

DESERT HILLS OF SCOTTSDALE

ARTICLES OF INCORPORATION

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ARIZONA CORPORATION COMMISSION
FOR THE STATE OF ARIZONA

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Louis Allen
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ARTICLES OF INCORPORATION

OF

DESERT HILLS OF SCOTTSDALE HOMEOWNERS ASSOCIATION, INC.

In compliance with the requirements of the statutes of the State of Arizona, pertaining to nonprofit corporations, A.R.S. § 10-1002 et seq., the undersigned, all of whom are of legal age, have this day voluntarily associated themselves together for the purpose of forming a corporation not for profit and do hereby certify:

ARTICLE I. NAME: The name of the corporation is Desert Hills of Scottsdale Homeowners Association, Inc., hereafter called the "Association."

ARTICLE II. DURATION: The time of commencement of this corporation shall be the date upon which these Articles are filed with the Arizona Corporation Commission and the duration shall be perpetual unless the Desert Hills of Scottsdale Homeowners Association, Inc., is dissolved.

ARTICLE III. PURPOSE: This corporation does not contemplate pecuniary gain or profit to the members thereof and the specific primary purposes for which it is formed are to provide for the maintenance and improvement of the Common Areas and the preservation, architectural control and enforcement of covenants, conditions and restrictions on the real property described in the preamble of the Declaration of Covenants, Conditions and Restrictions for Desert Hills of Scottsdale, recorded on Instrument No. 89-081305, February 22, 1989, of the Records of the Maricopa County Recorder, to promote the health, safety and welfare of the Owners within the above-described property and to have and exercise any and all powers, rights and privileges which a corporation organized under the nonprofit

corporation statutes of the State of Arizona may now or hereafter have or exercise.

ARTICLE IV. INITIAL BUSINESS: In furtherance of the general purposes, the Association shall have power to:

(a) perform all of the duties and obligations of the Association as set forth in the above-described Declaration of Covenants, Conditions and Restrictions, hereinafter called the "Declaration."

(b) fix, levy, collect and enforce payment by any lawful means, all charges or assessments pursuant to the terms of the Declaration; to pay all expenses in connection therewith and all office and other expenses incidental to the conduct of the business of the Association, including all licenses, taxes or governmental charges levied or imposed against the Common Areas;

(c) acquire (by gift, purchase or otherwise), own, hold, improve, build upon, operate, maintain, convey, sell, lease, transfer, dedicate for public use, or otherwise dispose of real or personal property in connection with the affairs of the Association, subject to the limitations of the Declaration;

(d) dedicate, sell or transfer all or any part of the Common Areas to any public agency, authority or utility for such purposes and subject to such conditions as may be agreed to by the Association and subject to the limitations contained in the Declaration; and

(e) participate in mergers and consolidations with other nonprofit corporations organized for the same purposes, subject to the limitations provided in the Declaration.

ARTICLE V. STATUTORY AGENT: The initial statutory agent is Clare H. Abel, Esq., upon whom all notices and processes, including service of summons may be served, and which, when so served shall be lawful personal service upon this corporation.

ARTICLE VI. PLACE OF BUSINESS: The known place of business of the Association is c/o Dividend Development Corporation, 5685 North Scottsdale Road, Suite 165, Scottsdale, Arizona 85253.

ARTICLE VII. MEMBERSHIP: Every person or entity who is a record owner of a fee or undivided fee interest in any Lot which is subject by covenants of record to assessment by the Association, including contract purchasers, with right of possession of a Lot, shall be a member of the Association. A member shall also be referred to herein as an "Owner." The foregoing is not intended to include persons or entities who hold an interest merely as security for the performance of an obligation. Membership shall

be appurtenant to and may not be separated from ownership of any Lot which is subject to assessment by the Association.

ARTICLE VIII. VOTING RIGHTS: All members shall be entitled to one vote for each Lot owned. When more than one person holds an interest in any Lot, all such persons shall be members. The vote for such Lot shall be exercised as they among themselves determine; but in no event shall more than one vote be cast with respect to any Lot, except as provided otherwise in the Declaration for Class B votes.

ARTICLE IX. INCORPORATORS: The name and address of the incorporators are:

NAME

ADDRESS:

Thomas Eggert

c/o Dividend Development Corporation
5685 North Scottsdale Road, Suite 165
Scottsdale, Arizona 85253

Carl Smith

c/o Dividend Development Corporation
5685 North Scottsdale Road, Suite 165
Scottsdale, Arizona 85253

Karen Moser

c/o Dividend Development Corporation
5685 North Scottsdale Road, Suite 165
Scottsdale, Arizona 85253

ARTICLE X. BOARD OF DIRECTORS; OFFICERS: After management of the Association is turned over to the Owners, other than the Developer, the affairs of this corporation shall be managed by a Board of not less than three (3) directors, and such officers as the Board of Directors may select from their membership from time to time, including a President, a Vice President, a Secretary and a Treasurer. The same person may hold any two offices, except the President may not at the same time hold the office of Secretary. At each annual meeting, the members shall elect three (3) directors for a term of one year.

ARTICLE XI. INITIAL DIRECTORS: The number of directors of this corporation to serve initially shall be three (3). The following persons were elected to serve as directors until the election of their successors:

NAME

ADDRESS:

Thomas Eggert

c/o Dividend Development Corporation
5685 North Scottsdale Road, Suite 165
Scottsdale, Arizona 85253

Carl Smith

c/o Dividend Development Corporation
5685 North Scottsdale Road, Suite 165
Scottsdale, Arizona 85253

Karen Moser

c/o Dividend Development Corporation
5685 North Scottsdale Road, Suite 165
Scottsdale, Arizona 85253

ARTICLE XII. SEVERABILITY: If any provision of these Articles or the Bylaws should be invalid for any reason, such invalidity shall in no way affect any other provisions, which shall remain in full force and effect.

ARTICLE XIII. LIMIT OF LIABILITY: The private property of each and every officer, director and member of the Association shall at all times be exempt from all debts and liabilities of the corporation.

ARTICLE XIV. INDEMNIFICATION OF BOARD OF DIRECTORS AND OFFICERS: Each officer or member of the Board of Directors shall be indemnified by the Owners against all expenses and liabilities, including attorney's fees, reasonably incurred by or imposed upon the officer in connection with any proceedings to which said officer may be a party, or in which said officer may become involved, by reason of said officer being or having been a member of the Board of Directors or officer, or any settlement thereof, whether or not said officer is a member of the Board of Directors or officer at the time such expenses are incurred, except in such cases wherein the Board member or officer is adjudged guilty of willful misfeasance or malfeasance in the performance of said officer's duties; provided that in the event of a settlement, the indemnification shall apply only if the Board of Directors approves such settlement as being for the best interest of Desert Hills of Scottsdale. Further, the Board of Directors shall be entitled to such protection offered pursuant to A.R.S. § 10-1005.

ARTICLE XV. DISSOLUTION: The Association may be dissolved with the assent given in writing and signed by not less than two-thirds (2/3) of each class of members. Upon dissolution of the Association the assets of the corporation shall be distributed to an appropriate public agency to be used for purposes similar to those for which this corporation was created. In the event that such distribution is refused acceptance, such assets shall be granted, conveyed and assigned to any nonprofit corporation, association, trust or other organization organized and operated for such similar purposes.

ARTICLE XVI. AMENDMENT: Amendment of these Articles shall require the assent (by vote or written consent) of members representing two-thirds of the entire membership, except that the number of directors, the known place of business and the

statutory agent may be changed by amendment of the Bylaws of the Association.

ARTICLE XVII. FHA/VA APPROVAL: As long as there is a Class B membership, the following actions will require the prior approval of the Federal Housing Administration or the Veterans Administration: annexation of additional properties, mergers and consolidations, mortgaging of Common Areas, dedication of Common Areas, dissolution and amendment of these Articles.

IN WITNESS WHEREOF, for the purpose of forming this corporation under the laws of the State of Arizona, We, the undersigned constituting the incorporators of this corporation, have executed these Articles of Incorporation this 15th day of February, 1989.

Thomas Eggert
Thomas Eggert

Carl Smith
Carl Smith

Karen Moser
Karen Moser

STATE OF ARIZONA)
) ss.
County of Maricopa)

Subscribed and sworn to before me by Thomas Eggert this 15 day of FEBRUARY, 1989.

Cathy A. Bankston
Notary Public

My commission expires:
My Commission Expires March 13, 1990

STATE OF ARIZONA)
County of MAHICOPA) ss.

Subscribed and sworn to before me by Carl Smith this
15 day of FEBRUARY, 1989.

Cathy A. Bunkton
Notary Public

My commission expires:

My Commission Expires March 13, 1990

STATE OF ARIZONA)
County of MAHICOPA) ss.

Subscribed and sworn to before me by Karen Moser this
15 day of FEBRUARY, 1989.

Cathy A. Bunkton
Notary Public

My commission expires:

My Commission Expires March 13, 1990

The undersigned, having been designated to act as
Statutory Agent for the above-referenced corporation, hereby
consents to act in that capacity until removal or resignation is
submitted in accordance with the Arizona Revised Statutes. *

Clare H. Abel
Clare H. Abel, Esq.

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When recorded mail to:

01/30/89

Clare H. Abel
Burch & Cracchiolo, P.A.
702 E. Osborn Road
Phoenix, Arizona 85014

PLAT FILE (RS)

RECORDED IN OFFICIAL RECORDS OF MARICOPA COUNTY, ARIZONA	
FEB 22 '89 -2 00	
HELEN FURCELL County Recorder	
FEE 67 ⁰⁰	PGS 62
1	

DECLARATION OF
COVENANTS, CONDITIONS AND RESTRICTIONS
FOR
DESERT HILLS OF SCOTTSDALE

THIS DECLARATION made this 15th day of February, 1989, by Dividend Development Corporation, a California corporation, authorized to do business in Arizona, as owner, hereinafter referred to as Declarant, is as follows:

WITNESSETH:

WHEREAS, Declarant is now the owner of all of the real property described as:

Lots 1 through 14, inclusive and Tracts A and B of Desert Hills of Scottsdale, Phase I, a residential development in the City of Scottsdale, Arizona, according to the plat recorded on the 13th day of January, 1989, at Book 328 of Maps, Page 38 thereof, Maricopa County Recorder, a copy of which is attached hereto and by this reference incorporated herein as Exhibit "A" (hereinafter the "Covered Property" or "Property").

WHEREAS, Declarant intends to and does hereby establish for its own benefit, for the benefit of Developer, as defined herein, and for the mutual benefit of all future owners or occupants of said Covered Property as said Covered Property is now and may subsequently be constituted, and each part thereof, certain easements and rights in, over and upon said Covered Property, and certain mutually beneficial covenants, conditions, restrictions and obligations with respect to the proper use, conduct and maintenance thereof; and.

WHEREAS, Declarant intends that the owners, mortgagees, occupants and all other persons hereafter acquiring any interest in said Covered Property or any part thereof, shall at all times enjoy the benefits of, and shall hold, sell and convey their interests subject to the rights, easements, covenants, conditions, restrictions, and obligations hereinafter set forth, all of which are hereby declared to be in furtherance of a general plan to promote and protect the cooperative aspect of such development and are established for the purpose of enhancing and perfecting the value, desirability and attractiveness of the Covered Property;

NOW, THEREFORE, Declarant as owner of the real property described in Exhibit A hereto and for the purposes above set forth, hereby declares that all of the Covered Property as defined herein and each part thereof, as may hereafter be annexed as provided herein, shall be held, sold and conveyed subject to the following easements, restrictions, covenants and conditions, which are for the purpose of protecting the value and desirability of, and which shall constitute equitable servitudes on the "Property" (as hereinafter defined) and which shall run with said Property and be binding on and inure to the benefit of all parties having any right, title or interest therein, or any part thereof, their heirs, successors and assigns.

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Article 1. DEFINITIONS

As used herein, unless otherwise specified or unless the context otherwise requires:

"Accessory Use" shall mean a use naturally and normally incidental to, subordinate to, and devoted exclusively to the permitted main use of a Lot.

"Additional Maintenance Areas" shall mean those portions of a Lot, if any, which, pursuant to future action of the Association, are maintained by the Association.

"Annexation Property" shall mean such other property, whether adjacent to the Covered Property or not, as it identified by Declarant for the purpose of bringing such additional property within the scope of this Declaration. Such property may include Lots 15 through 94 inclusive and Tracts C, D, E and F of Desert Hills of Scottsdale.

"Articles" shall mean the Articles of Incorporation of Desert Hills of Scottsdale Homeowners Association which are, or shall be, filed with the Corporation Commission of the State of Arizona, as said Articles are amended from time to time.

"Association" shall mean Desert Hills of Scottsdale Homeowners Association, Inc., an Arizona nonprofit corporation, its successors or assigns.

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

"Building" means any structure having a roof supported by columns or walls for the housing or enclosure of persons, animals or chattels and located on a Lot and forming a part of such Lot.

"Bylaws" shall mean the Bylaws of the Association as such Bylaws may be amended from time to time.

"Common Area" shall mean Tracts A and B as described in Exhibit A, and such additional common areas as may be annexed, including but not limited to landscaping, drainage easements, natural area open space, entry wall structures, perimeter wall structures, roadway, including sidewalk, curb and gutter, and other areas or structures constructed thereon.

"Covered Property" shall mean Lots 1 through 14, inclusive, and Tracts A and B of Desert Hills of Scottsdale and only such additional property within Desert Hills of Scottsdale as is brought within the Covered Property and specifically made

subject to this Declaration pursuant to the Article of this Declaration titled "Integrated Nature of the Covered Property."

"Declarant" shall mean Dividend Development Corporation, a California corporation authorized to do business in Arizona, as owner, its successors or assigns.

"Declaration" shall mean this instrument by which the Property is established as a residential development, as this Declaration may from time to time be amended.

"Developer" shall mean Dividend Development Corporation, a California corporation, and any successor or assign, if such successor or assign should acquire any portion of the Property from the Declarant for the purpose of development and is designated by Dividend Development Corporation as the Developer for the purpose hereof by a duly recorded written instrument.

"Dwelling" shall mean any building or portion thereof which is used as a private residence or sleeping place of one or more human beings.

"Front Yard Landscaping" shall mean that portion of each Lot between the back of curb and the front wall of the dwelling structure, including the garden wall returns between Dwellings, exclusive of the structure, appurtenances thereto, the driveway and walkways. On those yards with side or rear yards visible from private accessways or other landscaping easements, as shown on the recorded plat, Front Yard Landscaping shall also refer to such side and rear yard areas.

"Improvement(s)" shall mean buildings, private streets, garages, carports, driveways, walkways, parking areas, docks, fences, walls, porches, patios, hedges, plantings, planters, planted trees and shrubs, swimming pools, spas, and all other structures or landscaping improvements of every kind, nature or description.

"Lien" shall mean both voluntary and involuntary liens.

"Lot" shall mean each parcel of real property in the Property as shown with a separate and distinct number on a final subdivision plat, which has been duly recorded or filed in the Office of the County Recorder of Maricopa County, Arizona, exclusive of the Common Area.

"Manager" shall mean that person or entity employed from time to time by the Board to manage the affairs of the Association.

"Member" shall mean every person or entity who holds membership in the Association.

"Membership" shall mean that every Owner of a Lot which is subject to assessment shall be a member of the Association. Membership shall be appurtenant to and may not be separated from ownership of any Lot which is subject to assessment, except as provided for Developer in the Article titled Desert Hills of Scottsdale Homeowners Association, Inc., Section titled "Membership."

"Mortgage" shall mean and refer to all instruments establishing a security interest, including deeds of trust.

"Mortgagee" shall mean the beneficiary of a recorded deed of trust or the holder of a recorded mortgage.

"Owner" shall mean the person or persons whose estates or interests, individually or collectively, aggregate fee simple ownership of a Lot, but excluding those having an interest merely as security for the performance of an obligation.

"Public Utility Easement" shall mean an easement over, under, upon, and through an area as shown on the final recorded plat for the purpose of maintaining public utilities including water, sewer, electric, telephone, cable television, refuse collection and emergency vehicle access.

"Rules" shall mean any rules adopted by the Board, and any architectural standards, landscaping standards, and procedures for applying for approval, as determined by the Architectural Control Committee on an ad hoc basis or which, in the discretion of the Architectural Control Committee, may be adopted and published to the Owners.

"Visible from Neighboring Property" shall mean, with respect to any given object, that such object is or would be visible to a person six (6) feet tall, standing on any part of such neighboring property at an elevation no greater than the elevation of the base of the object being viewed.

Article 2. DESERT HILLS OF SCOTTSDALE HOMEOWNERS ASSOCIATION, INC.

2.1 ORGANIZATION: The Association is a nonprofit Arizona corporation, which corporation shall be the governing body for all of the Owners for the maintenance, repair, replacement, administration and operation of the Common Area and all other property it is required or permitted to maintain pursuant to this Declaration, and shall have the duties and powers prescribed by law and set forth in the Articles, Bylaws and this Declaration. Neither the Articles nor Bylaws shall for any

reason be amended or otherwise changed or interpreted so as to be inconsistent with this Declaration.

2.2 MEMBERSHIP:

2.2.1 Qualifications: Each Owner of a Lot, except Declarant, but excluding persons or entities who hold an interest merely as security for the performance of an obligation, shall automatically, upon becoming an Owner, become a Member of the Association and shall remain a Member until such Owner ceases to own a Lot. The Developer shall be a Member as long as any Lot in the Covered Property and Annexation Property has not been conveyed to an Owner, and Developer has not voluntarily relinquished Membership by written notice to the Association and the Veterans Administration.

2.2.2 Membership Rights and Duties: Each Member shall have the rights, duties and obligations set forth in this Declaration, the Articles, the Bylaws and the Association Rules as said documents may be amended from time to time.

2.2.3 Transfer of Membership: The Association Membership of each Owner (and Declarant) shall be appurtenant to the Lot giving rise to such Membership, and shall not be assigned, transferred, pledged, conveyed or alienated in any way except upon the transfer of title to said Lot, and then only to the transferee of title to said Lot. Any attempt to make a prohibited transfer shall be void. Any transfer of title to a Lot shall operate automatically to transfer the Membership in the Association appurtenant thereto to the new Owner thereof.

2.3 VOTING:

2.3.1 Number of Votes: The Association shall have two classes of voting membership:

Class A. Class A Members shall be all Owners, except Declarant, and shall be entitled to one vote for each Lot owned. When more than one person is the Owner of a Lot, all such persons shall be Members. The vote for such Lot shall be exercised as they among themselves determine, but in no event shall more than one vote be cast with respect to any Lot.

Class B. The Class B Member shall be the Developer and shall be entitled to three (3) votes for each Lot in the Covered Property and Annexation Property which has not been conveyed to an original Owner. Class B Membership shall cease and be converted to Class A Membership on the happening of the earliest of the following events:

(i) Within One Hundred Twenty (120) days after the total votes outstanding in the Class A Membership equals the total votes outstanding in the Class B Membership; or

(ii) Seven (7) years from the date of the first recording of the Declaration with the Maricopa County Recorder; or

(iii) The Developer advises the Association and the Veterans Administration, if applicable, that it is relinquishing all Class B votes.

2.3.2 Commencement of Voting Rights: Voting rights for both the Initial Covered Property and Annexation Property shall commence upon the first conveyance of a Lot by Declarant to an Owner.

2.3.3 Joint Owners' Disputes: The vote for each such Lot must be cast as a unit, and fractional votes shall not be allowed. In the event that the joint Owners are unable to agree among themselves as to how their one vote shall be cast, they shall lose their right to vote on the matter in question. If any Owner or Owners cast a vote representing a Lot, it will thereafter be conclusively presumed for all purposes that he or they were acting with the authority and consent of all other Owners of the same Lot. In the event more than one (1) vote is cast for a particular Lot, none of said votes shall be counted and said votes shall be deemed void.

2.3.4 Election and Removal of Board of Directors - Cumulative Voting Features: Every Owner entitled to vote at any election of the Board may cumulate his vote and give one candidate a number of votes equal to the number of Directors to be elected multiplied by the number of votes to which his Lot(s) are entitled. The entire Board or any individual Director may be removed from office with or without cause by vote of the majority of the voting power of the Members, provided, however, unless the entire Board is removed, an individual Director shall not be removed prior to the expiration of his term of office if the number of votes against the resolution for his removal or not consenting in writing to such removal would be sufficient to elect the Director if voted cumulatively at an election at which the same number of votes were cast and the entire number of Directors authorized at the time of the most recent election of the Director were then being elected. If any or all of the Directors are so removed, new Directors may be elected at the same meeting. Each Director must be a Member of the Association or a representative of Developer designated by Developer.

2.3.5 Approval by Each Class of Members: Any provision of the Articles, Bylaws, this Declaration, or the Association Rules, which expressly requires the approval of a specified per-

centage of the voting power of the Association before being undertaken, shall require the approval of said specified percentage of the Class A Membership and the Class B Membership.

2.4 DUTIES OF THE ASSOCIATION: In addition to the powers delegated to it by its Articles, and without limiting the generality thereof, the Association shall have the obligation to perform each of the following duties:

2.4.1 Maintenance and Management of Common Areas, Easements, Additional Maintenance Areas:

2.4.1.1 To maintain in a safe and first class condition, manage and preserve all of the Common Area, and front yard landscaping, including all Improvements presently or hereafter located thereon and thereunder, including, but not limited to, Tracts A and B and such additional areas as may be annexed to this property pursuant to Article 10 of this Declaration.

2.4.1.2 The Association shall have the right, but not the obligation, to maintain Additional Maintenance Areas. In the event the Association maintains Additional Maintenance Areas, the cost of such maintenance shall be funded through assessments levied equally on all Lots.

2.4.2 Rubbish Collection: To provide refuse pickup and garbage disposal for the Common Area.

2.4.3 Water and Other Utilities: To acquire, provide and/or pay for water, gas, sewer, electrical, telephone, cable and other necessary or convenient utility services for the Common Area.

2.4.4 Insurance: To obtain and maintain in force the following policies of insurance:

2.4.4.1 Fire and extended coverage insurance on the Common Area, the amount of such insurance to be not less than one hundred percent (100%) of the aggregate full insurable value.

2.4.4.2 General comprehensive public liability insurance against claims for personal or bodily injury, death or property damage with limits with regard to injury or death of not less than \$1,000,000.00 per person and \$3,000,000.00 per occurrence; and with limits of not less than \$500,000.00 per occurrence in respect of property damage, insuring against liability for bodily injury, death and property damage arising from the activities of the Association or with respect to property under its jurisdiction. Said liability insurance shall name and separately protect as insureds each Owner, Developer, the Association, the Board and their representatives, members and employees, and the Association Members (as a class), with respect

to any liability arising out of the maintenance or use of the Common Areas, or other property under the jurisdiction of the Association, and activities of the Association.

2.4.4.3 Such other insurance, including director and officer insurance (errors and omissions), and worker's compensation liability insurance to the extent necessary to comply with any applicable law, faithful performance and fidelity bonds to insure the Association against any loss from malfeasance or dishonesty of any employee or other person charged with the management or possession of any Association funds or other property and such indemnity and other bonds as the Board shall deem necessary or expedient to carry out the Association's functions.

2.4.4.4 The Association shall maintain blanket fidelity bonds for all officers, directors, trustees, employees of the Association and all other persons handling or responsible for funds of or administered by the Association. In the event the Association delegates responsibility for handling such funds to a management agent, such management agent shall be required to maintain such bonds for its officers, employees and agents handling or responsible for funds of or administered on behalf of the Association. Such bonds shall be in an amount no less than:

(i) the estimated maximum, including reserve funds, in the custody of the Association or the management agent at any given time during the term of the bond, or

(ii) an amount equal to three (3) months aggregate assessments on all Lots plus reserve funds.

(iii) Such fidelity bonds shall name the Association as an obligee.

(iv) Such bonds shall contain waivers by the issuers of the bonds of all defenses based upon the exclusion of persons serving without compensation from the definition of "employees" or similar terms.

(v) Such bonds shall provide that they may not be canceled or substantially modified (including cancellation for nonpayment of premium) without at least ten (10) days' prior written notice to the Association.

2.4.5 Rule Making: To make, establish, promulgate, amend and repeal the Association Rules.

2.4.6 Architectural Control Committee; Committee List: To appoint and remove members of the Architectural Control Committee all subject to the provisions of this Declaration. To create and maintain a current list of all committees and members

thereof. Such list shall be kept at the office of either the Association or the management company.

2.4.7 Taxes and Assessments: Pay all taxes and assessments which are or could become a lien on the Common Area or other property owned by the Association.

2.4.8 Enforcement of Restrictions and Rules: To perform such other acts, whether or not expressly authorized by this Declaration, as may be reasonably necessary to enforce any of the provisions of this Declaration and the Association Rules.

2.4.9 Budgets and Financial Statements: The Board shall cause financial statements for the Association to be regularly prepared and copies to be made available to each Member of the Association.

2.4.9.1 A pro forma operating statement (budget) for each fiscal year (which shall include a reserve for the repair and replacement of Common Area facilities, if any, shall be available not less than 60 days before the beginning of each fiscal year of the Association.

2.4.9.2 An annual report consisting of the following shall be available to any Owner within 120 days after the close of the fiscal year:

(i) A balance sheet as of the end of the fiscal year.

(ii) An operating (income) statement for the fiscal year.

(iii) A statement of changes in financial position for the fiscal year.

2.4.9.3 Ordinarily the annual report referred to above shall be prepared by an independent public accountant for any fiscal year in which the gross income of the Association exceeds \$50,000.00.

2.4.9.4 If the report referred to above is not prepared by an independent accountant, it shall be accompanied by the certificate of an authorized officer of the Association that the statements were prepared without audit from the books and records of the Association.

2.4.9.5 Upon the written request of any first Mortgagee, an audited annual statement will be made available within 60 days after the close of the fiscal year or within 30 days of the request, whichever occurs later. The Association may require

that the first Mortgagee requesting an audited annual statement pay the cost of the audit or some portion thereof.

2.5 POWERS AND AUTHORITY OF THE ASSOCIATION: The Association shall have all the powers of a nonprofit corporation organized under the Nonprofit Corporation Law of the State of Arizona, subject only to such limitations upon the exercise of such powers as are expressly set forth in the Articles, the Bylaws or this Declaration. It shall have the power to do any and all lawful things which may be authorized, required or permitted to be done by the Association by this Declaration, the Articles and the Bylaws, and to do and perform any and all acts which may be necessary or proper for or incidental to the exercise of any of the express powers of the Association, including without limitation:

2.5.1 Assessments: To levy assessments against Lots and to enforce payment of such assessments, all in accordance with the provisions of the Article hereof entitled "Assessments."

2.5.2 Right of Entry and Enforcement: To enter upon any Lot (excluding the interior of any dwelling thereon) or any Common Area for the purpose of ascertaining whether the provisions of this Declaration and Association Rules have been or are being complied with, for the purpose of enforcing by peaceful means any of the provisions of this Declaration or the Association Rules, or for the purpose of maintaining or repairing any such area as required to be maintained or repaired by this Declaration or the Association Rules. Except for routine landscaping, such entrance shall be after twenty-four (24) hours' prior written notice to the Owner, or such greater notice as may be required by any provision hereof; provided, however, that such entrance shall be permitted without any prior notice whatsoever in the event of an emergency. The Association shall also have the power and authority from time to time in its own name, on its own behalf or on behalf of any Owner or Owners who consent thereto, to commence and maintain actions and suits to restrain and enjoin any breach or threatened breach of this Declaration and the Association Rules, and to enforce, by mandatory injunction or otherwise, all of the provisions hereof. In addition, or as an alternative method of enforcing this Declaration and the Association Rules, the Board may impose monetary penalties, temporary suspensions of an Owner's rights as a Member or other appropriate discipline for failure to comply with the provisions of this Declaration or the Association Rules, provided that the procedures for notice and hearing set forth in the Article titled "Enforcement" are given to the accused Member before a decision to impose discipline is reached.

2.5.3 Easements and Access Areas: To grant and convey to any third party, easements and access ways in, on, over or under any Common Area, for the purpose of constructing, erecting,

operating or maintaining thereon, therein or thereunder (i) overhead or underground lines, cables, wires, conduits, or other devices for the transmission of electricity for lighting, heating, power, security system, telephone, cable television and other purposes, (ii) public sewers, storm water drains and pipes, water systems, sprinkling systems, water, heating and gas lines or pipes, and (iii) any similar public or quasi-public improvements or facilities.

2.5.4 Transfer, Dedication and Encumbrance of the Common Area: To sell, transfer or encumber all or any portion of the Common Area, and any other portion of the Property owned by the Association, to a person, firm or entity, whether public or private, and to dedicate or transfer all or any portion of the Common Area or other property owned by the Association to any public agency, authority, or utility for such purposes. No such sale, transfer, encumbrance or dedication shall be effective unless an instrument signed by Declarant and by Members representing seventy-five percent (75%) of the total voting power of the Association other than Declarant has been recorded, agreeing to such sale, transfer, encumbrance or dedication, and unless written notice of the proposed action is sent to every Member not less than thirty (30) days nor more than sixty (60) days in advance.

2.5.5 Employment of Agents: To employ the services of any person or corporation as managers, or other employees to manage, conduct, and perform the business, obligations and duties of the Association as may be directed by the Board and to enter into contracts for such purpose. Such agents shall have the right to ingress and egress over such portions of the Property as is necessary for the performance of such business, duties and obligations.

2.5.6 Employment of Professional Advisors: To employ professional counsel and obtain advice from such persons or firms or corporations such as, but not limited to, landscape architects, recreation experts, architects, engineers, planners, lawyers and accountants.

2.5.7 Borrowing of Money: To borrow and repay monies for the purpose of maintaining and improving the Common Area and to encumber property of the Association as security for the repayment of such borrowed money.

2.5.8 Create Classes of Service and Make Appropriate Charges: To create, in its sole discretion, various classes of service and to make appropriate charges therefor to the users thereof, including but not limited to reasonable admission and other fees for the use of any and all recreational facilities situated in Common Areas, and to avail itself of any rights granted by law, without being required to render such services to

those of its Members who do not assent to the said charges and to such other rules and regulations as the Board deems proper. In addition, the Board shall have the right to discontinue any service upon nonpayment or to eliminate such service for which there is no demand or adequate funds to maintain. Without limiting the generality of the foregoing, and in addition to the foregoing, except as otherwise provided herein, the Board may negotiate contracts and grant commercial concessions over, and with respect to, portions of the Common Area, provided that any such contract (except for the initial maintenance contract) or grant having a term of more than one (1) year shall require the vote or written approval of a majority of the votes of the Association.

2.5.9 Hold Title and Make Conveyances: To acquire, hold title to and convey, with or without consideration, real and personal property and interests therein, including but not limited to easements.

2.5.10 Services: To contract for or otherwise provide for all services necessary or convenient to the management, maintenance and operation of the Property, including the Common Area.

2.6 LIMITATIONS ON POWERS OF THE BOARD:

2.6.1 Vote of Members Required: Notwithstanding the powers of the Association as set forth in the paragraph hereof titled "Powers and Authority of the Association," the Board shall not take any of the following actions without the prior vote or written consent of a majority of the Class A Members and the Class B Members, if any, in the Association, including a majority of the voting power residing in Members other than Developer:

2.6.1.1 Enter into a contract with a third person or entity wherein such person or entity will furnish goods or services for the Common Area, and Additional Maintenance Areas, or the Association for a term longer than one year with the following exceptions:

(i) A contract with a public utility company if the rates charged for the materials or services are regulated by the Corporation Commission or successor thereof; provided, however, that the term of the contract shall not exceed the shortest term for which the supplier will contract at the regulated rate.

(ii) Prepaid casualty and/or liability insurance policies of not to exceed three years' duration provided that the policy permits short rate cancellation by the insured.

2.6.1.2 Incur aggregate expenditures for capital improvements to the Common Area, in any fiscal year in excess of five percent (5%) of the budgeted gross expenses of the Association for that fiscal year.

2.6.1.3 Pay compensation to members of the Board or to officers of the Association for services performed in the conduct of the Association's business; provided, however, that the Board may cause a director or an officer to be reimbursed for expenses incurred in carrying on the business of the Association.

2.6.1.4 Sell during any fiscal year property of the Association having an aggregate fair market value greater than five percent (5%) of the budgeted gross expenses of the Association for that fiscal year.

2.6.1.5 Fill any vacancy on the Board created by the removal of a member of the Board.

2.6.2 Termination of Agreements: Notwithstanding anything herein contained to the contrary, any agreement for professional management of the Property, or any other contract providing for services by Developer, must provide for termination by either party without cause or payment of a termination fee on not more than ninety (90) days' written notice and a maximum contract term of three (3) years.

2.7 THE ASSOCIATION RULES:

2.7.1 Adopted by the Board: By a majority vote of the Board, the Association may, from time to time, adopt, amend, and repeal such rules and regulations as it may deem reasonable (the "Association Rules"). The Association Rules shall govern the use of the Common Area, by any Owner, or by any invitee, licensee or lessee of such Owner, by the family of such Owner, or by any invitee, licensee or lessee of the family of such Owner; provided, however, that the Association Rules may not discriminate among Owners and shall not be inconsistent with this Declaration, the Articles or the Bylaws. A copy of the Association Rules as they may be amended, adopted or repealed from time to time, shall be mailed or otherwise delivered to each Owner. Upon such mailing or delivery, the Association Rules shall have the same force and effect as if they were set forth in and were a part of this Declaration. In the event of any conflict between any of the Association Rules and any of the other provisions of this Declaration, or the Articles or the Bylaws, the provisions of the Association Rules shall be deemed to be superseded by the provisions of this Declaration, the Articles or the Bylaws to the extent of such inconsistency.

2.7.2 Adopted by the Committee: In addition, the Architectural Control Committee may adopt standards for construction and landscaping and may adopt procedures for making, hearing and ruling on such applications. Such standards and procedures, when adopted by the Architectural Control Committee and delivered

to each Owner, as set forth above, shall be Association Rules, subject to the same provisions and enforcement procedures, except that approval of one application and disapproval of a similar application shall not be discriminatory enforcement.

2.8 PERSONAL LIABILITY: No member of the Board or the Architectural Control Committee or any officer of the Association, or Declarant, or the manager, shall be personally liable to any Owner, or to any other party, including the Association, for any damage, loss or prejudice suffered or claimed on account of any act, omission, error or negligence of the Association, the Board, the Architectural Control Committee, the manager or any other representative or employee of the Association, Declarant, or any officer of the Association, or of Declarant, provided that such person has, upon the basis of such information as may be possessed by him, acted in good faith, and without willful or intentional misconduct.

Article 3. ASSESSMENTS

3.1 CREATION OF THE LIEN AND PERSONAL OBLIGATION FOR ASSESSMENTS: Declarant, for each Lot owned, hereby covenants, and each Owner of any Lot by acceptance of a deed therefor, whether or not it shall be so expressed in such deed, and whether or not any Improvements exist on such Lot, is deemed to covenant and agree, for each Lot owned, to pay to the Association Annual Assessments, Special Assessments, Emergency Assessments, and Remedial Assessments, all of which shall be established, made and collected as hereinafter provided. The Annual, Special, Emergency, and Remedial Assessments, together with interest, costs and reasonable attorneys' fees, shall, when perfected in the manner hereinafter provided, be a charge on the land and shall be a continuing lien upon the Lot against which such assessment is made. Each such assessment, together with interest, costs and reasonable attorneys' fees, shall also be a personal obligation of the person who is the Owner of such Lot at the time the assessment becomes due and payable. The personal obligation for delinquent assessments shall not pass to successors in title unless expressly assumed by them, however, all perfected liens shall be liens on the interests of successive Owners of the Lots subject thereto, except as otherwise provided herein for Mortgagees. No Owner may waive or otherwise escape liability for the assessments provided for in this Declaration by nonuse of the Common Area, or any part thereof, or abandonment of the Lot.

3.2 PURPOSES OF ASSESSMENTS: Assessments levied shall be used exclusively to promote the recreation, health, safety and welfare of the residents of the Property, the improvement, operation and maintenance of the Common Area, and Additional Maintenance Areas, and the performance of the duties of the Association as set forth in this Declaration.

3.3 OPERATING FUND: There shall be an operating fund, into which the Association shall deposit all monies paid to it as

- (i) Annual Assessments;
- (ii) Emergency Assessments;
- (iii) Special Assessments;
- (iv) Remedial Assessments;
- (v) Use fees paid by users of recreational facilities;
- (vi) Miscellaneous fees;
- (vii) Income attributable to the operating fund;

and from which the Association shall make disbursements in performing the functions for which the foregoing assessments are levied.

3.4 ANNUAL ASSESSMENTS:

3.4.1 Levy and Enforcement of Annual Assessments: Annual Assessments shall be made, and enforced, by the Board in the manner provided in this Declaration against the Owners or trustors of all Lots, including Developer. The operation, management and maintenance of the Common Area with the rights, duties and obligations of the Association as set forth in this Declaration, shall be the exclusive obligation of the Association.

3.4.2 Amount of Assessments: Beginning with the fiscal year of the Association following termination of all Class B votes, the amount of the total Annual Assessment for all the Lots shall be determined by the Board at least thirty (30) days prior to the commencement of each fiscal year based on the budget for such fiscal year called for by paragraph 2.4.9 above.

3.4.2.1 Until January 1 of the year immediately following the conveyance of the first Unit to an Owner, the monthly assessment shall be no more than thirty dollars (\$30.00).

3.4.2.2 Except as otherwise provided herein, the total Annual Assessment and any Special or Emergency Assessments shall be assessed equally against all of the Lots.

3.4.2.3 Declarant may pay twenty-five percent of the annual assessment for each Lot in the Covered Property which is not improved with an occupied Dwelling, provided that all Owners

within a phase shall pay a full assessment no later than sixty (60) days after commencement of assessments for that phase.

3.4.3 Commencement Date for Annual Assessments: Subject to any assessment maintenance or subsidy program established by the Developer, the Annual Assessment hereunder shall commence to accrue on all Lots in a phase on the date ("Initial Commencement Date") which is the first day of the first month following the first recordation of a deed of a Lot in that phase from Declarant to any Owner other than Declarant pursuant to the sale of such Lot by Declarant to such Owner.

3.4.4 Increase of Annual Assessments: The maximum Annual Assessments for each succeeding fiscal year may be increased each year above the Maximum Assessments for the previous year without a vote of the Membership in an amount no more than the percentage of increase in the cost of living during said period in the Greater Phoenix Area shown by the Bureau of Labor Statistics, Consumer Price Index, or five percent (5%) of the maximum assessment for the previous year, whichever is greater. Any increase in the Annual Assessments which exceeds the allowable increase shall be made only upon the affirmative vote or written consent of two-thirds (2/3) of each class of Members who are voting as set forth below in the section titled "Notice and Quorum for any Action Authorized Under Paragraphs 3.4.4, 3.6 and 3.7."

3.4.5 Reserve Fund: For purposes of creating reserves to ensure payment when due of the cost of capital expenditures relating to the repair and replacement of the Common Area and equipment and fixtures in the Common Area, a portion of the Annual Assessments shall constitute a contribution to the reserve fund of the Association. The specific items for which such contribution shall be made and the amount of such contribution in respect of each such item shall be determined by the Board, acting in its sole discretion, at the time it adopts the budget for the Annual Assessments in accordance with this Declaration. All such contributions shall be collected in equal monthly installments as provided herein, shall be accounted for separately and shall be held in trust and used to pay for each specific capital expenditure in such manner and at such times as the Board, acting in its sole discretion, shall determine. Immediately upon receipt, all such capital contributions shall be deposited in a separate interest-bearing account or accounts, denominated Trustee Capital Account in any FDIC insured financial institution as may be determined by the Board by resolution, or invested in certificates of deposit issued by a bank or financial institution having assets in excess of Five Hundred Million Dollars (\$500,000,000.00).

3.5 ASSESSMENT ROLL: An assessment roll shall be accurately maintained and available in the office of the Asso-

ciation for inspection at all reasonable times by any Owner or his duly authorized representative. Said assessment roll shall indicate for each Lot, the name and address of the Owner thereof, all assessments levied against each Owner and his Lot, and the amount of said assessments paid and unpaid.

3.6 SPECIAL ASSESSMENTS FOR CAPITAL IMPROVEMENTS: In addition to the Annual Assessments authorized above, the Board may levy, during any fiscal year, a special assessment ("Special Assessment") applicable to that year only for the purpose of defraying, in whole or in part, the cost of any construction, reconstruction or unexpected repair or replacement of a capital improvement upon the Common Area, including the necessary fixtures and personal property related thereto, provided that any such assessment shall be made only upon vote or written consent of two-thirds (2/3) of each class of Members voting as provided in the paragraph hereof titled "Notice and Quorum for any Action Authorized Under Paragraphs 3.4.4, 3.6 and 3.7."

3.7 EMERGENCY ASSESSMENTS: If the assessments levied hereunder for any reason, including nonpayment of any Owner's assessments on a current basis, the Board shall immediately determine the approximate amount of such inadequacy and issue a supplemental budget, noted as to the reason therefor, and levy an emergency assessment for the amount required to meet all such expenses on a current basis ("Emergency Assessment") against the Owners of each of the Lots. Emergency Assessments which in the aggregate in any fiscal year exceed an amount equal to five percent (5%) of the budgeted gross expenses of the Association for the fiscal year may be levied only upon vote or written consent of two-thirds (2/3) of each class of Members voting as provided in the paragraph hereof titled "Notice and Quorum for any Action Authorized Under Paragraphs 3.4.4, 3.6 and 3.7."

3.8 NOTICE AND QUORUM FOR ANY ACTION AUTHORIZED UNDER PARAGRAPHS 3.4.4, 3.6 and 3.7: Written notice of any meeting called for the purpose of taking any action authorized under paragraphs 3.4.4, 3.6 or 3.7 shall be sent to all Members not less than 30 days nor more than 60 days in advance of the meeting. At the first such meeting called, the presence of Members or of proxies entitled to cast sixty percent (60%) of all the votes of each class of Membership shall constitute a quorum. If the required quorum is not present, another meeting may be called subject to the same notice requirement and the required quorum at the subsequent meeting shall be one-half (1/2) of the required quorum at the preceding meeting. No such subsequent meeting shall be held more than 60 days following the preceding meeting.

3.9 REMEDIAL ASSESSMENTS: Pursuant to this Declaration, the Board may levy an assessment against any Lot to reim-

burse the Association for costs incurred in bringing such Lot and its Owner into compliance with provisions of this Declaration, the Architectural Standards, the Landscaping Standards or the Association Rules. Remedial Assessments shall be due ten (10) days after the Board gives written notice thereof to the Owner subject thereto. The provisions of the section titled "Notice and Quorum for any Action Authorized Under Paragraphs 3.4.4, 3.6 and 3.7," of this Article with respect to approval of Special Assessments and Emergency Assessments shall not apply in the case of Remedial Assessments.

3.10 DUE DATES OF ASSESSMENTS; CERTIFICATE REGARDING ASSESSMENTS:

3.10.1 Due Dates: The first Annual Assessment and all Special Assessments shall be adjusted according to the number of months remaining in the fiscal year. The Board shall fix the amount of the Annual Assessment against each Lot at least thirty (30) days in advance of each Annual Assessment period. Written notice of all assessments shall be sent to each Owner subject thereto. The Annual Assessments and Special Assessments shall be collected monthly on the first day of each month commencing on the Initial Commencement Date. The Emergency Assessments shall be due and payable at the time and in the manner specified by the Board.

3.10.2 Certificate of Payment: The Board shall, upon written request therefor from any Owner or his Mortgagee, and for a reasonable charge furnish a certificate to such person or entity, signed by an officer of the Association, setting forth whether all Annual, Special, Emergency and Remedial Assessments on a specified Lot have been paid. Such certificate shall be conclusive evidence of payment of any assessment therein stated to have been paid.

3.10.3 Priority of Application of Payment: Any monies paid by an Owner to the Association shall be applied in the following priority:

- (i) monetary penalties;
- (ii) late fees;
- (iii) interest;
- (iv) use fees;
- (v) remedial assessments;
- (vi) emergency assessments;

- (vii) special assessments; and
- (viii) annual assessments.

Misapplication of funds by the Association to a lower priority shall not extinguish a higher priority indebtedness.

3.11 EFFECT OF NONPAYMENT OF ASSESSMENTS; REMEDIES OF THE ASSOCIATION: In the event of a default in payment of any assessment when due, such assessment shall be deemed to be delinquent. Each Owner vests in the Association or its assigns the right and power to bring all actions at law, liens, foreclosures or other remedies provided herein against the Owners for the collection of delinquent assessments. In the event an attorney or attorneys are employed for collection of any assessment, whether by suit or otherwise, each Owner agrees to pay reasonable attorneys' fees and costs thereby incurred in addition to any other amounts due or any other relief or remedy obtained against said Owner. In addition to any other remedies herein or by law provided, the Association may enforce the obligations of the Owners to pay the assessments provided for herein, and each of them, in any manner provided by law or in equity, and without any limitation of the foregoing by any or all of the following procedures:

3.11.1 Suspension of Rights; Monetary Penalties: The Board may (i) suspend the voting rights of any Owner, and after a hearing by the Board (whether or not the delinquent Owner appears), upon ten (10) days' written notice to the delinquent Owner, (ii) suspend such Owner's right to use the Common Area for any period during which any assessment against such Owner's Lot remains unpaid; provided that this provision shall not operate or be construed to deny or restrict ingress or egress of any Owner to his Lot, and/or (iii) impose reasonable monetary penalties pursuant to a monetary penalty schedule established by the Association.

3.11.2 Enforcement by Suit: The Board may commence and maintain a suit at law or equity against an Owner or prior Owner to enforce said assessment obligation, such suit to be maintained in the name of the Association. Any judgment rendered in any such action shall include the amount of the delinquency, with interest thereon at the rate equal to the highest rate for VA PUD mortgage loans during the period of delinquency, from the date of the delinquency, and all court costs and reasonable attorneys' fees, in such amount as the court may adjudge against the delinquent Owner.

3.11.3 Enforcement by Lien: There is hereby created a claim of lien, with power of sale, on each and every Lot to secure payment to the Association of any and all assessments levied against any and all Lots under this Declaration, together

with interest thereon at the rate equal to the highest rate for VA PUD mortgage loans during the period of delinquency from the date of delinquency, and all costs of collection which may be paid or incurred by the Association in connection therewith, including reasonable attorneys' fees. At any time after the occurrence of any default in the payment of such assessment, the Association or any authorized representative may, but shall not be required to make a written demand for payment to the delinquent Owner. Said demand shall state the date and amount of the delinquency. Each default shall constitute a separate basis for a demand or claim of lien or a lien, but any number of defaults may be included within a single demand or claim of lien. If such delinquency is not paid within ten (10) days after delivery of such demand, or at any time after the delinquency if no written demand is made, the Association may elect to file and record a notice of assessment and claim of lien on behalf of the Association against the Lot of the defaulting Owner in the Office of the County Recorder of Maricopa County, Arizona. Such a notice of assessment and claim of lien shall be executed and acknowledged by any officer of the Association, and shall contain substantially the following information:

- (i) The name of the delinquent Owner;
- (ii) The legal description of the Lot against which the claim of lien is made;
- (iii) The total amount of the delinquency, interest thereon, collection costs and reasonable attorneys' fees (with any proper offset allowed);
- (iv) That the notice of assessment and claim of lien is made by the Association pursuant to this Declaration;
- (v) That a lien is claimed against said Lot in an amount equal to the amount stated.

3.11.3.1 A copy of the lien shall be mailed to said Owner upon such recordation of a duly executed original or copy of such a notice of assessment and claim of lien, the lien claimed therein shall immediately attach and become effective.

3.11.3.2 Any such lien may be foreclosed by appropriate action in court or in the manner provided by law for the foreclosure of a deed of trust by exercise of a power of sale contained therein or in the manner provided by law for the enforcement of a judgment as the laws of the State of Arizona may from time to time be changed or amended. The Association shall have the power to bid in at any foreclosure sale, Trustee's sale or judgment sale and to purchase, acquire, lease, hold, mortgage and convey any Lot. Reasonable attorneys' fees, court costs, title search fees, interest and all other costs and expenses shall be allowed

to the extent permitted by law and the Owner shall be deemed to have contractually agreed to payment of such costs and expenses upon recordation of this Declaration.

3.11.3.3 The proceeds of any foreclosure, trustee's or judgment sale provided for in this Declaration shall first be paid to discharge court costs, court reporter charges, reasonable attorneys' fees, title costs and costs of the sale, and all other expenses of the proceedings and sale, and the balance of the proceeds, after satisfaction of such charges and unpaid assessments hereunder or any liens, shall be paid to the defaulting Owner.

3.11.3.4 Any purchaser at such sale shall thereupon be entitled to a deed to the Lot and immediate possession of the Lot and shall have the right to apply to a court of competent jurisdiction for such orders as may be reasonable for the purpose of acquiring and possessing the Lot. It shall be a condition of such sale, the deed so made shall provide, but, whether or not the deed so provides, the purchaser shall take the interest in the Lot sold subject to this Declaration.

3.11.3.5 Upon the timely curing of any default for which a notice of assessment and claim of lien was filed by the Association, the officers of the Association are hereby authorized to record an appropriate release of such lien in the Office of the Maricopa County Recorder.

3.12 ASSIGNMENT OF RENTS:

3.12.1 To the Association: As security for the payment of all such liens, each Owner hereby gives to and confers upon the Association the right, power and authority, during the continuance of such ownership, to collect the rents, issues and profits of said Owner's Lot, reserving unto the Owner the right, prior to any default by such Owner in performance of that Owner's obligation under this Declaration, or the Bylaws or the Articles to collect and retain such rents, issues and profits as they become due and payable. Upon any such default, the Association may, at any time, upon ten (10) days' written notice to such Owner, either in person, by agent or by a receiver to be appointed by a court of competent jurisdiction, and without regard to the adequacy of any security for such indebtedness, enter upon and take possession of such Owner's Lot or any part thereof, and in its own name sue for or otherwise collect such rents, issues and profits, including those past due and unpaid, and apply the same, less costs and expenses of operation and collection, including reasonable attorneys' fees, in payment of any indebtedness to the Association or in performance of any agreement hereunder, and in such order as the Association may determine. The entering upon and taking possession of said property, the collection of such rents, issues and profits and the application thereof as aforesaid, shall not cure nor waive

any default hereunder nor invalidate any act done pursuant to this Declaration.

3.12.2 Mortgagee Exemption: The assignment of rents and powers described in this paragraph shall not affect, and shall in all respects be subordinate to, the rights and powers of the holder of any first or second mortgage on any Lot, or any part thereof, to do the same or similar acts.

3.13 SUBORDINATION TO CERTAIN LIENS: The lien of the assessments shall be prior to all encumbrances made by the Owner or imposed by legal process upon any Lot except taxes, bonds, assessments and other levies, which, by law, are prior thereto, whether the notice of assessment and claim of lien is recorded prior to, or subsequent to, any such encumbrances, except that the lien of the assessments shall be subordinate to the lien of:

(i) any first Mortgage in favor of any Mortgagee,
or

(ii) for the initial fifteen (15) years following the date of recordation of this Declaration, any second Mortgage in favor of Developer;

provided, such first or second Mortgage is made in good faith and for value and recorded in the Office of the Recorder of Maricopa County prior to the recordation of a notice of assessment and claim of lien for said assessments. Sale or transfer of any Lot shall not defeat or affect the assessment lien. However, the sale or transfer of any Lot which is subject to any first or second Mortgage described above pursuant to a foreclosure or trustee's sale under such Mortgage shall extinguish the lien of such assessments as to payments thereof which become due prior to such sale or transfer, except for the personal obligation of the Owner at the time the assessments became due. No such sale or transfer shall relieve such Lot or the purchaser thereof from liability for any assessments thereafter becoming due or from the lien thereof.

3.14 INCOME TAX ELECTIONS: The Board shall have the right, exercisable in its sole discretion, to elect to report the receipts, expenses, deductions and credits, if any, of the Association for income tax purposes pursuant to Section 528 of the Internal Revenue Code of 1954, as amended, or any comparable statute or amendment thereto hereinafter enacted.

Article 4. COVENANTS AND RESTRICTIONS

In addition to all other covenants and restrictions contained herein, the following covenants and restrictions shall govern the use and occupancy of the Property:

4.1 RESIDENTIAL USE: No part of any Lot shall be used for other than private dwelling purposes and Accessory Uses. The foregoing restrictions as to use shall not be construed in such manner as to prohibit a Lot Owner from

(i) maintaining a personal professional library therein, or

(ii) keeping personal business or professional records or accounts therein, or

(iii) handling personal business or professional calls or correspondence therefrom, or

(iv) undertaking any other activity thereon not otherwise prohibited by this Declaration when such activity has been expressly approved in advance by the Association, such activities being hereby expressly declared to be Accessory Uses. Notwithstanding the foregoing, no Lot shall be used as the primary location or sale office of any Accessory Use.

4.2 TIME SHARING PROHIBITED: No Owner shall create undivided interests or any other interests in a Lot for time sharing or similar purposes. The purpose of this restriction is to prohibit shared ownership or other arrangements regarding any Lot which result in the interval use of such Lot or the overburdening of Common Area facilities.

4.3 ALTERATIONS AND IMPROVEMENTS: ~~No Improvements of any type or any structural or any other alteration to any Improvements, or any exterior additions or modifications to any Improvements (including but not limited to painting and solar panel installations), shall be made, constructed or maintained upon any Lot until the plans and specifications therefor showing the appearance, height, materials and color therefor, a plot plan showing the location thereof and appropriate grading plans for the site upon which any structure is to be or is located shall have been approved by the Architectural Control Committee in the manner set forth herein. All alterations and Improvements may be subject to timetables (for commencement and completion) as established by the Architectural Control Committee. In addition, all Improvements, alterations, additions, or modifications shall be subject to the ordinances of the City of Scottsdale. In addition to the provisions of this Declaration, each and every Owner shall be subject to the Association Rules, including, but not limited to architectural and landscaping rules.~~

4.4 LANDSCAPING: Each Owner of the Lot containing a completed Dwelling shall install landscaping within the time periods required by the Architectural Control Committee at time of approval of plans. No planting Visible From Neighboring

Property, planter bed, pool, sprinkler or structure shall be added, modified or removed without approval of the Architectural Control Committee. Care must be taken by each Owner not to impede the drainage as established by the Declarant or as approved by the Architectural Control Committee.

4.5 MAINTENANCE BY OWNER: Except as otherwise provided herein, the Owner of each Lot shall maintain all Improvements on his Lot in a clean and attractive condition, and without limiting the generality of the foregoing, the Owner of each Lot shall:

(i) keep his Lot free from rubbish, litter and noxious weeds;

(ii) maintain, cultivate and keep in good condition and repair, shrubs, trees, grass, lawns, plantings and other landscaping located or from time to time placed upon his Lot.

(iii) trim and restrain all trees, shrubs or plantings of any kind so that they shall not be allowed to overhang or otherwise encroach upon, above or below any walkway, or adjoining Lot, unless prior approval of the Architectural Control Committee or adjoining Lot Owner is obtained;

(iv) maintain in good condition and repair and adequately paint or otherwise finish all drainage Improvements and structures located or from time to time placed upon his Lot;

(v) maintain all walkway surfaces and keep them clean, reasonably dry and free of oil and other extraneous matter;

4.6 OWNERS' NONCOMPLIANCE WITH LANDSCAPING AND MAINTENANCE REQUIREMENTS: In the event an Owner shall fail to comply with the provisions of the paragraph above titled "Maintenance by Owner," the Association shall notify such Owner in writing of such specific lack of compliance, which notice shall specify the nature of such lack of compliance. If such Owner fails to remedy such lack of compliance within five (5) days after receipt of such notice (or within such greater time period as may be specified in such notice), or, in the alternative, fails to deliver written notice to the Board within five (5) days from receipt of such notice requesting a hearing before the Board with regard to the matters of noncompliance set forth in such notice, the Association or its authorized agents shall have the right to enter upon such Owner's Lot for the purpose of remedying the matters set forth in the notice, and shall not be liable for trespass in connection with such entry. If the Owner timely requests a hearing before the Board, the Board shall schedule a hearing and shall provide the Owner with at least seven (7) days' written notice as to the date, time and place thereof. At the hearing the Owner will have an opportunity to discuss with the

Board the merits of the claims set forth in the Association's original notice of noncompliance, and the Board will determine what action, if any, need be taken by the Owner and the time within which it must be accomplished. The decision of a majority of the members of the Board present at the hearing will be binding upon the Association and the Owner, subject only to legal remedies instituted within 20 days of the Board's decision. In the event it is determined that the Owner has not complied with the provisions of the paragraph titled "Maintenance by Owner" of this Article, the Board shall establish a reasonable time within which the Owner shall so comply. The cost to the Association of remedying such Owner's failure to comply with the provisions of this paragraph shall be assessed to the Owner as a Remedial Assessment, enforceable in the manner provided in the Article of this Declaration titled "Assessments." The authority of the Board to require the painting or other maintenance of the Dwelling, shall be limited to those portions of the Dwelling visible from neighboring streets.

4.7 POWER TOOLS AND OTHER EQUIPMENT: No power tool, communication equipment or other device shall be used on the Property which causes interference with cable TV reception and other electronic devices unless the prior written consent of the Architectural Control Committee has been obtained.

4.8 OBNOXIOUS AND OFFENSIVE ACTIVITIES: No obnoxious or offensive activity shall be carried on, in or upon any Lot or any part of the Property, nor shall anything be done thereon which may be or may become an annoyance or nuisance to the neighborhood or which may in any way interfere with the quiet enjoyment by each of the Owners of his respective Lot, or which shall in any way increase the premium rate of insurance.

4.9 ANTENNAS AND EXTERIOR APPLIANCES:

4.9.1 Antennas: No towers, antennas, aerials, or other facilities for the reception or transmission of radio or television broadcasts or other means of communication shall be erected and maintained or permitted to be erected and maintained on any Lot except by installations inside of structures constructed on said Lot, or by underground conduits, without the prior written consent of the Architectural Control Committee.

4.9.2 Wiring: No wiring for electrical or telephone installations, television antennas, security systems, machines or air conditioning units, or appliances shall be permitted on the exterior of any building or to protrude through the walls or roof of any building except as permitted by the Board or the Architectural Control Committee pursuant to the Article hereof titled "Architectural Control."

4.9.3 Exception for Cable: This paragraph shall not apply to, nor restrict, master antennas and head end systems for a cable television system installed or approved by Developer or by a franchise cable television operator.

4.10 GARAGE DOORS: Garage doors are to be kept closed at all times, except when not in immediate use for ingress and egress of vehicles and equipment.

4.11 COMPLIANCE WITH LAWS: Each Owner shall promptly comply with all laws, statutes, ordinances, rules and regulations of federal, state or municipal governments or authorities applicable to use and occupancy of and construction and maintenance of any Improvements.

4.12 EXTRACTION OF MINERALS: No oil drilling, oil development operations, oil refining, quarrying or mining operations of any kind shall be permitted on any Lot, nor shall oil wells, tanks, tunnels or mineral excavations be permitted on any Lot or within five hundred (500) feet below the surface of any Lot and no derrick or other structure designed for use in boring for water, oil, or natural gas shall be erected, maintained or permitted upon any Lot.

4.13 COMMERCIAL AND PROFESSIONAL USE: No Lot shall be used in a manner which results in the unreasonable use (quantity of use or otherwise) of any portion of the Common Area. Nothing herein shall be deemed to prevent the leasing of any Lot from time to time by the Owner thereof for residential purposes only and subject to all of the provisions of this Declaration.

4.14 GRADES, SLOPES AND DRAINAGE: No Owner of any Lot shall in any manner alter, modify or interfere with the grades, slopes or drainage on any Lot or on the Common Area. No structure, plantings, or other material shall be placed or permitted to remain on or within any slopes nor shall any other activities be undertaken by the Association or by any other person which may damage or interfere with established slope ratios, create erosion or sliding problems, or which may change the direction of flow of drainage channels or obstruct or retard the flow of water through drainage channels or across Lots. Maintenance and management of water retention and drainage shall be the responsibility of the Association.

4.15 USE OF IMPROVEMENTS DURING CONSTRUCTION; DILIGENCE IN CONSTRUCTION: No Improvement upon any Lot shall be occupied until the same is completed and made to comply with the restrictions, covenants and conditions contained in this Declaration. Any Improvement which is partially or totally destroyed or damaged shall be removed, repaired or replaced within a reasonable time after such destruction or damage occurs and subject to the requirements of this Declaration, by the then Owner or

Owners of that portion of the Lot or Lots upon which the destroyed or damaged Improvement was or is located. All work of construction, removal or repair of any Improvement upon any Lot shall be prosecuted diligently and continuously from the time of commencement thereof until the same shall be fully completed, except to the extent prevented by strikes, lockouts, boycotts, the elements, war, inability to obtain materials, acts of God or similar causes.

4.16 CHEMICALS: The Architectural Control Committee shall have the power, but not the duty, from time to time to determine that the use of particular chemicals on any Lot constitutes or would constitute a clear danger to the residents, and to publish the names of such chemicals and prohibit their use. No chemical so prohibited shall be used on or above any Lot. Additionally, the Architectural Control Committee may prohibit specified chemicals, including but not limited to pesticides and herbicides, from use on or above the open surface area of any Lot, or above any Lot, whether once or intermittently or continuously, if such chemical or any product or residue thereof does or may seep, drain, flow, drift or otherwise migrate into any natural or artificial waterway or body of water existing in the Property, into or above any part of the Common Area, or into or above any other Lot.

4.17 POISONOUS PLANTS AND ALLERGENS: The Architectural Control Committee shall have the power, but not the duty, from time to time, to determine that the use of particular plants in landscaping on any Lot or Common Area constitutes or would constitute a danger to residents and others because of the poisonous nature of the plant or likelihood of allergic reactions caused by contact, ingestion of the plant, or airborne pollens. No plant so prohibited shall be used on any Lot or Common Area.

4.18 EXTERIOR LIGHTING: All exterior lighting of a Lot shall be subject to approval of the Architectural Control Committee, except as originally installed by Developer.

4.19 OPEN FIRES: Exterior fires and barbecues shall be prohibited except in confined pits or barbecue facilities designed for such purpose, and no refuse shall be burned on the Property.

4.20 NOISE: No power tools, speaker, horn, whistle, bell or other similar sound facility or equipment shall be permitted upon any Lot which is capable of producing any sound in excess of sixty-five (65) decibels measured at a point one hundred (100) feet from (i) the outside of any Improvement within which the sound emanates or (ii) the speaker or other similar sound facility or equipment from which the sound emanates. No activity shall be undertaken or permitted upon any Lot, which activity causes any sound, whether intermittent, recurrent or

continuous, in excess of forty-five (45) decibels measured at any point on the boundary line of said Lot. Decibel measurements shall be the average of at least three (3) and at most five (5) decibel readings by a qualified engineer. In the event an Owner is in violation of this section, the cost of retaining the qualified engineer may be assessed against the Owner as a Remedial Assessment. The foregoing provisions of this Section shall not, however, prohibit the installation or use of devices designed and used solely for security purposes.

4.21 SIGNS: The only signs permitted on any Lot or Structure shall be:

4.21.1 For sale signs shall be prohibited on the Properties for twenty-four (24) months from the date this document is recorded. Thereafter, one sign of customary size for offering of signed property for sale. For rent signs shall be prohibited. Such prohibition shall not preclude an Owner from renting his premises; however, any tenant or occupant shall be bound to comply to the provisions of the Declaration and the Owner shall be primarily responsible for such compliance by a tenant or occupant;

4.21.2 Residential identification signs of a face area of seventy-five (75) square inches or less for identification of the occupant and address of any Dwelling, in a style designated or approved by the Architectural Control Committee;

4.21.3 Such multiple signs for sale, administration and directional purposes during development as are required by Developer and approved by Declarant;

4.21.4 Such signs as may be necessary to advise of rules and regulations or to caution or warn of danger and as are approved by Declarant;

4.21.5 Such signs as may be required by law;

4.21.6 There shall not be used or displayed on any Lot or Structure any signs, except those mentioned above, or any banners, streamers, flags, lights or other devices calculated to attract attention in aid of sale or rental. All permitted signs must be professionally painted, lettered and constructed.

4.22 ANIMALS, PETS: No animal of any kind shall be permitted which in the opinion of Declarant makes an unreasonable amount of noise or odor or is a nuisance. No animals shall be kept, bred or maintained within the Subdivision for any commercial purposes. Pets shall not be allowed loose or unsupervised on any part of the Property and walking of pets shall be allowed only on such portions of the Property as the Board may prescribe by its rules and regulations. If the Board determines that

walking of pets shall be permitted on the Property, Owners shall carry such equipment as necessary and shall leave the Property free from animal waste. The Board may establish fines for violation of this section, which fines shall be enforceable as for an assessment lien. Where such written permission is granted, privilege is revocable if the animal becomes obnoxious to other residents, in which event the Owner or person having control of the animal shall be given a written notice to correct the problem, or if not corrected, the Owner, upon written notice, will be required to dispose of the animal. The written notices provided for herein shall be issued by the Managing Agent or, if there is no Managing Agent, then, by one or more of the members of the Board of Directors.

4.23 PARKING RESTRICTIONS: No Owner shall do anything which will in any manner prevent the streets and the common areas from at all times being free and clear of all obstructions and in a safe condition for vehicular use. So that the company may function in an orderly manner, it shall be the duty and obligation of every Owner on behalf of himself, his family, tenants, servants, guests and invitees to observe and enforce the parking restrictions. It shall further be the duty and obligation of the Board to observe and determine that parking restrictions are followed and enforced:

~~4.23.1 No inoperative motor vehicles of any kind shall be stored or parked on any Lot, or in a carport. Inoperative vehicle shall be defined as any motor vehicle which does not have current license plates and/or is not in working order.~~

~~4.23.2 No motor homes, trailers of any kind, boats, all terrain vehicles or other recreational means of transportation, commercial vehicles, except those used during construction of the Improvements, truck campers, whether attached or detached, shall be kept, placed, maintained, constructed, reconstructed or repaired on the Common Area.~~

4.23.3 In addition to the other enforcement provisions contained within this Declaration, the Board may have any offending vehicle upon the Property removed from the Property to a commercial storage lot after notice to the Owner, if reasonably possible, or after posting the vehicle for six (6) hours with notice that the vehicle will be towed if it is not brought into compliance, if such notice or posting is consistent with safe practice. The recording of this Declaration shall be deemed to put every Owner, guest and invitee on notice of this provision as though the Common Areas were posted in accordance with applicable statutes of the State of Arizona and ordinances of the City of Scottsdale or its successor. Any car parked within a posted fire lane may be removed without notice.

4.24 EXCEPTIONS: The covenants, conditions and restrictions set forth in the Article titled "Covenants and Use Restrictions," and the Article titled "Architectural Control" shall not and do not apply to any of the following:

(i) Any act done or proposed to be done upon the Property, or any condition created thereon, by any utility company (including, but not limited to, companies furnishing electric, gas, water, telephone, cable television and/or sewer service to all or parts of the Property), or the agents or employees of any such company, which act could be done by such company were this Declaration not made;

(ii) Any act done or proposed to be done upon the Property, or any condition created thereon, by Developer, or its successors, assigns, agents, employees or contractors, in connection with the marketing and sales by Developer of the Lots, or in the course of planning for, preparing the Property for and/or construction upon the Property or any Lot of streets, utilities, recreational and residential buildings, security systems, and all other original Improvements, or in connection with the exercise of any easement reserved to Developer in the Article hereof titled "Easements";

(iii) Any act done or proposed to be done upon the Property, or any condition created thereon, which act or condition has been approved in advance by the Board or the Architectural Control Committee acting within its authority as set forth in the Article of this Declaration titled "Architectural Control";

(iv) Any act done or proposed to be done upon the Property, or any condition created thereon, by any person pursuant to court order, or the order of any public officer or public agency; provided, however, that the orders contemplated in this subparagraph are only those which are the result of action initiated by public officers or agencies and which embody mandatory requirements with penalties for nonperformance, and are not those orders which result from the application of private parties or are merely permissive.

Article 5. ARCHITECTURAL CONTROL

5.1 ARCHITECTURAL CONTROL COMMITTEE:

5.1.1 Purpose: It is the intention of Declarant, while imposing the within covenants, conditions and restrictions in order to provide for the orderly and attractive development of the Property, to provide through the Architectural Control Committee described herein a means by which the architectural and landscaping standards set forth in this Declaration, in Rules adopted by the Committee, and as ad hoc decisions of the Com-

mittee, will be enforced for proper development and operation of the Property.

5.1.2 Establishment of Committee: The Architectural Control Committee shall consist of a maximum of five (5) individuals. The terms "Architectural Control Committee" and "Committee," as used herein, shall refer to such committee.

5.1.3 Initial Members: The following persons are hereby designated as the initial members of the Architectural Control Committee established hereby:

Thomas Eggert
Carl Smith
Karen Moser

All of the rights, powers and duties of the Architectural Control Committee as set forth in this Declaration are hereby delegated to the Architectural Control Committee established hereby.

5.1.4 Appointment, Removal and Resignation: The right to appoint and remove all members of the Architectural Control Committee at any time, shall be and is hereby vested solely in the Board; provided, however, that no initial member of the Architectural Control Committee may be removed, nor any successor appointed for an initial member who dies or resigns, except by Developer prior to the sale of ninety percent (90%) of the Lots. Any member of the Architectural Control Committee may at any time resign from the Committee by giving written notice thereof to the Developer, if, pursuant to this paragraph, Developer has the right to appoint a successor to such member, or, if Developer does not have the right, to the Board. Members of the Committee are not required to be Members of the Association.

5.1.5 Vacancies: Except as otherwise provided herein for Developer, vacancies on the Architectural Control Committee, however caused, shall be filled by vote of a majority of the members of the Board. A vacancy shall be deemed to exist in case of the death, resignation or removal of any member. Failure of the Board to fill any vacancy in the Committee shall not prevent:

(i) the running of the sixty (60) day automatic approval period specified in the Section titled "Operation of Committee" of the Article hereof titled "Architectural Control," or

(ii) action by the Committee on any matter to the extent that a majority thereof each join in and consent thereto.

5.2 MEETINGS: The Architectural Control Committee shall meet from time to time as necessary to perform its duties

hereunder. The vote or written consent of a majority of members, at a meeting or otherwise, shall constitute the act of the Committee unless the unanimous decision of the Committee is specifically required under any provision of this Declaration. The Committee shall keep and maintain a written record of all actions taken by it at such meetings or otherwise.

5.3 DUTIES: It shall be the duty of the Architectural Control Committee to consider and act upon any and all proposals or plans submitted to it pursuant to the terms hereof, to administer Rules pertaining to architecture and landscaping, to ensure that any Improvements constructed or installed on the Property by anyone other than the Developer conform to plans approved by the Architectural Control Committee, to perform other duties delegated to it by the Developer within the time periods set forth herein, and to carry out all other duties imposed upon it by this Declaration. The Architectural Control Committee, in its own name or on behalf of the Association, may exercise all available legal and equitable remedies to prevent or remove any unauthorized and unapproved construction of Improvements on the Property or any portion thereof.

5.4 OPERATION OF COMMITTEE:

5.4.1 Documents Required: The Committee may require the submission to it of any or all of the following documents and such additional documents which it determines to be reasonably appropriate to the activity for which consent is requested:

(i) all required documents set forth in its Rules, if any, including, without limitation, soil reports, if required by the Committee;

(ii) a written description;

(iii) plans and specifications;

(iv) schematics;

(v) elevations;

(vi) a plot plan showing the location of the proposed Improvement; and

(vii) timetables.

5.4.2 Information Required; Time of Application: All submissions to the Architectural Control Committee shall:

(i) show the address of the party submitting the same;

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(ii) be in as many copies as there are Architectural Control Committee members;

(iii) be deemed made when actually received in complete form by the Committee and the Committee has requested no further information or revisions; and

(iv) state in writing the specific matters for which approval is sought.

5.4.3 Committee Discretion: The Committee, before giving such approval, may require that changes be made to comply with the requirements of this Declaration, the Association Rules and such additional requirements as the Committee may, in its absolute discretion, impose as to structural features of any proposed Improvement, the type of material used, or other features or characteristics thereof not expressly covered by any provisions of this instrument, including the location of any proposed Improvement with respect to the topography and finished ground elevation. The Committee may also require that the exterior finish and color, the architectural style or character of any proposed Improvement which constitutes a building or structure, and the landscaping plan shall be such as in the discretion of the Committee shall be deemed suitable in view of the general architectural style and character of existing Improvements within the Property.

5.4.4 Conditional Approval: The Committee, before giving its approval, may impose conditions or require changes to be made which in its discretion are required to ensure that the proposed Improvement will not detract from the appearance of the Property, or otherwise create any condition unreasonably disadvantageous to other Owners or detrimental to the Property as a whole.

5.4.5 Evidence of Approval: One of the sets of submissions to the Committee shall be retained by it. In the event the Committee approves or is deemed to approve the activity for which consent is required, the Committee shall endorse its consent on all copies and all but one set shall be mailed by the Committee, postage prepaid, to the address specified by the submitting party unless such party shall elect to accept delivery thereon in person or by agent so authorized in writing.

5.4.6 Automatic Approval: If the Committee fails to mail its certificate with regard to any matter submitted to it hereunder, within sixty (60) days after submission of all materials required by the Committee to be submitted to it, it shall be conclusively presumed that the Committee has approved the specific matters as to which approval was sought in the submission. It shall thereupon be the duty of the members of the

Committee, forthwith upon the request of the submitting party, to sign and acknowledge a certificate evidencing such approval.

5.4.7 Fees: As a condition precedent to its consideration of or action upon any material or matter submitted to it hereunder, the Committee shall be entitled to receive a sum fixed by it from time to time for each set of plans, specifications, drawings or other material so submitted. Notwithstanding the provisions of the section above titled, "Information Required; Time of Application" above, until the requisite sum shall have been paid to it as provided herein, any material delivered to the Committee shall not be considered to have been submitted to the Committee for the purposes of this Declaration.

5.4.8 Records of Committee Action: All actions of the Committee shall be noted in the minutes of the Board.

5.4.9 Recording of Approval: No certificate of the Committee shall be recorded by the Committee or any member thereof, but the same may be recorded by the party submitting the material concerning which the certificate was made.

5.4.10 Sole Discretion of Committee: All action by the Committee authorized in this Declaration shall be within its sole discretion.

5.4.11 Developer Exemption: The provisions of this Article shall not apply with respect to construction by Developer of Improvements within the Property.

5.4.12 Professional Advisors: The Architectural Control Committee shall, from time to time or as a continuing service, have the right to employ professional advisors for the purpose of reviewing submitted plans, with the cost of hiring to be paid by the Owner submitting the plans.

5.5 ACCESS TO PROPERTY: Each member of the Committee, or any other agent or employee of the Board, shall at all reasonable hours have the right of access to any part of the Property, and to any structures being built thereon, for the purpose of inspection relative to compliance with this Declaration.

5.6 WAIVER: The approval or disapproval by the Committee of any plans, specifications, drawings, grading plans, heights, or any other matters submitted for approval or consent shall not be deemed to be a waiver by the Committee of its right to approve, disapprove, object or consent to any of the features or elements embodied therein when the same features or elements are embodied in other plans, specifications, drawings or other matters submitted to the Committee.

5.7 LIABILITY: Neither the Association, the Board, the Committee nor any of its members shall be responsible for any defects in any building, Improvement or other structure or planting erected, constructed, installed, placed, altered or maintained in accordance with or pursuant to any plans and specifications, color scheme, timetable or other material approved by them or any conditions or requirements that they may have imposed with respect thereto, nor shall the Association, the Board, the Committee or any of its members have any liability for the inability of anyone to obtain a building permit for the construction or alteration of any building or structure pursuant to plans and specifications approved by the Committee.

5.8 SECURITY DEPOSIT: The Committee may condition its approval of any Improvements on the posting of a security deposit in favor of the Committee, in an amount specified by the Committee, or other security satisfactory to the Committee, to be used to ensure that any damage or destruction of the Common Area resulting from the construction or installation of the Improvements shall be repaired. Upon completion of such Improvements and repair by the Owner of any damage to said areas resulting therefrom, such security deposit shall be returned. The posting of security shall not relieve any Owner from liability for damage or destruction of said areas caused by him or his agents or contractors, and such liability shall not be limited to the amount of such security.

Article 6. DESTRUCTION

6.1 RECONSTRUCTION WITHOUT ELECTION OF OWNERS: In the event of a total or partial destruction of any portion of the Common Area, and if the available proceeds of the insurance carried pursuant to the Article titled "Desert Hills of Scottsdale Homeowners Association, Inc.," section titled "Duties of the Association," paragraph titled "Insurance," are sufficient to cover not less than ninety percent (90%) of the cost of repair or reconstruction thereof, the same shall be repaired and rebuilt promptly unless, within sixty (60) days from the date of such destruction, not less than seventy-five percent (75%) of the Members present and entitled to vote, in person or by proxy, at a duly constituted and called annual or special meeting of the Members at which a quorum is present, determine that such reconstruction shall not take place. If reconstruction is to take place, the Board shall cause to be executed, acknowledged and recorded in the Office of the Maricopa County Recorder a certificate declaring the intention of the Owners to rebuild, such certificate to be executed by any officer or agent of the Association duly authorized to execute the same by the Board.

6.2 RECONSTRUCTION BY CONSENT OF OWNERS: If the proceeds of such insurance are less than ninety percent (90%) of the costs of reconstruction, such reconstruction may nevertheless

take place if a majority of the Members present either in person or by proxy and entitled to vote at a duly noticed and called annual or special meeting of the Members at which a quorum is present elect to rebuild. In the event of an election to rebuild, a certificate shall be executed, acknowledged and recorded as provided for in the paragraph of this Article titled "Reconstruction Without Election of Owners."

6.3 ASSESSMENTS: In the event of a determination to rebuild pursuant to either of the preceding paragraphs of this Article, each Owner shall be obligated to contribute such funds as shall be necessary to pay his proportionate share of the cost of reconstruction, over and above the insurance proceeds. The proportionate share of each Owner (for each Lot owned) as to such assessment shall be equal to a fraction, the numerator of which is one (1) and the denominator of which is the number of Lots in the Property, and such assessment shall be due and payable in full within thirty (30) days after written notice thereof. The assessment for reconstruction shall be enforceable in the manner provided in this Declaration for any other assessment.

6.4 OBLIGATION OF BOARD: It shall be the obligation of the Board to take all steps necessary to assure the commencement and completion of such reconstruction at the earliest possible date.

6.5 DETERMINATION NOT TO REBUILD: If a certificate of intention to rebuild has not been executed, acknowledged and recorded within nine (9) months from the date of any partial or total destruction of the Common Area, or if reconstruction and rebuilding has not actually commenced within such nine (9) month period, then any insurance proceeds available for such rebuilding shall be distributed by the Board among the Owners subject to (i) all unpaid assessments of each Owner together with any interest on fees attributable thereto, and (ii) the rights of any Mortgagee covering each such Owner's Lot. The proportionate interest in said proceeds for each Lot owned shall be equal to a fraction, the numerator of which is one (1) and the denominator of which is the number of Lots in the Property.

6.6 DAMAGE TO LOT: Any restoration and repair of any damage to a Lot shall be made by and at the individual expense of the Owner of such Lot, to the extent not covered by insurance. If an Owner fails to make such restoration or repair of his Lot, the Board may, in accordance with this Declaration, take appropriate remedial action.

Article 7. CONDEMNATION

7.1 TAKING OF ENTIRE COMMON AREA: In the event the entire Common Area is taken under the power of eminent domain, the amount payable shall be paid to the Association, as trustee,

for distribution to the Owners, subject to (i) all unpaid assessments of each Owner together with any interest charges or fees attributable thereto, and (ii) the rights of any Mortgagees covering each such Owner's Lot. The proportionate interest of each Owner in the condemnation award shall be the same as that set forth in the Article titled "Destruction," Section titled "Determination Not to Rebuild."

7.2 PARTIAL TAKING OF COMMON AREA: In the event of a partial taking of the Common Area, the Association shall use all amounts awarded to it on account of such taking, to acquire and improve other real or personal property to replace the property which was taken; provided, however, that the Association shall not be obligated to replace such real or personal property if seventy-five percent (75%) of the voting power of the Association elects to distribute the condemnation award in the manner provided in the Article titled "Destruction," Section titled "Determination Not to Rebuild," rather than make such replacement. This provision is subject to the provisions of the Article titled "General Provisions," paragraph titled "Special Mortgage Requirements." If the Members of the Association do not elect, within sixty (60) days after the taking of the Common Area, to distribute the condemnation award, the Board may proceed with such acquisition and improvement of new property and may levy a Special Assessment on the Owners in accordance with the Article titled "Assessments," Section titled "Special Assessments for Capital Improvements," to raise any funds needed for such purpose in excess of the condemnation award. If the Members do not approve such Assessment, the Board shall perform such repair and restoration work and make such acquisitions as are possible with the available funds.

7.3 TAKING OF LOTS: In the event of a taking of Lots or any portion thereof, those Owners whose Lots are completely or partially taken shall be entitled to retain the award made to them, subject to (i) all unpaid assessments of each Owner together with any interest on fees attributable thereto, and (ii) the rights of any Mortgagees covering each such Owner's Lot. Nothing contained in this Article shall be deemed to limit the right of an Owner to pursue all available legal remedies and to obtain all compensation to which he may be entitled by reason of the taking of his Lot. Upon the complete taking of a Lot, that Membership of the Owner in the Association shall cease.

Article 8. EASEMENTS

8.1 USE OF THE COMMON AREA: Declarant hereby reserves and grants to Developer and hereby grants to each Owner a non-exclusive easement for use and enjoyment over all of the Common Area. Said easements are appurtenant to and shall pass with the title to every Lot. Said easements are for the benefit of the Lots, the Owners of the Lots, and each of them, their respective

families, guests, invitees, tenants, contract vendees, and such other classes of persons as to whom the Board may, from time to time and subject to published rules and regulations, extend the privilege of use and enjoyment of the Common Area, for all of the purposes and uses hereinabove set forth. In furtherance of the establishment of these easements, the individual warranty deeds to the Lots and sales contracts for the Lots, may, but shall not be required to, set forth the foregoing easements (expressly and/or by reference to this Declaration). The right of Developer and each Owner, and of such Owner's tenants and contract vendees, to use and possess the Common Area, as set forth herein, shall be subject to and governed by the provisions of this Declaration, the Articles and the Bylaws, and such other rules and regulations as may hereafter be adopted by the Board from time to time. The Association shall have the authority to lease or to grant licenses or concessions with respect to all or any part of the Common Area, subject only to the provisions of this Declaration, the Articles and Bylaws; provided, however, that any charges levied against the general public for any particular facilities shall not be less than charges levied against Lot Owners for the same use of the same facilities.

8.2 EASEMENT FOR ACCESS: The Common Areas shall be and hereby are made subject to an easement in favor of each adjoining Lot for access to make necessary repairs, maintenance and reconstruction upon said adjoining Lots and structures thereon.

8.2.1 Owner Liability: Any damage caused by such entry shall be repaired at the expense of the Owner whose property was the object of the repair work which led to such entry;

8.2.2 Reasonable Access: Any such entry shall be made only at reasonable times and with as little inconvenience as possible to the Association.

8.3 PUBLIC UTILITY EASEMENT: There shall be and hereby is created an easement over, upon, under and through an area as shown on the final recorded plat for the purpose of use, maintenance and repair of public utilities including water, sewer, electric, telephone, cable television, refuse collection and emergency vehicle access for the benefit of all Owners of Lots and the Association.

8.4 DRAINAGE EASEMENTS AMONG OWNERS: Wherever drainage, as established by the Developer, flows from one Lot onto, under or through one or more other Lots, said drainage flow shall not be impeded, diverted or otherwise changed. These easements shall include, but are not limited to, receiving the runoff from roofs and drainage under and through garden walls.

8.5 DRAINAGE EASEMENTS ON THE COMMON AREAS:

8.5.1 Flow to be Unobstructed: Pursuant to these recorded documents, there is created an easement in favor of all Owners and Residents of Desert Hills of Scottsdale over, across and through Tracts A and B such additional common areas as may be annexed, for the purpose of drainage and runoff. No structure, fence or planting other than turf shall be placed or permitted within said easement which could impede the flow of runoff water.

8.6. TO THE ASSOCIATION: There is hereby reserved and granted to Developer, the Architectural Control Committee and the Association, their agents and employees, such easements as are necessary to perform the duties and obligations of the Association and Architectural Control Committee as are set forth in this Declaration, the Bylaws, the Articles and the Association Rules, including, but not limited to, the right of access at all reasonable hours to any part of the Property (excluding the interior of any Dwelling), and to any Improvements being built thereon, for the purpose of inspection relative to compliance with the Declaration, the Bylaws, the Articles and the Association Rules.

8.7 COVENANTS RUNNING WITH THE LAND: Each of the easements provided for in this Declaration shall be deemed to be established upon the recordation of this Declaration, and shall thenceforth be deemed to be covenants running with the land for the use and benefit of the Lots and the Common Area, as the case may be, and superior to all other encumbrances applied against or in favor of any portion of the Property which are the subject of this Declaration. In furtherance of the easements provided for in this Declaration, the individual warranty deeds to the Lots may, but shall not be required to, set forth said easements.

8.8 DOCTRINE OF MERGER NOT APPLICABLE: The Doctrine of Merger shall not apply to easements between adjacent Lots for access, use and drainage and common ownership of one or more such Lots shall not extinguish or merge said easements.

8.9 OWNERS' INTERESTS IN UTILITY EASEMENTS:

8.9.1 On Common Areas and Other Lots: Whenever sanitary sewer house connections and/or electricity, gas, water, telephone or cable television lines are installed within the Property, which connections or any portion thereof lie in or upon the Common Area or Lots owned by persons other than the Owners of the Lot served by said connections, the Owner of any Lot served by said connections shall have the right, and is hereby granted an easement to the full extent necessary therefor,

(i) with the prior written approval of the Board or the Architectural Control Committee, to enter upon the Common Area or to have the utility companies enter upon the Common Area

in or upon which said connections, or any portion thereof, lie, in order to modify, repair, replace and generally maintain said connection strictly in accordance with approved architectural plans, as and when the same may be necessary, and

(ii) to enter upon Lots or to have the utility companies enter upon Lots in or upon which said connections, or any portion thereof, lie, in order to repair, replace and generally maintain said connections strictly in accordance with approved architectural plans, as and when the same may be necessary as set forth below.

8.9.2 Shared Utility Connections: Whenever sanitary sewer house connections and/or water house connections or electricity, gas, telephone or cable television lines are installed within the Property, which connections serve more than one Lot, the Owner of each Lot served by said connections shall be entitled to full use and enjoyment of such portions of said connections as serve his Lot.

8.9.3 Resolution of Disputes: In the event of a dispute between Owners with respect to the repair or rebuilding of utility service connections, or with respect to the sharing of the cost thereof, then upon written request of one of such Owners addressed to the Association, the matter shall be submitted to the Board who shall decide the dispute and make a Special Assessment against any or all of the Owners involved, which shall constitute a Special Assessment within the meaning of the Article of this Declaration entitled "Assessments," but shall not require the consent or approval of the Members of the Association, or any percentage of them.

8.10 EASEMENTS RESERVED BY DECLARANT ON BEHALF OF DEVELOPER: In addition to any easements which have been or may hereafter be excepted or reserved in the warranty deed of each Lot or other portion of the Property or by a separately recorded instrument, Declarant excepts, reserves and grants to Developer, its contractors, subcontractors, employees, agents, invitees, successors and assigns, and declares that upon the conveyance of any Lot, there are reserved and excepted the following easements, which are nonexclusive and in gross:

8.10.1 Within Public Utility Easements: An easement over, upon, under and through an area as may be delineated on the final plat of the Property. Construction within the public utility easements, except by public agencies, utility companies and cable television companies shall be limited to utilities and wood, wire and removable section type fencing. No structure, planting or other material shall be placed or permitted to remain which may interfere with the installation, use or maintenance within the easements of utilities, or which may obstruct, retard, accelerate or change the direction of the flow of water through

drainage channels or in drainage easements. All such structures, planting or other material as may exist from time to time within the easements shall be maintained continuously by the Owner of the Lot subject to the easement, except only those structures for which a public entity or utility company or the Association is responsible.

8.10.2 Within Common Area and Other Areas: For a period of time extending until seven (7) years following the closing of the sale of the first Lot, or until all Lots are sold to an Owner other than Declarant or Developer, whichever occurs earlier, a non-exclusive easement in, over, under and through the Common Area, for ingress and egress and for the purpose of:

8.10.2.1 completing the development of the Property, including constructing, maintaining and retaining all Improvements on the Property now or hereafter planned to be constructed on the Property by Developer or required to be constructed on the Property by any municipal or governmental agency

8.10.2.2 marketing and selling the Lots therein, customer relations and providing post sale customer service to Owners; and in connection with such easement the right, but not the obligation:

(i) to perform any and all architectural, engineering, grading, construction, excavation, landscaping and related work and activities;

(ii) to erect and maintain upon the Property storage buildings, storage areas and temporary sewage disposal facilities;

(iii) to store and use materials, equipment, vehicles, tools and machines which may be necessary or desirable in connection with such construction;

(iv) to display signs and erect, maintain and operate, for sales and administrative purposes, a fully staffed customer relations, customer service and sales office complex on the Property;

(v) to perform maintenance, repair and replacement work on, and to make custom Improvements, alterations and additions to Improvements; and

(vi) to construct Improvements on any Lot.

No such activities shall be deemed to be a nuisance.

8.10.2.3 An easement in, over, under and upon the Additional Maintenance Areas, for the purpose of performing main-

tenance, repair and replacement work, and to make improvements; provided, that this easement shall not be construed to require the Association to perform any work, whatsoever, with respect to the Additional Maintenance Areas.

8.10.3 Transfer By Developer: Developer shall have the right, without the joinder of any other person or entity, to grant and transfer all or any part of the easements reserved to it in this Section.

8.10.4 Owner Access Restricted: No Owner shall enter any construction area or cross any fence or other barricade constructed to prevent such entry or otherwise impede or interfere with such development and construction.

Article 9. ENFORCEMENT

9.1 ALL REMEDIES ARE AVAILABLE: In the event of any default by any Owner under the provisions of this Declaration, the Articles, the Bylaws, or the Association Rules, and upon any failure of any Owner to comply with any requirement or restriction thereof, the Association and its successors and assigns, the Board and its agents, or any of them, shall have all the rights and remedies which may be provided for in this Declaration, the Bylaws, the Articles, or the Association Rules, or which may be available at law or in equity, and may prosecute any action or other proceeding against such defaulting Owner and/or other persons for enforcement of any lien and the appointment of a receiver for the Lot and ownership interest of such Owner, or for damages or injunction or specific performance, or for judgment of payment of money and collection thereof, or the right to take possession of the Lot and to sell the same as hereinabove provided, or for any combination of remedies, for any other relief. The Association and the Board, and the agents of each, shall have the authority to correct such default and to do whatever may be necessary for such purpose. Any Owner may enforce this Declaration, the Articles, Bylaws and Association rules against any other person or entity if the Association fails, within a reasonable time after written request, to do so.

9.2 EXPENSE OF ENFORCEMENT IS LIEN ON LOT: All expenses of the Association in connection with such actions or proceedings, including court costs and attorneys' fees, and all damages, together with interest thereon at the maximum rate charged for VA or FHA mortgages during the period in question, until paid, shall be charged to such defaulting or non-complying Owner, and shall be a lien on such Owner's Lot, his interest in the Association and upon all of such Owner's additions and Improvements to his Lot, which lien shall be enforceable as a Remedial Assessment in the manner set forth in the Article hereof, titled "Assessments."

9.3 CUMULATIVE REMEDIES: Any and all such remedies may be exercised at any time and from time to time, cumulatively or otherwise, by the Association, or by the Board. The provisions of this Article are available in addition to the provisions in the Article hereof titled "Assessments."

9.4 LIEN FOR UNSUCCESSFUL SUIT BY OWNER: Should any Member institute suit against the Association, and should the Association be successful or sustained in its position in such suit, then such Member shall be required to reimburse the Association for its legal expenses incurred, including but not limited to attorneys' fees, fees of experts, court costs and other expenses reasonably incurred by the Association, and the amount to which the Association is entitled shall be a lien against the Owner's Lot as provided in and enforceable pursuant to the provisions of the Article hereof titled "Assessments."

Article 10. INTEGRATED NATURE OF THE COVERED PROPERTY

The real property described as Annexation Property shall be annexed to and become subject to this Declaration as set forth hereinafter in this Article.

10.1 DEVELOPMENT OF THE COVERED PROPERTY:

10.1.1 Annexation Necessary: Developer intends to sequentially develop the Annexation Property on a phased basis. No phase of Annexation Property shall become subject to this Declaration and until annexed pursuant to the paragraph of this Article titled "Annexation Without Approval and Pursuant to General Plan," or until a Declaration of Annexation signed by Declarant is recorded with the Maricopa County Recorder. All subsequent Improvements on Lots shall be consistent in quality of construction.

10.2 ANNEXATION WITHOUT APPROVAL AND PURSUANT TO GENERAL PLAN: Within seven (7) years from the recording of this Declaration, all or portions of the Annexation Property shall become Covered Property as to a particular phase upon the recordation of a deed of fee title to a Lot in such phase to an Owner other than a Developer by Declarant. The recording of a Declaration of Annexation shall make said real property phase subject to this Declaration and subject to the functions, powers and jurisdiction of the Association, and thereafter said annexed real property shall be part of the Covered Property and all of the Owners of Lots in said annexed phase shall be Members automatically.

10.3 MERGERS, CONSOLIDATIONS OR AFFILIATION: Upon a merger, consolidation or affiliation of the Association with another association, the Association's properties, rights and obligations may, by operation of law, be transferred to the surviving, consolidated or affiliated association, or, alterna-

tively, the properties, rights and obligations of another association may, by operation of law, be added to the properties, rights and obligations of the Association. The surviving or consolidated Association may administer the covenants, conditions and restrictions established by this Declaration within the Covered Property, together with the covenants and restrictions established upon any other property as one plan.

10.4 LIMITATION UPON ANNEXATION: Notwithstanding the foregoing paragraphs of this Article, no annexation of additional real property to this Declaration, unless there has been approval thereof by a majority of the voting power of this Association, shall have the effect of either overburdening the Common Areas, except as set forth in this Declaration, or of substantially increasing the assessments of Owners.

Article 11. GENERAL PROVISIONS

11.1 AMENDMENTS:

11.1.1 By Owners: Except as otherwise provided, this Declaration may be amended by an instrument signed by not less than seventy-five percent (75%) of the Lot Owners. Any amendment must be recorded prior to becoming effective.

11.1.2 By Declarant: As long as Class B votes exist, Declarant may amend this Declaration, the Articles of Incorporation of the Desert Hills of Scottsdale Homeowners Association, Inc., and the Bylaws, without approval of the Owners, in order to fulfill any requirements for obtaining financing or guarantees pursuant to VA, FHA, FNMA, GNMA, FHLMC or a similar entity.

11.1.3 Compliance with Law: No provision in this Declaration may be changed, modified or rescinded so as to conflict with the provisions of any law.

11.1.4 Apply to all Covered Property: No amendment or termination of this Declaration which does not apply to all of the Property then covered by this Declaration shall be made or recorded as to any portion of the Property without the written consent of all of the record Owners of such affected portion.

11.2 NOTICES: Notices provided for in this Declaration shall be in writing and shall be addressed to the person intended to receive the same, at the following address:

Association:

Desert Hills of Scottsdale

At the address of the management office if professional management is obtained, if not, the address of the

President of the Association or such other address as the Association may provide to the Owners.

Developer:

Dividend Development Corporation
5685 North Scottsdale Road, Suite 165
Scottsdale, Arizona 85253

Architectural Control Committee:

Desert Hills of Scottsdale
5685 North Scottsdale Road, Suite 165
Scottsdale, Arizona 85253

Owner:

At the address of the Lot owned by him or her or any other address designated in writing by such Owner The Developer, the Association and the Architectural Control Committee may designate a different address or addresses for notices by giving written notice of such change of address to all Members of the Association. Any Owner may designate a different address or addresses for notices to such Owner by giving written notice of such change of address to the Association. Notice addressed as above provided shall be deemed given when deposited in the United States Mail, return receipt requested, or when delivered in person with written acknowledgment of the receipt thereof.

11.3 SEVERABILITY: If any provision of this Declaration, the Articles, the Bylaws, or any section, sentence, clause, phrase or word, or the application thereof in any circumstance, is held invalid, the validity of the remainder of the Declaration, the Articles and Bylaws, and of the application of any such section, sentence, clause, phrase, or word in any other circumstances shall not be affected thereby.

11.4 SUCCESSORS OF DEVELOPER: Each and every right and obligation of Developer under this Declaration shall inure to the benefit of and be binding on each successor of Developer which is designated as a Successor Developer by an instrument duly recorded in the Office of the County Recorder of Maricopa County.

11.5 INAPPLICABILITY TO PROPERTY OF PUBLIC ENTITY: The provisions hereof shall be inapplicable to any property now owned or hereafter acquired by the State of Arizona or a political subdivision thereof.

11.6 VIOLATION AND NUISANCE: Every act or omission

whereby any provision of this Declaration is violated in whole or in part is hereby declared to be a nuisance and may be enjoined or abated, whether or not the relief sought is for negative or affirmative action, by Developer, the Association or any Owner or Owners.

11.7 VIOLATION OF LAW: All activities shall be in conformance with the laws and ordinances of the City of Scottsdale. Any violation of any federal, state, municipal or local law, ordinance or regulations, pertaining to the ownership, occupancy or use of any of the Property is hereby declared to be a violation of this Declaration and subject to any or all of the enforcement procedures set forth herein.

11.8 BREACH: No breach of the covenants, conditions or restrictions herein contained, nor the enforcement of any lien provisions herein, shall defeat or render invalid the lien of any mortgage or deed of trust made in good faith and for value, but all of said covenants, conditions and restrictions shall be binding upon and effective against any Owner whose title is derived through foreclosure or trustee's sale, or otherwise.

11.9 CONSTRUCTION OF DOCUMENT: This Declaration shall be construed in accordance with the laws of the State of Arizona.

11.10 SPECIAL MORTGAGEE REQUIREMENTS:

11.10.1 Notice of Delinquency: A first Mortgagee at its request is entitled to written notification from the Association of any default by the Owner of the Lot which is subject to a Mortgage in favor of said Mortgagee, of such Owner's obligations under the constituent documents which is not cured within sixty (60) days.

11.10.2 Mortgagee Entitlement to Notice: Upon written request, any Mortgagee shall be given a copy of all notices permitted or required by this Declaration to be given to the Owner or Owners whose property is subject to such recorded mortgage or deed of trust.

11.10.3 Right of First Refusal Restricted: Any first Mortgagee who obtains title to a Lot pursuant to the remedies provided in the mortgage, or foreclosure of the mortgage, or deed (or assignment) in lieu of foreclosure, shall be exempt from any "right of first refusal." In the event this Declaration is ever amended to provide for a right of first refusal, such amendment shall require the written, recorded approval of the Veteran's Administration.

11.10.4 Nonliability for Assessment Prior to Foreclosure: Any first Mortgagee who obtains title to a Lot pursuant to the remedies provided in the mortgage or deed of

trust or foreclosure of the mortgage or deed of trust shall not be liable for such Lot's unpaid assessments which accrue prior to the acquisition of title to such Lot by such first Mortgagee.

11.10.5 Examine Books: First Mortgagees shall have the right to examine the books and records of the Association.

11.10.6 Reserve Fund: An adequate reserve fund for replacement of the Common Area, Improvements must be established and must be funded by regular monthly payments rather than by Special Assessments.

11.10.7 Acts Requiring Prior Written Approval of Mortgagee: Notwithstanding anything to the contrary which may be set forth in this Declaration, the Articles or the Bylaws, unless at least seventy-five percent (75%) of the first Mortgagees (based upon one (1) vote for each first Mortgage owned) have given their prior written approval, the Association shall not:

(i) by act or omission, change, waive or abandon any scheme of regulations, or enforcement thereof, pertaining to the architectural design or the exterior appearance of Dwellings, the exterior maintenance of Dwellings, or the maintenance of Common Areas.

(ii) Change the method of determining the obligations, assessments, dues or other charges which may be levied against an Owner.

(iii) fail to maintain fire and extended coverage on the Common Area and other Association Property on a current replacement cost basis in an amount not less than one hundred percent (100%) of the insurable value (based on current replacement cost).

(iv) by act or omission, seek to abandon, partition, subdivide, encumber, sell or transfer the Common Area. The granting of easements for public utilities or for other public purposes consistent with the intended use of the Common Area by the Owners shall not be deemed a transfer within the meaning of this clause;

(v) use hazard insurance proceeds for losses to any Common Area, for other than the repair, replacement or reconstruction of such areas;

(vi) amend any part of this paragraph titled "Special Mortgagee Requirements" or the paragraph titled "General Mortgage Provisions."

11.10.8 Notice of Taking or Damaging: The Association shall give the Federal National Mortgage Association ("FNMA") or

the Federal Home Loan Mortgage Corporation ("FHLMC") notice in writing of any loss to, or taking of, the Property if such loss or taking exceeds Ten Thousand Dollars (\$10,000.00).

11.10.9 Payment of Delinquent Taxes: First Mortgagees may, jointly or singly, pay taxes or other charges which are in default and which may or have become a lien or charge against all or any portion of the Common Area and may pay overdue premiums on hazard insurance policies, or secure new hazard insurance coverage on the lapse of a policy, for such Common Area and first Mortgagees making such payments shall be owed immediate reimbursement therefor from the Association.

11.11 GENERAL MORTGAGEE PROVISIONS:

11.11.1 Right to Encumber: Any Owner may encumber his Lot by Mortgage, as defined herein.

11.11.2 Not Required to Cure Breach: A Mortgagee who acquires title by foreclosure or deed in lieu of foreclosure shall not be obligated to cure any breach of this Declaration which is noncurable or of a type which is not feasible to cure or which is not practical to cure and does not materially affect the Association or any other Owners.

11.11.3 Rights on Resale After Foreclosure: It is intended that any loan to facilitate the resale of any Lot after foreclosure or deed in lieu of foreclosure is a loan made in good faith and for value and entitled to all of the rights and protections afforded to Mortgagees hereunder.

11.11.4 Limit on Amendments Not Signed by Mortgagee: No amendment to this section titled "Special Mortgagee Requirements" shall affect the rights of the Mortgagee under any Mortgage recorded prior to recordation of such amendment who does not join in the execution thereof.

11.11.5 Right to Attend Meetings: Because of its financial interest in a Lot, a Mortgagee may appear (but may not vote) at meetings of the Owners and the Board to draw attention to violations of this Declaration which have not been corrected or made the subject of remedial proceedings or assessments.

11.11.6 Information Given to Board: A Mortgagee is authorized to furnish information to the Board concerning the existence of any loan encumbering a Lot.

11.11.7 Insurance Loss Payable: All applicable fire and all physical loss or extended coverage insurance policies shall contain loss payable clauses naming the Mortgagees as insured parties, as their interests may appear.

11.11.8 Mortgagee Protection Superior: In the event of a conflict between any provisions of the section titled "Special Mortgagee Provisions" and "General Mortgagee Provisions," the section titled "Special Mortgagee Provisions" shall control. In the event of a conflict between any provision of the aforementioned two sections and any other provision in this Declaration, the language contained in the aforementioned two sections shall control.

11.12 TERM: This Declaration and the covenants, conditions and restrictions contained herein, as amended from time to time, shall be and remain in full force and effect for a term of twenty (20) years from the date this Declaration is recorded, after which time said Declaration shall be extended automatically for successive periods of ten (10) years, unless amended or terminated in accordance with the Article titled "General Provisions," section titled "Amendments," except that if Arizona statutes require a higher percentage of approval for termination, such higher percentage shall be required. Upon termination of the Association, its assets shall be conveyed to another nonprofit organization or to a public agency having similar purposes.

11.13 PLURALS; GENDER: Whenever the context so requires, the use of the singular shall include and be construed as including the plural, and the masculine shall include the feminine and neuter.

11.14 HEADINGS: Section headings and table of contents are inserted for convenience only and are not intended to be a part of this document or, in any way, to define, limit, or describe the scope or intent of the particular section to which they refer.

11.15 CAPITALIZATION: Capitalization of a common noun or predicate adjective indicates the term is used as defined in the Article titled "Definitions," unless the context requires otherwise.

11.16 PERPETUITIES AND RESTRAINTS ON ALIENATION: If any of the covenants, rights, privileges or duties created by this Declaration shall be unlawful, void or voidable for violation of the rule against perpetuities, then such provision shall continue only until twenty-one (21) years after the death of the last of the now living descendants of the President of the United States, George M. Bush, and Governor of Arizona, Rose Mofford.

11.17 DOCUMENTS TO PREVAIL: In the event there is a conflict between or among this Declaration, the Articles or Bylaws, the most restrictive provision shall apply unless such interpretation is clearly contrary to the meaning and intent of

the Documents. In the event of a conflict, the provisions of the various documents shall prevail in the following order:

- (i) This Declaration;
- (ii) The Articles of Incorporation of the Desert Hills of Scottsdale Homeowners Association;
- (iii) The Bylaws of the Desert Hills of Scottsdale Homeowners Association;
- (iv) The Association Rules.

11.18 EXHIBITS: The following exhibits are attached to this Declaration, and; except as otherwise indicated, are incorporated herein.

Exhibit A: A copy of the recorded final plat, consisting of one (1) page.

IN WITNESS WHEREOF, Declarant has executed this Declaration the day and year first hereinabove written.

"DECLARANT"

DIVIDEND DEVELOPMENT CORPORATION, a California corporation, authorized to do business in Arizona

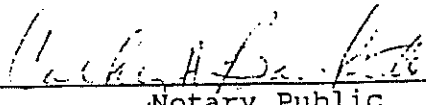
By: AW Eggert
Its: President, AC Division

89 081305

STATE OF California)
) ss.
County of San Diego

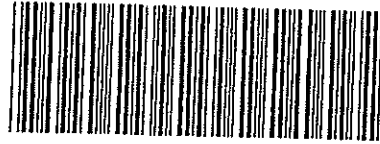
On this the 15 day of February, 1981, before me,
the undersigned Notary Public, personally appeared Thomas E
W. Stewart, a California corporation, who acknowledged himself to
be the President of Dividend Development Corporation, he
being authorized so to do, executed the foregoing instrument for
the purposes contained therein.

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



Notary Public

My Commission Expires:
My Commission Expires March 13, 1981



OFFICIAL RECORDS OF
MARICOPA COUNTY RECORDER
HELEN PURCELL

95-0108006 02/28/95 12:59

L111AM 1 OF 1

FIRST AMENDMENT
TO THE
DECLARATION OF COVENANTS, CONDITIONS AND RESTRICTIONS
FOR
DESERT HILLS OF SCOTTSDALE

Recorded in official records of Maricopa County, Arizona, Instrument Number 85-081305.

Section 2.4.4.2 is hereby amended to read as follows:

2.4.4.2. General comprehensive public liability insurance against claims for personal or bodily injury, death or property damage with limits with regard to injury or death of not less than \$1,000,000.00 per person and \$2,000,000.00 aggregate with limits of not less than \$50,000.00 per occurrence in respect of property damage, insuring against liability for bodily injury, death and property damage arising from the activities of the Association or with respect to property under its jurisdiction. Said liability insurance shall name and separately protect as insures each Owner, Developer, the Association, the Board and their representatives, members and employees, and the Association Members (as a class), with respect to any liability arising out of the maintenance or use of the Common Area, or other property under the jurisdiction of the Association, and activities of the Association.

All other provisions of the Declaration are the same and shall remain in full force and effect.

IN WITNESS WHEREOF, the undersigned has executed the instrument on this 21 day of February, 1995.

Desert Hills of Scottsdale Homeowners
Association

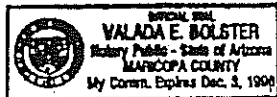
By: Julia Bode
President

STATE OF ARIZONA)
) ss
County of Maricopa)

This instrument was acknowledged before me this 21st day of February, 1995, by Julia Bode, as President of Desert Hills of Scottsdale Homeowners Association.

My Commission Expires:

Valada E. Bolster
Notary Public



DESERT HILLS OF SCOTTSDALE

BYLAWS

BYLAWS

OF

DESERT HILLS OF SCOTTSDALE HOMEOWNERS ASSOCIATION, INC.

ARTICLE 1

DEFINITIONS

SECTION 1.

"Common Areas" means all the general common areas as described and defined in the Declaration of Covenants, Conditions and Restrictions for Desert Hills of Scottsdale.

SECTION 2.

"Declaration" means that certain Declaration of Covenants, Conditions and Restrictions recorded on _____, in Instrument No. _____, Official Records of Maricopa County, Arizona, which affects the Project described below.

SECTION 3.

"Developer" means Dividend Development Corporation, a California corporation, its successors in interest and assigns, which is the Declarant under the Declaration of Covenants, Conditions and Restrictions Desert Hills of Scottsdale.

SECTION 4.

"Member" means any person, corporation, partnership, joint venture or other legal entity which is a member of the Desert Hills of Scottsdale Homeowners Association, Inc., and is synonymous with Owner.

SECTION 5.

"Owner" is synonymous with co-owner and means a person, corporation, partnership or other legal entity capable of holding or owning an interest in real property who owns all or an interest in a Lot as described in the Declaration of Covenants, Conditions and Restrictions for Desert Hills of Scottsdale.

SECTION 6.

"Unit" means and is synonymous with improved residential Lot as defined in the Declaration of Covenants, Conditions and Restrictions for Desert Hills of Scottsdale.

SECTION 7.

All terms herein shall be defined as provided in Arizona Revised Statutes § 33-551, unless defined otherwise in these Bylaws or in the Declaration, or unless the context requires otherwise.

ARTICLE 2

FUNCTIONS OF THE HOMEOWNERS ASSOCIATION

SECTION 1.

The Association is to act as a "management body" for the preservation, maintenance, architectural control and improvement of the Common Areas which is included in a plat recorded on January 13, 1989, in Book of Maps, Book 328, Page 38, in Records of Maricopa County Recorder, Arizona. The Association is subject to the limitations, covenants, conditions, restrictions, terms and provisions of the Declaration.

SECTION 2.

Pursuant to the provisions of the Declaration, it shall be the duty of the Board of Directors acting on behalf of the Association, to fix, alter, collect and enforce assessments upon Owners. Each Owner shall be liable to the Association for the assessment levied upon such Owner's Unit(s) under the provisions of the Declaration.

SECTION 3.

The Board of Directors shall have the power to exercise any right, power or purpose set forth expressly or by reasonable implication in the Declaration, the Articles of Incorporation or these Bylaws.

ARTICLE 3

MEMBERS' MEETINGS

SECTION 1.

The first annual meeting of the Members shall be held within six (6) months following the sale and conveyance by Developer of the first Unit to a purchaser other than Developer. Notice of such meeting shall be given as herein set forth.

Subsequent annual meetings of the Members shall be held on the annual anniversaries of the first annual meeting of Members.

If any annual meeting of the Members shall fall upon a Sunday or bank holiday, the same shall, instead, be held on the next following business day.

SECTION 2.

Special meetings of the Members (i) may be called by the President and (ii) shall be called by the President upon written demand therefor signed by Members constituting at least twentyfive (25%) of the membership and delivered to the President at least twenty (20) days prior to the date specified in the request for such special meeting. No special meeting of the Members shall be called for a Sunday or a holiday.

Service of said demand shall be complete upon personal delivery thereof or forty-eight (48) hours after deposit thereof in the United States mail, postage prepaid, addressed to the President at his last known residence address.

SECTION 3.

Written notice of each annual and special meeting shall be served on a Member not less than ten (10) days, nor more than fifty (50) days prior to such meeting. Service of said notice may be either personally or by United States mail, postage prepaid, addressed to each Record Date Member (described below) as his address appears on the books of the Council.

Such notice shall specify a reasonable time, date and place in Scottsdale, Arizona, for such meeting and, in the case of a special meeting, the general nature of the business to be transacted.

"Record Date Members" shall be, with respect to any meeting, those persons who, as of 5:00 p.m. of the twentieth (20th) day prior to such meeting, are Members. If at a meeting adjournment is taken, the Record Date Members for the adjourned meeting shall be the same as those for the meeting at which the adjournment was taken, unless the adjournment or adjournments exceed 30 days in the aggregate.

SECTION 4.

The presence in person or by proxy of a majority of the Record Date Members shall constitute a quorum for the transacting of business. If any meeting cannot be held because a quorum is not present, the Record Date Members present either in person or by proxy may adjourn said meeting to a time not less than forty-eight (48) hours, nor more than thirty (30) days from the time the original meeting was called; at said subsequent adjourned meeting one-third (1/3) of those Members entitled to vote at the

meeting who are present in person or by proxy shall constitute a quorum for the transaction of business. Notice of the reconvened meeting need not be given if the time and place are announced at the meeting which was adjourned.

SECTION 5.

When a meeting of the Members is adjourned for thirty (30) days or more, written notice of the adjourned meeting shall be given as in the case of any original meeting.

ARTICLE 4

VOTING RIGHTS

SECTION 1.

Only Record Date Members shall be entitled to vote upon any question before the membership or to authorize action.

SECTION 2.

On all matters a Member shall have one vote for each Unit owned and the majority of votes cast, except for election and removal of directors, shall determine the issue. Each Member entitled to vote shall have the right, in the election of Directors, to cumulate his votes.

If more than one legal person constitutes a Member, a vote(s) cast in person or by proxy will be ignored (except for the purpose of establishing a quorum) unless those persons attempting to vote declare to the same effect on the issue being voted upon.

SECTION 3.

Every Member entitled to vote or to authorize action may do so either in person or by written proxy filed with the Secretary. Every proxy shall be revocable. A proxy shall automatically cease upon conveyance by the Member of his Lot.

ARTICLE 5

ASSESSMENTS

SECTION 1.

As more fully provided in the Declaration, each Member is obligated to pay to the Association assessments which are secured by a continuing lien upon the property against which the assessment is made. Any assessments which are not paid when due shall be delinquent. If the assessment is not paid within thirty

(30) days after the due date, the assessment shall bear interest at the rate of fifteen percent (15%) per annum, and the Association may bring any action at law against the Owner personally obligated to pay the same or foreclose the lien against the property; interest, costs and reasonable attorney's fees of any such action or in contemplation of such action shall be added to the amount of such assessment.

SECTION 2.

The Board of Directors, prior to or concurrently with the conveyance of the first Unit to an Owner, shall establish monthly assessments to be in effect through the calendar month in which the first annual meeting of the Members is held. Such assessments shall be established by the Board of Directors and shall be made by the Association in an amount sufficient to meet the estimates of management expenses, operating expenses, maintenance expenses, and all other expenses of the Association. Such monthly assessments may be changed from time to time by the Board of Directors with respect to each month through the month in which the first annual meeting of the Members is held so as to reflect the actual expenses of the Association for such period. Such monthly assessments may be imposed in an amount less than that required to meet all of the expenses of the Association provided that Developer agrees to meet any deficit in expenses otherwise payable by the Association for the period ending at the close of the month in which the first annual meeting of the Members is held.

SECTION 3.

Subsequent to the first annual meeting of the Members, monthly assessments shall be made by the Association in an amount sufficient to meet the Association's estimate of expenses set forth in an operating budget for each fiscal year which shall set forth the anticipated income of the Association and which shall include separate estimates for administrative expenses, operating expenses, maintenance expenses, utilities, hazard insurance, replacement reserve and operating reserves. Such assessments shall be established by the Board of Directors for the balance of the fiscal year in which the first annual meeting of the Members takes place immediately upon the first organizational meeting, and thereafter not less than thirty (30) days prior to the commencement of each fiscal year.

ARTICLE 6

BOARD OF DIRECTORS; SELECTION; TERM OF OFFICE

SECTION 1.

Subject to the limitations of the Articles of

Incorporation, of these Bylaws and of the laws of the State of Arizona as to action to be authorized or approved by the Members, all Association powers shall be exercised by or under authority of, and the business and affairs of the Association shall be controlled by, a Board of Directors who must be Members of the Association, and such Board shall have authority to delegate its duties.

SECTION 2.

The authorized number of Directors of the Association shall be three (3) until changed by amendment to the Articles of Incorporation or by an amendment to this Section 2, Article 6, of these Bylaws, adopted by the vote or written assent of a majority of the Members of the Association.

SECTION 3.

At the first annual meeting, the Members shall elect three (3) Directors for a term of one year; at each annual meeting thereafter, the Members shall elect three (3) Directors. The initial Directors named in the Articles of Incorporation, and any replacements therefor, shall serve as Directors until the first annual meeting of the Members.

SECTION 4.

Nominations for election of the Board of Directors shall be made by a Nominating Committee. Nominations may also be made from the floor at the annual meeting. The Nominating Committee shall consist of a Chairman, who shall be a Member of the Association, and any two or more Members of the Association. The Nominating Committee shall be appointed by the Board of Directors prior to each annual meeting of the Members and the Members thereon shall serve from the close of such annual meeting until the close of the next following annual meeting and such appointment(s) shall be announced at each annual meeting. The Nominating Committee shall make as many nominations as it shall, in its discretion, determine, but such nominations shall be not less than the number of vacancies that are to be filled. Such nominations must be made from among the Members of the Association.

SECTION 5.

The entire Board of Directors or any individual Director may be removed from office by a vote of Members holding a majority of the voting power entitled to vote in the election of Directors. However, unless the entire Board is removed, an individual Director shall not be removed if the number of votes against the resolution for his removal exceeds the quotient arrived at when the total number of votes entitled to vote is

divided by one (1) plus the authorized number of Directors. If any or all Directors are so removed, new Directors may be elected at the same meeting.

SECTION 6.

Vacancies in the Board of Directors may be filled by a majority of the remaining Directors, though less than a quorum, or by a sole remaining Director, and each Director so elected shall hold office until his successor is elected at an annual meeting of Members or at a special meeting called for that purpose.

The Members may at any time elect a Director to fill any vacancy not filled by the Directors, and may elect the additional Directors at the meeting at which an amendment of these Bylaws is voted authorizing an increase in the number of Directors.

A vacancy or vacancies shall be deemed to exist in case of the death, resignation or removal of any Director, or if the Members shall increase the authorized number of Directors but shall fail at the meeting at which such increase is authorized, or at an adjournment thereof, to elect the additional Director(s) so provided for, or in case the Members fail at any time to elect the full number of authorized Directors.

If the Board of Directors accepts the resignation of a Director tendered to take effect at a future time, the Board, or the Members, shall have power to elect a successor to take office when the resignation shall become effective.

No reduction of the number of Directors shall have the effect of removing any Director prior to the expiration of his term in office.

SECTION 7.

No Director shall receive compensation for any service he may render to the Association. However, any Director may be reimbursed for his actual expenses incurred in the performance of his duties.

SECTION 8.

Other provisions herein notwithstanding, until management and control of the Association is transferred from the Developer, Directors and Members of the Nominating Committee do not need to be Members of the Association.

ARTICLE 7

BOARD OF DIRECTORS; MEETINGS

SECTION 1.

Meetings of the Board of Directors shall be held at the office of the Association, as designated for that purpose from time to time, by resolution of the Board or written consent of all of the Members of the Board. Any meeting shall be valid, wherever held, if held by the written consent of all Members of the Board, given either before or after the meeting and filed with the Secretary of the Association.

SECTION 2.

The organizational meetings of the Board shall be held immediately following the adjournment of the annual meetings of the Members.

SECTION 3.

Regular meetings of the Board of Directors shall be held at such time and place as may be agreed upon from time to time by the Board. If said day shall fall upon a holiday, such meetings shall be held on the next succeeding business day thereafter. No notice need be given of such regular meetings, except that a written notice shall be given to each Director of the resolution establishing a regular meeting date, which notice shall set forth the date of the month, the time and the place of the regular meeting.

SECTION 4.

Special meetings of the Board of Directors for any purpose or purposes shall be called at any time by the President or, if he is absent or unable or refuses to act, by any Vice President or by any two Directors.

Written notices of the time and place of special meetings shall be delivered personally to the Directors or sent to each Director by letter or by telegram, charges prepaid, addressed to him at his address as it is shown upon the records of the Association, or if it is not shown on such records or is not readily ascertainable, at the place at which the meetings of the Directors are regularly held. In case such notice is mailed or telegraphed, it shall be deposited in the United States mail or delivered to the telegraph company or the place in which the principal office of the Association is located at least forty-eight (48) hours prior to the time of the holding of the meeting. In case such notice is delivered as provided above, it shall be so delivered at least twenty-four (24) hours prior to the time of

the holding of the meeting. Such mailing, telegraphing or delivery as above provided shall be due, legal and personal notice to such Director.

SECTION 5.

When all of the Directors are present at any Directors' meeting, however called or noticed, and sign a written consent thereto on the records of such meeting, or, if a majority of the Directors is present, and if those not present sign in writing a waiver of notice of such meeting, which waiver shall be filed with the Secretary of the Association, the transactions thereof are as valid as if a meeting had been regularly called and noticed.

SECTION 6.

Notice of the time and place of holding an adjourned meeting need not be given to absent Directors if the time and place be fixed at the meeting adjourned.

SECTION 7.

A majority of the number of Directors as fixed by the Articles of Incorporation or by these Bylaws shall be necessary to constitute a quorum for the transacting of business, and the action of a majority of the Directors present at any meeting at which there is a quorum, when duly assembled, is valid as a corporate act; provided that a majority of the Directors, in the absence of a quorum, may adjourn from time to time, but may not transact any business.

SECTION 8.

Any action required or permitted to be taken by the Board of Directors may be taken without a meeting if all of the Members of the Board shall individually or collectively consent in writing to such action. Such written consent shall be filed with the Minutes of the proceedings of the Board. Such action by written consent shall have the same force and effect as the unanimous vote of such Directors.

ARTICLE 8

BOARD OF DIRECTORS; POWERS AND DUTIES

SECTION 1.

The Board of Directors shall have the power to:

- (a) Adopt and publish rules and regulations governing
- (i) the use of the Common Areas and facilities and (ii) the per-

sonal conduct of the Members and their guests thereon, and to establish penalties for the infraction thereof;

(b) Suspend the voting rights and the right to use of the Common Areas of a Member during any period in which such Member shall be in default in payment of any assessment levied by the Association. Such rights may also be suspended after notice and hearing, for a period not to exceed thirty (30) days, for infraction of published rules and regulations;

(c) Exercise for the Association all powers, duties and authorities vested in or delegated to this Association and not reserved to the membership by other provisions of these Bylaws, the Articles of Incorporation or the Declaration;

(d) Declare the office of a Member of the Board of Directors to be vacant in the event such Member shall be absent from three (3) consecutive regular meetings of the Board of Directors; and

(e) Employ a manager, an independent contractor or such other employee(s) as they deem necessary and to prescribe their duties.

SECTION 2.

It shall be the duty of the Board of Directors to:

(a) Cause to be kept a complete record of all its acts and corporate affairs and to present a statement thereof to the Members at the annual meeting of the Members or at any special meeting when such statement is requested in writing by one-fourth (1/4) of the Members who are entitled to vote;

(b) Supervise all officers, agents and employees of this Association and to see that their duties are properly performed;

(c) Establish the annual assessment period and fix the amount of the annual assessment against each Member for each Unit owned at least thirty (30) days in advance of each annual assessment period;

(d) Send written notice of each assessment to every Owner at least thirty (30) days in advance of each annual assessment period;

(e) Foreclose the lien against any property for which assessments are not paid within thirty (30) days after the due date thereof or to bring an action at law against the Owner personally obligated to pay same;

(f) Issue, or cause an appropriate officer to issue, upon demand by any person, a certificate setting forth whether or not any assessment has been paid. A reasonable charge may be made by the Board for the issuance of these certificates. If the certificate states an assessment has been paid, such certificate shall be conclusive evidence of such payment;

(g) Procure and maintain adequate fire, liability and other hazard insurance with respect to the property and cause that portion of each assessment attributable to such insurance to be placed in a separate bank account to be used for the premium payments thereof;

(h) Cause all officers and employees having fiscal responsibilities to be bonded as it may deem appropriate;

(i) To pay taxes which would be a lien upon the entire property or the Common Areas and to pay and discharge any lien or encumbrance levied against the entire property or the Common Areas;

(j) Cause the Common Areas to be maintained; and

(k) To enforce the Declaration.

ARTICLE 9

OFFICERS

SECTION 1.

The officers of the Association shall be a President, Vice President, Secretary and Treasurer. The Association may also have, at the discretion of the Board of Directors, one or more additional Vice Presidents, one or more Assistant Secretaries, one or more Assistant Treasurers, and such other officers as may be appointed in accordance with the provisions of Section 3 of this Article. One person may hold two or more offices, except those of President and Secretary.

SECTION 2.

The officers of the Association, except such officers as may be appointed in accordance with the provisions of Section 3 of this Article, shall be chosen annually by the Board of Directors, and each shall hold his office until he shall resign or shall be removed or otherwise disqualified to serve, or his successor shall be elected and qualified.

SECTION 3.

The Board of Directors may appoint such other officers as the business of the Association may require, each of whom shall hold office for such period, have such authority and perform such duties as are provided in these Bylaws or as the Board of Directors may from time to time determine.

SECTION 4.

Any officer may be removed, either with or without cause, by a majority of the Directors at the time in office, at any regular or special meeting of the Board, or, except in the case of an officer chosen by the Board of Directors, by any officer upon whom such power of removal may be conferred by the Board of Directors.

Any officer may resign at any time by giving written notice to the Board of Directors or to the President or Secretary of the Association. Any such resignation shall take effect at the date of the receipt of such notice or at any later time specified therein; unless otherwise specified therein, the acceptance of such resignation shall not be necessary to make it effective.

SECTION 5.

A vacancy in any office because of death, resignation, removal, disqualification or any other cause shall be filled in the manner prescribed in these Bylaws for regular appointments to such office.

SECTION 6.

The President shall be the chief executive officer of the Association and shall, subject to the control of the Board of Directors, have general supervision, direction and control of the business and affairs of the Association. He shall preside at all meetings of the Members and at all meetings of the Board of Directors. He shall be exofficio a member of all of the standing committees and shall have the general powers and duties of management usually vested in the office of president of a corporation and shall have such other powers and duties as may be prescribed by the Board of Directors or these Bylaws. He shall sign all leases, mortgages, deeds of trust and other instruments and shall cosign all checks and promissory notes.

SECTION 7.

In the absence or disability of the President, the Vice Presidents in order of their rank as fixed by the Board of Directors, or if not ranked, the Vice President designated by the Board of Directors, shall perform all the duties of the

President, and when so acting shall have all the powers of, and be subject to, all the restrictions upon the President. The Vice Presidents shall have such other powers and perform such other duties as from time to time may be prescribed for them, respectively, by the Board of Directors or these Bylaws.

SECTION 8.

The Secretary shall keep, or cause to be kept, a book of Minutes at the principal office or such other place as the Board of Directors may order, of all meetings of Directors and Members, with the time and place of holding, whether regular or special, and if special, how authorized, the notice thereof given, the names of those present at Directors' meetings, the number of Members present or represented at Members' meetings and the proceedings thereof.

The Secretary shall give, or cause to be given, notice of all the meetings of the Members and of the Board of Directors required by these Bylaws or by law to be given, and he shall keep the seal of the Association in safe custody and shall have such other powers and perform such other duties as may be prescribed by the Board of Directors or these Bylaws.

SECTION 9.

The Treasurer shall keep and maintain, or cause to be kept and maintained, adequate and correct accounts of the properties and business transactions of the Association, including accounts of its assets, liabilities, receipts, disbursements, gains, losses and surplus. The books of account shall at all reasonable times be open to inspection by any Director.

The Treasurer shall deposit all moneys and other valuables in the name and to the credit of the Association with such depositories as may be designated by the Board of Directors. He shall disburse the funds of the Association as may be ordered by the Board of Directors, shall render to the President and Directors, whenever they request it, an account of all of his transactions as Treasurer and of the financial condition of the Association, and shall have such other powers and perform such other duties as may be prescribed by the Board of Directors or these Bylaws.

ARTICLE 10

COMMITTEES

The Board of Directors shall appoint a Nominating Committee and may appoint such other committees as may be necessary from time to time, consisting of such number of the Members and with such powers as it may designate, consistent with

the Articles of Incorporation and these Bylaws and such committees shall hold office at the pleasure of the Board.

ARTICLE 11

CORPORATE RECORDS AND REPORTS - INSPECTION

SECTION 1.

The Association shall maintain adequate and correct accounts, books and records of its business and properties. All such books, records and accounts shall be kept at its principal place of business in the State of Arizona, as fixed by the Board of Directors from time to time, except that until management and control of the Association is transferred from the Developer, such books, records and accounts may be maintained at Developer's principal place of business, and upon the written request of any Member, shall be made available for inspection on the premises of Developer at 5685 North Scottsdale Road, Suite 165, Scottsdale, Arizona 85253.

SECTION 2.

The Member register, the books of account and minutes of proceedings of the Members and the Board of Directors and of executive committees of the Directors of the Association shall be open to inspection upon the written demand of any Member. The books will be made available within ten (10) days of the written request for a purpose reasonably related to his interests as a Member. These books shall be exhibited at any time when required by the demand at any Members' meeting of ten percent (10%) of the Members represented at the meeting.

Demand of inspection other than at a Members' meeting shall be made in writing upon the President, Secretary or Assistant Secretary of the Association.

SECTION 3.

The original or a copy of these Bylaws, as amended or otherwise altered to date, certified by the Secretary, shall be open to inspection by the Members at the Association's principal offices at all reasonable times during office hours.

SECTION 4.

All checks, drafts and other orders for payment of money, notes or other evidences of indebtedness, issued in the name of or payable to the Association, shall be signed or endorsed by such person or persons and in such manner as shall be determined from time to time by resolution of the Board of Directors.

SECTION 5.

The Board of Directors, except as these Bylaws otherwise provide, may authorize any officer or officers, agent or agents, to enter into any contract or execute any instrument in the name of and on behalf of the Association. Such authority may be general or confined to specific instances. Unless so authorized by the Board of Directors, no officer, agent or employee shall have any power or authority to bind the Association by any contract or engagement or to pledge its credit or to render it liable for any purpose or to any amount.

SECTION 6.

The Board of Directors shall cause an annual report to be sent to the Members not later than sixty (60) days after the close of the fiscal year.

The annual report shall include, but not be limited to, an independent examination or audit of the account(s) of the Association. The financial statement shall be prepared according to generally accepted accounting principles applied on a basis consistent with that of the preceding year.

ARTICLE 12

INSURANCE

SECTION 1.

The Board shall be authorized to purchase certain insurance upon the properties, which is to be purchased by the Association for the benefit of the Association, the Owners, and the Mortgagees, as their interests may appear, and provisions shall be made for the issuance of certificates of endorsement to the Eligible Mortgage Holder of the first Mortgage on any Owner's interest; provided, however, that no such Eligible Mortgage Holder shall have any right to determine or participate in the determination as to whether any damaged property shall be reconstructed or repaired, except as provided in the Article entitled "Rights of Eligible Mortgage Holders" and this Article, and shall not have any right to apply or have applied to the reduction of a mortgage any insurance proceeds, except distributions thereof made to an Owner and mortgagee, pursuant to the provisions of this Declaration. Such policies and endorsements thereon shall be deposited with the Association. The Board shall be empowered to obtain blanket coverage for all of the properties, including the dwellings. The Board shall deliver a copy of the policies, or by and through their agent advise the Owners of the coverage of said policies to determine which particular items are included within the coverage so that the Owners

may insure themselves as they see fit if certain items are not insured by the Association. Without limiting the generality of the foregoing, it shall be each Owners' responsibility to provide for himself, as he sees fit, Owner's liability insurance, theft or other insurance covering personal property damage and loss, and also insurance for each Owner's personal liability. Further, it shall be the responsibility of each Owner to provide and obtain as deemed appropriate:

(a) Casualty insurance on the portion of his Lot which is not maintained or insured by the Association, including, but not limited to, glass surfaces, plumbing, heating, cooling and electrical equipment, appliances, carpeting, drapes, wall coverings, fixtures, furniture, furnishings and other personal property. The Owner should determine whether or not the glass surfaces, plumbing, heating, cooling and electrical equipment are covered by insurance obtained by the Board.

(b) Insurance which is not carried by the Association and which the Owner desires.

SECTION 2.

Those buildings and improvements upon the properties and the personal property and equipment constituting and included in the Common Areas shall be insured by the Association in an amount equal to one hundred percent (100%) of current replacement cost of the project, exclusive of land, foundation, excavation, items for which insurance is the responsibility of the Owner, and other items normally excluded from coverage. Such coverage shall afford protection against:

(a) Loss or damage by fire and other hazards covered by a standard extended coverage endorsement.

(b) Agreed amount and inflation guard endorsement, if available; and

(c) All other perils which are customarily covered with respect to projects similar in construction, location and use, including all perils normally covered by a standard "all risks" endorsement, if such is available.

SECTION 3.

Public liability coverage shall be for at least \$1,000,000.00 for bodily injury, including deaths of persons and property damage arising out of the same occurrence. Such coverage shall include liability for property damage, bodily injury and death in connection with the operation, maintenance or use of the Common Areas and liability arising out of litigation instituted by individuals employed by the Association in connec-

tion with the operation, maintenance or use of the Common Areas and of those portions of the Lots the Association is obligated to maintain, and for errors and omissions of the Board.

ARTICLE 13

CORPORATE SEAL

The corporate seal shall be circular in form and shall have inscribed thereon the name of the Association, the date of its incorporation and the word "Arizona."

ARTICLE 14

FISCAL YEAR

The fiscal year of the Association shall begin on the 1st of January and end on the 31st of December of every year, except that the first fiscal year shall begin on the date of recordation of the Articles.

ARTICLE 15

MORTGAGES AND DEEDS OF TRUST

SECTION 1.

It shall be the duty of each Owner whose Unit is encumbered by a first mortgage or deed of trust to notify the Association through its Secretary of the name and address of such mortgagee or beneficiary, and the Association shall maintain a record of such encumbrances. The Owner shall likewise notify the Association as to the release or discharge of any such mortgage.

SECTION 2.

The Association shall at the request of a mortgagee or beneficiary of a deed of trust upon a Lot, report any unpaid assessments due from the Owner of the Lot, which assessments are more than sixty (60) days delinquent.

ARTICLE 16

AMENDMENTS TO BYLAWS

SECTION 1.

New Bylaws may be adopted or these Bylaws may be repealed or amended at the annual meeting, or at any other meeting of the Members called for that purpose, by a vote of a majority of the quorum of Members present in person or by proxy,

except that any such amendment shall be subject to the provisions of Section 2 hereof.

SECTION 2.

Whenever an amendment or new Bylaw is adopted, it shall be copied in the book of Bylaws with the original Bylaws, in the appropriate place. If any Bylaw is repealed, the fact of repeal with the date of the meeting at which the repeal was enacted or written assent was filed shall be stated in said book.

CERTIFICATE OF SECRETARY

I, the undersigned, do hereby certify:

1. That I am the duly elected and acting Secretary of Desert Hills of Scottsdale Homeowners Association, Inc., an Arizona corporation; and

2. That the foregoing Bylaws, comprising nineteen (19) pages, constitute the Bylaws of said corporation as duly adopted at a meeting of the Board of Directors held on the _____ day of _____, 19____.

IN WITNESS WHEREOF, I have hereunto subscribed my name and affixed the seal of the corporation this _____ day of _____, 19____.


Karen Moser, Secretary

DESERT HILLS OF SCOTTSDALE HOMEOWNERS ASSOCIATION

July 15, 1996

On July 20, 1996 a new law, HB 2299 will become effective covering the operations and administration of Homeowner Associations in the State of Arizona.

The following resolutions are submitted for approval by the Board of Directors of Desert Hills of Scottsdale Homeowners Association.

RESOLUTIONS:

1. Homeowners Association assessment fees which are paid monthly shall become delinquent thirty (30) days after the due date. A \$15.00 late fee will be charged to the homeowner on the 31st day. This fee may only be charged on a monthly basis until the total unpaid assessment reaches \$150.00 in which case the "late" fee charge is revised to 10% of the total amount due.
2. Fines, violations of the CC&R's and Rules and Regulations of the Association and special assessments shall all be treated the same as unpaid assessments and late charges shall apply to the total amount delinquent. Once the total reaches \$150.00, the amount of the penalties shall be revised to 10% of the total.
3. A late fee will be applied to homeowners that make only a partial payment on their association fee. Homeowner payments shall apply first to the Homeowners normal Assessment, Special Assessments, fines, violations to the CC&R, Rules and Regulations and any other additional fees including but not limited to legal fees.
4. The Board of Directors hereby approve that a lien shall be filed on any property when the total assessments due (including fines, penalties or special assessments) exceed \$180.00 for more than 30 days. In the event that the lien is not satisfied within 30 days of filing, the Association will begin foreclosure proceedings.
5. All Board of Directors meetings are open to all members of the Association. Members shall put all requests in writing 10 days prior to the Board meeting if such member wishes to make a statement on a specific issue. Otherwise questions and statements will be taken at the end of the board meeting and then only for a period of time not to exceed 15 minutes. The Board is not required to respond or give a definitive answer at this time. The Board may adjourn the business portion of the meeting prior to the open discussion period with the members at large.
6. All members of the Association will receive notification of the date, time and location of the regularly scheduled Board meetings. If any changes to the schedule occur, all members will be notified except in the case of an emergency. The Board may act on specific requests for architectural control approval and determinations of CC&R's and Rules and Regulations violations without calling a special meeting.