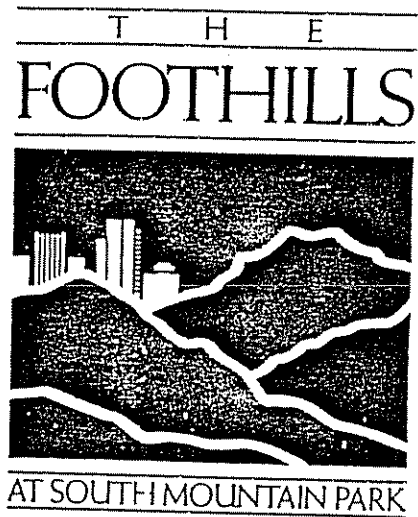




THE FOOTHILLS
DECLARATION OF
COVENANTS, CONDITIONS AND RESTRICTIONS
FOR
THE FOOTHILLS

Recorded in Official
Records of Maricopa
County, Arizona

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County Recorder

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P.O. Box 50069
Phoenix, AZ 85076

DECLARATION OF
COVENANTS, CONDITIONS AND RESTRICTIONS
FOR
THE FOOTHILLS

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DECLARATION OF
COVENANTS, CONDITIONS AND RESTRICTIONS
FOR
THE FOOTHILLS

THIS DECLARATION of Covenants, Conditions, and Restrictions (the "Declaration") is made effective as of this 7th day of April, 1987, by the Foothills Joint Venture, an Arizona general partnership (the "Declarant").

W I T N E S S E T H:

WHEREAS, Declarant is the legal title holder of that real property in the City of Phoenix, County of Maricopa, State of Arizona, as described on Exhibit A attached hereto and made a part hereof by the reference; and

WHEREAS, Declarant desires to reserve the right to annex the real property legally described on Exhibit B attached hereto and made a part hereof by this reference as well as any other real property which may be presently owned or hereafter acquired by Declarant (hereinafter referred to as the "Additional Property"); and

WHEREAS, Declarant desires to develop, in stages, The Foothills (as defined in Section Aa of Article 1 of this Declaration) into commercial or office areas and multi-family, Single Family attached and Single Family detached residential communities, Golf Course areas, residential hotel, and other recreational areas or other uses; and

WHEREAS, at full development it is intended, without obligation, that such communities and areas will collectively have one (1) or more commercial buildings, business parks, recreational areas, open spaces, walkways, paths, drives, landscaped drainage areas, and entryways; and

WHEREAS, as part of the various stages of development of The Foothills, Declarant intends, without obligation, to sell and have Recorded, various subdivision plats; to dedicate portions of The Foothills to the public for streets, roadways, drainage, flood control, and general public use; and to record various Tract Declarations covering portions of The Foothills, which Tract Declarations will designate the purposes for which such portions of The Foothills may be used and may set forth additional covenants, conditions, restrictions, assessments, charges, servitudes, liens, reservations and easements applicable to such portions of The Foothills; and

WHEREAS, Declarant desires to form a nonprofit corporation for the maintenance, social and recreational purposes of benefiting The Foothills, the Owners, the Lessees and the Residents (as said terms are defined hereinbelow); which nonprofit corporation (hereinafter termed the "Association") will (1) acquire, construct, operate, manage and maintain any Common Areas upon The Foothills; (2) establish, levy, collect and

disburse the Assessments and other charges imposed hereunder; (3) as the agent and representative of the Members of the Association and Residents of The Foothills, administer and enforce all provisions hereof and enforce use and other restrictions imposed on various parts of The Foothills; (4) perform and exercise all other rights, powers, duties and obligations granted to, or imposed upon, the Association by this Declaration or the Articles, Bylaws or Foothills Rules; and

WHEREAS, the Declarant therefore desires to subject all of The Foothills to the covenants, conditions, restrictions, assessments, charges, servitudes, liens, reservations and easements (hereinafter collectively called "Covenants") hereinafter set forth; and

WHEREAS, in order to cause the Covenants to run with The Foothills and to be binding upon The Foothills and the Owners, Residents and Lessees thereof from and after the date of Recording of this Declaration, Declarant hereby makes all conveyances of The Foothills, whether or not so provided therein, subject to the Covenants herein set forth; and by accepting Deeds, Leases, easements or other grants or conveyances to any portion of The Foothills, the Owners, Residents, Lessees, and other transferees for themselves and their heirs, executors, administrators, trustees, personal representatives, successors and assigns, agree that they shall be personally bound by all of the Covenants (including, but not limited to, the obligation to pay Assessments) hereinafter set forth except to the extent such persons are specifically excepted herefrom.

NOW, THEREFORE, DECLARANT hereby declares, covenants and agrees as follows:

ARTICLE 1 DEFINITIONS

The following words, phrases or terms used in this Declaration shall have the following meanings:

A. "Additional Property" shall mean the real property, together with all improvements thereon, described on Exhibit B attached hereto, and all other real property, and all improvements thereon, which may be presently owned or hereafter acquired by the Declarant.

B. "Annual Assessment" shall mean the charge levied and assessed each year against each Lot and Parcel, and the Owner thereof, pursuant to Article 7, Section 7.2, hereof.

C. "Apartment Development" shall mean a Parcel which is restricted by a Tract Declaration to Apartment Development Use, and is comprised of Rental Apartments and surrounding area which are intended, as shown by the site plan therefor approved by the City of Phoenix or other applicable governmental agencies and the Design Review Committee or otherwise, as one (1) integrated apartment operation under the same ownership.

D. "Articles" shall mean the Articles of Incorporation of the Association as the same may from time to time be amended or supplemented.

E. "Assessable Property" shall mean all Lots and Parcels, except such part or parts thereof as may from time to

time constitute Exempt Property.

F. "Assessment" shall mean an Annual Assessment, Special Assessment and/or Maintenance Charge.

G. "Assessment Lien" shall mean the lien created and imposed by Article 7.

H. "Assessment Period" shall mean the term set forth in Article 7, Section 7.7.

I. "Association" shall mean the Arizona nonprofit corporation to be organized by Declarant to administer and enforce the Covenants and to exercise the rights, powers and duties set forth in this Declaration, its successors and assigns. Declarant hereby reserves the exclusive right to cause such Association to be incorporated. The Association shall be incorporated under the name of "The Foothills Community Association" unless such name is not available, in which event Declarant may incorporate the Association under such other name as the Declarant deems appropriate.

J. "Association Land" shall mean such part or parts of The Foothills, together with the buildings, structures and improvements thereon, and other real property which the Association may at any time own in fee or in which the Association may at any time have a leasehold interest, for as long as the Association is the owner of the fee or leasehold interest.

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

L. "Bylaws" shall mean the Bylaws of the Association as the same may from time to time be amended or supplemented.

M. "Clubhouse Parcel" shall mean any real property restricted by a Tract Declaration for Clubhouse Use. The Clubhouse Parcel shall be privately owned and may be operated in conjunction with the Golf Course.

N. "Common Area and Common Areas" shall mean (a) all Association Land; (b) all land within The Foothills which the Declarant, by this Declaration or other Recorded instrument, makes available for use by Members of the Association and evidences its intent to convey to the Association at a later date; (c) all land within The Foothills which the Declarant indicates on a Recorded subdivision plat or Tract Declaration to be used for landscaping, drainage, water retention, and/or flood control for the benefit of The Foothills and/or the general public or which the Declarant indicates on a Recorded subdivision plat or Tract Declaration is to be dedicated to the public or the City of Phoenix or other public entity upon the expiration of a fixed period of time, but only until such land is so dedicated; (d) the Lakes; and (e) areas on a Lot or Parcel within easements granted to the Association or its Members for the location, construction, maintenance, repair and replacement of a wall or fence or of landscaping, which easement may be granted or created on a Recorded subdivision plat or Tract Declaration or by a Deed or other conveyance accepted by the Association.

O. "Condominium Development" shall mean a condominium established under the laws of the State of Arizona.

P. "Condominium Unit" shall mean a unit, together with any appurtenant interest in all general common elements,

within a Condominium Development. Such term shall not include a Rental Apartment in an Apartment Development.

Q. "Covenants" shall mean the covenants, conditions, restrictions, assessments, charges, servitudes, liens, reservations and easements set forth herein.

R. "Declarant" shall mean and refer to the Foothills Joint Venture, an Arizona general partnership, its successors and any person to whom any part or all of Declarant's rights under this Declaration are assigned by a written, Recorded instrument.

S. "Declaration" shall mean this Declaration of Covenants, Conditions and Restrictions as amended or supplemented from time to time.

T. "Deed" shall mean a deed or other instrument conveying the fee simple title in a "Lot" or "Parcel".

U. "Design Guidelines" shall mean the architectural guidelines and standards promulgated by the Design Review Committee as provided in Section 11.1 herein.

V. "Design Review Committee" shall mean the committee appointed by the Declarant pursuant to Article 11 hereof until the Declarant no longer owns any Lot or other property in The Foothills, and thereafter, "Design Review Committee" shall mean the Residential Design Review Committee or the Commercial Design Review Committee as applicable appointed pursuant to Article 11 hereof.

W. "Designee" shall mean a person designated by a Member pursuant to Article 3, Section 3.3, to exercise certain of the rights of a Member.

X. "Development Master Plan" shall mean The Foothills General Development Plan approved by the City of Phoenix as the same may be amended from time to time.

Y. "Dwelling Unit" shall mean any building or portion of a building situated upon a Lot or Parcel designed and intended for use and occupancy as a residence by a Single Family.

Z. "Exempt Property" shall mean the following parts of The Foothills:

(1) All land and improvements owned by, or dedicated to and accepted by, the United States, the State of Arizona, City of Phoenix, or any political subdivision thereof, for as long as any such entity or political subdivision is the owner thereof or for so long as said dedication remains effective;

(2) All Association Land;

(3) All real property which is designated on a Recorded subdivision plat or in Recorded covenants, conditions and restrictions as common area of a homeowner's association; and

(4) All real property which is part of the common elements of a Condominium Development.

Aa. "The Foothills" shall mean the real property described on Exhibit A, and any part of the Additional Property subsequently annexed and subjected to this Declaration by the Declarant pursuant to this Declaration, together with all buildings, structures and other improvements located thereon.

Bb. "The Foothills Rules" shall mean the rules for The Foothills adopted by the Board pursuant to Article 5, Section

5.3 and may also include rules for Lake use.

Cc. "Golf Course" shall mean substantially undeveloped land, including amenities such as landscaping, irrigation systems, paths and golf greens and tees which may be used for golfing or golf practice, clubhouses, pro shops, restaurants or similar buildings associated with a golf course and which are generally used by the persons entitled to use the Golf Course.

Dd. "Golf Course Lakes" shall mean those Lakes within the boundaries of the Golf Course. The Golf Course Lakes are owned by the Association and maintenance and access easements are given pursuant to Section 3.2.

Ee. "Golf Course Land" shall mean any real property restricted by a Tract Declaration to Golf Course Use.

Ff. "Golf Course Lot" and "Golf Course Parcel" shall mean a Lot or Parcel, respectively, which has a portion of its boundary immediately adjacent to the Golf Course or, in the case of a Condominium Development, a Condominium Development which has a portion of its common elements adjacent to the Golf Course.

Gg. "Lakes" shall mean the Lakes shown on the Development Master Plan for The Foothills, including the land underlying such Lakes. The Lakes shall be a part of the Common Area, although portions of the Lakes may be on Lots and Parcels. The Declarant intends to convey fee title to the portions of the Lakes which are not located on Lots and Parcels to the Association at a later date, at which time such portions of the Lakes will become Association Land.

Hh. "Lakefront Easement Area" shall mean the portion of a Lakefront Lot or Lakefront Parcel upon which the Lake is situated and the portion of a Lakefront Lot or Lakefront Parcel lying within twenty-five (25) feet of the shoreline unless otherwise described on a Tract Declaration.

Ii. "Lakefront Lot" shall mean a Lot which has a portion of its boundary on or in a Lake.

Jj. "Lakefront Parcel" shall mean a Parcel which has a portion of its boundary adjacent to or in a Lake, or Condominium Development which has a portion of its common elements adjacent to or in a Lake.

Kk. "Land Use Classification" shall mean the classification to be established by the Declarant pursuant to Article 4, Section 4.1, which designates the type of improvements which may be constructed on a Lot, Parcel or Association Land and the purposes for which such improvements and surrounding land may be utilized.

Ll. "Landscape Easement Area" shall mean any area of land which on any Recorded subdivision plat, any Tract Declaration or on any other Recorded instrument executed by the Declarant or the Association is designated as being subject to an easement for landscaping, sidewalks, permanent walls or utility access.

Mm. "Lease" shall mean a Lease, whether oral or written and regardless of the term thereof, whereby the Owner of a Rental Apartment in an Apartment Development lets such Rental Apartment to a Lessee. A Lease shall not, for purposes of this Declaration, include any subleases or any leasing arrangements

involving property other than a Rental Apartment in an Apartment Development.

Nn. "Lessee" shall mean the Lessee under a Lease, including an assignee of a Lease but excluding any person who has assigned all of his interest in a Lease.

Oo. "Lot" shall mean any (a) area of real property within The Foothills designated as a Lot on any Recorded subdivision plat approved by Declarant and restricted by a Tract Declaration to either Single Family Residential Use or Cluster Residential Use and (b) any Condominium Unit within The Foothills.

Pp. "Maintenance Charges" shall mean any and all costs assessed pursuant to Article 10, Sections 10.3 or 10.4.

Qq. "Member" shall mean any person or entity holding a Membership in the Association pursuant to this Declaration.

Rr. "Membership" shall mean a Membership in the Association granted pursuant to Article 6 of this Declaration.

Ss. "Natural Area" shall mean those areas designated on a Recorded subdivision plat or Tract Declaration as natural and open areas.

Tt. "Owner" shall mean the record owner, whether one (1) or more persons or entities, of beneficial or equitable title (and legal title if the same has merged with the beneficial or equitable title) to the fee simple interest of a Lot or Parcel. Owner shall not include (i) persons or entities having an interest in a Lot or Parcel merely as security for the performance of an obligation, or (ii) a Tenant of a Lot or Parcel. Owner shall include a purchaser under a contract for the conveyance of real property, a contract for deed, a contract to convey, an agreement for sale or any similar contract through which a seller has conveyed to a purchaser equitable title in a Lot or Parcel under which the seller is obligated to convey to the purchaser the remainder of seller's title in the Lot or Parcel, whether legal or equitable, on payment in full of all monies due under the contract. Owner shall not include a purchaser under a purchase contract and receipt, escrow instructions or similar executory contracts which are intended to control the rights and obligations of the parties to the executory contracts pending the closing of a sale or purchase transaction. In the case of Lots or Parcels the fee simple title to which is vested in a trustee pursuant to Arizona Revised Statutes, Section 33-801, et seq., the trustor shall be deemed to be the Owner. In the case of the Lots or Parcels the fee simple title to which is vested in a trustee pursuant to a subdivision trust agreement or similar agreement the beneficiary of any such trust who is entitled to possession of the trust property shall be deemed to be the Owner.

Uu. "Parcel" shall mean all areas of real property in The Foothills except for Lots.

Vv. "Party Fence" and "Party Wall" shall mean a fence or wall constructed on, or immediately adjacent to, the common boundary of Lots or Parcels or the common boundary of Common Areas and a Lot or Parcel.

Ww. "Recording" shall mean placing an instrument of public record in the office of the County Recorder of Maricopa

County, Arizona, and "Recorded" shall mean having been so placed of public record.

Xx. "Rental Apartments" shall mean Dwelling Units within a permanent improvement consisting of four (4) or more commercially integrated Dwelling Units under single ownership upon one (1) or more contiguous Parcels, each of which is designed and utilized, otherwise than as a hotel or on some other transient basis, for rental or leased residential purposes to non-owners on a non-cooperative basis. This term is intended to include rented or leased apartments in the typically regarded sense as of the date hereof, and it is not intended to include unusual or atypical arrangements or any arrangements whereby the apartment occupant is, directly or indirectly, an owner or beneficiary of ownership in his apartment or whereby he occupies his apartment pursuant to some form of reciprocal use agreement, irrespective of whether any such arrangements may otherwise fall within the aforesaid definition.

Yy. "Resident" shall mean:

(1) Each buyer under a contract of sale as defined in ARS 33-741 covering any part of the Assessable Property, regardless of whether the contract is Recorded, and each Tenant (other than a Lessee) actually residing or conducting a business on any part of the Assessable Property;

(2) Members of the immediate family of each Owner and Lessee and of each buyer and Tenant referred to in subparagraph (1) actually living in the same household with such Owner or Lessee or such buyer or Tenant; and

(3) The guests or invitees of any such Owner, Lessee, buyer or Tenant, if and to the extent the Board in its absolute discretion by resolution or by The Foothill Rules so directs.

Zz. "Single Family" shall mean a group of one (1) or more persons each related to the other by blood, marriage or legal adoption, or a group of not more than three (3) persons not all so related, who maintain a common household in a Dwelling Unit.

AA. "Special Assessment" shall mean any Assessment levied and assessed pursuant to Article 7, Section 7.5.

BB. "Special Use Fees" shall mean special fees authorized by this Declaration which an Owner, Lessee, Resident or any other person is obligated to pay to the Association over, above and in addition to any Annual or Special Assessments or Maintenance Charges imposed or payable hereunder.

CC. "Supplementary Declaration" shall mean a written instrument Recorded pursuant to Article 13, Section 13.2 of this Declaration.

DD. "Tenant" shall mean any person who occupies property located on The Foothills under any type of rental or letting arrangement but is not included in the definition of a Lessee.

EE. "Tract Declaration" shall mean a declaration Recorded pursuant to Article 4, Section 4.1 of this Declaration.

FF. "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 the same plane as the object being viewed at a distance of one hundred (100) feet or less from the nearest boundary of the property being viewed.

ARTICLE 2 PROPERTY SUBJECT TO THE FOOTHILLS DECLARATION

Section 2.1. General Declaration Creating The Foothills. Declarant intends to develop The Foothills and to sell and convey Lots and Parcels. As portions of The Foothills are developed, Declarant intends, with respect to particular property, to record one (1) or more Tract Declarations covering Lots and Parcels and designating Common Areas which will incorporate this Declaration and which will establish such additional covenants, conditions, and restrictions as may be appropriate for that property. Declarant hereby declares that all of the real property within The Foothills is, and shall be, held, conveyed, hypothecated, encumbered, leased, occupied, built upon or otherwise used, improved or transferred, in whole or in part, subject to this Declaration and any Recorded Tract Declarations applicable thereto, as amended or modified from time to time; provided, however, property which is not part of a Lot or Parcel and which is dedicated or conveyed to the public or a governmental entity for public purposes shall not be subject to this Declaration and the Covenants herein contained while owned by the public or the governmental entity, although restrictions imposed in this Declaration upon the Owners, Lessees and Residents concerning the use and maintenance of such public areas shall at all times apply to the Owners, Lessees and Residents. This Declaration and the Tract Declarations are declared and agreed to be in furtherance of a general plan for the subdivision, improvement and sale of The Foothills and are established for the purpose of enhancing and perfecting the value, desirability and attractiveness of The Foothills and every part thereof. All of this Declaration shall run with all Lots, Parcels and Association Land for all purposes and shall be binding upon and inure to the benefit of Declarant, the Association, all Owners, Lessees and Residents and their successors in interest. Nothing in this Declaration shall be construed to prevent the Declarant from modifying the Development Master Plan as to any portion of The Foothills owned by the Declarant or from dedicating or conveying portions of The Foothills owned by the Declarant, including streets or roadways, for uses other than as a Lot, Parcel or Association Land. Unless the Tract Declaration provides otherwise, Tract Declarations may be amended by approval of the Board and Owners of all Lots and Parcels subject to the Tract Declaration. As long as the Declarant owns any Lot or Parcel, Declarant approval is also required for any amendment to a Tract Declaration.

Section 2.2. Association Bound. Upon issuance of a Certificate of Incorporation by the Arizona Corporation Commission to the Association, the Covenants shall be binding upon and shall benefit the Association.

ARTICLE 3
EASEMENTS AND RIGHTS OF ENJOYMENT IN COMMON AREAS

Section 3.1. Easements of Enjoyment. Every Owner and other Member of the Association shall have a right and easement of enjoyment in and to the Common Areas (except for the Golf Course Lakes) which shall be appurtenant to, and shall pass with, the title to every Lot and Parcel, subject to the following provisions:

(a) The right of the Association to charge reasonable admission and other Special Use Fees for the use of any recreational or other facility situated upon the Common Areas. Fees shall be uniform among Members.

(b) The right of the Association to suspend the voting rights and right to use of the recreational facilities and other Common Areas by any Member (i) for any period during which any Assessment against his Lot or Parcel remains delinquent; (ii) for a period not to exceed sixty (60) days for any infraction of this Declaration, a Tract Declaration or The Foothills Rules, and (iii) for successive sixty (60) day periods if any such infraction is not corrected during any prior sixty (60) day suspension period.

(c) The right of the Association to dedicate 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. Unless otherwise required by zoning stipulations or agreements with the City of Phoenix effective prior to the date hereof or specified on a Recorded subdivision plat or Recorded Tract Declaration, no such dedication or transfer shall be effective unless an instrument signed by the Owners of two-thirds (2/3) of the Memberships in each class of Members agreeing to such dedication or transfer has been Recorded, except that the Board shall have authority to transfer to such public agencies, authorities or utilities easements and rights-of-way which are intended to benefit The Foothills and which do not have any substantial adverse effect on the enjoyment of the Common Areas by the Members.

(d) The right of the Association to regulate the use of the Common Areas through The Foothills Rules and to prohibit access to those Common Areas, such as landscaped rights-of-way, not intended for use by the Members. The Foothills Rules shall be intended, in the absolute discretion of the Board, to enhance the preservation of the Common Areas for the safety and convenience of the users thereof, or otherwise shall serve to promote the best interests of the Owners, Lessees and Residents.

Section 3.2. Lake Easements. All Lakes on The Foothills shall be owned by the Association including those within the boundaries of the Golf Course. The Association, and its agents and contractors, is hereby granted an easement on and over the Lakefront Easement Areas for purposes of maintenance, repair, and replacement of the Lakes. The Association is also granted an easement on and over the Golf Course Land, the

Lakefront Lots and the Lakefront Parcels for the purpose of ingress and egress to the Lakes and the Lakefront Easement Areas.

Section 3.3. Owners' Easements of Enjoyment. If a Lot or Parcel is leased or rented, the Lessee and the members of his family residing with the Lessee shall have the right to use the Common Area during the term of the Lease. The guests and invitees of any Member or other person entitled to use the Common Area pursuant to the Declaration or of any Lessee who is entitled to use the Common Area may use the Common Area provided they are accompanied by a Member, Lessee or other person entitled to use the Common Area pursuant to the Declaration. The Association shall have the right to limit the number of guests and invitees who may use the Common Area at any one time and may restrict the use of the Common Area by guests and invitees to certain specified times. An Owner's right and easement of enjoyment in and to the Common Area shall not be conveyed, transferred, alienated or encumbered separate and apart from a Lot or Parcel. Such right and easement of enjoyment in and to the Common Area shall be deemed to be conveyed, transferred, alienated or encumbered upon the sale of any Lot or Parcel, notwithstanding that the description in the instrument of conveyance, transfer, alienation or encumbrance may not refer to such right and easement. In the case of Memberships associated with commercial use, the Owner is entitled to designate one (1) person who shall be entitled to use the Common Area for each Membership held in the Association subject to Board approval.

Section 3.4. Easements for Ingress and Egress. Easements for ingress and egress are hereby reserved to the Declarant, and granted to the Owners, Lessees, Tenants and Residents and their family, guests, tenants and invitees, for pedestrian traffic over, through and across sidewalks, paths, walks and lanes as the same from time to time may exist upon the Common Area, and for vehicular traffic over, through and across such portions of the Common Area as from time to time may be paved and intended for such purposes.

ARTICLE 4

LAND USE CLASSIFICATIONS, PERMITTED USES AND RESTRICTIONS

Section 4.1. Land Use Classifications. As portions of The Foothills are readied for development, the Land Use Classifications, restrictions, easements, rights-of-way, and other matters, including new or different uses and restrictions therefor and including any number of subclassifications thereof for any special uses, shall be fixed by Declarant in a Tract Declaration which may be Recorded for that portion of The Foothills. Any such Tract Declaration shall be construed as a supplement to this Declaration and fully a part hereof for all purposes to the same extent as if all of the provisions thereof were set forth in this Declaration. The Land Use Classifications for Lots, Parcels and Association Land established by a Tract Declaration shall not be changed except by amendment of the Tract Declaration in the manner set forth in Article 2, Section 2.1 of this Declaration. Contemplated Land Use Classifications include, but are not limited to, the following Land Use Classifications:

- (a) Single Family Residential Use.
- (b) Apartment Development Use, which may be converted to Condominium Development Use upon approval by the Board.
- (c) Condominium Development Use, which may be converted to Apartment Development Use upon approval by the Board.
- (d) Commercial Condominium Development Use, which may include Office Condominium Development Use.
- (e) Commercial Office Use.
- (f) Business Park Use.
- (g) Industrial Park Use.
- (h) General Commercial Use.
- (i) Research and Development Park Use.
- (j) Association Use, which may include Common Areas.

- (k) Golf Course Use.
- (l) Well-Site Use, which shall be used only for the withdrawal of groundwaters.
- (m) Recreation/Resort Use.
- (n) Hotel Use.
- (o) Medical Center Use.
- (p) Cluster Residential Use, which shall consist of Lots with Dwelling Units intended for Single Family occupancy and may include those types of residential housing arrangements known as townhouses, clustered housing, zero-lot line housing and similar arrangements, together with related areas intended for the use and enjoyment of the Owners and Residents of the Lots in the cluster development.
- (q) Clubhouse Use.
- (r) Telecommunications Site Use.

Unless otherwise specifically provided in this Declaration, the definitions and characteristics of such Land Use Classifications, and specific permitted and prohibited uses in such classifications, shall be determined in the Tract Declaration.

Section 4.2. Covenants, Conditions, Restrictions and Easements Applicable to Lots and Parcels Within All Land Use Classifications. The following covenants, conditions, restrictions and reservations of easements and rights shall apply to all Lots and Parcels, and the Owners, Lessees and Residents thereof, regardless of Land Use Classifications.

(a) Architectural Control. All properties at The Foothills are subject to architectural control as established by the Design Review Committee. No improvements, alterations, repairs, excavation, grading, landscaping or other work which in any way alters the exterior appearance of any property within The Foothills, or the improvements located thereon, from its natural or improved state existing on the date a Tract Declaration for such property was first Recorded shall be made or done without prior written approval of the Design Review Committee, except as otherwise expressly provided in this Declaration. No building, fence, wall, residence or other structure shall be commenced, erected, improved, altered, or made without the prior written approval of the Design

Review Committee. All subsequent additions to, or changes or alterations in, any building, fence, wall or other structure, including exterior color scheme, and all changes in the grade of Lots or Parcels, shall be subject to the prior written approval of the Design Review Committee. No changes or deviations in or from the plans and specifications once approved in writing by the Design Review Committee shall be made without prior written approval of the Design Review Committee. This Section does not apply to improvements, alterations, repairs, excavation, grading, landscaping or other work performed by or on behalf of Declarant.

(b) Animals. No animal, bird, fowl, poultry or livestock, other than a reasonable number of generally recognized house or yard pets, shall be maintained on any Lot or Parcel and then only if they are kept, bred or raised thereon solely as domestic pets and not for commercial purposes. No animal, bird, fowl, poultry, or livestock shall be allowed to make an unreasonable amount of noise or to become a nuisance. No structure for the care, housing or confinement of any animal, bird, fowl, poultry, or livestock shall be maintained so as to be Visible From Neighboring Property. Upon the written request of any Member or Resident, the Board shall conclusively determine, in its sole and absolute discretion, whether, for the purposes of this Section, a particular animal, bird, fowl, poultry, or livestock is a generally recognized house or yard pet, whether such a pet is a nuisance, or whether the number of animals or birds on any such property is reasonable. Any decision rendered by the Board shall be enforceable in the same manner as other restrictions contained herein. The Board shall also have the authority to exempt from the foregoing restrictions, or portions thereof, (i) a pet shop or veterinary office in a General Commercial Land Use Classification or (ii) horses and horse stables and corrals in areas designated on a Recorded subdivision plat, in a Tract Declaration or in any other Recorded instrument signed by the Declarant as being suitable for the maintenance of horses and horse stables and corrals.

(c) Temporary Occupancy and Temporary Buildings. No trailer, basement of any incomplete building, tent, shack, garage or barn, and no temporary buildings or structures of any kind, shall be used at any time for a residence, either temporary or permanent. Temporary buildings or structures used during the construction of a dwelling or other structure on any property shall be removed immediately after the completion of construction.

(d) Maintenance of Lawns and Plantings. Each Owner of a Lot or Parcel shall keep all shrubs, trees, hedges, grass and plantings of every kind located on

- (i) his Lot or Parcel (including set back areas and Common Areas),
- (ii) planted public right-of-way areas between sidewalks (or bikepaths) and the street curb in front of his property, if any,

(iii) any other public right-of-way or easement area which abuts the Owner's Lot or Parcel and which is located between the boundary line of his Lot or Parcel and the paved area of any street, sidewalk, bikepath or similar area, and

(iv) any non-street public right-of-way or easement area adjacent to his Lot or Parcel, neatly trimmed, and shall keep all such areas properly cultivated and free of trash, weeds and other unsightly material; provided, however, that such Owner shall not be responsible for maintenance of any area over which (1) the Association assumes the responsibility in writing; (2) the Association has been given such responsibility by a Recorded instrument as provided in Article 10, Section 10.1 of this Declaration; (3) the City of Phoenix or other public agency assumes responsibility, for so long as the Association or the City of Phoenix or other public agency assumes or has responsibility as provided in (1), (2) or (3) above; or (4) the Association has responsibility under this Declaration.

(e) Nuisances; Construction Activities. No rubbish or debris of any kind shall be placed or permitted to accumulate upon or adjacent to any Lot or Parcel, and no odors shall be permitted to arise or emit therefrom so as to render any such property or any portion thereof, or activity thereon, unsanitary, unsightly, offensive or detrimental to any other property in the vicinity thereof or to the occupants of such other property. No other nuisance shall be permitted to exist or operate upon any Lot or Parcel so as to be offensive or detrimental to any other property in the vicinity thereof or to its occupants. Without limiting the generality of any of the foregoing provisions, no exterior speakers, horns, whistles, firecrackers, bells or other sound devices, except security devices used exclusively for security purposes, shall be located, used or placed on any such property without prior approval of the Board. Normal construction activities and parking in connection with the building of improvements on a Lot or Parcel shall not be considered a nuisance or otherwise prohibited by this Declaration, but Lots and Parcels shall be kept in a neat and tidy condition during construction periods, trash and debris shall not be permitted to accumulate, and supplies of brick, block, lumber and other building materials will be piled only in such areas as may be approved in writing by the Design Review Committee. In addition, any construction equipment and building materials stored or kept on any Lot or Parcel during construction of improvements may be kept only in areas approved in writing by the Design Review Committee, which may also require screening of the storage areas. The Board, in its sole discretion, shall have the right to determine the existence of any such nuisance.

(f) Diseases and Insects. No Owner shall permit any thing or condition to exist upon any Lot or Parcel which shall induce, breed or harbor infectious plant diseases or noxious insects.

(g) Repair of Building. No building or structure on any Lot or Parcel shall be permitted to fall into disrepair, and each such building and structure shall at all times be kept in good condition and repair and adequately painted or otherwise finished. In the event any building or structure is damaged or destroyed, then, subject to the approvals required by Subsection (a) above, such building or structure shall be immediately repaired or rebuilt or shall be demolished.

(h) Antennas. Except as otherwise provided herein, no antenna or other device for the transmission or reception of television or radio signals or any other form of electromagnetic radiation, including, but not limited to, satellite television or radio discs, antennas or equipment, shall be erected, used or maintained outdoors on any Lot or Parcel, whether attached to a building or structure or otherwise, unless approved in writing by the Design Review Committee. Declarant intends to cause a telecommunications center to be constructed and operated within The Foothills. The provisions of this Subsection (h) shall not apply to the telecommunications center to be constructed and operated by the Declarant or any machinery, equipment, satellite disc, wires and other facilities used in connection with the operation of the telecommunications center.

(i) Mineral Exploration. No Lot or Parcel shall be used in any manner to explore for or to remove any water, oil or other hydrocarbons, minerals of any kind, gravel, earth or any earth substance of any kind, except for grading and excavation work and the removal of fill material including, but without limitation, gravel, rock and sand, in connection with the construction of Dwelling Units, buildings, structures or other improvements which have been approved in writing by the Design Review Committee or which are being constructed by, or on behalf of, the Declarant.

(j) Trash Containers and Collection. No garbage or trash shall be placed or kept on any Lot or Parcel, except in covered containers of a type, size and style which are approved in writing by the Design Review Committee. In no event shall such containers be maintained so as to be Visible From Neighboring Property except to make the same available for collection and then only for the shortest time reasonably necessary to affect such collection. All rubbish, trash, or garbage shall be removed from the Lots and Parcels and shall not be allowed to accumulate thereon. No outdoor incinerators shall be kept or maintained on any Lot or Parcel.

(k) Clothes Drying Facilities. Outside clotheslines or other outside facilities for drying or airing clothes shall not be erected, placed or maintained on any Lot or Parcel unless they are erected, placed and maintained exclusively within a fenced service yard or otherwise concealed and shall not be Visible From Neighboring Property.

(l) Machinery and Equipment. No machinery or equipment of any kind shall be placed, operated or maintained upon, or adjacent to, any Lot or Parcel except

(i) such machinery or equipment as is usual and customary in connection with the use, maintenance or construction (during the period of construction) of a building, appurtenant structures, or other improvements; (ii) that which Declarant or the Association may require for the operation and maintenance of The Foothills; or (iii) that used in connection with any business permitted under a Tract Declaration.

(m) Signs. No signs whatsoever (including, but not limited to, commercial, political and similar signs) which are Visible From Neighboring Property shall be erected or maintained on any Lot or Parcel except:

(i) Signs required by legal proceedings.

(ii) No more than two (2) identification signs for individual residences, each with a face area of seventy-two (72) square inches or less.

★ (iii) Signs (including "For Sale" and "For Lease" signs) the nature, number, location, size, color, design, message content and type of which have been approved in advance and in writing by the Design Review Committee.

(iv) Promotional and advertising signs of builders on any Lot or Parcel approved from time to time by Declarant as to number, size, color, design, message content, location and type.

(v) Such other signs (including, but not limited to, construction job identification signs, builder identification signs, and subdivision, shopping center, apartment and business identification signs) which are in conformance with the requirements of the City of Phoenix or other governmental agencies and which have been approved in writing by the Design Review Committee as to size, color, design, message content and location.

(n) Restriction on Further Subdivision, Property Restrictions and Rezoning. No Lot or Parcel shall be further subdivided or separated into smaller Lots or Parcels by any Owner other than the Declarant, and no portion less than all of any such Lot or Parcel, shall be conveyed or transferred by any Owner other than Declarant, without the prior written approval of the Board. This provision shall not, in any way, limit Declarant from subdividing or separating into Lots or Parcels any property at any time owned by Declarant. No portion of a Lot but for the entire Lot, together with the improvements thereon, may be rented, and then only to a Single Family. No further covenants, conditions, restrictions or easements shall be Recorded by any Owner, Lessee, or other person other than the Declarant against any Lot or Parcel without the provisions thereof having been first approved in writing by the Board and any covenants, conditions, restrictions or easements Recorded without such approval being evidenced thereon shall be null and void.

(o) Utility Easements. There is hereby created a blanket easement upon, across, over and under each Lot and

Parcel for ingress to, egress from, and the installation, replacing, repairing and maintaining of, all utility and service lines and systems, including, but not limited to water, sewers, gas, telephones, electricity, television cable or communication lines and systems, etc. as such utilities are installed in connection with the initial development of the Lot or Parcel and the construction of the first Dwelling Unit or other building thereon. Pursuant to this easement, a providing utility or service company, whether public, quasi-public, or private, may install and maintain facilities and equipment on the property and affix and maintain wires, circuits and conduits on, in and under the roofs and exterior walls of buildings on the Lots and Parcels. Notwithstanding anything to the contrary contained in this Subsection, no sewers, electrical lines, water lines, or other utility or service lines may be installed or relocated on any Lot or Parcel except as initially programmed and approved by the Declarant or in writing by the Design Review Committee, or, if installed after the Recording of the Tract Declaration, approved in writing by the Owner and the Design Review Committee.

(p) Party Walls. Except as hereinafter provided, the rights and duties of Owners with respect to Party Walls between Lots and Parcels or Party Fences between Lots and Parcels shall be as follows:

(i) The Owners of contiguous Lots or Parcels who have a Party Wall or Party Fence shall both equally have the right to use such wall or fence, provided that such use by one (1) Owner does not interfere with the use and enjoyment of same by the other Owner.

(ii) In the event that any Party Wall or Party Fence is damaged or destroyed through the act of an Owner or any of his Tenants, Lessees, agents, guests, or members of his family (whether or not such act is negligent or otherwise culpable), it shall be the obligation of such Owner to rebuild and repair the Party Wall or Party Fence without cost to the Owner of the adjoining Lot or Parcel. any dispute over an Owner's liability for such damage shall be resolved as provided in Subsection (v) below, but any liability imposed on an Owner hereunder shall not prevent the Owner from seeking indemnity therefor from the persons causing such damage.

(iii) In the event any Party Wall or Party Fence is destroyed or damaged (including deterioration from ordinary wear and tear and lapse of time), other than by the act of an adjoining Owner, his Tenants, Lessees, agents, guests or family, it shall be the obligation of all Owners whose Lots or Parcels adjoin such Party Wall or Party Fence to rebuild and repair such wall or fence at their joint expense, such expense to be allocated among the Owners in accordance with the frontage of their Lots or Parcels on the Party Wall

or Party Fence.

(iv) Notwithstanding anything to the contrary herein contained, there shall be no modification of any Party Wall or Party Fence without the prior consent of all Owners of any interest therein, whether by way of easement or in fee.

(v) In the event of a dispute between Owners with respect to the construction, repair or rebuilding of a Party Wall or Party Fence, or with respect to the sharing of the cost thereof, such adjoining Owners shall submit the dispute to the Board, the decision of which shall be binding. Anything in the foregoing to the contrary notwithstanding.

(vi) In the case of Party Fences (1) between Common Areas and Lots or Parcels, or (2) constructed by the Declarant or the Association on Common Areas within a Lot or Parcel, the Association shall be responsible for all maintenance thereof, subject to the provisions of Article 10, Sections 10.3 and 10.4, except that each Owner of a Lot or Parcel shall be responsible for painting the portion of the Party Fence facing his Lot or Parcel or the portion thereof which is not a portion of the Common Area.

(vii) The provisions of this Subsection (p) shall not apply to any Party Wall which separates the interiors of two (2) Dwelling Units and the rights of the Owners of such Dwelling Units with respect to Party Walls shall be governed by plats and covenants, conditions and restrictions to be Recorded by the developer of the Dwelling Units.

(q) Utility Service. No lines, wires, or other devices for the communication or transmission of electric current or power, including telephone, television, and radio signals, shall be erected, placed or maintained anywhere in or upon any Lot or Parcel unless the same shall be contained in conduits or cables installed and maintained underground or concealed in, under or on buildings or other structures approved in writing by the Design Review Committee except for temporary power or telephone structures incident to the construction of buildings or structures approved in writing by the Design Review Committee.

(r) Overhead Encroachments. No tree, shrub, or planting of any kind on any Lot or Parcel shall be allowed to overhang or otherwise to encroach upon any sidewalk, street, pedestrian way or other area from ground level to a height of eight (8) feet without the prior written approval of the Design Review Committee.

(s) Trucks, Trailers, Campers and Boats. No motor vehicle classed by manufacturer rating as exceeding 3/4-ton, mobile home, recreational vehicle, travel trailer, tent trailer, trailer, camper shell, detached camper, boat, boat trailer, or other similar equipment or vehicle may be parked, maintained, constructed, reconstructed or repaired on any Lot or Parcel or on any street in The Foothills so as

to be Visible From Neighboring Property, the Common Areas or the streets; provided, however, the provisions of this Section shall not apply to (i) pickup trucks of less than 3/4-ton capacity with camper shells not exceeding seven (7) feet in height measured from ground level and mini-motor homes not exceeding seven (7) feet in height and eighteen (18) feet in length which are parked as provided in Subsection (u) below and are used on a regular and recurring basis for basic transportation, or (ii) trucks, trailers and campers parked in areas designated for parking in non-residential Land Use Classifications in connection with permitted commercial activities conducted in such non-residential Land Use Classifications.

(t) Motor Vehicles. No automobile, motorcycle, motorbike or other motor vehicle shall be constructed, reconstructed or repaired upon any Lot, Parcel or street in The Foothills, and no inoperable vehicle may be stored or parked on any such Lot, Parcel or street, so as to be Visible From Neighboring Property or to be visible from Common Areas or streets; provided, however, that the provisions of this Section shall not apply to (i) emergency vehicle repairs or temporary construction shelters or facilities maintained during, and used exclusively in connection with, the construction of any improvement approved in writing by the Design Review Committee; (ii) any automobile repair business which may be permitted in any General Commercial Land Use Classification.

(u) Parking. Vehicles of all Owners, Lessees and Residents, and of their employees, guests and invitees, are to be kept in garages, carports, residential driveways of the Owner, designated spaces in commercial areas, and other designated parking areas wherever and whenever such facilities are sufficient to accommodate the number of vehicles at a Lot or Parcel; provided, however, this Section shall not be construed to permit the parking in the above described areas of any vehicle whose parking on The Foothills is otherwise prohibited or the parking of any inoperable vehicle.

(v) Right of Entry. During reasonable hours and upon reasonable notice to the Owner or other occupant of a Lot or Parcel, any member of the Design Review Committee, any member of the Board, or any authorized representative of any of them, shall have the right to enter upon and inspect any Lot or Parcel, and the improvements thereon, except for the interior portions of any completed Dwelling Unit for the purpose of ascertaining whether or not the provisions of this Declaration have been or are being complied with and such persons shall not be deemed guilty of trespass by reason of such entry.

(w) Declarant's Use for Sales and Leasing Purposes. Notwithstanding any other provision of this Declaration, Declarant shall have the right and an easement to maintain sales or leasing offices, management offices and models throughout the project and to maintain one (1) or more advertising signs on the Common Area while the Declarant is selling Lots, Parcels and other property in

the project. Declarant reserves the right to place models, management offices and sales and leasing offices on any Lots, Parcels or other property owned by Declarant and on any portion of the Common Area in such number, of such size and in such locations as Declarant deems appropriate. So long as Declarant is marketing Lots, Parcels or other property, Declarant shall have the right to restrict the use of the parking spaces on the Common Area. Such right shall include reserving such spaces for use by prospective purchasers, Declarant's employees and others engaged in sales, leasing, maintenance, construction or management activities.

(x) Health, Safety and Welfare. In the event additional uses, activities, and facilities are deemed by the Board to be a nuisance or to adversely affect the health, safety or welfare of Owners, Lessees and Residents, the Board may make rules restricting or regulating their presence on The Foothills as part of The Foothills Rules or may direct the Design Review Committee to make rules governing their presence on Lots or Parcels as part of the Design Guidelines.

(y) Model Homes. The provisions of this Declaration and of Tract Declarations which prohibit non-residential use of Lots and Parcels and regulate parking of vehicles shall not prohibit the construction and maintenance of model homes by builders or developers engaged in the construction, sale or leasing of Dwelling Units on The Foothills and parking incidental to the visiting of such model homes so long as the location of such model homes are approved in writing by the Design Review Committee, and the construction, operation and maintenance of such model homes otherwise comply with all of the provisions of this Declaration. The Design Review Committee may also permit Lots and other areas to be used for parking in connection with the showing of model homes so long as such parking and parking areas are in compliance with the ordinances of the City of Phoenix or other applicable governmental agencies and any rules of the Design Review Committee. Any homes constructed as model homes shall cease to be used as model homes at any time the Owner or builder thereof is not actively engaged in the construction and sale of Single Family residences of The Foothills and no home shall be used as a model home for the sale of homes not located on The Foothills.

(z) Incidental Uses. The Board may approve uses of property within a Land Use Classification which are incidental to the full enjoyment by the Owners of the property within that Land Use Classification. Such approval may be subject to such regulations, limitations and restrictions, including termination of the use, as the Board may wish to impose, in its sole discretion, for the benefit of The Foothills as a whole. By way of example and not of limitation, the uses which the Board may permit are private roadways and streets within an area having a Land Use Classification of Cluster Residential Use or Condominium Development Use, recreation facilities intended primarily

for the benefit of all or certain Owners and Residents within areas having a Land Use Classification of Cluster Residential Use or Condominium Development Use, and recreational facilities intended for usage by the Residents or Owners of more than a single Lot or Parcel within any area classified for residential use.

(aa) Natural Area. Except by approval of the Board, the Natural Area shall remain in its natural state and shall not be used in any manner which will detract from or alter its natural and open desert setting. No fences, signs, buildings, improvements, structures or materials of any kind shall be constructed or placed thereon, except by approval of the Board.

(bb) Use of Lakes. Lake use rules shall be determined by the Board and shall become a part of The Foothills Rules.

(cc) Lake Structures. All docks or other construction appurtenant to water will be cantilevered. No construction will be allowed which may puncture the Lake liner.

(dd) Golf Balls. Each Golf Course Lot and Golf Course Parcel shall be subject to an easement permitting golf balls unintentionally to come upon the Lot or Parcel and for golfers at reasonable times and in a reasonable manner to enter upon the Lot or Parcel, but not into the interior of any Dwelling Unit or other building situated on the Lot or Parcel, to retrieve golf balls unintentionally hit onto the Lot or Parcel. Each Owner and other occupant of a Golf Course Lot or Golf Course Parcel, by becoming the Owner or occupant thereof, acknowledges that golf balls may be hit onto their Lot or Parcel by persons playing golf on the Golf Course and that such golf balls may cause injury to persons on the Lot or Parcel or cause damage to the Dwelling Unit or other structures or improvements situated on the Lot or Parcel. Each Owner and occupant of a Golf Course Lot or Golf Course Parcel assumes the risk of such injury or damage.

Third
Amendment

Section 4.3. Covenants, Conditions, Restrictions and Easements Applicable to Lots Within Single Family Residential Land Use Classification. The following covenants, conditions, restrictions and reservations of easements and rights shall apply only to Lots and the Owners and Residents thereof lying within a Single Family Land Use Classification:

(a) General. Property classified as "Single Family Residential" under a Tract Declaration may be used only for the construction and occupancy of Single Family detached dwellings and typical residential activities incidental thereto, such as the construction and use of a family swimming pool. All property within such Land Use Classification shall be used, improved, and devoted exclusively to Single Family Residential Use. No gainful occupation, profession, trade or other nonresidential use other than the keeping of an office for private use shall be conducted on any such property and no person shall enter into any Lot for engaging in such uses or for the purpose of receiving products or services arising out of such usage.

No structure whatever, other than one (1) private, Single Family residence, together with a private garage or a guest house, shall be erected, placed or permitted to remain on any Lot and no facilities for the preparation of food shall be provided or permitted in any guest house erected on said Lot.

(b) Tenants. The entire Dwelling Unit on a Lot may be let to a Single Family Tenant from time to time by the Owner, subject to the provisions of this Declaration and The Foothills Rules.

(c) Exclusive. Nothing in this paragraph is intended to preclude the inclusion of an amenity for the exclusive use of residences on Lots within a Parcel designated for Single Family use provided that the construction of any such amenity is approved in writing by the Design Review Committee.

Section 4.4. Covenants, Conditions, Restrictions and Easements Applicable to Hotel Land Use Classification. The following covenants, conditions, restrictions and reservations of easements and rights shall apply only to Parcels lying within a Hotel Land Use Classification:

(a) General. Property having a Land Use Classification of "Hotel Use" shall be used only for the construction, operation and maintenance of a hotel facility and activities typically incidental thereto, including, but not limited to, the operation of bars and restaurants; gift shops; clothing shops; recreational facilities; travel and automobile rental facilities; meeting, banquet and convention facilities; and lounges and lounge-type entertainment facilities. Such hotel facility and related activities and facilities, including the exterior and interior of all improvements and all landscaping, grounds and other items located on the property shall be operated and maintained in the manner of a quality hotel and resort.

(b) Operation of Hotel. Operations of the hotel may include activities normally associated with the operation and maintenance of a hotel, including, but not limited to, the conduct of conventions and receptions; television, radio and other media coverage; and various related activities.

(c) Cottages and Cabanas. If permitted by the Tract Declaration for the hotel Parcel, cottages and cabanas, may be constructed on property having a Land Use Classification of Hotel Use so long as they are operated in conjunction with the hotel.

Section 4.5. Golf Course Land.

(a) Not Common Area. The Golf Course Land shall not be part of the Common Area, and no Owner, Lessee, Tenant or Resident shall acquire any right, title or interest whatsoever in the Golf Course Land or the use of the Golf Course Land solely by reason of owning, leasing or occupying any Lot, Parcel or other property in The Foothills. The Recording of a Tract Declaration restricting the use of the Golf Course Land to use as a Golf Course shall not obligate the Owner of the Golf Course Land to actually operate a Golf Course upon the Golf Course Land for any definite period of

time whatsoever. If a Golf Course ceases to be operated on the Golf Course Land, then the Golf Course Land shall be maintained as an open space area until such time as the Tract Declaration for the Golf Course Land is amended in accordance with the provisions of this Declaration to permit the use of the Golf Course Land for something other than the operation of a Golf Course. No implied negative easements in favor of any Owner, Lessee, Tenant, Resident or other person or entity shall arise or be created by reason of the Recording of a Tract Declaration restricting the Golf Course Land to use as a Golf Course or from the fact that a Golf Course is actually operated for a period of time upon the Golf Course Land.

(b) Waiver of Liability. Each and every Owner, Resident, Lessee, Designee, the guests and invitees of any Member, or any other person utilizing or entering upon the Golf Course (collectively, the "Users" and sometimes hereinafter referred to individually as a "User"), hereby acknowledge and agree that: no member of the Board or of any committee of the Association; no officer of the Association; no other employee, contractor or agent of the Association; nor Declarant or any employee, contractor or agent of Declarant (including, but not limited to, all Golf Course contractors, architects and engineers); nor any Owner of the Golf Course Land or any officers, directors, employees, agents or contractors of any Owner of the Golf Course Land shall have any responsibility, accountability or liability whatsoever, including personal liability, to any User in connection with the design, construction, operation or maintenance of the Golf Course and the Golf Course Land, and each User hereby releases Declarant and the above-mentioned persons and entities from all claims, causes of action, duties, liabilities and obligations of any and every sort or nature, in law or in equity, which it has or which it may hereafter have, or which in the future may arise from, or as a result or by reason of, or in connection with, the design, construction, operation or maintenance of the Golf Course and Golf Course Land.

(c) Operation of the Golf Course. Each Owner, Resident, and Lessee acknowledge that the operation and maintenance of the Golf Course will require that maintenance men and other workers required to operate and maintain the Golf Course will commence work relating to the operation and maintenance of the Golf Course as early as 5:30 a.m. on a daily basis. In connection therewith, each Owner, Resident and Lessee agree that Declarant, and the Owner or Owners of all or any portion of the Golf Course Land, and the employees, agents and contractors of the Declarant and such Owners, shall not be responsible or accountable for, and shall be held harmless from, any claims, causes of action, loss or liability arising in connection with or associated with any noise or inconvenience normally associated with such construction and maintenance activities.

ARTICLE 5
ORGANIZATION OF ASSOCIATION

Section 5.1. Formation of Association. The Association shall be a nonprofit Arizona corporation charged with the duties and invested with the 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.

Section 5.2. Board of Directors and Officers. The affairs of the Association shall be conducted by the Board and such officers as the Board may elect or appoint in accordance with the Articles and the Bylaws as the same may be amended from time to time. The Board may also appoint various committees and appoint a manager who shall, subject to the direction of the Board, be responsible for the day-to-day operation of the Association. The Board shall determine the compensation to be paid to the manager or any other employee of the Association. Unless this Declaration specifically requires a vote of the Members, approvals or actions to be given or taken by the Association shall be valid if given or taken by the Board.

Section 5.3. The Foothills Rules. By a majority vote of the Board, the Association may, from time to time and subject to the provisions of this Declaration, adopt, amend and repeal rules and regulations to be known as The Foothills Rules. The Foothills Rules may restrict and govern the use of any Common Area by any Member or Resident, by the family and Designees of such Member; provided, however, that The Foothills Rules shall not discriminate among Members and shall not be inconsistent with this Declaration, the Articles or Bylaws. Upon adoption, The Foothills Rules shall have the same force and effect as if they were set forth in and were a part of this Declaration. The Foothills Rules may govern the use of water within The Foothills.

Section 5.4. Personal Liability. No member of the Board or of any committee of the Association, no officer of the Association, and no other employee of the Association shall be personally liable to any Member, or to any other person, 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, any representative or employee of the Association, or any committee, committee member or officer of the Association; provided, however, the limitations set forth in this Section 5.4 shall not apply to any person who has failed to act in good faith or has engaged in willful or intentional misconduct.

Section 5.5. Ancillary Associations. In the event any homeowners or similar association is to be formed by the developer (other than the Declarant) of a Parcel or subdivision on The Foothills, the covenants, conditions and restrictions, the articles of incorporation and bylaws or other governing documents for such association shall not be effective unless the contents thereof have been approved by the Board and the governing documents specify that such association and the rights of its members are subject and subordinate to the provisions of this

Declaration, the provisions of the Articles and Bylaws of the Association, and the provisions of The Foothills Rules.

ARTICLE 6
MEMBERSHIPS AND VOTING

Section 6.1. Owners of Lots and Parcels. Every Owner of a Lot or Parcel which is subject to Assessment shall be a Member of the Association. Each such Owner shall have the following number of Memberships in the Association:

(a) One (1) Membership for each Lot owned by the Member;

(b) In the case of a Parcel designated for Apartment Development Use, there shall be one (1) Membership for each seven thousand five hundred (7,500) gross square feet, or fraction thereof, of land within the Parcel.

(c) In the case of a Parcel designated for uses other than Single Family Residential Use, Condominium Development Use, Cluster Residential Use or Apartment Development Use there shall be one (1) Membership for each fifteen thousand (15,000) gross square feet, or fraction thereof, of land within the Parcel.

(d) Memberships in the Association for Parcels restricted by a Tract Declaration to Golf Course Use will be determined by an applicable Tract Declaration;

(e) In the case of the Owner of a Parcel designated for Condominium Development but as to which a Condominium Development declaration and Condominium Development plat have not been Recorded, there shall be one (1) Membership for each Condominium Dwelling Unit permitted upon the Parcel under the Tract Declaration for the Parcel. If a site plan for the Parcel is subsequently approved in writing by the Design Review Committee and the City of Phoenix or other applicable governmental agencies for a number of Dwelling Units different than the number of Dwelling Units permitted on the Parcel pursuant to the Tract Declaration for the Parcel, the number of Memberships shall be adjusted, as to the portion of the Parcel covered by the site plan and effective as of the date of adjustment, to reflect the actual number of Dwelling Units authorized by the site plan; and

(f) In the case of the Owner of a Parcel with a Land Use Classification of Single Family Residential or Cluster Residential, there shall be one (1) Membership for each Dwelling Unit permitted upon the Parcel under the Tract Declaration for the Parcel. If a subdivision plat or other instrument creating Lots is Recorded covering all or part of the area within the Parcel, the Parcel shall be reduced in size by the area so platted and the number of Memberships held by the Owner, as Owner of the Parcel, shall be reduced by a number equal to the number of Lots in the Recorded subdivision plat. All Memberships attributable to the Parcel shall cease when the land area ceases to be a Parcel because all of the area in the Parcel has been platted or otherwise dedicated to the public and no unplatted Single Family Residential or Cluster Residential

area remains within the Parcel.
Each such Membership shall be appurtenant to, and may not be separated from, ownership of the Lot or Parcel to which the Membership is attributable.

Section 6.2. Declarant. The Declarant shall be a Member of the Association for as long as Declarant owns any Lot or Parcel in The Foothills.

Section 6.3. Voting. The Association shall have two (2) classes of voting Memberships:

Class A. Class A Memberships shall be all Memberships, except the Class B Membership held by the Declarant, and each Owner shall be entitled to one (1) vote for each Class A Membership held by the Owner, subject to the authority of the Board to suspend the voting rights of the Owner for violations of this Declaration in accordance with the provisions hereof.

Class B. Class B Membership shall be all Memberships held by the Declarant. The Declarant shall be entitled to three (3) votes for each Membership owned by the Declarant. The Class B Membership shall cease and be converted to Class A Memberships on the happening of the first of the following events:

(a) Ninety (90) days after the number of Class A votes for Memberships attributable to Lots or Parcels which do not qualify for a reduced Annual Assessment under Article 7, Section 7.3 of this Declaration exceeds the number of Class B votes, or

(b) December 31, 2010, or

(c) When Declarant no longer owns property at The Foothills.

For purposes of this Section only, the number of Memberships owned by Declarant shall be deemed to be fifteen thousand (15,000) minus the number of Memberships held by Class A Members.

Section 6.4. Right to Vote. No change in the ownership of a Membership shall be effective for voting purposes unless and until the Board is given actual written notice of such change and is provided satisfactory proof thereof. The vote for all Memberships attributable to a Lot or Parcel must be cast as a unit, and fractional votes shall not be allowed. In the event that a Lot or Parcel is owned by more than one (1) person or entity and such owners are unable to agree among themselves as to how their vote or votes shall be cast, they shall lose their right to vote on the matter in question. If any Member casts a vote representing a certain Membership, it will thereafter be conclusively presumed for all purposes that he was acting with the authority and consent of all other owners of the same Membership unless objection thereto is made at the time the vote is cast. In the event more than one (1) ballot is cast for the Memberships attributable to a Lot or Parcel, none of the said votes shall be counted and all said votes shall be deemed void.

Section 6.5. Cumulative Voting for Board Members. In any election of the members of the Board, every owner of a Membership entitled to vote at such an election shall have the number of votes for each Membership equal to the number of

directors to be elected, except that the Class B Member shall have the number of votes designated in Section 6.3 above times the number of directors to be elected. Each Member shall have the right to cumulate his votes for one (1) candidate or to divide such votes among any number of the candidates. The candidates receiving the highest number of votes, up to the number of the Board members to be elected, shall be deemed elected.

Section 6.6. Membership Rights. Each Member shall have the rights, duties and obligations set forth in this Declaration and such other rights, duties and obligations as are set forth in the Articles and Bylaws, as the same may be amended from time to time.

Section 6.7. Transfer of Membership. Except as provided in Section 3.3 of Article 3, the rights and obligations of the owner of a Class A Membership in the Association shall not be assigned, transferred, pledged, conveyed or alienated in any way except upon transfer of ownership to an Owner's Lot or Parcel. A transfer of ownership to a Lot or Parcel may be effected by Deed, intestate succession, testamentary disposition, foreclosure of a mortgage of record, or such other legal process as now in effect or as may hereafter be established under or pursuant to the laws of the State of Arizona. Any attempt to make a prohibited transfer shall be void. Any transfer of ownership to a Lot or Parcel shall operate to transfer the Membership(s) appurtenant to said Lot or Parcel to the new Owner thereof.

ARTICLE 7 COVENANT FOR ASSESSMENTS AND CREATION OF LIEN

Section 7.1. Creation of Lien and Personal Obligation of Assessments and Maintenance Charges. The Declarant, for each Lot or Parcel within The Poothills, hereby covenants and agrees, and each Owner by acceptance of a Deed therefor (whether or not it shall be so expressed in such Deed) is deemed to covenant and agree, to pay to the Association the following Assessments and charges: (1) Annual Assessments established by this Article 7, (2) Special Assessments for capital improvements or other extraordinary expenses or costs established by this Article 7, and (3) Maintenance Charges established by Article 10, Sections 10.3 and 10.4, all such Assessments to be established and collected as hereinafter provided. The Annual Assessments, Special Assessments and Maintenance Charges, together with interest, costs, and reasonable attorney's fees, shall be a charge on the Lot or Parcel and shall be a continuing servitude and lien upon the Lot or Parcel against which each such Assessment is made, which lien shall be for the benefit of, and be enforceable by, the Association. The Annual and Special Assessments against each Lot or Parcel shall be based on the number of Memberships appurtenant to the Lot or Parcel. Each such Annual and Special Assessment and Maintenance Charge, together with interest, costs and reasonable attorney's fees, shall also be the personal obligation of the person who was the Owner of the Lot or Parcel at the time when the Assessment fell due. The personal obligation for

delinquent Assessments shall not pass to the successors in title of the Owner unless expressly assumed by them.

Section 7.2. Annual Assessments. To provide for the uses and purposes specified in Article 9 hereof, including the establishment of replacement and maintenance reserves, the Board shall assess against each Lot and Parcel an Annual Assessment commencing upon the earlier to occur of: 1) the date established by the Board, or 2) January 1, 1988. Until the commencement of Annual Assessments as provided above, all expenses and costs of the Association shall be paid by the Declarant. The amount of the Annual Assessment, subject to the provisions of Section 7.4 hereof, shall be in the sole discretion of the Board but shall be determined with the objective of fulfilling the Association's obligations under this Declaration and providing for the uses and purposes specified in Article 9.

Section 7.3. Uniform Rate of Assessment. The amount of any Annual Assessment against each Lot or Parcel shall be fixed at a uniform rate per Membership, except that:

(a) The Owner of a Lot shall pay only twenty-five percent (25%) of the Annual Assessment attributable to its Membership until the earlier of (i) the completion of a Dwelling Unit on the Lot or (ii) six (6) months from the commencement of construction of the first Dwelling Unit on the Lot. If, after two (2) years from the date of the Recording of the Tract Declaration applicable to a Lot, construction of a Dwelling Unit has not yet been completed, the Owner shall no longer qualify for the twenty-five percent (25%) reduced Assessment rate, but shall instead pay a sixty percent (60%) reduced Assessment until three (3) years from the date of the Recording of the Tract Declaration applicable to a Lot.

(b) The Owner of a Parcel restricted under a Tract Declaration to uses other than Single Family Residential Use, Condominium Development Use, Cluster Residential Use or Apartment Development Use shall pay only twenty-five percent (25%) of the Annual Assessment otherwise attributable to its Membership until the earlier of (i) the completion of the first building on the Parcel, (ii) twelve (12) months from the commencement of construction of the first building on the Parcel, or (iii) two (2) years from the date of the Recording of the Tract Declaration for the Parcel.

(c) The Owner of a Parcel which, under a Tract Declaration, is restricted to Condominium Development Use or Cluster Residential Use (and for which a plat has not been Recorded) shall pay only twenty-five percent (25%) of the Annual Assessment otherwise attributable to each of its Memberships until the earlier to occur of the Recording of a plat for the Parcel (at which time the provisions of Subsection 7.3 hereof shall apply) or two (2) years from the date of the Recording of the Tract Declaration for the Parcel.

(d) The Owner of a Parcel which, under a Tract Declaration, has been classified as Single Family Residential (and which remains a Parcel because it has not yet been subdivided) shall pay only twenty-five percent

(25%) of the Annual Assessment otherwise attributable to each of its Memberships.

(e) The Owner of a Parcel restricted by a Tract Declaration to Apartment Development Use shall pay twenty-five percent (25%) of the Annual Assessment for each Membership attributable to its Parcel until the earlier of (i) the completion of the first building on the Parcel, (ii) twelve (12) months from the commencement of construction of the first building on the Parcel, or (iii) until two (2) years from the date of Recording of the Tract Declaration for that Parcel. The Board, at the request of the Owner of the Parcel, may apply the provisions of this subsection 7.3(e) to each construction phase of the Parcel as if each phase were a separate Parcel.

(f) The Declarant shall not be required to pay Assessments for Class B Memberships, but shall be required to subsidize the Association the difference between the cost of operating and administering the Association and Assessment income received. When the Class B Membership ceases, in accordance with Article 6, Section 6.3, Declarant shall no longer be required to subsidize the cost of operating and administering the Association, but shall be subject to payment of Assessments for all remaining Parcels and Lots owned by Declarant, and shall be eligible for the reduced Assessment in the same manner as any other Class A Member.

For purposes of this Section, construction of a Dwelling Unit or other building shall commence on the date a building permit for the Dwelling Unit or other building is issued by the appropriate governmental authority. For purposes of this Section, a Dwelling Unit or other building shall be deemed completed when, in the opinion of the Board, the building is ready for occupancy or, in the case of a commercial building, ready for the making of interior improvements. If the Owner of a Parcel or Lot ceases to qualify for the reduced twenty-five percent (25%) rate during the period to which an Annual Assessment is attributable, the Assessment attributable to a Membership shall be prorated between the applicable rates on the basis of the number of days in the period that the Owner qualified for each rate. Annual Assessments may be collected on a monthly, quarterly or annual basis and Special Assessments may be collected as specified by the Board unless otherwise determined by the resolution of the Members of the Association approving the Special Assessment.

Section 7.4. Maximum Annual Assessment. The Annual Assessment to be established by the Board may not exceed a certain amount, hereinafter referred to as the "Maximum Annual Assessment", which Maximum Annual Assessment shall be determined and shall vary in accordance with the following provisions:

(a) Until January 1 following the year in which Assessments commence according to the provisions of Section 7.2 hereof, the Maximum Annual Assessment against each Owner or Lessee shall be one hundred fifty dollars (\$150.00) per each Membership.

(b) From and after January 1 following the year in which Assessments commence according to the provisions of Section 7.2 hereof, and during such year, the Maximum Annual

Assessment may be increased effective January 1 of each year without a vote of the Membership by a maximum of five percent (5%) of the Maximum Annual Assessment for the previous year or in conformance with the percentage rise, if any, of the Consumer Price Index as hereinafter defined, whichever is greater. The Maximum Annual Assessment attributable to the Consumer Price Index for each such period shall be computed by reference to the statistics published in the Monthly Labor Review by the United States Department of Labor, Bureau of Labor Statistics, designated "Consumer Price Index for All Urban Consumers, 1967 Equals 100, All Items", hereinafter called the "Consumer Price Index". The Maximum Annual Assessment shall be computed by the following formula:

X = Consumer Price Index for September of the calendar year immediately preceding the year of the first Annual Assessment.

Y = Consumer Price Index for September of the year immediately preceding the calendar year for which the Maximum Annual Assessment is to be determined.

$\left(\frac{Y-X}{X} \right)$ plus 1.0 multiplied by the initial Maximum Annual Assessment figure shall be equal to the Maximum Annual Assessment for the year in question.

If the Bureau of Labor Statistics shall change the method of determining the Consumer Price Index, the formula for determining the Maximum Annual Assessment shall be altered or amended, if possible, so as to continue the base period and base figure, but in the event it shall be impossible to do so, or in the event the Bureau of Labor Statistics shall cease to publish the said statistical information and such information is not available from any other source, public or private, then and in any such events a new formula for determining the Maximum Annual Assessment shall be adopted by the Board.

(c) From and after January 1 of the year immediately following the Recording of the first Tract Declaration, the Maximum Annual Assessment may be increased above the Maximum Annual Assessment otherwise determined under Subsection (b) above by a vote of Members entitled to cast two-thirds (2/3) of the votes entitled to be cast by each class of Members who are voting in person or by proxy at a meeting duly called for such purpose.

(d) To provide for the operation and management of the Association, and to provide funds for the Association to perform its duties and obligations under this Declaration, including the establishment of replacement and maintenance reserves, the Board, for each fiscal year of the Association commencing with the year in which the first Lot or Parcel is conveyed, shall assess against each Lot or Parcel an Annual Assessment. The amount of the Annual Assessment for each Lot or Parcel shall not exceed the maximum Annual Assessment for the fiscal year as computed pursuant to Section 7.4 of

this Declaration. The Board shall give notice of the Annual Assessment to each Owner at least thirty (30) days prior to the beginning of each fiscal year of the Association, but the failure to give such notice shall not affect the validity of the Annual Assessment established by the Board, nor relieve any Owner from his obligation to pay the Annual Assessment. If the Board determines during any fiscal year that its funds budgeted or available for that Assessment Period are, or will become, inadequate to meet all expenses of the Association for any reason, including, without limitation, nonpayment of Assessments by Members, it may increase the Annual Assessment for that Assessment Period, and the revised Annual Assessment shall commence on the date designated by the Board, except that no increase in the Annual Assessment for any Assessment Period which would result in the Annual Assessment for a Lot or Parcel exceeding the Maximum Annual Assessment for such Assessment Period shall become effective until approved by Members entitled to cast at least two-thirds (2/3) of the votes entitled to be cast by each class of Members who are voting in person or by proxy at a meeting duly called for such purpose.

Section 7.5. Special Assessments for Capital Improvements and Extraordinary Expenses. In addition to the Annual Assessments authorized above, the Association may levy, in any Assessment Period, one (1) or more Special Assessments applicable to that period only for the purpose of defraying, in whole or in part, the cost of any construction, reconstruction, repair or replacement of a capital improvement upon the Association Land, including fixtures and personal property related thereto, or for the purpose of defraying other extraordinary expenses, provided that any such Assessment shall have the assent of Members entitled to cast two-thirds (2/3) of the votes of each class of Members who are voting in person or by proxy duly called for such purpose. The provisions of this Section are not intended to preclude or limit the assessment, collection or use of Annual Assessments for the aforesaid purposes.

Section 7.6. Notice and Quorum for Any Action Authorized Under Sections 7.4 and 7.5. Written notice of any meeting called for the purpose of taking any action authorized under Sections 7.4 or 7.5 of this Article shall be sent to all Members no less than thirty (30) days nor more than sixty (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 (exclusive of suspended voting rights) 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 sixty (60) days following the preceding meeting.

Section 7.7. Establishment of Annual Assessment Period. The period for which the Annual Assessment is to be levied (the "Assessment Period") shall be the calendar year,

except that the first Assessment Period shall commence in accordance with the provisions of Section 7.2 hereof. The Board in its sole discretion from time to time may change the Assessment Period.

Section 7.8. Rules Regarding Billing and Collection Procedures. The Board shall have the right to adopt rules and regulations setting forth procedures for the purpose of making the Assessments provided herein, and for the billing and collection of the Annual and Special Assessments and the Maintenance Charges imposed pursuant to Article 10, Section 10.3 and 10.4, provided that said procedures are not inconsistent with the provisions hereof. The failure of the Association to send a bill to a Member shall not relieve any Member of his liability for any Assessment or charge under this Declaration, but the Assessment Lien therefor shall not be foreclosed or otherwise enforced until the Member has been given not less than thirty (30) days written notice prior to such foreclosure or enforcement, at the address of the Member on the records of the Association, that the Assessment or any installment thereof is, or will be, due and of the amount owing. Such notice may be given at any time prior to or after delinquency of such payment.

Section 7.9. Collection Costs and Interest on Delinquent Assessments. Any Assessment or installment thereof not paid when due shall be deemed delinquent and shall bear interest at a rate of twelve percent (12%) per annum, in addition to a flat five dollar (\$5.00) penalty charge per late occurrence, and the Member shall be liable for all costs, including interest and attorney's fees, which may be incurred by the Association in collecting the same. The Board may also record a Notice of Delinquent Assessment against any Lot or Parcel as to which an Assessment is delinquent and constitutes a lien and may establish a fixed fee to reimburse the Association for the Association's cost in Recording such Notice, processing the delinquency and Recording a notice of payment, which fixed fee shall be treated as a collection cost of the Association secured by the Assessment Lien.

Section 7.10. Evidence of Payment of Annual and Special Assessments and Maintenance Charges. Upon receipt of a written request by a Member or any other person, the Association, within a reasonable period of time thereafter, shall issue to such Member or other person a written certificate stating (a) that all Annual and Special Assessments and Maintenance Charges (including interest, costs and attorney's fees, if any, as provided in Section 7.9 above) have been paid with respect to any specified Lot or Parcel as of the date of such certificate, or (b) if all Annual and Special Assessments and Maintenance Charges have not been paid, the amount of such Annual and Special Assessments and Maintenance Charges (including interest, costs and attorney's fees, if any) due and payable as of such date. The Association may make a reasonable charge for the issuance of such certificates, which charges must be paid at the time the request for any such certificate is made. Any such certificate, when duly issued as herein provided, shall be conclusive and binding with respect to any matter therein stated as against any bona fide purchaser of, or lender on, the Lot or Parcel in question.

Section 7.11. Property Exempted from the Annual and Special Assessments and Assessment Lien. Exempt Property shall be exempted from the Annual and Special Assessments and, except as provided in Article 10, Section 10.3, from Maintenance Charges and the Assessment Lien; provided, however, that in the event any change of ownership of Exempt Property results in all or any part thereof becoming Assessable Property in any year, the same thereupon shall be subject to the Annual and Special Assessments and, if exempt therefrom, Maintenance Charges (prorated as of the date it became Assessable Property) and the Assessment Lien.

ARTICLE 8
ENFORCEMENT OF PAYMENT OF ANNUAL AND SPECIAL ASSESSMENTS AND
MAINTENANCE CHARGES AND OF ASSESSMENT LIEN

Section 8.1. Association as Enforcing Body. The Association, as the agent and representative of the Members, shall have the exclusive right to enforce the provisions of this Declaration. However, if the Association shall fail or refuse to enforce this Declaration or any provision hereof for a period of sixty (60) days after written request to do so, then any Member may enforce them on behalf of the Association, but not at the expense of the Association, by any appropriate action, whether in law or in equity.

Section 8.2. Association's Remedies to Enforce Payment of Annual and Special Assessments and Maintenance Charges. If any Member fails to pay the Annual or Special Assessments or installments when due, or to pay Maintenance Charges assessed pursuant to Article 10, Sections 10.3 and 10.4, the Association may enforce the payment of the Annual or Special Assessments, Maintenance Charges and/or the Assessment Lien by taking either or both of the following actions, concurrently or separately (and, by exercising either of the remedies hereinafter set forth, the Association does not prejudice or waive its right to exercise the other remedy):

(a) Bring an action at law and recover judgment against the Member personally obligated to pay the Annual or Special Assessments or the Maintenance Charges;

(b) Foreclose the Assessment Lien against the Lot or Parcel in accordance with the then prevailing Arizona law relating to the foreclosure of realty mortgages (including the right to recover any deficiency), and the Lot or Parcel may be redeemed after foreclosure sale as provided by law.

Section 8.3. Subordination of Assessment Lien to First Mortgage or Deed of Trust; Priority of Lien. The Assessment Lien provided for herein shall be subordinate to any first mortgage lien held by, or any first deed of trust of which the beneficiary is, a lender who has lent funds with the Lot or Parcel as security, or held by the lender's successors and assigns, and shall also be subject and subordinate to liens for taxes and other public charges which by applicable law are expressly made superior. Except as above provided, the Assessment Lien shall be superior to any and all charges, liens or encumbrances which hereafter in any manner may arise or be imposed upon each Lot or Parcel. Sale or transfer of any Lot or

Parcel shall not affect the Assessment Lien; provided, however, that if the sale or transfer is pursuant to foreclosure of a mortgage or deed of trust to which the Assessment Lien is subordinate, or pursuant to any sale or proceeding in lieu thereof, the purchaser at the mortgage foreclosure or deed of trust sale, or any grantee taking by deed in lieu of foreclosure, shall take the Lot or Parcel free of the Assessment Lien for all Annual and Special Assessments and Maintenance Charges that have accrued up to the date of issuance of a sheriff's or trustee's deed or deed in lieu of foreclosure; but such mortgage or deed of trust foreclosure sale purchaser or grantee shall take subject to all Annual and Special Assessments, Maintenance Charges and the Assessment Lien thereof accruing subsequent to the date of issuance of a sheriff's or trustee's deed or deed given in lieu of foreclosure.

Section 8.4. Costs to be Borne by Member in Connection with Enforcement of Payment of Annual and Special Assessments and Maintenance Charges. In any action taken pursuant to Section 8.2 of this Article, the Member shall be personally liable for, and the Assessment Lien shall be deemed to secure the amount of, the Annual and Special Assessments and Maintenance Charges together with interest and the Association's collection costs and attorney's fees, including those costs and fees specified in Article 7, Section 7.9.

ARTICLE 9 USE OF FUNDS; BORROWING POWER

Section 9.1. Purposes for Which Association's Funds May be Used. The Association shall apply all funds and property collected and received by it (including the Annual and Special Assessments, fees, loan proceeds, surplus funds and all funds and property received by it from any other source) for the common good and benefit of The Foothills and the Members and Residents by devoting said funds and property, among other things, to the acquisition, construction, alteration, maintenance, provision and operation, by any manner or method whatsoever, of any and all land, properties, improvements, facilities, services, projects, programs, studies and systems, within or without The Foothills, which may be necessary, desirable or beneficial to the general common interests of The Foothills, the Members and the Residents. The following are some, but not all, of the areas in which the Association may seek to aid, promote and provide for such common benefit: social interaction among Members and Residents, maintenance of landscaping on Common Areas and public right-of-way and drainage areas within The Foothills, recreation, liability insurance, communications, transportation, health, utilities, public services, safety and indemnification of officers and directors of the Association. The Association also may expend its funds for any purposes which any municipality may expend its funds under the laws of the State of Arizona or such municipality's charter. The Board in its discretion may use Association funds for executing any and all Association responsibilities created herein.

Section 9.2. Borrowing Power. The Association may

borrow money in such amounts, at such rates, upon such terms and security, and for such period of time as is necessary or appropriate.

Section 9.3. Association's Rights in Spending Funds From Year to Year. The Association shall not be obligated to spend in any year all the sums received by it in such year (whether by way of Annual or Special Assessments, fees or otherwise), and may carry forward as surplus any balances remaining. The Association shall not be obligated to reduce the amount of the Annual Assessment in the succeeding year if a surplus exists from a prior year and the Association may carry forward from year to year such surplus as the Board in its discretion may determine to be desirable for the greater financial security of the Association and the accomplishment of its purposes.

Section 9.4. Administration of Special Use Fees. The Association is authorized to bill for, sue for, collect, administer and disburse all Special Use Fees and the payment thereof shall be secured by the Assessment Lien.

Section 9.5. Insurance. The Association shall maintain insurance against liability incurred as a result of death or injury to persons or damage to property on the Common Areas.

ARTICLE 10 MAINTENANCE

Section 10.1. Common Areas and Public Right-of-Way. The Association, or its duly delegated representative, shall maintain and otherwise manage all Common Areas, including, but not limited to, the landscaping, walkways, paths, parking areas, drives, recreational facilities; provided however, the Association shall not be responsible for providing or maintaining the landscaping or structures on any Common Areas which are part of Lots or Parcels unless the Association assumes in writing the responsibility for such maintenance or such responsibility is set forth in a Recorded instrument as hereinafter provided. The Association shall also maintain any landscaping and other improvements not on Lots and Parcels, but which are within the exterior boundaries of The Foothills, shown on a subdivision plat or other plat of dedication for The Foothills or covered by a Tract Declaration, and which are intended for the general benefit of the Owners and Residents of The Foothills, except the Association shall not maintain areas which (i) the City of Phoenix or other governmental entity is maintaining, or (ii) are to be maintained by the Owners of a Lot or Parcel pursuant to Article 4, Section 4.2 (d), of this Declaration unless the Association elects to maintain such areas and as to which the Association has made such an election to maintain. Specific areas to be maintained by the Association may be identified on subdivision plats Recorded or approved by the Declarant, in Tract Declarations and in Deeds from the Declarant to a transferee of a Lot or Parcel.

In this connection the Association may, in the discretion of the Board:

- (a) Reconstruct, repair, replace or refinish any

improvement or portion thereof upon Association Land except that no permanent improvements shall be made by the Association on any Common Area that is noall be made by the Association on any Common Area that is not Association Land and the Association shall provide only maintenance on Common Areas which are not Association Land;

(b) Replace injured and diseasnd trees and other vegetation in any Common Area, and plant trees, shrubs and ground cover to the extent that the Board deems necessary for the conservation of water and soil and for aesthetic purposes;

(c) Place and maintain upon any Common Area such signs as the Board may deem appropriate for the proper identification, use and regulation thereof; and

(d) Do all such other and further acts which the Board deems necessary to preserve and protect the Common Area and the beauty thereof, in accordance with the general purposes specified in this Declaration.

The Board shall be the sole judge as to the appropriate maintenance of all Common Areas and other properties maintained by the Association. Any cooperative action necessary or appropriate to the proper maintenance and upkeep of said properties shall be taken by the Board or by its duly delegated representative.

In the event any subdivision plnt, Tract Declaration, deed restriction or this Declaration permits the Board to determine whether or not Owners of certain Lots or Parcels will be responsible for maintenance of certain Common Areas or public right-of-way areas, the Board shall have the sole discretion to determine whether or not it would be in the best interest of the Owners, Lessees, and Residents of The Foothills for the Association or an individual Owner to be responsible for such maintenance, considering cost, uniformity of appearance, location and other factors deemed relevant by the Board. The Board may cause the Association to contract with others for the performance of the maintenance and other obligations of the Association under this Article 10 and, in order to promote uniformity and harmony of appearance, the Board may also cause the Association to contract to provide maintenance services to Owners of Lots and Parcels having such responsibilities in exchange for the payment of such fees as the Association and Owner may agree upon. Fees for the above provided maintenance services are secured by the Assessment Lien as described in Section 7.1.

Section 10.2. Natural Area. The Owner of a Lot or Parcel of property which lies in the Natural Area shall be obligated to maintain said Natural Area, including native plants (other than noxious weeds) in its natural state. The Owner shall not plant, trim, remove or replace any vegetation, except where required to prevent fire hazard, without the approval of the Board. The Natural Area shall be kept free and clean of trash, debris, lumber, tools, equipment or any items whatsoever which are not native to the setting.

Section 10.3. Assessment of Certain Costs of Maintenance and Repair of Common Areas and Public Areas. In the event that the need for maintenance or repair of Common Areas and

other areas maintained by the Association is caused through the willful or negligent act of any Member, his family, guests, invitees or Designees, the cost of such maintenance or repairs shall be added to, and become a part of, the Assessment to which such Member and the Member's Lot or Parcel is subject and shall be secured by the Assessment Lien.

Section 10.4. Improper Maintenance and Use of Lots and Parcels. In the event any portion of any Lot or Parcel is so maintained as to present a public or private nuisance; or as to substantially detract from the appearance or quality of the surrounding Lots and Parcels or other areas of The Foothills which are substantially affected thereby or related thereto; or in the event any portion of a Lot or Parcel is being used in a manner which violates this Declaration or any Tract Declaration applicable thereto; or in the event the Owner of any Lot or Parcel is failing to perform any of its obligations under this Declaration, any Tract Declaration, or the Design Guidelines and standards of the Design Review Committee; the Board may make a finding to such effect, specifying the particular condition or conditions which exist, and pursuant thereto give notice thereof to the offending Owner that unless corrective action is taken within fourteen (14) days, the Board may cause such action to be taken at said Owner's cost. If at the expiration of said fourteen (14) day period of time the requisite corrective action has not been taken, the Board shall be authorized and empowered to cause such action to be taken and the cost thereof shall be added to, and become a part of, the Assessment to which the offending Owner and the Owner's Lot or Parcel is subject and shall be secured by the Assessment Lien.

ARTICLE 11 DESIGN REVIEW COMMITTEES

Section 11.1. Establishment. The Declarant shall establish a Design Review Committee to perform the functions and exercise the power granted to the Design Review Committee by this Declaration. At such time as the Declarant's right to appoint and remove members of the Design Review Committee has expired as provided for in Section 11.3 of this Declaration, the Board shall appoint a Residential Design Review Committee and a Commercial Design Review Committee. The Residential Design Review Committee shall rule on matters pertaining to property restricted by a Tract Declaration to Single Family Residential Use, Condominium Development Use or Cluster Residential Use, and the Commercial Design Review Committee shall rule on all matters pertaining to Office and Commercial Condominium Development Use, Commercial Office Use, General Commercial Use, Industrial Park, Research and Development Park Use, Recreation/Resort Use, Apartment Development Use, Golf Course Use, Hotel Use and Medical Center Use. In the event of a dispute as to which Design Review Committee has jurisdiction over a particular matter, the Board shall decide which committee has jurisdiction. Members of the Design Review Committee need not be architects, Owners, Lessees or Residents and do not need to possess any special qualifications of any type. The Design Review Committee shall hold regular meetings and shall keep minutes of their meetings.

The presence in person of the majority of the regular members of the Design Review Committee shall constitute a quorum for conducting the business of the committee, and the concurrence of a majority of the regular members present at any meeting at which a quorum is present shall be deemed to be the act of the committee. Any person designated as an alternate member of the Design Review Committee may participate at any meeting at which there is not a quorum for regular members present, may constitute a quorum by his presence and shall have all the authority of a regular member also participating. The Design Review Committee shall promulgate architectural guidelines and standard to be used in rendering its decisions, which guidelines and standards shall be known as Design Guidelines. Subject to the provisions of Section 11.2 of this Article, the decision of the Design Review Committee shall be final in all matters submitted to it pursuant to this Declaration.

Section 11.2. Fee. The Board may establish a reasonable processing fee to defer the costs of the Association in considering any requests for approvals submitted to the Board or the Design Review Committee, which fee shall be paid at the time the request for approval is submitted.

Section 11.3. Appointment of Design Review Committee Members. So long as the Declarant owns any Lot or other property in The Foothills, the Declarant shall have the right to appoint and remove the regular members and alternate members of the Design Review Committee. At such time as the Declarant no longer owns any property in The Foothills, or at such earlier time as the Declarant expressly relinquishes its rights under this Section, the Board shall have the right to appoint and remove the regular members and alternate members of the Design Review Committee.

Section 11.4. Limited Liability of Committee Approval. Written approval by a Design Review Committee shall relate only to the conformity of plans and specifications to general architectural and landscaping plans for the area covered by these Covenants, and such plans, drawings, and specifications are not approved for engineering design or architectural competence. By approving such plans, drawings, and specifications, a Design Review Committee does not assume liability or responsibility therefor, or for any defect in any structure constructed from such plans, drawings and specifications. Members of the Board shall have absolutely no personal responsibility to any person or entity with regard to any actions taken by them in their capacity as such members.

ARTICLE 12 RIGHTS AND POWERS OF ASSOCIATION

Section 12.1. Association's Rights and Powers as Set Forth in Articles and Bylaws. In addition to the rights and powers of the Association set forth in this Declaration, the Association shall have such rights and powers as are set forth in its Articles and Bylaws. Such rights and powers, subject to the approval thereof by any agencies or institutions deemed necessary by Declarant, may encompass any and all things which a natural person could do or which now or hereafter may be authorized by

law, provided such Articles and Bylaws are not inconsistent with the provisions of this Declaration and are necessary, desirable or convenient for effectuating the purposes set forth in this Declaration. After incorporation of the Association a copy of the Articles and Bylaws of the Association shall be available for inspection at the office of the Association during reasonable business hours.

Section 12.2. Association's Rights of Enforcement of Provisions of This and Other Instruments. The Association, as the agent and representative of the Owners and Lessees, shall have the right to enforce the Covenants set forth in this Declaration and/or any and all covenants, restrictions, reservations, charges, servitudes, assessments, conditions, liens or easements provided for in any contract, Deed, declaration or other instrument which (a) shall have been executed pursuant to, or subject to, the provisions of this Declaration, or (b) otherwise shall indicate that the provisions of such instrument were intended to be enforced by the Association or by Declarant.

Section 12.3. Contracts with Others for Performance of Association's Duties. Subject to the restrictions and limitations contained herein, the Association may enter into contracts and transactions with others, including Declarant and its affiliated companies, and such contracts or transactions shall not be invalidated or in any way affected by the fact that one (1) or more directors or officers of the Association or members of any committee is employed by, or otherwise connected with, Declarant or its affiliates, provided that the fact of such interest shall be disclosed or known to the other directors acting upon such contract or transaction unless prohibited by Arizona law. Unless prohibited by Arizona law any such director, officer or committee member may be counted in determining the existence of a quorum at any meeting of the Board or committee of which he is a member which shall authorize any contract or transaction described above or grant or deny any approval sought by the Declarant, its affiliated companies or any competitor thereof and may vote thereat to authorize any such contract, transaction or approval with like force and effect as if he were not so interested.

Section 12.4. Change of Use of Association Land and Procedure Therefor. Upon (a) adoption of a resolution by the Board stating that in the Board's opinion the then present use of a designated part of the Association Land or of the Association's interest in other Common Areas is no longer in the best interests of the Owners and Residents, and (b) the approval of such resolution by a majority of the votes of Members who are voting in person or by proxy at a meeting duly called for such purpose, the Board shall have the power and right to change the use thereof (and in connection therewith, construct, reconstruct, alter or change the improvements thereon in any manner deemed necessary by the Board to accommodate the new use), provided such new use (i) shall be for the benefit of the Owners and Residents, and (ii) shall be consistent with any deed restrictions (or zoning regulations) restricting or limiting the use of the Association Land.

Section 12.5. Contract Between Association and Golf Course Owner. As a condition to its approval of the

Development Master Plan, the City of Phoenix required that the Golf Course be irrigated by use of water from the Lakes. The Association shall, therefore, enter into an agreement with the Owner of the Golf Course to provide for the use by the Owner of the Golf Course of water from the Lakes for the purpose of irrigating the Golf Course. The Agreement shall contain such terms and provisions as the Association and the Owner of the Golf Course may reasonably in good faith mutually agree upon including, but without limitation, provisions (i) stating the price to be paid by the Owner of the Golf Course to the Association for water used for irrigation of the Golf Course, (ii) the quality of the water which the Association shall be obligated to maintain in the Lakes and (iii) prohibiting the Association from artificially restricting the flow of water between the Lakes in such manner as to adversely impact upon the use of water from the Lakes by the Owner of the Golf Course. The Agreement shall be for such term as the Association and the Golf Course Owner shall mutually agree upon, but the Association and the Owner of the Golf Course shall negotiate in good faith and use their best efforts to agree upon extensions or renewals of the Agreement so that an agreement for the use of water from the Lakes by the Golf Course Owner for the purpose of irrigating the Golf Course remains in effect at all times.

ARTICLE 13
ANNEXATION OF ADDITIONAL PROPERTY

Section 13.1. Annexation Without Approval and Pursuant to General Plan. All or any part of the Additional Property may be annexed to the Covered Property and become subject to this Declaration and subject to the jurisdiction of the Association without the approval, assent or vote of the Association or its Members, provided that a Supplementary Declaration of Covenants, Conditions and Restrictions, as described hereinafter in Section 13.2 covering the portion of said Additional Property sought to be annexed shall be executed and Recorded by Declarant or its successors and assigns; provided, however, no Supplementary Declaration shall be so executed and Recorded pursuant to this Section more than fifteen (15) years (i) subsequent to the Recording of this Declaration or (ii) subsequent to the last Recording of a Supplementary Declaration, whichever of (i) or (ii) shall have later occurred. The Recording of said Supplementary Declaration shall constitute and effectuate the annexation of said portion of the Additional Property described therein, making said real property subject to this Declaration and subject to the functions, powers and jurisdiction of the Association, and thereafter said annexed Additional Property shall be part of The Foothills and all of the Owners of Lots or Parcels in said annexed Additional Property shall automatically be Members of the Association. Although Declarant or its successors and assigns shall have the ability to so annex all or any portion of the Additional Property, neither Declarant nor its successors and assigns shall be obligated to annex all or any portion of such Additional Property and such Additional Property shall not become subject to this Declaration unless and until a Supplementary Declaration shall have been so

executed and Recorded.

Section 13.2. Supplementary Declarations. The annexations authorized under the foregoing Section shall be made by Recording a Supplementary Declaration of Covenants, Conditions and Restrictions, or similar instrument, with respect to the Additional Property which shall extend the plan of this Declaration to such property. Such Supplementary Declarations contemplated above may contain such complementary additions to the Covenants contained in this Declaration as may be necessary to reflect the different character, if any, of the annexed property and as are not inconsistent with the plan of this Declaration. In no event, however, shall any such Supplementary Declaration, revoke, or modify the Covenants established by this Declaration.

ARTICLE 14 TERM; AMENDMENTS; TERMINATION

Section 14.1. Term; Method of Termination. This Declaration shall be effective upon the date of its Recording and, as amended from time to time, shall continue in full force and effect for a term of twenty (20) years from the date this Declaration is Recorded. From and after said date, this Declaration, as amended, shall be automatically extended for successive periods of ten (10) years each. The Declaration may be terminated at any time by the affirmative vote, or written consent, or any combination thereof, of Owners entitled to cast at least seventy-five percent (75%) of the votes in each class of Membership. Anything in the foregoing to the contrary notwithstanding, no termination of this Declaration shall be effective unless and until the written consent to such termination has been obtained from the holders of Recorded first mortgages or deeds of trust on seventy-five percent (75%) of the Lots and Parcels upon which there are such Recorded first mortgages and deeds of trust. If the necessary votes and consents are obtained, the Board shall cause to be Recorded, a Certificate of Termination, duly signed by the President or any Vice President and attested by the Secretary of the Association, with their signatures acknowledged. Thereupon these Covenants shall have no further force and effect, and the Association shall be dissolved pursuant to the terms set forth in its Articles. So long as there is a Class B Membership in the Association, any termination of this Declaration must be approved by the Veterans Administration or the Federal Housing Administration as long as initial approval has been given.

Section 14.2. Amendments. This Declaration may be amended by Recording a Certificate of Amendment, duly signed and acknowledged by the President or any Vice President and attested to by the Secretary of the Association. The Certificate of Amendment shall set forth in full the amendment adopted, and, except as provided in Section 14.3 of this Article, shall certify that Owners representing seventy-five percent (75%) of the total votes in the Association voted affirmatively for the adoption of the amendment. Votes may be cast either at an election held for that purpose or by written consent. If The Foothills and this Declaration has previously been approved by the Veterans

Administration ("VA") or the Federal Housing Administration ("FHA"), and provided that there is a Class B Membership in the Association at the time of the proposed amendment, any amendment of this Declaration must be approved by the VA (if the VA previously approved The Foothills) and/or by the FHA (if the FHA previously approved The Foothills). So long as there is a Class B Membership in the Association, an amendment to this Declaration must be approved in writing by the Declarant.

Section 14.3. Right of Amendment if Requested by Governmental Agency or Federally Chartered Lending Institutions. Anything in this Article to the contrary notwithstanding, Declarant reserves the right to amend all or any part of this Declaration to such an extent and with such language as may be requested by the FHA or the VA, Federal National Mortgage Association ("FNMA"), or the Federal Home Loan Mortgage Corporation ("FHLMC") and to further amend to the extent requested by any other federal, state or local governmental agency which requests such an amendment as a condition precedent to such agency's approval of this Declaration, or by any federally chartered lending institution as a condition precedent to lending funds upon the security of any Lot(s) or Parcel(s) or any portions thereof. Any such amendment shall be effected by the Recording, by Declarant, of a Certificate of Amendment duly signed by, or on behalf of, the partners, authorized agents, or authorized officers of Declarant, as applicable, with their signatures acknowledged, specifying the federal, state or local governmental agency or the federally chartered lending institution requesting the amendment and setting forth the amendatory language requested by such agency or institution. The Recording of such a Certificate shall be deemed conclusive proof of the agency's or institution's request for such an amendment, and such Certificate, when Recorded, shall be binding upon all of The Foothills and all persons having an interest therein. It is the desire of Declarant to retain control of the Association and its activities during the anticipated period of planning and development. If any amendment requested pursuant to the provisions of this Section deletes, diminishes or alters such control, Declarant shall have the right to prepare, provide for and adopt as an amendment hereto, other and different control provisions. Except as provided in this Section 14.3, Declarant shall not have any right to amend this Declaration otherwise than in accordance with and pursuant to the provisions of Section 14.2 of this Article. Notwithstanding the foregoing, if The Foothills and this Declaration has previously been approved by the VA or the FHA, any amendment made pursuant to the provisions of this Section 14.3 must be approved by the VA (if the VA previously approved The Foothills) and/or by the FHA (if the FHA previously approved The Foothills).

ARTICLE 15 MISCELLANEOUS

Section 15.1. Interpretation of the Covenants. Except for judicial construction, the Association, by its Board, shall have the exclusive right to construe and interpret the provisions of this Declaration. In the absence of any

adjudication to the contrary by a court of competent jurisdiction, the Association's construction or interpretation of the provisions hereof shall be final, conclusive and binding as to all persons and property benefited or bound by the Covenants and provisions hereof.

Section 15.2. Severability. Any determination by any court of competent jurisdiction that any provision of this Declaration is invalid or unenforceable shall not affect the validity or enforceability of any of the other provisions hereof.

Section 15.3. Rule Against Perpetuities. If any interest purported to be created by this Declaration would otherwise be unlawful, void or voidable under the Rule Against Perpetuities or any related rule, the interest shall be construed as becoming void and of no effect as of the end of the applicable period of perpetuities computed from the date when the period of perpetuities starts to run on the challenged interest; the "lives in being" for computing the period of perpetuities shall be (a) those which would be used in determining the validity of the challenged interest, plus (b) those of the issue of the Board who are living at the time the period of perpetuities starts to run on the challenged interest.

Section 15.4. Rules and Regulations. In addition to the right to adopt rules and regulations on the matters expressly mentioned elsewhere in this Declaration, the Association shall have the right to adopt rules and regulations with respect to all other aspects of the Association's right, activities and duties, provided said rules and regulations are not inconsistent with the provisions of this Declaration.

Section 15.5. Declarant's Disclaimer of Representations. Anything to the contrary in this Declaration notwithstanding, and except as otherwise may be expressly set forth on a Recorded plat or other instrument Recorded, Declarant makes no warranties or representations whatsoever that the plans presently envisioned for the complete development of The Foothills can, or will be, carried out, or that any land now owned or hereafter acquired by it is or will be subjected to this Declaration, or that any such land (whether or not it has been subjected to this Declaration) is, or will be, committed to or developed for a particular (or any) use, or that if such land is once used for a particular use, such use will continue in effect.

Section 15.6. References to the Covenants in Deeds. Deeds to and instruments affecting any Lot or Parcel or any part of The Foothills may contain the Covenants herein set forth by reference to this Declaration; but regardless of whether any such reference is made in any Deed or instrument, each and all of the Covenants shall be binding upon the grantee/Owner or other person claiming through any instrument and his heirs, executors, administrators, successors and assigns.

Section 15.7. Successors and Assigns of Declarant. Any reference in this Declaration to Declarant shall include any successors or assignees of Declarant's rights and powers hereunder provided that Declarant's rights and powers may only be assigned by a written, Recorded instrument expressly assigning such rights and powers.

Section 15.8. Gender and Number. Wherever the context of this Declaration so requires, words used in the

masculine gender shall include the feminine and neuter genders; words used in the neuter gender shall include the masculine and feminine genders; words in the singular shall include the plural; and words in the plural shall include the singular.

Section 15.9. Captions and Titles. All captions, titles or headings of the Articles and Sections in this Declaration are for the purpose of reference and convenience only and are not to be deemed to limit, modify or otherwise affect any of the provisions hereof, or to be used in determining the intent or context thereof.

Section 15.10. Notices. If notice of any action or proposed action by the Board or any committee or of any meeting is required by applicable law, this Declaration or resolution of the Board to be given to any Owner, Lessee or Resident then, unless otherwise specified herein or in the resolution of the Board, such notice requirement shall be deemed satisfied if notice of such action or meeting is published once in any newspaper in general circulation within the County of Maricopa, City of Phoenix or The Foothills. This Section shall not be construed to require that any notice be given if not otherwise required and shall not prohibit satisfaction of any notice requirement in any other manner.

Section 15.11. FHA/VA Approval. If this Declaration has been initially approved by the FHA or the VA in connection with any loan programs made available by FHA or VA and any loans have been made which are insured or guaranteed by FHA or VA, then as long as there is a Class B Membership, the following actions will require the prior approval of the FHA or the VA, as applicable, unless the need for such approval has been waived by FHA or VA: Dedications of Common Areas (except where such dedication is required as of the date hereof to the City of Phoenix); and any amendment or termination of this Declaration.

Section 15.12. Attorneys' Fees. In the event the Association employs an attorney to enforce any lien granted to it under the terms of this Declaration or to collect any Assessments or other amounts due from an Owner or to enforce compliance with or recover damages for any violation or noncompliance with the Declaration, Articles, Bylaws or Foothills Rules, the offending Owner or other person or entity shall pay to the Association, upon demand, all attorney fees and court costs incurred by the Association, whether or not suit is filed, which fees and costs shall be secured by the Assessment Lien.

Section 15.13. Laws, Ordinances and Regulations. The covenants, conditions and restrictions set forth in this Declaration and the provisions requiring Owners and other persons to obtain the written approval of the Board or the Design Review Committees with respect to certain actions are independent of the obligation of the Owners and other persons to comply with all applicable laws, ordinances and regulations, and compliance with this Declaration shall not relieve an Owner or any other person from the obligation to also comply with all applicable laws, ordinances and regulations. Any violation of any state, municipal, or local law, ordinance or regulation, pertaining to the ownership, occupation or use of any property within The Foothills is hereby declared to be a violation of this Declaration and subject to any or all of the enforcement

procedures set forth herein.

Section 15.14. Disclaimer of Obligation to Fill or Maintain the Lakes. Notwithstanding anything to the contrary in this Declaration, neither the Declarant nor the Association shall be obligated to fill the Lakes or to continuously maintain water in the Lakes if the Declarant or the Association, in its sole discretion, determines that it is illegal, impractical or economically infeasible to fill the Lakes or to continue to maintain water in the Lakes. If the Lakes are not filled with water or after the Lakes are filled with water, the Declarant or the Association determines, in its sole discretion, that it is illegal, impractical or economically infeasible to continue to maintain water in the Lakes and the water from the Lakes is, therefore withdrawn, the Lakes may be used for such purposes and in such manner as the Declarant or, after the termination of the Class B Membership, the Association determines to be advisable.

Section 15.15. Written Approval. Whenever the written consent or approval of the Board, the Design Review Committee, or the Association is required pursuant to the terms of this Declaration, such approval or consent shall be deemed given by the applicable governing body if the act or matter that requires consent or approval is permitted pursuant to written rules, regulations or guidelines adopted by the governing body whose consent or approval is required.

07 218943

IN WITNESS WHEREOF, these presents have been
executed and made effective by Declarant as of the date first set
forth above.

FOOTHILLS JOINT VENTURE, an
Arizona general partnership

By: DEL E. WEBB FOOTHILLS
CORPORATION, An Arizona
corporation, its General
Partner

By Ramon E. Webb
Its Pres

By: AGI FOOTHILLS LIMITED
PARTNERSHIP, an Arizona
limited partnership, its
General Partner

By: BURNS INTERNATIONAL,
INC., an Arizona
corporation, its sole
General Partner

By Richard N. Brown
Its Vice President

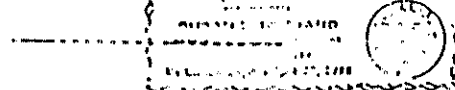
STATE OF ARIZONA)
) ss
County of Maricopa)

The foregoing instrument was acknowledged before me
this 15 day of April, 1987, by Ramon E. Webb
the President of Del E. Webb Foothills
Corporation, an Arizona corporation, the General Partner of
Foothills Joint Venture, a general partnership, on behalf of said
partnership.

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

Richard A. Brown
Notary Public

My commission expires



STATE OF ARIZONA)
) ss
 County of Maricopa)

The foregoing instrument was acknowledged before me this 9th day of April, 1987, by Fredrick Wisniewski, the Vice President of Burns International, Inc., an Arizona corporation, the General Partner of AGI Foothills Limited Partnership, an Arizona limited partnership, on behalf of said partnership as its General Partner of Foothills Joint Venture, an Arizona general partnership.

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

Luis J. Luana
 Notary Public

My commission expires:

