

When recorded, mail to:  
 EXECUTIVE HOMES, INC.  
 17916 North Sixth Place  
 Phoenix, Arizona 85022

BILL HENRY, COUNTY RECORDER	
FEE 24.00	PGS 24

DECLARATION OF COVENANTS, CONDITIONS  
 RESTRICTIONS, AND RESERVATIONS

SO  
 PROP RSTR (PR)

City of Mesa, County of Maricopa  
 State of Arizona

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THIS DECLARATION is made this 2<sup>nd</sup> day of OCTOBER 1984, by EXECUTIVE HOMES, INC., an Arizona corporation, hereinafter referred to as "Declarant."

W I T N E S S E T H

WHEREAS, Declarant is the owner of certain property in the county of Maricopa, State of Arizona, which is more particularly described on Exhibit "A" attached hereto and by this reference made a part hereof (the "Property"), which Property is to be subdivided by a subdivision plat entitled ALTA MESA UNIT 11, to be recorded in the office of the Maricopa County Recorder (the "Unit 11 plat"), and;

WHEREAS, said property is part of a parcel known as "Alta Mesa," and is subject to the Alta Mesa First Amended and Restated Declaration of Covenants, Conditions and Restrictions (the "Alta Mesa Declaration") recorded July 18, 1984, in the Records of Maricopa County, Arizona, at Recording No. 84-312771; and

WHEREAS, the Alta Mesa Declaration permits the establishment of "ancillary associations" for the benefit of residents of certain parcels or subdivisions within Alta Mesa, and Declarant desires to establish such an association; and

WHEREAS, the above described real property is intended to be developed into an appealing residential area and the Declarant, in order to achieve the aesthetic value which each owner is to enjoy, shall landscape the Common Areas and Front Yard of each Lot to insure a uniform look in harmony with the external architectural designs of the dwellings; and

WHEREAS, it is the purpose of this Declaration to provide a means for maintaining, controlling, and preserving the above described real property as a residential community desirable for residential living for all present and future owners and it is intended that the covenants, conditions and restrictions contained herein shall be construed to achieve that objective.

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

ARTICLE I

DEFINITIONS

Section 1. "Declarant" shall mean EXECUTIVE HOMES INC., an Arizona corporation, and its successors and assigns if

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such successors and assigns should acquire more than one (1) undeveloped lot from the Declarant for the purpose of development.

Section 2. "Declaration" shall mean this Declaration of Covenants, Conditions and Restrictions.

Section 3. "Lot" shall mean and refer to a recorded Lot to the extent such Lot is part of the Covered Property; provided, however, Lot shall not include any portion of a Common Area.

Section 4. "Owner" shall mean and refer to one or more persons or entities, other than Declarant, who are alone or collectively the record owner of a fee simple title to a Lot, but excluding those holding title merely as security for the performance of an obligation.

Section 5. "Dwelling" shall mean the residential dwelling unit together with garage and other structures on the same Lot.

Section 6. "Improvement" shall include buildings, driveways, fences, screening walls, retaining walls, hedges, windbreaks, plantings, planted trees and shrubs, poles, and all other structures or landscaping improvements of every type and kind.

Section 7. "Common Area" shall mean and refer to all real property and the improvements thereon owned by the Association for the common use and enjoyment of said Owners.

Section 8. "Front Yards" shall mean and refer to the area from the front sidewalk to the dwelling and from the front sidewalk to the front property fences.

Section 9. "Community" shall mean and refer to a group of residential patio home dwelling units.

Section 10. "Association" shall mean and refer to ALTA MESA UNIT 11 HOMEOWNERS ASSOCIATION, an Arizona non-profit corporation, to be incorporated under the laws of the State of Arizona, its successors and assigns, which shall be an "ancillary association" as that term is defined in Article V, Section 5 of the Alta Mesa Declaration. Unless this Declaration specifically requires a vote of the Members, approvals and other actions to be given or taken by the Association shall be valid if given or taken by the Board or its authorized delegate.

Section 11. "Board" shall mean the Board of Directors of the Association.

Section 12. "Association Rules": shall mean rules adopted by the Association pursuant to Article V hereof entitled "Duties and Powers of the Association."

Section 13. "Architectural and Landscaping Committee" shall mean and refer to the committee provided for in Article IX hereof entitled "Architectural and Landscaping Control".

Section 14. "Common Expense" shall mean and refer to the actual and estimated costs of: maintaining the Front Yards of each and every Lot in the Covered Property, which shall include the mowing and fertilizing of lawns, the planting of seasonal flowers, plants, and shrubs, costs of attrition, and water and electrical expenses incurred for the use of time clocks on sprinkling systems. "Common Expense" shall also refer to the actual and estimated costs of: general landscape maintenance, repair and replacement of any improvements in the Common Areas,

including unpaid Special and Reconstruction Assessments; costs of management and administration of the Association including, but not limited to, compensation paid by the Association to employees, accountants, attorneys and other agents; the costs of utilities, gardening, and other services benefitting the Common Areas; the costs of casualty, liability, workmen's compensation and other insurance covering the Common Areas and reasonable reserves as deemed appropriate by the Board; the costs of bonding of the members of the management body; taxes paid by the Association; amounts paid by the Association for the discharge of any lien or encumbrance levied against the Common Areas or portions thereof; costs incurred by the Architectural and Landscaping Committee; and the costs of any other item or items designated by, or in accordance with other expenses incurred by, the Association for any reason whatsoever which in the good faith judgment of the Board, are required in connection with the Common Areas and the Alta Mesa Unit 11 Community, the Articles of Incorporation, or the By-Laws, or in furtherance of the purpose of the Association or in the discharge of any obligation imposed on the Association by this Declaration.

Section 15. "Assessments" the following meanings shall be given to the assessments hereinafter defined:

"Regular Assessment" shall mean the amount which is to be paid by each Owner to the Association for Common Expenses.

"Special Assessment" shall mean a charge against a particular Owner and his Lot directly attributable to the Owner, equal to the cost incurred by the Association for corrective action performed, or attorneys' fees and other charges payable by such Owner, pursuant to the provisions of this Declaration, plus interest thereon as provided for in this Declaration.

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"Reconstruction Assessment" shall mean a charge against each Owner and his Lot representing a portion of the cost to the Association for reconstruction of any portion or portions of the Common Areas (if any) pursuant to the provisions of this Declaration.

"Capital Improvement Assessment" shall mean a charge against each Owner and his Lot representing a portion of the cost to the Association for installation or construction of any capital improvements on any portion of the Common Areas which the Association may from time to time authorize.

Section 16. "Articles" and "By-Laws" shall mean and refer to the Articles of Incorporation and By-Laws of the Association as the same may from time to time be duly amended.

Section 17. "Covered Property" shall mean all real property and the improvements situated thereon which comprise Alta Mesa Unit 11 and are or shall be subject to this Declaration.

Unless specifically defined elsewhere in this Declaration, all other words shall have their common and ordinary usage, as the context requires, and no term defined in the Alta Mesa Declaration shall automatically or necessarily have the same definition when used herein, except where and to the extent necessary for this Declaration to be consistent with the Alta Mesa Declaration.

## ARTICLE II

### ALTA MESA DECLARATION

Section 1. Neither this Declaration, the Association, or Articles of Incorporation or By-Laws of the

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Association shall be effective until approved by the Association established by the Alta Mesa Declaration (the "Alta Mesa Association") and the Residential Architectural Committee established by the Alta Mesa Declaration. The Association and the rights of its members are subject and subordinate to the provisions of the Alta Mesa Declaration, the Articles of Incorporation and By-Laws of the Alta Mesa Association, the Alta Mesa Rules, and the architectural rules and guidelines adopted pursuant to the Alta Mesa Declaration. In addition, all of the Properties shall remain fully subject to the Alta Mesa Declaration. In the event of any conflict or inconsistency between this Declaration and the Alta Mesa Declaration, the terms and provisions of the Alta Mesa Declaration shall control, except in cases where the terms and provisions of this Declaration require that the parties effected perform acts or obtain supermajority levels of voting in excess of or more stringent than those required by the Alta Mesa Declaration, in which event the provisions of this Declaration shall control.

Section 2. Upon recordation of the Unit 11 Plat, the Lots in ALTA MESA UNIT 11 shall have a land use classification, as that term is defined in the Alta Mesa Declaration, of Cluster Residential.

### ARTICLE III

#### USE RESTRICTIONS

Section 1. Residential Use. With the exception of the Common Area, all of said Lots shall be known and described as single-family Lots and none of said Lots or any part thereof shall be used for the conduct of an active trade or business.

Section 2. New and Permanent Construction. All structures on said Lots shall <sup>Unofficial Document</sup> be of new construction and no buildings shall be moved from any other location onto any of said Lots, except as otherwise provided for herein.

Section 3. Temporary Structures. No structure of a temporary character, trailer, garage, tent, shack or other outbuilding shall hereafter be used on any part of the Covered Property at any time as a residence, either temporarily or permanently until a dwelling house shall have been erected, or until a contract with a reliable contractor shall have been entered into for the construction of the dwelling which shall comply with the restrictions as herein contained, except trailers or temporary construction offices or storage buildings placed or erected thereon to be used for construction purposes by the contractors performing either on-site or off-site work on said subdivision during the course of construction.

Section 4. No Business Use. No store, office, hospital, or other place for the care or treatment of sick or disabled; theatre, saloon, or other place of entertainment shall ever be erected or permitted upon any of the said Lots, or any part thereof. No business of any kind or character whatsoever, save and except rental of the units themselves or passive investment activities by an Owner for his account, shall be conducted in and from any residence on said Lots. Any Owner who elects to rent his unit to another person does so on the condition that the use of his unit by any such tenant shall be subject to the terms and conditions of this Declaration and, specifically Section 16 of Article XVII entitled "Lease Agreements".

Section 5. Animals. No animals, livestock or poultry of any kind shall be raised, bred or kept on any Lot, except that dogs, cats or other common household pets may be kept on the Lots, provided they are not kept, bred or maintained for

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any commercial purpose, or in numbers deemed by the Board of Directors to be unreasonable.

Section 6. Signs. No advertising signs except "For Sale" and "For Rent" signs, no billboards, unsightly object or a nuisance shall be created, placed or permitted on any of the Lots, nor shall the premises be used in any way or for any purpose which may endanger the health or unreasonably disturb the Owner of any Lot, EXCEPT that the Declarant may erect a billboard or other sign on Lots during the development of the said subdivision.

Section 7. Offensive Activities. No noxious or offensive activity shall be carried on upon any Lot, nor shall anything be done thereon which may be or become an annoyance or nuisance to the neighborhood.

Section 8. Vehicles. No vehicle of any type which is abandoned or inoperable shall be stored or kept on any Lot within the Covered Property in such a manner as to be seen from any other Lot or from any streets or alleyways within this subdivision.

Section 9. Change in Intended Use. No portion of the Covered Property may be developed or redeveloped otherwise than in accordance with its original intended use, without the prior written authorization and approval of the Declarant.

Section 10. Re-Subdivision. No Lot shall be further subdivided and no portion less than the full Lot shall be conveyed by any Owner without the prior written authorization and approval of the Declarant.

Section 11. Oil and Mineral Activity. No oil exploration, drilling, development or refining operations and no quarrying or mining operations and no oil wells, surface tanks, tunnels, or mineral excavations or shafts shall be permitted upon or under any Lot; and no derrick or other structure designed for use in boring for oil or natural gas shall be erected, maintained or permitted on any Lot.

Section 12. Garbage. No garbage or trash shall be placed on the exterior of any building, except in those areas designated by the Board of Directors. All trash shall be placed in containers meeting the specifications of the City of Mesa. All rubbish, trash and garbage shall be regularly removed from each Lot and shall not be allowed to accumulate thereon.

Section 13. Party Walls and Common Walls. Any fence or wall constructed upon the property line of any Lot shall be and remain a Party Wall or Common Residential Wall, and each owner whose Lot includes a party wall or common wall shall have the following obligations and rights with respect thereto:

(A) Should the party wall or common wall at any time while in use by any party be damaged or destroyed by reason of any cause other than an act or negligence of a party, the same shall be repaired or rebuilt at the joint expense of the parties, which expense shall be borne equally by them, providing that any sum received from insurance against such damage or destruction shall be first applied to such restoration. Whenever the wall, or any part thereof, shall be rebuilt, it shall be erected on the same spot which it formerly occupied, and shall be of the same size and the same or similar material and of like quality.

(B) The cost and expense of all other maintenance and repairs, save and except painting, shall be the joint responsibility of the parties, each to bear one half (1/2) of the cost thereof, and each party shall have the sole responsibility for the cost of painting that portion of the party

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wall which fences his or her Lot, or the common wall adjoining residential structures.

(C) Each party shall have an easement of ingress and egress over, upon and across any Lot or Lots upon which such party shares a party wall, for the purpose of maintaining, repairing or rebuilding the party wall.

(D) All or a portion of the party wall constructed upon an easement for utilities shall not constitute a waiver of the easement holders' right to exercise any and all rights vested in them by said easement, including but not limited to the right to remove or require the removal of said party wall with the installation, operation or maintenance of utilities located upon said easement.

(E) In the event any utility company requires the removal of any party wall which has been constructed upon the utility easement, then and in that event, to the extent the cost of removal and reconstruction of the party wall is not paid for by the utility company requiring its removal, the parties shall share the cost of such removal and reconstruction equally.

(F) The rights and other obligations as provided in this paragraph shall be binding upon and inure to the benefit of the heirs, executors, administrators, and assigns of the parties, and such rights and obligations shall be perpetual and shall constitute covenants, which covenants shall run with the aforesaid real property. In the event any party fails to perform the obligations set forth and contained herein with respect to such party wall, such obligation shall be enforceable in a court of law or equity, and the prevailing party shall be entitled to recover, in any such action, costs and reasonable attorney's fees as established by the court.

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Section 14. Maintenance and Repair of Improvements. No building, residence, structure or other improvement upon any Lot shall be permitted to fall into disrepair, and each such building, residence, structure and other improvement shall at all times be kept in good condition and adequately painted or otherwise finished. Owners shall also maintain in good repair all exterior surfaces, including but not limited to walls, roofs, porches, patios and appurtenances. Garages shall be kept at all times in a neat and tidy manner. Shrubs, trees, grass and plantings of every kind of any Lot, including set-back and easement areas, shall be kept at all times neatly trimmed, properly cultivated and free of trash, weeds and other unsightly material.

Section 15. Storage. All exterior storage shall be in areas attractively screened or concealed (subject to all required approvals as to architectural control) from view from neighboring Lots and streets. This provision shall apply without limitation, to woodpiles, camping trailers, boat trailers, travel trailers, boats, mobile homes and unmounted pickup camper units. Also, without limitation, no automobile, truck or other vehicle, regardless of ownership, age, condition or appearance, shall remain on any Lot in any manner which could be construed as being stored, neglected, abandoned or otherwise not in frequent use.

#### ARTICLE IV

##### MINIMUM REQUIREMENTS

Section 1. One (1) Single-Family Dwelling. No structure shall be erected, altered, placed or permitted to remain on any of the said Lots other than one single-family dwelling not to exceed one story in height and a private garage not to exceed one story in height for not more than three cars.

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Section 2. Floor Area. No dwelling house having a ground area of fewer than 900 square feet per unit, including the walls proper of the house, but exclusive of open porches, pergolas or attached garage, or other similar extensions or projections, shall be erected, permitted or maintained on any of the said Lots.

Section 3. Set Backs. No building shall be erected on any of the said Lots, the front walls of which are closer than ten (10) feet to, nor further than twenty-five (25) feet from the front property line. The side walls of any such building abutting upon a street shall be no closer than five (5) feet to said street line to which it is adjacent. No setback from the side property line of a Lot is required of any side wall which does not abut on a street.

Section 4. Fences. No front solid wall or fence of any height or kind shall be constructed or maintained closer than twenty (20) feet to the front street line of any of the said Lots.

#### ARTICLE V

##### DUTIES AND POWERS OF THE ASSOCIATION

Section 1. General Duties and Powers. In addition to the duties and powers enumerated in its Articles and By-Laws, or elsewhere provided for herein, and without limiting the generality thereof, the Association shall:

(A) Enforce the provisions of this Declaration by appropriate means, including, without limitation, the expenditure of funds of the Association, the employment of legal counsel, the commencement of actions, and the promulgation of the Association Rules as provided in the By-Laws, which shall include the establishment of a system of fines or penalties enforceable as Special Assessments also as provided for in the By-Laws;

(B) Own, maintain, and otherwise manage all of the Common Areas and all improvements and landscaping thereon, and all other property acquired by the Association, and maintain all Front Yards in Covered Property;

(C) Pay any real and personal property taxes and other charges assessed against the Common Areas;

(D) Obtain, as may be appropriate for the benefit of all of the Common Areas, water, electric services and refuse collection;

(E) Grant easements for utilities where necessary over the Common Areas and the Covered Property;

(F) Collect assessments to defray expenses associated with the Common Areas and maintenance of Front Yards of each Lot in the Covered Property from the Owners of said Lots;

(G) Maintain such policy or policies of insurance as the Board deems necessary or desirable in furthering the purpose of and protecting the interest of the Association and the Owners;

(H) Establish and maintain a working capital and contingency fund in an amount to be determined by the Board.

Section 2. Association Rules. The Association shall also have the power to adopt, amend and repeal such rules and regulations as it deems reasonable (The Association Rules). The Association Rules shall govern such matters in

furtherance of the purpose of the Association, including, without limitation, the use of the Common Area; provided, however, that the Association Rules may not discriminate among Owners except to reflect the different nature of their rights as provided herein and shall not be inconsistent with this Declaration, The Alta Mesa Declaration, the Articles, or By-Laws. A copy of the Association Rules as they may from time to time be adopted, amended, or repealed shall be made available to each Owner and a copy shall be posted in a conspicuous place in the Common Area. Upon making such Association Rules available and posting a copy of the same, said Association Rules shall have the same force and effect as if they were set forth in and were part of this Declaration. In the event of any conflict between any such Association Rules and any of the provisions of The Alta Mesa Declaration, this Declaration, the Articles, or By-Laws, the provisions of the Association Rules shall be deemed to be superseded by the provisions of the Alta Mesa Declaration, this Declaration, the Articles, or the By-Laws to the extent of any such inconsistency.

Section 3. Emergency Powers. The Association or any person authorized by the Association may enter upon any Lot and Dwelling thereon in the event of any emergency involving potential danger to life or property.

#### ARTICLE VI

##### MEMBERSHIP

Section 1. Membership. Every Owner of a Lot as to which Regular Assessments have commenced and the Declarant, on the basis set forth herein, shall be Members of the Association. The terms and provisions set forth in this Declaration which are binding upon all Owners are not exclusive, as Owners and Members shall, in addition, be subject to the terms and provisions of the Articles of Incorporation and the By-Laws of the Association to the extent the provisions thereof are not in conflict with this Declaration. The foregoing is not intended to include persons or entities who hold an interest merely as security for the performance of an obligation. Membership of Owners shall be appurtenant to and may not be separated from the fee ownership of any Lot within the Covered Property which is subject to assessment by the Association. Ownership of a Lot shall be the sole qualification for the respective membership of an owner and not more than one membership shall exist based upon ownership of a single Lot.

Section 2. Transfer. The membership held by any Owner shall not be transferred, pledged or alienated in any way, except upon the conveyance of any Lot within the Covered Property and then only to the purchaser of such Lot. Any attempt to make a prohibited transfer is void and will not be reflected upon the books of the Association.

Section 3. Voting Rights. The Association shall have two (2) classes of voting membership:

Class A. Class A Members shall all be Owners. Class A Members shall be entitled to one (1) vote for each Lot subject to Assessments as hereinafter provided in which they hold the interest required for membership. When more than one person owns a portion of the interest required for membership, the vote for such Lot shall be exercised as they among themselves determine, but in no event shall more than one (1) vote be cast with respect to any Lot.

Class B. The Class B Member shall be the Declarant. The Class B Member shall be entitled to three (3) votes for each Lot owned. The Class B membership shall cease and be converted to Class A



membership on the happening of either of the following events, whichever occurs earlier:

(a) When the total votes outstanding in the Class A membership equal the total votes outstanding in the Class B membership; or

(b) Three (3) years from the date of this Declaration.

## ARTICLE VII

### COVENANT FOR MAINTENANCE ASSESSMENTS

Section 1. Creation of the Lien and Personal Obligation Assessments. Each Owner of any Lot within the Covered Property, by acceptance of a Deed or other conveyance, whether or not it shall be so expressed in any such Deed or other conveyance, is deemed to covenant and agrees to pay to the Association: Regular Assessments, Special Assessments, Capital Improvement Assessments, and Reconstruction Assessments; such Assessments to be fixed, established and collected from time to time as hereinafter provided. The Assessments, together with interest thereon and costs of collection thereof, as hereinafter provided, shall be a charge on the land and shall be a continuing lien (hereinafter "Assessment Lien") upon the Lot against which each such Assessment is made. Each such Assessment, together with such interest, costs and reasonable attorneys' fees, shall also be the personal obligation of the Owner of such Lot 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, subject to the provisions of the Section herein entitled, "Subordination of Assessment Lien" in the Article <sup>Unofficial Document</sup> entitled, "Nonpayment of Assessments", the Assessment Lien for the full amount of Assessments unpaid at the date of a transfer of the Lot shall continue as a charge against the Lot in the hands of the subsequent Owner.

### Section 2. Purpose and Limitations of Assessment.

(A) The Assessments levied by the Association shall be used for the purpose of enhancing and protecting the value, desirability and attractiveness of the Covered Property, including, without limitation, the improvement and maintenance of the properties, and the discharge of the Association's duties under this Declaration and other agreements to which the Association may become a party.

(B) Until January 1 of the year immediately following the conveyance of the first Lot to an Owner, the maximum annual assessment shall be Two Hundred Fifty Dollars (\$250) per Lot.

(1) 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 each year not more than ten percent (10%) above the maximum assessment for the previous year without a vote of the membership.

(2) 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 ten percent (10%) by a vote of two-thirds (2/3) of each class of members who are voting in person or by proxy, at a meeting duly called for this purpose.

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

Section 3. Regular Assessments. The amount and time of payment of Regular Assessments, subject to the limitations set forth in the preceding Section 2 of this Article VII, shall be determined by the Board pursuant to the Articles and By-Laws after giving due consideration to the current maintenance costs and future needs of the Association. Not later than thirty (30) days prior to the beginning of each fiscal year, the Board shall estimate the total Common Expenses to be incurred for the forthcoming fiscal year. The Board shall then determine the amount of the Regular Assessment against each Lot. Written notice of the annual Regular Assessments shall be sent to every Owner. Each Owner shall thereafter pay to the Association his Regular Assessment in installments as established by the Board. In the event the Board shall determine that the estimate of total charges for the current year is, or will become, inadequate to meet all Common Expenses for any reason, it shall immediately determine the approximate amount of such inadequacy and issue a supplemental estimate of the total Common Expenses and determine the revised amount of Regular Assessments against each Owner. In the event the Board shall determine that the amount collected or to be collected through Regular Assessments is in excess of the Association's needs for the current year and reserves appropriate for future years, the Board, in its discretion, may refund to the Members who paid such Assessments all or a portion of such excess, reduce the amount of the Regular Assessments, or abate collection of Regular Assessments as it deems appropriate. In no event shall a reduction in the amount or abatement in the collection of Regular Assessments pursuant to this Section result in diminished quality of services from those upon which the Common Expense budget was based.

Section 4. Capital Improvement Assessments. In addition to the Regular Assessments, the Association may levy in any calendar year a Capital Improvement Assessment applicable to that year only, for the purpose of defraying, in whole or in part, the cost of any construction or replacement (other than due to destruction or governmental taking) of a described capital improvement upon the Common Areas to the extent the same is not covered by the provisions affecting Reconstruction Assessments in the Articles hereof entitled "Destruction of Improvements" and "Eminent Domain," including the necessary fixtures and personal property related thereto. To the extent such costs of capital improvements exceed Fifty Dollar (\$50.00) times the total number of Class A votes outstanding at the end of the previous calendar year, such Assessment must have the assent of two-thirds (2/3) of the votes of each Class of Members at a Member's meeting duly called or the written consent of two-thirds (2/3) of each Class of Members.

Section 5. Reconstruction Assessments. Pursuant to the provisions of the Articles hereof entitled "Destruction of Improvements" and "Eminent Domain," the Association may levy a Reconstruction Assessment for the purpose of defraying, in whole or in part, the cost of any restoration or repair necessitated by the destruction or the taking of all or any portion of the Common Area or improvements thereon.

Section 6. Special Assessments. Special Assessments shall be levied by the Board against Lots with respect to which particular costs have been incurred by the Association. In the event the Association undertakes to provide materials or services which benefit the individual Lots and which can be accepted or not by individual Owners, such Owners, in accepting such materials or services, shall be deemed to have agreed in writing that the statements of charges or costs therefor received from the Association shall be Special Assessments.

Section 7. Certificate of Payment. The Association shall, upon request, furnish to any Member liable for Assessments, a certificate in writing signed by an officer or authorized agent of the Association, setting forth whether the Assessments on a specified Lot have been paid, and the amount of

delinquency, if any, and whether any other violations pursuant to this Declaration exist and the nature of such violations, if any. A reasonable charge may be made by the Board for the issuance of such certificates and said certificates shall be conclusive evidence of payment of any Assessment therein stated to have been paid.

Section 8. Exempt Property. The following portions of the Covered Property shall be exempt from the Assessments created herein; (i) all properties dedicated to and accepted by a local public authority; (ii) the Common Areas. However, no Lot, land or improvement devoted to Dwelling use shall be exempt from said Assessments.

Section 9. Date of Commencement of Regular Assessments. Regular Assessments shall commence as to a Lot on the first day of the month following the conveyance of such Lot to an Owner by the Declarant.

Section 10. Apportionment of Assessments. Unless otherwise provided in this Declaration, Regular, Reconstruction and Capital Improvement Assessments shall be collected at intervals selected by the Board and shall be fixed at a uniform rate for all Lots and shall be apportioned in such a way that each Lot and the Owner thereof shall be charged with a fraction of such Assessments, the fraction having a numerator of one (1) and a denominator equal to the number of Lots included, from time to time, within the Covered Property.

Section 11. No Offsets. Assessments shall be payable in the amount specified by the Assessment and no off-sets against such amount shall be permitted for any reason including, without limitation, a claim that the Association is not properly exercising its duties in maintenance or enforcement or the non-use of all or any portions of <sup>Unofficial Document</sup> the Common Areas.

## ARTICLE VIII

### NONPAYMENT OF ASSESSMENTS

Section 1. Delinquency. Any Assessment provided for in this Declaration which is not paid when due shall be delinquent. If any such Assessment is not paid within thirty (30) days after the delinquency date, a late charge of Five Dollars (\$5.00), or such other amount as the Board shall from time to time determine, shall be levied and the Assessment shall bear interest from the date of delinquency at the rate of eighteen percent (18%) per annum. The Association may, at its option, bring an action at law against the Owner personally obligated to pay the same, and/or foreclose the Assessment Lien against the Lot in accordance with the then prevailing law of the State of Arizona relating to the foreclosure of liens upon real property. If an action is commenced, there shall be added to the amount of such Assessment the late charge, interest, reasonable attorneys' fees, and expenses incurred in connection with the debt secured by the Assessment Lien. Any judgment entered in such an action shall include said late charge, interest, and a reasonable attorneys' fee, together with the costs of the action. Each Owner vests in the Association or its assigns the right and power to bring all actions at law for lien foreclosure against such Owner or other Owner for the collection of such delinquent Assessments.

Section 2. Priority of Assessment Lien. An Assessment Lien upon a Lot shall be superior to any and all other charges, liens or encumbrances which hereinafter in any matter may arise or be imposed upon such Lot; provided, however, that such Assessment Lien shall be subject and subordinate to: (i) liens for taxes and other public charges which by applicable law are expressly made superior; (ii) any assessment lien arising pursuant to the Alta Mesa Declaration; (iii) all liens recorded

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in the Office of the County Recorder of Maricopa County, Arizona, prior to the date of recordation by the Association of an instrument (hereinafter referred to as the Notice of Lien Priority), which will establish, pursuant to the then prevailing law of the State of Arizona, as to such Lot, the date of priority of the Assessment Lien as being the date of recordation of the Notice of Lien Priority. All liens recorded subsequent to the recordation of the Notice of Lien Priority, except for a First Mortgage or a First Deed of Trust, shall be junior and subordinate to the Assessment Lien. All liens recorded prior to the recording of the Notice of Lien Priority and any First Mortgage or First Deed of Trust shall remain superior to the Assessment Lien; provided, however, if any First Mortgage, First Deed of Trust, or other lien recognized as superior to the Assessment Lien under this provision is subsequently increased, refinanced or modified in any way, except for liens recognized as superior pursuant to clauses (i) and (ii) of this Section 2, such lien shall thereupon immediately and automatically lose its superiority to the Assessment Lien and become a junior and subordinate lien to the Assessment Lien.

Section 3. Curing of Default. Upon the timely curing of any default for which a Notice of Lien Priority was recorded by the Association, officers of the Association are hereby authorized to record an appropriate release of such notice, upon payment by the defaulting Owner of a fee to be determined by the Association to cover the costs of preparing and recording such release together with the payment of such other costs, including, without limitation, legal fees and court costs, interest or expenses as shall have been incurred.

Section 4. Cumulative Remedies. The Assessment Lien and the rights to foreclose thereunder shall be in addition to and not in substitution of <sup>Unofficial Document</sup> all other rights and remedies which the Association and its assigns may have hereunder and by law, including a suit to recover a money judgment for unpaid Assessments, as above provided.

Section 5. Subordination of Assessment Liens. If any Lot subject to a monetary lien created by any provision hereof shall be subject to the lien of a First Deed of Trust or Mortgage: (i) the foreclosure of any lien created by anything set forth in this Declaration shall not operate to affect or impair the lien of such First Deed of Trust or Mortgage; and (ii) the foreclosure of the lien of a First Deed of Trust or Mortgage, the acceptance of a deed in lieu of foreclosure of the First Deed of Trust or Mortgage or sale under a power of sale included in such First Deed of Trust or Mortgage (such events shall be hereinafter referred to as "Events of Foreclosure") shall not operate to affect or impair the Assessment Lien hereof, except that any persons who obtain an interest through any of the Events of Foreclosure shall take title free of the Assessment Lien hereof for all said charges that have accrued up to the time of any of the Events of Foreclosure, but subject to the Assessment Lien hereof for all said charges that shall accrue subsequent to any of the Events of Foreclosure. Nothing in this Section shall be construed to release any Owner from his personal obligation to pay for any Assessment levied pursuant to this Declaration.

#### ARTICLE IX

##### ARCHITECTURAL AND LANDSCAPING CONTROL

Section 1. Obligation to Submit Plans for Approval. No buildings, fence, wall, storage room, driveway or other Improvement or Structure shall be commenced, erected or maintained upon the Covered Property, nor shall any exterior addition to or change or alteration of any Dwelling, including, without limitation, patio covers or the color of any Dwelling, or

to any fences, walls, driveways, or garages be made until the following conditions are satisfied:

(A) Plans and specifications showing the nature, kind, size, area, height, materials, exterior color and surface, shape and design, and location of such Improvement must be approved by the Architectural and Landscaping Committee described below. Before granting such approval, the Architectural and Landscaping Committee shall have in its reasonable judgment, determined that the plans and specifications conform to any architectural standards adopted by the Board and provide for an Improvement which is in harmony as to external design and location with surrounding Dwellings and topography; and

(B) All construction must conform with such approved plans and specifications. Any such plans and specifications as the Architectural and Landscaping Committee does approve are not approved for engineering design, and by approving such plans and specifications neither the Architectural and Landscaping Committee, the members thereof, the Association, nor Declarant assumes liability or responsibility therefor, or for any defect in any Improvement constructed from such plans and specifications. In determining whether to approve or disapprove such plans and specifications, the Architectural and Landscaping Committee shall have the right to reject and disapprove any such plans or specifications which, in its opinion, are not suitable or desirable with respect to the individual Dwelling or the Covered Property as a whole. In this regard, the Architectural and Landscaping Committee shall have the right to take into consideration the matters mentioned above, as well as the aesthetics of the proposed building or other Improvement, the harmony thereof with the surroundings, the effect of the building or other Improvements on the view of the adjacent or neighboring property and the effect on the Covered Property as a whole; and

(C) All conditions for architectural control set forth in the Alta Mesa Declaration have been fully compiled with.

Section 2. Landscaping Approval. No trees, bushes, shrubs or plants shall be planted or emplaced upon the Front Yards of the Covered Property without written permission from the Architectural and Landscaping Committee. The Architectural and Landscaping Committee may disapprove any such planting if, in the opinion of the Committee, the aesthetic beauty of any Lot would be unduly marred by the location of such planting, or that such planting would create a problem in maintaining the Front Yard of said Lot. The Architectural and Landscaping Committee may from time to time adopt rules and regulations (Landscaping Standards) which permit the planting and placement of certain species of trees, bushes, shrubs or plants in particular locations without the prior approval of the Committee.

Any changes to the landscaping of any part of the Property must also comply fully with the provisions of the Alta Mesa Declaration.

Section 3. Approval and Conformity of Plans. In the event that the Architectural and Landscaping Committee shall disapprove of plans and specifications submitted to it pursuant to the provisions of Section 1 and 2 above of this Article IX, such decision shall be appealable to the Board as provided below, and the Board's decision that approval was properly withheld shall be final and nonappealable. In the event that; (i) the Architectural and Landscaping Committee approves such plans and specifications, or (ii) the Board approves or is deemed to have approved such plans and specifications after the Committee has disapproved the same, or (iii) the Architectural and Landscaping Committee fails to approve or disapprove such plans and specifications within twenty (20) days after the same have been

submitted to it, then such plans and specifications shall be deemed approved.

Section 4. Appeal of Architectural and Landscaping Committee Decisions. Decisions of the Architectural and Landscaping Committee shall be appealable to the Board. Appeals may be taken to the Board by written notice to the Board not more than ten (10) days following the final decision of the Committee, and within twenty (20) days following the receipt of such notice of appeal, the Board shall render a decision with respect to such appeal. The failure of the Board to render a decision within said twenty (20) day period shall be deemed a decision in favor of the appellant.

Section 5. Appointment of Architectural and Landscaping Committee. The Declarant shall initially appoint the Architectural and Landscaping Committee and it shall consist of not less than two (2) members. The Declarant shall retain the right to appoint, augment or replace members of the Architectural and Landscaping Committee until the earlier of the date on which Declarant no longer possesses a majority of the votes in the Association or until November 1, 1987; provided that the Declarant may, at its sole option, transfer this right to the Board by written notice thereof prior to the end of such period. Thereafter, the right to appoint, augment or replace members of the Committee shall automatically be transferred to the Board. The Committee shall initially consist of \_\_\_\_\_ and \_\_\_\_\_, and the address of the Committee to which all notices are to be given is 17416 North 6th Place, Phoenix, Arizona 85022.

Section 6. General Provisions.

(A) The Architectural and Landscaping Committee may establish reasonable <sup>Unofficial Document</sup> rules, subject to adoption by the Board, in connection with its review of plans and specifications by one or more of the members of the Committee, and concerning the creation of one or more subcommittees, the members of which shall be appointed by the Architectural and Landscaping Committee subject to confirmation by the Board, to which plan review responsibilities may be delegated. Unless such rules as the Architectural and Landscaping Committee may establish are compiled with, any plans and specifications submitted shall not be reviewed or approved.

(B) The address of the Committee shall be such place as the Board may from time to time designate by written notice to the Owners of the Lots.

Section 7. Nonapplication to Declarant. The provisions of this Article shall not apply to Lots owned from time to time by the Declarant.

Section 8. Enforcement Remedies. The Association may enforce the provisions of this Article by means of any remedy available at law or in equity, including, without limitation, the right to seek specific performance or to enjoin the continuance of any noncompliance with or violation of said provisions, or by means of any other remedy deemed appropriate by the Association. The failure of any such remedies to be employed upon any one or more occurrences giving rise to such remedies shall not be a waiver of the right to employ such remedies on other occasions. If, in any action to enforce said provisions, the Association prevails against the party in violation of said provisions, said party in violation shall pay the costs of suit and the reasonable attorneys' fees incurred by the Association.

Section 9. Exemption From Architectural Controls. Notwithstanding the foregoing, Declarant may, at its option, exempt any Owner or Owners from the obligations provided under Section 1 and 2 of this Article IX to submit plans and

specifications to the Association or the Architectural Committee and to obtain the approval of the Association or the Committee of such plans. Such exemptions shall be in writing with notice thereof given to the Association, and may be for a specified period of time, with respect to specified Improvements only or all Improvements, or may permanently exempt such Owner(s) from such obligations. The party receiving such exemption shall continue to be bound by the remaining provisions of Section 1 and 2 and the subsequent Sections of this Article IX and by the provisions for architectural control set forth in the Alta Mesa Declaration.

## ARTICLE X

### MAINTENANCE OBLIGATIONS

Section 1. Maintenance of Common Areas and Front Yards. The landscaped areas shall be of greenscaping consisting of lawns, groundcovers, trees, shrubs, and flowering plants. No desert landscaping, rockscaping, gravel, granite, cactus or any type of plant considered to be of the desert species shall be planted or emplaced on any Common Area or Front Yard. These Common Areas and Front Yards shall subsequently be maintained by the Declarant's own employees or by another party contracted to perform said maintenance until seventy-five percent (75%) of the units are occupied. At such time, the Association shall be delegated and assigned the power of maintaining and administering and enforcing these covenants, conditions and restrictions; collecting and disbursing funds pursuant to the assessments and charges hereinafter created and referred to; and to perform such other acts and shall generally benefit the community. The Association shall maintain the Common Areas and Front Yards of each and every Lot at a level of general maintenance and landscaping excellence at least <sup>Unofficial Document</sup> 1 to the standard prevailing with respect to areas of a similar nature located in residential communities commonly and generally deemed to be of high quality. The Association may, at its option, satisfy the maintenance obligations provided herein with its own employees and equipment or contract with another party to satisfy said maintenance obligations. Maintenance obligations shall consist of:

(A) Mowing, fertilizing, verticutting and planting of seasonal lawns. Planting of seasonal shrubs, groundcover, bushes and flowers. Replacement of trees, shrubs, bushes and plants due to attrition.

(B) All Front Yards will come equipped with bubbler and sprinkling systems which will be operated by automatic timer and controlled by the party contracted with to accomplish said maintenance obligations.

(C) Common Areas shall come equipped and be maintained by the same means as described in Paragraph (B), Section 1, Article X.

Section 2. Maintenance Responsibilities of Owners. Except where such obligations are expressly assumed by the Association, every Owner shall maintain the exterior of his or her Dwelling, roof, walls, fences and/or the exterior and roof of any other Improvement or structure located or emplaced on his or her Lot in good condition and repair.

Section 3. Enforcement Remedies. The Association may enforce the provisions of this Article by means of any remedy available at law or in equity, including, without limitation, the right to seek specific performance or to enjoin the continuance of the noncompliance with or violation of said provisions, or by means of any other remedy deemed appropriate by the

Association. If in any action to enforce said provisions the Association prevails against the party in violation of said provisions, said party in violation shall pay the costs of suit and the reasonable attorneys' fees incurred by the Association.

#### ARTICLE XI

##### INSURANCE

Section 1. Types. The Association shall make a good faith effort to obtain and continue in effect full coverage blanket liability insurance with clauses waiving subrogation against Owners and the Association and persons upon the Covered Property with the permission of an Owner. Such insurance shall be maintained by the Association for the benefit of the Association. As to any policy which will not be voided or impaired thereby, the Owners hereby waive and release all claims against the Association, the Board, and the Declarant, agents and employees of each of the foregoing, with respect to any loss covered by such insurance, whether or not caused by negligence or breach of any agreement by said persons, but only to the extent of insurance proceeds received in compensation for such loss. The Board shall annually determine whether the amounts and type of insurance it has obtained provide adequate coverage for the Common Areas and increases or add additional insurance as appropriate.

Section 2. Premiums and Proceeds. Insurance premiums for any such blanket insurance coverage obtained by the Association and any other insurance deemed necessary by the Association shall be a Common Expense to be included in the Regular Assessments levied by the Association. Insurance proceeds shall be used by the Association for the repair or replacement of the Property for which the insurance was carried, or otherwise disposed of as <sup>Unofficial Document</sup> provided in Article XII entitled "Destruction of Improvements" in this Declaration. The Association is hereby granted the authority to negotiate loss settlements with the appropriate insurance carriers. Any two (2) directors of the Association may sign a loss claim form and release form in connection with the settlement of a loss claim, and such signatures shall be binding on the Association and the Members.

#### ARTICLE XII

##### DESTRUCTION OF IMPROVEMENTS

Section 1. Comon Areas. In the event of partial or total destruction of improvements upon the Common Areas, it shall be the duty of the Association to restore and repair the same to its former condition as promptly as practical. The proceeds of any insurance maintained pursuant hereto shall be used for such purpose, subject to the prior rights of beneficiaries of Deeds of Trust whose interest may be protected by said policies. In the event that the amount available from the proceeds of such insurance policies for such restoration and repair shall be at least seventy-five percent (75%) of the estimated cost of restoration and repair, a Reconstruction Assessment may be levied by the Association over and above the amount of any insurance proceeds available for such purpose. In the event that the amount available from the proceeds of such insurance policies for such restoration and repair shall be less than seventy-five percent (75%) of the estimated cost of repair, the improvements shall be replaced or restored and a Reconstruction Assessment may be levied by the Association to provide the necessary funds for such repair and reconstruction, over and above the amount of any insurance proceeds available for such purpose; provided, however, that such Reconstruction Assessment shall first be approved by an affirmative vote of a majority of both classes of Members or the written consent of a like number of the Members of both Classes. In the event any excess insurance proceeds remain, the



Board, in its sole discretion, may retain such sums in the general funds of the Association or distribute pro rata all or a portion thereof of the Owners.

Section 2. Residential Units. In the event any residential unit is damaged or destroyed by an Owner or any of his guests, tenants, licensees, agents, or members of his family, such Owner shall, within sixty (60) days from the date of the occurrence of the damage or destruction, enter into a binding bona fide contract for the repair and rebuilding of the exterior of said residential unit and any damage to the exterior of adjacent residential units or property in a good workmanlike manner in conformance with the original plans and specifications used in the construction of said residential unit. In the event such Owner refuses or fails to so repair and rebuild any and all such damage to the exterior of the residential unit and adjacent property within a reasonable time, not to exceed six (6) months from the date of the occurrence of the damage or destruction, the Association, by and through its Board of Directors, is hereby irrevocably authorized by such Owner to repair and rebuild any such residential unit and/or adjacent property in a good workmanlike manner in conformance with the original plans and specifications of the residential units. The Owner shall then repay the Association in the amount actually expended for such repairs.

Each Owner further agrees that these charges for repairs, if not paid with ten (10) days after completion of the work, shall be delinquent and shall become a lien upon said Owner's lot and residential unit and shall continue to be such lien until fully paid. Said lien shall be subordinate to any First Mortgage or First Deed of Trust on the property. Said charges shall bear interest from the date of delinquency at the rate of twelve percent (12%) <sup>Unofficial Document</sup> per annum. The amount of principal and interest owed by said Owner to the Association shall be a debt, and shall be collectible by any lawful procedure allowed by the laws of the State of Arizona.

Each Owner, by his acceptance of a deed to a Lot and residential unit, hereby expressly vests in the Association or its agent the right and power to bring all actions against such Owner for the collection of such charges and to enforce the aforesaid lien by all methods available for the enforcement of such liens and such Owner hereby expressly grants to the Association a power of sale in connection with said lien.

Nothing contained in this Article shall be construed in any way so as to relieve any insurance company from the payment of any and all amounts which would be payable under any policy or policies, had not this Article been inserted.

In the event of a dispute between and Owner and the Board of Directors with respect to the cause of damage or the extent of repairs necessitated or with respect of the cost thereof, then, upon written request of the Owner, addressed to the Association, the matter shall be submitted to arbitration under such rules as may from time to time be adopted by the Association or its Board of Directors. If no such rules have been adopted, then the matter shall be submitted to three (3) arbitrators; one being chosen by the Board of Directors, one being chosen by the Owner, and the third being chosen by the other two. If the two arbitrators cannot agree as to the selection of the third arbitrator, then the then Presiding Judge of the Superior Court of the State of Arizona in Maricopa County shall choose the third arbitrator. A determination by any two of the three arbitrators shall be binding upon the Owner and the Association, who shall share the cost of arbitration equally. In the event one party fails to choose an arbitrator within ten (10) days after personal receipt of a request in writing for

arbitration from the other party, then said other party shall have the right and power to choose both arbitrators.

#### ARTICLE XIII

##### EMINENT DOMAIN

Section 1. The term "taking" as used in this Article shall mean condemnation by eminent domain or sale under threat of condemnation. In the event of a threatened taking of all or any portion of the Common Areas, the Board may delegate to represent all of the members in connection with the taking. The Board shall act in its sole discretion with respect to any awards being made in connection with the taking and shall be entitled to make a voluntary sale to the condemnor in lieu of engaging in a condemnation action. Any awards received on account of the taking shall be paid to the Association.

#### ARTICLE XIV

##### RIGHTS IN THE COMMON AREA

Section 1. Members' Right of Enjoyment. Every Owner and the family and guests of an Owner shall have a right and easement of enjoyment in and to the Common Area, if any, and such right shall be appurtenant to and shall pass with the fee title to every Lot, subject to the following provisions:

(A) The right of the Association to limit the number of guests of Members and to limit the use of the Common Area by persons not in possession of a Lot but owning a portion of the interest in a Lot required for membership.

(B) The right of the Association to establish reasonable rules and regulations pertaining to the use of the Common Area.

(C) The right of the Association to dedicate or transfer all or any part of the Common Areas to any public agency, authority or utility for such purposes and subject to such conditions as may be agreed to by the Owners. No such dedications or transfer (other than those dedications by Declarant specified on the recorded plat for the Covered Property) shall be effective unless an instrument signed by Owners entitled to cast two-thirds (2/3) of the votes of each class of Owners has been recorded, agreeing to such dedication or transfer, and unless written notice of the proposed action is sent to every Member not less than thirty (30) days nor more than sixty (60) days in advance.

Section 2. Waiver of Use. No Owner may exempt himself from personal liability for Assessments duly levied by the Association, nor release the Lot owned by him from the liens and charges hereof, by waiver of the use and enjoyment of the Common Area, or the abandonment of his Lot.

#### ARTICLE XV

##### EASEMENTS

Section 1. Reciprocal Utility Easements. The rights and duties of the Owners with respect to water, sewer, electricity, gas, telephone, cable television lines and drainage facilities shall be governed by the following:

(A) Wherever sanitary sewer and water house connections; electricity, gas, telephone and cable television lines; irrigation or drainage facilities are installed within the Covered Property, the Owners of any Lot served by said connections, lines or facilities shall have the right, and are

hereby granted an easement to the full extent necessary therefor, to enter upon the Lots owned by others, or to have utility companies enter upon the Lots owned by others, in or upon which said connections, lines or facilities, or any portion thereof lie, to repair, replace and generally maintain said connections as and when the same may be necessary as set forth below.

(B) Wherever sanitary sewer and water house connections; electricity, gas, telephone or cable television lines; irrigation or drainage facilities are installed within the Covered Property, which connections serve more than one (1) Lot, the Owner of each Lot served by said connections shall be entitled to the full use and enjoyment of such portions of said connections as service his or her Lot.

Section 2. Development and Construction Easements. An easement over the Common Areas as the same may from time to time exist and over such of the Covered Property on which development and construction of Dwellings and sales of such Dwellings has not been completed for development, construction, display and exhibit purposes in connection with the erection and sale of residential Dwelling units within the Covered Property is hereby reserved to the Declarant, its successors and assigns, including, without limitation, its sales agents and representatives, and prospective purchasers of Lots; provided, however, that such use shall not be for a period beyond the earlier of (i) November 1, 1987, or (ii) the date on which Declarant no longer has a majority of the votes in the Association.

Section 3. Access Easement. Easements are hereby reserved to Declarant, its successors and assigns, over the Covered Property for the purpose of access, ingress and egress over, to, from and upon the Unofficial Document Common Area.

Section 4. Inspection and Maintenance Easement. There is hereby reserved to the Association and its authorized representatives easements over the Covered Property for the purpose of inspection for compliance with the provisions of the Article hereof titled "Architectural and Landscaping Controls", and for the purpose of inspection and accomplishing compliance with the provisions of the Article hereof entitled "Maintenance Obligations."

Section 5. No Amendment. This Declaration cannot be amended to modify or eliminate the easements reserved to Declarant herein without the prior written approval of Declarant and any attempt to do so shall have no effect.

#### ARTICLE XVI

##### DESIGNATION AND CONVEYANCE OF COMMON AREAS

Section 1. Designation and Conveyance by Declarant. All or any part of any interest held by Declarant in the Covered Property may be conveyed, transferred or assigned to the Association and designated as Common Area by the Declarant in his sole discretion and without the approval, assent or vote of the Association or the Owners.

Section 2. Designation and Conveyance by Other Than Declarant. Upon acceptance in writing by the Association, pursuant to a two-thirds (2/3) majority vote of each class of its Members, or the written assent of such Members, any person may convey, transfer or assign real property, the improvements located thereon or an interest therein to the Association and designate the same as Common Area.

## ARTICLE XVII

GENERAL PROVISIONS

Section 1. Enforcement. The Association shall have the exclusive right to enforce by proceedings at law or in equity, all restrictions, conditions, covenants, reservations, liens and charges now or hereafter imposed by the provisions of this Declaration or any amendment hereto, including the right to prevent the violation of any such restrictions, conditions, covenants or reservations and the right to recover damages or other dues for such violation. Failure by the Association to enforce any covenant, condition or restriction herein contained shall in no event be deemed a waiver of the right to do so thereafter.

Section 2. Severability. Invalidation of any one of these covenants, conditions or restrictions by judgment or court order shall in no way affect any other provision which shall remain in full force and effect.

Section 3. Term. The covenants, conditions and restrictions of this Declaration shall run with and bind the Covered Property and shall inure to the benefit of and be enforceable by the Association or any Owner, their respective legal representatives, heirs, successors and assigns, for a term of fifty (50) years from the date this Declaration is recorded, after which time said covenants, conditions and restrictions shall be automatically extended for successive periods of ten (10) years, unless an instrument, signed by a majority of the then Owners has been recorded, agreeing to amend or release said covenants, conditions and restrictions in whole or in part.

Section 4. Construction. The provisions of this Declaration shall be liberally construed to effectuate its purpose of creating a plan for the development, management and operation of a residential community and for the maintenance of the Common Area and Front Yards. The Article and Section headings have been inserted for convenience only, and shall not be considered or referred to in resolving questions in interpretation or construction.

Section 5. Amendments. These conditions may be terminated, extended, modified or amended, at any time or times, as to the whole tract or any part thereof, by an instrument signed by not less than ninety percent (90%) of the owners of the Lots if such modification is made within fifty (50) years of the date of this agreement, and thereafter by an instrument signed by not less than seventy-five percent (75%) of the owners of said Lots, provided that no such termination, extension, modification, or amendment shall be effective until a proper instrument in writing has been executed, acknowledged and recorded in the Office of the Recorder, County of Maricopa, State of Arizona, and further provided that no such termination, extension, modification, or amendment shall be inconsistent with the Alta Mesa Declaration. The easements reserved in Articles XIV and XV hereof may not be terminated, modified, or amended except with the written consent of the owner of the dominant tenement and the removal of all encroachments on the affected servient tenement.

Section 6. Mortgagee Protection.

(A) The Association will give ten (10) days prior written notice to each institutional mortgagee before the Association or its members take any of the following actions:

(1) Abandonment or termination of the status of the planned development as it presently exists.

(2) Any amendment to the Articles of Incorporation, Declaration of Covenants, Conditions and Restrictions, By-Laws (or equivalent documents).

(3) Termination of professional management, if any, and assumption of self-management of the planned development.

(B) The Association shall give each institutional mortgagee written notice of any condemnation of any part of the Common Area, or damage thereto exceeding \$10,000 in amount.

(C) Any institutional mortgagee shall, upon written request, be entitled to:

(1) Inspect the books and records of the Association during normal business hours.

(2) Receive an annual financial statement of the Association within ninety (90) days following the end of any fiscal year of the Association.

(3) Receive written notice of all meetings of the Association and designate a representative to attend such meetings.

(D) So long as the Federal National Mortgage Association ("FNMA") or Government National Mortgage Association ("GNMA") is a mortgagee of a Lot in the planned development, or owns a Lot therein, the Association shall maintain in effect at least such casualty, flood and liability insurance, and a fidelity bond which satisfy those standards established by FNMA and GNMA for planned developments, as published in the FNMA and GNMA <sup>Unofficial Document</sup> "Servicer's Guide" or otherwise, except to the extent such requirements shall have been waived in writing by FNMA or GNMA.

Section 7. Singular Includes Plural. Whenever the context of this Declaration requires the same, the singular shall include the plural and the masculine shall include the feminine.

Section 8. Attorneys' Fees. In the event an action is instituted to enforce any of the provisions contained in this Declaration, the party prevailing in such action shall be entitled to recover from the other party thereto, as part of the judgment, reasonable attorneys' fees and costs of such suit. In the event the Association is a prevailing party in such action, the amount of such attorneys' fees and costs shall be a Special Assessment with respect to the Lot involved in the action.

Section 9. Nuisance. The result of every act or omission, whereby any provision, condition, restriction, covenant, easement or reservation contained in this Declaration is violated in whole or in part, is hereby declared to be and constitutes a nuisance, and every remedy allowed by law or equity against a nuisance, either public or private, shall be applicable against every such result, and may be exercised by the Association or any Owner. Such remedy shall be deemed cumulative and not exclusive.

Section 10. Notices. In each instance in which notice is to be given to an Owner, the same shall be in writing and may be delivered personally, in which case personal delivery of such notice to one or more Co-Owners shall be deemed delivery to all the Co-Owners, or such notice may be delivered by United States Postal Service, certified or registered, postage prepaid, to the Owner at the most recent address furnished by such Owner in writing to the Association for the purpose of giving notice, or, if no such address shall have been furnished, then to the street address of such Owner's Lot, and any notice so deposited

in the postal service within Maricopa County, Arizona, shall be deemed delivered forty-eight (48) hours after such deposit.

Section 11. Obligation of Declarant. For the period specified for utilization and during the period of actual utilization of the easement described in Section 2 Article XV in this Declaration entitled "Easements," Declarant, its lessees, agents, contractors, successors and assigns shall not be subject to the provisions of Article III entitled "Use Restrictions."

Section 12. Personal Covenant. To the extent the acceptance of a conveyance of a Lot creates a personal covenant between the Owner of such Lot and Declarant, the Association, or other Owners, such personal covenant shall terminate and be of no further force or effect from and after the date when a person or entity ceases to be an Owner except to the extent this Declaration may provide otherwise with respect to the payment of money to the Association.

Section 13. Nonliability of Officials. To the fullest extent permitted by law, neither the Association, the Board, the Architectural and Landscaping Committee, any other committee of the Association or any Member, or any officer, director or employee of any of the above, shall be liable to any Member or the Association for any damage, loss or prejudice suffered or claimed on account of any decision, approval or disapproval of plans or specifications (whether or not defective), course of action, act, omission or the like made in good faith, whether or not erroneous or negligent, and which such Association, Board, Member, committees or persons reasonably believed to be within the scope of their duties and rights. The Association shall indemnify and hold harmless to the full extent permitted by law, such Association, Board, Member, committees or persons with respect to any of such decisions, approvals or disapprovals of plans and specifications, course of action, act, omission or the like, and to defray the costs of this indemnification obligation, the Board shall assess each Owner for such Owner's share of such costs.

Section 14. Grantee-Developer Declarations. A Grantee-Developer may, at his option, record a declaration of covenants, conditions and restrictions [hereinafter "Grantee-Developer Declaration"] which shall bind and run with such portion of the Covered Property and inure to the benefit of the Owners of such portion, their successors and assigns, provided, however, that such a Grantee-Developer Declaration shall be compatible with the provisions of this Declaration. In the event of a conflict between this Declaration and any covenants, conditions and restrictions subsequently recorded by such a Grantee-Developer, this Declaration shall prevail and be controlling. Such a Grantee-Developer may require the creation of a Community Association for the purpose of enforcing the provisions of said Grantee-Developer Declaration, maintaining the Community Common Facilities (if any), and performing other functions similar to those performed by the Association.

Section 15. FHA/VA Approval. Providing the Federal Housing Administration or the Veterans Administration has issued commitments to insure one or more mortgages upon the Properties and as long as there is a Class B member, the following actions will require the prior approval of the Federal Housing Administration or the Veterans Administration: Annexation of additional properties, dedication of Common Area, and amendment of this Declaration of Covenants, Conditions, and Restrictions.

Section 16. Lease Agreements. Any lease agreement between a Lot Owner and a lessee shall be required to provide that the terms of the lease shall be subject in all respects to the provisions of the Declaration, Articles of Incorporation and the By-Laws, and that any failure by the lessee to comply with the terms of such documents shall be a default under the lease.

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Other than the foregoing, there is no restriction on the right of any Owner to lease his unit.

IN WITNESS WHEREOF, EXECUTIVE HOMES, INC., an Arizona corporation, as the owner of said property, has caused its corporate name to be signed by the undersigned officer(s) thereunto duly authorized, this 2 day of October, 1984.

EXECUTIVE HOMES, INC., an  
Arizona corporation

By   
William L. Diana, President

Unofficial Document

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STATE OF ARIZONA     )  
                              )ss.  
County of Maricopa )

On this, the 2 day of October, 1984, before me, the undersigned officer, personally appeared WILLIAM L. DIANA, who acknowledged himself to be the President of Executive Homes, Inc., an Arizona corporation, and that he, as such officer, being authorized so to do, executed the foregoing instrument, for the purposes therein contained, by signing for the corporation by himself as such officer.

IN WITNESS WHEREOF, I hereunto set my hand and official seal.

  
Notary Public

My Commission Expires:

6-15-86

Unofficial Document