When recorded, return to:

D. Randall Stokes, Esq.
Lewis and Roca
40 North Central Avenue
16th Floor
Phoenix, Arizona 85004-4429

OFFICIAL RECORDS OF
MARICOPA COUNTY RECORDER
HELEN PURCELL

92-0603634

10/26/92 03:04

AMENDED AND RESTATED

DECLARATION OF COVENANTS, CONDITIONS

AND RESTRICTIONS

FOR

SCOTTSDALE MOUNTAIN

AMENDED AND RESTATED
DECLARATION OF COVENANTS, CONDITIONS
AND RESTRICTIONS
FOR
SCOTTSDALE MOUNTAIN

TABLE OF CONTENTS

		PAGE
ARTICLE 1	DEFINITIONS	2
1.1	"Annexable Property"	2
1.2	"Annual Assessments"	2
1.3	"Architectural Committee"	2
1.4	"Articles"	2
1.5	"Assessments"	2
1.6	"Association"	2
1.7	"Association Rules"	2
1.8	"Board"	2
1.9	"Bylaws"	2
1.10	"City"	2
1.11	"Common Area"	2
1.12	"Common Expenses"	3
1.13	"Condominium Parcel"	3
1.14	"Condominium Unit"	3
1.15	"Declarant"	3
1.16	"Declaration"	3
1.17	"Developer Owner"	3
1.18	"Dwelling Unit"	3
1.19	"First Mortgage"	3
1.20	"Guidelines"	3
1.21	"Limited Common Areas"	3
1.22	"Lot"	3
1.23	"Master Development Plan"	4
1.24	"Maximum Annual Assessment"	4
1.25	"Member"	4
1.26	"Mortgage"	4
1.27	"Mortgagee"	4
1.28	"Non-Developer Owner"	4
1.29	"Occupant"	4
1.30	"Original Declaration"	4
1.31	"Owner"	4
1.32	"Parcel"	4
1.33	"Parcel Assessments"	4

ARR06254

1.34	"Person"	5
1.35	"Property"	5
1.36	"Record", "Recording", "Recorded" and "Recordation"	5
1.37	"Single Family"	5
1.38	"Special Assessments"	5
1.39	"Special Use Fees"	5
1.40	"Subsidiary Association"	5
1.41	"Subsidiary Declaration"	5
1.42	"Tract Declaration"	5
1.43	"Visible From Neighboring Property"	5
ARTICLE 2	EASEMENTS AND RIGHTS OF ENJOYMENT IN COMMON AREA	5
ARTICLE 3	MEMBERSHIP AND VOTING RIGHTS	6
3.1	Votes of Owners of Lots and Parcels	6
3.2	Declarant	7
3.3	Voting Classes	7
3.4	Right to Vote	8
3.5	Members' Rights	8
3.6	Transfer of Membership	8
ARTICLE 4	MAINTENANCE	8
4.1	Association's General Responsibilities	8
4.2	Maintenance of Owner's Structures	9
4.3	Publicly-Dedicated Areas	10
4.4	Assumption of Other Responsibilities	10
4.5	Additional Parcel Assessments	10
4.6	No Discrimination	11
ARTICLE 5	INSURANCE AND CASUALTY LOSSES	11
5.1	Insurance to be Obtained by the Association	11
5.2	Insurance to be Obtained by the Owners	12
5.3	Casualty Losses	13

ARTICLE 6	ANNEXATION AND DEANNEXATION	14
6.1	Reservation of Certain Annexation Rights	14
6.2	Limitations on Other Annexations	14
6.3	Recordation of Annexation Instrument	14
6.4	No Obligation to Annex	15
6.5	De-Annexation	15
ARTICLE 7	RIGHTS AND OBLIGATIONS OF THE ASSOCIATION	15
7.1	Common Area	15
7.2	Property for Common Use	16
7.3	Rules and Regulations	16
7.4	Availability of Books, Records and Other Documents	16
7.5	Implied Rights	16
7.6	Subsidiary Associations	16
7.7	Board of Directors and Officers	17
ARTICLE 8	ASSESSMENTS	17
8.1	Creation of Assessment Right	17
8.2	Covenants with Respect to Assessments	17
8.3	Lien for Assessments; Foreclosure	18
8.4	Dates Assessments Commence; Rates of Assessment	18
8.5	Computation of Assessments; Annual Budget	20
8.6	Due Dates	21
8.7	Maximum Annual Assessment	21
8.8	Notice and Quorum for Meetings to Consider Special Assessments and Certain Increases in Annual Assessments	21
8.9	Special Assessments	22
8.10	Parcel Assessments	22
8.11	Certificates	22
8.12	Surplus Monies	22
8.13	Billing and Collection Procedures	22
8.14	Declarant's Obligation for Deficiencies	23
8.15	Common Expenses Resulting from Misconduct	23

ARTICLE 9	ARCHITECTURAL REVIEW	23
9.1	Appointment of Architectural Committee; Standing to Enforce	23
9.2	Jurisdiction of the Architectural Committee; Promulgation of Guidelines	23
9.3	Submission and Review of Plans	24
9.4	Obligation to Obtain Approval	24
9.5	Changes to Interiors of Dwelling Units or Other Structures	25
9.6	Other Approvals; Liability	25
9.7	Fee	25
9.8	Inspection	25
9.9	Waiver	26
9.10	Appeal to Board	26
9.11	Nonapplicability to Declarant	26
9.12	Landscaping	26
ARTICLE 10	USE RESTRICTIONS	27
10.1	Single Family Residential Use	27
10.2	Animals	27
10.3	Garbage	27
10.4	Machinery and Equipment	27
10.5	Signs	27
10.6	Restriction on Further Subdivision, Property Restrictions and Rezoning	28
10.7	Parking	29
10.8	Model Homes	29
10.9	Prohibited Uses	29
10.10	Temporary Occupancy and Temporary Buildings; Outside Storage	29
10.11	Repair of Buildings	30
10.12	Maintenance of Landscaping and Driveways	30
10.13	Nuisances and Construction Activities	31
10.14	Diseases and Insects	31
10.15	Storage and Tool Sheds or Structures	32
10.16	Mineral Exploration	32
10.17	Clothes Drying Facilities	32
10.18	Blanket Utility Easements	32
10.19	Overhead Encroachments	32
10.20	Trucks, Trailers, Campers, Boats and Motor Vehicles	32

ARR06254

10.21	Declarant's Exemption	33
10.22	Health, Safety and Welfare	33
10.23	Incidental Uses	33
10.24	Window Coverings	33
10.25	Parcel Coverage	33
10.26	Duty of Maintenance	34
10.27	Utility Lines and Connections	34
10.28	On-Site Grading and Drainage; Drainage Easements	34
10.29	Building Exteriors	35
10.30	Garages and Driveways	35
10.31	Heating, Ventilating and Air Conditioning Units	35
10.32	Solar Collecting Panels or Devices	35
10.33	Antennas, Poles, Towers and Dishes	35
10.34	Basketball Goals or Play Structures	36
10.35	Tanks	36
10.36	Underground Facilities	36
10.37	Outdoor Burning	36
10.38	Fences, Interferences and Obstructions	36
10.39	Leasing; Obligations of Tenants and Other Occupants	37
10.40	Encroachments	38
10.41	Variances	38
ARTICLE 11	PARTY WALLS	38
11.1	General Rules of Law to Apply	38
11.2	Repair and Maintenance	38
11.3	Sharing of Repair and Maintenance	39
11.4	Consents to Modification	39
11.5	Non-Applicability to Condominiums	39
ARTICLE 12	GENERAL PROVISIONS	39
12.1	Term	39
12.2	Amendment	40
12.3	Indemnification	40
12.4	Easements for Utilities	40
12.5	No Partition	41
12.6	Severability; Interpretation; Gender	41
12.7	Perpetuities	41
12.8	Enforcement	41
12.9	Property Held in Trust or by Affiliates of Declarant	42
12.10	FHA/VA Approval	42

12.11	Notices to Certain Mortgage Holders, Insurers or Guarantors	42
12.12	Amendments Requested by Governmental Agency	43
12.13	Number of Days	43
12.14	Declarant's Right to Use Similar Name	43
12.15	Temporary Sign Easement	43
12.16	Notice of Violation	44
12.17	Declarant's Disclaimer of Representations	44
12.18	Declarant's Rights	44
12.19	References to VA and FHA	45
12.20	Amendments to Articles and Bylaws	45

92 603634

AMENDED AND RESTATED DECLARATION OF COVENANTS, CONDITIONS AND RESTRICTIONS FOR SCOTTSDALE MOUNTAIN

This Amended and Restated Declaration of Covenants, Conditions and Restrictions is made as of the 26th day of October, 1992, by SCOTTSDALE MOUNTAIN LIMITED PARTNERSHIP, an Arizona limited partnership, as "Declarant," with reference to the following:

A. The Property is being developed as a planned area development under the control and supervision of Declarant, as the master developer.

B. A portion of the Property is currently subject to the Original Declaration, which also provides that its coverage may be expanded to include the remainder of the Property.

C. Declarant is now the holder of the declarant's rights under the Original Declaration, and is currently the owner of fee title to all of the Property except approximately 44.49 acres.

D. To enhance the value and desirability of the Property and to promote its development as a planned area development known or to be known as "Scottsdale Mountain," Declarant desires to amend the Original Declaration in various respects and, for convenience and clarity, to amend and restate fully the Original Declaration, with the effect that this Declaration would replace the Original Declaration in its entirety; under the terms of the Original Declaration, Declarant has sufficient voting power so to amend the Original Declaration. As a part of such process, Declarant desires to expand coverage of this Declaration so that it covers all of the Property immediately, rather than proceed by incremental annexations as contemplated by the Original Declaration.

E. Declarant intends by this Declaration to impose upon the Property mutually beneficial restrictions under a general plan of improvement for the benefit of all owners of property within the Property. Declarant desires to provide a flexible (yet common) and reasonable procedure for the overall development of the Property, and to establish a method for the administration, maintenance, preservation, use and enjoyment of the Property, while preserving to the extent reasonably possible the natural character of the land comprising the Property, consistent with the natural area open space ordinances, regulations and requirements of the City.

F. As portions of Scottsdale Mountain are developed, Declarant intends (but shall not be obligated) to Record one or more Tract Declarations that may, among other things, establish such additional covenants, conditions and restrictions as may be appropriate, in Declarant's judgment, for the respective portions of Scottsdale Mountain affected thereby.

NOW, THEREFORE, Declarant hereby declares that the Property 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 now and hereafter subject to this Declaration and which shall be binding on all parties having any right, title

or interest in said real property or any part thereof, and their heirs, personal representatives, successors and assigns, and shall inure to the benefit of each owner of all or any part thereof.

ARTICLE 1

DEFINITIONS

Except as otherwise expressly provided in this Declaration, the following terms shall, for purposes of this Declaration, have the meanings set forth below:

1.1 "Annexable Property" shall mean any and all real property which is within one (1) mile of any point on the exterior boundary of the real property described on Exhibit A attached hereto.

1.2 "Annual Assessments" shall mean those Assessments designated as such in this Declaration and computed and levied as provided in Section 8.5.

1.3 "Architectural Committee" shall mean the committee established pursuant to Article 9.

1.4 "Articles" shall mean the articles of incorporation of the Association, as amended from time to time.

1.5 "Assessments" shall mean the Annual Assessments, the Parcel Assessments and the Special Assessments (as well as any other amounts declared by this Declaration to be a part of the Assessments or declared by this Declaration to be secured by the lien created under Section 8.3).

1.6 "Association" shall mean Scottsdale Mountain Community Association, an Arizona non-profit corporation, and its successors and assigns.

1.7 "Association Rules" shall mean the reasonable rules and regulations adopted by the Association pursuant to Section 7.3.

1.8 "Board" shall mean the board of directors of the Association.

1.9 "Bylaws" shall mean the bylaws of the Association, as amended from time to time.

1.10 "City shall mean the City of Scottsdale, Arizona, provided, however, that if Scottsdale Mountain (or any part thereof) ever becomes part of a municipality other than the City of Scottsdale, the term "City" shall mean and refer, to the extent applicable, to such other municipality.

1.11 "Common Area" shall mean all real property (including the improvements thereto), all easements and licenses, and all personal property and facilities owned by the Association for the common use and enjoyment of the Owners.

1.12 "Common Expenses" shall mean the actual and estimated expenses of operating the Association, and exercising and performing the rights and duties of the Association, including reasonable reserves, all as may be found to be necessary and appropriate by the Board pursuant to this Declaration, the Articles and the Bylaws.

1.13 "Condominium Parcel" shall mean: (a) a Parcel restricted in a Tract Declaration to condominium development and use; or (b) a Parcel with respect to which no Tract Declaration has yet been Recorded but which is designated for condominium use on the Master Development Plan.

1.14 "Condominium Unit" shall mean a Dwelling Unit which constitutes a "unit" within a "condominium," together with any appurtenant interest in all "common elements," as those terms are defined in the Arizona Condominium Act, Chapter 9 of Title 33 of the Arizona Revised Statutes, as amended.

1.15 "Declarant" shall mean Scottsdale Mountain Limited Partnership, an Arizona limited partnership, and any assignee of the rights and duties granted or reserved to Declarant herein, which assignment shall be evidenced by a Recorded instrument executed by the assigning Declarant.

1.16 "Declaration" shall mean this Amended and Restated Declaration of Covenants, Conditions and Restrictions, as hereafter amended from time to time; this Declaration is intended to, and shall, fully amend, restate and replace the Original Declaration, which instrument, upon Recordation of this Declaration, shall have no further force or effect whatsoever.

1.17 "Developer Owner" shall mean a Person (other than Declarant) in the business of developing, leasing and/or selling real property who has acquired one or more Lots or Parcels in connection with, and in the course of, such business, for the purpose of developing, leasing or selling such Lots or Parcels.

1.18 "Dwelling Unit" shall mean any building, or part thereof (including, but not limited to, a Condominium Unit), situated upon a Lot or Parcel and intended for use and occupancy as a residence by a Single Family.

1.19 "First Mortgage" shall mean a Mortgage Recorded against a Lot which has priority over all other Mortgages Recorded against that Lot.

1.20 "Guidelines" shall mean the rules and regulations adopted, amended and supplemented by the Architectural Committee pursuant to Section 9.2.

1.21 "Limited Common Areas" shall mean all areas of any Parcel or subdivision within the Property which are now or hereafter designated in or on a Tract Declaration, Recorded subdivision plat or other Recorded instrument as areas to be used in common by the Owners or Occupants of such Parcel or subdivision, so long as such areas are so used and maintained.

1.22 "Lot" shall mean and refer to: (a) a lot into which any part of the Property is subdivided as set forth in a subdivision plat now or hereafter Recorded; or (b) a Condominium Unit. In no event shall the term "Lot" mean or refer to all or any part of the Common Area or any Limited Common Areas.

1.23 "Master Development Plan" shall mean the conceptual or site development plan at any time in effect for Scottsdale Mountain prepared or adopted by Declarant and consistent with zoning for the property granted or approved by the City, as such plan may be amended from time to time (consistent with then-current zoning).

1.24 "Maximum Annual Assessment" shall mean the amount determined for each fiscal year of the Association in accordance with Section 8.7.

1.25 "Member" shall mean any Person entitled to membership in the Association, as provided in this Declaration.

1.26 "Mortgage" shall mean a deed of trust, as well as a mortgage, which, in either case, is Recorded against a Lot or Parcel.

1.27 "Mortgagee" shall mean a beneficiary under a deed of trust, as well as a mortgagee under a mortgage, which, in either case, is Recorded against a Lot or Parcel.

1.28 "Non-Developer Owner" shall mean any Owner (other than Declarant) who is not a Developer Owner.

1.29 "Occupant" shall mean any Person other than an Owner who occupies or is in possession of a Lot or Parcel, or any portion thereof or building or structure thereon, whether as a lessee under a lease or otherwise, other than on a merely transient basis.

1.30 "Original Declaration" shall mean the Declaration of Covenants, Conditions and Restrictions for Scottsdale Mountain Estates dated October 28, 1988 and recorded on November 3, 1988, at Recorder's No. 88-544171, records of Maricopa County, Arizona.

1.31 "Owner" shall mean the Person or Persons who individually or collectively own fee title to a Lot or Parcel (as evidenced by a Recorded instrument). The term "Owner" shall not include: (a) any Person who holds an interest in a Lot or Parcel merely as security for the performance of an obligation; or (b) a lessee, tenant or other Occupant of a Lot or Parcel. Declarant shall be the "Owner" of each Lot or Parcel with respect to which Declarant holds the interest required by this Section and, in addition, shall be deemed to be the "Owner" of each Lot or Parcel to which title is held by a trustee (other than the trustee of a deed of trust) for the benefit of Declarant. Notwithstanding the foregoing, if fee title to a Lot or Parcel is vested in a trustee under a deed of trust pursuant to Chapter 6.1 of Title 33 of the Arizona Revised Statutes, the owner of the trustor's interest under the deed of trust shall be deemed to be the "Owner" of that Lot or Parcel.

1.32 "Parcel" shall mean each area of the Property shown as a separate parcel of land on the Master Development Plan, provided, however, that in the event a Parcel is split in any manner into portions under separate ownership (other than by subdivision of the Parcel by Recordation of a subdivision plat into Lots, each of which constitutes or may have constructed thereon only one Dwelling Unit), each portion under separate ownership shall thereafter constitute a separate Parcel.

1.33 "Parcel Assessments" shall mean those Assessments levied in accordance with Sections 4.4, 4.5 and 8.10.

1.34 "Person" means a natural person, corporation, partnership, trustee or other legal entity.

1.35 "Property" shall mean the real property described on Exhibit A attached hereto, together with any additional property hereafter annexed thereto pursuant to Article 6, but excluding any property which is deleted from the Property pursuant to Article 6.

1.36 "Record", "Recording", "Recorded" and "Recordation" shall mean placing or having placed an instrument of public record in the official records of Maricopa County, Arizona.

1.37 "Single Family" shall mean a group of individuals related by blood, marriage or legal adoption, or a group of not more than three unrelated individuals maintaining a common household.

1.38 "Special Assessments" shall mean those Assessments levied in accordance with Section 8.9.

1.39 "Special Use Fees" shall mean any fees charged by the Association for use of Common Areas pursuant to Article 2.

1.40 "Subsidiary Association" shall mean an incorporated or unincorporated association of Owners of property subject to a Subsidiary Declaration, and its successors and assigns, established for the purpose of administering and enforcing the provisions of such Subsidiary Declaration.

1.41 "Subsidiary Declaration" shall mean any declaration of covenants, conditions and restrictions, declaration of condominium or like instrument, other than a Tract Declaration, Recorded after the Recording of, or otherwise subordinate to, this Declaration in regard to any Parcel, or part thereof, or group of Lots, by the Owner of such Parcel or part thereof, or group of Lots, which shall in all cases be consistent with and subordinate to this Declaration and any applicable Tract Declaration.

1.42 "Tract Declaration" shall mean any declaration of covenants, conditions and restrictions or like instrument which is Recorded by Declarant after the date this Declaration is Recorded and which relates to one or more Parcels, or portions thereof, or one or more groups of Lots.

1.43 "Visible From Neighboring Property" shall mean, with respect to any given object, that such object is or would be visible to a six-foot tall individual standing at natural grade level on neighboring property.

ARTICLE 2

EASEMENTS AND RIGHTS OF ENJOYMENT IN COMMON AREA

Every Owner shall have a non-exclusive right and easement of enjoyment in, to and over the Common Area, subject to any restrictions or limitations contained herein or in any Recorded instrument conveying such property to the Association or subjecting such property to this Declaration,

and subject further to the Association Rules. Any Owner may assign his, her or its right of enjoyment to (and share the same with) the members of his or her household and assign the same to and share the same with his, her or its tenants and invitees subject to the provisions of this Declaration and to reasonable regulation by the Board and otherwise in accordance with such procedures as the Board may adopt. An Owner who leases his, her or its Lot or Parcel shall be deemed to have delegated such Owner's rights and easements under this Article 2 to the lessee of such Lot or Parcel (except to the extent reasonably necessary for such Owner to inspect, repair and otherwise care for such Owner's Lot or Parcel and to assure compliance by the lessee with the terms of the lease). The foregoing grants and rights are subject, among other things, to the following limitations:

(a) The right of the Association pursuant to this Article to charge Special Use Fees for the use of the Common Area. The Special Use Fees, if any, shall be set by the Board from time to time, in its discretion. Special Use Fees shall be charged only for actual entry upon or utilization of those portions of the Common Area, if any, selected by the Board to be subject to a Special Use Fee, and shall be imposed only where the Board deems it appropriate to collect revenue from the actual users of such selected portions of the Common Area so that all of the costs of operating such selected portions of the Common Area are not borne by all of the Owners through Annual Assessments, but rather are borne, at least in part, by the Owners, Occupants and other Persons utilizing such selected portions of the Common Area.

(b) The right of the Association to suspend the rights of any Owner or Occupant to use and enjoy recreational facilities on the Common Area: (i) for any period during which an Assessment remains delinquent; (ii) for a period not to exceed 60 days for any infraction of this Declaration, a Tract Declaration, the Association Rules or the Guidelines; or (iii) for successive 60-day periods if any such infraction is not corrected during any preceding suspension period.

(c) The right of the Association to limit the number of guests of an Owner or Occupant who may use the Common Area.

(d) The right of the Association to regulate use of the Common Area in accordance with this Declaration.

ARTICLE 3

MEMBERSHIP AND VOTING RIGHTS

3.1 Votes of Owners of Lots and Parcels. Every Owner of a Lot or Parcel automatically shall be a Member of the Association and shall remain a Member for so long as such ownership continues. Each Owner's membership in the Association shall be appurtenant to and may not be separated from ownership of the Lot or Parcel to which the membership is attributable. In the event fee title to any Lot or Parcel is jointly held by two or more Persons, whether by joint tenancy, tenancy in common, community property or otherwise, each such Person shall be considered a Member but the membership as to such Lot or Parcel shall be jointly held, and such Persons shall jointly designate to the Association in writing one of their number who shall have the power to vote said membership, and, in the absence of such designation and until such designation is made, the Board shall either: (a) make such designation, in which event such designation shall be binding for all

purposes; or (b) declare that until all Persons who together hold such membership jointly make such written designation, the vote(s) attributable to such membership under this Declaration shall not be cast or counted on any questions before the Members; provided, however, that if any one of such Persons casts a vote or votes representing a certain Lot or Parcel without objection from any other Person sharing ownership of such Lot or Parcel, the Person casting such vote(s) will thereafter be conclusively presumed to be acting with the authority and consent of all other Persons sharing ownership of such Lot or Parcel unless and until objection thereto is made to the Board in writing. Notwithstanding the foregoing, so long as the Class B membership is in existence, no Class B Member shall at the same time be a Class A Member nor shall a Class B Member have any Class A votes, and the membership and number of votes of the Class B Member(s) shall be determined in accordance with Subsection 3.3.2. Each Owner (other than Declarant, so long as the Class B membership is in existence) shall have the number of votes in the Association determined as follows:

3.1.1 One vote for each Lot owned by such Owner; or

3.1.2 In the case of the Owner of a Parcel which has not been divided into Lots by a Recorded subdivision plat or other Recorded instrument, one vote for each Dwelling Unit permitted upon the Parcel under the applicable Tract Declaration, or if no Tract Declaration has been Recorded specifying the number of Dwelling Units for such Parcel, then one vote for each Dwelling Unit permitted upon such Parcel under the then current Master Development Plan. If a subdivision plat or other instrument creating Lots is Recorded covering all or part of such Parcel, then the votes attributable to those Lots shall be determined pursuant to Subsection 3.1.1 above, and the number of votes attributable to any portion of such Parcel not divided into Lots shall be equal to the number of votes assigned to the Parcel by this Subsection 3.1.2 immediately prior to the subdivision less the number of votes attributable to Lots resulting from such subdivision under Subsection 3.1.1 above. All votes attributable to a Parcel (as opposed to votes attributable to Lots created from such Parcel) shall cease when all of the property therein is platted (or otherwise divided into Lots) or dedicated to the public. No votes shall be attributable to Common Area or Limited Common Areas.

Notwithstanding the foregoing, a Developer Owner who is a Class A Member and is entitled to pay only a reduced Assessment pursuant to Section 8.4 shall be entitled only to the number of votes equal to the percentage of the full Assessments such Member is entitled to pay multiplied by the number of votes such Member would otherwise have under this Section.

3.2 Declarant. Declarant shall be a Member of the Association for so long as it holds a Class A or Class B membership.

3.3 Voting Classes. The Association shall have two classes of voting Members:

3.3.1 Class A. Class A Members shall be all Owners except Declarant (until the conversion of Declarant's Class B membership to Class A membership as provided below). Subject to the authority of the Board to suspend an Owner's voting rights in accordance with the provisions hereof, a Class A Member shall have the number of votes provided in Section 3.1.

3.3.2 Class B. The Class B Member shall be Declarant. The Class B Member shall be entitled to the number of votes equal to three times the number of votes which would otherwise be attributable to Lots and Parcels owned by Declarant as determined pursuant to Section

3.1 above (but without reduction due to the fact that Declarant may be entitled to pay reduced Assessments or no Assessments). Declarant shall have the right, from time to time, to designate an individual or individuals to exercise Declarant's voting rights, but such designation shall not act as an assignment by Declarant of its membership or voting rights hereunder. The Class B membership automatically shall cease and be converted to a Class A membership upon the earliest to occur of: (a) the date which is 90 days after the date upon which the total number of votes of the Class A Members equals the total number of votes of the Class B Member; (b) the date which is fifteen (15) years after the date this Declaration is Recorded; or (c) the date on which Declarant Records a written notice electing to convert the Class B membership to Class A membership.

3.4 Right to Vote. No change in the ownership of a Lot or Parcel shall be effective for voting purposes until the Board receives satisfactory evidence thereof. The vote(s) for each Member must be cast as a single unit. Split or fractional votes shall not be allowed. An Owner may give any person a proxy to cast the Owner's vote(s), subject to the Articles, Bylaws and applicable law.

3.5 Members' Rights. Each Member shall have the rights, duties and obligations set forth in this Declaration, the Articles, the Bylaws, any applicable Tract Declaration, the Association Rules, the Guidelines and any other rules and regulations adopted pursuant to any of the foregoing.

3.6 Transfer of Membership. Except as otherwise provided in this Declaration, the rights, duties and obligations of a Class A Member cannot and shall not be assigned, transferred, pledged, conveyed or alienated in any way except upon transfer of ownership of such Class A Member's Lot or Parcel, and then only to the transferee thereof. Such transfer may be effected by deed, intestate succession, testamentary disposition, foreclosure or other legal process authorized under Arizona law and shall operate to transfer the membership appurtenant thereto to the new Owner; any attempt to make any other form of transfer shall be void.

ARTICLE 4

MAINTENANCE

4.1 Association's General Responsibilities. The Association shall maintain and keep in good repair the Common Area (and certain other areas, as more expressly provided in this Section 4.1), and the costs of such maintenance shall be Common Expenses of the Association (subject to any insurance then in effect and subject to Section 4.5 below). This maintenance shall include, but not be limited to:

(a) maintenance, repair and replacement of all landscaping and other flora, structures and improvements situated upon the Common Area, including without limitation any perimeter or boundary walls on or adjacent to the exterior boundaries of the Property (but subject to all applicable natural area open space ordinances, regulations and requirements of the City);

(b) maintenance, repair and replacement of landscaping and flora in or upon public rights-of-way immediately adjacent to the exterior boundaries of the Property except where such obligations have been assumed by the City or other agency or Person (but subject to all applicable natural area open space ordinances, regulations and requirements of the City);

Declaration, and in the event such Subsidiary Association fails to meet such duties and obligations, the Association shall have all the same rights and remedies as are provided by this Section 4.2 in the case of an Owner's breach, except that if the Association expends any funds to cure a breach by such Subsidiary Association, its costs (including interest as provided in this Section 4.2) shall be the obligation of the Subsidiary Association and, except as otherwise limited or prohibited by law, shall also constitute a lien against each Condominium Unit or other Dwelling Unit subject to the jurisdiction of such Subsidiary Association, which lien shall have the priority and may be enforced in the matter described in Section 8.3 of this Declaration.

4.3 Publicly-Dedicated Areas. Except as expressly provided in this Article 4, and except as may otherwise be required by applicable law, the Association shall have no responsibility to maintain any areas within the Property (including, but not limited to, any public streets) which are dedicated to or the responsibility of a municipality or other governmental entity.

4.4 Assumption of Other Responsibilities. The Association may, in the discretion of the Board, assume maintenance responsibilities imposed on a Subsidiary Association by a Subsidiary Declaration. In such event, all costs of such maintenance shall be assessed as Parcel Assessments against only the Owners of Lots or Parcels within the Subsidiary Association to which the services are provided. The assumption of such maintenance responsibilities may take place only by contract between the Association and such Subsidiary Association or if, in the opinion of the Board, the level and/or quality of maintenance then being provided by such Subsidiary Association do not meet the community-wide standards sought to be maintained by the Association for the Property.

4.5 Additional Parcel Assessments. Where the Association has the responsibility to maintain, repair, replace, repave, resurface and operate private streets or private roadways constituting a part of the Common Area (or private street lights, light poles, street signs and other equipment and facilities appurtenant thereto), or any open space, recreational or other common facilities constituting a part of the Common Area, the Board, if in its discretion such private streets or private roadways (or appurtenant equipment and facilities), or open space, recreational or other common facilities, exclusively or disproportionately benefit the Owners of Lots within a particular subdivision (and their respective Occupants, guests and invitees) as compared to the Owners of other Lots or Parcels within the Property (and their respective Occupants, guests and invitees), may assess all (or such appropriate portion as the Board shall reasonably determine) of the costs of such maintenance, repair, replacement, repaving, resurfacing and operation solely against the Lots within such subdivision (and the respective Owners thereof) as additional Parcel Assessments, which shall be assessed equally against each of the Lots within such subdivision and shall be secured by the lien for Assessments created by and described in, and enforceable in accordance with, Article 8 below. Such additional Parcel Assessments may also include amounts to establish and fund reserves for such maintenance, repair, replacement, repaving, resurfacing and operation, and to purchase public liability, property damage and/or casualty insurance with respect to such private streets or private roadways (and such appurtenant equipment and facilities) and such open space, recreational and other common facilities, all if and as the Board may deem reasonable and appropriate. In no event shall the amount assessed by the Board against any Lot pursuant to this Section 4.5 for any fiscal year of the Association exceed two hundred percent (200%) of the Maximum Annual Assessment for a Lot for such fiscal year, as determined in accordance with Section 8.7 below. The intent of this Section 4.5 (which shall be considered in its interpretation and application) is to establish a mechanism whereby various facilities intended and designed solely or primarily for use by the Owners of Lots within a particular

subdivision (and their Occupants, guests and invitees) may be owned and maintained by the Association, at the sole or primary expense of such Owners, rather than require formation of a Subsidiary Association to undertake such ownership and maintenance, where it appears likely that cost and/or management efficiencies would be realized by giving those rights and obligations to the Association rather than to a Subsidiary Association.

4.6 No Discrimination. The provision of services in accordance with this Article shall not be deemed to be discrimination in favor of or against any Owner or Subsidiary Association.

ARTICLE 5

INSURANCE AND CASUALTY LOSSES

5.1 Insurance to be Obtained by the Association.

5.1.1 Hazard Insurance. The Board, acting on behalf of the Association, shall make a good faith effort to obtain and maintain at all times insurance for all insurable improvements on the Common Area against loss or damage by fire or other hazards, casualties and risks embraced within the coverage of the standard "extended coverage" policy available from time to time in the State of Arizona, against all other perils customarily covered for similar types of projects, and against loss or damage due to vandalism and malicious mischief, with such insurance to be in an amount equal to 100% of the current replacement cost, from time to time, without deduction for depreciation, of all such insurable improvements (excluding land, foundations, excavations and other items usually excluded from such insurance coverage, but including fixtures and building service equipment and personal property and supplies owned by the Association). The Board shall attempt in good faith to secure a policy or policies providing the insurance required by this Subsection 5.1.1 which provide that: (a) such insurance shall not be cancelled, invalidated or suspended by reason of any acts or omissions of any Owner (or of such Owner's Occupants, invitees, agents, tenants, servants, employees, guests or household members), or of any member, officer or employee of the Association or the Board without a prior written demand to the Board that any such act or omission be cured and without providing a sixty (60) day period within which the Board may cure such act or omission (or cause the same to be cured); and (b) the coverage afforded by such policy or policies shall not be prejudiced by any act or omission of any Owner or Occupant (or their agents) when such act or omission is not within the control of the Association.

5.1.2 Liability Insurance. The Board, acting on behalf of the Association, shall make a good faith effort to obtain and maintain at all times a comprehensive general liability policy insuring the Association, each member of the Board and each Owner against any liability to the public or to any Owner or Occupant (and such Owner's or Occupant's invitees, agents, employees, tenants, guests, servants and household members) for death, bodily injury and property damage arising out of or incident to the ownership or use of the Common Area or arising out of or incident to the performance by the Association of its maintenance and other obligations hereunder. The Board shall review annually the amounts of coverage afforded by said comprehensive general liability policy or policies and adjust such amounts of coverage as the Board deems appropriate, but in no event shall said policy or policies provide coverage of less than One Million Dollars ($1,000,000.00) for death, bodily injury and property damage for any single occurrence. The policy or policies providing such

insurance shall, by specific endorsement or otherwise, preclude denial by the insurer(s) providing such insurance of a claim under such policy or policies because of negligent acts or omissions of the Association or any Owner(s).

5.1.3 General Provisions Governing Insurance. The insurance to be obtained under Subsections 5.1.1 and 5.1.2 shall be written in the name of the Association as trustee for each of the Owners and for each Mortgagee (as their respective interests may appear) and shall be governed by the provisions hereinafter set forth: (a) all policies shall be written with one or more companies authorized to provide such insurance in the State of Arizona; (b) exclusive authority to adjust losses under policies in force on property owned or insured by the Association shall be vested in the Board; (c) in no event shall insurance coverage obtained and maintained by the Board be brought into contribution with insurance purchased by individual Owners, Occupants or their Mortgagees, or by any Subsidiary Association, and the insurance carried by the Association shall be primary; (d) the Board shall make every reasonable effort to secure insurance policies which provide for a waiver of subrogation by the insurer as to any claims against the Board, the Association, officers of the Association or the Owners, and their respective Occupants, tenants, servants, agents, employees, guests and household members; and (e) each policy providing insurance coverage under Subsections 5.1.1 and 5.1.2 shall require the applicable insurer to give not less than ten (10) days written notice to the Association, and to each Mortgagee which shall have given such insurer written notice of such Mortgagee's interest in a Lot or Parcel (which notice must include the name and address of such Mortgagee), of any cancellation, refusal to renew or material modification of such policy.

5.1.4 Other Insurance. The Board, acting on behalf of the Association, may also obtain such other insurance including, but not limited to, fidelity bond coverage, worker's compensation insurance and directors' and officers' liability insurance, as the Board deems appropriate.

5.1.5 Cost of Insurance. All premiums for the insurance or bonds required or permitted to be obtained by the Board by this Section 5.1 shall be Common Expenses. The Board shall not be liable for failure to obtain or maintain any of the insurance coverage required by this Section 5.1, or for any loss or damage resulting from such failure, if such failure is due to the unavailability of such insurance coverage from reputable companies authorized to provide such insurance in the State of Arizona, or if such insurance coverage is available only at an unreasonable cost.

5.2 Insurance to be Obtained by the Owners.

5.2.1 Public Liability Insurance. It shall be the individual responsibility of each Owner to provide (or cause to be provided), as such Owner sees fit and without any cost or expense to any other Owner or to the Association, such comprehensive public liability insurance as such Owner may desire against loss or liability for damages and any expense of defending against any claim for damages which might result from the ownership, use or occupancy of such Owner's Lot or Parcel.

5.2.2 Hazard and Contents Insurance. It shall be the individual responsibility of each Owner to provide (or cause to be provided), as such Owner sees fit and without any cost or expense to any other Owner or to the Association, such fire, liability, theft and any other insurance covering: (a) any Dwelling Unit and any other structure on (or constituting) such Owner's Lot or

Parcel; and (b) any and all fixtures and personal property upon such Lot or Parcel or in such Dwelling Unit or other structure(s), except, in either case (a) or (b), where a Subsidiary Declaration affecting a Lot or Parcel assigns such obligation to a Subsidiary Association.

5.3 Casualty Losses.

5.3.1 Damage and Destruction.

(a) Immediately after any damage or destruction by fire or other casualty to all or any part of the property insured by the Association under Section 5.1 above, the Board or its duly authorized agent shall: (i) proceed with the filing and adjustment of all claims arising under such insurance; (ii) obtain reliable and detailed estimates of the cost of repair or reconstruction of the damaged or destroyed property; and (iii) upon receipt of the proceeds of such insurance and except as is otherwise provided in this Subsection 5.3.1, use such proceeds to repair or reconstruct the damaged or destroyed property. The terms "repair" and "reconstruction" (or variants thereof), as used in this Article 5, shall mean repairing or restoring the property in question to substantially the same condition as that in which it existed prior to the fire or other casualty (or, where applicable, replacing the damaged or destroyed property with property substantially similar to the damaged or destroyed property as it existed prior to such damage or destruction).

(b) Major damage or destruction to significant improvements on property required to be insured by the Association under Section 5.1 above shall be repaired or reconstructed unless, at a special meeting of Members held within sixty (60) days after the occurrence of such damage or destruction, the Members determine, by a vote of Owners holding not less than seventy-five percent (75%) of the votes in each class of Members, not to so repair or reconstruct. If for any reason either the amount of the insurance proceeds to be paid as a result of such damage or destruction, or reliable and detailed estimates of the cost of repair or reconstruction, or both, are not made available to the Association within said period, then the period shall be extended until such information shall be made or become available; provided, however, that such extension shall not exceed an additional sixty (60) days. The Board shall determine, in good faith, whether damaged or destroyed improvements are "significant" for purposes of this Subsection. The Board shall determine, in good faith, whether minor damage or destruction to property insured by the Association, or major damage or destruction to improvements on such property determined by the Board not to be "significant," will be repaired or reconstructed.

(c) In the event it is determined under Subsection 5.3.1(b) that the damage or destruction of any part of the Common Area will not be repaired or reconstructed and no alternative improvements are authorized, such property shall be maintained by the Association in a neat and attractive condition as an undeveloped portion of the Common Area.

5.3.2 Excess or Deficiency of Proceeds. If damage or destruction for which insurance proceeds are paid is to be repaired or reconstructed and such proceeds are not sufficient to pay the cost thereof, the Board shall, without the necessity of a vote of the Members, levy assessments against the Owners of all Lots and Parcels, which assessments shall be allocated among such Owners in the same ratios as Annual Assessments are allocated pursuant to Article 8 of this Declaration. Additional assessments may be made in like manner at any time during or following the completion of any repair or reconstruction. Any assessments levied pursuant to this Subsection 5.3.2 shall be

deemed to be a part of the Assessments and shall be secured by the lien created by Section 8.3 below. If the funds available from insurance exceed the cost of repair, such excess shall be used to meet Common Expenses or, in the discretion of the Board, placed in a reserve account for contingencies or capital improvements.

ARTICLE 6

ANNEXATION AND DEANNEXATION

6.1 Reservation of Certain Annexation Rights. As of the date this Declaration is Recorded, Declarant contemplates that one or more portions (and perhaps all) of the Annexable Property may from time to time be annexed to the Property (and thereby subjected to the provisions of this Declaration) and, therefore, while Declarant shall have no obligation or duty to so annex all or any portion of the Annexable Property, Declarant hereby reserves the right, privilege and option from time to time hereafter to add and annex to the Property (and thereby to subject to the provisions of this Declaration) any part(s) or all of the Annexable Property, without the vote of the Members and without notice to or approval of any holder, insurer or guarantor of any Mortgage or of any other Person, provided, however, that the right, privilege and option reserved in this sentence shall expire and terminate at 11:59 p.m. local time on December 31 of the calendar year in which falls the fifteenth (15th) anniversary of the date this Declaration is Recorded. Notwithstanding the foregoing sentence, no portion of the Annexable Property may be annexed to the Property unless, at the time of each and any such annexation either: (a) the portion of the Annexable Property to be annexed is owned by Declarant; or (b) the owner of the portion to be annexed (if other than Declarant) consents in a written, Recorded instrument to such annexation.

6.2 Limitations on Other Annexations. Additional property not included within the Annexable Property may be annexed to the Property only: (a) by the affirmative vote of two-thirds (2/3) of the votes of each class of Members represented in person or by valid proxy at a meeting of Members duly called for that purpose; and (b) with the express written consent of each owner of all or any part of the property proposed to be annexed. Further, so long as the Class B membership is in existence no additional property may be annexed to the Property without the prior approval of the Federal Housing Administration or the Veterans Administration.

6.3 Recordation of Annexation Instrument. Upon approval pursuant to this Article 6 of any annexation of property to the Property, Declarant, in the case of annexation of all or any part of the Annexable Property, or the President and Secretary of the Association, in the case of any other annexation, shall execute, acknowledge and Record an instrument evidencing such annexation (which instrument shall also be duly executed and acknowledged by each owner of all or any part of the property being annexed), and such annexation shall be deemed effective only upon such Recordation. Such instrument (or a separate instrument Recorded by the Association against any property annexed to the Property pursuant to this Article 6 and executed by the owner of such annexed property) may subject the annexed property to such additional covenants, conditions, restrictions and easements as the owner thereof and Declarant or the Association, as applicable, may deem appropriate or desirable, provided, however, that any and all such additional covenants, conditions, restrictions and easements shall be subordinate and subject to the provisions of this Declaration.

6.4 No Obligation to Annex. Nothing herein shall constitute a representation, warranty or covenant that Declarant, any successor or assign of or Declarant, or any other Person will subject any additional property (whether or not a part of the Annexable Property) to the provisions of this Declaration, nor shall Declarant, any successor or assign of Declarant, or any other Person be obligated so to do, and Declarant may, by Recorded instrument executed by Declarant, waive its rights so to do, in whole or in part, at any time or from time to time.

6.5 De-Annexation. Notwithstanding any other provision of this Declaration, Declarant shall have the right from time to time, at its sole option and without the consent of any other Person (except as provided in this Section 6.5), to delete from the Property and remove from the effect of this Declaration one or more portions of the Property, provided, however, that: (a) a portion of the Property may not be so deleted and removed unless at the time of such deletion and removal such portion is owned by Declarant or Declarant executes and Records an instrument approving such deletion and removal; (b) a portion of the Property may not be so deleted and removed unless at the time of such deletion and removal no Common Area recreational facilities have been constructed thereon; and (c) a portion of the Property may not be so deleted and removed if such deletion and removal would deprive Owners and Occupants of other parts of the Property of access or other easements or rights-of-way necessary to the continued use of their respective parts of the Property (unless Declarant at the same time provides for reasonably adequate replacement easements or rights-of-way). Declarant may exercise its rights under this Section 6.5 by executing and Recording an instrument which identifies the portion of the Property to be so deleted and removed and which is executed by each owner of such portion (if other than Declarant), and the deletion and removal of such portion of the Property shall be effective upon the later of: (i) the date such instrument is Recorded; or (ii) the effective date specified in such instrument, if any, whereupon the portion of the Property so deleted and removed shall thereafter for all purposes be deemed not a part of the Property and not subject to this Declaration, and the owner(s) thereof (or of interests therein) shall not be Owners or Members or have any other rights or obligations hereunder except as members of the general public. No such deletion and removal of a portion of the Property shall act to release such portion from the lien for Assessments or other charges hereunder which have accrued prior to the effective date of such deletion and removal, but all such Assessments or other charges shall be appropriately prorated to the effective date of such deletion and removal, and no Assessments or other charges shall thereafter accrue hereunder with respect to the portion of the Property so deleted and removed. Each portion of the Property deleted and removed pursuant to this Section 6.5 shall thereafter be deemed to be a part of the Annexable Property unless otherwise expressly provided to the contrary in the instrument Recorded by Declarant to effect such deletion and removal.

ARTICLE 7

RIGHTS AND OBLIGATIONS OF THE ASSOCIATION

7.1 Common Area. Subject to the provisions of this Declaration and the rights of the Owners set forth herein, the Association shall be responsible for the management and control of the Common Area and shall keep the Common Area in good, clean, attractive and sanitary condition, order and repair.

7.2 Property for Common Use. The Association, through action of the Board, may acquire, hold and dispose of tangible and intangible personal property and real property, but no dedication, sale or transfer of all or any part of the Common Area shall be made or effective unless approved by Members holding not less than two-thirds (2/3) of the votes in each class of Members and unless approved to the extent required by Section 12.10. The Board, acting on behalf of the Association, shall accept any real or personal property, leasehold or other property interests within, adjacent to or related to any part of the Property as may be conveyed or assigned to the Association by Declarant.

7.3 Rules and Regulations. The Board may, from time to time and subject to the provisions of this Declaration, adopt, amend and repeal the Association Rules. The Association Rules may restrict and govern the use of the Common Area, but shall not discriminate among Owners and Occupants except to reflect their different rights and obligations as provided herein, and shall not be inconsistent with this Declaration, the Articles or the Bylaws. The Association Rules shall be intended to enhance the preservation and development of the Property, the Common Area and the Limited Common Areas. Upon adoption, the Association Rules shall have the same force and effect as if they were set forth herein. Sanctions for violation of the Association Rules or of this Declaration may be imposed by the Board and may include suspension of an Owner's right to vote or to use the recreational facilities on the Common Area, or both, and, where the Board deems it appropriate, may also include reasonable monetary fines. No suspension of an Owner's right to vote or to use the recreational facilities on the Common Area due to a violation of this Declaration or the Association Rules may be for a period longer than sixty (60) days (except where such Owner fails or refuses to cease or correct an on-going violation or commits the same or another violation, in which event such suspension may be extended for additional periods not to exceed sixty (60) days each until such violation ceases or is corrected).

7.4 Availability of Books, Records and Other Documents. The Association shall maintain complete and current copies of this Declaration, the Articles, the Bylaws, the Association Rules and the Guidelines (including any amendments to the foregoing) and of the books, records and financial statements of the Association, and, upon the prior written request to the Association by any Owner or by any holder, insurer or guarantor of a First Mortgage, shall make the same available for inspection, at reasonable times and under reasonable circumstances, by such Owner or such holder, insurer or guarantor.

7.5 Implied Rights. The Association may exercise any other right or privilege given to it expressly by this Declaration, the Articles or the Bylaws, and every other right or privilege reasonably to be implied from the existence of any right or privilege given to it herein or reasonably necessary to effectuate any such right or privilege.

7.6 Subsidiary Associations. In the event any homeowners' or similar Subsidiary Association is formed by a Developer Owner of a Parcel or portion thereof, or group of Lots, such Subsidiary Association's governing documents shall not be effective unless they have been approved in advance by Declarant, so long as Declarant owns any portion of the Property, and thereafter by the Board and they specify that such governing documents, such Parcel or portion thereof, or group of Lots, the Subsidiary Association, and the Subsidiary Association's members are subject and subordinate to this Declaration and the Articles, Bylaws, Guidelines and Association Rules.

7.7 Board of Directors and Officers. The affairs of the Association shall be conducted by the Board and such officers as the Board may elect or appoint in accordance with the Articles and the Bylaws. The initial Board and each Board thereafter for so long as there is a Class B Member of the Association shall consist of three (3) individuals (who need not be Members) appointed by Declarant. Commencing with the first annual meeting of the Members when there is no longer a Class B Member, the Board shall consist of, and the Members shall elect, seven (7) directors, each of whom must be a Member (or an individual designated by a corporate, partnership or other non-individual Member). The foregoing reference to seven (7) directors shall be subject to increase in the number of directors as provided in the Bylaws. Each director appointed by Declarant shall serve until: (a) such director resigns or dies; (b) such director is removed by Declarant; or (c) the Members elect new directors at the first annual meeting after termination of the Class B membership. The first board of directors elected by the Members shall consist of seven (7) individuals, four (4) of whom shall be elected for a 1-year term and three (3) of whom shall be elected for a 2-year term, thus establishing a staggered Board; thereafter, directors shall be elected for 2-year terms. The Board may appoint various committees at its discretion. The Board may also appoint or engage a manager to be responsible for the day-to-day operation of the Association and the Common Area. The Board shall determine the compensation to be paid to the manager.

ARTICLE 8

ASSESSMENTS

8.1 Creation of Assessment Right. In order to provide funds to enable the Association to meet its financial and other obligations and to create and maintain appropriate reserves, there is hereby created a right of assessment exercisable on behalf of the Association by the Board. Annual Assessments and Special Assessments shall be for Common Expenses and shall be allocated among all Lots and Parcels as provided in this Article 8. Parcel Assessments shall be for the purposes provided in Sections 4.4, 4.5 and 8.10 hereof and shall be levied against one or more Parcels or against one or more groups of Dwelling Units in particular portions of the Property only in accordance with such Sections.

8.2 Covenants with Respect to Assessments. Each Owner, by acceptance of his, her or its deed (or other conveyance instrument) with respect to a Lot or Parcel, is deemed to covenant and agree to pay the Assessments levied pursuant to this Declaration with respect to such Owner's Lot or Parcel, together with interest from the date due at a rate equal to the greater of: (a) twelve percent (12%) per annum; or (b) the annual rate of interest then in effect for new first priority single family residential mortgage loans guaranteed by the Veterans Administration, and together with such reasonable late fees as may be established by the Board in advance for general application and such costs and reasonable attorneys' fees as may be incurred by the Association in seeking to collect such Assessments. Each of the Assessments with respect to a Lot or Parcel, together with interest, late fees, costs and reasonable attorneys' fees as provided in this Section 8.2, shall also be the personal obligation of the Person who or which was the Owner of such Lot or Parcel at the time such Assessment arose with respect to such Lot or Parcel, provided, however, that the personal obligation for delinquent Assessments shall not pass to a successor in title of such Owner unless expressly assumed by such successor. No Owner shall be relieved of his, her or its obligation to pay any of the Assessments by abandoning or not using his, her or its Lot or Parcel or the Common Area, or by

leasing or otherwise transferring occupancy rights with respect to his, her or its Lot or Parcel. However, upon transfer by an Owner of fee title to such Owner's Lot or Parcel, as evidenced by a Recorded instrument, such transferring Owner shall not be liable for any Assessments thereafter levied against such Lot or Parcel. The obligation to pay Assessments is a separate and independent covenant on the part of each Owner. No diminution or abatement of Assessments or set-off shall be claimed or allowed by reason of the alleged failure of the Association or Board to take some action or perform some function required to be taken or performed by the Association or Board under this Declaration, the Articles or the Bylaws, or for inconvenience or discomfort arising from the making of repairs or improvements which are the responsibility of the Association, or from any action taken to comply with any law or ordinance or with any order or directive of any municipal or other governmental authority.

8.3 Lien for Assessments; Foreclosure. There is hereby created and established a lien against each Lot or Parcel which shall secure payment of all present and future Assessments assessed or levied against such Lot or Parcel or the Owner thereof (together with any present or future charges, fines, penalties or other amounts levied against such Lot or Parcel or the Owner or Occupant thereof pursuant to this Declaration or the Articles, the Bylaws, any applicable Tract Declaration, the Association Rules or the Guidelines). Such lien is and shall be prior and superior to all other liens affecting the Lot or Parcel in question, except: (a) all taxes, bonds, assessments and other levies which, by law, would be superior thereto; and (b) the lien or charge of any First Mortgage made in good faith and for value. Such lien may be foreclosed in the manner provided by law for the foreclosure of mortgages. The sale and transfer of any Lot or Parcel pursuant to a mortgage foreclosure or any proceeding in lieu thereof with respect to a First Mortgage shall extinguish the lien of the Assessments as to payments which became due prior to such sale or transfer, but no such sale or transfer shall relieve such Lot or Parcel from liability for any Assessments becoming due after such sale or transfer, or from the lien thereof. The Association shall have the power to bid for any Lot or Parcel at any sale to foreclose the Association's lien on the Lot or Parcel, and to acquire and hold, lease, mortgage and convey the same. During the period any Lot or Parcel is owned by the Association, no right to vote shall be exercised with respect to said Lot or Parcel and no Assessment (whether Annual Assessments, Special Assessments or Parcel Assessments) shall be assessed or levied on or with respect to said Lot or Parcel, provided, however, that the Association's acquisition and ownership of a Lot or Parcel under such circumstances shall not be deemed to convert the same into Common Area. The Association may maintain a suit to recover a money judgment for unpaid Assessments, rent, interest and attorneys' fees without foreclosing or waiving the lien securing same. Recording of this Declaration constitutes record notice and perfection of the liens established hereby, and further Recordation of any claim of a lien for Assessments or other amounts hereunder shall not be required, whether to establish or perfect such lien or to fix the priority thereof, or otherwise (although the Board shall have the option to Record written notices of claims of lien in such circumstances as the Board may deem appropriate).

8.4 Dates Assessments Commence; Rates of Assessment.

8.4.1 Dates Assessments Commence; Rates. The Developer Owner of a Lot shall pay only 25% of the Annual Assessments, Special Assessments and Parcel Assessments for such Lot until the earliest of:

(a) completion of construction of the first Dwelling Unit thereon as evidenced by the issuance of a certificate of occupancy therefor; or

(b) 12 months from the date of Declarant's conveyance of the Lot (or the Parcel from which such Lot was established) to a Developer Owner.

If the Developer Owner ceases to be entitled to the 25% rate pursuant to Subsection 8.4.1(b), then thereafter the Developer Owner shall pay only 50% of the Annual Assessments, Special Assessments and Parcel Assessments for such Lot until the earliest of:

(c) completion of construction of the first Dwelling Unit thereon as evidenced by the issuance of a certificate of occupancy therefor; or

(d) 12 months after the date the 25% rate terminated.

However, if the site plan for a Condominium Parcel approved by the Architectural Committee contemplates the construction thereon of more than one building containing Dwelling Units, the Condominium Parcel shall, for purposes of this Section only, be deemed subdivided into the number of sub-parcels equal to the number of buildings containing Dwelling Units shown on the approved site plan, in which case the Annual Assessments, Special Assessments and Parcel Assessments shall be deemed divided among such sub-parcels in proportion to the number of Dwelling Units to be contained in the buildings on the respective sub-parcels, such that each of the buildings shall be allocated to a separate sub-parcel, and the Developer Owner shall pay only 25% or 50%, as applicable, of the prorated Annual Assessments, Special Assessments and Parcel Assessments against each sub-parcel until the earliest of the events specified in subsections (a) and (b) above, or (c) and (d) above, as applicable, with respect to such sub-parcel. Upon termination of the 50% rate under (c) or (d) above, as applicable, the Owner of such Lot (whether a Developer Owner or a Non-Developer Owner) shall thereafter pay 100% of the Annual Assessments, Special Assessments and Parcel Assessments otherwise applicable to such Lot.

The Developer Owner of a Parcel which has not yet been subdivided shall pay reduced rates hereunder as though the Parcel had already been subdivided into the number of Lots designated in a Tract Declaration Recorded against such Parcel or, if no Tract Declaration designating such number of Lots has been Recorded, then the number of Lots shown for such Parcel on the Master Development Plan. In the event the Parcel is subdivided into phases and less than all of such phases are subdivided into Lots, the applicable reduced rates set forth above in this Subsection 8.4.1 will continue to apply to the unsubdivided remainder of the Parcel until the dates specified above.

8.4.2 Owners Entitled to Reduced Assessment Rates. Subject to Subsection 8.4.3, a Non-Developer Owner shall not be entitled to the reduced assessment rates provided in Subsection 8.4.1 and a Developer Owner shall be entitled to such reduced rates only if that Owner is a Developer Owner with respect to the specific Lot or Parcel in question. If a Developer Owner ceases to qualify for such reduced assessment rates during any fiscal year of the Association, that Developer Owner shall immediately notify the Board, in writing, of the change in status. The failure of a Developer Owner to notify the Board of the change in status shall not prevent or preclude the reinstatement of the obligation to pay Assessments at the full rate pursuant hereto as of the applicable date provided herein. The Association may from time to time request that any Developer Owner of property being

assessed at a reduced rate furnish to the Association evidence that such Developer Owner continues to be entitled to a reduced assessment rate under Subsection 8.4.1 and if such Developer Owner fails to produce such evidence within 30 days following the date of the Association's request, or if such evidence as is furnished is unsatisfactory, in the Board's reasonable discretion, to demonstrate such Developer Owner's continued entitlement to the reduced assessment rate, the Board may terminate such reduced assessment rate as of the date reasonably deemed appropriate by the Board.

8.4.3 Declarant's Exemption from Assessments. As to any portion of the Property on which Declarant itself is constructing Dwelling Units, Declarant shall pay 25% of the Annual Assessments, Special Assessments and Parcel Assessments which would otherwise be attributable to all Lots within such portion of the Property which are owned by Declarant. As to all other portions of the Property owned by Declarant, Declarant shall not be obligated to pay any Assessments whatsoever, but Declarant shall have certain obligations to contribute to the Association in accordance with Section 8.14 below.

8.5 Computation of Assessments; Annual Budget. The Board shall prepare and adopt an annual budget for each fiscal year of the Association, which shall serve as the basis for determining the Annual Assessments for the applicable fiscal year (subject to the limitations of Section 8.7 hereof). Such budget shall take into account the estimated Common Expenses and cash requirements of the Association for the year. The annual budget shall also take into account the estimated net available cash income for the year, if any, from the operation or use of any of the Common Area, whether from Special Use Fees or otherwise. The annual budget shall also provide for a reserve for contingencies and a reserve for replacements, all in such reasonably adequate amounts as shall be determined by the Board, taking into account the number and nature of replaceable assets, the expected life of each asset, and each asset's expected repair or replacement cost. Not later than sixty (60) days following the meeting of the Board at which the Board adopts the annual budget for the year in question, the Board shall cause to be delivered or mailed to each Owner a copy of the budget and a statement of the amount of the Annual Assessments to be levied against such Owner's Lot or Parcel for the fiscal year in question. In the event the Board fails to adopt a budget for any fiscal year prior to commencement of such fiscal year, then until and unless such budget is adopted, the budget (and the amount of the Annual Assessments provided for therein) for the year immediately preceding shall remain in effect. Subject to the provisions of this Section 8.5 and of Sections 8.7 and 8.9, neither the annual budget (nor any amended budget adopted pursuant to the following provisions of this Section 8.5) adopted by the Board, nor any Assessment levied pursuant thereto, shall be required to be ratified or approved by the Owners or any other Persons. If, at any time during a fiscal year of the Association the Board deems it necessary to amend the budget for such year, the Board may do so and may levy an additional Annual Assessment for such year (subject to the limitations imposed by Section 8.7) or may call a meeting of the Members to request that the Members approve a Special Assessment pursuant to Section 8.9. Within sixty (60) days after adoption of an amended budget (if the Board elects to levy an additional Annual Assessment), the Board shall cause to be delivered or mailed to each Owner a copy of the amended budget and a statement of the additional Annual Assessment to be levied against such Owner's Lot or Parcel; if, instead, the Board elects to call a meeting of Members to seek approval of a Special Assessment, the Board shall cause a copy of the amended budget proposed by the Board to be delivered or mailed to each Owner with the notice of such meeting, and if a Special Assessment is duly approved by the Members at such meeting, shall cause to be promptly mailed or delivered to Owner a statement of the Special Assessment to be levied against such Owner's Lot or Parcel.

8.6 Due Dates. Annual Assessments for each fiscal year shall be due and payable in equal periodic installments, payable not more frequently than monthly nor less frequently than semiannually, as determined for such fiscal year by the Board, with each such installment to be due and payable on or before the first day of each applicable period during that fiscal year. Parcel Assessments and Special Assessments, if any, shall be paid in such manner and on such dates as may be fixed by the Board. In addition to any other powers of collection or enforcement granted hereunder, in the event any Assessments with respect to a Lot or Parcel are delinquent, the Board shall have the right, in its sole discretion, to accelerate the date(s) on which all subsequent installments of Assessments with respect to such Lot or Parcel are due and payable. Assessments shall be deemed "paid" when actually received by the Association or by its manager or agent designated by the Association to collect the same (provided, however, that if any Assessments are paid by check and the bank or other institution upon which such check is drawn thereafter dishonors or refuses to pay such check, those Assessments shall not be deemed "paid" and shall remain due and payable with interest accruing from the date such Assessments were originally due).

8.7 Maximum Annual Assessment. The Annual Assessments provided for herein shall not at any time exceed the Maximum Annual Assessment, as determined in accordance with this Section 8.7. For the fiscal year ending December 31, 1992, the Maximum Annual Assessment shall be Nine Hundred Dollars ($900.00). Thereafter, unless a greater increase is approved by the affirmative vote of two-thirds (2/3) of the votes of each class of Members represented in person or by valid proxy at a meeting of Members duly called for such purpose, the Maximum Annual Assessment for any fiscal year shall be equal to the Maximum Annual Assessment for the immediately preceding fiscal year increased at a rate equal to the greater of: (a) the percentage increase for the applicable fiscal year over the immediately preceding fiscal year in the Consumer Price Index -- All Urban Consumers -- All Items (1982-1984 Average = 100 Base) published by the Bureau of Labor Statistics of the U.S. Department of Labor (or its successor governmental agency), or, if such index is no longer published by said Bureau or successor agency, in the index most similar in composition to such index; or (b) ten percent (10%). Nothing herein shall obligate the Board to levy, in any fiscal year, Annual Assessments in the full amount of the Maximum Annual Assessment for such fiscal year, and an election by the Board not to levy Annual Assessments in the full amount of the Maximum Annual Assessments for any fiscal year shall not prevent the Board from levying Annual Assessments in subsequent fiscal years in the full amount of the Maximum Annual Assessment for such subsequent fiscal year (as determined in accordance with this Section 8.7). In the event that, for any fiscal year, the Board elects to levy an Annual Assessment at less than the full amount of the Maximum Annual Assessment for such fiscal year, the Board may, if in its reasonable discretion circumstances so warrant, subsequently levy a supplemental Annual Assessment during said fiscal year so long as the total of the Annual Assessments levied during said fiscal year does not exceed the Maximum Annual Assessment for such fiscal year.

8.8 Notice and Quorum for Meetings to Consider Special Assessments and Certain Increases in Annual Assessments. Notwithstanding any other provision hereof or of the Articles, Bylaws or Association Rules, written notice of any meeting called for the purpose of: (a) approving the establishment of any Special Assessment, as required by Section 8.9 hereof; or (b) approving any increase in the Maximum Annual Assessment greater than that permitted by application of the formula as set forth in Section 8.7 hereof, shall be sent to all Members not less than thirty (30) days nor more than sixty (60) days prior to the date of said meeting. At the first meeting thus called to consider the particular Special Assessment or increase in the Maximum Annual Assessment, a quorum

shall consist of sixty percent (60%) of the votes in each class of Members (whether represented in person or by valid proxy), provided, however, that if a quorum, as so determined, is not present at said first meeting, a second meeting may be called (subject to the same notice requirements as set forth above) to consider the same issue, and a quorum at said second meeting shall be one-half (1/2) of the required quorum at the first meeting, as described above. Such second meeting may not be held more than sixty (60) days after the first meeting.

8.9 Special Assessments. In addition to the Annual Assessments and Parcel Assessments authorized by this Article 8, the Association may levy Special Assessments from time to time, provided, however, that any Special Assessment shall be effective only with the approval of not less than two-thirds (2/3) of the votes of each class of Members represented in person or by valid proxy at a meeting of Members duly called and convened to consider such Special Assessment. Subject to Section 8.4, Special Assessments shall be allocated equally among all Lots.

8.10 Parcel Assessments. In addition to the Annual Assessments and Special Assessments authorized in this Article 8, the Association may levy Parcel Assessments from time to time against one or more Parcels or against one or more groups of Lots in particular portions of the Property to reimburse the Association for any and all expenses incurred in the event the Association has or assumes applicable maintenance responsibilities as provided in Sections 4.4 and 4.5 hereof (provided that if the Association has or assumes such responsibilities pursuant to a contract with a Parcel Owner or a Subsidiary Association pursuant to Section 4.4 hereof, such Parcel Assessments shall not be levied unless and until such Parcel Owner or Subsidiary Association fails or refuses to pay the Association in accordance with said contract).

8.11 Certificates. The Association shall, upon the written request of any Owner or the holder, insurer or guarantor of any Mortgage, and upon payment of such reasonable charge as may be determined by the Board, furnish to the requesting party a certificate, executed by an officer of the Association, stating the date to which Assessments with respect to such Owner's Lot or Parcel (or the Lot or Parcel against which such Mortgage is Recorded) have been paid and the amount, if any, of any Assessments which have been levied with respect to said Lot or Parcel but which remain unpaid as of the date of such certificate; said certificate shall be binding upon the Association as to the matters set forth therein as of the date thereof.

8.12 Surplus Monies. Unless otherwise expressly determined by the Board, any surplus monies of the Association shall be held by the Association and placed in one or more reserve accounts as determined by the Board, and shall not be paid to the Owners or credited against the Owners' respective liabilities for Assessments.

8.13 Billing and Collection Procedures. The Board shall have the right to adopt procedures for the purpose of making, billing and collecting the Assessments and Special Use Fees, which procedures may include delegating to the applicable Subsidiary Association the authority and obligation of billing and collecting some or all of the Assessments and Special Use Fees. The failure of the Association to send a bill to an Owner shall not relieve such Owner of the Owner's liability for an Assessment or Special Use Fee. The Association shall be under no duty to refund any payments received by the Association even if the ownership of a Lot or Parcel changes during a fiscal year of the Association. Any successor Owner shall be given credit for any unrefunded prepayments made by a prior Owner.

8.14 Declarant's Obligation for Deficiencies. So long as the Class B membership exists, Declarant shall pay and contribute to the Association, within thirty (30) days after the end of each fiscal year of the Association, or at such other times as may be requested by the Board, such funds as may be necessary, when added to the Assessments levied by the Association pursuant to this Declaration, to provide for: (a) the operation and maintenance of the Common Area and the recreational facilities located thereon; (b) the maintenance of adequate reserves; and (c) the performance by the Association of all other obligations of the Association under this Declaration or the Articles or Bylaws. Declarant's obligations under this Section 8.14 may be satisfied in the form of a cash subsidy or by "in kind" contributions of services or materials, or a combination of both.

8.15 Common Expenses Resulting from Misconduct. Notwithstanding any other provision of this Article 8, if any Common Expense is caused by the misconduct of any Owner (or of any Occupant, tenant, employee, servant, agent, guest or invitee for whose actions such Owner is responsible under applicable law), the Association may assess that Common Expense exclusively against such Owner and such Owner's Lot or Parcel, which amount (together with any and all costs and expenses, including but not limited to attorneys' fees, incurred by the Association in recovering the same) shall be secured by the lien created pursuant to Section 8.3.

ARTICLE 9

ARCHITECTURAL REVIEW

9.1 Appointment of Architectural Committee; Standing to Enforce. All property which is now or hereafter subject to this Declaration shall be subject to architectural, landscaping and aesthetic review as provided herein. This review shall be in accordance with this Article 9 and such standards as may be promulgated by the Architectural Committee, which is hereby established. Authority and standing on behalf of the Association to enforce in any court of competent jurisdiction decisions of the Architectural Committee and the provisions of this Article 9 shall be vested in Declarant, so long as Declarant has the right to appoint the Architectural Committee under this Section 9.1 and thereafter in the Board (provided that in all cases any expenses incurred in such enforcement actions shall be Common Expenses). So long as Declarant owns any part of the Property, the Architectural Committee shall consist of three (3) individuals appointed by, and who shall serve at the pleasure of, Declarant. At such time as either: (a) Declarant no longer owns any part of the Property; or (b) Declarant Records a written waiver of its right to appoint the Architectural Committee, the Board shall appoint the members of the Architectural Committee, which shall have such number of members (but not less than three (3)) as the Board may elect, from time to time. Each member of the Architectural Committee appointed by the Board shall serve in such capacity until: (a) such member is removed by the Board; or (b) such member resigns such position or dies. Prior to the appointment of the initial members of the Architectural Committee, and at any time when there is no one serving on the Architectural Committee (whether due to death, resignation or removal), the Board shall have and exercise any and all rights, powers, duties and obligations of the Architectural Committee.

9.2 Jurisdiction of the Architectural Committee; Promulgation of Guidelines. The Architectural Committee shall have exclusive jurisdiction over all original construction and any modifications, additions or alterations to improvements on any portion of the Property (including, but

not limited to, the construction or installation of, or modifications, additions or alterations to: (a) buildings and other structures; (b) landscaping; (c) fences; (d) heating, ventilating, air conditioning and cooling units; (e) solar panels; (f) paint; and (g) any other construction, modification, addition or alteration affecting the exterior appearance of any structure, Lot or Parcel). The Architectural Committee shall adopt, and may from time to time amend, supplement and repeal, the Guidelines. The Guidelines shall interpret, implement and supplement this Declaration, and shall set forth procedures for Architectural Committee review and the standards for development within the Property. The Guidelines shall include, without limitation, provisions regarding: (i) the size of Dwelling Units; (ii) architectural design, with particular regard to the harmony of the design with surrounding structures and topography; (iii) placement of buildings; (iv) landscaping design, content and conformance with the natural character of the Property, taking into consideration natural area open space ordinances, regulations and requirements of the City; (v) requirements concerning exterior color schemes, exterior finishes and materials throughout Scottsdale Mountain; (vi) signage; and (vii) perimeter and screen wall design and appearance. The Guidelines shall have the same force and effect as the Association Rules. Further, after termination of Declarant's right to appoint the members of the Architectural Committee pursuant to Section 9.1, any and all amendments, supplements, repeals or replacements to or of the Guidelines shall be subject to the approval of the Board.

9.3 Submission and Review of Plans. No original construction, modification, alteration or addition subject to the Architectural Committee's jurisdiction (including, but not limited to, landscaping) shall be commenced until it has been approved or is deemed approved by the Architectural Committee as provided herein. Any Owner or other Person seeking to construct or install any new improvements or landscaping or to make any modification, alteration or addition to any existing improvement (including, but not limited to, landscaping and grading) upon any portion of the Property (or to cause same to be constructed or made) shall first submit to the Architectural Committee detailed plans, specifications and elevations (including, but not limited to, a detailed site plan) relating to the proposed construction, installation, modification, alteration or addition; said plans, specifications and elevations shall be sent by: (a) personal delivery, in which case the Person delivering the same shall obtain a signed and dated receipt from the recipient thereof (in which event they shall be deemed received as of the date indicated by the recipient on such receipt); or (b) by U.S. mail, postage paid, certified mail, return receipt requested (in which event they shall be deemed received as of the date indicated on the return receipt). The Architectural Committee shall have forty-five (45) days after its receipt of such plans, specifications and elevations to approve or disapprove of the proposed construction, installation, modification, alteration or addition or to request additional information, and, if the Architectural Committee disapproves, to give such Owner or other Person reasonably detailed written reasons for such disapproval. In the event the Architectural Committee fails either to approve or disapprove the proposed construction, installation, modification, alteration or addition (or to request additional information) within said forty-five (45) day period, such proposed construction, installation, modification, alteration or addition shall be deemed approved.

9.4 Obligation to Obtain Approval.

9.4.1 Except as otherwise expressly provided in this Declaration or the Guidelines or an applicable Tract Declaration, without the prior written approval by the Architectural Committee of plans and specifications prepared and submitted to the Architectural Committee in accordance with the provisions of this Declaration and the Guidelines: (a) no improvements, alterations, repairs,

excavation, grading, landscaping or other work shall be done which in any way alters the exterior appearance of any property or improvements thereon from their natural or improved state existing on the date Recorded; and (b) no building, fence, exterior wall, pool, roadway, driveway or other structure, improvement or grading shall be commenced, erected, maintained, altered, changed or made on any Lot or Parcel at any time.

9.4.2 No exterior trees, bushes, shrubs, plants or other landscaping shall be planted or placed upon the Property except in compliance with plans and specifications therefor which have been submitted to and approved by the Architectural Committee in accordance with the Guidelines and except in compliance with Section 9.12 below.

9.4.3 No material changes or deviations in or from the plans and specifications for any work to be done on the Property, once approved by the Architectural Committee, shall be permitted without approval of the change or deviation by the Architectural Committee.

9.4.4 No other item or matter required by this Declaration to be approved in accordance with this Article 9 or to be approved by the Architectural Committee shall be done, undertaken or permitted until approved by the Architectural Committee.

9.5 Changes to Interiors of Dwelling Units or Other Structures. Nothing contained herein shall be construed to limit the right of an Owner to remodel the interior of his, her or its Dwelling Unit or other structure on such Owner's Lot or Parcel or to paint the interior of his, her or its Dwelling Unit or such other structure any color desired, except to the extent such remodeling or painting is visible from outside such Dwelling Unit or other structure or affects the exterior appearance of such Dwelling Unit or other structure.

9.6 Other Approvals; Liability. No approval by the Architectural Committee of any proposed construction, modification, addition or alteration shall be deemed to replace or be substituted for any building permit or similar approval required by any applicable governmental authority, nor shall any such approval be deemed to make the Architectural Committee (or the Board or the Association) liable or responsible for any damage or injury resulting or arising from any such construction, modification, addition or alteration. None of Declarant, the Association, the Board or the Architectural Committee (nor any member thereof) shall be liable to the Association, any Owner or any other party for any damage, loss or prejudice suffered or claimed on account of: (a) the approval or disapproval of any plans, drawings or specifications, whether or not defective; (b) the construction or performance of any work, whether or not pursuant to approved plans, drawings and specifications; or (c) the development of any Lot or Parcel.

9.7 Fee. The Architectural Committee may establish in the Guidelines a reasonable processing fee to defer its costs in considering any request for approvals submitted to the Architectural Committee or for appeals to the Board, which fee shall be paid at the time the request for approval or review is submitted.

9.8 Inspection. Any member or authorized consultant of the Architectural Committee, or any authorized officer, director, employee or agent of the Association, may at any reasonable time and without being deemed guilty of trespass enter upon any Lot or Parcel, after reasonable notice to the Owner or Occupant of such Lot or Parcel, in order to inspect the improvements constructed or

being constructed on such Lot or Parcel to ascertain that such improvements have been, or are being, built in compliance with this Declaration, any applicable Tract Declaration, the Guidelines and any approved plans, drawings or specifications.

9.9 Waiver. Approval by the Architectural Committee of any plans, drawings or specifications for any work done or proposed, or for any other matter requiring approval of the Architectural Committee, shall not be deemed to constitute a waiver of any right to withhold approval of any similar plan, drawing, specification or matter subsequently submitted for approval.

9.10 Appeal to Board. Any Owner or Occupant aggrieved by a decision of the Architectural Committee may appeal the decision to the Board in accordance with procedures to be established in the Guidelines. In the event the decision of the Architectural Committee is overruled by the Board on any issue or question, the prior decision of the Architectural Committee shall be deemed modified to the extent specified by the Board. Notwithstanding the foregoing, until termination of Declarant's right to appoint the members of the Architectural Committee pursuant to Section 9.1, no decision of the Architectural Committee may be appealed to the Board.

9.11 Nonapplicability to Declarant. The provisions of this Article 9 shall not apply to any portions of the Property owned by Declarant or any Person affiliated with Declarant. Further, this Article 9 may not be amended without Declarant's written consent so long as Declarant owns any of the Property.

9.12 Landscaping. Except as expressly provided herein or as expressly approved by the Architectural Committee, landscaping on the Property shall be consistent with the character of the natural environment surrounding the Property, shall comply with any and all provisions of the Guidelines relating to permitted or prohibited plants, and shall comply with all applicable governmental requirements, including but not limited to all natural area open space ordinances, regulations and requirements of the City. Subject to the foregoing, all Lots and Parcels (other than Condominium Units), excluding driveways and parking areas, and excluding that portion of the Lot or Parcel, if any, which is enclosed by a perimeter wall around the rear yard, shall be landscaped in a manner and using plants and soil approved in advance by the Committee. No exterior trees, bushes, shrubs, plants or other landscaping shall be planted or placed upon any Lot or Parcel except in compliance with plans and specifications therefor which have been submitted to and approved by the Architectural Committee in accordance with this Article 9 and the Guidelines. No material changes or deviations in or from the plans and specifications for any work to be done on any Lot or Parcel once approved by the Architectural Committee, shall be permitted without approval of the change or deviation by the Architectural Committee. Neither this Section 9.12 nor Sections 9.3 or 9.4 above shall be construed to prevent normal landscape maintenance or the replacement of dead or diseased plants with other similar plants (so long as the replacement plants are permitted by the Guidelines) and by applicable governmental requirements, including, but not limited to, all natural area open space ordinances, regulations and requirements of the City.

ARTICLE 10

USE RESTRICTIONS

10.1 Single Family Residential Use. No structure whatsoever, other than one private, Single Family residence, together with a private garage for not more than four cars, one gazebo, one tennis court and one storage facility (all of which must be approved in advance by the Architectural Committee in accordance with this Declaration), as well as a swimming pool (which shall not be subject to Architectural Committee approval except as to any aboveground structures appurtenant thereto), shall be erected, placed or permitted on any Lot. No gainful occupation, profession, trade or other non-residential use shall be conducted on or in any Lot. The entire (but not less than all of a) Dwelling Unit on a Lot may be leased to a Single Family tenant from time to time by the Owner thereof, subject to the provisions of this Declaration, any applicable Subsidiary Declaration and the Association Rules. This Section 10.1 shall not be deemed to prevent an Owner or Occupant from conducting his or her personal and non-business affairs on his or her Lot. This Section 10.1 also shall not be deemed to prevent an Owner or Occupant from using the Dwelling Unit on his or her Lot for business purposes which: (a) utilize, on an exclusive or non-exclusive basis, a minimal portion of such Dwelling Unit; (b) do not result in the use of the Dwelling Unit for business meetings or appointments; (c) do not result in shipping from the Lot: (d) do not result in large or excessive amounts of deliveries to the Lot; and (e) do not otherwise violate local zoning and use laws.

10.2 Animals. No animal, livestock, poultry or fowl of any kind, other than a reasonable number of generally recognized house pets, shall be maintained on or in any Lot and then only if they are kept or raised thereon solely as domestic pets and not for commercial purposes. No house pets shall be permitted to make an unreasonable amount of noise or create a nuisance. No structure for the care, housing or confinement of any pet shall be Visible From Neighboring Property. Notwithstanding the foregoing, no pets may be kept on or in the Tract or any Lot which result in an annoyance to other Owners or Occupants in the vicinity. All pets shall be leashed when not on a Lot owned by the pet's owner or on which the pet's owner is an Occupant or guest, and persons walking any pet shall promptly and properly remove and dispose of the pet's waste.

10.3 Garbage. No garbage or trash shall be allowed, stored or placed on any Lot or other portion of the Property except in sanitary, covered containers. In no event shall such containers be Visible From Neighboring Property, except for a reasonable time immediately prior to and after collection. All trash and garbage shall be regularly removed from each Lot and shall not be allowed to accumulate thereon or elsewhere on the Property.

10.4 Machinery and Equipment. No machinery or equipment of any kind shall be placed, operated, stored or maintained upon any Lot or other portion of the Property except: (a) such machinery or equipment as is usual and customary in connection with the use, maintenance or construction (during the period of construction) of a building, appurtenant structures or improvements thereon; or (b) that which Declarant or the Association may require for the development, operation and maintenance of Scottsdale Mountain.

10.5 Signs. Except as otherwise expressly permitted by this Declaration, no signs of whatever nature shall be placed on the Common Area except with respect to Association or Common Area matters as approved by the Board. No signs of whatever nature shall be placed on any Lot

except: (a) signs required by legal proceedings; (b) a maximum of 2 identification signs for each Dwelling Unit, each with a maximum face area of 72 square inches; and (c) signs, including "for sale" and "for lease" signs and subdivision or building identification signs, the nature, number, location, content and design of which shall be approved in writing by the Architectural Committee. Signs on any other portion of the Property shall be subject to the prior review and approval of the Architectural Committee unless: (i) required by legal proceedings; or (ii) approved by Declarant.

10.6 Restriction on Further Subdivision, Property Restrictions, and Rezoning.

10.6.1 All proposed site plans and subdivision plats for any Parcel or Lot, or any portion thereof, must be approved in writing by the Architectural Committee prior to Recordation thereof or commencement of construction on the applicable Lot or Parcel. No Lot, or portion thereof, shall be further subdivided or subjected to a condominium declaration, and no portion less than all of any such Lot, or any easement or other interest therein, shall be conveyed or transferred by any Owner without the prior written approval of the Architectural Committee, provided that nothing in this Subsection 10.6.1 shall be deemed to prohibit sales by Declarant or a Developer Owner of Lots into which a Parcel is divided, so long as the plat(s) and other items required to be approved pursuant to this Section 10.6 have been so approved.

10.6.2 No Subsidiary Declaration or further covenants, conditions, restrictions, condominium declarations or easements shall be Recorded against any Parcel or Lot, or portion thereof, without the prior written approval of the Architectural Committee.

10.6.3 No applications for rezoning, variances or use permits, or for waivers of or modifications to existing variances, use permits, zoning stipulations or similar restrictions, shall be filed with any governmental authority or agency without the prior written approval of the Architectural Committee, and then only if such proposed zoning, variance or use, or waiver or modification, is in compliance with this Declaration, any applicable Tract Declaration, any applicable Subsidiary Declaration and the general plan of development of Scottsdale Mountain.

10.6.4 No subdivision plat, condominium declaration, Subsidiary Declaration, easement, declaration of further covenants, conditions, restrictions or easements or other instrument which is to be Recorded and which is required by this Section 10.6 to be approved by the Architectural Committee shall be effective unless the required approval is evidenced on such instrument by the signature of an authorized representative of the Architectural Committee.

10.6.5 No site plan, subdivision plat, condominium declaration, Subsidiary Declaration or further covenants, conditions, restrictions or easements, and no application for rezoning, variances or use permits shall be submitted to the City or any other governmental authority or agency unless the same has first been approved in writing by the Architectural Committee as provided in this Section 10.6; further, no changes or modifications shall be made in any such documents, instruments or applications once the same have been approved by the Architectural Committee hereunder (whether requested by the City or otherwise) unless such changes or modifications have first been approved by the Architectural Committee in writing.

10.6.6 Notwithstanding the foregoing, Declarant shall not be required to seek or obtain any of the approvals or consents otherwise required under this Section 10.6 as to any Lot or Parcel, or any portion of either, of which Declarant is the Owner.

10.7 Parking. No vehicle shall be parked on any private street or roadway owned by the Association, or on any other street or roadway shown on any map of dedication, subdivision plat or similar instrument Recorded by Declarant unless otherwise expressly provided either: (a) in or on such Recorded map of dedication, subdivision plat or similar instrument showing the street or roadway and approved in writing by the Architectural Committee; or (b) in a separate Recorded instrument executed by the Architectural Committee. Vehicles shall be kept in garages, carports, residential driveways, other designated parking areas or as otherwise required in a Subsidiary Declaration. The Board may adopt additional parking restrictions including the establishment of fines and assessments for their violation. The Board may also delegate its authority to enforce such parking restrictions to an appropriate Subsidiary Association. This Section 10.7 is not intended to prohibit temporary on-street parking by guests of Owners or Occupants, provided that no vehicles may be parked on any street or roadway overnight, and provided further that the Board may adopt and enforce additional restrictions and regulations on such temporary on-street guest parking as the Board sees fit, in its discretion.

10.8 Model Homes. Nothing contained herein shall prohibit the construction and maintenance of model homes, sales offices and parking incidental thereto by Persons engaged in the construction, marketing and sales of Dwelling Units upon a Parcel or any of the Lots, provided, however, that such models and sales offices may only be open during reasonable hours and otherwise shall be in compliance with the provisions of this Declaration, the Guidelines and ordinances of the City. Except as otherwise approved in writing by the Architectural Committee: (a) all model homes and sales offices shall cease to be used as such at any time the Owner (or an affiliate of the Owner, or a lessee thereof as the case may be) is not actively engaged in the construction and sale of Dwelling Units within the Parcel within which the model home is situated; and (b) no model home or sales office shall be used for the sale or rental of residences not located within the Parcel within which the model home is situated.

10.9 Prohibited Uses. The following uses of the Property and any and all Lots are prohibited:

10.9.1 any use which is offensive by reason of odor, fumes, dust, smoke, noise, glare, heat, sound, vibration, radiation or pollution, or which constitutes a nuisance, or which is hazardous by reason of risk of fire or explosion, or which is injurious to the reputation of any Lot, Parcel or Owner; and

10.9.2 any use which is in violation of the laws (after taking into account the application of any validly granted or adopted variance, exception or special use permit, ordinance or regulation) of the United States, the State of Arizona, the City or any other governmental entity having jurisdiction over the Property.

10.10 Temporary Occupancy and Temporary Buildings; Outside Storage. No trailer, tent, shack, garage, barn or temporary structure of any kind shall be used as a residence, whether temporary or permanent. Except during the construction process, no temporary building or structure

shall be erected, installed or maintained on any Parcel or Lot without prior written approval in accordance with Article 9 of the Declaration. Temporary structures used during construction must receive prior written approval, in accordance with Article 9 of the Declaration, with regard to location and appearance, and shall be removed immediately after completion of such construction, and that portion of the Parcel or Lot from which the same are removed shall be promptly placed in such condition as is otherwise required by this Declaration. Except during construction, no materials, supplies, equipment, finished or semifinished products or articles of any nature shall be stored on any area outside of a building unless approved in advance by the Architectural Committee. Any permitted outside storage shall be screened by a solid visual barrier so as not to be Visible From Neighboring Property, provided, however, that during construction of improvements on the Parcel or Lot, necessary construction materials and supplies may be stored on the Lot or Parcel without the need for a solid visual barrier provided such materials and supplies are kept in neat order considering the construction activities and otherwise in compliance with the Guidelines. The Architectural Committee shall have the right to designate the areas and manner in which supplies of building materials and construction equipment shall be stored and the routes construction vehicles may use. All such designations shall be reasonable. Except with the express written approval of the Architectural Committee, no Dwelling Unit or other structure on any Lot or Parcel shall be occupied in any manner while in the course of original construction or prior to issuance by the appropriate local governmental authority of a certificate of occupancy (or other similar document) with respect to such Dwelling Unit or other structure.

10.11 Repair of Buildings. No building or improvement on any Parcel or Lot shall be permitted to fall into disrepair and each such building and improvement shall at all times be kept in good condition and repair and adequately painted or otherwise finished to maintain a first class appearance of the building or improvement. In the event any building or improvement is damaged or destroyed, then, subject to the approvals required by Article 9 of the Declaration, such building or improvement shall be immediately repaired, rebuilt or demolished (or caused to be repaired, rebuilt or demolished) by the Owner thereof.

10.12 Maintenance of Landscaping and Driveways. Unless otherwise provided in a Subsidiary Declaration, each Owner shall be responsible for the proper maintenance of all landscaping in the following locations:

10.12.1 on the Owner's Lot (including set back areas located thereon), except that in the event the maintenance of any portions of such Owner's Lot is the responsibility of the Association or a Subsidiary Association, a utility, or a governmental or similar authority, then only for so long as such entities are not undertaking such responsibility;

10.12.2 portions of the Common Area adjacent to an Owner's Lot or Parcel and which are on the Lot's or Parcel's side of any wall erected on the Common Area; and

10.12.3 public or private right-of-way areas between sidewalks or bicycle paths and the street curb on the Owner's Lot or Parcel, public or private right-of-way areas between sidewalks or bicycle paths and any fence or wall on the Owner's Lot or Parcel, or other public or easement areas adjacent to the Owner's Lot or Parcel, except that in the event the maintenance of such areas is the responsibility of the Association or a Subsidiary Association, a utility, or a governmental or similar authority, then only for so long as such entities are not undertaking such responsibility.

As used herein, maintenance shall include but not be limited to keeping the areas neatly trimmed, cultivated and free of trash, weeds and unsightly material. All lawn areas shall be timely mowed as needed to keep an even, well groomed appearance and shall be watered and fertilized at such times and in such quantities as required to keep the grass alive and attractive and free of weeds. All trees, shrubs, plants and ground covers shall be timely and properly trimmed (including, without limitation, the removal of dead wood therefrom) according to their plant culture and landscape design and shall be watered and fertilized at such times and in such quantities as required to keep them alive and attractive. Any dead tree, shrub, plant or ground cover shall be removed and replaced immediately. All bed areas shall be kept free of weeds and cultivated periodically as needed. If at the time an Owner acquires title to a Lot, landscaping has not yet been completed on that Lot, then, within one hundred eighty (180) days after completion of a Dwelling Unit on that Lot (as evidenced by the issuance of a certificate of occupancy therfor), the Owner shall complete the landscaping of all portions of the Lot visible from the street(s) running immediately in front of or along the side of the Lot, together with any public or private right-of-way areas (other than sidewalks or bicycle paths) lying between the front or side boundaries of such Lot and an adjacent street, which landscaping shall comply with the provisions of this Declaration, the Guidelines and any other applicable requirements or restrictions imposed by the Architectural Committee, the City or any governmental or municipal agency having jurisdiction. Each Owner shall maintain in good condition and repair all paved and concrete areas, including driveways, roadways and parking areas, located on the Owner's Lot. The provisions of the Section 10.12 are subject to all applicable governmental requirements, including, but not limited to, all natural area open space ordinances, regulations and requirements of the City.

10.13 Nuisances; Construction Activities. No rubbish or debris of any kind shall be permitted to accumulate upon or adjacent to any Parcel or Lot (or any other part of the Property) so as to create a nuisance or render any such property or activity thereon unsanitary, unsightly or offensive. Although normal construction activities shall not be considered a nuisance or otherwise prohibited, all Lots must be kept in a neat and tidy condition during construction periods. No noxious or offensive activity shall be carried on or permitted on any Parcel or Lot (or any other part of the Property), nor shall anything be done thereon which may be, or may become, an annoyance or nuisance to Persons or property in the vicinity of such Lot or Parcel or to Scottsdale Mountain, or which shall interfere with the quiet enjoyment of each of the Owners and Occupants. Without limiting the generality of any of the foregoing provisions, no exterior speakers, horns, whistles, bells or other sound devices, except ordinary intercom systems or security devices used exclusively for security purposes, and no spot lights or other high intensity lighting visible outside of a Dwelling Unit or other structure, shall be located, used or placed on the Property. The Architectural Committee in its discretion shall have the right to determine the existence of any such nuisance. Furthermore, the Architectural Committee, acting on behalf of the Association, shall have the right to remove any such nuisance at the expense of the Owner responsible for the nuisance (or at the expense of the Owner whose tenant, Occupant or guest is responsible for the nuisance); such expenses (including, but not limited to, attorneys' fees and other collection costs) shall be paid by the Owner promptly on demand, with interest thereon at the rate provided in Section 12.8 from the date incurred until fully paid, and, with such interest, shall be secured by the lien against the Lot created pursuant to Section 8.3.

10.14 Diseases and Insects. No Owner or Occupant shall permit any thing or condition to exist upon any Lot or Parcel (or any other part of the Property) which shall induce, breed or harbor infectious plant or animal diseases or noxious insects.

10.15 Storage and Tool Sheds or Structures. No storage or tool sheds or similar structures shall be placed, erected or maintained upon any part of the Property except: (a) where such storage or tool shed or similar structure is constructed of the same or substantially similar materials as, and is the same color as and architecturally comparable to, the Dwelling Unit upon the same Lot as storage or tool shed or similar structure (all as reasonably determined by the Architectural Committee, and subject to applicable provisions of the Guidelines); or (b) where such storage or tool shed or similar structure is temporarily placed on the Property by Declarant, an affiliate or assignee of Declarant, or a Developer Owner in connection with construction activities of Declarant, such affiliate or assignee of Declarant, or such Developer Owner.

10.16 Mineral Exploration. No Lot or any other portion of the Property shall be used in any manner to explore for, quarry, mine, remove or transport any water, oil or other hydrocarbons, minerals, gravel, gas, earth or any earth substance of any kind (except to the limited extent required in connection with normal construction activities).

10.17 Clothes Drying Facilities. No outside clotheslines or other facilities for drying or airing clothes shall be placed on any Parcel or Lot without prior written approval in accordance with Article 9, unless they are not Visible From Neighboring Property.

10.18 Blanket Utility Easements. There is hereby created a blanket easement upon, over and under each Lot, each Parcel, the Common Area and any Limited Common Areas for ingress to, egress from, and the installation, replacement, repair, maintenance, operation and existence of all utility equipment and service lines and systems, as such equipment, lines and systems are installed in connection with the initial development of the Parcels, the Lots, the Common Area and any Limited Common Areas and the construction of buildings thereon. Utility or service facilities and equipment may be affixed and maintained on, in and under the roofs and exterior walls of buildings on Parcels, Lots, Common Area and any Limited Common Areas. Notwithstanding anything to the contrary contained in this Section 10.18, but subject to the provisions of Section 10.27, no utility or service equipment or lines may be installed or relocated on any Lot, any Parcel, the Common Area or any Limited Common Areas except as initially approved by the Declarant, or, if installed after Recordation of this Declaration, as approved by the Owner thereof and the Architectural Committee.

10.19 Overhead Encroachments. No tree, shrub or planting of any kind shall be allowed to overhang or encroach upon any public right-of-way, bicycle path or any other pedestrian way from ground level to a height of 8 feet without prior written approval in accordance with Article 9.

10.20 Trucks, Trailers, Campers, Boats and Motor Vehicles. No motor vehicle, motor home, mobile home, trailer, camper shell, detached camper, boat, boat trailer, snow mobile, jet ski or other similar equipment or vehicle may be parked, maintained, constructed, reconstructed, repaired or stored on any Lot or other portion of the Property, or on any street, so as to be Visible From Neighboring Property (including but not limited to any Common Area, Limited Common Areas or street). The foregoing limitation on parking shall not apply to:

10.20.1 automobiles, trucks or vans, or mini-motor homes not exceeding 7 feet in height from ground level and 18 feet in length, so long as such automobiles, trucks or vans or mini-motor homes: (a) are parked as provided in Section 10.7; (b) are used on a regular and recurring

basis for basic transportation; and (c) do not have commercial or business signs or other advertising attached thereto or displayed thereon (other than ordinary license plate frames); or

10.20.2 temporary facilities maintained during, and used exclusively in connection with, construction activities, provided, however, that such activities are approved in advance and in writing in accordance with Article 9.

Notwithstanding Subsection 10.20.1 above, no automobile, motorcycle, motorbike or other motor vehicle shall be constructed, repaired or, if inoperable, stored upon any Lot or street, or any other portion of the Property, so as to be Visible From Neighboring Property.

10.21 Declarant's Exemption. Nothing contained in this Declaration or in the Declaration shall be construed to prevent the construction, installation or maintenance by Declarant or its agents during the period of development and construction on the Property of improvements, landscaping or signs deemed necessary or convenient by Declarant, in its sole discretion, to the development or sale of property within the Property, provided that any such improvements and landscaping shall be generally consistent, in terms of appearance and quality, with similar improvements and landscaping elsewhere within Scottsdale Mountain.

10.22 Health, Safety and Welfare. In the event uses of, activities on, or facilities upon or within the Property or any Lot are deemed by the Board or the Architectural Committee to be a nuisance or to adversely affect the health, safety or welfare of Owners or Occupants, the Architectural Committee may make rules restricting or regulating their presence.

10.23 Incidental Uses. Subject to the provisions of this Declaration and any applicable Subsidiary Declaration, the Architectural Committee, may approve, regulate and restrict incidental uses of property within a land use classification. By way of example and not of limitation, the Board may permit: private roadways; tennis and/or swimming clubs intended primarily for the benefit of all or certain Owners or Occupants; tennis courts; swimming pools; hiking and equestrian trails; and other recreational facilities.

10.24 Window Coverings. No external window covering or reflective covering may be placed, or permitted to remain, on any window of any building, structure or other improvement without prior written approval in accordance with Article 9. Further all curtains, blinds, interior shutters and other window coverings or window treatments which are visible from outside a Dwelling Unit or other structure shall be neutral in color. No bedsheets, blankets, bedspreads or other items not designed for use as curtains or other window coverings shall be used for such purpose, whether permanently or temporarily, if the same are visible from outside the applicable Dwelling Unit or other structure.

10.25 Parcel Coverage. The percentage of each Lot which may be covered by buildings (as well as the location of such buildings and other improvements on each Lot) shall be subject to review and approval in accordance with Article 9, as part of the review of plans for proposed improvements on such Lot pursuant to said Article 9, but shall in no event violate City ordinances and regulations in effect from time to time.

10.29 Building Exteriors. All colors of materials on the building exteriors and all exterior wall surfaces of any building shall be in accordance with plans and designs approved in accordance with Article 9. All materials used for the exterior of the buildings shall be high quality, long-life, low maintenance materials.

10.30 Garages and Driveways. The interior of all garages situated upon Lots shall be maintained by the respective Owners and Occupants thereof in a neat, clean and sightly condition. Such garages shall be used for parking vehicles and storage only, and shall not be used or converted for living or recreational activities. Garage doors shall be kept closed at all times except to the limited extent reasonably necessary to permit the entry or exit of vehicles or persons. All driveways on Lots shall be of concrete construction.

10.31 Heating, Ventilating and Air Conditioning Units. No heating, ventilating, air conditioning or evaporative cooling units or equipment shall be placed, constructed or maintained upon a Parcel or any Lot, including, but not limited to, upon the roof or exterior walls of any structure on any part of a Parcel or any Lot.

10.32 Solar Collecting Panels or Devices. Declarant recognizes the benefits to be gained by permitting the use of solar energy as an alternative source of electrical power for residential use. At the same time, Declarant desires to promote and preserve the attractive appearance of the Property and the improvements thereon, thereby protecting the value generally of the Property and the various portions thereof, and of the various Owners' respective investments therein. Therefore, subject to prior approval of the plans therefor by the Architectural Committee pursuant to Article 9, solar collecting panels and devices may be placed, constructed or maintained upon a Parcel or Lot (including upon the roof of any structure upon Lot), so long as either: (a) such solar collecting panels and devices are placed, constructed and maintained so as not to be Visible From Neighboring Property; or (b) such solar collecting panels and devices are placed, constructed and maintained in such location(s) and with such means of screening or concealment as the Architectural Committee may reasonably deem appropriate to limit, to the extent possible, the visual impact of such solar collecting panels and devices when viewed by a person six feet tall standing at ground level on adjacent properties.

10.33 Antennas, Poles, Towers and Dishes. No television, radio, shortwave, microwave, satellite, flag or other antenna, pole, tower or dish shall be placed, constructed or maintained upon any Lot or Parcel (including, but not limited to, upon the roof or exterior walls of any Dwelling Unit or other structure), unless: (a) where such antenna, pole, tower or dish is installed upon the roof of a Dwelling Unit or other structure, such antenna, pole, tower or dish is fully screened and concealed from view from adjacent properties by a parapet wall which conforms architecturally with the structure of such Dwelling Unit or other structure; or (b) in all other cases, such antenna, pole, tower or dish is fully and attractively screened or concealed from view from adjacent properties, which means of screening or concealment shall (in either case (a) or (b)) be subject to the Guidelines and to approval in accordance with Article 9. Notwithstanding the foregoing, the Architectural Committee may adopt a rule or other Guideline permitting an Owner or Occupant to install and maintain a flagpole upon such Owner's or Occupant's Lot, provided that the location and size of such flagpole (and the number and size of any flag(s) mounted thereon) may be regulated by the Architectural Committee and may, if so provided in such rule or other Guideline, be made subject to the prior

approval thereof by the Architectural Committee. Further, basketball goals and backboards (including poles on which the same are mounted) are governed by Section 10.34.

10.34 Basketball Goals or Play Structures. No basketball goal, backboard or similar structure or device, and no swingsets or other play structures, shall be placed or constructed on any Lot without the prior written approval of the Architectural Committee (including, without limitation, approval as to appearance and location). Any basketball goal or backboard shall be mounted on a free-standing pole located entirely within an enclosed rear or side yard of a lot, and shall not be attached to the roof or other portion of any structure. Any such pole shall be painted the same color as the predominant color of the Dwelling Unit on the Lot on which the pole is placed.

10.35 Tanks. No tanks of any kind (including tanks for the storage of fuel) shall be erected, placed or maintained on any Lot or Parcel unless such tanks are buried underground. Nothing herein shall be deemed to prohibit use or storage upon any Lot or Parcel of propane or similar fuel tanks with a capacity of ten (10) gallons or less used in connection with a normal residential gas barbecue, grill or fireplace. Further, this Section shall not be deemed to prohibit use or storage upon a Lot of an aboveground propane or other fuel tank used in connection with heating a spa or "hot tub" so long as such tank either (a) has a capacity of ten (10) gallons or less; or (b) is appropriately screened, in accordance with the Guidelines or as otherwise approved by the Architectural Committee, so as not to be Visible From Neighboring Property.

10.36 Underground Facilities. No cesspool or well may be dug or installed without the prior written approval of the Board.

10.37 Outdoor Burning. There shall be no outdoor burning of trash or other debris, provided, however, that the foregoing shall not be deemed to prohibit the use of normal residential barbecues or other similar outside cooking grills or outdoor fireplaces.

10.38 Fences, Interferences and Obstructions.

10.38.1 All fences shall be of block construction (except as may be otherwise approved in advance by the Architectural Committee) and, except as otherwise approved pursuant to Article 9, shall be painted or colored to match the exterior of the structure(s) enclosed by or upon the same Lot as such fence. All fences shall be subject to the Guidelines and to Architectural Committee approval including, without limitation, as to location and height. The foregoing shall not apply to boundary walls or fences constructed by or with the approval of Declarant along property lines bounding public rights-of-way, provided, however, that such boundary walls or fences shall be constructed so as to comply with applicable municipal zoning and other laws and ordinances. No fence shall be permitted to interfere with existing recorded restrictions, drainageways or easements. Except as otherwise provided by applicable law or governmental rule or regulation, and subject to any applicable restrictions or requirements set forth in any recorded plat of all or any part of the Property, fences may be constructed in or over a recorded utility easement, provided, however, that should the utility companies ever require access to such easement, it shall be the responsibility of the Owner of the applicable Lot or Parcel, at his, her or its sole expense, to remove and replace such fence.

10.38.2 No structure, shrubbery or other vegetation shall be permitted to exist on any Lot or Parcel, the height or location of which shall be deemed by the Architectural Committee

either to constitute a traffic hazard or to be unattractive in appearance or unreasonably detrimental to adjoining property. As an aid to freer movement of vehicles at and near street intersections and in order to protect the safety of pedestrians and the operators of vehicles and/or property, the Architectural Committee may impose further limitations on the height of fences, walls, gateways, ornamental structures, hedges, shrubbery and other fixtures, and construction and planting at the intersection of two or more streets or roadways.

10.39 Leasing; Obligations of Tenants and Other Occupants.

10.39.1 All leases shall be in writing and shall provide that the terms of the lease shall be subject in all respects to the provisions of this Declaration, the Articles, the Bylaws and the Association Rules. All tenants shall be subject to the terms and conditions of this Declaration, any applicable Tract Declaration, the Articles, the Bylaws, the Association Rules and the Guidelines as though such tenant were an Owner (except that such tenant shall not have any voting rights appurtenant to the Lot occupied by such tenant except pursuant to an express written assignment complying with this Declaration). Each Owner shall cause his, her or its tenants or other Occupants to comply with this Declaration, any applicable Tract Declaration, the Articles, the Bylaws, the Association Rules and the Guidelines and, to the extent permitted by applicable law, shall be responsible and liable for all violations and losses caused by such tenants or Occupants, notwithstanding the fact that such tenants or Occupants are also fully liable for any violation of each and all of those documents.

10.39.2 In the event that a tenant or other Occupant violates any provision of this Declaration, any applicable Tract Declaration, the Articles, the Bylaws, the Association Rules or the Guidelines, the Association shall have the power to bring an action or suit against such tenant or other Occupant to recover sums due for damages or injunctive relief, or for any other remedy available at law or equity. The Association's costs in doing so, including, but not limited to, reasonable attorneys' fees, together with interest as provided in Section 12.8, shall be reimbursed by the tenant or other Occupant to the Association (or, in the absence of reimbursement by the tenant or other Occupant, or at the election of the Board, by the Owner of the Lot occupied by such tenant or other Occupant) and constitute a lien on the applicable Lot which shall have the priority, and may be enforced in the manner, described in Section 8.3.

10.39.3 The Board shall also have the power to suspend the right of the tenant or other Occupant to use the recreational facilities on or constituting a part of the Common Area for any violation by the tenant or other Occupant of any duty imposed under this Declaration, any applicable Tract Declaration, the Articles, the Bylaws, the Association Rules or the Guidelines and to impose reasonable monetary fines upon the tenant or the Owner of the applicable Lot, or both. No suspension hereunder of the right of a tenant or other Occupant to use the recreational facilities on or constituting part of the Common Area may be for a period longer than sixty (60) days except where the tenant or other Occupant fails or refuses to cease or correct an on-going violation or commits the same or another violation, in which event such suspension may be extended for additional periods not to exceed sixty (60) days each until such violation ceases or is corrected; the foregoing limitation shall not affect or prevent termination of the applicable lease if permitted by the terms of said lease or otherwise by applicable law.

10.39.4 No Owner may lease less than his, her or its entire Lot. No Lot may be leased for a period of less than thirty (30) days. Upon leasing his, her or its Lot, an Owner shall promptly notify the Association of the commencement and termination dates of the lease and the names of each tenant or other Person who will occupy the Lot during the term of the lease.

10.40 Encroachments. There are reserved and granted for the benefit of each Lot and Parcel over, under and across each other Lot and Parcel and the Common Area, and for the benefit of the Common Area, over, under and across each Lot and Parcel, non-exclusive easements for encroachment, support, occupancy and use of such portions of the Parcels, Lots and/or Common Area as are encroached upon, used and occupied as a result of any original construction design, accretion, erosion, deterioration, decay, errors in original construction, movement, settlement, shifting or subsidence of any building or structure or any portion thereof, or any other cause. In the event any improvements on a Lot or Parcel, or on the Common Area, are partially or totally destroyed, the encroachment easement shall exist for any replacement structure which is rebuilt pursuant to the original construction design. The easement for the maintenance of the encroaching improvement(s) shall exist for as long as the encroachment exists; provided, however, that no easement of encroachment shall be created due to the willful misconduct of the Association or any Owner. Any easement of encroachment may but need not be cured by repair and restoration of the structure.

10.41 Variances. The Architectural Committee may, at its sole discretion, grant variances from the restrictions set forth in this Article 10 if the Architectural Committee determines either: (a) that a particular restriction would create a substantial hardship or burden on an Owner or Occupant which is not attributable to the Owner's or Occupant's acts, or a change of circumstances has rendered the particular restriction obsolete; and, (b) the activity permitted under the requested variance will not have a substantially adverse effect on other Owners and Occupants and is consistent with the high quality of life intended for Scottsdale Mountain. The request for a variance must be made in writing and be accompanied by adequate supporting documentation. The Architectural Committee shall approve or disapprove the request, in writing, as promptly as possible under the particular circumstances, and all such decisions of the Architectural Committee shall be final and nonappealable.

ARTICLE 11

PARTY WALLS

11.1 General Rules of Law to Apply. Each wall or fence which is located on, or serves as, the dividing line between two Lots, between two Parcels, between a Parcel and a Lot, or between a Lot or Parcel and Common Area shall constitute a party wall, and, to the extent not inconsistent with the provisions of this Article 11, the general rules of law regarding party walls and liability for property damages due to negligent or willful acts or omissions shall apply thereto. (For purposes of this Article 11 only, in the case of a party wall between a Lot or Parcel and Common Area, in interpreting the provisions of this Article the Common Area bounded by such wall shall be deemed to be a "Lot" and the Association shall be deemed to be the "Owner" of such "Lot.")

11.2 Repair and Maintenance. No Owner or Occupant of any Lot or Parcel (or any tenant, guest, invitee, employee or agent of such Owner or Occupant) shall do or permit any act (or

omit to do any act) that will or does damage, destroy or impair the structural soundness or integrity of any party wall, or which would cause any party wall to be exposed to the elements, and, in the event any such Owner, Occupant, tenant, guest, invitee, employee or agent does or permits any such act (or so omits to do any act), such Owner's or Occupant's liability with respect to such damage, destruction, impairment or exposure shall be determined in accordance with applicable law.

11.3 Sharing of Repair and Maintenance. In the event any repair, maintenance or reconstruction of any party wall shall be necessary (other than due to the negligence or willful act or omission of the Owner or Occupant of one Lot or Parcel, or such Owner's or Occupant's tenants, guests, invitees, employees or agents) the cost thereof shall be borne equally by the Owners and/or Occupants of the Lot(s) or Parcel(s) having in common such party wall, and in the event any Owner (or Occupant) fails or refuses timely to pay such Owner's (or Occupant's) share of such cost, the other Owner (or Occupant) shall have the right to pay in full such cost and recover from such Owner (or Occupant) such Owner's (or Occupant's) share of such cost (together with interest as provided in Section 12.8 of this Declaration).

11.4 Consents to Modification. No Owner or Occupant shall alter or modify any party wall in any respect without having first obtained the written consent of the Owner of the other Lot or Parcel adjoining such party wall, provided that such consent shall not be required in the case of repair or restoration of such party wall to its condition prior to any damage or destruction if the negligence or willful act or omission of the Owner or Occupant of such other Lot or Parcel was the cause of such damage or destruction and such Owner or Occupant fails or refuses to repair or restore such party wall promptly upon the request of the other Owner or Occupant. Any consent required by this Section 11.4 shall be in addition to and not in substitution for the consents or approvals of the Architectural Committee required by this Declaration or of any municipal or other governmental body having jurisdiction over the Property.

11.5 Non-Applicability to Condominiums. The provisions of this Article 11 are not intended to, and shall not, apply to walls between Condominium Units.

ARTICLE 12

GENERAL PROVISIONS

12.1 Term. All of the covenants, conditions, restrictions and other provisions of this Declaration (as amended from time to time in accordance with the provisions hereof): (a) shall run with and bind the Property; (b) shall inure to the benefit of and shall be enforceable by the Association or by the owner of any property subject to this Declaration, and their respective legal representatives, heirs, successors and assigns; and (c) shall remain in full force and effect until January 1, 2043, at which time said conditions, covenants, restrictions and other provisions, unless revoked by an affirmative vote of Members holding not less than seventy-five percent (75%) of all votes in the Association, shall automatically be extended for successive periods of twenty-five (25) years each, until revoked in the manner provided above. Notwithstanding any such revocation of this Declaration, each Owner of a Lot or Parcel (and such Owner's Occupants, tenants, agents, guests and invitees) shall nevertheless have a permanent easement across the Common Area for access to such

Lot or Parcel and for access to and use of such recreational facilities as may exist on the Common Area at the time of such revocation.

12.2 Amendment. Except as otherwise expressly provided herein, this Declaration may be amended only by the affirmative vote (in person or by proxy) or written consent of Members holding at least seventy-five (75%) of the votes in each class of Members. No amendment to this Declaration shall be effective unless and until such amendment is Recorded. Further, so long as the Class B membership exists, no amendment to this Declaration shall be effective without the prior approval of the Federal Housing Administration and the Veterans Administration.

12.3 Indemnification. The Association shall indemnify each and every officer and director of the Association (including, for purposes of this Section, former officers and directors of the Association) against any and all expenses, including attorneys' fees, reasonably incurred by or imposed upon any officer or director of the Association in connection with any action, suit, or other proceeding (including settlement of any suit or proceeding, if approved by the Board serving at the time of such settlement) to which he or she may be a party by reason of being or having been an officer or director of the Association, except for their own individual willful misfeasance, malfeasance, misconduct or bad faith. The officers and directors shall have no personal liability with respect to any contract or other commitment made by them, in good faith, on behalf of the Association (except indirectly to the extent that such officers or directors may also be Members of the Association and therefore subject to Assessments hereunder to fund a liability of the Association), and the Association shall indemnify and forever hold each such officer and director free and harmless from and against any and all liability to others on account of any such contract or commitment. Any right to indemnification provided for herein shall not be exclusive of any other rights to which any officer or director, or former officer or director of the Association, may be entitled. If the Board deems it appropriate, in its sole discretion, the Association may advance funds to or for the benefit of any director or officer (or former director or officer) of the Association who may be entitled to indemnification hereunder to enable such Person to meet on-going costs and expenses of defending himself or herself in any action or proceeding brought against such Person by reason of his or her being, or having been, an officer or director of the Association. In the event it is ultimately determined that a current or former officer or director to whom, or for whose benefit, funds were advanced pursuant to the preceding sentence does not qualify for indemnification pursuant to this Section 12.3 or otherwise under the Articles, Bylaws or applicable law, such current or former officer or director shall promptly upon demand repay to the Association the total of such funds advanced by the Association to him or her, or for his or her benefit, with interest (should the Board so elect) at a rate not to exceed ten percent (10%) per annum from the date(s) advanced until paid.

12.4 Easements for Utilities. There is hereby reserved to the Association the power to grant easements upon, across, over and under the Common Area for installation, replacement, repair, and maintenance of master television antenna systems, security and similar systems, and all utilities, including, but not limited to, water, sewers, telephones, cable television, gas and electricity, and for delivering or providing public or municipal services such as refuse collection and fire and other emergency vehicle access (which easements shall also include appropriate rights of ingress and egress to facilitate such installation, replacement, repair and maintenance, and the delivery or provision of such public, municipal or emergency services), provided, that no such easement shall interfere with a Dwelling Unit or its reasonable use and such easements shall require the holder of the easement to repair any damage caused to the property of any Owner.

12.5 No Partition. No Person acquiring any interest in the Property or any part thereof shall have a right to, nor shall any person seek, any judicial partition of the Common Area, nor shall any Owner sell, convey, transfer, assign, hypothecate or otherwise alienate all or any of such Owner's interest in the Common Area or any funds or other assets of the Association except in connection with the sale, conveyance or hypothecation of such Owner's Lot or Parcel (and only appurtenant thereto), or except as otherwise expressly permitted herein. This Section shall not be construed to prohibit the Board from acquiring and disposing of tangible personal property nor from acquiring or disposing of title to real property (other than disposition of title to the Common Area) which may or may not be subject to this Declaration.

12.6 Severability; Interpretation; Gender. Invalidation of any one of these covenants or restrictions by judgment or court order shall in no way affect any other provisions which shall remain in full force and effect. The provisions hereof shall be construed and interpreted with reference to the laws of the State of Arizona. Where the context hereof so requires, any personal pronouns used herein, whether used in the masculine, feminine or neuter gender, shall include all genders, and the singular shall include the plural and vice versa. Titles of Articles and Sections are for convenience only and shall not affect the interpretation hereof. References in this Declaration to specific Sections, Subsections and Articles shall, unless otherwise expressly provided, be deemed to refer to the specified Section, Subsection or Article of this Declaration, whether or not such references are accompanied by phrases such as "hereof," "herein," "of this Declaration" or the like.

12.7 Perpetuities. If any of the covenants, conditions, restrictions or other provisions of this Declaration shall be unlawful, void or voidable for violation of the rule against perpetuities, then such provisions shall continue only until twenty-one (21) years after the death of the last survivor of the now living descendants of the President of the United States in office on the date this Declaration is Recorded.

12.8 Enforcement. Subject to Section 9.1, the Association shall have the standing and power to enforce the provisions of this Declaration, all Tract Declarations, the Articles, the Bylaws, Associations Rules and Guidelines, and its costs in doing so, including, but not limited to, reasonable attorneys' fees, together with interest thereon from the date the costs are expended at a rate equal to the greater of: (a) ten percent (10%) per annum; or (b) the annual rate of interest then in effect for new first mortgage loans guaranteed by the Veterans Administration shall constitute a lien on all Lots and Parcels owned by the Owner or Owners against whom the action is taken (or against whose Occupants the action is taken), which lien shall have the priority and may be enforced in the manner described in Section 8.3. Further, any Owner shall have the standing and the right to bring an action against the Association for any violation or breach by the Association of any provision hereof or of the Articles or the Bylaws. In addition, any Owner or Owners shall have the standing and power to enforce the provisions of this Declaration, the Articles and the Bylaws, and the prevailing party or parties in any action by an Owner or Owners to enforce any such provisions shall be entitled to recover from the other party or parties its or their costs in such action (including reasonable attorneys' fees), together with interest thereon at the rate of ten percent (10%) per annum, and shall further be entitled to have all such costs (including such interest) included in any judgment awarded to the prevailing party or parties in such action. Failure by the Association or by any Owner to take any such enforcement action shall in no event be deemed a waiver of the right to do so thereafter.

12.9 Property Held in Trust or by Affiliates of Declarant. Any and all portions of the Property which are now or hereafter held in a subdivision or similar trust or trusts (or similar means of holding title to property), the beneficiary of which trust(s) is Declarant, shall be deemed for all purposes to be owned by Declarant and shall be treated for all purposes in the same manner as if such property were owned in fee by Declarant. No conveyance, assignment or other transfer of any right, title or interest in or to any of such property by Declarant to any such trust (or the trustee thereof) or to Declarant by any such trust (or the trustee thereof) shall be deemed for all purposes to be a sale of such property or any right, title or interest therein. Similarly, except and to the extent otherwise expressly stated in a Recorded instrument executed by Declarant, any and all portions of the Property which are now or hereafter owned or held by an Affiliate (as defined below) of Declarant shall be deemed for all purposes to be owned by Declarant and shall be treated for all purposes under this Declaration in the same manner as if such property were owned in fee by Declarant. Except and to the extent otherwise expressly stated in a Recorded instrument executed by Declarant, no conveyance, assignment or other transfer of any right, title or interest in or to any such property by Declarant to any Affiliate, or from any Affiliate to Declarant, shall be deemed for all purposes to be a sale of such property or any right, title or interest therein. For purposes of this Section, the term "Affiliate" shall mean any Person controlling, controlled by or under common control with Declarant and shall further include, without limiting the generality of the foregoing, any general or limited partnership having as a general partner Declarant or any subsidiary, parent or any general partner of Declarant, as well as any subdivision or similar trust or trusts having any one or more of the foregoing as beneficiaries. For purposes of this Section, the phrase "for all purposes" shall mean "for all purposes under this Declaration, any Tract Declaration, any Subsidiary Declaration, the Articles, the Bylaws, the Association Rules and the Guidelines."

12.10 FHA/VA Approval. So long as the Class B membership is in existence, the following actions shall not be taken without the prior approval of the Federal Housing Administration or the Veterans Administration (if and to the extent this Declaration shall have been submitted previously to and approved by the Federal Housing Administration or the Veterans Administration and, at the time of the action in question, the applicable agency has insured or guaranteed an outstanding loan against a Lot): (a) annexation of additional properties to the Property (except to the extent such annexations are in accordance with a plan of annexation or expansion previously approved by such agencies); (b) dedication of any part or all of the Common Area (except for dedications to the City or other governmental authority for public use); or (c) amendment of this Declaration.

12.11 Notices to Certain Mortgage Holders, Insurers or Guarantors. The Association shall give timely written notice of any of the following actions, events or occurrences to any holder, insurer or guarantor of a Mortgage who or which, prior to such action, event or occurrence, shall have made written request to the Association for such notice (which written request shall state the name and address of such holder, insurer or guarantor and the street address or other specific location of the Lot or Parcel to which the applicable Mortgage pertains):

12.11.1 Any condemnation or casualty loss that affects either a material portion of the Property or the property subject to the applicable Mortgage;

12.11.2 Any delinquency lasting sixty (60) days or more in payment of any assessments or other charges owed to the Association by the Owner of the Lot or Parcel subject to the applicable Mortgage, or any other breach or default hereunder by the Owner of the Lot or Parcel

subject to the applicable Mortgage which is not cured within sixty (60) days after notice thereof from the Association to such Owner; or

12.11.3 Any lapse, cancellation or material modification of any insurance policy or fidelity bond maintained by the Association.

12.12 Amendments Requested by Governmental Agency. Notwithstanding any other provision of this Declaration, Declarant shall have the right to amend all or any part of this Declaration to such extent and with such language as may be requested by the Federal Housing Administration, Veterans Administration, Federal National Mortgage Association, Federal Home Loan Mortgage Corporation or other governmental or quasi-governmental agency which issues, guarantees, insures or purchases Mortgages (or securities or other debt instruments backed or secured by Mortgages), or otherwise governs transactions involving Mortgages or instruments evidencing same, or otherwise governs development of the Property, as a condition to such agency's approval of this Declaration, the development encompassing the Property or any subdivision constituting a part of the Property, or as Declarant may conclude in good faith to be necessary to secure such approval of any such agency. Any such amendment shall be effected by Declarant's Recording an instrument executed by Declarant and appropriately acknowledged, specifying the governmental or quasi-governmental agency requesting such amendment, or whose requirements the amendment is intended to satisfy, and setting forth the appropriate amendatory language. Such amendment shall be effective, without the consent or approval of any other Person, on and as of the date the same is Recorded, and shall thereupon and thereafter be binding upon any and all Owners or other Persons having any interest in all or any part of the Property. Except as expressly provided in this Section, neither Declarant nor any other Person(s) shall have the right to amend this Declaration except in accordance with and pursuant to the other provisions and requirements of this Declaration.

12.13 Number of Days. In computing the number of days for purposes of any provision of this Declaration, any Tract Declaration, the Articles, the Bylaws, the Association Rules or the Guidelines, all days shall be counted including Saturdays, Sundays and holidays; provided, however, that if the final day of any time period falls on a Saturday, Sunday or legal holiday, then the final day shall be deemed to be the next day which is not a Saturday, Sunday or legal holiday.

12.14 Declarant's Right to Use Similar Name. Declarant hereby reserves the right to use, and the Association shall be deemed to have irrevocably consented to the use for any other nonprofit corporation which may be formed or incorporated by Declarant of a corporate name which is the same as or deceptively similar to the name of the Association provided one or more words are added to the name of such other corporation to make the name of the Association distinguishable from the name of such other corporation. Within five (5) days after being requested to do so by the Declarant, the Association shall sign such letters, documents or other instruments as may be required by the Arizona Corporation Commission in order for any other nonprofit corporation formed or incorporated by the Declarant to use such a corporate name.

12.15 Temporary Sign Easement. Declarant hereby reserves to itself and its agents a temporary easement over, upon and across those portions of the Common Area adjacent to publicly dedicated streets and roadways for purposes of installing and maintaining signs identifying Persons building upon or developing portions of the Property. The easement reserved hereby shall expire and

terminate upon completion of construction and sales activities upon the Property, but in no event later than fifteen (15) years after the date this Declaration is Recorded.

12.16 Notice of Violation. The Association shall have the right to Record a written notice of a violation by any Owner or Occupant of any restriction or provision of this Declaration, the Articles, the Bylaws or the rules and regulations of the Association. The notice shall be executed and acknowledged by an officer of the Association and shall contain substantially the following information: (a) the name of the Owner or Occupant; (b) the legal description of the Lot or Parcel against which the notice is being Recorded; (c) a brief description of the nature of the violation; (d) a statement that the notice is being Recorded by the Association pursuant to this Declaration; and (e) a statement of the specific steps which must be taken by the Lot or Parcel Owner or Occupant to cure the violation. Recordation of a notice of violation shall serve as a notice to the Owner and Occupant, and to any subsequent purchaser of the Lot or Parcel, that there is such a violation. If, after the Recordation of such notice, it is determined by the Association that the violation referred to in the notice does not exist or that the violation referred to in the notice has been cured, the Association shall Record a notice of compliance which shall state the legal description of the Lot or Parcel against which the notice of violation was Recorded, the Recording data of the notice of violation, and shall state that the violation referred to in the notice of violation has been cured or, if such be the case, that it did not exist. Notwithstanding the foregoing, failure by the Association to Record a notice of violation shall not constitute a waiver of any existing violation or evidence that no violation exists.

12.17 Declarant's Disclaimer of Representations. Notwithstanding anything to the contrary herein, Declarant makes no warranties or representations whatsoever that the plans presently envisioned for the complete development of Scottsdale Mountain can or will be carried out, or that any real property now owned or hereafter acquired by it is or will be subjected to this Declaration, or that any such real property (whether or not it has been subjected to this Declaration) is or will be committed to or developed for a particular (or any) use, or that if such real property is once used for a particular use, such use will continue in effect. While Declarant has no reason to believe that any of the restrictive covenants contained in this Declaration are or may be invalid or unenforceable for any reason or to any extent, Declarant makes no warranty or representation as to the present or future validity or enforceability of any such restrictive covenant. Any Owner acquiring a Lot or Parcel in reliance on one or more of such restrictive covenants shall assume all risks of the validity and enforceability thereof and by accepting a deed to the Lot or Parcel agrees to hold Declarant harmless therefrom.

12.18 Declarant's Rights. Any or all of the special rights and obligations of the Declarant may be transferred to other Persons, provided that the transfer shall not reduce an obligation nor enlarge a right beyond that contained herein, and provided, further, that no such transfer shall be effective unless it is in a written instrument signed by the Declarant and duly Recorded. Notwithstanding any provisions contained in this Declaration to the contrary, so long as construction and/or sale of Lots or Parcels shall continue, it shall be expressly permissible for Declarant to maintain and carry on upon portions of the Common Area such facilities and activities as, in the sole opinion of Declarant, may be reasonably required, convenient or incidental to the construction and/or sale of such Lots or Parcels, including, but not limited to, business offices, signs, model units and sales offices, and Declarant shall have an easement for access to such facilities. The right to maintain and carry on such facilities and activities shall include specifically the right to use Lots or other portions of the Property owned by Declarant and any clubhouse or community center

which may be owned by the Association, for models, sales offices and other purposes related to Declarant's sales activities on or with respect to the Property. This Section may not be amended without the express written consent of Declarant; provided, however, the rights contained in this Section shall terminate upon the earlier of: (a) fifteen (15) years from the date this Declaration is Recorded; or (b) upon Recording by Declarant of a written statement that all sales activity has ceased.

12.19 References to VA and FHA. In various places throughout this Declaration, references are made to the Veterans Administration ("VA") and the Federal Housing Administration ("FHA") and, in particular, to various consents or approvals required of either or both of such agencies. These references are included so as to cause this Declaration to meet certain requirements of such agencies should Declarant submit Scottsdale Mountain project (or portions thereof) for approval by either or both of such agencies. However, Declarant shall have no obligation to submit the Scottsdale Mountain project (or any portion thereof) for approval by either or both of such agencies, and Declarant shall have full discretion whether to submit the Scottsdale Mountain project (or any portion thereof) for approval by either or both of such agencies. Unless and until the VA or the FHA shall have approved the Scottsdale Mountain project, and at any time during which both: (a) such approval, once given, shall be revoked, withdrawn, cancelled or suspended; and (b) there are no outstanding mortgages or deeds of trust Recorded against any Lot or other portion of the Property to secure payment of an FHA-insured or VA-guaranteed loan, all references herein to required approvals or consents of such agencies shall be deemed null and void and of no force or effect.

12.20 Amendments to Articles and Bylaws. The Articles and Bylaws may only be amended by following the procedure set forth in this Section. The Board shall adopt a resolution setting forth the proposed amendment and directing that it be submitted to a vote at a meeting of Members, which may be either an annual or a special meeting, and if approved by Members holding (either personally or by valid proxy) the Applicable Percentage (defined below) of the votes eligible to be cast on the amendment (including votes otherwise eligible to be cast but not represented personally or by valid proxy at such meeting), such amendment shall have been adopted, provided, however, that a copy of any such proposed amendment or a summary of the changes to be effected shall have been given to each Member in good standing at least ten (10) days prior to said meeting of the Members. For purposes hereof, the "Applicable Percentage" shall mean, in the case of an amendment to the Articles, sixty-seven percent (67%), and in the case of an amendment to the Bylaws, fifty-one percent (51%). Any number of amendments may be submitted and voted upon at any one meeting. Notwithstanding the foregoing but subject to Section 12.19, so long as the Class B membership is in existence, the following actions shall require the prior approval of the Federal Housing Administration and the Veterans Administration: (a) amendment of the Articles or the Bylaws; (b) dissolution of the Association; and (c) merger or consolidation of the Association with any other entity.

92 603634

IN WITNESS WHEREOF, Declarant has executed this Declaration as of the day and year first set forth above.

DECLARANT:

SCOTTSDALE MOUNTAIN LIMITED PARTNERSHIP, an Arizona limited partnership

By SUNCOR DEVELOPMENT COMPANY, an Arizona corporation, its General Partner

By _____

Its President & CEO

STATE OF ARIZONA)
) ss.
County of Maricopa)

On this 19th day of October, 1992, before me, the undersigned officer, personally appeared John C. Ogden, who acknowledged himself to be President/CEO of SUNCOR DEVELOPMENT COMPANY, an Arizona corporation which is General Partner of SCOTTSDALE MOUNTAIN LIMITED PARTNERSHIP, an Arizona limited partnership, and that he, being authorized so to do, executed the foregoing instrument for the purposes therein contained by signing the name of said entities by himself.

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

_____
Notary Public

My Commission Expires:

My Commission Expires March 30, 1994

92 603634

EXHIBIT A

The following real property situated in Maricopa County, Arizona:

PARCEL NO. 1:

Section Thirteen (13), Township Three (3) North, Range Five (5) East of the Gila and Salt River Base and Meridian, Maricopa County, Arizona;

EXCEPT any portion of the following described parcel lying within said Section 13:

COMMENCING at the West quarter corner of Section 18, Township 3 North, Range 6 East; thence North 38 degrees 21 minutes 20 seconds East a distance of 106.50 feet, to a point that is on the centerline of a certain 40.00 foot public utility easement and also a point of curvature for that public utility easement; thence along the centerline of curve concave to the Northwest having a radius of 380.00 feet and a central angle of 20 degrees 25 minutes 56 seconds, an arc distance of 135.51 feet; thence North 24 degrees 30 minutes 04 seconds West a distance of 20.00 feet, to a point on the North edge of the aforementioned 40.00 foot public utility easement lying on a curve concave to the Northwest having a radius of 360.00 feet and a radial bearing of North 24 degrees 30 minutes 04 seconds West, said point on a curve also being the TRUE POINT OF BEGINNING; thence North 27 degrees 41 minutes 09 seconds West a distance of 22.21 feet; thence North 74 degrees 00 minutes 00 seconds West a distance of 148.47 feet; thence North 63 degrees 00 minutes 00 seconds West a distance of 70.00 feet; thence North 27 degrees 00 minutes 00 seconds East a distance of 140.00 feet; thence South 63 degrees 00 minutes 00 seconds East a distance of 127.30 feet; thence South 27 degrees 41 minutes 09 seconds East a distance of 158.92 feet, to a point on a curve that has a radial bearing of North 30 degrees 52 minutes 14 seconds West; thence along a curve concave to the Northwest having a radius of 360.00 feet and a central angle of 06 degrees 22 minutes 10 seconds, an arc distance of 40.02 feet to the TRUE POINT OF BEGINNING; and

EXCEPT any portion lying within SCOTTSDALE MOUNTAIN ESTATES UNIT ONE, according to the plat of record in the office of the County Recorder of Maricopa County, Arizona, in Book 304 of Maps, page 35; and

EXCEPT that portion lying within THE VILLAS AT SCOTTSDALE MOUNTAIN SUMMIT, according to the plat of record in the office of the County Recorder of Maricopa County, Arizona in Book 326 of Maps, page 49 and Replat in Book 331 of Maps, page 43.

PARCEL NO. 2:

Lots One (1), Two (2), Three (3), Four (4), Five (5), Six (6), Seven (7), Eight (8), Nine (9), Ten (10), Eleven (11), and Twelve (12), Tracts A and D, Parcels A, B and C, and that portion shown as Vista Corridor, and those portions shown as easements for drainage and flood control, all part of SCOTTSDALE MOUNTAIN ESTATES UNIT 1, according to the plat of record in the office of the County Recorder of Maricopa County, Arizona, in Book 304 of Maps, page 35.

Source: Lawyers Title Insurance Corporation Policy No. 133-00-577-861 (LTA Case No. 227,069 TAM)

(c) maintenance, repair and replacement of landscaping and signs within areas designated on one or more subdivision plats or Tract Declarations Recorded by, or bearing the written approval of, Declarant (or, after termination of the Class B membership, the Association) with respect to all or portions of the Property as "landscape easements," "landscape and wall easements" or "landscape and sign easements" (or similar designations) to be maintained by the Association (but subject to all applicable natural area open space ordinances, regulations and requirements of the City);

(d) maintenance, repair and replacement of the side facing a street or portion of the Common Area of any boundary or perimeter wall situated along major public or private streets or roadways within the Property or otherwise within areas designated on one or more subdivision plats or Tract Declarations Recorded by, or bearing the written approval of, Declarant (or, after termination of the Class B membership, the Association) with respect to the Property as having walls required to be maintained by the Association;

(e) maintenance and repair of any drainage easements upon or across the Common Area; and

(f) maintenance, repair, replacement, repaving and resurfacing of any and all private streets or private roadways constituting a part of the Common Area, and of any and all private street lights, light poles, street signs and other equipment and facilities appurtenant to such private streets or roadways (so long as such private street lights, light poles, street signs or other equipment or facilities are not owned by a Subsidiary Association, Owner or utility company or similar entity obligated to maintain, repair and replace same).

4.2 Maintenance of Owner's Structures. Each Owner shall be responsible for the maintenance, cleaning, painting, repair and general care of all structures and landscaping existing or constructed upon such Owner's Lot or Parcel, and, in particular, each Owner shall cause the exterior of said structures and said landscaping to be maintained in good condition and repair and in an attractive state consistent with this Declaration, any applicable Tract Declaration, the Guidelines, the Association Rules and general community standards within the Property. In the event the Board determines that an Owner is in breach of such Owner's obligations under the preceding sentence, the Board may give such Owner written notice of such determination, including a reasonably detailed list or description of the repairs, maintenance or other work required to cure such Owner's breach, and in the event the Owner does not cure such breach within thirty (30) days after the date of said written notice, the Board, on behalf of the Association, may cause the repairs, maintenance or other work to be performed so as to cure such Owner's breach, and the Association's costs in doing so, together with interest from the date of expenditure at the rate set forth in Section 12.8, shall constitute a lien on such Owner's Lot or Parcel, which lien shall have the priority and may be enforced in the manner described in Section 8.3; the Association shall also have standing and authority to request that a court of competent jurisdiction compel such Owner to cure such breach, and to the extent not inconsistent with an order of such court, the Association may pursue either or both of the courses of action described in this sentence. The Association shall have an easement on, over, across and through each Lot and Parcel, and any Limited Common Areas, to permit it to carry out its rights, duties and obligations under this Article 4. In the case of Condominium Units or other Dwelling Units, the exterior maintenance of which is the responsibility of a Subsidiary Association pursuant to a Subsidiary Declaration, the maintenance duties and obligations imposed by this Section 4.2 upon Owners shall be fulfilled and performed by the Subsidiary Association established by such Subsidiary