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DECLARATION OF COVENANTS, CONDITIONS
AND RESTRICTIONS
FOR
FOOTHILLS CLUB WEST

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DECLARATION OF COVENANTS, CONDITIONS
AND RESTRICTIONS
FOR
FOOTHILLS CLUB WEST
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DECLARATION OF COVENANTS, CONDITIONS
AND RESTRICTIONS FOR
FOOTHILLS CLUB WEST

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3 This Declaration of Covenants, Conditions and
4 Restrictions is made as of June 1, 1989, by UDC - FOOTHILLS
5 LIMITED PARTNERSHIP, an Arizona limited partnership, as
"Declarant," with reference to the following:

6 A. As of the date hereof, Declarant is the owner of
7 fee title to, and the master developer of, certain real prop-
8 erty in Maricopa County, Arizona, lying generally north of
9 Pecos Road in the general vicinity of 19th Avenue to 24th
10 Street, in Phoenix, Arizona, to be known and developed (perhaps
11 with additional real property) under the name "Foothills Club
12 West."

13 B. Declarant desires to develop Foothills Club West
14 as a planned area development.

15 C. As part of the development of Foothills Club West
16 and without obligation so to do, Declarant intends to dedicate
17 portions of Foothills Club West to the public and to Record
18 various additional covenants, conditions and restrictions apart
19 from this Declaration in the form of separate Tract
20 Declarations which shall cover certain portions of Foothills
21 Club West to be specified in such Tract Declarations.

22 D. Declarant intends by this Declaration to impose
23 upon the Property mutually beneficial restrictions under a gen-
24 eral plan of improvement for the benefit of all owners of prop-
25 erty within the Property. Declarant desires to provide a
26 flexible (yet common) and reasonable procedure for the overall
development of the Property, and to establish a method for the
administration, maintenance, preservation, use and enjoyment of
the Property, while preserving to the extent reasonably possi-
ble the natural character of the land comprising the Property.

27 E. As portions of Foothills Club West are developed,
28 Declarant intends (but shall not be obligated) to Record one or
29 more Tract Declarations that may, among other things, designate
30 Common Areas and Limited Common Areas, establish land use clas-
31 sifications, and establish such additional covenants, condi-
32 tions and restrictions as may be appropriate, in Declarant's
33 judgment, for the respective portions of Foothills Club West
34 affected thereby.

35 NOW, THEREFORE, Declarant hereby declares that the
36 Property shall be held, sold and conveyed subject to the fol-
lowing easements, restrictions, covenants and conditions, which

1 are for the purpose of protecting the value and desirability of
2 and which shall run with the real property now and hereafter
3 subjected to this Declaration and which shall be binding on all
4 parties having any right, title or interest in said real prop-
5 erty or any part thereof, and their heirs, personal representa-
6 tives, successors and assigns, and shall inure to the benefit
7 of each owner of all or any part thereof.

8 ARTICLE 1

9 DEFINITIONS

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

13 1.1 "Annexable Property" shall mean the real property
14 described on Exhibit "B" attached hereto and incorporated
15 herein by reference, together with any other real property any
16 part of which is located within five (5) miles of the property
17 described on Exhibit "B" hereto.

18 1.2 "Annual Assessments" shall mean those Assessments
19 designated as such in this Declaration and computed and levied
20 as provided in Section 8.5 of this Declaration.

21 1.3 "Apartment Parcel" shall mean: (a) a Parcel des-
22 ignated in a Tract Declaration as having a residential apart-
23 ment development land use classification; or (b) a Parcel with
24 respect to which no Tract Declaration has yet been Recorded but
25 which is designated for apartment use on the Master Development
26 Plan.

1.4 "Apartment Unit" shall mean a Dwelling Unit
located on an Apartment Parcel, the occupancy of which is
governed by a rental agreement.

1.5 "Architectural Committee" shall mean the commit-
tee established pursuant to Article 9 of this Declaration.

1.6 "Articles" shall mean the articles of incorpora-
tion 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 Bylaws and the
statutes and regulations of the State of Arizona.

1.7 "Assessments" shall mean the Annual Assessments,
the Parcel Assessments and the Special Assessments (as well as
any other amounts declared by this Declaration to be a part of

1 the Assessments or declared by this Declaration to be secured
by the lien created under Section 8.3).

2 1.8 "Association" shall mean Foothills Club West
3 Community Association, an Arizona non-profit corporation to be
4 formed by Declarant not later than 90 days after Recordation of
5 this Declaration (but prior to the conveyance of any Lot to a
6 retail purchaser), and its successors and assigns (provided,
however, that if such corporate name is not available for use,
another name may be selected by Declarant in connection with
the incorporation of the Association).

7 1.9 "Association Rules" shall mean the reasonable
8 rules and regulations adopted by the Association pursuant to
9 Section 7.3 of this Declaration.

10 1.10 "Board" shall mean the group or body of individ-
11 uals elected in accordance with the provisions of the Articles,
12 the Bylaws and the statutes and regulations of the State of
13 Arizona, in which group or body is vested the management of the
14 affairs of the Association, and shall be equivalent in meaning
15 to the term "board of directors," as defined in Section
16 10-1002(6) of the Arizona Revised Statutes.

17 1.11 "Bylaws" shall mean the bylaws of the
18 Association, as the same may be amended from time to time in
19 accordance with the provisions thereof and with the applicable
20 provisions of this Declaration, the Articles and the statutes
21 and regulations of the State of Arizona.

22 1.12 "City" shall mean the City of Phoenix, Arizona,
23 provided, however, that in the event Foothills Club West (or
24 any part thereof) at any future time becomes part of a munici-
25 pality other than the City of Phoenix, the term "City" shall
26 mean and refer, to the extent applicable, to such other munici-
pality.

19 1.13 "Common Area" shall mean all real property
(including the improvements thereto), all easements and
20 licenses, and all personal property and facilities owned by the
21 Association for the common use and enjoyment of the Owners.

22 1.14 "Common Expenses" shall mean the actual and esti-
23 mated expenses of operating the Association, including any rea-
24 sonable reserves, all as may be found to be necessary and
25 appropriate by the Board pursuant to this Declaration, the
26 Articles and the Bylaws.

19 1.15 "Condominium Parcel" shall mean: (a) a Parcel
20 designated in a Tract Declaration as having a residential con-
21 dominium development land use classification; or (b) a Parcel

1 with respect to which no Tract Declaration has yet been
 2 Recorded but which is designated for residential condominium
 use on the Master Development Plan.

3 1.16 "Condominium Unit" shall mean a Dwelling Unit
 4 which constitutes a "unit" within a "condominium," together
 with any appurtenant interest in all "common elements," as
 5 those terms are defined in the Arizona Condominium Act, Chapter
 9 of Title 33 of the Arizona Revised Statutes, as amended.

6 1.17 "Declarant" shall mean UDC - Foothills Limited
 Partnership, an Arizona limited partnership, and any assignee
 7 of the rights and duties granted or reserved to Declarant
 herein, which assignment shall be evidenced by a Recorded
 instrument executed by the assigning Declarant.

8 1.18 "Declaration" shall mean this Declaration of
 9 Covenants, Conditions and Restrictions, as the same may be
 amended from time to time.

10 1.19 "Developer Owner" shall mean a Person (other than
 11 Declarant) in the business of developing, leasing and/or sell-
 ing real property who has acquired one or more Lots or Parcels
 12 in connection with, and in the course of, such business, for
 the purpose of developing, leasing or selling such Lots or
 13 Parcels, and shall also include a Person who acquires a Non-
 Residential Parcel for such Person's own development and use.

14 1.20 "Dwelling Unit" shall mean any building, or part
 15 thereof (including, but not limited to, a Condominium Unit),
 situated upon a Lot or Parcel and intended for use and occu-
 16 pancy as a residence by a Single Family.

17 1.21 "Eligible Mortgage Holder" shall mean any holder
 (as evidenced by a Recorded instrument) of a First Mortgage who
 18 or which shall have made written request to the Association for
 notice of any proposed action that, pursuant to Section 11.2 or
 19 Section 11.12, requires the consent of a specified percentage
 of Eligible Mortgage Holders (which written request must con-
 20 tain the name and address of the Eligible Mortgage Holder and
 the Lot number or street address of the Lot against which the
 21 First Mortgage held by said Eligible Mortgage Holder is
 Recorded).

22 1.22 "Exempt Property" shall mean portions of the
 23 Property not subject to Assessments, which shall be the follow-
 ing areas now or hereafter located within Foothills Club West:

24 1.22.1 all Government Property;

1 1.22.2 a Parcel with a land use classification
 2 of School Use or Church Use, unless and to the extent it is
 otherwise indicated in the applicable Tract Declaration or
 other appropriate Recorded instrument;

3 1.22.3 all Common Area; and

4 1.22.4 all Limited Common Areas.

5 Exempt Property shall remain subject to all provisions of this
 6 Declaration except that so long as such property is Exempt
 7 Property, it shall not be subject to the obligation to pay
 8 Annual Assessments, Parcel Assessments or Special Assessments
 9 except as otherwise expressly provided in this Declaration or
 10 in an applicable Tract Declaration. The Owner of Exempt
 11 Property (other than Common Area or Limited Common Area) may
 12 elect at any time by Recording a written instrument against
 13 his, her or its property (and by delivering a copy thereof to
 14 the Board) to subject such property to Assessments and to have
 15 such property no longer treated as Exempt Property, whereupon
 such property shall cease to be Exempt Property and shall be
 subject to Annual Assessments, Parcel Assessments and Special
 Assessments in accordance with the provisions of this
 Declaration and shall be deemed to be a Non-Residential Parcel
 for purposes of establishing the Assessments to which it is
 subject and the votes to which its Owner is entitled except as
 otherwise provided in a Recorded instrument signed by the Owner
 of such Exempt Property and by either: (a) Declarant, so long
 as Declarant owns any portion of the Property or the Annexable
 Property; or (b) by a majority of the members of the Board.

16 1.23 "First Mortgage" shall mean a Mortgage Recorded
 17 against a Lot which has priority over all other Mortgages
 Recorded against that Lot.

18 1.24 "Government Property" shall mean all land and
 19 improvements owned by or dedicated to a public or governmental
 20 agency or authority for so long as the public or governmental
 21 agency or authority is the owner or beneficiary thereof, except
 for land or improvements, or both, owned and/or operated by a
 public or governmental agency or authority acting in a proprie-
 tary capacity.

22 1.25 "Guidelines" shall mean the rules and regulations
 23 adopted, amended and supplemented by the Architectural
 Committee pursuant to Section 9.2 of this Declaration.

24 1.26 "Limited Common Areas" shall mean all areas of
 25 any Parcel or subdivision within the Property, other than a
 26 Non-Residential Parcel or a subdivision limited to non-
 residential uses, which are now or hereafter designated on

1 Tract Declaration, Recorded subdivision plat or other Recorded
 2 instrument as areas to be used in common by the Owners or
 3 Occupants of such Parcel or subdivision (which areas shall also
 4 be maintained by and at the expense of the Owners or Occupants
 of such Parcel or subdivision, or by a homeowners' or similar
 Subsidiary Association established with respect to such Parcel
 or subdivision) so long as such areas are so used and main-
 tained.

5 1.27 "Lot" shall mean and refer to: (a) a lot into
 6 which any part of the Property limited by a Tract Declaration
 7 or other Recorded instrument to Single Family residential use
 8 is subdivided as set forth in a subdivision plat now or here-
 9 after Recorded; or (b) a Condominium Unit. For purposes of
 10 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 any Limited
 Common Areas.

11 1.28 "Master Development Plan" shall mean the concep-
 12 tual or site development plan at any time in effect for
 13 Foothills Club West and approved by the City or other govern-
 14 mental jurisdiction having the authority to approve and regu-
 late master plans for planned area developments located in
 Foothills Club West, as the same may be amended from time to
 time.

15 1.29 "Maximum Annual Assessment" shall mean the
 16 amounts determined for each fiscal year of the Association in
 accordance with Section 8.7 of this Declaration.

17 1.30 "Member" shall mean any Person entitled to
 membership in the Association, as provided in this Declaration.

18 1.31 "Mortgage" shall mean a deed of trust, as well as
 19 a mortgage, which, in either case, is Recorded against a Lot.

20 1.32 "Net Acre" shall mean a gross acre less any dedi-
 cated rights-of-way and Common Area.

21 1.33 "Non-Developer Owner" shall mean any Owner (other
 22 than Declarant) who is not a Developer Owner.

23 1.34 "Non-Residential Parcel" shall mean: (a) a
 24 Parcel designated in a Tract Declaration as having a land use
 25 classification other than residential apartment development,
 residential condominium development or Single Family residen-
 tial development; or (b) a Parcel on which no Tract Declaration
 has been Recorded but which is designated for non-residential
 use on the Master Development Plan.

1 1.35 "Mortgagee" shall mean a beneficiary under a deed
2 of trust, as well as a mortgagee under a mortgage, which, in
3 either case, is Recorded against a Lot.

4 1.36 "Occupant" shall mean any Person other than an
5 Owner who occupies or is in possession of a Lot or Parcel, or
6 any portion thereof or building or structure thereon, whether
7 as a lessee under a lease or otherwise, other than on a merely
8 transient basis.

9 1.37 "Owner" shall mean the Person or Persons who
10 individually or collectively: (a) own fee title to a Lot or
11 Parcel (as evidenced by a Recorded instrument); or (b) hold the
12 seller's or vendor's interest in a Lot or Parcel under a con-
13 tract for conveyance, contract for deed, agreement for sale or
14 similar contract through which a seller has conveyed to a pur-
15 chaser equitable title in property and under which the seller
16 is obligated to convey to the purchaser the remainder of the
17 seller's title in the property, whether legal or equitable, on
18 payment in full of all sums due under the contract. The term
19 "Owner" shall not include: (i) any Person who holds an inter-
20 est in a Lot or Parcel merely as security for the performance
21 of an obligation; or (ii) a lessee, tenant or other Occupant of
22 a Lot or Parcel. Declarant shall be the "Owner" of each Lot or
23 Parcel with respect to which Declarant holds the interest
24 required by this Section and, in addition, shall be deemed to
25 be the "Owner" of each Lot or Parcel to which title is held by
26 a trustee (other than the trustee of a deed of trust) for the
benefit of Declarant. Notwithstanding part (a) of this
Section, in the case of a Lot or Parcel, the fee title to which
is vested in a trustee under a deed of trust pursuant to
Chapter 6.1 of Title 33 of the Arizona Revised Statutes, the
owner of the trustor's interest under the deed of trust shall
be deemed to be the "Owner" of that Lot or Parcel.

18 1.38 "Parcel" shall mean each area of the Property
19 shown as a separate piece of real property on the Master
20 Development Plan, provided, however, that in the event a Parcel
21 is split in any manner into portions under separate ownership
22 (other than by subdivision of the Parcel by Recordation of a
23 subdivision plat into Lots, each of which constitutes or may
24 have constructed thereon only one Dwelling Unit), each portion
25 under separate ownership shall thereafter constitute a separate
26 Parcel. Any portion of a Parcel subdivided into Lots (or into
Lots and either Common Area or Limited Common Areas, or both)
by Recordation of a subdivision plat shall, effective upon such
Recordation, cease to be a Parcel; any remaining portion of
such Parcel not so subdivided shall continue to be a Parcel
unless and until such remaining portion is so subdivided.

1 1.39 "Parcel Assessments" shall mean those Assessments
2 levied in accordance with Sections 4.4, 4.5 and 8.10 of this
3 Declaration.

4 1.40 "Person" means a natural person, corporation,
5 partnership, trustee or other legal entity.

6 1.41 "Property" shall mean the real property described
7 on Exhibit "A" attached hereto and shall further refer to such
8 additional property, if any, as may hereafter be annexed
9 thereto pursuant to Article 6 hereof or as is now or may here-
10 after be owned in fee simple by the Association, but shall not
11 include real property, if any, which is deleted and removed
12 from the Property pursuant to Section 6.7 hereof.

13 1.42 "Record", "Recording", "Recorded" and
14 "Recordation" shall mean placing or having placed an instrument
15 of public record in the official records of Maricopa County,
16 Arizona, or of such other governmental authority, office or
17 official with which or whom the applicable laws of the State of
18 Arizona prescribe that documents affecting title to real prop-
19 erty in the area including the Property are to be placed of
20 public record.

21 1.43 "Single Family" shall mean a group of individuals
22 related by blood, marriage or legal adoption, or a group of not
23 more than three unrelated individuals maintaining a common
24 household.

25 1.44 "Single Family Parcel" shall mean: (a) a Parcel
26 designated in a Tract Declaration as having a Single Family
residential land use classification; or (b) a Parcel with
respect to which no Tract Declaration has yet been Recorded but
which is designated for Single Family residential use on the
Master Development Plan.

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

1.46 "Special Use Fees" shall mean any fees charged by
the Association for use of the Common Areas pursuant to
Section 2.1 of this Declaration.

1.47 "Subsidiary Association" shall mean an Arizona
nonprofit corporation, its successors and assigns, established
for the purpose of administering and enforcing the provisions
of any Subsidiary Declaration.

1.48 "Subsidiary Declaration" shall mean any declara-
tion of covenants, conditions and restrictions, declaration of
condominium or like instrument, other than a Tract Declaration,

1 Recorded after the Recording of this Declaration in regard to
 2 any Parcel, or part thereof, or group of Lots, by the Owner of
 3 such Parcel or part thereof, or group of Lots, which shall in
 4 all cases be consistent with and subordinate to this
 5 Declaration and any applicable Tract Declaration.

6 1.49 "Tract Declaration" shall mean any declaration of
 7 covenants, conditions and restrictions or like instrument
 8 Recorded by Declarant after the Recording of this Declaration
 9 in regard to one or more Parcels, or portions thereof, or one
 10 or more groups of Lots, which shall in all cases be consistent
 11 with and subordinate to this Declaration.

12 1.50 "Visible From Neighboring Property" shall mean,
 13 with respect to any given object, that such object is or would
 14 be visible to an individual whose eyes are six feet above the
 15 ground and who is standing at natural grade level on
 16 neighboring property.

17 ARTICLE 2

18 EASEMENTS AND RIGHTS OF ENJOYMENT IN COMMON AREA

19 2.1 Easements and Rights of Enjoyment. Every Owner
 20 shall have a non-exclusive right and easement of enjoyment in,
 21 to and over the Common Area, subject to any restrictions or
 22 limitations contained herein or in any Recorded instrument con-
 23 veying to the Association or subjecting to this Declaration
 24 such property, and subject further to the Association Rules.
 25 Any Owner may assign his, her or its right of enjoyment to (and
 26 share the same with) the members of his or her household and
 assign the same to and share the same with his, her or its ten-
 ants and invitees subject to the provisions of this Declaration
 and to reasonable regulation by the Board and otherwise in
 accordance with such procedures as the Board may adopt. An
 Owner who leases his, her or its Lot or Parcel shall be deemed
 to have delegated such Owner's rights and easements under this
Section 2.1 to the lessee(s) of such Lot or Parcel (except to
 the extent reasonably necessary for such Owner to inspect,
 repair and otherwise care for such Owner's Lot or Parcel and to
 assure compliance by the lessee(s) with the terms of the
 lease(s)). The foregoing grants and rights are subject, among
 other things, to the following limitations:

23 2.1.1 The right of the Association pursuant to
 24 this Section to charge Special Use Fees for the use of the
 25 Common Area. The Special Use Fees, if any, shall be set by the
 26 Board from time to time, in its discretion. Special Use Fees
 shall be charged only for actual entry upon or utilization of
 those portions of the Common Area selected by the Board to be
 subject to a Special Use Fee, and shall be intended to collect

1 revenue from the actual users of such selected portions of the
2 Common Area so that all of the costs of operating such selected
3 portions of the Common Area are not borne by all of the Owners
4 through Annual Assessments, but rather are borne, at least in
5 part, by the Owners, Occupants and other Persons utilizing such
6 selected portions of the Common Area.

7 2.1.2 The right of the Association to suspend the
8 voting rights and the rights to use and enjoyment of recrea-
9 tional facilities upon the Common Area of any Owner or
10 Occupant, as the case may be:

11 (a) for any period during which an
12 Assessment remains delinquent;

13 (b) for a period not to exceed 60 days for
14 any infraction of this Declaration, a Tract Declaration, the
15 Association Rules or the Guidelines; or

16 (c) for successive 60-day periods if any
17 such delinquency or infraction is not corrected during any pre-
18 ceding suspension period.

19 2.1.3 The right of the Association to limit the
20 number of guests of an Owner or Occupant, or the number of
21 Persons from a Non-Residential Parcel, who may use the Common
22 Area.

23 2.1.4 The right of the Association to regulate use
24 of the Common Area in accordance with this Declaration.

25 2.2 Ingress and Egress Over Certain Common Area.

26 2.2.1 The Association may own land which is
intended to be used for landscaping adjacent to streets in
Foothills Club West. Such landscaping area may separate a
Parcel from the street nearest to the Parcel, thereby creating
a need for the Owner of the Parcel to have ingress and egress
rights over the landscaping area in order to have access to the
street. Therefore, Declarant hereby creates, grants and
conveys to the Owner and Occupants of each Parcel, their
agents, employees, guests and invitees, a permanent, non-
exclusive easement (an "Access Easement") for vehicular and
pedestrian ingress and egress in, upon, over and across such
landscaping area (a "Landscape Tract"). At such time as the
exact location of such Access Easement is determined with
respect to a particular Parcel and approved by Declarant or the
Architectural Committee, as applicable, it shall be indicated
on the Recorded subdivision plat or plats for the Parcel or on
such other Recorded instrument as is acceptable to Declarant or
the Architectural Committee, as applicable. For itself and the

1 Association, Declarant retains and reserves the right to use
 2 each Landscape Tract for landscaping, drainage, irrigation
 lines, pedestrian and bicycle paths, and other purposes which
 do not preclude the uses permitted herein.

3 2.2.2 At its sole cost and expense, the Owner of a
 4 Parcel benefitted by such an Access Easement shall construct
 all necessary improvements in connection with such Access
 5 Easement, and maintain such improvements in good working order,
 condition and repair (including, without limitation, all clean-
 6 ing, sweeping, restriping and repairing of roadways) and in
 compliance with all applicable governmental regulations.
 7 During the construction phase of the improvements on a Parcel,
 Declarant or the Association, as applicable, shall grant to the
 8 Owner thereof and its agents and employees a temporary license
 to enter upon the applicable Landscape Tract as is reasonably
 9 necessary in order to construct such improvements, and such
 Owner shall be fully responsible and liable for making any and
 10 all repairs and replacement of landscaping and other improve-
 ments on such Landscape Tract caused by or resulting from such
 activities.

11 2.2.3 Unless Declarant or the Board authorizes the
 12 public dedication or transfer of all or any parts of such an
 Access Easement to a municipal corporation, the Owner of the
 13 Parcel to which such Access Easement is appurtenant (or
 Declarant or the Board, if such Owner fails to do so), shall on
 14 an annual basis prohibit the use of such Access Easement by the
 general public during a twenty-four (24) hour period.

15 2.2.4 Each Owner and its successors, assigns and
 16 grantees agrees, by acceptance of its deed or other instrument
 of transfer, to indemnify and hold harmless Declarant, its
 17 successors and assigns, and the Association, from and against
 any and all damages, costs and liabilities, including, without
 18 limitation, attorneys' fees, mechanics' and materialmen's
 liens, real estate taxes and assessments, arising out of or in
 19 connection with the Access Easement appurtenant to such Owner's
 Parcel.

20 ARTICLE 3

21 MEMBERSHIP AND VOTING RIGHTS

22 3.1 Votes of Owners of Lots and Parcels. Every Owner
 23 of a Lot or Parcel automatically shall be a Member of the
 Association and shall remain a Member for so long as such own-
 24 ership continues. Each Owner's membership in the Association
 shall be appurtenant to and may not be separated from ownership
 25 of the Lot or Parcel to which the membership is attributable.
 In the event any Lot or Parcel is owned by two or more Persons

1 whether by joint tenancy, tenancy in common, community property
2 or otherwise, each such Person shall be considered a Member but
3 the membership as to such Lot or Parcel shall be joint, and
4 such Persons shall jointly designate to the Association in
5 writing one of their number who shall have the power to vote
6 said membership, and, in the absence of such designation and
7 until such designation is made, the Board shall either:
8 (a) make such designation, in which event such designation
9 shall be binding for all purposes; or (b) declare that until
10 all Persons who together hold such membership jointly make such
11 written designation, the vote(s) attributable to such
12 membership under this Declaration shall not be cast or counted
13 on any questions before the Members; provided, however, that if
14 any one of such Persons casts a vote or votes representing a
15 certain Lot or Parcel without objection from any other Person
16 sharing ownership of such Lot or Parcel, that Person will
17 thereafter be conclusively presumed to be acting with the
18 authority and consent of all other Persons sharing ownership of
19 such Lot or Parcel unless and until objection thereto is made
20 to the Board, in writing. Notwithstanding the foregoing, so
21 long as the Class B membership is in existence, no Class B
22 Member shall at the same time be a Class A Member nor shall a
23 Class B Member have any Class A votes, and the membership and
24 number of votes of the Class B Member(s) shall be determined in
25 accordance with Subsection 3.3.1. Subject to Subsection 3.3.1
26 below, each Owner (other than Declarant, so long as the Class B
membership is in existence) shall have the following applicable
number of votes in the Association:

3.1.1 One vote for each Lot owned by such Owner;

3.1.2 In the case of the Owner of a Single Family
Parcel or Condominium Parcel which has not been divided into
Lots by a Recorded subdivision plat or other Recorded instru-
ment, one vote for each Dwelling Unit permitted upon the Parcel
under the applicable Tract Declaration, or if no Tract
Declaration has been Recorded with respect to such Parcel, then
one vote for each Dwelling Unit permitted upon such Parcel
under the then current Master Development Plan. If a subdivi-
sion plat or other instrument creating Lots is Recorded cover-
ing all or part of such Parcel, then the votes attributable to
the Lots shall be determined pursuant to Subsection 3.1.1
above, and the number of votes held by the Owner of such Parcel
as Owner of the portion of such Parcel not so divided into Lots
(if any) shall be equal to the number of Dwelling Units
permitted on such Parcel pursuant hereto less the number of
votes determined pursuant to Subsection 3.1.1 above. If a
Tract Declaration or subdivision plat for such Parcel is there-
after Recorded for a different number of Dwelling Units, the
number of votes shall be adjusted to reflect the actual number
of Dwelling Units as set forth in such Tract Declaration or

1 Recorded subdivision plat. All votes attributable to such
2 Parcel (as opposed to votes attributable to Lots created from
3 such Parcel) shall cease when the property ceases to be a
4 Parcel because all of the area therein is platted (or otherwise
5 divided into Lots) or dedicated to the public;

6 3.1.3 One-half of one vote for each Apartment Unit
7 situated on an Apartment Parcel on which construction has been
8 completed;

9 3.1.4 One-half of one vote for each Dwelling Unit
10 permitted under the applicable Tract Declaration upon an
11 Apartment Parcel upon which construction has not been completed
12 (or, if no Tract Declaration has been Recorded with respect to
13 such Parcel, then one-half of one vote for each Dwelling Unit
14 permitted upon such Parcel under the then current Master
15 Development Plan);

16 3.1.5 In the case of a Non-Residential Parcel
17 (except as provided in Subsection 3.1.6 below), three (3) votes
18 for each Net Acre within such Parcel (in the case of fractional
19 Net Acres rounding to the nearest whole number of votes), pro-
20 vided, however, that if a commercial condominium is estab-
21 lished, Declarant or the Board, as applicable, may allocate
22 votes in a manner deemed appropriate so that the allocated
23 votes do not exceed three (3) per Net Acre; or

24 3.1.6 In the case of a Non-Residential Parcel (or
25 set of Non-Residential Parcels under common ownership or man-
26 agement) which is limited by one or more Tract Declarations to
use as a golf course (together with related or incidental
facilities, such as a clubhouse, pro shop, restaurant, dining
room and associated recreational facilities), whether public or
private, such number of votes per Net Acre as shall be speci-
fied in the Tract Declaration(s) Recorded against such Parcel
(or set of Parcels), but in no event less than one-twentieth
(1/20) of one vote per Net Acre, or more than three (3) votes
per Net Acre, within such Parcel (or set of Parcels). In the
event the use of any such Parcel shall be converted to any use
other than: (a) as described in the preceding sentence; or
(b) open space or Common Area, such Parcel shall be entitled to
the number of votes (and subject to Assessments at the rates)
as determined elsewhere in this Declaration for property of
similar use.

27 3.2 Declarant. Declarant shall be a Member of the
28 Association for so long as it holds a Class A or Class B
29 membership.

30 3.3 Voting Classes. The Association shall have two
31 classes of voting Members:

1 3.3.1 Class A. Class A Members shall be all
2 Owners except Declarant (until the conversion of Declarant's
3 Class B membership to Class A membership as provided below).
4 Subject to the authority of the Board to suspend an Owner's
5 voting rights in accordance with the provisions hereof, and
6 except as provided in this Subsection 3.3.1, a Class A Member
7 shall have the number of votes provided in Section 3.1.
8 Notwithstanding the foregoing, a Developer Owner who is a Class
9 A Member and is entitled to pay only a reduced Assessment pur-
10 suant to Section 8.4 shall be entitled only to the number of
11 votes equal to the percentage of the full Assessments such
12 Member is entitled to pay multiplied by the number of votes
13 such Member would otherwise have under Section 3.1 above.
14 Further, the Owner of Exempt Property shall not be entitled to
15 any votes with respect to such property except as provided in
16 Section 1.22; and

9 3.3.2 Class B. The Class B Member shall be
10 Declarant. The Class B Member shall be entitled to the number
11 of votes equal to three times the number of votes which would
12 otherwise be attributable to Lots and Parcels owned by
13 Declarant as determined pursuant to Section 3.1 above, provided
14 that as to any Parcel owned by Declarant which has not yet been
15 subjected to a Tract Declaration (and therefore has not yet
16 been assigned to a particular land use classification), for
17 purposes of determining the votes to which Declarant shall be
18 entitled with respect to such Parcel: (a) such Parcel shall be
19 deemed to be either a residential Parcel or a Non-Residential
20 Parcel, depending upon the use for such Parcel designated on
21 the Master Development Plan; and (b) a Parcel deemed pursuant
22 to subparagraph (a) to be a residential Parcel shall be deemed
23 to have the maximum number of Dwelling Units permitted for such
24 Parcel under the Master Development Plan. Declarant shall have
25 the right, at any time and from time to time, to assign all or
26 any part of its voting rights appurtenant to its Class B
membership (as well as all or any other rights appurtenant
thereto) to one or more Persons acquiring, for purposes of
development and sale, any part of the Property. Further,
Declarant shall have the right, at any time and from time to
time, to designate an individual or individuals to exercise
Declarant's voting rights (whether appurtenant to Class A or
Class B membership), provided, however, that such designation
shall not act as an assignment by Declarant of its membership
or voting rights hereunder. Subject to the provisions of
Article 6 below, the Class B membership automatically shall
cease and be converted to a Class A membership upon the ear-
liest to occur of the following events:

(a) the date which is 90 days after the date
upon which the total number of votes of the Class A Members
equals the total number of votes of the Class B Member;

1 (b) the date which is twenty (20) years after
the date this Declaration is Recorded; or

2 (c) the date on which Declarant Records a
3 written notice electing to convert the Class B membership to
Class A membership.

4 3.4 Right to Vote. No change in the ownership of a
5 Lot or Parcel shall be effective for voting purposes until the
6 Board receives written notice of such change together with sat-
7 isfactory evidence thereof. The vote(s) for each Member must
8 be cast as a single unit. Split or fractional votes shall not
9 be allowed. Any Owner of a Lot, Parcel or Apartment Unit which
10 is leased or which is subject to a valid, outstanding and
11 Recorded executory agreement of sale may, in the lease, agree-
ment of sale or other written instrument, assign the voting
right appurtenant to the Lot, Parcel or Apartment Unit to the
lessee thereof or to the purchaser thereof under such agreement
of sale, as applicable, provided that a copy of the written
assignment of such voting rights is furnished to the Secretary
of the Association prior to any meeting at which such lessee or
purchaser seeks to exercise such voting right.

12 3.5 Members' Rights. Each Member shall have the
13 rights, duties and obligations set forth in this Declaration,
14 the Articles, the Bylaws, any applicable Tract Declaration, the
Association Rules, the Guidelines and any other rules and regu-
lations adopted pursuant to any of the foregoing.

15 3.6 Transfer of Membership. Except as otherwise pro-
16 vided in this Declaration, the rights, duties and obligations
17 of a Class A Member cannot and shall not be assigned, trans-
18 ferred, pledged, conveyed or alienated in any way except upon
19 transfer of ownership of such Class A Member's Lot, Parcel or
20 Apartment Unit, and then only to the transferee thereof. Such
transfer may be effected by deed, intestate succession,
testamentary disposition, foreclosure or other legal process
authorized under Arizona law, shall operate to transfer the
membership appurtenant thereto to the new Owner and any attempt
to make any other form of transfer shall be void.

21 ARTICLE 4

22 MAINTENANCE

23 4.1 Association's General Responsibilities. The
24 Association shall maintain and keep in good repair the Common
25 Area (and certain other areas, as more expressly provided in
26 this Section 4.1), and the costs of such maintenance shall be
Common Expenses of the Association (subject to any insurance

1 then in effect and subject to Section 4.5 below). This
maintenance shall include, but not be limited to:

2 4.1.1 maintenance, repair and replacement of all
3 landscaping and other flora, structures and improvements
4 situated upon the Common Area, including without limitation any
perimeter or boundary walls on or adjacent to the exterior
boundaries of the Property;

5 4.1.2 maintenance, repair and replacement of land-
6 scaping and flora in or upon public rights-of-way immediately
7 adjacent to the exterior boundaries of the Property (except
where such obligations have been assumed by the City or other
agency or Person);

8 4.1.3 maintenance, repair and replacement of land-
9 scaping and signs within areas designated on one or more sub-
10 division plats or Tract Declarations Recorded by, or bearing
11 the written approval of, Declarant (or, after termination of
the Class B membership, the Association) with respect to all or
portions of the Property as "landscape easements," "landscape
and wall easements" or "landscape and sign easements" (or simi-
lar designations) to be maintained by the Association;

12 4.1.4 maintenance, repair and replacement of the
13 side facing a street or portion of the Common Area of any
14 boundary or perimeter wall situated within areas designated on
one or more subdivision plats or Tract Declarations Recorded
15 by, or bearing the written approval of, Declarant (or, after
16 termination of the Class B membership, the Association) with
respect to the Property as "wall easements" (or similar
designations) to be maintained by the Association;

17 4.1.5 maintenance and repair of any drainage ease-
18 ments upon or across the Common Area; and

19 4.1.6 maintenance, repair, replacement, repairing
20 and resurfacing of any and all private streets or private
21 roadways constituting a part of the Common Area, and of any and
22 all private street lights, light poles, street signs and other
23 equipment and facilities appurtenant to such private streets or
roadways (so long as such private street lights, light poles,
street signs or other equipment or facilities are not owned by
a Subsidiary Association or any Owner or by a utility company
or similar entity obligated to maintain, repair and replace
same).

24 Notwithstanding the foregoing, except where otherwise provided
25 in a Tract Declaration or other instrument Recorded by, or
26 bearing the written approval of, Declarant (or, after termina-
tion of the Class B membership, the Association) affecting any

1 part of the Property, maintenance of the side facing any public
2 or private street or roadway of any boundary or perimeter walls
3 situated upon the Property along such public or private street
4 or roadway shall be the responsibility of the Association,
5 while the maintenance of the side of such boundary or perimeter
6 walls (and of boundary or perimeter walls between Common Area
7 and an Owner's Lot or Parcel) facing an Owner's Lot or Parcel
8 shall be the responsibility of such Owner (or, if applicable,
9 of a Subsidiary Association having jurisdiction over such Lot,
10 if so provided in a Recorded declaration of condominium or of
11 covenants, conditions and restrictions governing such Lot and
12 such Subsidiary Association).

13 4.2 Maintenance of Owner's Structures. Each Owner
14 shall be responsible for the maintenance, cleaning, painting,
15 repair and general care of all structures and landscaping
16 existing or constructed upon such Owner's Lot or Parcel, and,
17 in particular, each Owner shall cause the exterior of said
18 structures and said landscaping to be maintained in good condi-
19 tion and repair and in an attractive state consistent with gen-
20 eral community standards within the Property. In the event
21 that the Association shall determine, by the affirmative vote
22 of a majority of the votes of each class of Members represented
23 in person or by valid proxy at a meeting called for such pur-
24 pose, that any Owner is in breach of such Owner's obligations
25 under the preceding sentence, the Association shall promptly
26 give such Owner written notice of such determination, including
a reasonably detailed list or description of the repairs, main-
tenance or other work required to cure such Owner's breach, and
in the event the Owner shall not have cured such breach within
thirty (30) days after the date of said written notice, the
Association may cause the repairs, maintenance or other work to
be performed so as to cure such Owner's breach, and the
Association's costs in doing so, together with interest from
the date of expenditure at the rate set forth in Section 11.8
of this Declaration, shall constitute a lien on such Owner's
Lot or Parcel, which lien shall have the priority and may be
enforced in the manner described in Section 8.3 of this
Declaration; the Association shall also have standing and
authority to request that a court of competent jurisdiction
compel such Owner to cure such breach, and to the extent not
inconsistent with an order of such court, the Association may
pursue either or both of the courses of action described in
this sentence. The Association shall have an easement on,
over, across and through each Lot and Parcel to permit it to
carry out its rights, duties and obligations under this Article
4. In the case of Condominium Units or other Dwelling Units,
the exterior maintenance of which is the responsibility of a
Subsidiary Association pursuant to a Subsidiary Declaration,
the maintenance duties and obligations imposed by this
Section 4.2 upon Owners shall be fulfilled and performed by the

1 Subsidiary Association established by such Subsidiary
2 Declaration, and in the event such Subsidiary Association fails
3 to meet such duties and obligations, the Association shall have
4 all the same rights and remedies as are provided by this
5 Section 4.2 in the case of an Owner's breach, except that if
6 the Association expends any funds to cure a breach by such
7 Subsidiary Association, its costs (including interest as pro-
8 vided in this Section 4.2) shall be the obligation of the
9 Subsidiary Association and, except as otherwise limited or pro-
10 hibited by law, shall also constitute a lien against each
11 Condominium Unit or other Dwelling Unit subject to the juris-
12 diction of such Subsidiary Association, which lien shall have
13 the priority and may be enforced in the matter described in
14 Section 8.3 of this Declaration.

15 4.3 Publicly-Dedicated Areas. Except as expressly
16 provided in this Article 4 (including, without limitation, in
17 Subsection 4.1.2), and except as may otherwise be required by
18 applicable law, the Association shall have no responsibility to
19 maintain any areas within the Property (including, but not
20 limited to, public streets) which are dedicated to or the
21 responsibility of a municipality or other governmental entity.

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

19 4.5 Additional Parcel Assessments. Where the
20 Association has the responsibility to maintain, repair,
21 replace, repave, resurface and operate private streets or pri-
22 vate roadways constituting a part of the Common Area (or pri-
23 vate street lights, light poles, street signs and other
24 equipment and facilities appurtenant thereto), or any open
25 space, recreational or other common facilities constituting a
26 part of the Common Area, the Board, if in its discretion such
private streets or private roadways (or appurtenant equipment
and facilities), or open space, recreational or other common
facilities, exclusively or disproportionately benefit the
Owners of Lots within a particular subdivision (and their
respective Occupants, guests and invitees) as compared to the

1 Owners of other Lots or Parcels within the Property (and their
2 respective Occupants, guests and invitees), may assess all (or
3 such appropriate portion as the Board shall reasonably deter-
4 mine) of the costs of such maintenance, repair, replacement,
5 repaving, resurfacing and operation solely against the Lots
6 within such subdivision (and the respective Owners thereof) as
7 additional Parcel Assessments, which shall be assessed equally
8 against each of the Lots within such subdivision and shall be
9 secured by the lien for Assessments created by and described
10 in, and enforceable in accordance with, Article 8 below. Such
11 additional Parcel Assessments may also include amounts to
12 establish and fund reserves for such maintenance, repair,
13 replacement, repaving, resurfacing and operation, and to pur-
14 chase public liability, property damage and/or casualty insur-
15 ance with respect to such private streets or private roadways
16 (and such appurtenant equipment and facilities) and such open
17 space, recreational and other common facilities, all if and as
18 the Board may deem reasonable and appropriate. In no event
19 shall the amount assessed by the Board against any Lot pursuant
20 to this Section 4.5 for any fiscal year of the Association
21 exceed one hundred percent (100%) of the Maximum Annual
22 Assessment for a Lot for such fiscal year, as determined in
23 accordance with Section 8.7 below. The intention of this
24 Section 4.5 (which shall be considered in its interpretation
25 and application) is to establish a mechanism whereby various
26 facilities intended and designed solely or primarily for use by
the Owners of Lots within a particular subdivision (and their
Occupants, guests and invitees) may be owned and maintained by
the Association, at the sole or primary expense of such Owners,
rather than require formation of a Subsidiary Association to
undertake such ownership and maintenance, where it appears
likely at the time the subdivision is developed that cost
and/or management efficiencies would be realized by giving
those rights and obligations to the Association rather than to
a Subsidiary Association.

18 4.6 No Discrimination. The provision of services in
19 accordance with this Article shall not be deemed to be discrim-
20 ination in favor of or against any Owner or Subsidiary
21 Association.

ARTICLE 5INSURANCE AND FIDELITY BONDS; CASUALTY LOSSES5.1 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 for all insurable improvements on the Common Area against loss or damage by fire or other hazards, casualties and risks embraced within the coverage of the standard "extended coverage" policy available from time to time in the State of Arizona, against all other perils customarily covered for similar types of projects (including those covered by the standard "all risk" endorsement available from time to time in the State of Arizona), and against loss or damage due to vandalism and malicious mischief. Said insurance shall be in an amount equal to 100% of the current replacement cost, from time to time, without deduction for depreciation, of all such insurable improvements (excluding land, foundations, excavations and other items usually excluded from such insurance coverage, but including fixtures and building service equipment and personal property and supplies owned by the Association), 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 improvements required to be insured hereunder) by the Board with the assistance of the insurer or insurers providing such coverage.

(b) The policy or policies providing the insurance required by this Subsection 5.1.1 shall provide that: (i) any insurance trust agreement will be recognized; (ii) the insurer shall waive any right of subrogation against the Owners, the Board or the Association, and their respective Occupants, agents, tenants, servants, employees, guests and household members; (iii) such insurance shall not be cancelled, invalidated or suspended by reason of any acts or omissions of any Owner (or of such Owner's Occupants, invitees, agents, tenants, servants, employees, guests or household members), or of any member, officer or employee of the 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 primary, and shall in no event be brought into contribution with any insurance maintained by individual Owners, their Mortgagees or other lien holders; and (v) the coverage afforded by such policy or policies shall not be prejudiced by any act or

1 omission of any Owner or Occupant (or their agents) when such
act or omission is not within the control of the Association.

2 (c) The policy or policies providing the
3 insurance required by this Subsection 5.1.1 shall also contain
(if available at no additional cost or at a reasonable addi-
4 tional cost) the following endorsements (or their
equivalents): (i) "agreed amount" and "inflation protection"
5 endorsements; (ii) "increased cost of construction" endorse-
ment; (iii) "contingent liability from operation of building
6 laws or codes" endorsement; (iv) "demolition cost" endorsement;
and (v) "current replacement cost" endorsement.

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

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

14 5.1.2 Liability Insurance. The Board, acting on
behalf of the Association, shall obtain and maintain at all
15 times a comprehensive general liability policy insuring the
Association, each member of the Board and each Owner (and, so
16 long as Declarant or any affiliate of Declarant, or any Person
with whom Declarant or any such affiliate contracts directly
17 for the performance of all or a substantial portion of
Declarant's rights and obligations hereunder, or for the con-
struction of substantial improvements on the Property, retains
18 an interest in the Property or any Lot or Parcel, insuring
Declarant, such affiliate and such other Person, if identified
19 by Declarant to the Association, provided that any added pre-
mium cost or other expense resulting from naming Declarant,
20 such affiliate or such other Person as insureds shall be borne
by Declarant, such affiliate or such other Person), against any
21 liability to the public or to any Owner or Occupant (and such
Owner's or Occupant's invitees, agents, employees, tenants,
22 guests, servants and household members) for death, bodily
injury and property damage arising out of or incident to the
23 ownership or use of the Common Area or arising out of or inci-
dent to the performance by the Association of its maintenance
24 and other obligations hereunder. The Board, with the assis-
tance of the insurer(s) providing such coverage, shall review
25 annually the amounts of coverage afforded by said comprehensive
general liability policy or policies and adjust such amounts of
26

1 coverage as the Board deems appropriate, but in no event shall
 2 said policy or policies provide coverage less than One Million
 3 Dollars (\$1,000,000.00) for death, bodily injury and property
 4 damage for any single occurrence. The policy or policies pro-
 5 viding such insurance shall, by specific endorsement or other-
 wise, 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 Declarant, any affiliate of Declarant or any other
 Person named as an insured or additional insured thereunder).

6 5.1.3 Flood Insurance. In the event any part of
 7 the Common Area is in a "special flood hazard area," as defined
 8 by the Federal Emergency Management Agency (or its successors),
 9 the Board, acting on behalf of the Association, shall obtain
 10 (and maintain at all times during which any part of the Common
 11 Area is in such a "special flood hazard area") a "master" or
 12 "blanket" policy of flood insurance covering all insurable
 13 improvements on the Common Area and covering any personal prop-
 14 erty situated from time to time within such improvements (to
 15 the extent such personal property is normally covered by the
 16 standard flood insurance policy available from time to time in
 the State of Arizona). Said insurance shall be in an amount
 not less than the lesser of: (a) 100% of the current replace-
 ment cost, from time to time, of all such insurable improve-
 ments (and such insurable personal property) located in the
 "special flood hazard area"; or (b) the maximum coverage avail-
 able for such insurable improvements and insurable personal
 property under the National Flood Insurance Program. Unless a
 higher maximum deductible amount is required by applicable law,
 the policy providing such insurance shall provide for a deduct-
 ible not to exceed the lesser of \$5,000 or one percent (1%) of
 the face amount of such policy.

17 5.1.4 General Provisions Governing Insurance. The
 18 insurance required to be obtained under Subsections 5.1.1,
 19 5.1.2 and 5.1.3 shall be written in the name of the Association
 20 as trustee for each of the Owners and for each Mortgagee (as
 their respective interests may appear) and shall be governed by
 the provisions hereinafter set forth:

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

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

25 (c) In no event shall the insurance coverage
 26 obtained and maintained by the Board hereunder be brought into

1 contribution with insurance purchased by individual Owners,
2 Occupants or their Mortgagees, or by any Subsidiary
3 Association, and the insurance carried by the Association shall
4 be primary;

5 (d) The Board shall be required to make every
6 reasonable effort to secure insurance policies that will pro-
7 vide for a waiver of subrogation by the insurer as to any
8 claims against the Board or the Owners and their respective
9 Occupants, tenants, servants, agents, employees, guests and
10 household members;

11 (e) Each policy providing insurance coverage
12 required by Subsections 5.1.1, 5.1.2 and 5.1.3 shall require
13 the applicable insurer to give not less than ten (10) days
14 written notice to the Association, and to each Mortgagee which
15 shall have given such insurer written notice of such
16 Mortgagee's interest in a Lot (which notice must include the
17 name and address of such Mortgagee), of any cancellation,
18 refusal to renew or material modification of such policy; and

19 (f) To the extent reasonably available, each
20 policy providing insurance coverage required by Subsections
21 5.1.1, 5.1.2 and 5.1.3 shall contain a waiver by the applicable
22 insurer of its rights to repair and reconstruct instead of
23 paying cash.

24 5.1.5 Fidelity Bonds. The Board, acting on behalf
25 of the Association, shall obtain and maintain at all times ade-
26 quate fidelity bond coverage to protect against dishonest acts
on the part of officers, directors and employees of the
Association and all others who handle, or are responsible for
handling, funds held or administered by the Association,
whether or not such officers, directors, employees or others
receive compensation for services they render to or on behalf
of the Association. Any independent management agent which
handles funds for the Association shall also obtain (and pay
for) such fidelity bond coverage with respect to its own
activities (and those of its directors, officers and employees,
whether or not such directors, officers or employees receive
compensation for services rendered). Such fidelity bonds: (a)
shall name the Association as obligee; (b) shall be issued by
one or more companies authorized to issue such bonds in the
State of Arizona; and (c) shall be in an amount sufficient to
cover the maximum total of funds reasonably expected by the
Board to be in the custody of the Association or such agent at
any time while such bond is in force, but in no event shall the
amount of such fidelity bond coverage be less than the sum of
three (3) months' Annual Assessments on all Lots and Parcels,
plus the total of funds held in the Association's reserves.
Each such fidelity bond shall provide that the issuer thereof

1 shall provide not less than ten (10) days written notice to the
Association and to each Eligible Mortgage Holder before such
2 bond may be cancelled or substantially modified for any reason.

3 5.1.6 Workers' Compensation Insurance. The Board,
acting on behalf of the Association, shall obtain and maintain
workers' compensation insurance if and to the extent necessary
4 to meet the requirements of applicable law.

5 5.1.7 Cost of Insurance. All premiums for the
insurance or bonds required to be obtained by the Board by this
6 Section 5.1 shall be Common Expenses (except that, as provided
in Subsection 5.1.5 above, the cost of the fidelity bond
7 required to be furnished by any independent management agent
shall be paid by such agent, and, as provided in
8 Subsection 5.1.2 above, any added cost of naming Declarant, or
any Person with whom or which Declarant contracts directly for
9 the performance of all or a substantial portion of Declarant's
obligations hereunder, or for the construction of improvements
10 on the Property, shall be borne by Declarant or such other
Person). The Board shall not be liable for failure to obtain
11 or maintain any of the insurance coverage required by this
Section 5.1, or for any loss or damage resulting from such
12 failure, if such failure is due to the unavailability of such
insurance coverage from reputable companies authorized to pro-
13 vide such insurance in the State of Arizona, or if such insur-
ance coverage is available only at an unreasonable cost.

14 5.1.8 Subsequent Changes in Insurance
Requirements. It is the intention of this Article 5 (and, in
15 particular, of this Section 5.1), to impose upon the
Association the obligation to obtain and maintain in full force
16 and effect at least those types and amounts of insurance as are
required, at the time this Declaration is Recorded, by the
17 Federal National Mortgage Association, Federal Home Loan
Mortgage Corporation, Veterans Administration and Federal
18 Housing Administration. However, notwithstanding any provision
of this Declaration to the contrary, should any or all of said
19 agencies subsequently amend or modify their respective require-
ments regarding the insurance coverage required to be main-
20 tained by the Association, the Board, acting on behalf of the
Association, shall, promptly upon receiving notice of such
21 amendment or modification from any such agency, from any Owner
or Eligible Mortgage Holder or from Declarant, obtain such
22 additional, modified or amended policy or policies of insurance
as may be necessary to conform to such amended or modified
23 requirements (provided, however, that the Board shall not be
required to alter the types or amounts of coverage if the
24 amendments or modifications adopted by any such agency reduce
or eliminate required types or amounts of insurance). Should
25 such requirements of any such agency conflict with the
26

1 requirements of any other such agency or with applicable
 2 provisions of law, the Board, acting on behalf of the
 3 Association, shall diligently work with such agency or agencies
 4 to resolve such conflict and shall thereafter obtain and
 5 maintain such additional, modified or amended policy or poli-
 6 cies of insurance as may be necessary to conform with the
 7 requirements of such agencies, taking into account the resolu-
 8 tion of said conflict. In the event the Board, after exercise
 9 of such diligence, is unable to resolve such conflict, the
 10 Board, acting on behalf of the Association, shall exercise its
 11 good faith business judgment and obtain and maintain in full
 12 force and effect such insurance coverage as the Board, in the
 13 exercise of such judgment, deems to conform as closely as pos-
 14 sible with the applicable requirements of all such agencies,
 15 and of law, taking into account such conflict. Nothing in this
 16 Subsection 5.1.8 shall be deemed to require the Board to reduce
 17 the insurance coverage then in effect for the Association in
 18 the event any such agency modifies its requirements to permit
 19 lesser coverages.

10 5.2 Insurance to be Obtained by the Owners.

11 5.2.1 Public Liability Insurance. It shall be the
 12 individual responsibility of each Owner to provide (or cause to
 13 be provided), as such Owner sees fit and without any cost or
 14 expense to any other Owner or to the Association, such compre-
 15 hensive public liability insurance as such Owner may desire
 16 against loss or liability for damages and any expense of
 17 defending against any claim for damages which might result from
 18 the ownership, use or occupancy of such Owner's Lot or Parcel.

16 5.2.2 Hazard and Contents Insurance. It shall be
 17 the individual responsibility of each Owner to provide (or
 18 cause to be provided), as such Owner sees fit and without any
 19 cost or expense to any other Owner or to the Association, such
 20 fire, liability, theft and any other insurance covering:
 21 (a) any Dwelling Unit and any other structure on (or constitut-
 22 ing) such Owner's Lot or Parcel; and (b) any and all fixtures
 23 and personal property upon such Lot or Parcel or in such
 24 Dwelling Unit or other structure(s), except, in either case (a)
 25 or (b), where a Subsidiary Declaration affecting a Lot or
 26 Parcel assigns such obligation to a Subsidiary Association.

22 5.3 Casualty Losses.

23 5.3.1 Damage and Destruction.

24 (a) Immediately after any damage or destruc-
 25 tion by fire or other casualty to all or any part of the prop-
 26 erty required to be insured by the Association under
Section 5.1 above, the Board or its duly authorized agent

1 shall: (i) proceed with the filing and adjustment of all
2 claims arising under such insurance; (ii) obtain reliable and
3 detailed estimates of the cost of repair or reconstruction of
4 the damaged or destroyed property; and (iii) upon receipt of
5 the proceeds of such insurance and except as is otherwise pro-
6 vided in this Subsection 5.3.1, use such proceeds to repair or
7 reconstruct the damaged or destroyed property. The terms
8 "repair" and "reconstruction" (or variants thereof), as used in
9 this Article 5, shall mean repairing or restoring the property
10 in question to substantially the same condition as that in
11 which it existed prior to the fire or other casualty (or, where
12 applicable, replacing the damaged or destroyed property with
13 property substantially similar to the damaged or destroyed
14 property as it existed prior to such damage or destruction).

8 (b) Any major damage or destruction to the
9 property required to be insured by the Association under
10 Section 5.1 above shall be repaired or reconstructed unless:
11 (i) at a special meeting of the Members of the Association duly
12 noticed and convened within sixty (60) days after the occur-
13 rence of such damage or destruction, the Members determine, by
14 a vote of Owners holding not less than seventy-five percent
15 (75%) of the votes in each class of Members, not to so repair
16 or reconstruct; and (ii) Eligible Mortgage Holders representing
17 at least fifty-one percent (51%) of all Lots subject to First
18 Mortgages held by Eligible Mortgage Holders concur in such
19 determination not to so repair or reconstruct. If for any rea-
20 son either the amount of the insurance proceeds to be paid as a
21 result of such damage or destruction, or reliable and detailed
22 estimates of the cost of repair or reconstruction, or both, are
23 not made available to the Association within said period, then
24 the period shall be extended until such information shall be
25 made or become available; provided, however, that such exten-
26 sion 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.

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

23 5.3.2 Excess or Deficiency of Proceeds. If the
24 damage or destruction for which the insurance proceeds are paid
25 is to be repaired or reconstructed and such proceeds are not
26 sufficient to pay the cost thereof, the Board shall, without
the necessity of a vote of the Members, levy assessments
against the Owners of all Lots and Parcels, which assessments

1 shall be allocated among such Owners in the same ratios as
2 Annual Assessments are allocated pursuant to Subsection 8.4.3
3 of this Declaration. Additional assessments may be made in
4 like manner at any time during or following the completion of
5 any repair or reconstruction. Any assessments levied pursuant
6 to this Subsection 5.3.2 shall be deemed to be a part of the
7 Assessments and shall be secured by the lien created by Section
8 8.3 below. If the funds available from insurance exceed the
9 cost of repair, such excess shall be used to meet Common
10 Expenses or, in the discretion of the Board, placed in a
11 reserve account for contingencies or capital improvements.

12 5.3.3 Repair or Reconstruction of Dwelling Units
13 or Other Structures. In the event of the destruction of a
14 Dwelling Unit or other structure on a Lot or Parcel, or of dam-
15 age to such Dwelling Unit or other structure which, in the rea-
16 sonable judgment of the Board, materially affects the exterior
17 appearance thereof, the Board shall have the right, at its
18 option, exercisable by written notice to the Owner of the Lot
19 or Parcel upon which such Dwelling Unit or other structure is
20 situated, to require such Owner to repair or reconstruct (or
21 cause to be repaired or reconstructed), at such Owner's expense
22 (subject to any insurance proceeds as such Owner may then or
23 thereafter receive in respect of such destruction or damage),
24 such Dwelling Unit or other structure within such reasonable
25 period of time as shall be specified by the Board in such
26 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 establish such time
period notwithstanding such Owner's failure to maintain hazard
or casualty insurance upon such Owner's Lot or Parcel or any
structures thereon and notwithstanding any unavailability or
delay in receipt of proceeds of any insurance policy or poli-
cies, although the Board may take such matters into account in
establishing or extending the time period within which such
repair or reconstruction must be completed. Any such repair or
reconstruction work shall be performed in compliance with all
applicable provisions hereof, and the Owner of such Lot or
Parcel shall take such steps as are reasonably necessary to
prevent damage to surrounding property and injury to persons as
may result from or arise in connection with the destroyed or
damaged Dwelling Unit or other structure or the repair or
reconstruction activities with respect thereto. The foregoing
provisions of this Subsection 5.3.3 shall also apply to struc-
tures containing Condominium Units: (a) to the extent
permitted by and subject to the provisions of the Arizona
Condominium Act (Sections 33-1201 through 33-1270, Arizona
Revised Statutes), as amended from time to time; and
(b) provided that all references in the foregoing provisions of
this Subsection 5.3.3 to the "Owner" of a Lot or Dwelling Unit
shall be deemed to be references to the Subsidiary Associati

1 having jurisdiction over the portion of the Property upon which
the damaged or destroyed Dwelling Unit(s) is (or are) situated.

2 ARTICLE 6

3 ANNEXATION OF ADDITIONAL PROPERTY; DEANNEXATION

4 6.1 Reservation of Certain Annexation Rights. As of
5 the date this Declaration is Recorded, Declarant contemplates
6 that one or more portions (and perhaps all) of the Annexable
7 Property may from time to time be annexed to the Property (and
8 thereby subjected to the provisions of this Declaration) and,
9 therefore, while Declarant shall have no obligation or duty to
10 so annex all or any portion of the Annexable Property,
11 Declarant hereby reserves the right, privilege and option from
12 time to time hereafter to add and annex to the Property (and
13 thereby to subject to the provisions of this Declaration) any
14 part(s) or all of the Annexable Property, without the vote of
15 the Members and without notice to or approval of any holder,
16 insurer or guarantor of any Mortgage or of any other Person,
provided, however, that the right, privilege and option
reserved in this sentence shall expire and terminate at 11:59
p.m. local time on December 31 of the calendar year in which
falls the twentieth (20th) anniversary of the date this
Declaration is Recorded. Notwithstanding the foregoing sen-
tence, no portion of the Annexable Property may be annexed to
the Property unless, at the time of each and any such annexa-
tion either: (a) the portion of the Annexable Property to be
annexed is owned by Declarant; or (b) the owner of the portion
to be annexed (if other than Declarant) consents in a written,
Recorded instrument to such annexation.

17 6.2 Limitations on Other Annexations. As of the date
18 this Declaration is Recorded, Declarant does not intend to
19 annex any additional property to the Property other than the
20 Annexable Property, and additional property not included within
21 the Annexable Property may be annexed to the Property only:
22 (a) by the affirmative vote of two-thirds (2/3) of the votes of
each class of Members represented in person or by valid proxy
at a meeting of Members duly called for that purpose; and (b)
with the approval of the applicable percentage of Eligible
Mortgage Holders, as provided in Section 11.2 hereof; and (c)
with the express written consent of each owner of all or any
part of the property proposed to be annexed.

23 6.3 FHA and VA Approval. In addition to the require-
24 ments imposed by Sections 6.1 and 6.2 above, so long as the
25 Class B membership is in existence no additional property
26 (whether or not a part of the Annexable Property) may be
annexed to the Property without the prior approval of the
Federal Housing Administration or the Veterans Administration

1 (except to the extent such annexations are in accordance with a
2 plan of annexation or expansion previously approved by such
3 agencies).

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

1 6.5 Effect of Annexation. Upon the effective date of
2 an annexation pursuant to this Article 6, as provided above:
3 (a) the property so annexed shall immediately be and become a
4 part of the Property and subject to all of the provisions
5 hereof; (b) any Lot or Parcel then or thereafter constituting a
6 part of the annexed property, and the Owner of any such Lot or
7 Parcel, shall thereupon be subject to all of the provisions of
8 this Declaration (including, but not limited to, the provisions
9 of Articles 2, 3 and 8 hereof); (c) any part or parts of the
10 property annexed which is or are designated or declared to be
11 Common Area shall thereupon be subject to the provisions of
12 this Declaration (including, but not limited to, the provisions
13 of Articles 2 and 4 hereof); and (d) improvements then or
14 thereafter situated upon the annexed property shall be subject
15 to the provisions of this Declaration and shall be reasonably
16 consistent, in terms of quality of construction, with the
17 improvements situated upon other portions of the Property prior
18 to such annexation.

19 6.6 No Obligation to Annex. Nothing herein shall
20 constitute a representation, warranty or covenant that
21 Declarant, any successor or assign of or Declarant, or any
22 other Person will subject any additional property (whether o
23

1 not a part of the Annexable Property) to the provisions of this
2 Declaration, nor shall Declarant, any successor or assign of
3 Declarant, or any other Person be obligated so to do, and
4 Declarant may, by Recorded instrument executed by Declarant,
5 waive its rights so to do, in whole or in part, at any time or
6 from time to time.

7 6.7 De-Annexation. Notwithstanding any other provi-
8 sion of this Declaration, Declarant shall have the right from
9 time to time, at its sole option and without the consent of any
10 other Person (except as provided in this Section 6.7), to
11 delete from the Property and remove from the effect of this
12 Declaration one or more portions of the Property, provided,
13 however, that: (a) a portion of the Property may not be so
14 deleted and removed unless at the time of such deletion and
15 removal such portion is owned by Declarant (subject to
16 Section 11.9 below) or Declarant executes and Records an
17 instrument approving such deletion and removal; (b) a portion
18 of the Property may not be so deleted and removed unless at the
19 time of such deletion and removal no Dwelling Units or Common
20 Area recreational facilities have been constructed thereon; and
21 (c) a portion of the Property may not be so deleted and removed
22 if such deletion and removal would deprive Owners and Occupants
23 of other parts of the Property of access or other easements or
24 rights-of-way necessary to the continued use of their respec-
25 tive parts of the Property (unless Declarant at the same time
26 provides for reasonably adequate replacement easements or
rights-of-way). Declarant may exercise its rights under this
Section 6.7 in each case by executing and causing to be
Recorded an instrument which identifies the portion of the
Property to be so deleted and removed and which is executed by
each owner of such portion (if other than Declarant), and the
deletion and removal of such portion of the Property shall be
effective upon the later of: (i) the date such instrument is
Recorded; or (ii) the effective date specified in such instru-
ment, if any, whereupon, except as otherwise expressly provided
in this Section 6.7, the portion of the Property so deleted and
removed shall thereafter for all purposes be deemed not a part
of the Property and not subject to this Declaration, and the
owner(s) thereof (or of interests therein) shall not be deemed
to be Owners or Members or have any other rights or obligations
hereunder except as members of the general public. No such
deletion and removal of a portion of the Property shall act to
release such portion from the lien for Assessments or other
charges hereunder which have accrued prior to the effective
date of such deletion and removal, but all such Assessments or
other charges shall be appropriately prorated to the effective
date of such deletion and removal, and no Assessments or other
charges shall thereafter accrue hereunder with respect to the
portion of the Property so deleted and removed. Each portion
of the Property deleted and removed pursuant to this Section

1 6.7 shall thereafter be deemed to be a part of the Annexable
2 Property unless otherwise expressly provided to the contrary in
the instrument Recorded by Declarant to effect such deletion
and removal.

3 ARTICLE 7

4 RIGHTS AND OBLIGATIONS OF THE ASSOCIATION

5 7.1 Common Area. The Association, subject to the
6 rights of the Owners set forth in this Declaration, shall be
7 responsible for the management and control of the Common Area
and shall keep the Common Area in good, clean, attractive and
sanitary condition, order and repair, pursuant to the terms and
conditions hereof.

8 7.2 Personal Property and Real Property for Common
9 Use. The Association, through action of the Board, may
10 acquire, hold and dispose of tangible and intangible personal
11 property and real property, except that, subject to the provi-
12 sions of Sections 11.2, 11.10 and 11.11, no dedication, sale or
13 transfer of all or any part of the Common Area shall be made or
14 effective unless approved by not less than two-thirds (2/3) of
15 the votes of each class of Members represented in person or by
16 valid proxy at a meeting of Members duly called for such pur-
pose. The Board, acting on behalf of the Association, shall
accept any real or personal property, leasehold or other prop-
erty interests within, adjacent to or related to all or any
part of the Property as may be conveyed or assigned to the
Association by Declarant (including, but not limited to, such
parts of the Common Area as may now or hereafter be held by
Declarant).

17 7.3 Rules and Regulations. By a majority vote of the
18 Board, the Association may, from time to time and subject to
19 the provisions of this Declaration, adopt, amend and repeal the
20 Association Rules. The Association Rules may restrict and gov-
21 ern the use of the Common Area, provided, however, that the
22 Association Rules shall not discriminate among Owners and
23 Occupants except to reflect their different rights and obliga-
24 tions as provided herein, and shall not be inconsistent with
25 this Declaration, the Articles or the Bylaws. The Association
26 Rules shall be intended to enhance the preservation and devel-
opment of the Property, the Common Area and the Limited Common
Areas. Upon adoption, the Association Rules shall have the
same force and effect as if they were set forth herein.
Sanctions for violation of the Association Rules or of this
Declaration may be imposed by the Board and may include
suspension of the right to vote and the right to use the recre-
ational facilities on the Common Area, and, where approved by a
majority vote of each class of Members represented in person or

1 by valid proxy at a meeting of Members duly called for such
2 purpose, may also include reasonable monetary fines. No
3 suspension of an Owner's right to vote or of the right of such
4 Owner (or any Occupant of such Owner's Lot or Parcel or any
5 guest or household member of such Owner or Occupant) to use the
6 recreational facilities on the Common Area due to a violation
7 of the Association Rules may be for a period longer than sixty
8 (60) days (except where such Owner or Occupant fails or refuses
9 to cease or correct an on-going violation or commits the same
10 or another violation, in which event such suspension may be
11 extended for additional periods not to exceed sixty (60) days
12 each until such violation ceases or is corrected).

13 7.4 Availability of Books, Records and Other
14 Documents. The Association shall maintain complete and current
15 copies of this Declaration, the Articles, the Bylaws, the
16 Association Rules and the Guidelines (as well as any amendments
17 to the foregoing) and of the books, records and financial
18 statements of the Association, and, upon the prior written
19 request to the Association by any Owner or by any holder,
20 insurer or guarantor of a First Mortgage, shall make the same
21 available for inspection, at reasonable times and under reason-
22 able circumstances, by such Owner or such holder, insurer or
23 guarantor.

24 7.5 Audited Financial Statements. In the event any
25 holder, insurer or guarantor of a First Mortgage submits to the
26 Association a written request for an audited financial state-
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
guarantor, and in the event no such audited financial statement
has been prepared for the most recently concluded fiscal year,
the Association shall cause the same to be prepared and deliv-
ered to such holder, insurer or guarantor as soon as reasonably
possible. The cost of having such an audited financial state-
ment prepared shall be a Common Expense.

27 7.6 Implied Rights. The Association may exercise any
28 other right or privilege given to it expressly by this
29 Declaration, the Articles or the Bylaws, and every other right
30 or privilege reasonably to be implied from the existence of any
31 right or privilege given to it herein or reasonably necessary
32 to effectuate any such right or privilege.

33 7.7 Subsidiary Associations. In the event any home-
34 owners' or similar Subsidiary Association is formed by a
35 Developer Owner (other than Declarant) of a Parcel or portion
36 thereof, or group of Lots, such Subsidiary Association's
governing documents shall not be effective unless they have
been approved in advance by the Board and they specify that

1 such governing documents, such Parcel or portion thereof, or
 2 group of Lots, the Subsidiary Association, and the Subsidiary
 3 Association's members are subject and subordinate to this
 4 Declaration and the Articles, Bylaws, Guidelines and
 5 Association Rules. The Board shall not disapprove any such
 6 governing documents unless, in the Board's sole discretion,
 7 either: (a) they are inconsistent or in conflict with this
 8 Declaration, the Articles, the Bylaws, the Association Rules,
 9 the Guidelines and any applicable Tract Declaration; or
 10 (b) they fail to contain the specification required by the pre-
 11 ceding sentence.

12 7.8 Board of Directors and Officers. The affairs of
 13 the Association shall be conducted by the Board and such offi-
 14 cers as the Board may elect or appoint in accordance with the
 15 Articles and the Bylaws. The initial Board and each Board
 16 thereafter for so long as there is a Class B Member of the
 17 Association shall consist of three (3) Members or other per-
 18 sons, and Declarant shall have the right to appoint such direc-
 19 tors. Commencing with the first annual meeting of the Members
 20 when there is no longer a Class B Member, the Board shall con-
 21 sist of, and the voting Members shall elect, seven (7) direc-
 22 tors, all of whom must be Members (or an individual designated
 23 by a corporate, partnership or other non-individual Member).
 24 The foregoing reference to seven (7) directors shall be subject
 25 to increase in the number of directors as provided in the
 26 Bylaws. The term of each of the directors shall be for one
 year until there is no longer a Class B Member. Thereafter the
 initial terms shall be four (4) Directors for a 1-year term and
 three (3) Directors for a 2-year term, thus establishing a
 staggered Board. In succeeding years, all directors shall be
 elected for a 2-year term. The Board may appoint various com-
 mittees at its discretion. The Board may also appoint or
 engage a manager to be responsible for the day-to-day operation
 of the Association and the Common Area. The Board shall deter-
 mine the compensation to be paid to the manager.

19 ARTICLE 8

20 ASSESSMENTS

21 8.1 Creation of Assessment Right. In order to pro-
 22 vide funds to enable the Association to meet its financial and
 23 other obligations and to create and maintain appropriate
 24 reserves, there is hereby created a right of assessment exer-
 25 cisable on behalf of the Association by the Board. Annual
 26 Assessments and Special Assessments shall be for Common
 Expenses and shall be allocated among all Lots and Parcels as
 provided in this Article 8. Parcel Assessments shall be for
 the purposes provided in Sections 4.4, 4.5 and 8.10 hereof and
 shall be levied against one or more Parcels or against one or

1 more groups of Dwelling Units in particular portions of the
Property only in accordance with such Sections.

2 8.2 Covenants with Respect to Assessments. Each
3 Owner, by acceptance of his, her or its deed (or other convey-
4 ance instrument) with respect to a Lot or Parcel, is deemed to
5 covenant and agree to pay the Assessments levied pursuant to
6 this Declaration with respect to such Owner's Lot or Parcel,
7 together with interest from the date due at a rate equal to the
8 greater of: (a) ten percent (10%) per annum; or (b) the annual
9 rate of interest then in effect for new first priority single
10 family residential mortgage loans guaranteed by the Veterans
11 Administration, and together with such costs and reasonable
12 attorneys' fees as may be incurred by the Association in
13 seeking to collect such Assessments. Each of the Assessments
14 with respect to a Lot or Parcel, together with interest, costs
15 and reasonable attorneys' fees as provided in this Section 8.2,
16 shall also be the personal obligation of the Person who or
17 which was the Owner of such Lot or Parcel at the time such
18 Assessment arose with respect to such Lot or Parcel, provided,
19 however, that the personal obligation for delinquent
20 Assessments shall not pass to a successor in title of such
21 Owner unless expressly assumed by such successor. No Owner
shall be relieved of his, her or its obligation to pay any of
the Assessments by abandoning or not using his, her or its Lot
or Parcel or the Common Area, or by leasing or otherwise trans-
ferring occupancy rights with respect to his, her or its Lot or
Parcel. However, upon transfer by an Owner of fee title to
such Owner's Lot or Parcel, as evidenced by a Recorded instru-
ment, such transferring Owner shall not be liable for any
Assessments thereafter levied against such Lot or Parcel. The
obligation to pay Assessments is a separate and independent
covenant on the part of each Owner. No diminution or abatement
of Assessments or set-off shall be claimed or allowed by reason
of the alleged failure of the Association or Board to take some
action or perform some function required to be taken or per-
formed by the Association or Board under this Declaration, the
Articles or the Bylaws, or for inconvenience or discomfort
arising from the making of repairs or improvements which are
the responsibility of the Association, or from any action taken
to comply with any law or ordinance or with any order or direc-
tive of any municipal or other governmental authority.

22 8.3 Lien for Assessments; Foreclosure. There is
23 hereby created and established a lien against each Lot or
24 Parcel which shall secure payment of all present and future
25 Assessments assessed or levied against such Lot or Parcel or
26 the Owner thereof (together with any present or future charges,
fines, penalties or other amounts levied against such Lot or
Parcel or the Owner or Occupant thereof pursuant to this
Declaration or the Articles, the Bylaws, any applicable Tract

1 Declaration, Rules or the Guidelines). Such lien is and shall
 2 be prior and superior to all other liens affecting the Lot or
 3 Parcel in question, except: (a) all taxes, bonds, assessments
 4 and other levies which, by law, would be superior thereto; and
 5 (b) the lien or charge of any First Mortgage (or in the case of
 6 a Parcel, any first priority mortgage or deed of trust affect-
 7 ing such Parcel) made in good faith and for value. Such lien
 8 may be foreclosed in the manner provided by law for the fore-
 9 closure of mortgages. The sale and transfer of any Lot or
 10 Parcel pursuant to a mortgage foreclosure or any proceeding in
 11 lieu thereof shall extinguish the lien of the Assessments as to
 12 payments which became due prior to such sale or transfer, but
 13 no such sale or transfer shall relieve such Lot or Parcel from
 14 liability for any Assessments becoming due after such sale or
 15 transfer, or from the lien thereof. The Association shall have
 16 the power to bid for any Lot or Parcel at any sale to foreclose
 17 the Association's lien on the Lot or Parcel, and to acquire and
 18 hold, lease, mortgage and convey the same. During the period
 any Lot or Parcel is owned by the Association, no right to vote
 shall be exercised with respect to said Lot or Parcel and no
 Assessment (whether Annual Assessments, Special Assessments or
 Parcel Assessments) shall be assessed or levied on or with
 respect to said Lot or Parcel, provided, however, that the
 Association's acquisition and ownership of a Lot or Parcel
 under such circumstances shall not be deemed to convert the
 same into Common Area. The Association may maintain a suit to
 recover a money judgment for unpaid Assessments, rent, interest
 and attorneys' fees without foreclosing or waiving the lien
 securing same. Recording of this Declaration constitutes
 record notice and perfection of the liens established hereby,
 and further Recordation of any claim of a lien for Assessments
 or other amounts hereunder shall not be required, whether to
 establish or perfect such lien or to fix the priority thereof,
 or otherwise (although the Board shall have the option to
 Record written notices of claims of lien in such circumstances
 as the Board may deem appropriate).

19 8.4 Dates Assessments Commence; Rates of
 20 Assessment; Ratio Between Lots and Parcels.

21 8.4.1 Dates Assessments Commence; Rates. The
 22 Developer Owner of a Lot or Apartment Unit shall pay only 25%
 23 of the Annual Assessments, Special Assessments and Parcel
 24 Assessments for such Lot or Apartment Unit until the earliest
 25 of:

- 26 (a) the initial conveyance of a completed Dwelling Unit thereon to a different Owner;

1 (b) completion of construction of the
Apartment Units as evidenced by the issuance of a certificate
of occupancy therefor; or

2
3 (c) 12 months from the later of: (i) the
date on which the Lot or Apartment Unit (or the Parcel from
which such Lot was established or on which the Apartment Unit
4 is located) was included within the Property; or (ii) the date
of Declarant's conveyance of the Lot or Apartment Unit (or the
5 Parcel from which such Lot was established or on which the
Condominium Unit or Apartment Unit is located) to a Developer
6 Owner.

7 If the Developer Owner ceases to be entitled to the 25% rate
because of the occurrence of the event described in Subsection
8 8.4.1(c) above, then thereafter the Developer Owner shall pay
only 50% of the Annual Assessments, Special Assessments and
9 Parcel Assessments for such Lot or Apartment Unit until the
earliest of:

10
11 (d) the initial conveyance of a completed
 Dwelling Unit thereon to a different Owner;

12 (e) completion of the Apartment Units as
evidenced by the issuance of a certificate of occupancy
13 therefor; or

14 (f) 12 months after the date the 25% rate
15 terminated.

16 However, if the site plan for a Condominium Parcel or Apartment
Parcel approved by the Architectural Committee contemplates the
construction thereon of more than one building containing
17 Dwelling Units, the Condominium Parcel or Apartment Parcel
shall, for purposes of this Section only, be deemed subdivided
18 into the number of sub-parcels equal to the number of buildings
containing Dwelling Units shown on the approved site plan, in
19 which case the Annual Assessments, Special Assessments and
Parcel Assessments shall be deemed divided among such sub-
20 parcels in proportion to the number of Dwelling Units to be
contained in the buildings on the respective sub-parcels, such
21 that each of the buildings shall be allocated to a separate
sub-paragraph, and the Developer Owner shall pay only 25% or 50%,
22 as applicable, of the prorated Annual Assessments, Special
Assessments and Parcel Assessments against each sub-paragraph
23 until the earliest of the events specified in subsections (a)
through (c) above, or (d) through (f) above, as applicable,
24 with respect to such sub-paragraph.

25 The Developer Owner of a Single Family Parcel which remains an
intact Parcel because it has not yet been subdivided shall pay

1 reduced rates hereunder as though the Parcel had already been
 2 subdivided into the number of Lots designated in a Tract
 3 Declaration Recorded against such Parcel or, if no Tract
 4 Declaration designating such number of Lots has been Recorded,
 5 then the number of Lots shown for such Parcel on the Master
 6 Development Plan. In the event the Parcel is subdivided into
 7 phases and less than all of such phases are subdivided into
 8 Lots, the applicable reduced rates set forth above in this
 9 Subsection 8.4.1 will continue to apply to the unsubdivided
 10 remainder of the Parcel until the dates specified above.

11 8.4.2 Assessments as to Non-Residential Parcels.
 12 Assessments as to each Non-Residential Parcel shall commence
 13 upon the date a Tract Declaration is Recorded subjecting such
 14 Parcel to this Declaration, provided that Declarant or the
 15 Developer Owner (as applicable) of a Non-Residential Parcel
 16 shall pay only 25% of the Annual Assessments and Special
 17 Assessments for such Parcel until the earliest of:

18 (a) completion of the first building thereon
 19 as evidenced by the issuance of the certificate of occupancy or
 20 similar instrument therefor or completion of any other improve-
 21 ments that allow the Parcel to be used in any trade or business;

22 (b) 12 months from the later of: (i) the
 23 date on which the Parcel was included within the Property; or
 24 (ii) the date of Declarant's conveyance of the Parcel to a
 25 Developer Owner.

26 In the event the Developer Owner ceases to be entitled to the
 25% rate because of the occurrence of the event described in
Subsection 8.4.2(b) above, then thereafter the Developer Owner
 shall pay only 50% of the Annual Assessments and Special
 Assessments until the earliest of:

(c) completion of the first building on such
 Parcel as evidenced by the issuance of a certificate of occu-
 pancy therefor or completion of any other improvements that
 allow the Parcel to be used in any trade or business; or

(d) 12 months from the date the 25% rate ter-
 minated.

However, if the site plan for the Parcel approved by the
 Architectural Committee contemplates the construction of more
 than one building thereon, the Parcel shall, for the purposes
 of this Subsection 8.4.2 only, be deemed subdivided into the
 number of sub-parcels equal to the number of buildings set
 forth on the approved site plan, in which case the Annual
 Assessments and Special Assessments shall be deemed divided
 equally among such sub-parcels such that each of the buildings

1 shall be allocated to a separate sub-parcel, and the Developer
2 Owner shall pay only 25% or 50% as applicable of the Annual
3 Assessments and Special Assessments against each sub-parcel
4 until the earliest of the events specified in subsections (a)
5 and (b) above, or (c) and (d) above, as applicable, with
6 respect to each sub-parcel.

7 8.4.3 Ratio among Lots, Parcels and Apartment
8 Units. The Annual Assessments, Special Assessments and Maximum
9 Annual Assessment for each Apartment Unit shall always equal
10 fifty percent (50%) of the Annual Assessments, Special
11 Assessments and Maximum Annual Assessment, respectively, for
12 each Lot, and, subject to Subsection 8.7.4, the Annual
13 Assessments, Special Assessments and Maximum Annual Assessment
14 for each Net Acre in a Non-Residential Parcel shall always
15 equal three (3) times the Annual Assessments, Special
16 Assessments and Maximum Annual Assessments, respectively, for
17 each Lot (but in all cases without reference to any reduced
18 Assessment to which Declarant or any Developer Owner may be
19 entitled under Subsections 8.4.1 and 8.4.5).

20 8.4.4 Owners Entitled to Reduced Assessment
21 Rates. Subject to Subsection 8.4.5, a Non-Developer Owner
22 shall not be entitled to the reduced assessment rates provided
23 in Subsections 8.4.1 and 8.4.2 and a Developer Owner shall be
24 entitled to such reduced rates only if he is a Developer Owner
25 with respect to the specific Lot or Parcel in question. If a
26 Developer Owner ceases to qualify for such reduced assessment
rates during any fiscal year of the Association, that Developer
Owner shall immediately notify the Board, in writing, of the
change in status. The failure of a Developer Owner to notify
the Board of the change in status shall not prevent or preclude
the reinstatement of the obligation to pay Assessments at the
full rate pursuant hereto as of the applicable date provided
herein. The Association may from time to time request that any
Developer Owner of property being assessed at a reduced rate
furnish to the Association evidence that such Developer Owner
continues to be entitled to a reduced assessment rate under
Subsections 8.4.1 or 8.4.2, as applicable, and if such
Developer Owner fails to produce such evidence within 30 days
following the date of the Association's request, or if such
evidence as is furnished is unsatisfactory, in the Board's rea-
sonable discretion, to demonstrate such Developer Owner's con-
tinued entitlement to the reduced assessment rate, the Board
may terminate such reduced assessment rate as of the date rea-
sonably deemed appropriate by the Board.

24 8.4.5 Declarant's Entitlement to Reduced Rates.
25 Solely for purposes of determining the rate(s) of Assessments
26 payable by Declarant hereunder, Declarant shall be deemed a

1 Developer Owner under this Section 8.4 with respect to all Lots
and Parcels owned by Declarant.

2 8.5 Computation of Assessments; Annual Budget. The
3 Board shall prepare and adopt an annual budget for each fiscal
4 year of the Association, which annual budget shall serve as the
5 basis for determining the Annual Assessments for the applicable
6 fiscal year (subject to the limitations of Section 8.7
7 hereof). Such budget shall take into account the estimated
8 Common Expenses and cash requirements of the Association for
9 the year. The annual budget shall also take into account the
10 estimated net available cash income for the year, if any, from
11 the operation or use of any of the Common Area, whether from
12 Special Use Fees or otherwise. The annual budget shall also
13 provide for a reserve for contingencies for the year (and for
14 subsequent fiscal years) and a reserve for replacements, all in
15 such reasonably adequate amounts as shall be determined by the
16 Board, taking into account the number and nature of replaceable
17 assets, the expected life of each asset, and each asset's
18 expected repair or replacement cost. Not later than sixty (60)
19 days following the meeting of the Board at which the Board
20 adopts the annual budget for the year in question, the Board
21 shall cause to be delivered or mailed to each Owner a copy of
22 the budget and a statement of the amount of the Annual
23 Assessments to be levied against such Owner's Lot or Parcel for
24 the fiscal year in question. In the event the Board fails to
25 adopt a budget for any fiscal year prior to commencement of
26 such fiscal year, then until and unless such budget is adopted,
the budget (and the amount of the Annual Assessments provided
for therein) for the year immediately preceding shall remain in
effect. Subject to the provisions of this Section 8.5 and of
Sections 8.7 and 8.9, neither the annual budget (nor any
amended budget adopted pursuant to the following provisions of
this Section 8.5) adopted by the Board, nor any Assessment
levied pursuant thereto, shall be required to be ratified or
approved by the Owners or any other Persons. If, at any time
during a fiscal year of the Association the Board deems it nec-
essary to amend the budget for such year, the Board may do so
and may levy an additional Annual Assessment for such year
(subject to the limitations imposed by Section 8.7) or may call
a meeting of the Members to request that the Members approve a
Special Assessment pursuant to Section 8.9. Within sixty (60)
days after adoption of an amended budget (if the Board elects
to levy an additional Annual Assessment), the Board shall cause
to be delivered or mailed to each Owner a copy of the amended
budget and a statement of the additional Annual Assessment to
be levied against such Owner's Lot or Parcel; if, instead, the
Board elects to call a meeting of Members to seek approval of a
Special Assessment, the Board shall cause a copy of the amended
budget proposed by the Board to be delivered or mailed to each
Owner with the notice of such meeting, and if a Special

1 Assessment is duly approved by the Members at such meeting,
2 shall cause to be promptly mailed or delivered to Owner a
statement of the Special Assessment to be levied against such
Owner's Lot or Parcel.

3 8.6 Due Dates. Annual Assessments for each fiscal
4 year shall be due and payable in equal periodic installments,
5 payable not more frequently than monthly nor less frequently
6 that semiannually, as determined for such fiscal year by the
7 Board, with each such installment to be due and payable on or
8 before the first day of each applicable period during that fis-
9 cal year. Parcel Assessments and Special Assessments, if any,
10 shall be paid in such manner and on such dates as may be fixed
11 by the Board. In addition to any other powers of collection or
12 enforcement granted hereunder, in the event any Assessments
13 with respect to a Lot or Parcel are delinquent, the Board shall
14 have the right, in its sole discretion, to accelerate the
15 date(s) on which all Assessments with respect to such Lot or
16 Parcel are due and payable. For purposes of this Declaration,
17 Assessments shall be deemed "paid" when actually received by
18 the Association or by its manager or agent designated by the
19 Association to collect the same (provided, however, that if any
20 Assessments are paid by check and the bank or other institution
21 upon which such check is drawn thereafter dishonors or refuses
22 to pay such check, those Assessments shall not be deemed "paid"
23 and shall remain due and payable with interest accruing from
24 the date such Assessments were originally due).

14 8.7 Maximum Annual Assessment. The Annual
15 Assessments provided for herein shall not at any time exceed
16 the Maximum Annual Assessment, as determined in accordance with
17 this Section 8.7. For the fiscal year ending December 31,
18 1989, the Maximum Annual Assessment shall be:

17 8.7.1 \$240.00 for each Lot;

18 8.7.2 \$120.00 for each Apartment Unit;

19 8.7.3 for each Non-Residential Parcel (except as
20 provided in Subsection 8.7.4 below), \$720.00 times the number
21 of Net Acres (to the nearest one-tenth of a Net Acre) in such
Non-Residential Parcel; and

22 8.7.4 for each Non-Residential Parcel which is
23 limited by a Tract Declaration to use as a golf course
24 (together with related or incidental facilities, such as a
25 clubhouse, pro shop, restaurant, dining room and associated
26 recreational facilities), whether public or private, such
amount per Net Acre (to the nearest one-tenth of a Net Acre) as
shall be specified in the Tract Declaration Recorded against
such Parcel, but in no event less than \$12.00 per Net Acre, or

1 more than \$720.00 per Net Acre, within such Parcel, provided
2 that the amount per Net Acre so specified shall bear the same
3 ratio to the number of votes per Net Acre specified for such
4 Parcel pursuant to Subsection 3.1.6 as the amount per Net Acre
5 specified in Subsection 8.7.3 bears to the number of votes per
6 Net Acre specified in Subsection 3.1.5. The provisions of this
7 Subsection 8.7.4 are subject to the last sentence of Subsection
8 3.1.6.

9 Thereafter, unless a greater increase is approved by the affir-
10 mative vote of two-thirds (2/3) of the votes of each class of
11 Members represented in person or by valid proxy at a meeting of
12 Members duly called for such purpose, the Maximum Annual
13 Assessment for any fiscal year shall be equal to the Maximum
14 Annual Assessment for the immediately preceding fiscal year
15 increased at a rate equal to the greater of: (a) the percent-
16 age increase for the applicable fiscal year over the immedi-
17 ately preceding fiscal year in the Consumer Price Index -- All
18 Urban Consumers -- All Items (1982-1984 Average = 100 Base)
19 published by the Bureau of Labor Statistics of the U.S.
20 Department of Labor (or its successor governmental agency), or,
21 if such index is no longer published by said Bureau or suc-
22 cessor agency, in the index most similar in composition to such
23 index; or (b) ten percent (10%). Notwithstanding the forego-
24 ing, the Board may, without the approval of the Members,
25 increase the Maximum Annual Assessment for any fiscal year by
26 an amount sufficient to permit the Board to meet any increases
over the preceding fiscal year in: (i) premiums for any insur-
ance coverage required by this Declaration to be maintained by
the Association; or (ii) charges for utility services necessary
to the Association's performance of its obligations under this
Declaration, in either case (i) or (ii) notwithstanding the
fact that the resulting increase in the Maximum Annual
Assessment is at a rate greater than otherwise permitted under
the preceding sentence. In addition, in the event Declarant at
any time hereafter annexes any portion(s) or all of the
Annexable Property, and the Association's added maintenance and
other responsibilities with respect to the Common Areas and
other property thereby annexed necessitate an increase in the
Maximum Annual Assessment greater than otherwise permitted
under this Section 8.7 without approval of the Members,
Declarant may nevertheless increase such Maximum Annual
Assessment, effective not earlier than the first sale to a
retail purchaser of a Lot within the portion(s) so annexed,
without the vote of the Members, so long as such increase is in
an amount and in accordance with a revised budget approved by
the Veterans Administration or the Federal Housing
Administration; such new Maximum Annual Assessment, if so
approved, shall thereupon be substituted for the previously
established Maximum Annual Assessment for the applicable fiscal
year of the Association. Nothing herein shall obligate the

1 Board to levy, in any fiscal year, Annual Assessments in the
2 full amount of the Maximum Annual Assessment for such fiscal
3 year, and the election by the Board not to levy Annual
4 Assessments in the full amount of the Maximum Annual
5 Assessments for any fiscal year shall not prevent the Board
6 from levying Annual Assessments in subsequent fiscal years in
7 the full amount of the Maximum Annual Assessment for such sub-
8 sequent fiscal year (as determined in accordance with this
9 Section 8.7). In the event that, for any fiscal year, the
10 Board elects to levy an Annual Assessment at less than the full
11 amount of the Maximum Annual Assessment for such fiscal year,
12 the Board may, if in its reasonable discretion circumstances so
13 warrant, subsequently levy a supplemental Annual Assessment
14 during said fiscal year so long as the total of the Annual
15 Assessments levied during said fiscal year does not exceed the
16 Maximum Annual Assessment for such fiscal year.

9 8.8 Notice and Quorum for Meetings to Consider
10 Special Assessments and Certain Increases in Annual
11 Assessments. Notwithstanding any other provision hereof or of
12 the Articles, Bylaws or Association Rules, written notice of
13 any meeting called for the purpose of: (a) approving the
14 establishment of any Special Assessment, as required by Section
15 8.9 hereof; or (b) approving any increase in the Maximum Annual
16 Assessment greater than that permitted by application of the
17 formula as set forth in Section 8.7 hereof, shall be sent to
18 all Members not less than thirty (30) days nor more than sixty
19 (60) days prior to the date of said meeting. At the first
20 meeting thus called to consider the particular Special
21 Assessment or increase in the Maximum Annual Assessment, a quo-
22 rum shall consist of sixty percent (60%) of the votes in each
23 class of Members (whether represented in person or by valid
24 proxy), provided, however, that if a quorum, as so determined,
25 is not present at said first meeting, a second meeting may be
26 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.

20 8.9 Special Assessments. In addition to the Annual
21 Assessments and Parcel Assessments authorized by this Article
22 8, the Association may levy Special Assessments from time to
23 time, provided, however, that any Special Assessment shall be
24 effective only with the approval of not less than two-thirds
25 (2/3) of the votes of each class of Members represented in per-
26 son or by valid proxy at a meeting of Members duly called and
convened to consider such Special Assessment. Subject to
Subsections 8.4.1, 8.4.2, 8.4.4 and 8.4.5, Special Assessments
shall be allocated among all Lots and Parcels in the ratio
established in Subsection 8.4.3.

1 8.10 Parcel Assessments. In addition to the Annual
2 Assessments and Special Assessments authorized in this Article
3 8, the Association may levy Parcel Assessments from time to
4 time against one or more Parcels or against one or more groups
5 of Lots in particular portions of the Property to reimburse the
6 Association for any and all expenses incurred in the event the
7 Association has or assumes applicable maintenance responsibilities
8 as provided in Sections 4.4 and 4.5 hereof (provided that
9 if the Association has or assumed such responsibilities pur-
10 suant to a contract with a Parcel Owner or a Subsidiary
11 Association pursuant to Section 4.4 hereof, such Parcel
12 Assessments shall not be levied unless and until such Parcel
13 Owner or Subsidiary Association fails or refuses to pay the
14 Association in accordance with said contract).

8 8.11 Certificates. The Association shall, upon the
9 written request of any Owner or the holder, insurer or guaran-
10 tor of any Mortgage, or of any mortgage or deed of trust
11 affecting any Parcel, and upon payment of such reasonable
12 charge as may be determined by the Board, furnish to the
13 requesting party a certificate, executed by an officer of the
14 Association, stating the date to which Assessments with respect
15 to such Owner's Lot or Parcel (or the Lot or Parcel against
16 which such Mortgage or such mortgage or deed of trust, as
17 applicable, is Recorded) have been paid and the amount, if any,
18 of any Assessments which have been levied with respect to said
19 Lot or Parcel but which remain unpaid as of the date of such
20 certificate; said certificate shall be binding upon the
21 Association as to the matters set forth therein as of the date
22 thereof.

16 8.12 Surplus Monies. Unless otherwise expressly
17 determined by the Board, any surplus monies of the Association
18 shall be held by the Association and placed in one or more
19 reserve accounts as determined by the Board, and shall not be
20 paid to the Owners or credited against the Owners' respective
21 liabilities for Assessments.

19 8.13 Billing and Collection Procedures. The Board
20 shall have the right to adopt procedures for the purpose of
21 making, billing and collecting the Assessments and Special Use
22 Fees, which procedures may include delegating to the applicable
23 Subsidiary Association the authority and obligation of billing
24 and collecting some or all of the Assessments and Special Use
25 Fees. The failure of the Association to send a bill to an
26 Owner shall not relieve such Owner of the Owner's liability for
an Assessment or Special Use Fee. No lien shall be foreclosed
or otherwise enforced until the Owner has been given not less
than 30 days written notice thereof prior to the commencement
of such foreclosure or enforcement. The notice shall be
addressed to the Owner at the address of the Owner on the

1 records of the Association. It shall be the responsibility of
2 the Owner to inform the Association in writing of a change of
3 address. The Association shall be under no duty to refund any
4 payments received by the Association even if the ownership of a
5 Lot or Parcel changes during a fiscal year of the Association.
6 Any successor Owner shall be given credit for any unrefunded
7 prepayments made by a prior Owner. In case the Owner of a Lot
8 or Parcel having a right to pay a reduced payment amount as
9 provided herein fails to notify the Board at such time as the
10 payment amount should be increased, such Owner shall nonethe-
11 less be liable for the full amount of the Assessment and such
12 Owner's failure to notify the Board shall not relieve such
13 Owner of the liability for such full Assessment.

14 8.14 Declarant's Obligation for Deficiencies. So long
15 as the Class B membership exists, Declarant shall pay and con-
16 tribute to the Association, within thirty (30) days after the
17 end of each fiscal year of the Association, or at such other
18 times as may be requested by the Board, such funds as may be
19 necessary, when added to the Assessments levied by the
20 Association pursuant to this Declaration, to provide for:
21 (a) the operation and maintenance of the Common Area and the
22 recreational facilities located thereon; (b) the maintenance of
23 adequate reserves; and (c) the performance by the Association
24 of all other obligations of the Association under this
25 Declaration or the Articles or Bylaws. Declarant's obligations
26 under this Section 8.14 may be satisfied in the form of a cash
subsidy or by "in kind" contributions of services or materials,
or a combination of both.

1 8.15 Common Expenses Resulting from Misconduct.
2 Notwithstanding any other provision of this Article 8, if any
3 Common Expense is caused by the misconduct of any Owner (or of
4 any Occupant, tenant, employee, servant, agent, guest or
5 invitee for whose actions such Owner is responsible under
6 applicable law), the Association may assess that Common Expense
7 exclusively against such Owner and such Owner's Lot or Parcel,
8 which amount (together with any and all costs and expenses,
9 including but not limited to attorneys' fees, incurred by the
10 Association in recovering the same) shall be secured by the
11 lien created pursuant to Section 8.3.

12 8.16 Statement of Payment. Upon receipt of a written
13 request therefor from any Owner, the Board, within a reasonable
14 time thereafter, shall issue to the requesting party a written
15 statement stating that as of the date of that statement:

16 8.16.1 all Assessments and Special Use Fees
17 (including collection fees, if any, in regard thereto), have
18 been paid with respect to the Lot or Parcel specified in the
19 Owner's request; or,

1 8.16.2 if such have not been paid, the
amount(s) then due and payable.

2 The Association may make a reasonable charge for the issuance
3 of such statement. Any such statement shall be conclusive and
binding on the Association with respect to any matter set forth
4 therein.

5 8.17 Exempt Property. Exempt Property shall be exempt
6 from Annual Assessments, Special Assessments and Parcel
7 Assessments, and no voting rights in the Association shall
8 attach to Exempt Property, provided, however, that should any
9 Exempt Property cease to be Exempt Property for any reason, it
shall thereupon be subject to Annual Assessments, Special
10 Assessments and Parcel Assessments (prorated as of the date it
11 ceased to be Exempt Property) secured by the lien created pur-
12 suant to Section 8.3 above, and voting rights in the
13 Association shall attach thereto as otherwise determined in
14 this Declaration.

15 ARTICLE 9

16 ARCHITECTURAL STANDARDS; 17 ARCHITECTURAL COMMITTEE

18 9.1 Appointment of Architectural Committee; Standing
19 to Enforce. All property which is now or hereafter subject to
20 this Declaration shall be subject to architectural, landscaping
21 and aesthetic review as provided herein. This review shall be
22 in accordance with this Article 9 and such standards as may be
23 promulgated by Architectural Committee, which is hereby estab-
24 lished. Authority and standing on behalf of the Association to
25 enforce in any court of competent jurisdiction decisions of the
26 Architectural Committee and the provisions of this Article 9
shall be vested in the Board, provided, however, that so long
as Declarant has the right to appoint the Architectural
Committee under this Section 9.1, Declarant shall have the
right, but not the obligation, to enforce decisions of the
Architectural Committee and the provisions of this Article 9,
on behalf of the Association, in courts of competent jurisdic-
tion. So long as Declarant owns any part of the Property or
the Annexable Property, the Architectural Committee shall con-
sist of three (3) individuals appointed by, and who shall serve
at the pleasure of, Declarant. At such time as either:
(a) Declarant no longer owns any part of the Property or the
Annexable Property; or (b) Declarant Records a written waiver
of its right to appoint the Architectural Committee, the Board
shall appoint the members of the Architectural Committee, which
shall have such number of members (but not less than three (3))
as the Board may elect, from time to time. Each member of the
Architectural Committee appointed by the Board shall serve in

1 such capacity until: (a) such member is removed by the Board;
 2 or (b) such member resigns such position or dies. Prior to the
 3 appointment of the initial members of the Architectural
 4 Committee, and at any time when there is no one serving on the
 Architectural Committee (whether due to death, resignation or
 removal), the Board shall have and exercise any and all rights,
 powers, duties and obligations of the Architectural Committee.

5 9.2 Jurisdiction of the Architectural Committee;
Promulgation of Guidelines. The Architectural Committee shall
 6 have exclusive jurisdiction over all original construction and
 7 any modifications, additions or alterations to improvements on
 8 any portion of the Property (including, but not limited to, the
 9 construction or installation of, or modifications, additions or
 10 alterations to: (a) buildings and other structures; (b) land-
 11 scaping; (c) fences; (d) heating, ventilating, air conditioning
 12 and cooling units; (e) solar panels; (f) paint; or (g) any
 13 other construction, modification, addition or alteration
 affecting the exterior appearance of any structure, Lot or
 Parcel). The Architectural Committee shall adopt, and may from
 time to time amend, supplement and repeal, the Guidelines. The
 Guidelines shall interpret, implement and supplement this
 Declaration, and shall set forth procedures for Architectural
 Committee review and the standards for development within the
 Property. The Guidelines shall include, without limitation,
 provisions regarding:

14 9.2.1 the size of Single Family Dwelling Units;

15 9.2.2 architectural design, with particular regard
 16 to the harmony of the design with surrounding structures and
 topography;

17 9.2.3 placement of buildings;

18 9.2.4 landscaping design, content and conformance
 19 with the natural character of the Property;

20 9.2.5 requirements concerning exterior color
 21 schemes, exterior finishes and materials throughout Foothills
 Club West;

22 9.2.6 signage; and

23 9.2.7 perimeter and screen wall design and appear-
 24 ance.

25 The Guidelines shall have the same force and effect as the
 26 Association Rules. Further, after termination of Declarant's
 right to appoint the members of the Architectural Committee
 pursuant to Section 9.1, any and all amendments, supplements,

1 repeals or replacements to or of the Guidelines shall be
subject to the approval of the Board.

2 9.3 Submission and Review of Plans. No original con-
3 struction, modification, alteration or addition subject to the
Architectural Committee's jurisdiction (including, but not
4 limited to, landscaping) shall be commenced until it has been
approved or is deemed approved by the Architectural Committee
5 as provided herein. Any Owner or other Person seeking to con-
6 struct or install any new improvements or landscaping or to
7 make any modification, alteration or addition to any existing
improvement (including, but not limited to, landscaping) upon
8 any portion of the Property (or to cause same to be constructed
or made) shall first submit to the Architectural Committee
9 detailed plans, specifications and elevations (including, but
not limited to, a detailed site plan) relating to the proposed
10 construction, installation, modification, alteration or addi-
11 tion; said plans, specifications and elevations shall be sent
by: (a) personal delivery, in which case the Person delivering
12 the same shall obtain a signed and dated receipt from the
recipient thereof (in which event they shall be deemed received
13 as of the date indicated by the recipient on such receipt); or
(b) by U.S. mail, postage paid, certified mail, return receipt
14 requested (in which event they shall be deemed received as of
the date indicated on the return receipt). The Architectural
15 Committee shall have forty-five (45) days after its receipt of
such plans, specifications and elevations to approve or disap-
16 prove of the proposed construction, installation, modification,
alteration or addition or to request additional information,
17 and, if the Architectural Committee disapproves, to give such
Owner or other Person reasonably detailed written reasons for
18 such disapproval. In the event the Architectural Committee
fails either to approve or disapprove the proposed construc-
19 tion, installation, modification, alteration or addition (or to
request additional information) within said forty-five (45) day
20 period, such proposed construction, installation, modification,
alteration or addition shall be deemed approved.

21 9.4 Obligation to Obtain Approval.

22 9.4.1 Except as otherwise expressly provided in
23 this Declaration or the Guidelines or an applicable Tract
Declaration, without the prior written approval by the
24 Architectural Committee of plans and specifications prepared
and submitted to the Architectural Committee in accordance with
25 the provisions of this Declaration and the Guidelines:

26 (a) no improvements, alterations, repairs,
excavation, grading, landscaping or other work shall be done
which in any way alters the exterior appearance of any property
or improvements thereon from their natural or improved state.

1 existing on the date a Tract Declaration for such property is
first Recorded; and

2 (b) no building, fence, exterior wall, pool,
3 roadway, driveway or other structure, improvement or grading
shall be commenced, erected, maintained, altered, changed or
4 made on any Lot or Parcel at any time.

5 9.4.2 No exterior trees, bushes, shrubs, plants or
other landscaping shall be planted or placed upon the Property
6 except in compliance with plans and specifications therefor
which have been submitted to and approved by the Architectural
7 Committee in accordance with the Guidelines and except in com-
pliance with Section 9.14 below.

8 9.4.3 No material changes or deviations in or from
the plans and specifications for any work to be done on the
9 Property, once approved by the Architectural Committee, shall
be permitted without approval of the change or deviation by the
10 Architectural Committee.

11 9.4.4 No other item or matter required by this
Declaration to be approved in accordance with this Article 9 or
12 to be approved by the entity having approval authority pursuant
to this Article 9 shall be done, undertaken or permitted until
13 approved by the Architectural Committee, subject to the provi-
sions of Section 9.12 below.

14 9.5 Changes to Interiors of Dwelling Units or Other
15 Structures. Nothing contained herein shall be construed to
limit the right of an Owner to remodel the interior of his, her
16 or its Dwelling Unit or other structure on such Owner's Lot or
Parcel or to paint the interior of his, her or its Dwelling
17 Unit or such other structure any color desired, except to the
extent such remodeling or painting is visible from outside such
18 Dwelling Unit or other structure or affects the exterior
appearance of such Dwelling Unit or other structure.

19 9.6 Other Approvals; Liability. No approval by the
20 Architectural Committee of any proposed construction, modifica-
tion, addition or alteration shall be deemed to replace or be
21 substituted for any building permit or similar approval
required by any applicable governmental authority, nor shall
22 any such approval be deemed to make the Architectural Committee
(or the Board or the Association) liable or responsible for any
23 damage or injury resulting or arising from any such construc-
tion, modification, addition or alteration. None of Declarant,
24 the Association, the Board or the Architectural Committee (nor
any member thereof) shall be liable to the Association, any
25 Owner or any other party for any damage, loss or prejudice suf-
fered or claimed on account of:

26

1 9.6.1 the approval or disapproval of any plans,
drawings or specifications, whether or not defective;

2 9.6.2 the construction or performance of any work,
3 whether or not pursuant to approved plans, drawings and
specifications; or

4 9.6.3 the development of any Lot or Parcel.

5 9.7 Fee. The Board may establish a reasonable pro-
6 cessing fee to defer the costs of the Architectural Committee
in considering any request for approvals submitted to the
7 Architectural Committee or for appeals to the Board, which fee
shall be paid at the time the request for approval or review is
submitted.

8 9.8 Inspection. Any member or authorized consultant
9 of the Architectural Committee, or any authorized officer,
director, employee or agent of the Association, may at any rea-
10 sonable time and without being deemed guilty of trespass enter
upon any Lot or Parcel, after reasonable notice to the Owner or
11 Occupant of such Lot or Parcel, in order to inspect the
improvements constructed or being constructed on such Lot or
12 Parcel to ascertain that such improvements have been, or are
being, built in compliance with this Declaration, any applica-
13 ble Tract Declaration, the Guidelines and any approved plans,
drawings or specifications.

14 9.9 Waiver. Approval by the Architectural Committee
15 of any plans, drawings or specifications for any work done or
proposed, or for any other matter requiring approval of the
16 Architectural Committee, shall not be deemed to constitute a
waiver of any right to withhold approval of any similar plan,
17 drawing, specification or matter subsequently submitted for
approval.

18 9.10 Appeal to Board. Except as provided in this
19 Section 9.10 and in Section 9.12 below, any Owner or Occupant
aggrieved by a decision of the Architectural Committee may
20 appeal the decision to the Board in accordance with procedures
to be established in the Guidelines. In the event the decision
21 of the Architectural Committee is overruled by the Board on any
issue or question, the prior decision of the Architectural
22 Committee shall be deemed modified to the extent specified by
the Board. Notwithstanding the foregoing, until termination of
23 Declarant's right to appoint the members of the Architectural
Committee pursuant to Section 9.1, no decision of the
24 Architectural Committee may be appealed to the Board.

25 9.11 Nonapplicability to Declarant. The foregoing
provisions of this Article 9 shall not apply to any portions of
26

1 the Property owned by Declarant or any Person affiliated with
2 Declarant so long as any improvements constructed thereon (or
3 any additions, modifications or alterations to any such
4 improvements) are constructed or made in a good and workmanlike
5 fashion and are generally comparable in terms of quality of
6 construction to other improvements theretofore constructed by
7 Declarant or any Person affiliated with Declarant on the
8 Property (or on other property adjacent to or near the
9 Property). Further, this Article 9 may not be amended without
10 Declarant's written consent so long as Declarant owns any of
11 the Property or the Annexable Property.

12 9.12 Declarant's Jurisdiction over Non-Residential
13 Parcels. Notwithstanding the other provisions of this
14 Article 9 (or any other provision of this Declaration),
15 Declarant shall have all of the rights and powers of the
16 Architectural Committee (or the Board, as applicable) with
17 respect to all Non-Residential Parcels and all buildings,
18 fences, walls, pools, landscaping, roadways, driveways and
19 other structures and improvements thereon (including, but not
20 limited to, all exterior additions to or changes or alterations
21 in any such structure or improvement), provided, however, that
22 such rights and powers shall vest in and be exercisable only by
23 the Architectural Committee (or the Board, as applicable) upon
24 the first to occur of: (a) the date as of which approved
25 buildings and other improvements have been completed (as
26 evidenced by certificates of occupancy or similar instrument
issued by the appropriate governmental authority), in accordance with site plans approved by Declarant, upon all Non-Residential Parcels within the Property and on all other property within Foothills Club West designated for non-residential purposes by the Master Development Plan, as amended from time to time; or (b) the date specified in a Recorded instrument executed by Declarant expressly waiving its right to exercise the rights and powers conferred upon it by this Section 9.12 (or, if no date is specified, the date of Recordation of such instrument). All decisions made by Declarant in its exercise of the rights and powers conferred upon it by this Section 9.12 shall be final and binding and shall not be subject to appeal to, or review by, the Architectural Committee or the Board. Further, no variances of any of the restrictions set forth in this Declaration with respect to Non-Residential Parcels and no consents or approvals required or permitted to be given by the Board or the Architectural Committee pursuant hereto relating to Non-Residential Parcels shall be granted or given without the prior written consent of Declarant until the earlier of the two dates specified in (a) and (b) of this Section 9.12.

25 9.13 Non-Residential Exemption. Declarant shall have
26 the right to permanently exempt any Non-Residential Parcel from

1 all of the provisions of this Article 9 (except those of
2 Section 9.15 below) or to modify the application of this
3 Article 9 (except the application of Section 9.15 below) to any
4 Non-Residential Parcel by including such exemption or modifica-
5 tion in a Tract Declaration applicable to such Non-Residential
6 Parcel. Declarant's right to create new exemptions or modifi-
7 cations for Non-Residential Parcels under this Section 9.13
8 shall terminate upon the earlier of the dates specified in
9 subparts (a) and (b) of the first sentence of Section 9.12.

10 9.14 Landscaping. Except as expressly provided herein
11 or as expressly approved by the Architectural Committee, land-
12 scaping on the Property shall be consistent with the character
13 of the natural environment surrounding the Property, and shall
14 comply with any and all provisions of the Guidelines relating
15 to permitted plants. All Lots and Parcels (other than
16 Condominium Units), excluding driveways and parking areas, and
17 excluding that portion of the Lot or Parcel, if any, which is
18 enclosed by a perimeter wall around the rear yard, shall be
19 landscaped in a manner and using plants and soil approved in
20 advance by the Committee. No exterior trees, bushes, shrubs,
21 plants or other landscaping shall be planted or placed upon any
22 Lot or Parcel except in compliance with plans and
23 specifications therefor which have been submitted to and
24 approved by the Architectural Committee in accordance with this
25 Article 9 and the Guidelines. No material changes or
26 deviations in or from the plans and specifications for any work
to be done on any Lot or Parcel once approved by the
Architectural Committee, shall be permitted without approval of
the change or deviation by the Architectural Committee.
Neither this Section 9.14 nor Sections 9.3 or 9.4 above shall
be construed to prevent normal landscape maintenance or the
replacement of dead or diseased plants with other similar
plants (so long as the replacement plants are permitted by the
Guidelines.)

18 9.15 Water Conservation. Declarant, being sensitive
19 to the fact that Foothills Club West is located in a desert
20 environment, desires to develop a community that is conscious
21 of the need to conserve water and maintain the integrity of the
22 desert environment. The Architectural Committee responsible
23 for overseeing the architectural control of Foothills Club West
24 has promulgated guidelines which contain certain water conser-
25 vation requirements in an effort to be conscious of any water
26 conservation requirements that may be imposed by the City or
the Arizona Department of Water Resources. The Architectural
Committee shall require that any development of Foothills Club
West will be sensitive to water conservation by requiring
that: (a) landscaping of Common Area, to the extent practica-
ble, will utilize native and drought tolerant plant materials;
and (b) builders within Foothills Club West will be required to

1 install water conserving plumbing fixtures. Finally, Declarant
2 intends to assist citywide water conservation efforts by uti-
3 lizing (or requiring utilization of) reclaimed water throughout
4 Foothills Club West in the irrigation of any and all golf
5 courses within Foothills Club West as well as the maintenance
6 of levels of any and all lakes within Foothills Club West.

4 ARTICLE 10

5 PARTY WALLS

6 10.1 General Rules of Law to Apply. Each wall or
7 fence which is located on, or serves as, the dividing line
8 between two Lots, between two Parcels, between a Parcel and a
9 Lot, or between a Lot or Parcel and Common Area shall consti-
10 tute a party wall, and, to the extent not inconsistent with the
11 provisions of this Article 10, the general rules of law regard-
12 ing party walls and liability for property damages due to neg-
ligent or willful acts or omissions shall apply thereto. (For
purposes of this Article 10 only, in the case of a party wall
between a Lot or Parcel and Common Area, in interpreting the
provisions of this Article the Common Area bounded by such wall
shall be deemed to be a "Lot" and the Association shall be
deemed to be the "Owner" of such "Lot.")

13 10.2 Repair and Maintenance. No Owner or Occupant of
14 any Lot or Parcel (or any tenant, guest, invitee, employee or
15 agent of such Owner or Occupant) shall do or permit any act (or
16 omit to do any act) that will or does damage, destroy or impair
17 the structural soundness or integrity of any party wall, or
18 which would cause any party wall to be exposed to the elements,
and, in the event any such Owner, Occupant, tenant, guest,
invitee, employee or agent does or permits any such act (or so
omits to do any act), such Owner's or Occupant's liability with
respect to such damage, destruction, impairment or exposure
shall be determined in accordance with applicable law.

19 10.3 Sharing of Repair and Maintenance. In the event
20 any repair, maintenance or reconstruction of any party wall
21 shall be necessary (other than due to the negligence or willful
22 act or omission of the Owner or Occupant of one Lot or Parcel,
23 or such Owner's or Occupant's tenants, guests, invitees,
24 employees or agents) the cost thereof shall be borne equally by
25 the Owners and/or Occupants of the Lot(s) or Parcel(s) having
26 in common such party wall, and in the event any Owner (or
Occupant) fails or refuses timely to pay such Owner's (or
Occupant's) share of such cost, the other Owner (or Occupant)
shall have the right to pay in full such cost and recover from
such Owner (or Occupant) such Owner's (or Occupant's) share of
such cost (together with interest as provided in Section 11.8
of this Declaration).

1 10.4 Consents to Modification. No Owner or Occupant
 2 shall alter or modify any party wall in any respect without
 3 having first obtained the written consent of the Owner of the
 4 other Lot or Parcel adjoining such party wall, provided that
 5 such consent shall not be required in the case of repair or
 6 restoration of such party wall to its condition prior to any
 7 damage or destruction if the negligence or willful act or omis-
 8 sion of the Owner or Occupant of such other Lot or Parcel was
 the cause of such damage or destruction and such Owner or
 Occupant fails or refuses to repair or restore such party wall
 promptly upon the request of the other Owner or Occupant. Any
 consent required by this Section 10.4 shall be in addition to
 and not in substitution for the consents or approvals of the
 Architectural Committee required by this Declaration or of any
 municipal or other governmental body having jurisdiction over
 the Property.

9 10.5 Non-Applicability to Condominiums. The provi-
 10 sions of this Article 10 are not intended to, and shall not,
 11 apply to walls between Condominium Units or between Apartment
 12 Units.

12 ARTICLE 11

13 GENERAL PROVISIONS

14 11.1 Term. All of the covenants, conditions, restric-
 15 tions and other provisions of this Declaration (as amended from
 16 time to time in accordance with the provisions hereof): (a)
 17 shall run with and bind the Property; (b) shall inure to the
 18 benefit of and shall be enforceable by the Association or by
 19 the owner of any property subject to this Declaration, and
 20 their respective legal representatives, heirs, successors and
 21 assigns; and (c) shall remain in full force and effect until
 22 January 1, 2040, at which time said conditions, covenants,
 23 restrictions and other provisions, unless revoked by an affir-
 mative vote of Members owning not less than seventy-five
 percent (75%) of all Lots, shall automatically be extended for
 successive periods of twenty-five (25) years each, until
 revoked in the manner provided above. Notwithstanding any such
 revocation of this Declaration, each Owner of a Lot or Parcel
 (and such Owner's Occupants, tenants, agents, guests and
 invitees) shall nevertheless have a permanent easement across
 the Common Area for access to such Lot or Parcel and for access
 to and use of such recreational facilities as may exist on the
 Common Area at the time of such revocation.

24 11.2 Amendment. Except as otherwise provided herein
 25 (and subject to the provisions of Sections 11.10, 11.11, 11.12,
 26 and 11.13), this Declaration may be amended only by the affir-
 mative vote (in person or by proxy) or written consent of

1 Members owning at least seventy-five percent (75%) of all
 2 Lots. No amendment to this Declaration shall be effective
 3 unless and until such amendment is Recorded. In addition to
 4 and notwithstanding the foregoing: (a) so long as the Class B
 5 membership exists, no amendment to this Declaration shall be
 6 effective without the prior approval of the Federal Housing
 7 Administration or the Veterans Administration; and (b) no
 8 amendment of a material nature to this Declaration (or to the
 9 Articles or the Bylaws) shall be effective unless approved by
 10 Eligible Mortgage Holders representing at least fifty-one
 11 percent (51%) of all Lots subject to First Mortgages held by
 12 Eligible Mortgage Holders. A change to any of the following
 13 would be considered to be a change of a material nature:

14 11.2.1 provisions relating to voting rights in the
 15 Association;

16 11.2.2 provisions relating to Assessments,
 17 Assessment liens or subordination of Assessments;

18 11.2.3 provisions relating to reserves for mainte-
 19 nance and repairs;

20 11.2.4 provisions relating to Owners' rights to use
 21 the Common Area;

22 11.2.5 boundaries of any Lot;

23 11.2.6 conversion of any Lot into Common Area or
 24 vice versa;

25 11.2.7 addition or annexation of property to, or
 26 withdrawal of property from, the Property, or addition or
 annexation of any property to, or withdrawal, removal or dele-
 tion of any property from, the Common Area (except to the
 limited extent certain additions, annexations, withdrawals,
 removals or deletions are expressly permitted without approval
 of or notice to the holders, insurers or guarantors of any
 Mortgage by Article 6 of this Declaration);

11.2.8 provisions relating to insurance or fidelity
 bonds;

11.2.9 provisions relating to the leasing of Lots
 (or Dwelling Units thereon);

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

11.2.11 restoration or repair of any structures or
 improvements on the Common Area following a hazard damage or

1 condemnation in a manner other than as specified in this
Declaration;

2 11.2.12 any action to dissolve or otherwise termi-
3 nate the Association or the legal status of the Property after
substantial destruction or condemnation of improvements on the
4 Property occurs; or

5 11.2.13 any provisions that expressly benefit the
holders, insurers or guarantors of Mortgages.

6 An Eligible Mortgage Holder shall be deemed to have approved a
7 proposed material change if such Eligible Mortgage Holder fails
to submit to the Association a response to a written notice of
8 the proposed material change within thirty (30) days after its
receipt of such notice, so long as such notice is sent by cer-
9 tified or registered mail, return receipt requested.

10 11.3 Indemnification. The Association shall indemnify
each and every officer and director of the Association
11 (including, for purposes of this Section, former officers and
directors of the Association) against any and all expenses,
12 including attorneys' fees, reasonably incurred by or imposed
upon any officer or director of the Association in connection
13 with any action, suit, or other proceeding (including settle-
ment of any suit or proceeding, if approved by the Board
14 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
15 director of the Association, except for their own individual
willful misfeasance, malfeasance, misconduct or bad faith. The
16 officers and directors shall have no personal liability with
respect to any contract or other commitment made by them, in
17 good faith, on behalf of the Association (except indirectly to
the extent that such officers or directors may also be Members
18 of the Association and therefore subject to Assessments here-
under to fund a liability of the Association), and the
19 Association shall indemnify and forever hold each such officer
and director free and harmless from and against any and
20 all liability to others on account of any such contract or com-
mitment. Any right to indemnification provided for herein
21 shall not be exclusive of any other rights to which any officer
or director, or former officer or director of the Association,
22 may be entitled. If the Board deems it appropriate, in its
sole discretion, the Association may advance funds to or for
23 the benefit of any director or officer (or former director or
officer) of the Association who may be entitled to indemnifica-
24 tion hereunder to enable such Person to meet on-going costs and
expenses of defending himself or herself in any action or pro-
25 ceeding brought against such Person by reason of his or her
being, or having been, an officer or director of the
26 Association. In the event it is ultimately determined that a

1 current or former officer or director to whom, or for whose
2 benefit, funds were advanced pursuant to the preceding sentence
3 does not qualify for indemnification pursuant to this
4 Section 11.3 or otherwise under the Articles, Bylaws or appli-
5 cable law, such current or former officer or director shall
6 promptly upon demand repay to the Association the total of such
7 funds advanced by the Association to him or her, or for his or
8 her benefit, with interest (should the Board so elect) at a
9 rate not to exceed ten percent (10%) per annum from the date(s)
10 advanced until paid.

11 11.4 Easements for Utilities. There is hereby
12 reserved to the Association the power to grant blanket ease-
13 ments upon, across, over and under all of the Common Area for
14 installation, replacement, repair, and maintenance of master
15 television antenna systems, security and similar systems, and
16 all utilities, including, but not limited to, water, sewers,
17 telephones, cable television, gas and electricity, and for
18 delivering or providing public or municipal services such as
19 refuse collection and fire and other emergency vehicle access
20 (which easements shall also include appropriate rights of
21 ingress and egress to facilitate such installation, replace-
22 ment, repair and maintenance, and the delivery or provision of
23 such public, municipal or emergency services), provided, that
24 no such easement shall interfere with a Dwelling Unit,
25 Apartment Unit or apartment building or their reasonable use or
26 with Declarant'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.

18 11.5 No Partition. No Person acquiring any interest
19 in the Property or any part thereof shall have a right to, nor
20 shall any person seek, any judicial partition of the Common
21 Area, nor shall any Owner sell, convey, transfer, assign, hy-
22 pothecate or otherwise alienate all or any of such Owner's
23 interest in the Common Area or any funds or other assets of the
24 Association except in connection with the sale, conveyance or
25 hypothecation of such Owner's Lot or Parcel (and only appurte-
26 nant thereto), or except as otherwise expressly permitted
herein. This Section shall not be construed to prohibit the
Board from acquiring and disposing of tangible personal prop-
erty nor from acquiring or disposing of title to real property
(other than disposition of title to the Common Area) which may
or may not be subject to this Declaration.

1 11.6 Severability; Interpretation; Gender.
2 Invalidation of any one of these covenants or restrictions by
3 judgment or court order shall in no way affect any other provi-
4 sions which shall remain in full force and effect. The provi-
5 sions hereof shall be construed and interpreted with reference
6 to the laws of the State of Arizona. Where the context hereof
7 so requires, any personal pronouns used herein, whether used in
8 the masculine, feminine or neuter gender, shall include all
9 genders, and the singular shall include the plural and vice
10 versa. Titles of Articles and Sections are for convenience
11 only and shall not affect the interpretation hereof.

12 11.7 Perpetuities. If any of the covenants, condi-
13 tions, restrictions or other provisions of this Declaration
14 shall be unlawful, void or voidable for violation of the rule
15 against perpetuities, then such provisions shall continue only
16 until twenty-one (21) years after the death of the last survi-
17 vor of the now living descendants of the President of the
18 United States in office on the date this Declaration is
19 Recorded.

20 11.8 Enforcement. Subject to Section 9.1, the
21 Association shall have the standing and power to enforce the
22 provisions of this Declaration, the Articles, the Bylaws and
23 the rules and regulations of the Association, and the provi-
24 sions of any other Recorded document pertaining to any Lot or
25 Lots, or Parcel or Parcels, and its costs in doing so,
26 including, but not limited to, reasonable attorneys' fees,
together with interest thereon from the date the costs are
expended at a rate equal to the greater of: (a) ten percent
(10%) per annum; or (b) the annual rate of interest then in
effect for new first mortgage loans guaranteed by the Veterans
Administration shall constitute a lien on all Lots and Parcels
owned by the Owner or Owners against whom the action is taken
(or against whose Occupants the action is taken), which lien
shall have the priority and may be enforced in the manner
described in Section 8.3. Further, any Owner shall have the
standing and the right to bring an action against the
Association for any violation or breach by the Association of
any provision hereof or of the Articles or the Bylaws. In
addition, any Owner or Owners shall have the standing and power
to enforce the provisions of this Declaration, the Articles and
the Bylaws, and the prevailing party or parties in any action
by an Owner or Owners to enforce any such provisions shall be
entitled to recover from the other party or parties its or
their costs in such action (including reasonable attorneys'
fees), together with interest thereon at the rate of ten
percent (10%) per annum, and shall further be entitled to have
all such costs (including such interest) included in any judg-
ment awarded to the prevailing party or parties in such
action. Failure by the Association or by any Owner to take any

1 such enforcement action shall in no event be deemed a waiver of
the right to do so thereafter.

2 11.9 Property Held in Trust or by Affiliates of
3 Declarant. Any and all portions of the Property (and of the
4 Annexable Property) which are now or hereafter held in a sub-
5 division or similar trust or trusts (or similar means of hold-
6 ing title to property), the beneficiary of which trust(s) is
7 Declarant, shall be deemed for all purposes to be owned by
8 Declarant and shall be treated for all purposes in the same
9 manner as if such property were owned in fee by Declarant. No
10 conveyance, assignment or other transfer of any right, title or
11 interest in or to any of such property by Declarant to any such
12 trust (or the trustee thereof) or to Declarant by any such
13 trust (or the trustee thereof) shall be deemed for all purposes
14 to be a sale of such property or any right, title or interest
15 therein. Similarly, except and to the extent otherwise
16 expressly stated in a Recorded instrument executed by
17 Declarant, any and all portions of the Property (and of the
18 Annexable Property) which are now or hereafter owned or held by
19 an Affiliate (as defined below) of Declarant shall be deemed
20 for all purposes to be owned by Declarant and shall be treated
for all purposes under this Declaration in the same manner as
if such property were owned in fee by Declarant. Except and to
the extent otherwise expressly stated in a Recorded instrument
executed by Declarant, no conveyance, assignment or other
transfer of any right, title or interest in or to any such
property by Declarant to any Affiliate, or from any Affiliate
to Declarant, shall be deemed for all purposes to be a sale of
such property or any right, title or interest therein. For
purposes of this Section, the term "Affiliate" shall mean any
Person controlling, controlled by or under common control with
Declarant and shall further include, without limiting the gen-
erality of the foregoing, any general or limited partnership
having as a general partner Declarant or any subsidiary, parent
or any general partner of Declarant, as well as any subdivision
or similar trust or trusts having any one or more of the fore-
going as beneficiaries. For purposes of this Section, the
phrase "for all purposes" shall mean "for all purposes under
this Declaration or under any Tract Declaration or Subsidiary
Declaration."

21 11.10 FHA/VA Approval. So long as the Class B
22 membership is in existence, the following actions shall not be
23 taken without the prior approval of the Federal Housing
24 Administration or the Veterans Administration (if and to the
25 extent this Declaration shall have been submitted previously to
and approved by the Federal Housing Administration or the
26 Veterans Administration and, at the time of the action in ques-
tion, the applicable agency has insured or guaranteed an out-
standing loan against a Lot): (a) annexation of additional

1 properties to the Property (except to the extent such
 2 annexations are in accordance with a plan of annexation or
 3 expansion previously approved by such agencies); (b) dedication
 4 of any part or all of the Common Area; or (c) amendment of this
 5 Declaration.

6 11.11 Notices to Certain Mortgage Holders, Insurers or
 7 Guarantors. The Association shall give timely written notice
 8 of any of the following actions, events or occurrences to any
 9 holder, insurer or guarantor of a Mortgage who or which, prior
 10 to such action, event or occurrence, shall have made written
 11 request to the Association for such notice (which written
 12 request shall state the name and address of such holder,
 13 insurer or guarantor and the Lot number or street address of
 14 the Lot to which the applicable Mortgage pertains):

15 11.11.1 Any condemnation or casualty loss that
 16 affects either a material portion of the Property or the Lot
 17 securing the applicable Mortgage;

18 11.11.2 Any delinquency lasting sixty (60) days
 19 or more in payment of any assessments or other charges owed to
 20 the Association by the Owner of the Lot securing the applicable
 21 Mortgage, or any other breach or default hereunder by the Owner
 22 of the Lot securing the applicable Mortgage which is not cured
 23 within sixty (60) days after notice thereof from the
 24 Association to such Owner;

25 11.11.3 Any lapse, cancellation or material
 26 modification of any insurance policy or fidelity bond main-
 27 tained by the Association; or

28 11.11.4 Any proposed action which requires the
 29 consent of a specified percentage of Eligible Mortgage Holders,
 30 as provided in Section 11.2 hereof.

31 11.12 Dissolution or Termination of the Association or
 32 Legal Status of the Property. No action to dissolve or other-
 33 wise terminate the Association or the legal status of the
 34 Property for any reason other than the substantial destruction
 35 or condemnation of the Property shall be taken without the con-
 36 sent of Eligible Mortgage Holders representing not less than
 37 sixty-seven percent (67%) of all Lots subject to First
 38 Mortgages held by Eligible Mortgage Holders.

39 11.13 Amendments Requested by Governmental Agency.
 40 Notwithstanding any other provision of this Declaration,
 41 Declarant shall have the right to amend all or any part of this
 42 Declaration to such extent and with such language as may be
 43 requested by the Federal Housing Administration, Veterans
 44 Administration, Federal National Mortgage Association, Federa

1 Home Loan Mortgage Corporation or other governmental or
2 quasi-governmental agency which issues, guarantees, insures or
3 purchases Mortgages (or securities or other debt instruments
4 backed or secured by Mortgages), or otherwise governs transac-
5 tions involving Mortgages or instruments evidencing same, or
6 otherwise governs development of the Property or the Annexable
7 Property, as a condition to such agency's approval of this
8 Declaration, the development encompassing the Property or any
9 subdivision constituting a part of the Property. Any such
10 amendment shall be effected by Declarant's Recording an instru-
11 ment executed by Declarant and appropriately acknowledged,
12 specifying the governmental or quasi-governmental agency
13 requesting such amendment and setting forth the appropriate
14 amendatory language. Recording of such amendment shall consti-
15 tute conclusive proof of such governmental or quasi-
16 governmental agency's request for such amendment. Such
17 amendment shall be effective, without the consent or approval
18 of any other Person, on and as of the date the same is
19 Recorded, and shall thereupon and thereafter be binding upon
20 any and all Owners or other Persons having any interest in all
21 or any part of the Property. Except as expressly provided in
22 this Section, neither Declarant nor any other Person(s) shall
23 have the right to amend this Declaration except in accordance
24 with and pursuant to the other provisions and requirements of
25 this Declaration.

13
14 11.14 Number of Days. In computing the number of days
15 for purposes of any provision of this Declaration or the
16 Articles or Bylaws, all days shall be counted including
17 Saturdays, Sundays and holidays; provided, however, that if the
18 final day of any time period falls on a Saturday, Sunday or
19 legal holiday, then the final day shall be deemed to be the
20 next day which is not a Saturday, Sunday or legal holiday.

17
18 11.15 Declarant's Right to Use Similar Name. The
19 Association hereby irrevocably consents to the use by any other
20 nonprofit corporation which may be formed or incorporated by
21 Declarant of a corporate name which is the same as or decep-
22 tively similar to the name of the Association provided one or
23 more words are added to the name of such other corporation to
24 make the name of the Association distinguishable from the name
25 of such other corporation. Within five (5) days after being
26 requested to do so by the Declarant, the Association shall sign
such letters, documents or other writings as may be required by
the Arizona Corporation Commission in order for any other non-
profit corporation formed or incorporated by the Declarant to
use a corporate name which is the same or deceptively similar
to the name of the Association.

25 11.16 Temporary Sign Easement. Declarant hereby
26 reserves to itself and its agents a temporary easement over,

1 upon and across those portions of the Common Area adjacent to
2 publicly dedicated streets and roadways for purposes of
3 installing and maintaining signs identifying Persons building
4 upon or developing portions of the Property. The easement
reserved hereby shall expire and terminate upon completion of
construction and sales activities upon the Property, but in no
event later than twenty (20) years after the date this
Declaration is Recorded.

5 11.17 Notice of Violation. The Association shall have
6 the right to Record a written notice of a violation by any
7 Owner or Occupant of any restriction or provision of this
8 Declaration, the Articles, the Bylaws or the rules and regula-
9 tions of the Association. The notice shall be executed and
10 acknowledged by an officer of the Association and shall contain
11 substantially the following information: (a) the name of the
12 Owner or Occupant; (b) the legal description of the Lot or
13 Parcel against which the notice is being Recorded; (c) a brief
14 description of the nature of the violation; (d) a statement
15 that the notice is being Recorded by the Association pursuant
16 to this Declaration; and (e) a statement of the specific steps
17 which must be taken by the Lot or Parcel Owner or Occupant to
18 cure the violation. Recordation of a notice of violation shall
19 serve as a notice to the Owner and Occupant, and to any subse-
quent purchaser of the Lot or Parcel, that there is such a
violation. If, after the Recordation of such notice, it is
determined by the Association that the violation referred to in
the notice does not exist or that the violation referred to in
the notice has been cured, the Association shall Record a
notice of compliance which shall state the legal description of
the Lot or Parcel against which the notice of violation was
Recorded, the Recording data of the notice of violation, and
shall state that the violation referred to in the notice of
violation has been cured or, if such be the case, that it did
not exist. Notwithstanding the foregoing, failure by the
Association to Record a notice of violation shall not consti-
tute a waiver of any existing violation or evidence that no
violation exists.

20 11.18 Declarant's Disclaimer of Representations.
21 Notwithstanding anything to the contrary herein, Declarant
22 makes no warranties or representations whatsoever that the
23 plans presently envisioned for the complete development of
24 Foothills Club West can or will be carried out, or that any
25 real property now owned or hereafter acquired by it is or will
26 be subjected to this Declaration, or that any such real prop-
erty (whether or not it has been subjected to this Declaration)
is or will be committed to or developed for a particular (or
any) use, or that if such real property is once used for a par-
ticular use, such use will continue in effect. While Declarant
has no reason to believe that any of the restrictive covenants

1 contained in this Declaration are or may be invalid or
2 unenforceable for any reason or to any extent, Declarant makes
3 no warranty or representation as to the present or future
4 validity or enforceability of any such restrictive covenant.
Any Owner acquiring a Lot or Parcel in reliance on one or more
of such restrictive covenants shall assume all risks of the
validity and enforceability thereof and by accepting a deed to
the Lot or Parcel agrees to hold Declarant harmless therefrom.

5 11.19 Declarant's Rights. Any or all of the special
6 rights and obligations of the Declarant may be transferred to
7 other Persons, provided that the transfer shall not reduce an
8 obligation nor enlarge a right beyond that contained herein,
9 and provided, further, that no such transfer shall be effective
10 unless it is in a written instrument signed by the Declarant
11 and duly Recorded. Nothing in this Declaration shall be con-
12 strued to require Declarant or any successor to develop any of
13 the Annexable Property in any manner whatsoever.
14 Notwithstanding any provisions contained in this Declaration to
15 the contrary, so long as construction and initial sale of Lots
16 shall continue, it shall be expressly permissible for Declarant
17 to maintain and carry on upon portions of the Common Area such
18 facilities and activities as, in the sole opinion of Declarant,
19 may be reasonably required, convenient or incidental to the
20 construction or sale of such Lots, including, but not limited
21 to, business offices, signs, model units and sales offices, and
22 Declarant shall have an easement for access to such facil-
23 ities. The right to maintain and carry on such facilities and
24 activities shall include specifically the right to use Lots
25 owned by Declarant and any clubhouse or community center which
26 may be owned by the Association, as models, sales offices and
other purposes related to Developer's sales activities on the
Property and the Annexable Property. So long as Declarant con-
tinues to have rights under this Section, no Person shall
Record any subdivision plat or map, any declaration of cove-
nants, conditions and restrictions, any declaration of condo-
minium or any similar instrument affecting any portion of the
Property without Declarant's review and written consent
thereto, and any attempted Recordation without compliance here-
with shall result in such subdivision plat or map, declaration
of covenants, conditions and restrictions, declaration of con-
dominium or similar instrument being void and of no force and
effect unless subsequently approved by Recorded consent signed
by Declarant. This Section may not be amended without the
express written consent of Declarant; provided, however, the
rights contained in this Section shall terminate upon the ear-
lier of: (a) twenty (20) years from the date this Declaration
is Recorded; or (b) upon Recording by Declarant of a written
statement that all sales activity has ceased.

11.20 Declarant's Easement for Annexable Property.

1 Declarant shall have, and hereby expressly reserves, an ease-
2 ment over and across the Common Area for the purposes of rea-
3 sonable ingress to and egress from, over and across the
4 Property, including private roads and pathways, to the
Annexable Property until all of the Annexable Property is fully
developed and sold to retail purchasers.

11.21 References to VA and FHA.

5 In various places throughout this Declaration, references are made to the
6 Veterans Administration ("VA") and the Federal Housing
7 Administration ("FHA") and, in particular, to various consents
8 or approvals required of either or both of such agencies.
9 These references are included so as to cause this Declaration
10 to meet certain requirements of such agencies should Declarant
11 submit Foothills Club West project (or portions thereof) for
12 approval by either or both of such agencies. However,
13 Declarant shall have no obligation to submit the Foothills Club
14 West project (or any portion thereof) for approval by either or
15 both of such agencies, and Declarant shall have full discretion
16 whether to submit the Foothills Club West project (or any
17 portion thereof) for approval by either or both of such agen-
18 cies. Unless and until the VA or the FHA shall have approved
19 the Foothills Club West project, and at any time during which
20 both: (a) such approval, once given, shall be revoked,
21 withdrawn, cancelled or suspended; and (b) there are no out-
22 standing mortgages or deeds of trust Recorded against any Lot
23 or other portion of the Property to secure payment of an FHA-
24 insured or VA-guaranteed loan, all references herein to
25 required approvals or consents of such agencies shall be deemed
26 null and void and of no force or effect.

11.22 Waiver of Certain Nuisance Claims.

17 Declarant hereby waives, now and forever, on behalf of itself, its
18 successors and assigns, and on behalf of all present and future
19 owners of property located within that section of Foothills
20 Club West as described in the attached Exhibit "C", any and all
21 claims, known and unknown, any or all rights of action, either
22 legal or equitable which they have or may have or even might
23 have by reason of any action of the City of Phoenix in operat-
24 ing the wastewater treatment facility located at 17002 South
25 Seventh Street, Phoenix, Arizona and any additions or improve-
26 ments thereto in the collection of wastewater and in treating
the wastewater, or by reason of any fumes, odors, vapors,
smoke, noise or other discharges into the atmosphere, or by
reason of the existence, location and use of the wastewater
treatment facility. This agreement and waiver shall be cove-
nants running with the land described on Exhibit "C" hereto and
shall be binding on Declarant as owner of the land, their heirs
and assigns, and anyone claiming under it, as owners or
occupants thereof. This waiver of nuisance claims shall not

1 apply to the negligence or intentional acts of the City of
Phoenix, its agents or employees.

2 ARTICLE 12

3 GOLF COURSES

4 12.1 Disclaimers Regarding Golf Courses. All Persons,
5 including all Owners, are hereby advised that no representa-
6 tions or warranties have been or are made by Declarant or any
7 other Person with regard to the continuing ownership, operation
8 or configuration of, or right to use, any golf course within,
9 near or adjacent to the Property, whether or not depicted on
10 the Master Development Plan or any other land use plan, sales
11 brochure or other marketing display or plat. No purported rep-
12 resentation or warranty, written or oral, in such regard shall
13 ever be effective without an amendment hereto executed by
14 Declarant. Further, the ownership, operation or configuration
15 of, or rights to use, any such golf course may change at any
16 time and from time to time for reasons including, but not
17 limited to: (a) the purchase or assumption of operation of any
18 such golf course by an independent Person; (b) the conversion
19 of any such golf course's membership structure to an equity
20 club or similar arrangement whereby the members of such golf
21 course or an entity owned or controlled thereby become the
owner(s) and/or operator(s) of such golf course; (c) the con-
veyance, pursuant to contract, option or otherwise, of such
golf course to one or more affiliates, shareholders, employees
or independent contractors of Declarant; or (d) the conveyance
of any such golf course to the Association or to one or more
Subsidiary Associations. As to any of the foregoing or any
other alternative, no consent of the Association, any
Subsidiary Association or any Owner shall be required to effec-
tuate such transfer (except for the consent of the Association
in the event of a transfer to the Association or of the appli-
cable Subsidiary Association in the event of a transfer to such
Subsidiary Association). No Owner or Occupant shall have any
ownership interest in any such golf course solely by virtue
of: (i) his, her or its membership in the Association or any
Subsidiary Association; or (ii) his, her or its ownership, use
or occupancy of any Lot or Parcel, or portion thereof.

22 12.2 Rights of Access and Parking. Each such golf
23 course and its members (regardless of whether such members are
24 Owners), employees, agents, contractors, or designers shall at
25 all times have a right and nonexclusive easement of access and
26 use over all roadways located within the Property as reasonably
necessary to travel to and from any entrance within the
Property to and from such golf course and, further, over those
portions of the Property (whether Common Area or otherwise)
reasonably necessary to the operation, maintenance, repair, and

1 replacement of such golf course and its facilities. Without
2 limiting the generality of the foregoing, members of such golf
3 course and permitted members of the public shall have the right
4 to park their vehicles on the roadways within the Property at
5 reasonable times before, during and after golf tournaments and
6 other functions held at such golf course.

7 12.3 Limitations on Amendments. In recognition of the
8 fact that the provisions of this Article are for the benefit of
9 any such golf course, no amendment to this Article and no
10 amendment in derogation of this Article to any other provisions
11 of this Declaration may be made, without the written approval
12 thereof by the owner(s) of any such golf course. The foregoing
13 shall not apply, however, to amendments made by Declarant,
14 including, but not limited to, amendments made pursuant to
15 Section 11.13.

16 12.4 Golf Cart Path Easement. There may be golf cart
17 path easements designated as such on one or more plats of the
18 Property, or portions thereof, or in one or more Tract
19 Declarations, which shall be used for golf cart paths, pedes-
20 trian walkways, maintenance and vehicle access, and unhindered
21 access between said paths and any golf course. Nothing shall
22 be placed or maintained in any golf cart path easement which
23 shall interfere with utilization thereof as a playable part of
24 such golf course, and all landscaping and other improvements
25 within a golf cart path easement (except those installed or
26 constructed by Declarant) shall require the approval of the
Architectural Committee.

1 12.5 Golf Balls, Disturbances and Nuisances. Each
2 Owner understands and agrees that his, her or its Lot or Parcel
3 is adjacent to or near one or more golf courses and related
4 facilities and that golf course-related activities, including,
5 without limitation, regular course play and tournaments, may be
6 held within the Property. Each Owner acknowledges that the
7 location of his, her or its Lot or Parcel within the Property
8 may result in nuisances or hazards to persons and property on
9 such Lot or Parcel as a result of normal golf course operations
10 or as a result of such other resort-related activities. Each
11 Owner covenants for itself, its successors and assigns that it
12 shall assume all risks associated with such location,
13 including, but not limited to, the risk of property damage or
14 personal injury arising from stray golf balls or actions inci-
15 dental to such resort-related activities and shall indemnify
16 and hold harmless the Association and Declarant from any lia-
17 bility, claims, or expenses, including attorneys' fees, arising
18 from such property damage or personal injury. Each Owner fur-
19 ther covenants that the Association, Declarant and the Owner of
20 any such golf course shall have the right, in the nature of an
21 easement, to subject all or any portion of the Property to

1 nuisances incidental to the maintenance, operation, or use of
2 the golf course(s), and to the carrying out of such golf
3 course-related activities. Notwithstanding the above, any
4 Owner engaging in such golf course-related activities shall
5 respect neighboring properties in scheduling and holding such
6 events so as not unreasonably to disturb Owners and Occupants
7 of the neighboring property.

8 12.6 Operation of the Golf Course. Each Owner
9 acknowledges that the operation and maintenance of golf course
10 within, near or adjacent to the Property may require that main-
11 tenance personnel and other workers required to operate and
12 maintain such golf course will commence work relating to the
13 operation and maintenance of such golf course as early as 5:30
14 a.m. on a daily basis. In connection therewith, each Owner and
15 Occupant agrees that Declarant, and the owner or owners of all
16 or any portion of such golf course, and the employees, agents
17 and contractors of Declarant and such owners, shall not be
18 responsible or accountable for, and shall be held harmless
19 from, any claims, causes of action, loss or liability arising
20 in connection with or associated with any noise or inconve-
21 nience normally associated with such construction and mainte-
22 nance activities.
23
24
25
26

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

2 DECLARANT:

3 UDC - FOOTHILLS LIMITED PARTNERSHIP,
4 an Arizona limited partnership

5 By UDC ADVISORY SERVICES, INC., an
6 Illinois corporation, General
7 Partner

8 By _____

9 Its _____

10 By UDC ADVISORY SERVICES LIMITED
11 PARTNERSHIP, an Illinois
12 limited partnership, General
13 Partner

14 By UDCAS CORPORATION, an
15 Illinois corporation,
16 General Partner

17 By _____

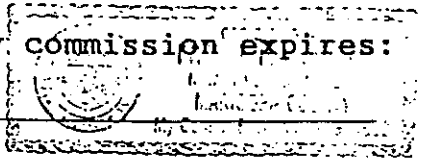
18 Its _____

19 STATE OF ARIZONA)
20) ss.
21 County of Maricopa)

22 On this 23rd day of June, 1989, before me,
23 the undersigned officer, personally appeared
24 Gary D. Haarer, who acknowledged himself to be Agent
25 of UDC ADVISORY SERVICES, INC., an Illinois corporation
26 which is General Partner of UDC - FOOTHILLS LIMITED PARTNERSHIP,
an Arizona limited partnership, and that he, being authorized so
to do, executed the foregoing instrument for the purposes therein
contained by signing the name of said entities by himself.

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

2
3 *Philip J. Rucinski*
4 Notary Public

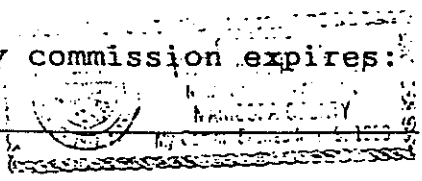
5 My commission expires:
6 

7 STATE OF ARIZONA)
8) ss.
9 County of Maricopa)

10 On this 23rd day of June, 1989, before me,
11 the undersigned officer, personally appeared Gary D. Haarer
12 _____, who acknowledged himself to be Agent _____ of
13 UDCAS CORPORATION, an Illinois corporation which is General
14 Partner of UDC ADVISORY SERVICES LIMITED PARTNERSHIP, an Illinois
15 limited partnership which is in turn General Partner of UDC-
16 FOOTHILLS LIMITED PARTNERSHIP, an Arizona limited partnership,
17 and that he, being authorized so to do, executed the foregoing
18 instrument for the purposes therein contained by signing the name
19 of said entities by himself.

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

21 *Philip J. Rucinski*
22 Notary Public

23 My commission expires:
24 

25 LENDER CONSENT AND SUBORDINATION

26 Lincoln Savings and Loan Association, a California state-chartered savings and loan association ("Lincoln"), is the holder of the beneficiary's interest under that certain Deed of Trust (the "Deed of Trust") dated November 1, 1988, executed by UDC-Foothills Limited Partnership, an Arizona limited partnership, as trustor, in favor of First American Title Insurance Company of Arizona, an Arizona corporation, as trustee,

1 and Lincoln, as beneficiary, and recorded November 2, 1988 at
2 Recorder's No. 88-540515, records of Maricopa County, Arizona.
3 Lincoln hereby consents to the execution and recordation of the
4 foregoing Declaration of Covenants, Conditions and Restrictions
5 for Foothills Club West, and hereby subordinates the Deed of
6 Trust and the lien thereof to such Declaration, provided, how-
7 ever, that the lien of the Deed of Trust shall remain prior and
8 superior to any lien arising pursuant to or under such
9 Declaration (including, but not limited to, any lien securing
10 payment of assessments).

LINCOLN SAVINGS AND LOAN
ASSOCIATION, a California state-
chartered savings and loan associa-
tion

By *Wayne Powers*
Its *Secretary*

12 STATE OF ARIZONA)
13) ss.
County of Maricopa)

14 On this 19th day of July, 1989, before
15 me, the undersigned officer, personally appeared Wayne Powers,
16 who acknowledged himself to be Secretary of
17 LINCOLN SAVINGS AND LOAN ASSOCIATION, a California state-
18 chartered savings and loan association, and that he, in such
19 capacity, being authorized so to do, executed the foregoing
20 instrument for the purposes therein contained by signing the name
21 of said association by himself.

22 IN WITNESS WHEREOF, I hereunto set my hand and offi-
23 cial seal.

Traci Shear
Notary Public

24 My commission expires:
25 My Commission Expires April 29, 1991