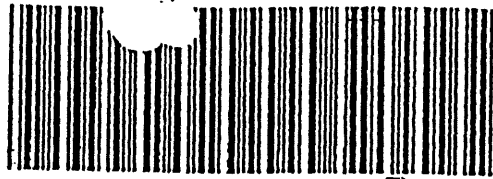


Arizona Greene



OFFICIAL RECORDS OF
MARICOPA COUNTY RECORDER
HELEN PURCELL

98-025572 03/31/98 04:53

TEXT 3 OF 5

First American Title

When recorded, return to:

Connie Foley
UDC Homes, Inc.
6710 North Scottsdale Rd.
Scottsdale, Az 85253

201-800-1078396
3/5

AMENDED TRACT DECLARATION AND DECLARATION OF
ADDITIONAL COVENANTS, CONDITIONS AND RESTRICTIONS FOR
PARCEL 18 AT FOOTHILLS CLUB WEST.

This Tract Declaration and Declaration of Covenants, Conditions and Restrictions is executed as of March 30, 1998, by UDC HOMES, INC., a Delaware corporation ("Declarant"), with respect to the following:

RECITALS:

A. As of the date hereof, Declarant is the owner and holder of all rights of the "Declarant" under that certain Declaration of Covenants, Conditions and Restrictions for Foothills Club West dated June 1, 1989, and Recorded on July 21, 1989, at Recorder's No. 89-337438, in the official records of Maricopa County, Arizona (as amended from time to time, the "Declaration", with capitalized terms used in this Tract Declaration having the same meanings as set forth for such terms in the Declaration unless otherwise specifically indicated).

B. By virtue of the Declaration of Annexation for Parcel 18 at Foothills Club West Recorded on 3/31/98 at Recorder's No. 98-025572 in the official records of Maricopa County, Arizona, the real property described on Exhibit A attached hereto and incorporated herein by reference (the "Tract") is a part of the Property, as that term is defined in the Declaration.

C. The Declaration contemplates that Tract Declarations for property located within Foothills Club West may be executed and Recorded from time to time as development of Foothills Club West proceeds and as land use classifications for such property are established.

D. Declarant desires to Record this Tract Declaration with respect to the Tract.

NOW, THEREFORE, Declarant hereby declares as follows:

1. Land Use Classification. The Tract shall have a land use classification of Single Family Residential Use, subject to the provisions of this Tract Declaration (and the Declaration). Any and all references in this Tract Declaration to "Lot" or "Lots" shall be deemed to refer to any Lot or Lots, as defined in the Declaration, established or created from the Tract.

2. Additional Covenants, Conditions, Restrictions and Reservations Applicable to the Tract. The following covenants, conditions, restrictions and reservations of easements and rights shall apply to the Tract (and all portions thereof and Lots created therefrom) and to the Owners and Occupants thereof:-

2.1 Single Family Residential Use. No structure whatsoever, other than one private, Single Family residence, together with a private garage for not more than four cars, one gazebo, one tennis court and one storage facility (all of which must be approved in advance by the Architectural Committee in accordance with the Declaration), as well as a swimming pool (which shall not be subject to Architectural Committee approval except as to any aboveground structures appurtenant thereto), shall be erected, placed or permitted on any Lot. No gainful occupation, profession, trade or other non-residential use shall be conducted on or in any Lot. The entire (but not less than all of a) Dwelling Unit on a Lot may be leased to a Single Family tenant from time to time by the Owner thereof, subject to the provisions of the Declaration, this Tract Declaration, any applicable Subsidiary Declaration and the Association Rules.

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

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

2.4 Machinery and Equipment. No machinery or equipment of any kind shall be placed, operated, stored or maintained upon the Tract or any Lot except:

2.4.1 such machinery or equipment as is usual and customary in connection with the use, maintenance or construction (during the period of construction) of a building, appurtenant structures or improvements thereon; or

2.4.2 that which Declarant or the Association may require for the development, operation and maintenance of Foothills Club West.

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

2.5.1 signs required by legal proceedings;

2.5.2 a maximum of 2 identification signs for each Dwelling Unit, each with a maximum face area of 72 square inches; and

2.5.3 signs, including "for sale" and "for lease" signs and subdivision or building identification signs, the nature, number, location, content and design of which shall be approved in writing by

the Architectural Committee.

2.6 Restriction on Further Subdivision, Property Restriction, and Rezoning.

2.6.1 All proposed site plans and subdivision plats for the Tract or any Lot, or any portion thereof, must be approved in writing by the Architectural Committee prior to Recordation thereof or commencement of construction on the Tract or the applicable Lot. No Lot, or portion thereof, shall be further subdivided or subjected to a condominium declaration, and no portion less than all of any such Lot, or any easement or other interest therein, shall be conveyed or transferred by any Owner without the prior written approval of the Architectural Committee, provided that nothing in this Subsection 2.6.1 shall be deemed to prohibit sales by Declarant or a Developer Owner of Lots into which the Tract is divided, so long as the plat(s) and other items required to be approved pursuant to this Section 2.6 have been so approved.

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

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

2.6.4 No subdivision plat, condominium declaration, Subsidiary Declaration, easement, declaration of further covenants, conditions, restrictions or easements or other instrument which is to be Recorded and which is required by this Section 2.6 to be approved by the Architectural Committee shall be effective unless the required approval is evidenced on such instrument by the signature of an authorized representative of the Architectural Committee.

2.6.5 No site plan, subdivision plat, condominium declaration, Subsidiary Declaration or further covenants, conditions, restrictions or easements, and no application for rezoning, variances or use permits shall be submitted to the City or any other governmental authority or agency unless the same has first been approved in writing by the Architectural Committee as provided in this Section 2.6; further, no changes or modifications shall be made in any such documents, instruments or applications once the same have been approved by the Architectural Committee hereunder (whether requested by the City or otherwise) unless such changes or modifications have first been approved by the Architectural Committee in writing.

2.6.6 Notwithstanding the foregoing, Declarant shall not be required to seek or obtain any of the approvals or consents otherwise required under this Section 2.6 as to the Tract or any Lot, or any portion of either, of which Declarant or an affiliate of Declarant is the Owner (or which Declarant or an affiliate of Declarant has an option to acquire).

2.7 Parking. It is the intent of Declarant to eliminate on-street parking as much as possible in Foothills Club West. No vehicle shall be parked on any street or roadway shown on any map of dedication, subdivision plat or similar instrument Recorded by Declarant unless otherwise expressly provided either: (a) in or on such Recorded map of dedication, subdivision plat or similar instrument showing the street

or roadway and approved in writing by Declarant; or (b) in a separate Recorded instrument executed by Declarant. Vehicles shall be kept in garages, carports, residential driveways, other designated parking areas or as otherwise required in a Subsidiary Declaration. The Board may adopt additional parking restrictions including the establishment of fines and assessments for their violation. The Board may also delegate its authority to enforce such parking restrictions to an appropriate Subsidiary Association.

2.8 Model Homes. Nothing contained herein shall prohibit the construction and maintenance of model homes, sales offices and parking incidental thereto by Persons engaged in the construction, marketing and sales of Dwelling Units upon the Tract or any of the Lots, provided, however, that such models and sales offices may only be open during reasonable hours and otherwise shall be in compliance with the provisions of this Tract Declaration, the Declaration and ordinances of the City. Except as otherwise approved in writing by the Architectural Committee: (a) all model homes and sales offices shall cease to be used as such at any time the Owner (or an affiliate of the Owner, or a lessee thereof as the case may be) is not actively engaged in the construction and sale of Dwelling Units within the Tract; and (b) no model home or sales office shall be used for the sale or rental of residences not located within the Tract. Notwithstanding the foregoing, Declarant may, without the approval or consent of the Architectural Committee or any other Person, use any Lot or Dwelling Unit of which Declarant or an affiliate of Declarant is the Owner or lessee as a model home or sales office (and for parking incidental thereto) in connection with the sale or marketing of residences not located within the Tract.

2.9 Prohibited Uses. The following uses of the Tract and any and all Lots are prohibited:

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

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

2.10 Temporary Occupancy and Temporary Buildings; Outside Storage. No trailer, tent, shack, garage, barn or temporary structure of any kind shall be used as a residence, whether temporary or permanent. Except during the construction process, no temporary building or structure shall be erected, installed or maintained on the Tract or any Lot without prior written approval in accordance with Article 9 of the Declaration. Temporary structures used during construction must receive prior written approval, in accordance with Article 9 of the Declaration, with regard to location and appearance, and shall be removed immediately after completion of such construction, and that portion of the Tract or Lot from which the same are removed shall be promptly placed in such condition as is otherwise required by the Declaration or this Tract Declaration. Except during construction, no materials, supplies, equipment, finished or semifinished products or articles of any nature shall be stored on any area outside of a building unless approved in advance by the Architectural Committee. Any permitted outside storage shall be screened by a solid visual barrier so as not to be Visible From Neighboring Property, provided, however, that during construction of improvements on the Tract or any Lot, necessary construction materials and supplies may be stored on the Lot or Tract without the need for a solid visual barrier provided such materials and supplies are kept in neat order considering the construction activities. The Architectural Committee is authorized to designate the areas and manner in which supplies of building materials and construction equipment shall be stored and the routes construction vehicles may use. All such designations shall be reasonable. Except with the express written approval of the Architectural Committee, no Dwelling Unit or other structure on any Lot or Tract shall be

occupied in any manner while in the course of original construction or prior to issuance by the appropriate local governmental authority of a certificate of occupancy (or other similar document) with respect to such Dwelling Unit or other structure.

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

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

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

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

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

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

2.13 Nuisances; Dust Control; Construction Activities. No rubbish or debris of any kind shall be permitted to accumulate upon or adjacent to the Tract or any Lot (or any other part of the Property) so as to create a nuisance or render any such property or activity thereon unsanitary, unsightly or

offensive. Each Lot shall be landscaped and maintained in a manner which will minimize the possibility of dust being transmitted into the air and over adjacent properties. Although normal construction activities shall not be considered a nuisance or otherwise prohibited, all Lots must be kept in a neat and tidy condition during construction periods. No noxious or offensive activity shall be carried on or permitted on the Tract or any Lot (or any other part of the Property), nor shall anything be done thereon which may be, or may become, an annoyance or nuisance to Persons or property in the vicinity of such Lot or the Tract or to Foothills Club West, or which shall interfere with the quiet enjoyment of each of the Owners and Occupants. Without limiting the generality of any of the foregoing provisions, no exterior speakers, horns, whistles, bells or other sound devices, except ordinary intercom systems or security devices used exclusively for security purposes, shall be located, used or placed on the Property. The Architectural Committee in its discretion shall have the right to determine the existence of any such nuisance. Furthermore, the Architectural Committee, acting on behalf of the Association, shall have the right to remove any nuisance at the expense of the Owner responsible for the nuisance (or at the expense of the Owner whose tenant, Occupant or guest is responsible for the nuisance); such expenses (including, but not limited to, attorneys' fees and other collection costs) shall be paid by the Owner promptly on demand, with interest thereon at the rate provided in Section 11.8 of the Declaration from the date incurred until fully paid, and, with such interest, shall be secured by the lien against the Lot created pursuant to Section 8.3 of the Declaration.

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

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

2.16 Mineral Exploration. Neither the Tract nor any Lot shall be used in any manner to explore for, quarry, mine, remove or transport any water, oil or other hydrocarbons, minerals, gravel, gas, earth or any earth substance of any kind.

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

2.18 Blanket Utility Easements. There is hereby created a blanket easement upon, over and under the Tract, each Lot, the Common Area and any Limited Common Areas within the Tract for ingress to, egress from, and the installation, replacement, repair, maintenance, operation and existence of all utility equipment and service lines and systems, as such equipment, lines and systems are installed in connection with the initial development of the Tract, the Lots, the Common Area and any Limited Common Areas within the Tract and the construction of buildings thereon; provided that such easements shall be specifically and permanently described and fixed by Recorded instrument either: (a) at the time a subdivision plat, approved to the extent required by this Tract Declaration, is Recorded with respect to the portion of the Property to be served or burdened by such easement(s), as applicable; or (b) within 180 days following approval, to the extent required by this Tract Declaration and by the appropriate governmental agencies, of a site plan for the portion of the Property to be served or burdened by such easement(s), as applicable; provided, further, that in the event such easements with respect to a portion of the Property are not specifically and permanently described and fixed by Recorded instrument at or within the time specified in (a) or (b) above (whichever occurs later), the blanket easements created hereby with respect to such portion of the Property shall nevertheless automatically terminate and expire. Utility or service facilities and equipment may be affixed and maintained on, in and under the roofs and exterior walls of buildings on the Tract, the Lots, the

Common Area and any Limited Common Areas within the Tract. Notwithstanding anything to the contrary contained in this Section 2.18, but subject to the provisions of Section 2.27, no utility or service equipment or lines may be installed or relocated on any Lot, the Tract, the Common Area or any Limited Common Areas within the Tract except as initially approved by the Declarant, or, if installed after Recordation of this Tract Declaration, as approved by the Owner and the Architectural Committee.

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

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

2.20.1 automobiles, trucks or vans, or mini-motor homes not exceeding 7 feet in height from ground level and 18 feet in length, so long as such automobiles, trucks or vans or mini-motor homes: (a) are parked as provided in Section 2.7; and (b) are used on a regular and recurring basis for basic transportation; or

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

Notwithstanding Subsection 2.20.1 above, no automobile, motorcycle, motorbike or other motor vehicle shall be constructed, repaired or, if inoperable, stored upon any Lot or street, or any other portion of the Tract or the Property, so as to be Visible From Neighboring Property.

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

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

2.23 Incidental Uses. Subject to the provisions of the Declaration, this Tract Declaration and any applicable Subsidiary Declaration, the entity having approval authority pursuant to Article 9 of the Declaration may approve, regulate and restrict incidental uses of property within a land use classification. By way of example and not of limitation, the Board may permit: private roadways; tennis and/or swimming clubs intended primarily for the benefit of all or certain Owners or Occupants; tennis courts; swimming pools; and other recreational facilities.

2.24 Window Coverings. No external window covering or reflective covering may be placed, or permitted to remain, on any window of any building, structure or other improvement without prior written approval in accordance with Article 9 of the Declaration.

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

2.26 Duty of Maintenance. Each Owner shall, at such Owner's sole cost and expense, keep such Owner's Lot (including buildings, improvements, private drives, easement areas and grounds thereon) in a well-maintained, clean, neat and attractive condition at all times and shall comply in all respects with all governmental health, fire and safety statutes, ordinances, regulations and requirements.

2.27 Utility Lines and Connections. All utility wires, lines, pipes, conduits, facilities, connections and installations (including, without limitation, electrical, telephone, cable television, water, gas and sanitary sewer) shall be installed and maintained underground or concealed in, under, or on structures approved in writing in advance in accordance with Article 9 of the Declaration. No utility meter or apparatus shall be located on any pole or attached to the outside of any building wall which is exposed to view from any street. All transformers shall be placed on or below the surface of the Lot or the Tract. Temporary above-ground power or telephone structures and water lines incident to construction activities shall be permitted but only with prior written approval in accordance with Article 9 of the Declaration. Notwithstanding the foregoing, utility meters and related panels and similar equipment may be placed on outside building walls exposed to view from a street in order to comply with any requirements, requests, regulations, orders, conditions or specifications of any public, quasi-public or private utility or any governmental agency or body, provided that reasonable efforts shall be made to avoid placing any such meter, panel or other equipment on the outside front wall of a residence or other building facing the street running directly in front of such residence.

2.28 On-Site Grading and Drainage; Drainage Easements. No water shall be drained or discharged from the Tract or any Lot, or building thereon, except in accordance with: (a) the master drainage study (including any amendments thereto) approved by the appropriate governmental agency (or agencies) and the Architectural Committee (or other drainage study approved by the Architectural Committee if no such master drainage study exists); and (b) grading and drainage plans approved in accordance with Article 9 of the Declaration and applicable City ordinances. Further, no Owner or Occupant shall interfere with the drainage established by the grading and drainage plans for the remainder of the Property or any other property adjacent to the Lot or Tract. Except as otherwise provided herein, or by applicable governmental rule, regulation or ordinance, the owner of property subject to Recorded easements shall be responsible for maintaining said property. One or more Lots or other portions of the Tract may be subject to easements for storm water and other drainage, pursuant to Recorded plats or other Recorded instruments. No Owner or Occupant shall interfere with such easements or the flow of water over or through the areas subject to such easements. Without limiting the generality of the preceding sentence, no Owner or Occupant shall install landscaping or improvements (including, without limitation, fences) which would interfere with the flow of water over or through such areas, and the areas subject to such easements shall be subject to applicable municipal or other governmental ordinances and regulations and to any applicable restrictions set forth in or on the Recorded plats or other Recorded instruments establishing such easements. The City and its employees, agents, contractors and designees, as well as the Associations and its employees, agents, contractors and designees, shall have the right and an easement to enter upon any Lot or other portion of the Tract which is subject to a drainage easement as described in this Section 2.28, for purposes of repairing, replacing, installing, operating and maintaining the areas subject to such easement and any drainage-related systems or equipment therein, and, in connection with their exercise of such right and easement, shall have the right (without liability to the Owner or Occupant of the property in question) to remove plants or other

landscaping and fences or other improvements situated within the areas subject to such easements.

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

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

2.31 Heating, Ventilating and Air Conditioning Units. No heating, air conditioning or evaporative cooling units or equipment shall be placed, constructed or maintained upon the Tract or any Lot, including, but not limited to, upon the roof or exterior walls of any structure on any part of the Tract or any Lot unless: (a) where such unit or equipment is installed upon the roof of any structure upon the Tract or any Lot, such unit or equipment is fully screened from view from any street running immediately in front of such structure by a parapet wall which conforms architecturally with such structure; or (b) in all other cases, such unit or equipment is attractively screened or concealed so as not to be Visible From Neighboring Property, which means of screening or concealment shall (in either case (a) or (b)) be subject to the Guidelines and to approval in accordance with Article 9 of the Declaration.

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

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

regulated by the Architectural Committee and may, if so provided in such rule or other Guideline, be made subject to the prior approval thereof by the Architectural Committee.

2.34 Basketball Goals or Similar Structures. No basketball goal or similar structure or device (whether mounted on a pole, wall or roof) shall be placed or constructed upon the front yard, front elevation or front roof surface of any structure on the Tract or any Lot (except upon Common Area). A basketball goal may be placed on a Lot in a location where such goal would be visible from a street running along the side of a Dwelling Unit so long as: (a) such goal is located within an enclosed rear yard on such Lot; and (b) the location of such goal are approved in advance, in writing, by the Architectural Committee.

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

2.36 Underground Facilities. No cesspool or well may be dug or installed without the prior written approval of the Board. No part of the Tract or any Lot shall be used for purposes of boring, mining, exploring for or removing oil or other hydrocarbons, minerals, gravel or earth (except to the limited extent required in connection with the normal construction activities of Declarant, an affiliate or assignee of Declarant or a Developer Owner during the applicable construction period).

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

2.38 Fences, Interferences and Obstructions.

2.38.1 All fences shall be of block construction (except as may be otherwise permitted with the prior written consent of the Architectural Committee) and, except as otherwise approved pursuant to Article 9 of the Declaration, shall be painted or colored to match the exterior of the structure(s) enclosed by or upon the same Lot as such fence. No fence shall exceed six and one-half (6 1/2) feet in height, provided that no fence within fifteen (15) feet of the front property line of a Lot shall exceed three (3) feet in height; the height limitations in this sentence shall not include the height of a retaining wall upon which any such fence is situated. The foregoing shall not apply to boundary walls or fences constructed by or with the approval of Declarant along property lines bounding public rights-of-way, provided, however, that such boundary walls or fences shall be constructed so as to comply with applicable municipal zoning and other laws and ordinances. No fence shall be permitted to interfere with existing recorded restrictions, drainageways or easements. Except as otherwise provided by applicable law or governmental rule or regulation, and subject to any applicable restrictions or requirements set forth in any recorded plat of all or any part of the Property, fences may be constructed in or over a recorded utility easement, provided, however, that should the utility companies ever require access to such easement, it shall be the responsibility of the Owner of the applicable Lot, at his, her or its sole expense, to remove and replace such fence.

2.38.2 No structure, shrubbery or other vegetation shall be permitted to exist on the Tract or any Lot, the height or location of which shall be deemed by the Architectural Committee either to constitute a traffic hazard or to be unattractive in appearance or unreasonably detrimental to adjoining

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

2.39 Leasing; Obligations of Tenants and Other Occupants.

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

2.39.2 In the event that a tenant or other Occupant violates any provision of the Declaration, this Tract Declaration, the Articles, the Bylaws or the Association Rules, the Association shall have the power to bring an action or suit against such tenant or other Occupant to recover sums due for damages or injunctive relief, or for any other remedy available at law or equity. The Association's costs in doing so, including, but not limited to, reasonable attorneys' fees, together with interest as provided in Section 11.8 of the Declaration, shall be reimbursed by the tenant or other Occupant to the Association (or, in the absence of reimbursement by the tenant or other Occupant, or at the election of the Board, by the Owner of the Lot occupied by such tenant or other Occupant) and constitute a lien on the applicable Lot which shall have the priority, and may be enforced in the manner, described in Section 8.3 of the Declaration.

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

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

2.40 Encroachments. There are reserved and granted for the benefit of each Lot and any other portion of the Tract, over, under and across each other Lot and other portion of the Tract and the Common Area, and for the benefit of the Common Area, over, under and across each Lot and all other portions of the Tract, non-exclusive easements for encroachment, support, occupancy and use of such portions of the Tract, Lots and/or Common Area as are encroached upon, used and occupied as a result of any original construction design, accretion, erosion, deterioration, decay, errors in original construction, movement, settlement, shifting or subsidence of any building or structure or any portion thereof, or any other cause. In the event any improvements on a Lot or other portion of the Tract, or on the Common Area, are partially or totally destroyed, the encroachment easement shall exist for any replacement structure which is rebuilt pursuant to the original construction design. The easement for the maintenance of the encroaching

improvement(s) shall exist for as long as the encroachment exists; provided, however, that no easement of encroachment shall be created due to the willful misconduct of the Association or any Owner. Any easement of encroachment may but need not be cured by repair and restoration of the structure.

2.41 Variances. Subject to Section 9.12 of the Declaration, the Architectural Committee may, at its sole discretion, grant variances from the restrictions set forth in this Tract Declaration if the Architectural Committee determines that:

2.41.1 either:

(a) a particular restriction would create a substantial hardship or burden on an Owner or Occupant and that such hardship is not attributable to the Owner's or Occupant's acts; or

(b) a change of circumstances has rendered the particular restriction obsolete; and,

2.41.2 the activity permitted under the requested variance will not have a substantially adverse effect on other Owners and Occupants and is consistent with the high quality of life intended for Foothills Club West.

The request for a variance must be made in writing and be accompanied by adequate supporting documentation. The Architectural Committee shall approve or disapprove the request, in writing, as promptly as possible under the particular circumstances, and all such decisions of the Architectural Committee shall be final and nonappealable.

3. Enforcement. As provided in Section 11.8 of the Declaration, the Association shall have the standing and power to enforce the provisions of this Tract Declaration and, so long as Declarant is the owner of any portion of the Property or the Annexable Property, Declarant shall also have the right but not the obligation to enforce the provisions of this Tract Declaration and to take corrective action in the event of a breach hereof to the same extent that the Association may enforce this Tract Declaration or take corrective action with respect to a breach hereof in accordance with the terms and conditions of the Declaration.

4. Term. All of the covenants, conditions, restrictions and other provisions of this Tract Declaration (as amended from time to time in accordance with the provisions hereof): (a) shall run with and bind the Tract and all portions thereof, including but not limited to all Lots created therefrom; (b) shall inure to the benefit of and shall be enforceable by the Association or by the owner of any property subject hereto or, so long as Declarant owns any portion of the Property or the Annexable Property, by Declarant, and by their respective legal representatives, heirs, successors and assigns; and (c) shall remain in full force and effect for a term co-extensive with the term of the Declaration, as the same may be extended in accordance with the provisions thereof, provided that, notwithstanding any termination of the Declaration pursuant to the terms thereof, the provisions of this Tract Declaration governing use and occupancy of the Tract shall remain in force to the maximum extent practicable unless revoked or amended by an affirmative vote of Persons owning not less than seventy-five percent (75%) of all Lots subject to this Tract Declaration.

5. Amendment. This Tract Declaration may be amended by Declarant, without the consent or approval of any other Person, so long as Declarant owns all Lots subject to this Tract Declaration. Commencing at such time as any Lot is owned by an Owner other than Declarant, this Tract Declaration may only be amended in accordance with the provisions of Sections 11.2 and 11.13 of the Declaration (except that any percentages of Members or Eligible Mortgage Holders required to approve any amendment shall be applied only to Members owning, or Eligible Mortgage Holders having Mortgages affecting, Lots created from the Tract and subject to this Tract Declaration), and subject to the provisions of Sections 11.10, 11.11, 11.12, and 11.21, with references in all of the Sections cited above in this Section 5 to the "Declaration" to be deemed to be a reference to this Tract Declaration. Notwithstanding the preceding sentence, no amendment

of this Declaration (other than one adopted by Declarant pursuant to the first sentence of this Tract Declaration) shall be effective unless approved in advance, in writing, by the Architectural Committee, which approval shall be indicated by the signature on such amendment of an authorized representative of the Architectural Committee. In no event shall any amendment be effective unless and until it is Recorded.

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

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

8. Declarant's Disclaimer of Representations. While Declarant has no reason to believe that any of the restrictive covenants, conditions or provisions contained in this Tract Declaration are or may be invalid or unenforceable for any reason or to any extent, Declarant makes no warranty or representation as to the present or future validity or enforceability of any such restrictive covenants, conditions or provisions. Any Owner acquiring a Lot in reliance on one or more of such restrictive covenants, conditions or provisions shall assume all risks of the validity and enforceability thereof and by accepting a deed to the Lot agrees to hold Declarant harmless therefrom.

9. Interpretation. This Tract Declaration shall be considered an integral part of the Declaration and shall be construed with the Declaration as if the provisions hereof were set forth therein. This Tract Declaration shall run with the Tract and be enforceable in accordance with and as a part of the Declaration. In the event of any conflict between a provision of the Declaration and a provision of this Tract Declaration, the provision in the Declaration shall control except in the case where the provision in this Tract Declaration places greater or more specific restrictions upon the use, occupancy, improvement or development of the Tract or Lots created therefrom, or upon the activities or conduct of Owners, Occupants or other upon or about the Tracts or Lots created therefrom, in which event the provision in this Tract Declaration shall control.

IN WITNESS WHEREOF, Declarant has executed this instrument as of the date first set forth above.

DECLARANT:

UDC HOMES, INC., a Delaware corporation

By: *R. Robert Mc Bee*
Its: *V.P.*

STATE OF ARIZONA)
) ss.
County of Maricopa)

On this 30th of March 1998 before me, the undersigned officer, personally appeared Robert M. Cross, who acknowledged himself to be Vice President of UDC HOMES, INC., a Delaware corporation; and that he, being authorized so to do, executed the foregoing instrument for the purposes therein contained by signing the name of said corporation by himself.

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

Connie Foley
Notary Public

My commission expires:

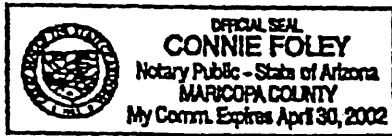


EXHIBIT "A"

**FOURTH AMENDED
NO. 201-800-1078396**

A portion of the Northwest quarter of Section 31, Township 1 South, Range 3 East of the Gila and Salt River Base and Meridian, Maricopa County, Arizona, more particularly described as follows:

COMMENCING at the West quarter corner of said Section 31;

thence North 89 degrees 50 minutes 35 seconds East, 1,197.87 feet along the East-West mid-section line of said Section 31;

thence North 00 degrees 09 minutes 25 seconds West 78.19 feet to a point on the monument line of 17th Avenue, as platted in Book 432 of Maps, Page 28, Maricopa County Records, Arizona;

thence North 51 degrees 54 minutes 04 seconds West, 40.00 feet to a point on the West right-of-way line of said 17th Avenue, said point also being the POINT OF BEGINNING;

thence leaving said right-of-way North 63 degrees 46 minutes 18 seconds West, 580.67 feet;

thence North 34 degrees 04 minutes 58 seconds East, 560.36 feet;

thence North 81 degrees 56 minutes 54 seconds East, 616.65 feet to a point on the West right-of-way line of 17th Avenue, said point also being a point on a curve, the central point bears North 85 degrees 49 minutes 19 seconds West 1059.42 feet from said point on a curve;

thence continuing along said right-of-way line, Southwesterly along said curve concave to the Northwest through a central angle of 33 degrees 55 minutes 15 seconds an arc length of 627.21 feet, having a chord data of South 21 degrees 08 minutes 18 seconds West, 618.09 feet to its point of tangency;

thence South 38 degrees 05 minutes 56 seconds West, 293.04 feet to the POINT OF BEGINNING.

EXCEPT all oil, gas, other hydrocarbon substances, helium or other substances of a gaseous nature, coal, metals, minerals, fossils, fertilizer of every name and description; together with all uranium, thorium or any other materials which is or may be determined by the law of the United States or of this State, or decisions of courts to be peculiarly essential to the production of fissionable materials, whether or not of commercial value and the exclusive right thereto, on, in or under the above described lands, shall be and remain and are hereby reserved in and retained by the State of Arizona in patent recorded in Docket 15392, Page 317.