

**MOUNTAIN PARK RANCH HOMEOWNERS ASSOCIATION**

**DECLARATION of  
COVENANTS, CONDITIONS and RESTRICTIONS**

**April 17<sup>th</sup> 1984**

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Maricopa County  
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# **MOUNTAIN PARK RANCH DECLARATION OF COVENANTS, CONDITIONS, AND RESTRICTIONS (CC&R's)**

**April 17, 1984**

**THIS DECLARATION OF COVENANTS, CONDITIONS, AND RESTRICTIONS (hereinafter referred to as the "Declaration") is made this 17<sup>th</sup>. day of April, 1984, by GENSTAR DEVELOPMENT INC., a New York corporation, doing business as Genstar Southwest Development (hereafter sometimes referred to as "Declarant").**

## **W I T N E S S E T H**

**WHEREAS, is the developer of approximately two thousand six hundred forty forty-seven (2,647) acres of land in Phoenix, Maricopa County, Arizona, known as Mountain Park Ranch; and**

**WHEREAS, Declarant owns fee simple title to that portion of Mountain Park Ranch legally described on Exhibit A attached hereto and made a part hereof by this reference (hereinafter referred to as the "Covered Property"); and**

**WHEREAS, Declarant has options to purchase those portions of Mountain Park Ranch legally described on Exhibit B attached hereto and made a part hereof by this reference (hereinafter referred to as the "Additional Property"); and**

**WHEREAS, Declarant desires to develop, in stages the Covered Property and those portions of the Additional Property which may from time to time be annexed pursuant to this Declaration and become a part of the Covered Property, into planned residential, office, commercial and other communities; and**

**WHEREAS, at full time development it is intended, without obligations, that such communities will collectively have one or more shopping centers, office parks, lakes, parks, recreational areas, hillsides, open spaces, walkways, bicycle paths, drives and other social, civic and cultural buildings and facilities; and**

**WHEREAS, as part of the various stages of development of the aforesaid lands, Declarant intends, without obligation, to record various subdivisions plats; to dedicate portions of Mountain Park Ranch to the public for streets, roadways, drainage, flood control, parks and general public use; and to record various Tract Declarations covering portions of Mountain Park Ranch, which Tract Declarations will designate the purposes for which such portions of Mountain Park Ranch may be used and may set forth additional covenants, conditions, restriction, assessments, charges, servitudes, liens, reservations and easements applicable to such portions of Mountain Park Ranch; and**

**WHEREAS, Declarant desires to form a non-profit corporation for the social and recreational purposes of benefiting Mountain Park Ranch, the Owners and the Residents (as said terms are defined herein below), which non-profit corporation (hereinafter termed the "Association") will (1) acquire, construct, operate, manage and maintain a variety of Common Areas upon Mountain Park Ranch; (2) establish, levy, collect**

and disburse the Assessments and other charges imposed hereunder; and (3) as the agent and representative of the Members of the Association and Residents of Mountain Park Ranch, administer and enforce all provisions hereof and enforce use and other restrictions imposed on various parts of Mountain Park Ranch; and

WHEREAS, Declarant is preparing the necessary documents for the incorporation and organization of the Association and may, without obligation, seek approval thereof by Federal Housing Administration (hereafter referred to as "FHA"), The Veterans Administration (hereinafter referred to as the "VA") the Federal National Mortgage Association (hereafter referred to as "FNMA"), the Federal Home Loan Mortgage Corporation (hereafter referred to as "FHLMC"), and by any other governmental agencies or financial institutions whose approval Declarant deems necessary or desirable; and

WHEREAS, in order to enable the Association to accomplish the purposes outlined above, the Declarant wishes to subject all of the Covered Property to the covenants, conditions, restriction, assessments, charges, servitudes, liens, reservation and easements (hereafter collectively called "Covenants") hereinafter set forth; and

WHEREAS, in order to cause the Covenants to run with the Covered Property and to be binding the Covered Property and the Owners from and after the date of recordation of this Declaration, whether or not so provided therein, subject to the Covenants set forth; and by accepting Deeds, leases, easements or other grants or conveyances to any portion of the Covered Property, the Owners 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 I**

### **DEFINITIONS**

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

A. **“Additional Property”** shall mean that real property situated in the City of Phoenix, County of Maricopa, State of Arizona, which is legally described on Exhibit B attached hereto, and the development to be completed thereon, all or part of which may be added to the Covered Property in one or more additional phases by Supplemental Declaration pursuant to the provisions of Article XIV.

B. **“Annual Assessment”** shall mean the charge levied and assessed each year against each Lot, Parcel, or Owner pursuant to Article VII, Section 2, hereof.

C. **“Apartment Development”** shall mean a Parcel or portion thereof which is described in a Tract Declaration, is limited by the Tract Declaration to residential use, and is comprised of Rental Apartments and surrounding area which are intended, as shown by the site plan therefore approved by the City of Phoenix and the Architectural Review Committee or otherwise, as one integrated apartment operation under the same ownership.

D. **“Architectural Review Committee”** shall mean the committee of the Association to be created pursuant to Article XI below.

E. **“Articles”** shall mean the Articles of Incorporation of the Association as the same may from time to time be amended or supplemented.

F. **“Assessable Property”** shall mean any Lot or Parcel, except such part or parts thereof as may from time to time constitute Exempt Property.

G. **“Assessment”** shall mean an Annual Assessment, Special Assessment and/or Maintenance Charge.

H. **“Assessment Lien”** shall mean the lien created and imposed by Article VII.

I. **“Assessment Period”** shall mean the term set forth in Article VII, Section 7.

J. **“Association”** shall mean the Arizona non-profit 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 and intends to name the Association “The Mountain Park Ranch Homeowners Association.”

J(2). **“Association Land”** shall mean such part or parts of the Covered Property, 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.

L. “Board” shall mean the Board of Directors of the Association.

M. “Bylaws” shall mean the Bylaws of the Association as the same may from time to time be amended or supplemented.

N. “Common Area and Common Areas” shall mean (a) all Association Land; (b) all land within the Covered Property 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 Covered Property which the Declarant indicates on a recorded subdivision plat or Tract Declaration is to be used for landscaping, drainage, hillsides, and/or flood control for the benefit of Mountain Park Ranch and/or the general public and is to be dedicated to the public or the City of Phoenix upon the expiration of a fixed period of time, but only until such land is so dedicated; and (d) areas on a Lot or Parcel or dedicated land within easements granted to the Association or its Members for the location, construction, maintenance, repair and replacement of walls, sidewalks, landscaping, and utility access (including but not limited to the Landscape Easement Area described in Article IV, Section 2 below), which easements 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 horizontal property regime established under the laws of the State of Arizona which is limited by the Tract Declaration therefore to residential use.

P. “Condominium Unit” shall mean an apartment unit, together with any appurtenant interest in all general and common elements, which is created by a horizontal property regime established under Arizona law. 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. “Covered Property” shall mean the real property situated in the City of Phoenix, Maricopa County, Arizona, described on Exhibit A attached hereto, and the development to be completed thereon, and any part of the Additional Property added pursuant to Article XIV hereof.

S. “Declarant” shall mean Genstar Development Inc., a New York corporation, doing business as Genstar Southwest Development, and the successors and assigns of Declarant’s rights and powers hereunder.

T. “Declaration” shall mean this Declaration of Covenants, Conditions, and Restrictions, as amended or supplemented from time to time.

U. “Deed” shall mean a deed or other instrument conveying the fee simple title in a “Lot” or “Parcel”.

V. “ Dwelling Unit” shall mean any building or portion of a building situated upon a Lot or Parcel or upon any portion of the Additional Property designed and intended for use and occupancy as a residence by a single family, but shall exclude any

model home until such model home has been sold or leased as a residence by a single family.

W. "Exempt Property" shall mean the following parts of Mountain Park Ranch:

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

(2) All Association Land, for as long as the Association is the owner thereof.

X. "Hillsides" shall mean the hillsides shown on the Master Development Plan for Mountain Park Ranch. The Hillsides shall be a part of the Common Area. Declarant intends to grant easements on the Hillsides to the City of Phoenix for public trails and to convey fee title to the Hillsides to the Association at which time the Hillsides will become Association Land.

Y. "Lakes" shall mean the lakes shown on the Master Development Plan for Mountain Park Ranch, including the land underlying such lakes. The lakes shall be a part of the Common Area. Declarant intends to convey fee title to the Lakes to the City of Phoenix and to grant to the Association at a later date an easement to maintain the Lakes.

Z. "Land Use Classification" shall mean the classification to be established by Declarant pursuant to Article IV, Section 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.

AA. "Landscape Easement Area" shall mean the approximate then (10) foot portion of land adjacent to the streets in the Covered Property and the entryways to Mountain Park Ranch which is subject to an easement for landscaping, sidewalks, perimeter walls and utility access as described in Article IV, Section 2 below. The landscaping, sidewalk, perimeter wall and utility access easement shall be granted or created on a recorded subdivision plat or Tract Declaration or by deed or other conveyance accepted by Declarant or the Association.

BB. "Lot" shall mean any (a) area of real property within the Covered Property designated as a Lot on any subdivision plat recorded or approved by Declarant and limited by a Tract Declaration to either Single Family Residential Use or Cluster Residential Use, and (b) any Condominium Unit within the Covered Property which is limited to residential use by a Tract Declaration.

CC. "Maintenance Charges" shall mean any and all costs assessed pursuant to Article X, Section 2 or 3.

DD. "Master Development Plan" shall mean the Mountain Park Ranch Development Plan approved by the City of Phoenix, as the same may be from time to time amended, a copy of which shall be on file at all times in the office of the Association.



EE. “Member” shall mean any person holding a Membership in the Association pursuant to this Declaration.

FF. “Membership” shall mean a membership in the Association and the rights granted to the Owners and Declarant pursuant to Article VI to participate in the Association.

GG. “Mountain Park Ranch” shall mean that real property described on Exhibits A and B and the development to be completed thereon.

HH. “Mountain Park Ranch Rules” shall mean the rules for Mountain Park Ranch adopted by the Board pursuant to Article V, Section 3.

II. “Owner” shall mean (when so capitalized) the record holder of legal title to the fee simple interest in any Lot or Parcel including contract sellers, but excluding others who hold such title merely as security. In the case of Lots or Parcels the fee simple title to which is vested of record in a trustee pursuant to Arizona Revised Statutes, Section 30-801 et seq., legal title shall be deemed to be in the Trustor. An Owner shall include any person who holds record title to a Lot or Parcel in joint ownership with any other person or holds an undivided fee interest in any Lot or Parcel.

JJ. “Parcel” shall mean an area of real property within the Covered Property limited by a Tract Declaration to one of the following Land Use Classifications: Apartment Development, Condominium Development (but only until the horizontal property regime therefore is recorded), Shopping Center, Commercial Office, Industrial Park, Resort Hotel, School, Library, Fire Station, Golf Course, Commercial Recreational, or Power Substation. The term Parcel shall also include an area of land within the Covered Property as to which a Tract Declaration has been recorded designating the area for Single Family Residential use of Cluster Residential use but which has not yet been subdivided into Lots and related amenities and rights-of-way, but any such area shall cease to be a Parcel upon the recordation or a subdivision plat or other instrument covering the area and creating Lots and related amenities. A Parcel shall not include a Lot or any Association Land but, in the case of staged developments, shall include areas not yet included in a subdivision plat, horizontal property regime or other recorded instrument creating Lots and related amenities. A Parcel with a Land Use Classification of Apartment Development shall cease to be a Parcel if the Apartment Development is converted to Condominiums.

KK. “Party Fence” shall mean a fence 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.

LL. “Party Wall” shall mean a wall constructed on or immediately adjacent to the common boundary of Lots or Parcels.

MM. “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.

NN. “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 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.

OO. “Resident” shall mean:

(1) Each buyer under a contract of sale covering any part of the Assessable Property, regardless of whether the contract is recorded, and each tenant actually residing or conducting a business on any part of the Assessable Property; and

(2) Members of the immediate family of each Owner and of each buyer and tenant referred to in subparagraph (1) actually living in the same household with such Owner or such buyer or tenant. Subject to such rules and regulations as the Association may hereafter specify (including the imposition of special non-resident fees for use of the Association Land if the Association shall so direct), the term “Resident” shall also include the employees, guests or invitees of any such Owner, buyer or tenant, if and to the extent the Board in its absolute discretion by resolution so directs.

PP. “Single Family” shall mean a group of one 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.

QQ. “Special Assessment” shall mean any assessment levied and assessed pursuant to Article VII, Section 5.

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

SS. “Supplemental Declaration” shall mean a written instrument recorded in the records of the County Recorder of Maricopa County, Arizona which refers to this Declaration and which amends, modifies, or supplements this Declaration in accordance with its terms.

TT. “Tenant” shall mean any person who occupies property located on the Covered Property under any type of rental or letting arrangement.

UU. “Tract Declaration” shall mean a declaration recorded pursuant to Article VI, Section 1 of this Declaration.

VV. “Visible From Neighboring Property” shall mean, with respect to any given object that such object is or would be visible to a person six feet tall, standing at ground level on any part of such neighboring property.

## ARTICLE II

### **PROPERTY SUBJECT TO MOUNTAIN PARK RANCH DECLARATION**

**Section 1. General Declaration Creating Mountain Park Ranch.** Declarant intends to develop Mountain Park Ranch by subdivision into various Lots and Parcels and to sell and convey such Lots and Parcels. As Declarant acquires fee simple title to the Additional Property pursuant to its purchase options, it intends to add such portions to the Covered Property and subject them to the provisions of this Declaration by recording a Supplemental Declaration. As portions of the Covered Property are developed, Declarant intends, with respect to particular property, to record one or more Tract Declarations covering Lots and Parcels and designation 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 Covered Property is and shall be held, conveyed, hypothecated, encumbered, leases, 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 dedicated or sold 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 except for the provisions of Article IV hereof which shall apply to such publicly owned property, and provided further that restrictions imposed in this Declaration upon the Owners and Residents concerning the use and maintenance of such public areas shall at all times apply to the Owners 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 Mountain Park Ranch and are established for the purpose of enhancing and perfecting the value, desirability and attractiveness of Mountain Park Ranch 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, Residents and their successors in interest. Nothing in this Declaration shall be construed to prevent Declarant from modifying the Master Development Plan or any portions thereof as to which a Tract Declaration has not been recorded or from dedicating or conveying portions of Mountain Park Ranch, including streets or roadways, for uses other than as a Lot, Parcel or Association Land.

**Section 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 III**

### **EASEMENTS AND RIGHTS OF ENJOYMENT IN COMMON AREAS**

**Section 1. Easements of Enjoyment.** Every Owner and Tenant and other Member of the Association shall have a right and easement of enjoyment in and to the Common Areas 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 no to exceed 60 days for any infraction of this Declaration, a Tract Declaration or the Mountain Park Ranch Rules, and (iii) for successive 60-day periods if any such infraction is not corrected during any prior 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, nor 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, no such dedication or transfer shall be effective unless an instrument signed by 75% of the Owners 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 Mountain Park Ranch and which do not have any substantial adverse affect 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 Mountain Park Ranch Rules and to prohibit access to those Common Areas, such as landscaped right-of-ways, not intended for use by the Members. The Mountain Park Ranch Rules shall be intended, in the absolute discretion of the Board, to enhance the preservation of the Common Areas or the safety and convenience of the users thereof, or otherwise shall serve to promote the best interests of the Owners and Residents.

**Section 2. Delegation of Use.** Any Member my, in accordance with Mountain Park Ranch Rules and the limitations therein contained and this Declaration (a) delegate his right of enjoyment in the Common Areas and facilities to the members of his family, his tenants, or his guests or invitees; or (b) designate another person to exercise all of his rights (but not liabilities or voting rights), which other person shall, during the period of such designation, have the sole right to delegate eights of enjoyment pursuant to subsection (a) of this section.

## **ARTICLE IV**

### **LAND USE CLASSIFICATIONS, PERMITTED USES AND RESTRICTIONS**

**Section 1. Land Use Classifications.** As portions of Mountain Park Ranch are readied for development, the Land Use Classification, restrictions, easements, right of way, and other matters, including new or different uses and restrictions therefore and including any number of sub classifications thereof for any special uses, shall be fixed by Declarant in a Tract Declaration which may be recorded for that portion of the Covered Property. 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. In exercising its authority to record Tract Declarations, Declarant shall not impose any new land use classifications or new restrictions which are not generally in conformance with then-existing use and restrictions applicable to Mountain Park Ranch or with the scheme of development contemplated by the Master Development Plan and this Declaration. The land use classifications for Lots, Parcels and Association Land established by a Tract Declaration shall not be changed except as specifically permitted by this Declaration. The contemplated Land Use Classifications are as follows:

- (a) Single Family Residential Use.
- (b) Apartment Development Use, which may be converted to Condominium Development Use approval by the Board.
- (c) Condominium Development Use, which may be converted to Apartment Development Use upon approval by the Board.
- (d) Commercial Office Use.
- (e) Shopping Center Use.
- (f) Industrial Park Use.
- (g) Association Use, which may include Common Areas.
- (h) General Public Use, excluding Hillside
- (i) Cluster Residential Use, which shall consist of Lots with dwelling units 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.
- (j) Resort Hotel.
- (k) School.
- (l) Library.

- (m) Fire Station.
- (n) Golf Course.
- (p) Commercial Recreational Use.
- (q) Hillsides.

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. All Tract Declarations shall be subject to applicable zoning laws.

**Section 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 Parcel, the Owners thereof, and all Residents, regardless of Land Use Classifications.

(a) **Architectural Control.** No improvements, alterations, repairs, excavations, grading, landscaping (except landscaping on a Lot or Parcel designated for single Family Residential Use) or other work which in any way alters the exterior appearance of any property within Mountain Park Ranch , 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 down without the prior approval of the Architectural Review Committee, except as otherwise expressly provided in this Declaration. No building, fence, wall, residence or other structure shall be commenced, erected, maintained, improved, altered, or made without the prior written approval of the Architectural 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 Architectural Review Committee. No changes or deviations in or from the plans and specifications once approved by the Architectural Review Committee shall be made without the prior written of Architectural Review Committee. The Architectural Review Committee shall have the right to adopt from time to time written architectural guidelines and standards for Mountain Park Ranch in accordance with the provisions of Article XI, Section 1 below.

(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 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 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, a pet shop in a Shopping Center Land Use Classification.

(c) **Temporary Occupancy and Temporary Buildings.** No trailer, basement or any incomplete, tent, shack, garage or barn, and no temporary buildings or structures of any kind, shall be used at any time for residence, either temporary or permanent. Temporary building or structures used during the construction of a dwelling 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 bike paths) and the street curb in front of his property, if any,
- (iii) any other public right of-way or easement areas 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, bike path 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 which is included in a Landscape Easement Area or over which (1) the Association assumes the responsibility by a Recorded instrument as provided in Article X, Section 1 of this Declaration; or (3) the City of Phoenix assumes responsibility, for so long as the Association of the City of Phoenix assumes or has responsibility as provided in Subsections (1), (2) or (3). The Architectural Review Committee may require landscaping by Owner of the areas described in Subsections (ii), (iii) and (iv) above. The landscaping on each Lot or Parcel designated for Single Family Residential Use shall be completed within six (6) months after the Dwelling Unit on such Lot or Parcel is first occupied. No landscaping shall be erected, placed or maintained anywhere in or upon a Lot or Parcel (other than a Lot or Parcel for Single Family Residential Use) unless the plans for such landscaping have been approved by the Architectural Review Committee.

(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 or loud noises 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 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, whistle, firecrackers, bells or other sound devices, except security devices used exclusively for security purposes, shall be located, used or places on any such property. 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, supplies of brick, block, lumber and other building materials will piles only in such areas as may be approved by the Architectural Review Committee, and construction vehicles of contractors, agents or suppliers shall not use any routes, within Mountain Park Ranch which Declarant designates as off-limits for such vehicles. In addition, any construction equipment and building materials stored or kept on any Lot or Parcel during construction of improvements may be kept in areas approved by the Architectural 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 time 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. No antenna or other device for the transmission or reception of television or radio signals or any other form of electromagnetic radiation shall be erected, used or maintained outdoors on any Lot or Parcel, whether attached to a building or structure or otherwise, unless approved by the Architectural Review Committee.

(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.

(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 by the Architectural 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 shortest time reasonable necessary to effect 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 Mountain Park Ranch; 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) Not more than two (2) identification signs for individual residences, each with a face area if seventy-two square inches or less;

(iii) Signs (including “for sale” and “for lease” signs) the nature, number, and location of which have been approved in advance and in writing by the Architectural Review Committee.

(iv) Signs of builders on any Lot or Parcel approved from time to time by Declarant as to number, size, colors, designs, message content, location and type.

(v) Such other signs (including but not limited to constructions job identification signs, builders signs, and subdivisions, shopping center, apartment and business identification signs) which are in conformance with the requirements of the City of Phoenix and which have been approved in writing by the Architectural Review Committee as to size, colors, design, message content and location.

(n) **Restriction on Further Subdivisions. Property Restrictions and Rezoning.** No Lot or Parcel shall be further subdivided or separated into smaller lots or parcels by any Owner, and no portions less than all of any such Lot or Parcel, nor any easement or other interest therein, shall be conveyed or transferred by any Owner, without the prior written approval of the Board, which approval must be evidenced on the plat or other instrument creating the subdivision, easement or other interest. 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 and which has not previously been platted or subdivided into Lots. 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 or other person 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. No application for rezoning of any Lot or Parcel, and no applications for variances or use permits, shall be filed with any governmental authority unless the proposed use of the Lot or Parcel has been approved by Declarant or, if Declarant no longer owns any portion of the Covered Property, by the Board and the proposed use otherwise complies with this Declaration and any applicable Tract Declaration. Notwithstanding anything contained herein to the contrary, Declarant shall have the right to change the location, size or configuration of the Common Areas after a subdivision plat affecting such Common Areas has been recorded so long as such change does not adversely affect any Owners of Lots or Parcels in the reasonable judgment of Declarant.

(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 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 utilities or service lines may be installed or relocated on any Lot or Parcel except as initially programmed and approved by Declarant or the Architectural Review Committee, or, if install after recordation of the Tract Declaration, approved by the Owner and the Architectural Review Committee.

(p) Landscaping Easement. There is hereby created an affirmative easement for ingress, egress, installation, replacing, repairing and maintenance or landscaping, sidewalks, perimeter walls, and utility access upon, over and across the Landscape Easement Area in favor of Declarant and its successors and assigns. The exact location of the Landscape Easement Area over portions of the Covered Property will be designated from time to time on a recorded subdivision plat or Tract Declaration or by deed or other conveyance. Declarant shall have full power and authority to transfer and convey said easement to the City of Phoenix or to the Association under such terms and conditions as may be deemed appropriate to Declarant. If the reasonable use of the Landscape Easement Area so requires, any person or entity having a right to utilize the Landscape Easement Area shall have the right to ingress and egress upon, over, under and across that portion of each Lot or Parcel which is immediately adjacent to the Landscape Easement Area for the purpose of exercising the rights and obligations contained in this Subsection (p).

(q) 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 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, 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 Owners 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, agents, guests or family, it shall be the obligation of all Owners whose Lots or Parcels adjoin such Party Wall or Party Fence, or, in the event of a Party Wall or Party Fence between Common Areas and Lots or Parcels, it shall be the obligation of the Association and/or 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 and, if applicable, the Association, 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 impairment of the structural integrity 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 constructed by 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 X, Sections 2 and 3, 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, and

(vii) The provisions of this Subsection (q) shall not apply to any Party Wall which separates the interiors of Two Dwelling Units and the rights of the owners of such Dwelling Units with respect to Party Walls shall be governed by plats to be recorded by the developer of the Dwelling Units.

(r) 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 building or other structures approved by the Architectural Review Committee. No provision hereof shall be deemed to forbid the erection of temporary power or telephone structures incident to the construction of buildings or structures approved by the Architectural Review Committee.

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

(t) Trucks, Trailers, Campers and Boats. No motor vehicle classed by manufacturer rating as exceeding 3/4-ton, mobile home, 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 Mountain Park Ranch so as to be Visible from Neighboring Property, the Common Areas or streets, provided, however, the provisions of this Section shall not apply to (i) pickup trucks or less than 3/4-ton capacity with camper shells not exceeding 7 feet in height measured from ground level and mini-motor homes not exceeding 7 feet in height and 18 feet in length which are parked as provided in Subsection (v) below and are used on a regular and recurring basis for basic transportation, (ii) the parking or storage of emergency vehicles or utility company vehicles in an area designated for such use on a Tract Declaration or on a site plan approved by the Architectural Review Committee, or (iii) 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.

(u) Motor Vehicles. No automobile, motorcycle, motorbike or other motor vehicle shall be constructed, reconstructed or repaired upon any Lot, Parcel or street in Mountain Park Ranch, and no inoperable vehicle may 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 repair of vehicles or temporary constructions shelters or facilities maintained during, and used exclusively in connection with the construction of any improvement approved by the Architectural Review Committee; (ii) any automobile repair business which may be permitted in any Industrial Park or Shopping Center land Use Classification; (iii) the parking of such vehicles during normal business in areas designated for parking in a non-residential Land Use Classification; (iv) vehicles parked in garages on Lots or parcels so long as such vehicles are in good operating conditions and appearance and are not under repair, (v) the storage of such vehicles in an area designated for such purposes on a Tract Declaration or on a site plan approved by the Architectural Review Committee.

(v) **Parking.** It is the intent of the Declarant to restrict On-Street parking as much as possible. Vehicles of all Owners and Residents, and of their employees, guests and invites, are to be kept in garages, carports, residential driveways of the Owner, 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 Mountain Park Ranch is otherwise prohibited or the parking of any inoperable vehicle.

(w) **Swimming.** There shall be no swimming in the Lakes except in case of an emergency.

(x) **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 Architectural Review Committee, any member of the Board, or any authorized representative of either 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 residence, 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.

(y) **Declarant's Exemption.** Nothing contained in this Declaration shall be construed to prevent the erection or maintenance by Declarant, or its duly authorized agents, of structures, improvements or signs necessary or convenient to the development or sale of property within Mountain Park Ranch.

(z) **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 and Residents, the Boards may make rules restricting or regulating their presence on Mountain Park Ranch as part of the Mountain Park Ranch Rules or may direct the Architectural Review Committee to make rules governing their presence on Lots or Parcels as part of the architectural guidelines.

(aa) **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 persons engaged in the construction of residential dwellings on Mountain Park Ranch and parking incidental to the visiting of such model homes so long as the location of such model homes are approved by the Architectural Review Committee, the opening and closing hours are approved by the Board, and the construction, operation and maintenance of such model homes otherwise comply with all of the provisions of this Declaration. The Architectural 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 and any rules of the Architectural Review Committee. Any homes constructed as model homes shall cease to be used as model homes at any time the Owner thereof is not actively engaged in the construction and sale of single family

residences on Mountain Park Ranch and no home shall be used as a model home for the sale of homes not located on Mountain Park Ranch.

(bb) 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 Mountain Park Ranch 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, tennis clubs and/or swimming clubs 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, a business office for the Association within an area having a land use classification of Association Use, tennis courts, swimming pools, and other 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 and a sales, information and marketing center operated by Declarant within an area having a land use classification of Association Use.

Section 3. Covenants, Conditions, Restrictions and Easements Applicable to Lots Within Single Family Residential 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 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 private single family residence, together with a private garage for not more than three (3) cars, a guest house or servant quarter, 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 or servants' quarter 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 provisions of this Declaration and the Mountain Park Ranch Rules.

Section 4. Variances. The Board may, at its option and in extenuating circumstances, grant variances from the restrictions set forth in Article IV of this Declaration or in any Tract Declaration if the Board determines in its discretion (a) either (i) that a restriction would create an unreasonable hardship or burden on an Owner, or (ii) that a change of circumstances since the recordation of this Declaration had rendered such restriction obsolete and (b) that the activity

permitted under the variance will not have any substantial adverse effect on the Owners and Residents of Mountain Park Ranch and is consistent with the high quality of life intended for residents on Mountain Park Ranch.

## **ARTICLE V**

### **ORGANIZATION OF ASSOCIATION**

**Section 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 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 Articles and the Bylaws as the same may be amended from time to time. The initial Board shall be composed of five members. The board may also appoint various committees and appoint a Manager (including but not limited to a management company) 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.

**Section 3. The Mountain Park Ranch 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 Mountain Park Ranch Rules. The Mountain Park Ranch Rules may restrict and govern the use of any area by any Member or Resident, by the family of such Member, or by any invitee, licensee or tenant of such Member; provided, however, that the Mountain Park Ranch rules shall not discriminate among Members and shall not be inconsistent with this Declaration, the Article or Bylaws. Upon adoption, the Mountain Park Ranch Rules shall have the same force and effect as if they were set forth in and were a part of this Declaration.

**Section 4. Personal Liability.** No member of the Board or of any committee of the Association, no officer of the Association, and no Manager or 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, the Manager, 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 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. Ancillary Association.** 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 Mountain Park Ranch, 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 Mountain Park Ranch Rules.

## **ARTICLE VI**

### **MEMBERSHIPS AND VOTING**

**Section 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:

- (a) One Membership for each Lot owned by the Member;
- (b) One Membership for each acre (43,560 square feet) or fraction thereof in each Parcel owned by the Member, except any Parcels which have a land use classification of Single Family Residential, Apartment Development, or cluster Residential;
- (c) One Membership for each completed Rental Apartment owned by the Member;
- (d) In the case of (i) the Owner of a Parcel designated for use as an Apartment Development but as to which construction has not been completed, or (ii) the Owner of a Parcel designated for Condominium Development but as to which a horizontal property regime has not been recorded, one Membership for each Dwelling Unit or Rental Apartment permitted upon the Parcel under the sales contract under which the Owner purchased the Parcel from Declarant. If a site plan for the Parcel is subsequently approved by the Architectural Review Committee and City of Phoenix for a number of Dwelling units or Rental Apartments different than the number of Dwelling Units or Rental Apartments assumed pursuant to the sales contract for the Parcel, the number of Memberships shall be adjusted as of the date of approval of the site plan by the City of Phoenix to reflect the actual number of Dwelling Units or Rental Apartments authorized by the site plan. The number of Memberships held by the Owner of an Apartment Development shall be reduced by one as soon as construction of each Rental Apartment is completed; and
- (e) In the case of the Owner of a Parcel with a land used classification of Single Family Residential or Cluster Residential, one membership for each Dwelling Unit permitted upon the Parcel under the sales contract under which the Owner purchased the Parcel from Declarant. 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. There shall be only one Membership for each Lot, for each Dwelling Unit, for each Rental Apartment and for each acre (or fraction thereof) in a Parcel, which Memberships shall be shared by any joint owners of, or owners of undivided interests in, a Lot, Parcel, Rental Apartment, or Dwelling Unit.

**Section 2. Declarant.** Declarant shall be a Member of the Association for so long as it holds a Class B Membership pursuant to Section 3 below or owns any Lot or Parcel in Mountain Park Ranch.

**Section 3. Voting.** The Association shall have two classes of voting Memberships:

**Class A.** Class A Memberships shall be all Memberships, except the Class B Membership held by Declarant, and each Owner shall be entitled to one 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 violation of this Declaration in accordance with the provisions hereof.

**Class B.** There shall be one Class B Membership which shall be held by Declarant and the Class B Membership shall be entitled to three (3) votes for each Lot and for each acre or portion of an acre in a Parcel owned by Declarant and for each Dwelling Unit and for each non-residential acre provided for in the Additional Property under the Master Development Plan then in effect for Mountain Park Ranch. For purposes of this Section only and in order to pursue the development of Mountain Park Ranch contemplated by the Master Development Plan, the Class B Member shall at any time be deemed to be the owner of 13,243 Lots or Dwelling Units and 1,014 acres in Parcels, less a number of Lots and acres in Parcels equal to the number of Class A Memberships then held by Class A Member. The class B Membership shall cease and be converted to Class A Memberships, on the basis of the number of Lots or Dwelling Units and Parcels actually owned by Declarant, on the happening of the first of the following events:

- (a) When the total votes outstanding in the Class A Memberships equal the total votes outstanding in the Class B Memberships, or
- (b) The first day of September, 2004

**Section 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 each such Membership must be as a unit, and fractional votes shall not be allowed. In the event that a Membership is owned by more than one 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 cast 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 vote is cast for a particular Membership, none of the said votes shall be counted and all said votes shall be deemed void.

**Section 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 3 above times the number of directors to be elected. Each Member shall have the right to cumulate his votes for one 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. 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 7. Transfer of Memberships.** 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, and then only to the transferee of ownership to the 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 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 the ownership to a Lot or Parcel shall operate to transfer the Membership(s) appurtenant to said Lot or Parcel to the new Owner thereof.

**Section 8. Adjustment in Votes of Class B Member.** In the event the general plan of development contemplated by the Master Development Plan (or modification thereof) is not pursued to completion and an affirmative statement of abandonment of any or all parts of the general plan previously approved by the City of Phoenix is recorded in the office of the County Recorder of Maricopa County, Arizona, then, in such event the number of Lots or Dwelling Units deemed owned by Declarant pursuant to Section 3 above shall be reduced by the number of Dwelling Units attributable on the Master Plan to the area so abandoned. In the event, the number of Lots deemed owned by Declarant pursuant to Section 3 above shall be reduced by the number of Dwelling Units attributable on the Master Development Plan to the area so abandoned. For the purpose of this section, a "constructive abandonment" shall be deemed to have occurred when Declarant shall fail to record a Tract Declaration for a period of one (1) year and all on-site and off-site construction activities at Mountain Park Ranch shall have ceased for a period of one (1) year and Declarant and shall have made no substantial progress towards planning or preparation for continuation of the general plan of development for a period of one (1) year. A constructive abandonment shall not occur if the lack of recordation, construction, and planning or preparation shall be due to strike, acts of God, war, riot, insurrection, or other acts which are beyond the control of Declarant.

**ARTICLE VII**  
**COVENANTS FOR ASSESSMENTS AND CREATION OF LIEN**

**Section 1. Creation of Lien and Personal Obligation of Assessments and Maintenance Charges.** Declarant, for each Lot, Parcel and Rental Apartment hereafter established within Mountain Park Ranch, 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 VII, (2) Special Assessments for capital improvements or other extraordinary expenses or costs established by this Article VII, and (3) Maintenance Charges established by Article X, Section 2 and 3, all such Assessments to be established and collected as hereinafter provided. The Annual Assessments, Special 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 Assessments is made and, in the case of Assessments against a Rental Apartment, shall be a charge and lien upon the Apartment Development in which the Rental Apartment is located. The Annual and Special Assessments against each Lot, Parcel or Rental Apartments shall be based on the number of Memberships appurtenant to the Lot, Parcel or Rental Apartment. 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, Parcel or Rental Apartment 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 then.

**Section 2. Annual Assessments.** In order to provided for the uses and purposes specified in Article IX hereof, including the establishment of replacement and maintenance reserves, the Board in each year, commencing with the year in which the first Tract Declaration is recorded, shall assess against each Lot,. Parcel and Rental Apartment an Annual Assessment. The amount of the Annual Assessment, subject to the provisions of Section 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 IX.

**Section 3. Uniform Rate of Assessment.** The amount of any Annual or Special Assessment against each Lot, Parcel or Rental Apartment shall be fixed at a uniform rate per Membership, except that the following Owners shall pay only 25% of the Annual Assessment otherwise attributable to his Membership during the periods hereafter specified:

(a) The Owner of a Lot shall pay only 25% of the Annual Assessment attributable to his Membership until the earlier of (i) the completion of a Dwelling Unit on the Lot or (ii) six month from the commencement of construction of a Dwelling Unit on the Lot.

(b) The Owner of a Parcel restricted under a Tract Declaration to uses other than residential shall pay only 25% of the Annual Assessments otherwise attributable to his Membership until the earlier of (i) the completion of the first building on the Parcel, or (ii) six month from the commencement of construction of the first building on the Parcel.

(c) The Owner of a Parcel which, under a Tract Declaration, is to be used as an Apartment Development (and which has not been converted to Condominiums) or a Condominium Development (and for which the horizontal property regime has not been recorded) shall pay only 25% of the Annual Assessment otherwise attributable to each of his Memberships until a site plan has been approved by the Architectural Review Committee and the City of Phoenix for any portion of the Parcel and an Apartment Development or Condominium Development has either been completed on the Parcel or six months have elapsed since construction of the Development was commenced.

(d) The Owner of a Parcel which, under a Tract Declaration, has been classified as Single Family Residential or Cluster Residential (and which remains a Parcel because it has not yet been subdivided) shall pay only 25% of the Annual Assessment otherwise attributable to each of his Memberships.

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 rental building, ready for the making of interior tenant improvements. For purposes of determining the amount of Annual and Special Assessments only, the Class B Member shall be deemed, with respect to Parcels and Lots owned by the Declarant, to have the same number of Memberships he would have if Class A Memberships were issued with respect to the Lots and/or Parcels owned by the Class B Member, and no Annual or Special Assessment shall be attributable to any portion of the Additional Property until such portion of the Additional Property is added to the Covered Property by Supplemental Declaration pursuant to the provisions of Article XIV. If the Owner of a Parcel or Lot ceases to qualify for the reduced 25% rate during the period to which an Annual Assessment is attributable or the Parcel ceases to be a Parcel because it has been subdivided for Single Family Residential usage, 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 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 provision:

(a) Until January 1 of the year following the recordation of the first Tract Declaration, the Maximum Annual Assessment against each Owner or Lessee shall be \$12.50 per each Membership.

(b) From and after January 1 of the year immediately following recordation of the first Tract Declaration and during such year, the Maximum Annual Assessment may be increased effective January 1 of each year without a vote of the Membership by five percent (5%) or by an amount equal to the rise, if any, of the Consumer Price Index as hereinafter defined, whichever is greater. Any rise in the Maximum Annual Assessment based on the Consumer Price Index 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 - U.S. City Average for Urban Wage Earners and Clerical Workers, 1967 Equals 100, All Items", hereinafter called the "Consumer Price Index". For Purposes of identification only, the Consumer Price Index for January 1984 was 302.7. An adjustment in the Maximum Annual Assessment on the basis of the rise in the Consumer Price Index shall be computed by the following formula:

X = Consumer Price Index for September of 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.

$\left(\frac{Y - X}{X} \text{ plus } 1.0\right)$  multiplied by the initial Maximum Annual Assessment figure = 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 recordation 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 two-thirds (2/3) of each class of Members who are voting in person or by proxy at a meeting duly called for such purpose.

**Section 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, a Special Assessment 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 two-thirds (2/3) of the votes of each class of Members who are voting in

person or by proxy at a meeting duly called for such purpose. In connection with any such Special Assessment, Owners qualifying for paying only 25% of the Annual Assessment attributable to their Memberships pursuant to Section 3 above shall also be required to pay only twenty-five percent (25%) of the Special Assessment otherwise attributable to each such Membership unless such Owner is determined by the Board to be directly benefitted by the capital improvement financed in whole or in part by such Special Assessment, in which event the Owner shall pay the full amount of the Special Assessment attributable to his Membership. 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 6. Notice and Quorum for Any Action Authorized Under Sections 4 and 5.** Written notice of any meeting called for the purpose of taking any action authorized under Sections 4 or 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. 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 upon the filing of the first Tract Declaration and terminate on December 31 of such year. The Board in its sole discretion from time to time may change the Assessment Period by recording with the County Recorder of Maricopa County, Arizona, an instrument specifying the new Assessment Period.

**Section 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 Assessment and the Maintenance Charges imposed pursuant to Article X, Sections 2 and 3, 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 therefore shall not be foreclosed or otherwise enforced until the Member has been given no 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. The Association shall be under no duty to refund any payments received by it even though the ownership of a Membership changes during an Assessment Period; successor Owners of Lots or Parcels and Rental Apartments shall be given credit for prepayments, on a prorated basis, made by prior Owners. In case the Owner of a Membership becomes liable for payment of an increased sum pursuant to Section 3 of this Article during the Assessment Period, he shall notify the Association but his failure to notify the Association shall not relieve him of the liability for such amounts. The amount of the Annual Assessment against

Members who become such during an Assessment Period upon the recordation of a Tract Declaration shall be prorated and such new Members shall not be liable for any previously levied Special Assessments.

**Section 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 from thirty (30) days after the due date until paid at a rate equal to the greater of (a) twelve percent (12%) per annum or (b) the then prevailing interest rate on loans insured by the Federal Housing Association, or (c) the then prevailing interest rate on loans guaranteed by the Veterans Administration, and the Member shall be liable for all costs, including attorneys' fees, which may be incurred by the Association in collecting the same. The applicable interest rate on delinquent Assessments shall be determined on a daily basis. 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 10. Evidence of Payment of Annual and Special Assessments and Maintenance Charges.** Upon receipt of a written request by a Member or any person, the Association within a reasonable period of time thereafter shall issue to such Member or other person a written certification stating (a) that all Annual and Special Assessments and Maintenance Charges (including interest, costs and attorney's fees, if any, as provided in Section 9 above) have been paid with respect to any specified Lot, Parcel or Rental Apartment 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 purchasers of, or lender on, the Lot, Parcel or Rental Apartment in question.

**Section 11. Property Exempted from the Annual and Special Assessments and Assessment Lien.** Exempt Property shall be exempted from assessment of the Annual and Special Assessments and, except as provided in Article X, Section 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 assessment of 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 VIII

### **ENFORCEMENT OF PAYMENT OF ANNUAL AND SPECIAL ASSESSMENTS AND MAINTENANCE CHARGES AND OF ASSESSMENT LIEN**

**Section 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 an unreasonable period of time after written request to do so, then any Member may enforce them on behalf of the Association by any appropriate action, whether in law or in equity.

**Section 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 X, Sections 2 and 3, 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 3. Subordination of Assessment Lien to First Mortgage or Deed of Trust; Property of Lien.** The Assessment Lien provided for herein shall be subordinate to any first mortgage lien held by, or 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 upon the date of issuance of a sheriff's or trustee's deed or deed in lieu of foreclosure, the Assessment Lien immediately shall become and remain superior to any and all other charges, liens or encumbrances (except liens for taxes or other public charges which by applicable law are expressly made superior), and 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 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 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 VII, Section 9.

## **ARTICLE IX**

### **Use of Funds; Borrowing Power**

**Section 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 Mountain Park Ranch 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 Mountain Park Ranch, which may be necessary, desirable or beneficial to the general common interests or Mountain Park Ranch, 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, public right of way, drainage areas and Hillside within Mountain Park Ranch, recreation (including operation and maintenance of the Lakes), liability insurance, communications, education, 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 for which any municipality may expend its funds under the laws of the State of Arizona or such municipality's charter.

**Section 2. Borrowing Power.** The Association may borrow money in such amounts, at such rates, upon such terms and security, and for such periods of time as is necessary or appropriate.

**Section 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 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; provided, however, that all Special Use Fees collected shall, if imposed in connection with a particular improvement, be separately accounted for as to each separate improvement pertaining to which they are collected and shall be expended on the particular improvement to which they pertain.

**Section 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 with minimum bodily injury limits of \$1,000,000.00 per occurrence and minimum property damage liability limits of \$500,000.00 per occurrence or a combined single limits of \$1,000,000.00 per occurrence.

## **ARTICLE X**

### **Maintenance**

**Section 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, Hillside, riding paths, parking areas, drives, recreational facilities and the roofs, interiors and exteriors of the buildings and structures located upon said properties; 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 (i) such landscaping or structures are available for use by all Owners and Residents or are within easements intended for the general benefit of Mountain Park Ranch and (ii) 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 which are within the exterior boundaries of the Covered Property which are within areas shown on a subdivision plat or other plat of dedication for the Covered Property or covered by a Tract Declaration, and which are intended for the general benefit of the Owners and Residents of the Covered Property 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 IV, Section 2(d) of this Declaration unless the Association elects to maintain such areas and as to which the Association has not previously made such an election to maintain. Specific areas to be maintained by the Association may be identified on subdivision plats recorded or approved by Declarant, in Tract Declarations and in deeds from Declarant to a transferee of a Lot or Parcel, but the failure to so identify such areas shall not affect the Association's rights or responsibilities with respect to such Common Areas and other areas intended for the general benefit of Mountain Park Ranch.

The Board shall use a reasonably high standard of care in providing for the repair, management and maintenance of said property so that the Mountain Park Ranch development will reflect a high pride of ownership. In this connection the Association may, subject to any applicable provisions on Special Assessments for capital improvements, in the discretion of the Board:

(a) Reconstruct, repair, replace or refinish any improvement or portion thereof upon Association Land;

(b) Construct, reconstruct, repair, replace or refinish any road improvement or surface upon any portion of the Common Area used as a road, street, walk, driveway, parking area, or lake area, except that no permanent improvements shall 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;

(c) Replace injured and diseased 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;

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

(e) 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 purpose 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 plat, 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 and Residents of Mountain Park Ranch 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 X 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.

**Section 2. 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, or invitees, 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. Any charges or fees to be paid by the Owner of a Lot or Parcel pursuant to Section 1 of this Article X in connection with a contract entered into by the

Association with an Owner for the performance of an Owner's maintenance responsibilities shall also become a part of such Assessment and shall be secured by the Assessment Lien.

**Section 3. 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 Mountain Park Ranch 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 architectural guidelines and the standards of the Architectural Review Committee, the Board may by resolution 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 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 XI**

### **ARCHITECTURAL REVIEW COMMITTEE**

**Section 1. Establishment.** The Board shall establish an Architectural Review Committee to perform the functions of the Architectural Review Committee set forth in this Declaration and shall adopt the procedural rules and regulations for the performance of such duties by the Architectural Review Committee, including procedures for the preparation, submission and determination of the application for any approvals required by this Declaration or any Tract Declaration. The Architectural Review Committee shall consist of such number of regular members and alternate members as the Board may designate and such members shall be appointed by the Board. The appointees need not be architects, owners, or residents and do not need to possess any special qualifications of any type except such as the Board may, in its discretion, require. The Architectural Review Committee shall hold regular meetings, a quorum for such meeting shall consist of a quorum of the regular members, and the concurrence of a majority of the regular members shall be necessary for any decision of the Architectural Review Committee. An alternate member may participate at any meeting at which there is not a quorum of regular members present, may constitute a quorum by his (their) presence and shall have all of the authority of a regular member while so participating. The Architectural Review Committee shall promulgate architectural guidelines and standards to be used in rendering its decisions, which guidelines and standards must be approved by the Board prior to their implementation. Subject to the provisions of Section 2 of this Article, the decision of the Architectural Review Committee shall be final on all matters submitted to it pursuant to this Declaration.

**Section 2. Appeal to Board.** Any Owner or other Resident aggrieved by a decision of the Architectural Review Committee may appeal the decision to the Board in accordance with procedures to be established by the Board. In the event the decision of the Architectural Review Committee is overruled by the Board on any issue or question, the prior decision of the Architectural Review Committee shall be deemed modified to the extent specified by the Board and, for the purposes of this Declaration,

such decision, as so modified, shall thereafter be deemed the decision of the Architectural Review Committee.

**Section 3. Fee.** The Board may establish a reasonable processing fee to defer the costs of the Association in considering any requests for approvals submitted to it, which fee shall be paid at the time the request for approval is submitted.

## **ARTICLE XII**

### **RIGHTS AND POWERS OF ASSOCIATION**

**Section 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 2. Association's Rights of Enforcement of Provisions of This and Other Instruments.** The Association, as the agent and representative of the Owners 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 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 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, and provided further that the transaction or contract is fair and reasonable. 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 Declarant, its affiliated companies or any competitor thereof and may vote thereafter to authorize any such contract, transaction or approval with like force and effect as if he were not so interested.

**Section 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 buildings, structures and 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) or Tract Declaration restricting or limiting the use of the Association Land.



## ARTICLE XIII

### **TERM; AMENDMENTS; TERMINATION**

**Section 1. Term; Method of Termination.** This Declaration shall be effective upon the date of recordation hereof 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, unless there is an affirmative vote to terminate this Declaration by the then Members casting ninety percent (90%) of the total votes cast at an election held for such purpose within six (6) months prior to the expiration of the initial effective period hereof or any ten (10) year extension. The Declaration may be terminated at any time if ninety (90%) of the votes cast by each class of Members shall be cast in favor of termination at an election held for such purpose. Anything in the foregoing to the contrary notwithstanding, no vote to terminate this Declaration shall be effective unless and until the written consent to such termination has been obtained, within a period from six (6) months prior to such vote to six (6) months after such vote from the holders of Recorded first mortgages or deeds of trust to which the Assessment Lien is subordinate pursuant to Article VIII, Section 3 above, 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 with County Recorder of Maricopa County, Arizona, a Certificate of Termination, duly signed by the President or Vice President and attested by the Secretary or Assistant 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.

**Section 2. Amendments.** This Declaration may be amended by recording with the County Recorder of Maricopa County, Arizona, a Certificate of Amendment, duly signed and acknowledged as required for a Certificate of Termination in Section 1 of this Article. The Certificate of Amendment shall set forth in full the amendment

adopted, and, except as provided in Section 3 of this Article, shall certify that at an election duly called and held pursuant to the provisions of the Articles and Bylaws the Members casting seventy-five (75%) of the votes at the election voted affirmatively for the adoption of the amendment. A Tract Declaration may be amended in the same manner as this Declaration, but a Tract Declaration, so long as Declarant is the owner of a Lot or Parcel subject to such Tract Declaration, may be amended by a Recorded instrument executed by Declarant, the Owners of all Lots and Parcels subject to the Tract Declaration, the holders of any first mortgages and deeds of trust described in Article VIII, Section 3, on Lots or Parcels subject to the Tract Declaration, and the FHA or VA, as applicable, if such agency has guaranteed or insured any loan on a Lot or Parcel subject to the Tract Declaration.

Section 3. Right of Amendment if Requested by Governmental Agency of 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 FHA,VA, FNMA, or FHLMC and to further amend this Declaration 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 recordation, 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 for the amendatory language requested by such agency or institution. Recordation 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 Covered Property 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 3 Declarant shall not have any right to amend this Declaration otherwise than in accordance with and pursuant to the provisions of Section 2 of the Article.

## **ARTICLE XIV**

### **ANNEXATION OF ADDITIONAL PROPERTY**

**Section 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 the Section of this Article entitled "Supplementary Declarations", 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 three (3) years (i) subsequent to the recordation of this Declaration or (ii) subsequent to the last recordation of a Supplementary Declaration, whichever of (i) and (ii) shall have later occurred. The recordation 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 Covered Property 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 2. Supplementary Declarations.** The annexations authorized under the foregoing section shall be made by recording in the office of the County Recorder of Maricopa County, Arizona 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 and modifications of the covenants, conditions and restrictions 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, modify or add to the covenants established by this Declaration within the existing Covered Property.

## **ARTICLE XV**

### **MISCELLANEOUS**

**Section 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 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 3. Rules Against Perpetuities.** If any interest purported to be created by this Declaration is challenged 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 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 4. Change of Circumstances.** Except as otherwise expressly provided in this Declaration, no change of conditions or circumstances shall operate to extinguish, terminate or modify any of the provisions of this declaration.

**Section 5. 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 rights, activities and duties, provided said rules and regulations are not inconsistent with the provisions of this Declaration.

**Section 6. 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 in the office of the County Recorder of Maricopa County, Arizona, Declarant makes no warranties or representations whatsoever that the plans presently envisioned for the complete development of Mountain Park Ranch 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 7. References to the Covenants in Deeds.** Deeds to and instruments affecting any Lot or Parcel or any part of the Covered Property 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 8. Successors and Assigns of Declarant.** Any reference in this Declaration to the Declarant shall include any successors or assignees of Declarant's rights and powers hereunder.

**Section 9. 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 gender words; words in the singular shall include the plural; and words in the plural shall include the singular.

**Section 10. 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 11. 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 City of Phoenix or Mountain Park Ranch. 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 12. FHA/VA Approval.** As long as there is a Class B Membership, and 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 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 amendment of this Declaration.