

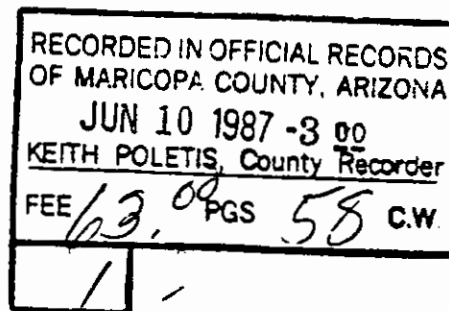
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PROP. RSTR (RS)

DECLARATION OF COVENANTS, CONDITIONS
AND RESTRICTIONS
FOR
SONORAN HEIGHTS



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DECLARATION OF COVENANTS, CONDITIONS
AND RESTRICTIONS FOR
SONORAN HEIGHTS

This Declaration of Covenants, Conditions and Restrictions is made as of the 9th day of June, 1987, by TITLE USA COMPANY OF ARIZONA, an Arizona corporation, as "Declarant," and REALTY DEALERS, LTD., an Illinois limited partnership, as "Developer," with reference to the following:

A. Declarant, as trustee of its Trust No. 1393, is the owner of fee title to the Property, and Developer is the sole beneficiary of said trust.

B. Developer and Declarant intend by this Declaration to impose upon the Property mutually beneficial restrictions under a general plan of improvement for the benefit of all owners of residential property within the Property. Developer and Declarant desire 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 maximum extent practicable, the natural character of the desert hillside land comprising the Property.

NOW, THEREFORE, Developer and Declarant hereby declare 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 subjected 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 I

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 (other than the real property described on Exhibit "A" hereto) situated within the area bounded by Thunderbird Road on the north and Shea Boulevard on the south, and by 136th Street

1 and 120th Street on the east and west, respectively, provided
2 that, as more particularly provided in Article VI below, no
3 portion of the Annexable Property may be annexed to the
4 Property pursuant to Article VI unless, at the time of such
5 annexation, such portion is owned by Declarant or Developer (or
6 is annexed with the written consent of the owner thereof).

7 1.2 "Architecture and Landscaping Guidelines" shall
8 mean the guidelines promulgated and adopted by the Architecture
9 and Landscaping Review Committee pursuant to Section 9.2 of
10 this Declaration.

11 1.3 "Architecture and Landscaping Review Committee"
12 shall mean the committee established pursuant to Article IX of
13 this Declaration.

14 1.4 "Articles" shall mean the articles of incorpora-
15 tion of the Association, as the same may be amended from time
16 to time in accordance with the provisions thereof and with the
17 applicable provisions of this Declaration, the Bylaws and the
18 statutes and regulations of the State of Arizona.

19 1.5 "Annual Assessments" shall mean those Assessments
20 computed and levied as provided in Section 8.2 of this
21 Declaration.

22 1.6 "Assessments" shall mean the Annual Assessments,
23 the Parcel Assessments and the Special Assessments.

24 1.7 "Association" shall mean Sonoran Heights
25 Association, an Arizona nonprofit corporation, and its
26 successors and assigns (provided, however, that if such corpo-
rate name is not available for use, another name may be
selected by Developer in connection with the incorporation of
the Association).

1.8 "Board" shall mean the group or body of persons
elected in accordance with the provisions of the Articles, the
Bylaws and the statutes and regulations of the State of
Arizona, in which group or body is vested the management of the
affairs of the Association, and shall be equivalent in meaning
to the term "board of directors," as defined in A.R.S. Section
10-1002(6), as in effect at the date hereof.

1.9 "Bylaws" shall mean the bylaws of the
Association, as the same may be amended from time to time in
accordance with the provisions thereof and with the applicable
provisions of this Declaration, the Articles and the statutes
and regulations of the State of Arizona.

1.10 "Common Area" shall mean all real property (including the improvements thereto) owned by the Association for the common use and enjoyment of the Owners. The Common Area to be owned by the Association at the time of the conveyance of the first Lot to a retail purchaser shall be the property described on Exhibit "B" attached hereto and incorporated herein by reference.

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

1.12 "Condominium Unit" shall mean 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.

1.13 "Declarant" shall mean Title USA Company of Arizona, an Arizona corporation, serving in its capacity as trustee of its Trust No. 1393, and its successors and assigns.

1.14 "Declaration" shall mean this Declaration of Covenants, Conditions and Restrictions, as the same may be amended from time to time.

1.15 "Developer" shall mean Realty Dealers, Ltd., an Illinois limited partnership, and any assignee of the rights and duties granted or reserved to the Developer herein, which assignment shall be evidenced by a duly executed and acknowledged Recorded instrument. The term "Developer" shall in no event mean or refer to a retail Lot buyer.

1.16 "Eligible Mortgage Holder" shall mean any holder (as evidenced by a Recorded instrument) of a First Mortgage who or which shall have made written request to the Association for notice of any proposed action that, pursuant to Section 12.2 or Section 12.11, requires the consent of a specified percentage of Eligible Mortgage Holders (which written request must contain the name and address of the Eligible Mortgage Holder and the Lot number or street address of the Lot against which the First Mortgage held by said Eligible Mortgage Holder is Recorded).

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

1.18 "Lot" shall mean and refer to a lot into which any part of the Property is subdivided as set forth in: (a) a subdivision plat now or hereafter Recorded with respect to all or any part of the Property; or (b) a Condominium Unit. For purposes of this Declaration, a Lot shall be deemed to come into existence on and as of the date the plat depicting and establishing such Lot is Recorded. In no event shall the term "Lot" mean or refer to all or any part of the Common Area (or to all or any part of any common area or common elements established by a declaration of covenants, conditions and restrictions, declaration of condominium or other such instrument hereafter Recorded pursuant to Article VI or otherwise). In no event shall the term "Lot" mean or refer to all or any part of the Common Area.

1.19 "Maximum Annual Assessment" shall mean the amount determined for each fiscal year of the Association in accordance with Subsection 8.1.5 of this Declaration.

1.20 "Member" shall mean any Person entitled to membership in the Association, as provided herein, provided, however, that there shall be only one Class "A" membership for each Lot, as further provided in Article III below.

1.21 "Mortgage" shall mean a deed of trust, as well as a mortgage, which, in either case, is Recorded against a Lot or any other part of the Property.

1.22 "Mortgagee" shall mean a beneficiary or holder of a deed of trust, as well as a mortgagee under a mortgage, which, in either case, is Recorded against a Lot or any other part of the Property.

1.23 "Occupant" shall mean any Person other than an Owner who occupies or is in possession of a Lot, whether as a lessee under a lease or otherwise.

1.24 "Owner" shall mean the Person or Persons who individually or collectively: (a) own fee title to a Lot (as evidenced by a Recorded instrument); or (b) hold the seller's or vendor's interest under a contract for conveyance, contract for deed, agreement for sale or similar contract through which a seller has conveyed to a purchaser equitable title in property and under which the seller is obligated to convey to the purchaser the remainder of the seller's title in the property, whether legal or equitable, on payment in full of all sums due under the contract. The term "Owner" shall not include: (i) any Person who holds an interest in a Lot merely as security for the performance of an obligation; or (ii) a lessee, tenant or other Occupant of a Lot. Developer shall be the "Owner" of each Lot with respect to which Developer holds the interest

1 required by this Section 1.24 and, in addition, shall be deemed
2 to be the "Owner" of each Lot to which title is held by a trustee
3 (other than the trustee of a deed of trust) for the benefit
4 of Developer. Notwithstanding Subsection 1.24(a), in the case
5 of a Lot, the fee title to which is vested in a trustee under a
6 deed of trust pursuant to Chapter 6.1 of Title 33 of the
7 Arizona Revised Statutes, the "Owner" of that Lot shall be
8 deemed to be the owner of the trustor's interest under the deed
9 of trust.

10 1.25 "Parcel Assessments" shall mean those Assessments
11 levied in accordance with Section 4.4 and the last sentence of
12 Subsection 8.1.1 of this Declaration.

13 1.26 "Person" (whether or not such term is capitalized
14 herein) means a natural person, corporation, partnership, trustee
15 or other legal entity.

16 1.27 "Property" shall mean the real property described
17 in Exhibit "A" attached hereto and shall further refer to such
18 additional property, if any, as may hereafter be annexed
19 thereto pursuant to Article VI hereof or as is now or may here-
20 after be owned in fee simple by the Association.

21 1.28 "Record," "Recording," "Recorded" and
22 "Recordation" shall mean placing or having placed an instrument
23 of public record in the official records of Maricopa County,
24 Arizona, or of such other governmental authority, office or
25 official with which or whom the applicable laws of the State of
26 Arizona prescribe that documents affecting title to real property
in the area including the Property are to be placed of
public record.

1.29 "Residential Association" shall mean any homeowners
or similar association created with respect to property
now or hereafter subjected to this Declaration containing (or
to contain) units, homes, apartments or other structures for
residential purposes, but shall not include the Association.

1.30 "Residential Unit" shall mean any structure
constructed on (or constituting) a Lot which is intended for
use and occupancy as a residence by a single household.

1.31 "Special Assessments" shall mean those
Assessments levied in accordance with Section 8.3 hereof.

1 3.1.2 Class "B". Class "B" Members shall be
2 Developer and any assignee of all or any part of Developer's
Class "B" membership rights.

3 3.2 Voting. The voting rights of the Class "A" and
4 Class "B" Members are as follows:

5 3.2.1 Class "A". Each Class "A" Member shall be
6 entitled on all issues to one (1) vote for each Lot with
7 respect to which such Member holds the interest required for
8 membership by Subsection 3.1.1 above. When more than one
9 Person holds such interest in any Lot, there shall be only one
10 (1) vote with respect to such Lot, which vote shall be exer-
11 cised by the Person designated to exercise the power to cast
12 such vote, as provided in Subsection 3.1.1. Any attempt to
13 cast a vote appurtenant to a Lot in a manner inconsistent with
that designation shall result in the suspension of the power to
cast such vote until such time as such vote is cast in accor-
dance with that designation. Any Owner of a Lot which is
leased or which is subject to a valid, outstanding and Recorded
executory agreement of sale may, in the lease, agreement of
sale or other written instrument, assign the voting right
appurtenant to the Lot to the lessee of the Lot or to the pur-
chaser of the Lot under such agreement of sale, as applicable,
provided that a copy of such instrument is furnished to the
Secretary of the Association prior to any meeting.

14 3.2.2 Class "B". The Class "B" Member or Members
15 shall be entitled to three (3) votes for each Lot owned by such
16 Class "B" Member or Members provided, however, that if at the
17 time any portion of the Annexable Property is annexed to the
18 Property, such portion has not been subdivided into Lots, the
19 Class "B" Member or Members owning such portion shall, upon
20 such annexation and until such portion is subdivided into Lots,
be deemed to have, with respect to such annexed portion, the
number of votes equal to three (3) times the number of residen-
tial lots permitted under the then-current zoning with respect
to such annexed portion. Developer shall have the right, at
any time and from time to time, to assign all or any part of
its voting rights appurtenant to its Class "B" membership
rights (as well as all or any other rights appurtenant thereto)
to one or more persons or entities acquiring, for purposes of
development and sale, any part of the Property. Further,
Developer shall have the right, at any time and from time to
time, to designate an individual or individuals to exercise
Developer's voting rights (whether appurtenant to Class "A" or
Class "B" membership), provided, however, that such designation
shall not act as an assignment by Developer of its membership
or voting rights hereunder. Upon the earlier to occur of: (i)
January 1, 1995; or (ii) the time at which the total number of
Class "A" votes outstanding (as determined pursuant to

1 Subsection 3.2.1) equals (or exceeds) the total number of Class
2 "B" votes outstanding (as determined pursuant to the preceding
3 provisions of this Subsection 3.2.2), the Class "B" membership
4 shall terminate and be deemed converted to a Class "A"
5 membership, whereupon the membership and voting rights of
6 Developer (and any assignee of Developer's Class "B" membership
7 rights) shall be determined in accordance with Subsections
8 3.1.1 and 3.2.1.

9 ARTICLE IV

10 MAINTENANCE

11 4.1 Association's General Responsibilities. The
12 Association shall maintain and keep in good repair the Common
13 Area (and certain other areas, as more expressly provided in
14 this Section 4.1), the costs of such maintenance to be Common
15 Expenses of the Association (subject to any insurance then in
16 effect). This maintenance shall include, but not be limited to:

17 4.1.1 maintenance, repair and replacement of all
18 landscaping and other flora, structures and improvements
19 situated upon the Common Area, including any perimeter or
20 boundary walls;

21 4.1.2 maintenance, repair and replacement of
22 landscaping and flora in or upon public rights-of-way within or
23 immediately adjacent to the Property (including, but not
24 limited to, landscape medians within public rights-of-way
25 within the Property);

26 4.1.3 maintenance, repair and replacement of
landscaping and signs within areas (if any) designated on one
or more subdivision plats with respect to the Property as
"landscape easements," "landscape and wall easements" or "land-
scape and sign easements" (or similar designations) to be main-
tained by the Association;

4.1.4 maintenance, repair and replacement of the
side facing a street or portion of the Common Area of any
boundary or perimeter wall situated within areas designated on
one or more subdivision plats with respect to the Property as
"wall easements" (or similar designations) to be maintained by
the Association; and

4.1.5 maintenance and repair of any drainage
easements upon or across the Common Area.

Notwithstanding the foregoing, except where otherwise provided
in a Recorded declaration of covenants, conditions and restric-
tions or other Recorded instrument affecting any part of the

1 Property, maintenance of the side facing any public right-of-
2 way of any boundary or perimeter walls situated upon the
3 Property along public rights-of-way shall be the responsibility
4 of the Association, while the maintenance of the side of such
5 boundary or perimeter walls (and of boundary or perimeter walls
6 between Common Area and Owner's Lot) facing an Owner's Lot
7 shall be the responsibility of such Owner. In performing and
8 exercising its maintenance obligations and rights under this
9 Declaration (and, in particular, under this Article IV), the
10 Association shall exercise all reasonable efforts to preserve
11 the natural character of the Common Area and other property for
12 which the Association is responsible hereunder, minimizing to
13 the extent practicable hillside disturbance and maintaining
14 landscaping in a manner consistent with the natural environment
15 surrounding the Property and shall comply with all applicable
16 municipal or state requirements regarding maintenance of natu-
17 ral open space portions of the Common Area.

10 4.2 Maintenance of Owner's Structures. Each Owner
11 shall be responsible for the maintenance, cleaning, painting,
12 repair and general care of the Residential Unit and any other
13 structure existing or constructed upon such Owner's Lot, and,
14 in particular, each Owner shall cause the exterior of said
15 Residential Unit or other structure to be maintained in good
16 condition and repair and in an attractive state consistent with
17 general community standards within the Property. In the event
18 that the Association shall determine, by the affirmative vote
19 of a majority of the votes of each class of Members represented
20 in person or by valid proxy at a meeting called for such pur-
21 pose, that any Owner is in breach of such Owner's obligations
22 under the preceding sentence, the Association shall promptly
23 give such Owner written notice of such determination, including
24 a reasonably detailed list or description of the repairs, main-
25 tenance or other work required to cure such Owner's breach, and
26 in the event the Owner shall not have cured such breach within
thirty (30) days after the date of said written notice, the
Association shall 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
of this Declaration, shall constitute a lien on such Owner's
Lot, which lien shall have the priority and may be enforced in
the manner described in Section 8.4 of this Declaration. The
Association shall have an easement on, over, across and through
each Lot to permit it to carry out its duties and obligations
under this Article IV. In the case of Condominium Units
situated upon any part of the Property, the maintenance duties
and obligations imposed by this Section 4.2 upon Owners shall
be fulfilled and performed by the Residential Association
established by the Recorded declaration of condominium or other
Recorded instrument governing those Condominium Units, and in

1 the event such Residential Association fails to meet such
2 duties and obligations, the Association shall have all the same
3 rights and remedies as are provided by this Section 4.2 in the
4 case of an Owner's breach, except that if the Association
5 expends any funds to cure a breach by such Residential
6 Association, its costs (including interest as provided in this
7 Section 4.2) shall be the obligation of the Residential
8 Association and shall also constitute a lien against each
9 Condominium Unit subject to the jurisdiction of such
10 Residential Association, which lien shall have the priority and
11 may be enforced in the manner described in Section 8.4 of this
12 Declaration.

13 4.3 Publicly Dedicated Areas. Except as expressly
14 provided in this Article IV (and, in particular, in
15 Subsection 4.1.2), and except as may otherwise be required by
16 applicable law, the Association shall have no responsibility to
17 maintain any areas within the Property (including, but not
18 limited to, public streets) which are dedicated to or the
19 responsibility of a municipality or other governmental entity.

20 4.4 Assumption of Other Responsibilities. The
21 Association may, in the discretion of the Board, assume the
22 maintenance responsibilities set out in any declaration
23 Recorded subsequent to this Declaration which creates any
24 Residential Association upon all or any portion of the
25 Property. In such event, all costs of such maintenance shall
26 be assessed as Parcel Assessments only against the Owners of
Lots within the Residential Association to which the services
are provided. The assumption of such maintenance responsibility
may take place only by contract or if, in the opinion of
the Board, the level and/or quality of maintenance then being
provided by such Residential Association do not meet the
community-wide standards sought to be maintained by the
Association on and with respect to the Property.

 4.5 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 Residential
Association.

ARTICLE V

INSURANCE AND FIDELITY BONDS; CASUALTY LOSSES

5.1 Insurance to be Obtained by the Association.

5.1.1 Hazard Insurance.

(a) The Board, acting on behalf of the
Association, shall obtain and maintain at all times insurance

1 for all insurable improvements on the Common Area against loss
2 or damage by fire or other hazards, casualties and risks
3 embraced within the coverage of the standard "extended cover-
4 age" policy available from time to time in the State of
5 Arizona, against all other perils customarily covered for simi-
6 lar types of projects (including those covered by the standard
7 "all risk" endorsement available from time to time in the State
8 of Arizona), and against loss or damage due to vandalism and
9 malicious mischief. Said insurance shall be in an amount equal
10 to 100% of the current replacement cost, from time to time,
11 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), with such
amount to be redetermined annually (and upon the subjection of
any portion, or all, of the Annexable Property to the effect of
this Declaration if such subjection results in an addition to
the Common Area of property upon which are situated improve-
ments required to be insured hereunder) by the Board with the
assistance of the insurer or insurers providing such coverage.

12 (b) The policy or policies providing the insur-
13 ance required by this Subsection 5.1.1 shall provide that: (i)
14 any insurance trust agreement will be recognized; (ii) the
15 insurer shall waive any right of subrogation against the
16 Owners, the Board or the Association, and their respective
17 agents, employees, guests and household members; (iii) such
18 insurance shall not be cancelled, invalidated or suspended by
19 reason of any acts or omissions of any Owner (or of such
20 Owner's invitees, agents, employees or household members), or
21 of any member, officer or employee of 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); (iv) such insurance coverage shall be pri-
mary, and shall in no event be brought into contribution with
any insurance maintained by individual Owners or their
Mortgagees; and (v) 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.

22 (c) The policy or policies providing the insur-
23 ance required by this Subsection 5.1.1 shall also contain (if
24 available at no additional cost or at such additional cost as
25 is not demonstrably unreasonable) the following endorsements
26 (or their equivalents): (i) "agreed amount" and "inflation
protection" endorsements; (ii) "increased cost of construction"
endorsement; (iii) "contingent liability from operation of

1 building laws or codes" endorsement; and (iv) "demolition cost"
2 endorsement.

3 (d) The policy or policies providing the insur-
4 ance required by this Subsection 5.1.1 shall also contain a
5 steam boiler and machinery endorsement providing coverage in an
6 amount not less than the lesser of \$2,000,000 or the insurable
7 value of the building(s) housing such boiler and machinery, if
8 any.

9 (e) Unless a higher maximum deductible amount is
10 required by applicable law, each policy providing the insurance
11 coverage required by this Subsection 5.1.1 shall provide for a
12 deductible not to exceed the lesser of \$10,000 or one percent
13 (1%) of the face amount of such policy.

14 5.1.2 Liability Insurance. The Board, acting on
15 behalf of the Association, shall obtain and maintain at all
16 times a comprehensive general liability policy insuring the
17 Association, each member of the Board and each Owner (and, so
18 long as Developer, or any Person with whom Developer contracts
19 directly for the performance of all or a substantial portion of
20 Developer's rights and obligations hereunder, or for the con-
21 struction of substantial improvements on the Property, retains
22 an interest in the Property or any Lot, insuring Developer and
23 such Person, if identified by Developer to the Association,
24 provided that any added premium cost or other expense resulting
25 from naming Developer or such Person as insureds shall be borne
26 by Developer or such other Person), against any liability to
the public or to any Owner or Occupant (and such Owner's or
Occupant's invitees, agents, employees 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, with
the assistance of the insurer(s) providing such coverage, shall
review annually the amounts of coverage afforded by said com-
prehensive 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 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 endorse-
ment 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) (or of Developer or any other Person named as an
insured or additional insured thereunder).

25 5.1.3 Flood Insurance. In the event any part of
26 the Common Area is in a "special flood hazard area," as defined

1 by the Federal Emergency Management Agency (or its successors),
2 the Board, acting on behalf of the Association, shall obtain
3 (and maintain at all times during which any part of the Common
4 Area is in such a "special flood hazard area") a "master" or
5 "blanket" policy of flood insurance covering all insurable
6 improvements on the Common Area and covering any personal prop-
7 erty situated from time to time within such improvements (to
8 the extent such personal property is normally covered by the
9 standard flood insurance policy available from time to time in
10 the State of Arizona). Said insurance shall be in an amount
11 not less than the lesser of: (a) 100% of the current replace-
12 ment cost, from time to time, of all such insurable improve-
13 ments (and such insurable personal property) located in the
14 "special flood hazard area"; or (b) the maximum coverage avail-
15 able for such insurable improvements and insurable personal
16 property under the National Flood Insurance Program. Unless a
17 higher maximum deductible amount is required by applicable law,
18 the policy providing such insurance shall provide for a deduct-
19 ible not to exceed the lesser of \$5,000 or one percent (1%) of
20 the face amount of such policy.

11 5.1.4 General Provisions Governing Insurance.

12 The insurance required to be obtained under Subsections 5.1.1,
13 5.1.2 and 5.1.3 shall be written in the name of the Association
14 as trustee for each of the Owners and for each Mortgagee (as
15 their respective interests may appear) and shall be governed by
16 the provisions hereinafter set forth:

15 (a) All policies shall be written with one or
16 more companies authorized to provide such insurance in the
17 State of Arizona;

17 (b) Exclusive authority to adjust losses under
18 policies in force on property owned or insured by the
19 Association shall be vested in the Board;

19 (c) In no event shall the insurance coverage
20 obtained and maintained by the Board hereunder be brought into
21 contribution with insurance purchased by individual Owners,
22 Occupants or their Mortgagees, or by any Residential
23 Association, and the insurance carried by the Association shall
24 be primary;

22 (d) Subject to the requirement of item (ii) of
23 Subsection 5.1.1(b) above, the Board shall be required to make
24 every reasonable effort to secure insurance policies that will
25 provide for a waiver of subrogation by the insurer as to any
26 claims against the Board or the Owners and their respective
27 tenants, servants, agents and guests (if securing same will
28 impose on the Association no additional cost or only such rea-
29 sonable cost as the Board may approve, in its discretion);

1 (e) Each policy providing insurance coverage
2 required by Subsections 5.1.1, 5.1.2 and 5.1.3 shall require
3 the applicable insurer to give not less than ten (10) days'
4 written notice to the Association, and to each Mortgagee which
5 shall have given such insurer written notice of such
6 Mortgagee's interest in a Lot (which notice must include the
7 name and address of such Mortgagee), of any cancellation,
8 refusal to renew or material modification of such policy.

5 5.1.5 Fidelity Bonds. The Board, acting on
6 behalf of the Association, shall obtain and maintain at all
7 times adequate fidelity bond coverage to protect against dis-
8 honest acts on the part of officers, directors and employees of
9 the Association and all others who handle, or are responsible
10 for handling, funds held or administered by the Association,
11 whether or not such officers, directors, employees or others
12 receive compensation for services they render to or on behalf
13 of the Association. Any independent management agent which
14 handles funds for the Association shall also obtain (and pay
15 for) such fidelity bond coverage with respect to its own
16 activities (and those of its directors, officers and employees,
17 whether or not such directors, officers or employees receive
18 compensation for services rendered). Such fidelity bonds: (a)
19 shall name the Association as obligee; (b) shall be issued by
20 one or more companies authorized to issue such bonds in the
21 State of Arizona; and (c) shall be in an amount sufficient to
22 cover the maximum total of funds reasonably expected by the
23 Board to be in the custody of the Association or such agent at
24 any time while such bond is in force, but in no event shall the
25 amount of such fidelity bond coverage be less than the sum of
26 three (3) months' Annual Assessments on all Lots, plus the
total of funds held in the Association's reserves. Each such
fidelity bond shall provide that the issuer thereof shall pro-
vide not less than ten (10) days written notice to the
Association and to each Eligible Mortgage Holder before such
bond may be cancelled or substantially modified for any reason.

19 5.1.6 Workers' Compensation Insurance. The
20 Board, acting on behalf of the Association, shall obtain and
21 maintain workers' compensation insurance if and to the extent
22 necessary to meet the requirements of applicable law.

23 5.1.7 Cost of Insurance. All premiums for the
24 insurance or bonds required to be obtained by the Board by this
25 Section 5.1 shall be Common Expenses (except that, as provided
26 in Subsection 5.1.5 above, the cost of the fidelity bond
required to be furnished by any independent management agent
shall be paid by such agent, and, as provided in
Subsection 5.1.2 above, any added cost of naming Developer, or
any Person with whom or which Developer contracts directly for
the performance of all or a substantial portion of Developer's

1 obligations hereunder, or for the construction of improvements
2 on the Property, shall be borne by Developer or such other
3 Person). The Board shall not be liable for failure to obtain
4 or maintain any of the insurance coverage required by this
5 Section 5.1, or for any loss or damage resulting from such
6 failure, if such failure is due to the unavailability of such
7 insurance coverage from reputable companies authorized to pro-
8 vide such insurance in the State of Arizona, or if such insur-
9 ance coverage is available only at an unreasonable cost.

6 5.1.8 Subsequent Changes in Insurance
7 Requirements. It is the intention of this Article V (and, in
8 particular, of this Section 5.1), to impose upon the
9 Association the obligation to obtain and maintain in full force
10 and effect at least those types and amounts of insurance as are
11 required, at the time this Declaration is Recorded, by the
12 Federal National Mortgage Association and the Federal Home Loan
13 Mortgage Corporation. However, notwithstanding any provision
14 of this Declaration to the contrary, should either of said
15 agencies (or any other governmental or quasi-governmental
16 agency then involved in making, insuring or guaranteeing loans
17 with respect to Residential Units within the Property) subse-
18 quently amend or modify their respective requirements regarding
19 the insurance coverage required to be maintained by the
20 Association, the Board, acting on behalf of the Association,
21 shall, promptly upon receiving notice of such amendment or mod-
22 ification from any such agency, from any Owner or Eligible
23 Mortgage Holder or from Developer, obtain such additional, mod-
24 ified or amended policy or policies of insurance as may be nec-
25 essary to conform to such amended or modified requirements.
26 Should such requirements of any such agency conflict with the
requirements of any other such agency or with applicable provi-
sions of law, the Board, acting on behalf of the Association,
shall diligently work with such agency or agencies to resolve
such conflict and shall thereafter obtain and maintain such
additional, modified or amended policy or policies of insurance
as may be necessary to conform with the requirements of such
agencies, taking into account the resolution of said conflict.
In the event the Board, after exercise of such diligence, is
unable to resolve such conflict, the Board, acting on behalf of
the Association, shall exercise its good faith business judg-
ment and obtain and maintain in full force and effect such
insurance coverage as the Board, in the exercise of such judg-
ment, deems to conform as closely as possible with the applica-
ble requirements of all such agencies, and of law, taking into
account such conflict.

24 5.2 Insurance to be Obtained by the Owners.

25 5.2.1 Public Liability Insurance. It shall be
26 the individual responsibility of each Owner to provide, as such

1 Owner sees fit and at such Owner's sole expense, such compre-
2 hensive public liability insurance as such Owner may desire
3 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.

4 5.2.2 Hazard and Contents Insurance. It shall be
5 the individual responsibility of each Owner to provide, as such
6 Owner sees fit and at such Owner's sole expense, such fire,
7 liability, theft and any other insurance covering: (a) the
8 Residential Unit and any other structure on (or constituting)
9 such Owner's Lot; and (b) any and all fixtures and personal
property upon such Lot or in such Residential Unit or other
structure(s), except, in either case (a) or (b), where any
other declaration of covenants, conditions and restrictions,
declaration of condominium or other Recorded instrument affect-
ing a parcel within which such Lot is situated assigns such
obligation to a Residential Association or similar body.

10 5.3 Casualty Losses.

11 5.3.1 Damage and Destruction.

12 (a) Immediately after any damage or destruction
13 by fire or other casualty to all or any part of the property
14 required to be insured by the Association under Section 5.1
15 above, the Board or its duly authorized agent shall: (i) pro-
16 ceed with the filing and adjustment of all claims arising under
17 such insurance; (ii) obtain reliable and detailed estimates of
18 the cost of repair or reconstruction of the damaged or des-
19 troyed property; and (iii) upon receipt of the proceeds of such
20 insurance and except as is otherwise provided in this
21 Subsection 5.3.1, use such proceeds to repair or reconstruct
the damaged or destroyed property. Repair or reconstruction,
as used in this Article V, means 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 prop-
erty with property substantially similar to the damaged or des-
troyed property as it existed prior to such damage or
destruction).

22 (b) Any major damage or destruction to the prop-
23 erty required to be insured by the Association under Section
24 5.1 above shall be repaired or reconstructed unless: (i) at a
25 special meeting of the Members of the Association duly noticed
26 and convened within sixty (60) days after the occurrence of
such damage or destruction, the Members determine, by a vote of
Owners owing not less than seventy-five percent (75%) of all
Lots, not to so repair or reconstruct; and (ii) Eligible
Mortgage Holders representing at least fifty-one percent (51%)

1 of all Lots subject to First Mortgages held by Eligible
2 Mortgage Holders concur in such determination not to so repair
3 or reconstruct. If for any reason either the amount of the
4 insurance proceeds to be paid as a result of such damage or
5 destruction, or reliable and detailed estimates of the cost of
6 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 avail-
able; provided, however, that such extension shall not exceed
an additional sixty (60) days. The Board shall determine
whether any minor damage or destruction to the Common Area
should be repaired or reconstructed.

7 (c) In the event that it is determined in the
8 manner described above that the damage or destruction of any
9 part of the Common Area shall not be repaired or reconstructed
10 and no alternative improvements are authorized, then and in
that event such property shall be maintained by the Association
in a neat and attractive condition as an undeveloped portion of
the Common Area.

11 5.3.2 Excess or Deficiency of Proceeds. If the
12 damage or destruction for which the insurance proceeds are paid
13 is to be repaired or reconstructed and such proceeds are not
14 sufficient to pay the cost thereof, the Board shall, without
15 the necessity of a vote of the Members, levy an equal assess-
16 ment against the Owner of each Lot. Additional assessments may
17 be made in like manner at any time during or following the com-
pletion 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 cre-
ated by Section 8.4 below. If the funds available from insur-
ance exceed the cost of repair, such excess shall be used to
meet Common Expenses.

18 5.3.3 Repair or Reconstruction of Residential
19 Units. In the event of the destruction of a Residential Unit
20 or other structure on a Lot, or of damage to such Residential
21 Unit or other structure which, in the reasonable judgment of
the Board, materially affects the exterior appearance thereof,
the Board shall have the right, at its option, exercisable by
written notice to the Owner of the Lot upon which such
Residential Unit or other structure is situated, to require
22 such Owner to repair or reconstruct (or cause to be repaired or
23 reconstructed), at such Owner's expense (subject to any insur-
24 ance proceeds as such Owner may then or thereafter receive in
25 respect of such destruction or damage), such Residential Unit
26 or other structure within such period of time as shall be spec-
ified by the Board in such notice (which period of time shall
in no event be less than eight (8) months from the date of such
destruction or damage). The Board may exercise such right and

1 establish such time period notwithstanding such Owner's failure
2 to maintain hazard or casualty insurance upon such Owner's Lot
3 or any structures thereon and notwithstanding any unavailability
4 or delay in receipt of proceeds of any insurance policy or
5 policies, although the Board may take such matters into account
6 in establishing or extending the time period within which such
7 repair or reconstruction must be completed. Any such repair or
8 reconstruction work shall be performed in compliance with all
9 applicable provisions hereof, and the Owner of such Lot shall
10 take such steps as are reasonably necessary to prevent damage
11 to surrounding property and injury to persons as may result
12 from or arise in connection with the destroyed or damaged
13 Residential Unit or other structure or the repair or recon-
14 struction activities with respect thereto. The foregoing pro-
15 visions of this Subsection 5.3.3 shall also apply to structures
16 containing Condominium Units: (a) to the extent permitted by
17 and subject to the provisions of the Arizona Condominium Act
18 (Sections 33-1201 through 33-1270, Arizona Revised Statutes),
19 as amended from time to time; and (b) provided that all refer-
20 ences in the foregoing provisions of this Subsection 5.3.3 to
21 the "Owner" of a Lot or Residential Unit shall be deemed to be
22 references to the Residential Association having jurisdiction
23 over the portion of the Property upon which the damaged or des-
24 troyed Residential Unit(s) is (or are) situated.

13 ARTICLE VI

14 ANNEXATION OF ADDITIONAL PROPERTY

15 6.1 Reservation of Certain Annexation Rights. As of
16 the date the Declaration is Recorded, Developer and Declarant
17 contemplate that one or more portions (and perhaps all) of the
18 Annexable Property may from time to time be annexed to the
19 Property (and thereby subjected to the provisions of this
20 Declaration) and, therefore, while neither Developer nor
21 Declarant shall have any obligation or duty to so annex all or
22 any portion of the Annexable Property, Developer and Declarant
23 hereby reserve the right, privilege and option from time to
24 time hereafter to add and annex to the Property (and thereby to
25 subject to the provisions of this Declaration) any part(s) or
26 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, provided, however, that the right,
privilege and option reserved in this sentence shall expire and
terminate January 1, 1995. Notwithstanding the foregoing sen-
tence, no portion of the Annexable Property may be annexed to
the Property pursuant to said sentence unless, at the time of
each and any such annexation either: (a) the portion of the
Annexable Property to be annexed is owned either by Developer
or Declarant; or (b) the owner of the portion to be annexed (if

1 other than Developer or Declarant) consents in a written,
2 Recorded instrument to such annexation.

3 6.2 Limitations on Other Annexations. As of the date
4 this Declaration is Recorded, neither Declarant nor Developer
5 intends to annex any additional residential property or common
6 area to the Property other than the Annexable Property, and
7 additional residential property and common area not included
8 within the Annexable Property may be annexed to the Property
9 only: (a) by the affirmative vote of two-thirds (2/3) of the
10 votes of each class of Members represented in person or by
11 valid proxy at a meeting of Members duly called for that pur-
12 pose; and (b) with the approval of the applicable percentage of
13 Eligible Mortgage Holders, as provided in Section 12.2 hereof;
14 and (c) with the express written consent of each owner of all
15 or any part of the property proposed to be annexed.

16 6.3 FHA and VA Approval. In addition to the require-
17 ments imposed by Sections 6.1 and 6.2 above, in the event, and
18 only in the event, that at the time of the proposed annexation
19 the Veterans Administration or the Federal Housing
20 Administration (or both) has approved this Declaration and is
21 then either insuring or guaranteeing loans with respect to
22 Residential Units within the Property, then so long as the
23 Class "B" membership is in existence no additional property
24 (whether or not a part of the Annexable Property) may be
25 annexed to the Property without the prior approval of the
26 Federal Housing Administration or the Veterans Administration
(or both), as applicable.

1 6.4 Recordation of Annexation Instrument. Upon
2 approval to the extent required by this Article VI of any
3 annexation of property to the Property, Declarant or Developer
4 (as applicable), in the case of annexation of all or any part
5 of the Annexable Property, or the President and Secretary of
6 the Association, in the case of any other annexation, shall
7 execute, acknowledge and Record an instrument effecting and
8 evidencing such annexation (which instrument shall also be duly
9 executed and acknowledged by each owner of all or any part of
10 the property being annexed), and such annexation shall be
11 deemed effective only upon such Recordation. Such instrument
12 (or a separate instrument Recorded against any property annexed
13 to the Property pursuant to this Article VI and executed by the
14 owner of such annexed property) may subject the annexed prop-
15 erty to such additional covenants, conditions and restrictions
16 as the owner thereof may deem appropriate or desirable
17 (subject, however, to approval thereof by the Association and
18 to such other approval rights as may be granted hereby to other
19 parties in connection with such annexation), provided, however,
20 that any and all such additional covenants, conditions and

1 restrictions shall be subordinate and subject to the provisions
2 of this Declaration.

3 6.5 Effect of Annexation. Upon the effective date of
4 an annexation pursuant to this Article VI, as provided above:
5 (a) the property so annexed shall immediately be and become a
6 part of the Property and subject to all of the provisions
7 hereof; (b) any Lot then or thereafter constituting a part of
8 the annexed property, and the Owner of any such Lot, shall
9 thereupon be subject to all of the provisions of this
10 Declaration (including, but not limited to, the provisions of
11 Articles II, III and VIII hereof); (c) any part or parts of the
12 property annexed which is or are designated or declared to be
13 Common Area shall thereupon be subject to the provisions of
14 this Declaration (including, but not limited to, the provisions
15 of Articles II and IV hereof); and (d) improvements then or
16 thereafter situated upon the annexed property shall be subject
17 to the provisions of this Declaration and shall be reasonably
18 consistent, in terms of quality of construction, with the
19 improvements situated upon other portions of the Property prior
20 to such annexation.

21 6.6 No Obligation to Annex. Nothing herein shall
22 constitute a representation, warranty or covenant that
23 Declarant, Developer, any successor or assign of Declarant or
24 Developer, or any other person will subject any additional
25 property (whether or not a part of the Annexable Property) to
26 the provisions of this Declaration, nor shall Declarant,
Developer, any successor or assign of Declarant or Developer,
or any other person be obligated so to do, and Declarant and
Developer may, by Recorded instrument executed by both
Declarant and Developer, waive their right so to do, in whole
or in part, at any time or from time to time.

ARTICLE VII

RIGHTS AND OBLIGATIONS OF THE ASSOCIATION

27 7.1 Common Area. The Association, subject to the
28 rights of the Owners set forth in this Declaration, shall be
29 responsible for the management and control of the Common Area
30 and shall keep the Common Area in good, clean, attractive and
31 sanitary condition, order and repair, pursuant to the terms and
32 conditions hereof.

33 7.2 Personal Property and Real Property for Common
34 Use. The Association, through action of the Board, may
35 acquire, hold and dispose of tangible and intangible personal
36 property and real property, except that, subject to the provi-
37 sions of Sections 12.2, 12.10 and 12.11, no dedication, sale or
38 transfer of all or any part of the Common Area shall be made or

1 effective unless approved by not less than two-thirds (2/3) of
2 the votes of each class of Members represented in person or by
3 valid proxy at a meeting of Members duly called for such pur-
4 pose. The Board, acting on behalf of the Association, shall
5 accept any real or personal property, leasehold or other prop-
6 erty interests within, adjacent to or related to all or any
7 part of the Property as may be conveyed or assigned to the
8 Association by Developer or Declarant (including, but not
9 limited to, such parts of the Common Area as may now or here-
10 after be held by Developer or Declarant).

6 7.3 Rules and Regulations. The Association, through
7 the Board, may make and enforce reasonable rules and regula-
8 tions governing the use of the Property, which rules and regu-
9 lations shall be consistent with the rights and duties
10 established by this Declaration. Sanctions for violation of
11 such rules and regulations or of this Declaration may be
12 imposed by the Board and may include suspension of the right to
13 vote and the right to use the recreational facilities on the
14 Common Area (if any), and, where approved by a majority vote of
15 each class of Members represented in person or by valid proxy
16 at a meeting of Members duly called for such purpose, may also
17 include reasonable monetary fines. No suspension of an Owner's
18 right to vote or of the right of such Owner (or any Occupant of
19 such Owner's Lot) to use recreational facilities on the Common
20 Area due to a violation of the rules and regulations of the
21 Association may be for a period longer than sixty (60) days
22 (except where such Owner or Occupant fails or refuses to cease
23 or correct an on-going violation or commits the same or another
24 violation, in which event such suspension may be extended for
25 additional periods not to exceed sixty (60) days each until
26 such violation ceases or is corrected).

17 7.4 Availability of Books, Records and Other
18 Documents. The Association shall maintain complete and current
19 copies of this Declaration, the Articles, the Bylaws and all
20 rules and regulations of the Association (as well as any amend-
21 ments to the foregoing) and of the books, records and financial
22 statements of the Association, and, upon the prior written
23 request to the Association by any Owner or by any holder,
24 insurer or guarantor of a First Mortgage, shall make the same
25 available for inspection, at reasonable times and under reason-
26 able circumstances, by such Owner or such holder, insurer or
guarantor.

23 7.5 Audited Financial Statements. In the event any
24 holder, insurer or guarantor of a First Mortgage submits to the
25 Association a written request for an audited financial state-
26 ment of the Association for the most recently concluded fiscal
year of the Association, the Association shall promptly deliver
such an audited financial statement to such holder, insurer or

1 guarantor, and in the event no such audited financial statement
2 has been prepared for the most recently concluded fiscal year,
3 the Association shall cause the same to be prepared and delivered to such holder, insurer or guarantor as soon as reasonably possible. The cost of having such an audited financial statement prepared shall be a Common Expense.

4 7.6 Implied Rights. The Association may exercise any
5 other right or privilege given to it expressly by this
6 Declaration, the Articles or the Bylaws, and every other right
7 or privilege reasonably to be implied from the existence of any
8 right or privilege given to it herein or reasonably necessary
9 to effectuate any such right or privilege.

10 ARTICLE VIII

11 ASSESSMENTS

12 8.1 Creation of Assessment Right.

13 8.1.1 Right of Assessment by Board; Allocation
14 Among Lots. In order to provide funds to enable the
15 Association to meet its financial and other obligations and to
16 create appropriate reserves, there is hereby created a right of
17 assessment exercisable on behalf of the Association by the
18 Board. Annual Assessments and Special Assessments shall be
19 allocated equally among all Lots (subject to Subsection 8.1.6)
20 and shall be for Common Expenses, except that if any Common
21 Expense is caused by the misconduct of any Owner (or by any
22 Occupant of such Owner's Lot), the Association may assess that
23 Common Expense exclusively against such Owner and such Owner's
24 Lot. Parcel Assessments shall be levied against Residential
25 Units in particular portions of the Property to reimburse the
26 Association for any and all expenses incurred in the event the
Association has or assumes applicable maintenance responsibilities as provided in Section 4.4 hereof (provided that if the Association has or assumes such responsibilities pursuant to a contract with a Residential Association pursuant to Section 4.4 hereof, such Parcel Assessments shall not be levied unless and until such Residential Association fails or refuses to pay the Association in accordance with said contract).

8.1.2 Covenant to Pay. Each Owner, by acceptance of his, her or its deed with respect to a Lot, is deemed to covenant and agree to pay the Assessments, together with interest from the date due at a rate equal to ten percent (10%) per annum, and together with such costs and reasonable attorneys' fees as may be incurred in seeking to collect such Assessments.

8.1.3 Personal Obligation to Pay. Each of the Assessments with respect to a Lot, together with interest,

1 costs and reasonable attorneys' fees as provided in
2 Subsection 8.1.2 above, shall also be the personal obligation
3 of the Person who or which was the Owner of such Lot at the
4 time such Assessment arose with respect to such Lot, provided,
5 however, that the personal obligation for delinquent
6 Assessments shall not pass to a successor in title of such
7 Owner unless expressly assumed by such successor.

8 8.1.4 Due Dates. Annual Assessments for each
9 fiscal year shall be due and payable in equal semiannual
10 installments on or before the first day of January and the
11 first day of July of such fiscal year. Parcel Assessments and
12 Special Assessments, if any, shall be paid in such manner and
13 on such dates as may be fixed by the Board. In addition to any
14 other powers of collection or enforcement granted hereunder, in
15 the event any Assessments with respect to a Lot are delinquent,
16 the Board shall have the right, in its sole discretion, to
17 accelerate the date on which all Assessments with respect to
18 such Lot are due and payable. For purposes of this
19 Declaration, Assessments shall be deemed "paid" when actually
20 received by the Association or by its manager or agent design-
21 ated by the Association to collect the same (provided, how-
22 ever, that if any Assessments are paid by check and the bank or
23 other institution upon which such check is drawn thereafter
24 dishonors and refuses to pay such check, those Assessments
25 shall not be deemed "paid" and shall remain due and payable).

26 8.1.5 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 Subsection 8.1.5. For the fiscal year ending December 31,
1987, the Maximum Annual Assessment shall be Two Hundred
Sixty-Four Dollars (\$264.00) per year for each Lot.
Thereafter, unless a greater increase is approved by the affir-
mative 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 percent-
age increase for the applicable fiscal year over the immedi-
ately preceding fiscal year in the Consumer Price Index--All
Urban Consumers--All Items (1967 = 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) five
percent (5%). Notwithstanding the foregoing, the Board may,
without the approval of the Members, increase the Maximum
Annual Assessment for any fiscal year by an amount sufficient
to permit the Board to meet any increases over the preceding

1 fiscal year in: (i) premiums for any insurance coverage
2 required by this Declaration to be maintained by the
3 Association; or (ii) charges for utility services necessary to
4 the Association's performance of its obligations under this
5 Declaration, in either case (i) or (ii) notwithstanding the
6 fact that the resulting increase in the Maximum Annual
7 Assessment is at a rate greater than otherwise permitted under
8 the preceding sentence. Nothing herein shall obligate the
9 Board to levy, in any fiscal year, Annual Assessments in the
10 full amount of the Maximum Annual Assessment for such fiscal
11 year, and the election by the Board not to levy Annual
12 Assessments in the full amount of the Maximum Annual
13 Assessments for any fiscal year shall not prevent the Board
14 from levying Annual Assessments in subsequent fiscal years in
15 the full amount of the Maximum Annual Assessment for such sub-
16 sequent fiscal years (as determined in accordance with this
17 Subsection 8.1.5). In the event that, for any fiscal year, the
18 Board elects to levy an Annual Assessment at less than the full
19 amount of the Maximum Annual Assessment for such fiscal year,
20 the Board may, if in its reasonable discretion the circum-
21 stances so warrant, subsequently levy a supplemental Annual
22 Assessment during said fiscal year so long as the total of the
23 Annual Assessments levied during such fiscal year does not
24 exceed the Maximum Annual Assessment for such fiscal year.

25 8.1.6 Dates Assessments Become Payable.

26 Assessments shall be payable in respect of a Lot from the date
upon which title to said Lot shall first be conveyed to a
retail purchaser, and such Assessments shall be payable regard-
less of whether a Residential Unit or other structure shall be
situated upon such Lot on such date. Subject to Section 8.6
below, no Assessments shall be payable with respect to any Lot
owned by Developer (or owned by Declarant as trustee for
Developer). As to any Lot conveyed by Developer (or Trustee)
to a retail purchaser, Assessments as to such Lot shall be
prorated as of the close of escrow with respect to such Lot
(or, if no escrow is utilized, as of the date of Recordation of
the deed conveying such Lot to such retail purchaser).

8.1.7 No Relief from Obligation upon
Abandonment. 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 the Common Area, or by leasing or
otherwise transferring occupancy rights with respect to his,
her or its Lot.

8.1.8 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

1 Association, stating the date to which Assessments with respect
2 to such Owner's Lot (or the Lot against which such Mortgage is
3 Recorded) have been paid and the amount, if any, of any
4 Assessments which have been levied with respect to said Lot but
5 which remain unpaid as of the date of such certificate; said
6 certificate shall be binding upon the Association as to the
7 matters set forth therein as of the date thereof.

8 8.2 Computation of Assessments; Annual Budget. The
9 Board shall prepare and adopt an estimated annual budget for
10 each fiscal year of the Association, which annual budget shall
11 serve as the basis for determining the Annual Assessments for
12 the applicable fiscal year (subject to the limitations of
13 Subsection 8.1.5 hereof). Such budget shall take into account
14 the estimated Common Expenses and cash requirements of the
15 Association for the year. The annual budget shall also take
16 into account the estimated net available cash income for the
17 year, if any, from the operation or use of any of the Common
18 Area. The annual budget shall provide for a reserve for con-
19 tingencies for the year (and for subsequent fiscal years) and a
20 reserve for replacements, all in such reasonably adequate
21 amounts as shall be determined by the Board. The Board shall
22 cause a copy of the budget and a statement of the amount of the
23 Annual Assessments to be levied against each Lot for the fol-
24 lowing fiscal year to be delivered or mailed to each Owner not
25 more than sixty (60) days following the meeting of the Board at
26 which such budget shall have been adopted. Subject to the pro-
visions of Subsection 8.1.5 and of Section 8.3, neither the
annual budget (or amended budget) adopted by the Board, nor any
Assessment levied pursuant thereto, shall be required to be
ratified or approved by the Members. 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 Subsection 8.1.5) or may call a
meeting of the Members to request that the members approve a
Special Assessment pursuant to Section 8.3. Within sixty (60)
days after adoption of an amended budget (if the Board elects
to levy an additional Annual Assessment), the Board shall cause
a copy of the amended budget and a statement of the additional
Annual Assessments to be levied against the Lots to be deliv-
ered or mailed to each Owner; 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
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 a statement of the Special
Assessment to be levied against each Lot to be promptly mailed
or delivered to each Owner.

1 8.3 Special Assessments. In addition to the Annual
2 Assessments and Parcel Assessments authorized in Section 8.1,
3 the Association may levy Special Assessments from time to time,
4 provided, however, that any Special Assessment shall be effective only with the approval of not less than two-thirds (2/3)
5 of the votes of each class of Members represented in person or
6 by valid proxy at a meeting of Members duly called and convened
7 to consider such Special Assessment. Special Assessments shall
8 be allocated equally among all Lots (subject to Subsection
9 8.1.6).

10 8.4 Lien for Assessments; Foreclosure. The
11 Assessments (together with any other charges, fines, penalties
12 or other amounts levied against a Lot or the Owner or Occupant
13 thereof pursuant to this Declaration or the Articles, Bylaws or
14 rules and regulations of the Association) shall constitute a
15 lien on each Lot prior and superior to all other liens,
16 except: (a) all taxes, bonds, assessments and other levies
17 which, by law, would be superior thereto; and (b) the lien or
18 charge of any First Mortgage made in good faith and for value.
19 Such liens may be foreclosed in the manner provided by law for
20 the foreclosure of mortgages. The sale or transfer of any Lot
21 pursuant to a mortgage foreclosure or any proceeding in lieu
22 thereof shall extinguish the lien of the Assessments as to payments which became due prior to such sale or transfer, but no
23 such sale or transfer shall relieve such Lot from liability for
24 any Assessments becoming due after such sale or transfer, or
25 from the lien thereof. The Association shall have the power to
26 bid for any Lot at any sale to foreclose the Association's lien
on the Lot, and to acquire and hold, lease, mortgage and convey
the same. During the period any Lot is owned by the
Association following any such foreclosure no right to vote
shall be exercised with respect to said Lot and no Assessment
(whether Annual, Special or Parcel) shall be assessed or levied
on or with respect to said Lot, provided, however, that the
Association's acquisition and ownership of a Lot under such
circumstances shall not be deemed to convert the same into
Common Area. Legal action to recover a money judgment for
unpaid Assessments, rent, interest, attorneys' fees and other
enforcement expenses may be maintained without foreclosing or
waiving the lien securing the same. Recording of this
Declaration constitutes record notice and perfection of the
liens granted or established hereby, and further Recordation of
any claim of a lien for Assessments or other amounts hereunder
shall not be required.

27 8.5 Notice and Quorum for Meetings to Consider
28 Special Assessments and Certain Increases in Annual
29 Assessments. Notwithstanding any other provision hereof or of
30 the Articles, the Bylaws or the rules and regulations of the
Association, written notice of any meeting called for the pur-

pose of: (a) approving the establishment of any Special Assessment, as required by Section 8.3 hereof; or (b) approving any increase in the Maximum Annual Assessment greater than that permitted by application of the formula as set forth in Subsection 8.1.5 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.

8.6 Developer's Obligation for Operating Deficiencies. So long as the Class "B" membership exists, Developer 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 (if any); (b) the maintenance of adequate reserve accounts; and (c) the performance by the Association of all other obligations of the Association under this Declaration or under the Articles or the Bylaws.

8.7 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 their liabilities for Assessments.

ARTICLE IX

ARCHITECTURAL AND LANDSCAPING STANDARDS; ARCHITECTURE AND LANDSCAPING REVIEW COMMITTEE

9.1 Appointment of Architecture and Landscaping Review Committee; Standing to Enforce. All property which is now or hereafter subjected to this Declaration shall be subject to architectural, landscaping and environmental review as provided herein. This review shall be in accordance with this Article IX and such standards as may be promulgated by the

1 Board or the Architecture and Landscaping Review Committee,
2 which is hereby established. The Board shall have the author-
3 ity and standing on behalf of the Association to enforce in any
4 court of competent jurisdiction its decisions, decisions of the
5 Architecture and Landscaping Review Committee, and any of the
6 other provisions of this Declaration. The Board shall appoint
7 the members of the Architecture and Landscaping Review
8 Committee, none of whom shall be required to be Owners or to
9 reside on the Property. The Architecture and Landscaping
10 Review Committee shall have such number of members (but not
11 less than three (3)) as the Board may elect, from time to
time. Each member of the Architecture and Landscaping Review
Committee shall serve in such capacity until: (a) such member
is removed by the Board; or (b) such member resigns such posi-
tion or dies. Prior to the Board's appointment of the initial
members of the Architecture and Landscaping Review Committee,
and at any time when there are no persons serving on the
Architecture and Landscaping Review Committee (whether due to
death, resignation or removal), the Board shall have and exer-
cise any and all rights, powers, duties and obligations of the
Architecture and Landscaping Review Committee.

12 9.2 Jurisdiction of the Architecture and Landscaping
13 Review Committee: Promulgation of Guidelines. The Architecture
14 and Landscaping Review Committee shall have exclusive jurisdic-
15 tion over all original construction and any modifications,
16 additions or alterations to improvements on any portion of the
17 Property (including, but not limited to, the construction or
18 installation of, or modifications, additions or alterations
19 to: (a) buildings and other structures; (b) landscaping;
20 (c) fences; (d) heating, ventilating, air conditioning and
21 cooling units; (e) solar panels; (f) paint; and (g) any other
22 construction, modification, addition or alteration affecting
23 the exterior appearance of any Residential Unit or Lot). The
24 Architecture and Landscaping Review Committee shall promulgate
25 and adopt the Architecture and Landscaping Guidelines and shall
26 make the same available to Owners, builders and developers who
seek to engage in development of or construction, modifica-
tions, additions or alterations upon any portion of the
Property, and shall conduct its operations in accordance there-
with. The Architecture and Landscaping Guidelines shall inter-
pret, implement and supplement this Declaration (as it relates
to matters within the jurisdiction of the Architecture and
Landscaping Review Committee), and shall set forth procedures
for Architecture and Landscaping Review Committee review and
the standards for development within the Property, and may
include, without limitation, provisions regarding landscaping
design, content and conformity with the natural hillside char-
acter of the Property.

1 9.3 Submission and Review of Plans. No original con-
2 struction, modification, alteration or addition subject to the
3 Architecture and Landscaping Review Committee's jurisdiction
4 (including, but not limited to, landscaping) shall be commenced
5 until it has been approved or is deemed approved by the
6 Architecture and Landscaping Review Committee as provided
7 herein. Any Owner or other Person seeking to construct or
8 install any new improvements or landscaping or to make any mod-
9 ification, alteration or addition to any existing improvement
10 (including, but not limited to, landscaping) upon any portion
11 of the Property (or to cause same to be constructed or made)
12 shall first submit to the Architecture and Landscaping Review
13 Committee detailed plans, specifications and elevations relat-
14 ing to the proposed construction, installation, modification,
15 alteration or addition. The Architecture and Landscaping
16 Review Committee shall have thirty (30) days after submission
17 of such plans, specifications and elevations to approve or dis-
18 approve of the proposed construction, installation, modifica-
19 tion, alteration or addition or to request additional
20 information, and, if the Architecture and Landscaping Review
21 Committee disapproves, to give such Owner or other Person rea-
22 sonably detailed written reasons for such disapproval. In the
23 event the Architecture and Landscaping Review Committee fails
24 either to approve or disapprove the proposed construction,
25 installation, modification, alteration or addition (or to
26 request additional information) within said thirty (30) day
period, such proposed construction, installation, modification,
alteration or addition shall be deemed approved.

15 9.4 Landscaping. Except as expressly provided herein
16 or as expressly approved by the Architecture and Landscaping
17 Review Committee, landscaping on the Property shall be consis-
18 tent with the character of the native hillside environment
19 surrounding the Property, and shall comply with any and all
20 provisions of the Architecture and Landscaping Guidelines
21 relating to permitted and prohibited plants, and with all
22 applicable native plant preservation regulations of the City of
23 Scottsdale or any other governmental entity having jurisdiction
24 over the Property. All Lots (other than Condominium Units),
25 excluding driveways and parking areas, and excluding that
26 portion of the Lot, 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 Architecture
and Landscaping Review Committee. No exterior trees, bushes,
shrubs, plants or other landscaping shall be planted or placed
upon any Lot except in compliance with plans and specifications
therefor which have been submitted to and approved by the
Architecture and Landscaping Review Committee in accordance
with Section 9.3 above and the Architecture and Landscaping
Guidelines. No material changes or deviations in or from the
plans and specifications for any work to be done on any Lot,

1 once approved by the Architecture and Landscaping Review
2 Committee, shall be permitted without approval of the change or
3 deviation by such Committee. Neither this Section 9.4 nor
4 Section 9.3 above shall be construed to prevent normal land-
5 scape maintenance or the replacement of dead or diseased plants
6 with other similar plants (so long as the replacement plants
7 are permitted by the Architecture and Landscaping Guidelines
8 and applicable governmental laws, rules and regulations).

5 9.5 Changes to Interiors of Residential Units.

6 Nothing contained herein shall be construed to limit the right
7 of an Owner to remodel the interior of his, her or its
8 Residential Unit (or other structure on such Owner's Lot) or to
9 paint the interior of his, her or its Residential Unit (or such
10 other structure) any color desired, except to the extent such
11 remodeling or painting is visible from outside such Residential
12 Unit (or such other structure) or affects the exterior appear-
13 ance of such Residential Unit (or such other structure).

10 9.6 General. No approval by the Architecture and
11 Landscaping Review Committee of any proposed construction, mod-
12 ification, addition or alteration shall be deemed to replace or
13 be substituted for any building permit or similar approval
14 required by any applicable governmental authority, nor shall
15 any such approval be deemed to make the Architecture and
16 Landscaping Review Committee (or the Board or the Association)
17 liable or responsible for any damage or injury resulting or
18 arising from any such construction, modification, addition or
19 alteration.

16 9.7 Nonapplicability to Developer. The provisions of
17 this Article IX shall not apply to any portions of the Property
18 owned by Developer or any Person affiliated with Developer so
19 long as any improvements or landscaping constructed or
20 installed thereon (or any additions, modifications or altera-
21 tions to any such improvements or landscaping) are constructed
22 or made in a good and workmanlike fashion and are generally
23 comparable in terms of quality of construction to other
24 improvements or landscaping theretofore constructed or
25 installed by Developer or any Person affiliated with Developer
26 on the Property (or on other property adjacent to or near the
Property).

22 ARTICLE X

23 USE RESTRICTIONS AND OTHER COVENANTS.
24 CONDITIONS AND EASEMENTS

24 10.1 Residential and Recreational Purpose. The
25 Property shall be used only for residential, recreational and
26 related purposes. No Lot or any other part of the Property

1 shall be used, directly or indirectly, for any business, com-
2 mercial, manufacturing, industrial, mercantile, vending or
3 other similar purpose, except for use by Developer (or an
4 affiliate or assignee of Developer), for a period not to exceed
5 seven (7) years from the conveyance by Developer of the first
6 Lot to a retail purchaser, directly in connection with its con-
7 struction and sales activities with respect to the Property
8 (including, but not limited to, maintenance and operation of
9 model homes, sales offices, and signs advertising the Property).

10 10.2 Garages and Driveways. The interior of all
11 garages constructed on the Property shall be maintained by the
12 respective Owners and Occupants thereof in a neat, clean and
13 slightly condition. Garages shall be used for parking vehicles
14 and storage only, and shall not be used or converted for living
15 or recreational activities. All driveways shall be of concrete
16 construction.

17 10.3 Temporary Structures. No temporary residence,
18 structure or garage shall be placed or erected upon any part of
19 the Property (except as may otherwise be permitted by Section
20 10.4 or Section 10.21). Except with the express written
21 approval of Developer, no Residential Unit or other structure
22 on any Lot shall be occupied in any manner while in the course
23 of original construction or prior to issuance by the appropri-
24 ate local governmental authority of a certificate of occupancy
25 (or other similar document) with respect to such Residential
26 Unit or other structure.

10.4 New Construction. All buildings or structures
erected on the Property shall be of new construction and the
buildings and structures shall not have been moved to the
Property from other locations (except for temporary construc-
tion and/or sales facilities placed or maintained on the
Property by Developer or an affiliate or assignee of Developer
in connection with the construction and sales activities of
Developer or such affiliate or assignee of Developer).

10.5 Signs. No billboards or signs of any type or
character shall be erected or permitted on any part of the
Property or on any Lot, except for signs used by Developer (or
an affiliate or assignee of Developer) to advertise the
Property during the construction and sales period. Nothing
herein shall be deemed to prohibit attachment to the exterior
of a Residential Unit of a single nameplate and a single
address plate identifying the occupant and the address of such
Residential Unit or the placing upon the exterior of any
Residential Unit (or upon the Lot containing the Residential
Unit) of a single "For Sale" or "For Lease" sign, provided that
such nameplates and address plates shall be subject to the
rules and regulations of the Board or such committee as the

1 Board may designate, and except that such "For Sale" or "For
2 Lease" sign shall not have dimensions exceeding eighteen (18)
3 inches by twenty-four (24) inches. Further, nothing herein
4 shall be deemed to prohibit installation and maintenance of
directional signs, subdivision identification signs, street
signs or similar signs as may be approved by the Board for
installation or maintenance by the Association.

5 10.6 Heating, Ventilating and Air Conditioning Units.

6 No heating, air conditioning or evaporative cooling units or
7 equipment shall be placed, constructed or maintained upon the
8 Property, including, but not limited to, upon the roof or exte-
9 rior walls of any structure on any part of the Property
10 unless: (a) where such unit or equipment is installed upon the
11 roof of any structure upon the Property, such unit or equipment
is fully screened from view from adjacent properties by a
parapet wall which conforms architecturally with such struc-
ture; or (b) in all other cases, such unit or equipment is
attractively screened or concealed from ground level view from
adjacent properties, which means of screening or concealment
shall (in either case (a) or (b)) be subject to the regulations
and approval of the Board.

12 10.7 Solar Collecting Panels or Devices. Developer

13 recognizes the benefits to be gained by permitting the use of
14 solar energy as an alternative source of electrical power for
15 residential use. At the same time, Developer desires to pro-
16 mote and preserve the attractive appearance of the Property and
17 the improvements thereon, thereby protecting the value gen-
18 erally of the Property and the various portions thereof, and of
19 the various Owners' respective investments therein. Therefore,
20 solar collecting panels and devices may be placed, constructed
21 or maintained upon any Lot within the Property (including upon
22 the roof of any structure upon any Lot), so long as either:
(a) such solar collecting panels and devices are placed,
constructed and maintained so as not to be visible when viewed
by a person six feet tall standing at ground level on adjacent
properties; 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 Board may reason-
ably 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.

23 10.8 Antennas and Towers. No television, radio,

24 shortwave or other antenna, pole or tower shall be placed,
25 constructed or maintained upon the Property (including, but not
26 limited to, upon the roof or exterior walls of any Residential
Unit), unless: (a) where such antenna, pole or tower is
installed upon the roof of a Residential Unit, such antenna,

1 pole or tower is fully screened and concealed from view from
2 adjacent properties by a parapet wall which conforms architec-
3 turally with the structure of such Residential Unit; or (b) in
4 all other cases, such antenna, pole or tower is fully and
5 attractively screened or concealed from view from adjacent
6 properties, which means of screening or concealment shall (in
7 either case (a) or (b)) be subject to the regulations and
8 approval of the Board. Notwithstanding the foregoing, the
9 Board may install (or permit to be installed) upon the Common
10 Area a television and/or radio "dish-type" antenna designed and
11 intended to serve all Owners and Occupants of the Property (or
12 as many of such Owners and Occupants as elect to use such ser-
13 vice).

14 **10.9 Basketball Goals or Similar Structures.** No bas-
15 ketball goal or similar structure or device (whether mounted on
16 a pole, wall or roof) shall be placed or constructed upon the
17 front yard, front elevation or front roof surface of any struc-
18 ture on any part of the Property (except upon the Common
19 Area). For purposes of the foregoing sentence, the term
20 "front" shall be deemed to mean visible from ground level view
21 from the street(s) running immediately in front of or along the
22 side of a Residential Unit or other structure.

23 **10.10 Tanks.** No tanks of any kind (including tanks for
24 the storage of fuel) shall be erected, placed or maintained on
25 the Property unless such tanks are buried underground. Nothing
26 herein shall be deemed to prohibit use or storage upon the
Property of propane or similar fuel tanks with a capacity of
ten (10) gallons or less used in connection with a normal resi-
dential gas barbecue, grill or fireplace.

10.11 Vehicles.

10.11.1 No private passenger automobiles or pickup
trucks shall be parked upon the Property or any roadway adja-
cent thereto except within a garage, in a private driveway
appurtenant to a Residential Unit, or within areas designated
for such purpose by the Board (or, in the case of a condominium
development, within parking lots, parking garages or similar
designated parking areas within such condominium development).

10.11.2 No other vehicles (including, but not
limited to, mobile homes, motor homes, boats, recreational
vehicles, trailers, trucks, campers, permanent tents or similar
vehicles or equipment) shall be kept, placed or maintained upon
the Property or any roadway adjacent thereto, except:
(a) within a fully enclosed garage appurtenant to a Residential
Unit; or (b) in such areas and subject to such rules and regu-
lations as the Board may designate and adopt.

1 10.11.3 No vehicle (including, but not limited to,
2 those enumerated in Subsections 10.11.1 and 10.11.2 above)
3 shall be constructed, reconstructed or repaired upon the
Property or any roadway adjacent thereto except within a fully
enclosed garage.

4 10.11.4 No motor vehicles of any kind which are
5 not in operating condition shall be parked in any unenclosed
6 parking areas (including, but not limited to, private driveways
7 appurtenant to a Residential Unit).

8 10.12 Underground Facilities. No cesspool or well may
9 be dug or installed without the prior written approval of the
10 Board. No part of the Property shall be used for purposes of
11 boring, mining, exploring for or removing oil or other
12 hydrocarbons, minerals, gravel or earth (except to the limited
13 extent required in connection with the normal construction
14 activities of Developer or an affiliate or assignee of
15 Developer during the construction period).

16 10.13 Outdoor Burning. There shall be no outdoor burn-
17 ing of trash or other debris, provided, however, that the fore-
18 going shall not be deemed to prohibit the use of normal
19 residential barbecues or other similar outside cooking grills
20 or outdoor fireplaces.

21 10.14 Sanitation. Garbage and refuse facilities,
22 containers and the like shall be attractively screened and cam-
23 ouflaged in such manner as to conceal them from the view of
24 neighboring Lots, Residential Units, property, roads or
25 streets. All equipment for the storage or disposal of garbage
26 or other waste shall be kept in a clean and sanitary condi-
tion. All rubbish, trash and garbage shall be kept only in
containers meeting applicable municipal sanitation requirements
(and any applicable reasonable rules and regulations of the
Association), shall be regularly removed from the Property and
shall not be allowed to accumulate thereon.

10.15 Fences, Interferences and Obstructions.

10.15.1 Except as otherwise provided in this
Subsection 10.15.1 and except as may be otherwise permitted
with the prior written consent of the Board, all fences
(excluding wooden gates incorporated therein) shall be of block
construction and shall be painted or colored to match the exte-
rior of the structure(s) enclosed by or upon the same Lot as
such fence. No fence shall exceed six and one-half (6 1/2)
feet in height, provided that no fence within fifteen (15) feet
of the front property line of a Lot shall exceed three (3) feet
in height. The restrictions contained in the preceding two
sentences shall not apply to boundary walls or fences

1 constructed by Developer along property lines bounding public
2 rights-of-way, provided, however, that such boundary walls or
3 fences shall be constructed so as to comply with applicable
4 municipal zoning and other laws and ordinances. No fence shall
5 be permitted to interfere with existing Recorded restrictions,
6 drainageways or easements, and, to the extent a block fence
7 constructed in accordance with the first sentence of the
8 Subsection 10.15.1 would interfere with such restrictions,
9 drainageways or easements, other materials, including, but not
10 limited to wrought iron, may be used in place of block, but
11 only with the prior written approval of Developer or the
12 Board. Except as otherwise provided by applicable law or gov-
13 ernmental rule or regulation, and subject to any applicable
14 restrictions or requirements set forth in any Recorded plat of
15 all or any part of the Property, fences may be constructed in
16 or over a Recorded utility easement, provided, however, that
17 should the utility companies ever require access to such ease-
18 ment, it shall be the responsibility of the Owner of the appli-
19 cable Lot or Residential Unit, at his, her or its sole expense,
20 to remove and replace such fence. Developer may also install
21 fences consisting in whole or in part of wrought iron or simi-
22 lar materials between one or more Lots and portions of the
23 Common Area where Developer deems it appropriate or desirable
24 to provide Owners of such Lots with less restricted views of
25 the Common Areas; subject to prior review and approval by the
26 Architecture and Landscaping Review Committee pursuant to
Article IX hereof, an Owner of a Lot upon which such a fence
was initially constructed by Developer (or the Association, in
the case of such a fence initially constructed by Developer on
Common Area) may use similar materials in replacing, repairing
or reconstructing such fence in the event it is damaged or des-
troyed or otherwise requires repair.

10.15.2 No structure, shrubbery or other vegeta-
tion shall be permitted to exist on any Lot or other portions
of the Property, the height or location of which shall be
deemed by the Board 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 safe-
ty of pedestrians and the operators of vehicles and/or prop-
erty, the Board may impose further limitations on the height of
fences, walls, gateways, ornamental structures, hedges,
shrubbery and other fixtures, and construction and planting on
corner Lots or other parcels at the intersection of two or more
streets or roadways.

10.16 Nuisance. No rubbish or debris of any kind shall
be placed or permitted to accumulate for any unreasonable
length of time on any portion of the Property, and no odors
shall be permitted to arise therefrom, so as to render the

1 Property or any portion thereof unsanitary, unsightly or offen-
2 sive or detrimental to any other portion of the Property in the
3 vicinity thereof or to its occupants. No nuisance shall be
4 permitted to exist or operate upon any portion of the Property
5 so as to be offensive or detrimental to any Owner or Occupant.
6 Without limiting the generality of any of the foregoing provi-
7 sions, no exterior speakers, horns, whistles, bells or other
8 sound devices, except ordinary home intercom systems or secu-
9 rity devices used exclusively for security purposes, shall be
10 located, used or placed on the Property. The Board in its dis-
11 cretion shall have the right to determine the existence of any
12 such nuisance. Furthermore, the Board shall have the right to
13 remove any nuisance at the expense of the Owner responsible for
14 the nuisance (or at the expense of the Owner whose tenant,
15 Occupant or guest is responsible for the nuisance).

16 10.17 Drainage Alteration; Easements. Except as other-
17 wise provided in this Declaration, or by applicable governmen-
18 tal rule, regulation or ordinance, the owner of property
19 subject to Recorded easements shall be responsible for
20 maintaining said property. Some or all Lots within the
21 Property are now or may hereafter be subject to easements for
22 drainage purposes. The Owner of a Lot subject to such a drain-
23 age easement shall, at such Owner's expense, keep that portion
24 of his, her or its Lot which is subject to such a drainage
25 easement free of fences, barriers, rubbish or other
26 obstructions (including, but not limited to, shrubbery or other
vegetation other than well-manicured, properly maintained grass
or similar ground cover) which would impair or impede the free
flow of water over and through such drainage easement area. No
Owner shall use, or permit his, her or its family members, ten-
ants, guests, agents, employees, invitees or Occupants to use,
all or any portion of any such drainage easement area (whether
a part of such Owner's Lot or not) for ingress or egress of
vehicles, pedestrians or animals, or for access to any Lot or
any other property, or for any other purpose except as a drain-
age easement, including related maintenance thereof as provided
in this Declaration. All Owners and Occupants shall at all
times comply with any and all applicable rules, regulations,
ordinances and requirements of the City of Scottsdale and any
other governmental authority having jurisdiction over the
Property relating to the use, maintenance and repair of such
drainage easement areas. Each Owner shall indemnify and hold
harmless Declarant, Developer and UDC-Universal Development
L.P. ("UDC"), a Delaware limited partnership doing business in
the State of Arizona as UDC Homes Limited Partnership, and
their respective affiliates, successors, assigns, agents and
employees, from and against any and all damage, claim, liabil-
ity, expense and injury arising or resulting from or in connec-
tion with any failure by such Owner or any of his, her or its
family members, tenants, guests, agents, employees, invitees or

1 Occupants to perform or observe any of the covenants, condi-
2 tions or restrictions imposed by this Section 10.17. The pro-
3 visions of this Section 10.17 shall be enforceable by: (a) any
4 Owner; (b) the Owner of any other property benefited or served
by any such drainage easement; and (c) Declarant, Developer or
UDC, or any other party entitled to seek indemnification pur-
suant to this Section 10.17.

5 10.18 Clothes-Drying Facilities. Outside clotheslines
6 or other outside facilities for drying or airing clothes shall
7 not be erected, placed or maintained on any part of the
8 Property unless they are erected, placed or maintained exclu-
sively within a fenced yard or otherwise concealed and shall
not be visible to a person six feet tall standing at ground
level on neighboring property.

9 10.19 Pets. No animals, livestock or poultry of any
10 kind shall be raised, bred or kept on the Property, provided,
11 however, that nothing herein shall be construed as prohibiting
12 the keeping of a reasonable number of ordinary household pets
13 in or on a Lot, subject to rules and regulations adopted by the
Board, provided that such pets are not kept, bred or maintained
for any commercial purpose. Notwithstanding the foregoing, no
pets may be kept upon the Property (or on or in any Lot) which,
in the opinion of the Board, result in any annoyance or are
obnoxious to Owners or Occupants of other Lots in the vicinity.

14 10.20 Leasing; Obligations of Tenants and Other
15 Occupants.

16 10.20.1 No Owner may lease less than his, her or
17 its entire Lot. No Lot may be leased for a period of less than
18 thirty (30) days. All leases shall be in writing and shall
19 provide that the terms of the lease shall be subject in all
20 respects to the provisions of this Declaration, the Articles,
21 the Bylaws and the rules and regulations of the Association.
22 Upon leasing his, her or its Lot, an Owner shall promptly
23 notify the Association of the commencement and termination
24 dates of the lease and the names of each tenant or other Person
25 who will occupy the Lot during the term of the lease. All ten-
26 ants shall be subject to the terms and conditions of this
Declaration, the Articles, the Bylaws and the rules and regula-
tions of the Association as though such tenant were an Owner
(except that such tenant shall not have the voting rights
appurtenant to such Lot except pursuant to an express written
assignment complying with Subsection 3.2.1 hereof). Each Owner
shall cause his, her or its tenants or other Occupants to com-
ply with this Declaration, the Articles, the Bylaws and the
rules and regulations of the Association and shall be responsi-
ble and liable for all violations and losses caused by such
tenants or Occupants, notwithstanding the fact that such ten-

1 ants or Occupants of the Lot are also fully liable for any
2 violation of each and all of those documents. The provisions
3 of this Section 10.20 shall not apply to Developer's use of
Lots owned by (or leased to) Developer as a model home or
office or for marketing purposes pursuant to Section 10.1.

4 10.20.2 In the event that a tenant or other
5 Occupant violates any provision of this Declaration, the
6 Articles, the Bylaws and the rules and regulations of the
7 Association, the Association shall have the power to bring an
8 action or suit against such tenant or other Occupant to recover
9 sums due for damages or injunctive relief, or for any other
10 remedy available at law or equity. The Association's costs in
11 doing so, including, but not limited to, reasonable attorneys'
fees, together with interest as provided in Section 12.8
hereof, 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 8.4 hereof.

12 10.20.3 The Board shall also have the power to
13 suspend the right of the tenant or other Occupant to use the
14 recreational facilities on or constituting a part of the Common
15 Area for any violation by the tenant or other Occupant of any
16 duty imposed under this Declaration, the Articles, the Bylaws
17 or the rules and regulations of the Association and, where
18 approved by Members holding a majority of the votes in each
19 class of Members represented in Person or by valid proxy at a
20 meeting of Members duly called for such purpose, to impose rea-
21 sonable monetary fines upon the tenant or the Owner of the
22 applicable Lot, or both. No suspension hereunder of the right
of a tenant or other Occupant to use the recreational facil-
ities 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.

23 10.21 Storage and Tool Sheds or Structures. No storage
24 or tool sheds or similar structures shall be placed, erected or
25 maintained upon any part of the Property except: (a) where
26 such storage or tool shed or similar structure is constructed
as an integral part of a Residential Unit (including materials,
color and the like); or (b) where such storage or tool shed or

1 similar structure is temporarily placed on the Property by
2 Developer (or an affiliate or assignee of Developer) in connec-
3 tion with construction activities of Developer (or such affili-
4 ate or assignee of Developer).

5 10.22 Landscaping and Maintenance. Within ninety (90)
6 days of acquiring a Lot (other than a Condominium Unit), each
7 Owner shall landscape, if not already landscaped, such Lot and
8 any public right-of-way areas (other than sidewalks or bicycle
9 paths) lying between the front or side boundaries of such Lot
10 and an adjacent street, except where the installation or main-
11 tenance (or both) of landscaping within any public right-of-way
12 area is designated on a Recorded plat approved by Developer or
13 the Association as being the responsibility of the
14 Association. Except in the case of an Owner whose Residential
15 Unit is situated within or on property subjected to the provi-
16 sions of a Recorded declaration of covenants, conditions and
17 restrictions, a Recorded declaration of condominium or any
18 other Recorded instrument obligating a Residential Association
19 to maintain landscaping, each Owner shall maintain the land-
20 scaping on such Owner's Lot and any public right-of-way areas
21 lying between the front or side boundaries of such Lot and an
22 adjacent street and shall keep the land free of debris and
23 weeds at all times and promptly repair portions of the land-
24 scaping which have been damaged. In the case of an Owner whose
25 Residential Unit is situated within or on property subjected to
26 the provisions of a Recorded declaration of covenants, condi-
tions and restrictions, a Recorded declaration of condominium
or any other Recorded instrument obligating a Residential
Association to maintain landscaping, said Residential
Association shall be responsible for performing with respect to
said property (and any public right-of-way areas lying between
the boundaries of such property and adjacent streets) the main-
tenance and repair obligations imposed by the preceding sen-
tence and in the following provisions of this Section 10.22.
Each Owner (or the applicable Residential Association, if
appropriate) shall maintain the aforementioned landscaping and
exterior of the Owner's Residential Unit in accordance with
standards prescribed by the Board and otherwise in a manner and
to a level not less than the standards of quality established
by the Board with respect to the quality, quantity and fre-
quency of watering, mowing, weeding, trimming, fertilizing,
painting and the like. In the event any Owner or Residential
Association, as applicable, fails to perform the obligations
provided herein, the Association may, at the discretion of the
Board, perform those obligations at the expense of such Owner
or Residential Association, which expense, together with attor-
neys' fees and interest as provided in Section 12.8 hereof,
shall constitute a lien on such Owner's Lot or upon all Lots in
such Residential Association, as applicable. The provisions of

1 this Section 10.22 shall not apply to any Lot or other property
2 owned by Developer.

3 10.23 Miscellaneous. The Board, in its good faith dis-
4 cretion, is hereby authorized to grant such waivers of the
5 restrictions contained in this Article X as it shall deem
6 appropriate in the circumstances, so long as the use permitted
7 by such waiver shall not result in an unsafe, unsanitary or
8 aesthetically displeasing condition and shall not result, in
9 the Board's discretion, in a substantial departure from the
10 common plan of development contemplated by this Declaration.
11 In addition, all portions of the Property shall continue at all
12 times to be subject to any and all applicable zoning laws and
13 ordinances, provided, however, that where the provisions of
14 this Declaration are more restrictive than such laws or
15 ordinances, the provisions of this Declaration shall control.

16 ARTICLE XI

17 PARTY WALLS

18 11.1 General Rules of Law to Apply. Each wall or
19 fence which is located on the dividing line between two Lots
20 (or between a Lot and Common Area) shall constitute a party
21 wall, and, to the extent not inconsistent with the provisions
22 of this Article XI, the general rules of law regarding party
23 walls and liability for property damages due to negligent or
24 willful acts or omissions shall apply thereto. (For purposes
25 of this Article XI only, in the case of a party wall on the
26 dividing line between a Lot 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 any 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, 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 such
Owner's or Occupant's guests, invitees, employees or agents)

1 the cost thereof shall be borne equally by the Owners and/or
2 Occupants of the Lots having in common such party wall, and in
3 the event any Owner (or Occupant) fails or refuses timely to
4 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 pro-
vided in Section 12.8 of this Declaration).

5 11.4 Consents to Modification. No Owner or Occupant
6 shall alter or modify any party wall in any respect without
7 having first obtained the written consent of the Owner of the
8 other Lot adjoining such party wall, provided that such consent
9 shall not be required in the case of repair or restoration of
10 such party wall to its condition prior to any damage or
11 destruction if the negligence or willful act or omission of the
12 Owner or Occupant of such other Lot was the cause of such dam-
age 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 gov-
ernmental body having jurisdiction over the Property.

13 11.5 Nonapplicability to Condominiums. The provisions
14 of this Article XI are not intended to, and shall not, apply to
walls between Condominium Units.

15 ARTICLE XII

16 GENERAL PROVISIONS

17 12.1 Term. The covenants, conditions and restrictions
18 of this Declaration: (a) shall run with and bind the Property;
19 (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, their respective legal representatives, heirs,
20 successors and assigns; and (c) shall remain in full force and
effect until January 1, 2038, at which time said conditions,
covenants and restrictions, unless revoked by an affirmative
21 vote of Members owning not less than seventy-five percent (75%)
of all Lots, shall automatically be extended for successive
22 periods of twenty-five (25) years each, until revoked in the
manner provided above. Notwithstanding any such revocation of
23 this Declaration, each Owner of a Lot (and such Owner's
Occupants, tenants, guests and invitees) shall nevertheless
24 have a permanent easement across the Common Area for access to
such Lot and for access to and use of such recreational facil-
25 ities as may exist on the Common Area at the time of such revo-
cation.

1 12.2 Amendment. Except as otherwise provided herein
 2 (and subject to the provisions of Sections 12.10, 12.11, 12.12,
 3 and 12.13), this Declaration may be amended only by the affir-
 4 mative vote (in person or by proxy) or written consent of
 5 Members owning at least seventy-five percent (75%) of all
 6 Lots. No amendment to this Declaration shall be effective
 7 unless and until such amendment shall be recorded with the
 8 Recorder. In addition to and notwithstanding the foregoing:
 9 (a) in the event, and only in the event, that at the time of
 10 the proposed amendment the Federal Housing Administration or
 11 the Veterans Administration (or both) is then either insuring
 or guaranteeing loans with respect to Residential Units within
 the Property, then 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 or the
 Veterans Administration, or both, as applicable; and (b) no
 amendment of a material nature to this Declaration (or to the
 Articles or the Bylaws) shall be effective unless approved by
 Eligible Mortgage Holders representing at least fifty-one
 percent (51%) of all Lots subject to First Mortgages held by
 Eligible Mortgage Holders. A change to any of the following
 would be considered to be a change of a material nature:

12 12.2.1 provisions relating to voting rights in the
 13 Association;

14 12.2.2 provisions relating to Assessments,
 15 Assessment liens or subordination of Assessments;

16 12.2.3 provisions relating to reserves for mainte-
 17 nance and repairs;

18 12.2.4 provisions relating to Owners' rights to
 19 use the Common Area;

20 12.2.5 boundaries of any Lot;

21 12.2.6 conversion of any Lot into Common Area or
 22 vice versa;

23 12.2.7 addition or annexation of property to, or
 24 withdrawal of property from, the Property, or addition or
 25 annexation of any property to, or withdrawal of any property
 26 from, the Common Area (except to the limited extent certain
 additions or annexations are expressly permitted without
 approval of or notice to the holders, insurers or guarantors of
 any Mortgage by Article VI of this Declaration);

 12.2.8 provisions relating to insurance or fidel-
 ity bonds;

1 12.2.9 provisions relating to the leasing of Lots
(or Residential Units thereon);

2 12.2.10 provisions relating to the right of an
3 Owner to sell or transfer such Owner's Lot;

4 12.2.11 restoration or repair of any structures or
improvements on the Common Area following a hazard damage or
5 condemnation in a manner other than as specified in this
Declaration;

6 12.2.12 any action to dissolve or otherwise termi-
7 nate the Association or the legal status of the Property after
substantial destruction or condemnation of improvements on the
8 Property occurs; or

9 12.2.13 any provisions that expressly benefit the
holders, insurers or guarantors of Mortgages.

10 In the event a proposed addition, amendment or change to this
Declaration, the Articles or the Bylaws is deemed by the Board
11 as not being of a material nature, the Association shall never-
theless provide written notice to each Eligible Mortgage Holder
12 of the proposed addition, amendment or change (and of the
Board's determination that the same is not of a material
13 nature), and each Eligible Mortgage Holder which shall not have
made written negative response to such notice within thirty
14 (30) days after the date of such notice shall automatically be
deemed to have approved the proposed addition, amendment or
15 change.

16 12.3 Indemnification. The Association shall indemnify
each and every officer and director of the Association
17 (including, for purposes of this Section, former officers and
directors of the Association) against any and all expenses,
18 including attorneys' fees, reasonably incurred by or imposed
upon any officer or director of the Association in connection
19 with any action, suit, or other proceeding (including settle-
ment of any suit or proceeding, if approved by the Board
20 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
21 director of the Association, except for their own individual
willful misfeasance, malfeasance, misconduct or bad faith. The
22 officers and directors shall have no personal liability with
respect to any contract or other commitment made by them, in
23 good faith, on behalf of the Association (except indirectly to
the extent that such officers or directors may also be Members
24 of the Association and therefore subject to Assessments here-
under to fund a liability of the Association), and the
25 Association shall indemnify and forever hold each such officer
and director free and harmless from and against any and
26

1 all liability to others on account of any such contract or com-
2 mitment. Any right to indemnification provided for herein
3 shall not be exclusive of any other rights to which any officer
4 or director, or former officer or director of the Association,
5 may be entitled. If the Board deems it appropriate, in its
6 sole discretion, the Association may advance funds to or for
7 the benefit of any director or officer (or former director or
8 officer) of the Association who may be entitled to indemnifica-
9 tion hereunder to enable such Person to meet on-going costs and
10 expenses of defending himself or herself in any action or pro-
11 ceeding brought against such Person by reason of his or her
12 being, or having been, an officer or director of the
13 Association. In the event it is ultimately determined that a
14 current or former officer or director to whom, or for whose
15 benefit, funds were advanced pursuant to the preceding sentence
16 does not qualify for indemnification pursuant to this
17 Section 12.3 or otherwise under the Articles, Bylaws or appli-
18 cable law, such current or former officer or director shall
19 promptly upon demand repay to the Association the total of such
20 funds advanced by the Association to him or her, or for his or
21 her benefit, with interest (should the Board so elect) at a
22 rate not to exceed ten percent (10%) per annum from the date(s)
23 advanced until paid.

12.4 Easements for Utilities. There is hereby
13 reserved to the Association the power to grant blanket ease-
14 ments upon, across, over and under all of the Common Area for
15 installation, replacement, repair, and maintenance of master
16 television antenna systems, security and similar systems, and
17 all utilities, including, but not limited to, water, sewers,
18 telephones, cable television, gas and electricity, and for
19 delivering or providing public or municipal services such as
20 refuse collection and fire and other emergency vehicle access
21 (which easements shall also include appropriate rights of
22 ingress and egress to facilitate such installation, replace-
23 ment, repair and maintenance, and the delivery or provision of
24 such public, municipal or emergency services), provided, that
25 no such easement shall interfere with a Residential Unit or its
26 reasonable use or with Developer's construction and sales
activities and such easements shall require the holder of the
easement to repair any damage caused to the property of any
Owner. Should any entity furnishing a service covered by the
general easement herein provided request a specific easement by
separate Recordable document, the Association shall have the
right to grant such easement on said property in accordance
with the terms hereof.

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, hy-

1 pothecate or otherwise alienate all or any of such Owner's
2 interest in the Common Area or any funds or other assets of the
3 Association except in connection with the sale, conveyance or
4 hypothecation of such Owner's Lot (and only appurtenant
5 thereto), or except as otherwise expressly permitted herein.
6 This Section shall not be construed to prohibit the Board from
7 acquiring and disposing of tangible personal property nor from
8 acquiring or disposing of title to real property (other than
9 disposition of title to the Common Area) which may or may not
10 be subject to this Declaration.

11 12.6 Severability; Interpretation; Gender.

12 Invalidation of any one of these covenants or restrictions by
13 judgment or court order shall in no way affect any other provi-
14 sions which shall remain in full force and effect. The provi-
15 >sions hereof shall be construed and interpreted with reference
16 to the laws of the State of Arizona. Where the context hereof
17 so requires, any personal pronouns used herein, whether used in
18 the masculine, feminine or neuter gender, shall include all
19 genders, and the singular shall include the plural and vice
20 versa. Titles of Articles and Sections are for convenience
21 only and shall not affect the interpretation hereof.

22 12.7 Perpetuities. If any of the covenants, condi-

23 tions, restrictions or other provisions of this Declaration
24 shall be unlawful, void or voidable for violation of the rule
25 against perpetuities, then such provisions shall continue only
26 until twenty-one (21) years after the death of the last survi-
27 vor of the descendants of Ronald Reagan, President of the
28 United States, living as of the date this Declaration is
29 Recorded.

30 12.8 Enforcement. The Association shall have the

31 standing and power to enforce the provisions of this
32 Declaration, the Articles, the Bylaws and the rules and regula-
33 tions of the Association, and the provisions of any other
34 recorded document pertaining to any Lot or Lots, and its costs
35 in doing so, including, but not limited to, reasonable attor-
36 neys' fees, together with interest thereon from the date the
37 costs are expended at a rate equal to ten percent (10%) per
38 annum, shall constitute a lien on all Lots owned by the Owner
39 or Owners against whom the action is taken (or against whose
40 Occupants the action is taken), which lien shall have the pri-
41 ority and may be enforced in the manner described in
42 Section 8.4. Further, any Owner shall have the standing and
43 the right to bring an action against the Association for any
44 violation or breach by the Association of any provision hereof
45 or of the Articles or the Bylaws. In addition, any Owner or
46 Owners shall have the standing and power to enforce the provi-
47 >sions of this Declaration, the Articles and the Bylaws, and the
48 prevailing party or parties in any action by an Owner or Owners

1 to enforce any such provisions shall be entitled to recover
2 from the other party or parties its or their costs in such
3 action (including reasonable attorneys' fees), together with
4 interest thereon at the rate of ten percent (10%) per annum,
5 and shall further be entitled to have all such costs (including
6 such interest) included in any judgment awarded to the
7 prevailing party or parties in such action. Failure by the
8 Association or by any Owner to take any such enforcement action
9 shall in no event be deemed a waiver of the right to do so
10 thereafter.

11 12.9 Property Held in Trust. Any and all portions of
12 the Property (and of the Annexable Property) which are now or
13 hereafter held in a subdivision or similar trust or trusts (or
14 similar means of holding title to property), the beneficiary of
15 which trust(s) is Developer, shall be deemed for all purposes
16 hereunder to be owned by Developer and shall be treated for all
17 purposes hereunder in the same manner as if such real property
18 were owned in fee by Developer. No conveyance, assignment or
19 other transfer of any right, title or interest in or to any of
20 such real property by Developer to any such trust (or the trustee
21 thereof) or to Developer by any such trust (or the trustee
22 thereof) shall be deemed for purposes of this Declaration to be
23 a sale of such real property or any right, title or interest
24 therein.

25 12.10 FHA/VA Approval. In the event, and only in the
26 event, that at the time of the proposed action either the
Federal Housing Administration or the Veterans Administration,
or both, is insuring or guaranteeing loans with respect to
Residential Units within the Property, then 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, or both,
as applicable: (a) annexation of additional properties to the
Property; (b) dedication of any part or all of the Common Area;
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 Lot number or street address of
the Lot 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 Lot
securing the applicable Mortgage;

1 12.11.2 Any delinquency lasting sixty (60) days or
2 more in payment of any Assessments or other charges owed to the
3 Association by the Owner of the Lot securing the applicable
4 Mortgage, or any other breach or default hereunder by the Owner
5 of the Lot securing the applicable Mortgage which is not cured
6 within sixty (60) days after notice thereof from the
7 Association to such Owner;

8 12.11.3 Any lapse, cancellation or material modi-
9 fication of any insurance policy or fidelity bond maintained by
10 the Association; or

11 12.11.4 Any proposed action which requires the
12 consent of a specified percentage of Eligible Mortgage Holders,
13 as provided in Section 12.2 hereof.

14 12.12 Dissolution or Termination of the Association or
15 Legal Status of the Property. No action to dissolve or other-
16 wise terminate the Association or the legal status of the
17 Property for any reason other than the substantial destruction
18 or condemnation of the Property shall be taken without the con-
19 sent of Eligible Mortgage Holders representing not less than
20 sixty-seven percent (67%) of all Lots subject to First
21 Mortgages held by Eligible Mortgage Holders.

22 12.13 Amendments Requested by Governmental Agency.
23 Notwithstanding any other provision of this Declaration,
24 Developer shall have the right to amend all or any part of this
25 Declaration to such extent and with such language as may be
26 requested by the Federal Housing Administration, Veterans
Administration, Federal National Mortgage Association, Federal
Home Loan Mortgage Corporation or other similar 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 transac-
tions involving Mortgages or instruments evidencing same, as a
condition to such agency's approval of this Declaration or of
any residential development situated within the Property. Any
such amendment shall be effected by Developer's Recording an
instrument executed by Developer and appropriately acknowl-
edged, specifying the governmental or quasi-governmental agency
requesting such amendment and setting forth the appropriate
amendatory language. Recording of such amendment shall consti-
tute conclusive proof of such governmental or quasi-
governmental agency's request for such amendment. 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 Developer nor any other Person(s) shall

1 have the right to amend this Declaration except in accordance
2 with and pursuant to the other provisions and requirements of
this Declaration.

3 12.14 Number of Days. In computing the number of days
4 for purposes of any provision of this Declaration or the
Articles or Bylaws, all days shall be counted including
5 Saturdays, Sundays and holidays; provided however, that if the
6 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.

7 12.15 Developer's Right to Use Similar Name. The
8 Association hereby irrevocably consents to the use by any other
9 nonprofit corporation which may be formed or incorporated by
Developer of a corporate name which is the same or deceptively
10 similar to the name of the Association provided one or more
words are added to the name of such other corporation to make
11 the name of the Association distinguishable from the name of
such other corporation. Within five (5) days after being
12 requested to do so by the Developer, the Association shall sign
such letters, documents or other writings as may be required by
13 the Arizona Corporation Commission in order for any other non-
profit corporation formed or incorporated by the Developer to
use a corporate name which is the same or deceptively similar
to the name of the Association.

14 12.16 Notice of Violation. The Association shall have
15 the right to Record a written notice of a violation by any
Owner or Occupant of any restriction or provision of this
16 Declaration, the Articles, the Bylaws or the rules and regula-
tions of the Association. The notice shall be executed and
17 acknowledged by an officer of the Association and shall contain
substantially the following information: (a) the name of the
18 Owner or Occupant; (b) the legal description of the Lot against
which the notice is being Recorded; (c) a brief description of
19 the nature of the violation; (d) a statement that the notice is
being Recorded by the Association pursuant to this Declaration;
20 and (e) a statement of the specific steps which must be taken
by the Lot Owner or Occupant to cure the violation.
21 Recordation of a notice of violation shall serve as a notice to
the Owner and Occupant, and to any subsequent purchaser of the
22 Lot that there is such a violation. If, after the Recordation
of such notice, it is determined by the Association that the
23 violation referred to in the notice does not exist or that the
actual violation referred to in the notice has been cured, the
24 Association shall Record a notice of compliance which shall
state the legal description of the Lot against which the notice
25 of violation was Recorded, the Recording data of the notice of
violation, and shall state that the violation referred to in
26 the notice of violation has been cured, or if such be the case,

1 that it did not exist. Notwithstanding the foregoing, failure
2 by the Association to Record a notice of violation shall not
3 constitute a waiver of any existing violation or evidence that
4 no violation exists.

5 IN WITNESS WHEREOF, the undersigned have executed this
6 Declaration as of the day and year first set forth above.

DEVELOPER:

7 REALTY DEALERS, LTD., an Illinois
8 limited partnership

9 By UDC ADVISORY SERVICES, INC.,
10 an Illinois corporation, its
11 General Partner

By 
12Its 
13

DECLARANT:

14 TITLE USA COMPANY OF ARIZONA, an
15 Arizona corporation, as Trustee of
16 its Trust No. 1393 and not person-
17 ally

By 
18Its 
19
20
21
22
23
24
25
26

1 STATE OF ARIZONA)
 2 County of Maricopa) ss.

3 On this 4th day of June, 1987, before me, the
 4 undersigned officer, personally appeared Richard C. Kraemer
 5 who acknowledged himself to be Agent of UDC ADVISORY
 6 SERVICES, INC., an Illinois corporation which is general
 7 partner of REALTY DEALERS, LTD., an Illinois limited
 8 partnership, and that he, in such capacity, being authorized so
 9 to do, executed the foregoing instrument for the purposes
 10 therein contained by signing the name of said corporation and
 11 said partnership by himself.

12 IN WITNESS WHEREOF, I hereunto set my hand and offi-
 13 cial seal.

14 Maureen Kay
 15 Notary Public

16 My commission expires:
 17 _____



1 STATE OF ARIZONA)
 2) ss.
 County of Maricopa)

3 On this 10 day of June, 1987, before me, the
 4 undersigned officer, personally appeared J. Donna Collins,
 5 who acknowledged himself to be Asst. Trust Officer of TITLE
 6 USA COMPANY OF ARIZONA, an Arizona corporation, as Trustee of
 its Trust No. 1393 and not personally, and that he, in such
 capacity, being authorized so to do, executed the foregoing
 instrument for the purposes therein contained by signing the
 name of said Corporation by himself.

7 IN WITNESS WHEREOF, I hereunto set my hand and offi-
 8 cial seal.

9 
 10 _____

Notary Public

11 My commission expires:

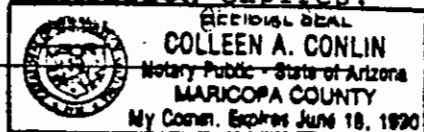


EXHIBIT "B"

87 367916

Common Areas

Tracts A through N, inclusive, SONORAN HEIGHTS,
according to the plat recorded in Book 311, page 20, in the
office of the Maricopa County, Arizona Recorder.