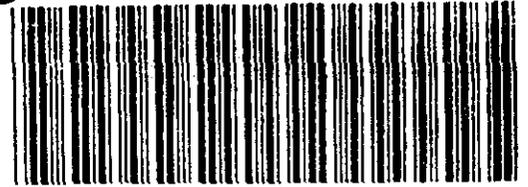


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**AMENDED AND RESTATED  
DECLARATION OF  
COVENANTS, CONDITIONS AND RESTRICTIONS  
OF  
MOUNTAIN VIEW ESTATES**

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THIS DECLARATION, made this 8<sup>th</sup> day of January, 2001, by MOUNTAIN VIEW ESTATE HOMEOWNERS ASSOCIATION, a non-profit association, hereinafter called "Declarant" or the "Association", replaces and supersedes all CC&Rs previously enacted by the Declarant or its predecessors in interest;

**WITNESSETH**

WHEREAS, the Association is a non-profit association, comprised of all owners of lots within MOUNTAIN VIEW ESTATES, a subdivision consisting of:

Lots 1 through 56 inclusive and tract A, Mountain  
View Estates, replat according to Book 164, page 41,  
records of Maricopa County, Arizona;

and the Association has ownership of all the property, both real and personal, which is hereinafter defined and referred to as the "Common Areas" within the subdivision; and

WHEREAS, said Mountain View Estates is currently subject to that certain Declaration of Covenants, Conditions and Restrictions of Mountain View Estates dated September 3, 1976 and recorded in Docket 11865 at page 516, as such Declaration may have been amended from time to time (the "Original Declaration"); and

WHEREAS, the Original Declaration provides that it may be amended by an instrument signed by the owners of not less than 75% of the lots within the subdivision, and this requirement has been met as evidenced by the signatures of 43 lot owners attached to this Amended and Restated Declaration of Covenants, Conditions and Restrictions of Mountain View Estates (the "Amended Declaration").

NOW, THEREFORE, the Association hereby declares that all the properties described above (including lots and common areas) shall be held, sold, and conveyed, subject to the following easements, restrictions, covenants, and conditions which are for the purpose of preserving the distinctive Frank Lloyd Wright character of the properties and thereby protecting and enhancing the value, desirability, and attractiveness of the real property; and all of which are hereby declared to be for the benefit of all of the property described herein, and the owners thereof, their heirs, successors, grantees, and assigns. These easements, covenants, restrictions, and conditions shall run with the real property and shall be binding on all parties having or acquiring any right, title, or interest in the described properties, or any part thereof.

#### P R E A M B L E

Mountain View Estates, its homes, and its front setbacks, were designed by the architects of the Frank Lloyd Wright Foundation located at Taliesin West.

They created a landmark masterpiece community whose distinctive home designs and consistent flowing front setbacks and landscaping add value to each home in the community.

John Rattenbury, a principal of Taliesin Architects, explained: "When we designed Mountain View Estates in 1976, the underlying philosophy was to create an overall harmony in the community by way of forms, colors, textures, and landscaping. Although each home expresses some individuality, and in fact none are identical, the beauty of the neighborhood comes from the way each home blends with the community and adds to the harmony of the ensemble."

If additions, alterations, or changes are undertaken without thoughtful design controls, property values could be diminished. For the same reason, it is imperative that each property be maintained to proper standards. The intent of these Covenants, Conditions, and Restrictions (the CC&Rs), is to provide the means by which all homeowners can preserve and enhance the value of their homes and their property and that of their neighbors.

**Grandfather Clause.** Violations to this revised Declaration which are already in place as of the date of this Declaration, and which are not violations of the previous declaration of covenants, conditions, and restrictions governing the Association, shall be "grandfathered" and no corrective action shall be taken by the Association, although it is strongly hoped and requested that applicable homeowners will voluntarily bring their property into accordance with this Declaration.

## **ARTICLE I DEFINITIONS**

**Section 1.** "Association" shall mean and refer to MOUNTAIN VIEW ESTATES HOMEOWNERS ASSOCIATION, its successors and assigns.

**Section 2.** "Assessment Lien" shall mean the charge and continuing servitude and lien against a Lot for payment of Assessments, as defined herein.

**Section 3.** "Member" shall mean and refer to the record owner, whether one or more persons or entities, of equitable title (or legal title if equitable title has merged) of any Lot which is a part of the Properties.

**Section 4.** "Property" or "Properties" shall mean and refer to that certain real property hereinbefore described, and such additions thereto as may hereafter be brought within the jurisdiction of the Association.

**Section 5.** "Common Area" shall mean all real property owned by the Association for the common use and enjoyment of the Members, including, but not limited to, all of the above-referred to Properties except the land specifically designated as a "Lot" or "Unit" on the above-referred to plat of record and all recorded amendments thereto, and streets dedicated to the public and accepted by governmental agency. The Common Area owned by the Association is described in Exhibit "A" attached hereto and incorporated herein by this reference.

**Section 6.** "Lot" or "Unit" shall mean and refer to numbered lots shown upon a recorded subdivision map of the properties, recorded in Book 164 of Map and Plats at page 41, and all recorded amendments thereto.

**Section 7.** "Declarant" shall mean and refer to Mountain View Estates Homeowners Association, a non-profit association.

**ARTICLE II**  
**MEMBERSHIP**

Membership in the Association shall be limited to record owners of equitable title (or legal title if equitable title has merged) of a lot or of any property any duly annexed property by the Association. An owner of a Lot shall automatically, upon becoming the owner of said Lot, be a member of the Association and shall remain a member of the Association until such time as their ownership ceases, for any reason, at which time their membership in said Association shall automatically cease. Ownership of a Lot shall be the sole qualification and criteria for membership. However, the foregoing is not intended to and does not include persons or entities who hold an interest merely as security for the performance of an obligation.

A membership in the Association shall not be transferred, pledged, or alienated in any way, except upon the sale of such Lot and then only to such purchaser, or by intestate succession, testamentary disposition, foreclosure of mortgage of record, or other legal process. Any attempt to make a prohibited transfer is void and will not be reflected upon the books and/or records of the Association. In the event the owner of any Lot should fail or refuse to transfer the membership registered in their name to the purchaser of such Lot, the Association shall have the right to record the transfer upon the books of the Association and issue a new membership to the purchaser and thereupon, the old membership, outstanding in the name of the seller, shall be null and void as though the same had been surrendered.

**ARTICLE III**  
**VOTING RIGHTS**

**Section 1.** The Association shall have one class of voting membership, which class shall consist of all those Members as defined in Article II. A Member shall be entitled to one (1) vote for each Lot owned by a said member as provided above; except that in no event shall there be more than one vote per Lot. In the event a Lot is owned by more than one Member, then each such Member shall have only a portion of a vote the numerator of which shall be one and the denominator of which shall be the number of Members holding an ownership interest in their respective Lot.

**Section 2.** In the event any Member shall be in arrears in the payment of any amounts due under any of the provisions of this Declaration for a period of thirty (30) days, or shall be in default in the performance of any of the terms of this Declaration for a period of thirty (30) days, said Member's right to vote as a member of the Association shall be suspended and shall remain

suspended until all payments are brought current and all defaults are remedied.

## ARTICLE IV PROPERTY RIGHTS

**Section 1. Member's Easement of Enjoyment.** Every Member shall have a right and easement of enjoyment in and to the Common Area, which right and easement of enjoyment shall be appurtenant to such Member's Lot and shall pass with the title to such Lot, to be subject to those items hereinafter set forth. It is expressly acknowledged and agreed by all the parties concerned that this paragraph is for the mutual benefit of all Members of the Lots and is necessary for the protection of said Members. Such right and easement of enjoyment shall be subject to such reasonable rules and regulations as from time to time are promulgated by the Board of Directors, which may include:

(a) The right of the Association to dedicate or transfer all or any part of the Common Area to any public agency, authority, or utility for such purposes and subject to such conditions as may be agreed to by the Members, provided that no such dedication or transfer shall be effective without the written consent of three-fourths (3/4) of the Members.

(b) The right of the Association, in accordance with its Articles and By-Laws, to borrow money for the purposes of improving the Common Areas and facilities and in aid thereof, to mortgage said property.

### **Section 2. Eminent Domain.**

**2.1 Definition of Taking.** The term "taking" as used in this Section 2 shall mean condemnation by eminent domain or sale under threat of condemnation of all or any portion of the Common Areas.

**2.2 Representation in Condemnation Proceedings.** In the event of a threatened taking, of all or any portion of the Common Areas, and subject to Section 1 of this Article IV, the Members may appoint the Association, through such persons as the Board may delegate, to represent all of the Members in connection therewith. The Association shall act in its taking and shall be entitled to make a voluntary sale to the condemnor in lieu of engaging in a condemnation action.

**2.3 Award for Common Areas.** Any awards received by the Association on account of the taking of Common Areas at its sole discretion, may retain any award in the general funds of the Association or distribute all or any portion thereof to the Members as their interest may appear. The rights of a Member and the Mortgagee of the Member's Lot as to any distribution shall

be governed by the provisions of the Mortgage encumbering such Lot.

**Section 3. Waiver of Use.** No Member shall be exempted from personal liability for Assessments or the Member's Lot released from liens or changes arising under this Declaration by waiver of any right of use or enjoyment of the Common Areas.

## ARTICLE V

### COVENANT FOR MAINTENANCE ASSESSMENTS

**Section 1. Creation of the Lien and Personal Obligation of Assessments.** The Association, for each Lot owned within the Properties, hereby covenants, and each owner of any Lot, by acceptance of a deed therefore, whether or not it shall be so expressed in any such deed or other conveyance, is deemed to covenant and agrees to pay to the Association:

- 1) Annual assessments or charges, and
- 2) Special assessments for capital improvements

Such assessments to be fixed, established, and collected from time to time as hereinafter provided.

The annual and special assessments, together with interest accruing at the annual rate of eighteen percent (18%) per annum if not timely paid, and costs actually incurred by the Association together with its reasonable attorney's fees incurred in collecting such amounts, shall be a charge on the land and shall be a continuing lien upon the Property against which each such assessment is made. Each such assessment, interest, costs, and reasonable attorney's fees, shall also be the personal obligation of the person who was the owner of such Lot at the time when the assessment fell due. The personal obligation shall not pass to a successor in title to the Lot unless it is expressly assumed or unless prior to such transfer of title, as evidenced by the records of the County Recorder, or other appropriate governmental agency, a lien for such assessment shall have been filed or recorded in writing.

**Section 2. Purpose of Assessments.** The assessments levied by the Association shall be used exclusively for the purpose of promoting the recreation, health, safety, and welfare of the residents of the Properties and, in particular, for the improvement and maintenance of the Properties, services, and facilities devoted to this purpose and related to the use and enjoyment of the Common Area, and of the homes situated on the Properties.

**Section 3. Annual Assessment.** Association and each Member, for themselves, their heirs, successors, and assigns, further covenant that each such Lot shall be subject to annual

assessments (the "Annual Assessment") in amounts to be determined by the Association. The amount, which is to be pro-rated among the Members of the Association on the basis of the number of Lots owned, shall be established annually by the Board of Directors.

An Annual Report shall be prepared by or under the direction of the Board of Directors, the exact date of which shall be determined by the Board of Directors. The Board of Directors shall meet with the Members within sixty (60) days following the end of the previous year to discuss and set the Annual Assessment for the current year.

The Annual Assessment may be increased by the Board of Directors, effective the first day following the end of each fiscal year, subject to the approval of no less than fifty one percent (51%) of the Members who are voting and present in person, or by proxy, at a meeting duly called for that purpose and at which a quorum is present. This assessment shall not be more than twenty percent (20%) greater than the immediately preceding fiscal year's assessment without the approval of at least sixty seven percent (67%) of the Members who are voting and present in person, or by proxy, at a meeting duly called for that purpose and at which a quorum is present. Written notice of the Annual Assessment shall be sent to every Member subject thereto. The due dates shall be established by the Board of Directors. The Association shall, following demand and within a reasonable time and for a reasonable charge, furnish a signed certificate setting forth whether the assessments on a specified Lot have been paid, and the Board shall have no obligation to provide such information unless such a request is made.

**Section 4. Special Assessments.** In addition to the Annual Assessments authorized above, the Association's Board of Directors shall have the power and right to levy, in any assessment year, a special assessment ("Special Assessment") applicable to that year only for the purpose of providing for the construction of additional recreational and other common facilities, unexpected repairs, the alteration, replacement, demolition or removal of common facilities from time to time, or for other unusual, non-recurring expenses incurred or to be incurred by the Association, as in the Board of Director's discretion appears to be in the best interest of the Association. Any actions levying a Special Assessment for that year shall be authorized by an affirmative vote of fifty-one percent (51%) of the Board of Directors at a meeting duly called at which a quorum is present, and ratified and approved by the affirmative vote of sixty-seven percent (67%) of the Members of the Association present in person, or by proxy, at a duly called meeting at which a quorum is present.

For purposes of Section 3 and Section 4 of this Article, the presence at a duly called meeting

of Members or proxies entitled to cast sixty-seven percent (67%) of all the votes of membership shall constitute a quorum. If the required quorum is not forthcoming in any meeting, another meeting may be called by sending written notice to all Members not less than ten (10) days nor more than fifty (50) days in advance of the meeting, setting forth the purpose of the meeting and the required quorum at any such subsequent meeting shall be seventy-five percent (75%) 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 5. Rate of Assessments.** Both annual and special assessments must be fixed at a uniform rate for all Lots and shall be collected on an annual basis. Each Lot's pro-rata share of any assessment shall be one-fifty-sixth ( $1/56$ ) of the total amount of said assessment, unless the number of Lots in the Association shall be changed to greater or less than 56, in which event the assessment shall be pro-rated by a fraction, the numerator of which shall be one and the denominator of which shall be the number of Lots then in the Association.

**Section 6. Non-payment of Assessments and Remedies.** Each Member, for, his or her heirs, grantees, and assigns, covenants that with respect to assessments or charges determined during the period that he or she is a Member, will remit those charges directly to the Board, or to such other party or parties as directed by the Association's Board of Directors.

Any assessments which are not paid when due shall be delinquent. Each Member further agrees that such charges, if not paid within thirty (30) days after the due date, shall bear interest from the date of delinquency at a rate of eighteen percent (18%) per annum and shall become a lien upon said Member's Lot and there shall continue to be such lien until fully paid.

Each Member expressly vests in the Association or its agent, the right and power to bring any action at law or in equity against the Member personally obligated to pay the any amounts due under this Declaration, and/or to foreclose the lien against such Member's Lot and the costs and reasonable attorney's fees of any such action shall be added to the amount of such assessment and the interest accrued thereon. Each such Member, by their acceptance of a deed to a lot, hereby expressly vests in the Association a power of sale in connection with said lien. The lien provided for in this section shall be in favor of the Association and be for the benefit of all other Members. The Association, shall have the power to bid on an interest foreclosed at a foreclosure sale and to acquire, hold, lease, mortgage, and convey the same. No Member may exempt themselves from liability under this Declaration by the abandonment of their Lot.

**Section 7. Exempt Property.** The Common Area shall be exempt from the assessment created herein; however, no land or improvements devoted to dwelling use shall be exempt from said assessments.

**Section 8. Insurance.** The Board of Directors, or its duly authorized agent, shall have the authority to and shall obtain insurance for all of the Common Area buildings and facilities, and shall also obtain a Broad Form Public Liability Policy covering all common elements and all damage or injury caused by the negligence of the Association or any of its agents. Said insurance may include coverage against vandalism. Premiums for all such insurance shall be a common expense to be paid out of the Annual Assessments. All such insurance coverage obtained by the Board of Directors shall be written in the name of the Association. Neither the Association nor the Board, nor any member of the Board or Officer or Agent of the Association, shall be liable to any person for failure of the Association to secure and maintain any such insurance coverage where such coverage is not available in the State of Arizona at a reasonable cost and on other reasonable terms and conditions.

**Section 9. Rights of First Mortgagees.**

**9.1 General Provisions.** Notwithstanding and prevailing over any other provisions of this Declaration, the Articles, Bylaws, or Association Rules, the following provisions shall apply to and benefit each holder of a First Mortgage upon a Lot.

**9.2 Subordination of Lien.** Any lien which arises against a Lot by reason of the failure or refusal of a Member to make timely payment of any Assessment shall be subordinate to the lien of a prior recorded First Mortgage on the Lot, acquired in good faith and for value, except to the extent said lien secures the amount of any unpaid Assessment (together with any interest, costs, reasonable attorneys' fees and late charges related thereto) which accrues from and after the date on which a First Mortgagee comes into possession of or acquires title to the Lot, whichever occurs first, and if any lien for unpaid Assessments which becomes payable after recordation of the First Mortgage and prior to the date on which the First Mortgagee comes into possession of or acquires title to the Lot is not extinguished, to the extent it secures said unpaid Assessments, by the process by which such First Mortgagee acquired title to the Lot, neither such First Mortgagee nor a third party purchaser shall be liable for such unpaid Assessments, and, upon written request to the Association by such First Mortgagee or purchaser, the lien shall be released in writing by the Association to the extent it secured such unpaid Assessments. Nevertheless, in the event the

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**9.3 No Personal Liability.** A First Mortgagee shall not in any case or manner be personally liable for the payment of any Assessment or charge, nor the observance or performance of any covenant, restriction, or rule and regulation of the Association, or any provision of the Articles or Bylaws, or any management agreements, except for those matters which are enforceable by

injunctive or other equitable actions, not requiring the payment of money, except as specifically provided in this Article V.

**9.4 Enforcement After Foreclosure Sale.** An action to abate the breach of any of these covenants, conditions, restrictions, and reservations may be brought against purchasers who have acquired title through foreclosure of a Mortgage and the subsequent foreclosure or trustee's sale (or through any equivalent proceedings), and the successors in interest to said purchasers, even though the breach existed prior to the time said purchaser acquired an interest in such Lot.

**9.5 Subject to Declaration.** At the time a First Mortgagee comes into possession of or becomes record owner of a Lot, the First Mortgagee shall be subject to all of the terms and conditions of this Declaration including, but not limited to, the obligation to pay all Assessments and charges accruing thereafter, in the same manner as any other Member.

## ARTICLE VI PARTY WALL

**Section 1. General Rules of Law to Apply.** Each wall which is built as a part of the original construction of the homes, walls, or fences upon the Properties and placed on the dividing line between the Lots shall constitute a party wall, and to the extent not inconsistent with the provisions of this Article, the general rules of law regarding party walls, including without limitation, liability for property damage due to negligence or willful acts or omissions, shall apply thereto.

**Section 2. Sharing of Repairing Maintenance.** The cost of reasonable repair and maintenance of a party wall shall be shared by the Members in proportion to the number of lineal feet of their Lot adjoining such wall. In the event any such party wall is damaged or destroyed through the act of an adjoining Member or any of their guests, tenants, invitees, licensees, agents, or members of their family, whether or not such act is negligent or otherwise culpable, so as to deprive the other adjoining Member of the full use and enjoyment of such wall, then the first of such Members shall forthwith proceed to promptly rebuild and repair the same to as good a condition as formerly, without cost to the adjoining Member.

**Section 3. Destruction by Fire or Other Casualty.** If a party wall is destroyed or damaged by fire or other casualty, any Member whose Lot adjoins the wall may restore it and thereafter the other Members, whose Lots adjoin the wall, shall contribute to the cost of restoration thereof, in proportion to the number of lineal feet of their Lot adjoining the wall; without prejudice,

however, to the right of any such Members to call for larger contribution from the others under any rule of law or equity regarding liability for negligent or willful acts or omissions.

**Section 4. Right to Contribution Runs with the Land.** The right of any Member to contribution from any other Member under this Article shall be appurtenant to the land and shall pass to such Members and successors in title, and shall be enforceable as provided at law or in equity.

**Section 5. Arbitration.** In the event of any dispute concerning a party wall or arising under the provisions of this Article, each party shall choose one arbitrator and such arbitrators shall choose one additional arbitrator and the decision will be by the majority of all the arbitrators. Should any one party refuse to appoint an arbitrator within ten (10) days after written request therefore, the Board of Directors of the Association shall select an arbitrator for the refusing party.

## ARTICLE VII

### ESTABLISHMENT OF COMMON AREA EASEMENTS

The Declarant, by this covenant and in accordance with the Declaration of the Covenants, Conditions and Restrictions of Mountain View Estates recorded with the Maricopa County Recorder's Office at Docket No. 11865, pgs. 516-536, has established, for the benefit of all Members, a common area easement, more particularly described as shown on Exhibit "B" attached hereto and incorporated herein as if fully set forth. Said easement is established for the purpose of providing ingress and egress to and from the fences or walls that exist on the individual perimeter Member's Lots, and further, for the purpose of the maintenance of the exterior of the fence or walls and other structures that exist as shown on Exhibit "B." The purpose and intention of the easement granted is that the parties hereto, their respective heirs, executors, administrators, and assigns shall allow the Association or its authorized representative to have ingress and egress for the purposes set forth above, over and upon all of that portion set out in Exhibit "B." This easement is superior and paramount to the rights of any of the Members over which said easement runs, and it is a covenant running with the land intended to be perpetual. It is agreed that the maintenance of the exterior portions of the walls will be provided for by the Association as part of its duties as heretofore set out.

**ARTICLE VIII**  
**ARCHITECTURAL REVIEW**

**Section 1. Organization of Architectural Review Committee.** The Board shall establish an Architectural Review Committee and shall adopt the procedural rules and substantive regulations for the performance of the duties of the Architectural Review Committee. The Architectural Review Committee shall be organized as follows:

**1.1 Powers and Duties.** The Architectural Review Committee (the "Committee") shall have all of the powers, authority, and duties conferred upon it by this Declaration or by the Articles, Bylaws, or Association Rules, or by any similar recorded instrument approved in advance by the Board. Without limiting the generality of the foregoing, it shall be the duty of the Committee to consider and act upon all proposals or plans submitted to it pursuant to the provisions of this Declaration, to perform any other duties delegated to it by the Board, and to carry out all other duties imposed upon it by this Declaration. In the absence of an Architectural Review Committee consisting of at least three (3) members, the powers, authority, and duties of the Committee shall be exercised by the Board.

**1.2. Committee Composition.** The Architectural Review Committee shall consist of three (3) to five (5) members as determined by and appointed by the Board. From time to time as deemed appropriate by the Committee, a professional Architect trained in the Taliesin tradition may be retained to advise the Committee with regard to design approval issues. Appointment and any payment of the Architect to be incurred by the Association must be submitted to the Board for prior approval. A member of the Committee shall not be required to satisfy any particular qualification for membership and may be a member of the Board, an officer of the Association, a Member, or a professional architect.

**1.3. Term of Office.** Unless a member of the Committee has resigned or been removed, his or her term of office shall be for a period of one (1) year, or until the appointment of his or her successor. Any replacement for a member who has resigned or been removed shall serve such member's unexpired term. Members of the Committee who have resigned, been removed, or whose terms have expired may be reappointed.

**1.4. Appointment and Removal.** The right to appoint and remove members of the Committee at any time shall be and is hereby vested solely in the Board; provided, however, that no member may be appointed or removed from the Committee except by the vote or written consent

of at least fifty-one percent (51%) of the members of the Board.

**1.5. Resignations.** Any member of the Committee may at any time resign from the Committee by giving five (5) days prior written notice thereof to the other members of the Committee and the Board.

**1.6. Vacancies.** Vacancies on the Committee, however caused, shall be filled by the Board. A vacancy or vacancies on the Committee shall be deemed to exist in the case of the death, resignation, or removal of any member.

**Section 2. Meetings and Compensation of Architectural Review Committee.** The Architectural Review Committee shall meet from time to time as necessary, either in person, by telephone or in writing, to perform its duties hereunder. The vote or written consent of a majority of the members shall constitute the act of the Committee. The Committee shall keep and maintain a written record of all actions taken by it. Although members of the Committee shall not be paid for their services, consultants hired by the Committee may be paid for their services.

**Section 3. Obligation to Obtain Approval.**

**3.1.** No building, fence, wall, pool, roadway, driveway, or other structure or improvement, nor any excavation, grading or other work, any of which is visible from the center point of any rear yard of any Lot from a height no greater than six feet (6') above ground level, shall be commenced, erected, repaired (except to its original condition), or maintained within the Property, nor shall any exterior addition or change or alteration be made to or in any such structure or improvement, including, without limitation, awnings, patio covers, exterior walls, fences, the color of any structure or improvement, or the drainage or grading on any Lot, except in compliance with plans and specifications therefor that have been submitted to and approved in writing by the Committee in accordance with this Article VIII of the Declaration.

**3.2** No material change to the topography, drainage or current landscape design shall be made to the front yard of any Lot except in compliance with plans and specifications therefor that have been submitted to and approved in writing by the Architectural Review Committee.

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

**3.4.** To obtain such approval, the Member must submit a request for the approval and the request must be accompanied by appropriate supporting plans and specifications. It is the

responsibility of the applicant Member to notify the Chairman of the Committee or his designee of the pending request and to provide the Chairman of the Committee or his designee with an adequate number of copies (as determined by the Chairman or his designee) of the plans and specifications, and no submission of a request for approval shall be complete until the Member has complied with all provisions of this Article.

The plans and specifications must be specific in showing the nature, kind, shape, height, materials, colors, and locations of the addition, change, or alteration, and the relationship to adjoining properties, and shall be submitted in writing. In considering such plans for approval, the Committee shall give significant consideration to the harmony of external design and location in relation to surrounding structures and topography and in keeping with the original architectural aesthetic intent for the Properties governed by this Declaration of Covenants, Conditions and Restrictions. Further, to the extent required by applicable law, all such plans and specifications must be approved by the Town of Paradise Valley in addition to receiving the necessary approval under these CC&Rs.

All approved projects must be started within three months of notification to the Member of approval by the Committee, or such other period as may be approved by the Committee, and shall be completed as soon after commencement of the improvement as is practicable.

Members of the Committee and Board shall recuse themselves from any consideration of plans and specifications relating to their own residences or those of contiguous neighboring Lots.

All residences and additions thereto are to remain one-story and the maximum roof line height of said additions is to be no more than the maximum height of the roof line of the original structure.

**Section 4. Waiver.** The approval by the Architectural Review Committee of any plans, drawings, or specifications for any work done or proposed, or for any other matter requiring the approval of the Committee shall not be deemed to constitute a waiver of any right to withhold approval of any similar plan, drawing, specification, or matter subsequently submitted for approval.

**Section 5. Liability.** Neither the Association, the Architectural Review Committee, nor any member thereof shall be liable to the Association, any Member, or any other party for any damage, loss, or prejudice suffered or claimed on account of any of the following, provided, however, that with respect to the liability of a member of the Committee, such member has acted in good faith on the basis of information possessed by the member:

- (A) the approval or disapproval of any plans, drawings, or specifications, whether or not defective;
- (B) the construction or performance of any work, whether or not pursuant to approved plans, drawings, or specifications;
- (C) the development of any Lot; or,
- (D) the execution and filing or recording of any estoppel certificate or statement, whether or not the facts therein are correct.

Without in any way limiting the generality of the foregoing provisions of this Section 5, the Committee, or any member thereof, may, but is not required to, consult with or hear the views of the Association or any Member with respect to any plans, specifications or other proposal submitted for review.

**Section 6. Appeal to Board.** Any Member aggrieved by a decision of the Architectural Review Committee may appeal the decision to the Board. The decision of the Board on any such appeal shall be final.

**Section 7. Fee.** In the event the plans and specifications submitted to the Committee were not prepared by a licensed architect, the Committee may engage a consulting architect to review and approve plans submitted by a Member. The cost of such a consulting architect shall be borne by the Member. The proposed cost of the consulting architect shall be submitted to the Member for approval. In the event the Member disapproves of the cost, the Member's proposal shall be deemed withdrawn.

**Section 8. Inspection.** Any member or authorized consultant of the Committee may at any reasonable time and after reasonable notice to the Member owning a Lot, and without being deemed guilty of trespass, enter upon any such Lot in order to inspect the improvements constructed or being constructed on such Lot to ascertain that the improvements have been or are being built in compliance with the previously approved plans and specifications.

**Section 9. Approval.** No approval of the Committee shall be valid unless given in writing after consideration and approval by a majority of the members of the Committee. Notwithstanding the foregoing sentence, if the Committee fails to approve or disapprove the plans submitted by a Member in compliance with this Article 8 within thirty days from the date of submission to all members of the Committee, then the plans as submitted shall be deemed approved by the Committee.

**ARTICLE IX**  
**USE RESTRICTIONS**

**Section 1.** The Property is hereby restricted to residential dwellings for residential use. No nonresidential use involving or causing commercial traffic or other visible evidence of a non-residential use shall be conducted on any Lot. The entire, but not less than all, of a dwelling unit situated on a Lot may be leased to a tenant from time to time by the Member, subject to the provisions of this Declaration and such reasonable rules as are promulgated by the Association from time to time. All buildings or structures erected upon a Lot shall be of new construction. No buildings or structures shall be moved from other locations onto a Lot, and no subsequent buildings or structures other than housing units, being single family dwellings, shall be constructed. No structures of a temporary character, trailer, basement, tent, shack, garage, barn, or other similar type structure shall be used on any portion of a Lot at any time as a residence, either temporary or permanent. There shall be no chain link or metal fencing of any type which is visible from neighboring property permitted on any Lot.

**Section 2.** Notwithstanding any other provision herein contained to the contrary, it shall be expressly permissible for a Member to maintain, during a period of construction, such facilities as may be reasonably required, convenient, or incidental to the construction or remodeling of their home.

**Section 3.** No animal, livestock, poultry, or fowl of any kind shall be kept, bred, or maintained on or within any Lot, other than a reasonable number of generally recognized common house pets, and then only if they are kept or raised thereon solely as domestic pets and not for commercial purposes. No domestic pets shall be permitted to make an unreasonable amount of noise or create a nuisance. All dogs shall be kept on a leash whenever not on their own Lot and dog owners shall clean up as necessary after their animals defecate on any other Member's Lot or on Common Areas.

**Section 4. Nuisances; Construction Activities.** No rubbish or debris of any kind shall be permitted to accumulate upon or adjacent to any Lot so as to create a nuisance or render any such Lot or activity thereon unsanitary, unsightly, or offensive. Although normal construction activities related to projects duly approved by the Committee shall not be considered a nuisance or otherwise

prohibited, Lots shall be kept in a generally neat and clean condition during construction periods. The Committee is authorized to designate the areas and manner in which supplies of building materials and construction equipment shall be stored and the routes construction vehicles may use. All such designations shall be reasonable and nondiscriminatory.

The foregoing notwithstanding, no noxious or offensive activity shall be carried on or permitted on any Lot, nor shall anything be done on any Lot that is or may become an annoyance or nuisance to persons or property in the vicinity of such Lot or in the Property, or which shall interfere with the quiet enjoyment of each of the Members.

**Section 5. Diseases and Insects.** No Member or occupant of a Lot shall permit any condition to exist upon any Lot that shall induce, breed, or harbor infectious plant diseases or noxious insects.

**Section 6. Repair of Buildings.** No building or improvement on any Lot shall be permitted to fall into disrepair and all buildings and improvements shall at all times be kept in good condition and repair and adequately painted or otherwise finished. In the event any building or improvement is damaged or destroyed, then, subject to the approvals required by Article 8 of this Declaration, such building or improvement shall be promptly repaired, rebuilt, or demolished by the Member.

**Section 7. Antennas and Dishes.** Any antenna or other device for the reception of television signals erected or placed upon a Lot, or on any improvement or building thereon shall be located so as to minimize its visibility from neighboring properties to the extent practicable.

**Section 8. Mineral Exploration.** No Lot shall be used in any manner to explore for, quarry, mine, remove, or transport any water, oil, or other hydrocarbons, minerals, gravel, gas, earth, or any earth substance of any kind.

**Section 9. Garbage.** No garbage or trash shall be allowed, stored, or placed on a Lot except in sanitary, covered containers. Such containers shall not be conspicuously visible from neighboring property, except for a reasonable time immediately prior to and after collection. All trash and garbage shall be regularly removed from each Lot and shall not be allowed to accumulate thereon. No incinerators shall be kept or maintained on any Lot.

**Section 10. INTENTIONALLY OMITTED.**

**Section 11. Machinery and Equipment.** No machinery or equipment of any kind shall

be placed, operated, stored, or maintained upon any Lot except such machinery or equipment as is usual and customary in connection with the use, maintenance, or (during the period of construction) construction of a building, appurtenant structures, or improvements thereon. This provision shall not prohibit the storage of machinery or equipment in a garage or other location that is not visible from the street or neighboring properties.

**Section 12. Signs; Street Addresses.** No signs shall be placed on the Common Areas except with respect to Association or Common Area matters as approved by the Board. No signs shall be placed on any Lot except professionally produced: (a) signs required by legal proceedings; (b) "For Sale" and "For Lease" signs; and (c) signs which state that the property is monitored by an electronic monitoring system. Notwithstanding the preceding restrictions, the street address number of each Lot shall be provided, however, no Lot shall have more than two (2) identification signs, nor shall any identification sign have a face area of more than seventy-two (72) square inches.

**Section 13. Overhead Encroachments.** No tree, shrub, or planting of any kind shall be allowed to overhang or encroach upon any public roadway, or any other pedestrian way from ground level to a height of eight (8) feet, without the prior written approval of the Committee.

**Section 14. Lights.** No outdoor lighting shall be located in such a manner as to shine directly on any residence other than the residence constructed on the Lot on which such outdoor lighting is located.

**Section 15. Fires.** Other than properly constructed barbecue pits, grills, fireplaces or firepits, no open fires shall be permitted on the Lots nor shall any other similar activity or condition be permitted on the Lots which would tend to increase the insurance rates for other Members.

**Section 16. INTENTIONALLY OMITED**

**Section 17. Trucks, Trailers, Boats, and Motor Vehicles.** No motor vehicle classified by the manufacturer's rating as exceeding one ton, no motor home, mobile home, commercial vehicle, trailer, camper shell, detached camper, boat, boat trailer, snowmobile, jet ski, dune buggy, or other similar equipment or vehicle shall be parked, maintained, constructed, reconstructed, repaired, or stored on any Lot or on any street so as to be visible from neighboring property including, but not limited to Common Areas. No automobile, motorcycle, motorbike, or other motor vehicle shall be constructed, reconstructed, repaired, or stored upon any Lot or street so as to be visible from neighboring property, including, but not limited to, any Common Areas. The foregoing limitation on parking shall not apply to temporary loading and unloading of a vehicle.

**Section 18. Parking.** It is the intent of the Association to eliminate on-street parking as much as possible in Mountain View Estates. The motor vehicles of Members and those living in their residence shall be kept in garages. Notwithstanding the previous sentence, vehicles may be parked in the Member's residential driveway if such garage capacity is already being used.

**Section 19. Health, Safety, and Welfare.** Uses of, activities in, or facilities within a Lot that adversely affect the health or safety of Members or other occupants of a Lot, are prohibited.

**Section 20. Variances.** The Board may, in its sole discretion and only in extenuating circumstances, grant variances from the restrictions stated in this Declaration if the Board determines that either:

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

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

and,

(c) the activity permitted under the requested variance will not have a substantially adverse effect on other Members or other occupants of Lots and is consistent with the high quality of life intended for the Property.

The request for a variance must be made in writing and be accompanied by adequate supporting documentation. The Board shall approve or disapprove the request, in writing, as promptly as reasonably possible under the particular circumstances. The decision of the Board may be appealed to the membership as a whole, by any party directly involved in the issue. All decisions of the Association shall be final and non-appealable.

**Section 21. Utility Service.** Throughout the Property all lines, wires, or other devices for the communication or transmission of electric current, including telephone, television, and radio signals, shall be contained in conduits or cables installed and maintained underground or concealed in a manner approved in writing in advance by the Committee. Temporary power or telephone structures incident to construction activities shall be permitted, but only with the prior written approval of the Committee.

**Section 22. Restriction on Further Subdivision, Property Restrictions, and Re-zoning.** No Lot or portion thereof shall be further subdivided. In addition,

(a) No easement or other interest in a Lot shall be conveyed or transferred by any Member other than a beneficial interest for the purpose of obtaining financing, a leasehold interest, or the grant of the entire fee interest; and,

(b) No applications for re-zoning, variances, or use permits for any Lot shall be filed without Committee approval.

**Section 23. Leasing.** No less than an entire Lot, together with the improvements thereon, may be leased or rented, and then only to a single family.

**Section 24. Front Yard Landscaping and Maintenance.** The front yard landscaping of each Lot shall be maintained in accordance with the "Landscape and Maintenance Guidelines For Mountain View Estates" attached hereto as Exhibit "C" and incorporated herein by this reference. Should any Member fail to provide the necessary maintenance of their front yard, the Association may provide such maintenance and charge such Member for the cost of same. Such cost shall also be an assessment against the Member and their Lot and collectable as provided for in Article 5 of this Declaration.

**Section 25.** Common areas shall remain undivided, and shall, at all times, be owned by the Association or its successors, it being agreed that this restriction is necessary in order to preserve the rights of the Members with respect to the operation and management of the Common areas and the easements owned by the Association.

**Section 26.** Garage doors are to remain closed except when entering or leaving the garage or when garage access is otherwise required. This provision is to enhance the aesthetic appearance of the subdivision and for security purposes.

**Section 27.** Mailboxes are to be of uniform design and are to be well-maintained.

## ARTICLE X

### SEMI-PUBLIC EASEMENTS

There is created hereby, a blanket-easement upon, across, over, and above the Common Areas, for ingress, egress, installation, replacing, repairing, and maintaining all utilities, including, but not limited to, water, sewer, gas, telephones, and electricity. By virtue of this easement, it shall be expressly permissible for the providing electrical and/or telephone company to erect and maintain the equipment on said property, and to affix and maintain electrical and/or telephone wires, conduits on circuits on, above, across, and under the roofs and exterior walls of the homes on the Lots. The easements provided for in this Article shall in no way effect any other recorded easements.

**ARTICLE XI**  
**EXTERIOR MAINTENANCE**

The Association or its duly delegated representatives shall maintain and otherwise manage all property up to the exterior lot lines, not limited to the landscaping, parking areas, streets, and common elements and easements, and such additional maintenance as the Board of Directors shall, from time to time, determine to be in the best interest of the Association and its Members. The Board of Directors shall use a high standard of care in providing for said repair, management, and maintenance so that the project will reflect a high pride of ownership. All maintenance and repair of the individual homes (including painting of the exterior of the homes) shall be the sole obligation and expense of the individual Member, except to the extent that exterior maintenance and repair as provided by the Association to common walls and other structures, as heretofore defined. Any cooperative action necessary or appropriate to the proper maintenance and upkeep of the common elements, including fences and other structures within Common Areas shall be taken by the Board of Directors duly delegated representatives. In the event that the need for maintenance and repair is caused through the willful or negligent act of a Member, their family, guests or invitees, the cost of such maintenance or repairs shall be added to and become part of the assessment to which such Lot is subject.

**ARTICLE XII**  
**DAMAGE OR DESTRUCTION OF PROPERTY**

In the event any Common Area is damaged or destroyed by a Member or any of their guests, tenants, licensees, agents, invitees, or members of their family, such Member does hereby irrevocably authorize the Association to repair such damaged element and the Association shall so repair said damaged element in a good workmanlike manner in substantial conformance with the original plans and specifications. The Member shall then repay the Association the amount actually expended for such repairs. The cost of such maintenance or repair shall be added to and become a part of the Assessments to which such Member and such Member's Lot is subject and shall be secured by the Assessment Lien and by a Recorded Assessment Lien as deemed appropriate by the Board.

**ARTICLE XIII**

## GENERAL PROVISIONS

**Section 1.** The Association, or any Member, shall have the right to enforce, by a proceeding, in law or in equity, all restrictions, covenants, conditions, reservations, liens and charges now or hereafter imposed by the provisions of this Declaration. Failure by the Association or by any Member, to enforce any covenant or restriction herein contained shall in no event be deemed a waiver of the right to do so thereafter. In the event the Association brings any action at law or in equity to prevent or remedy any violation of Article 8 hereof, including without limitation, an injunctive action seeking removal of an improvement made in violation of Article 8, it shall be no defense that the Association or the Committee failed to object to such improvement prior to its completion.

**Section 2.** To the fullest extent permitted by law, every director and every officer of the Association shall be indemnified by the Association, and every other person serving as an employee or direct agent of the Association, or on behalf of the Association as a member of a committee or otherwise, may, in the discretion of the Board, be indemnified by the Association, against all expenses and liabilities, including attorneys' fees, reasonably incurred by or imposed upon them in connection with any proceeding to which they may be a party, or in which they may become involved, by reason of their being or having served in such capacity on behalf of the Association, or any settlement thereof, whether or not he or she is a director, officer or member of any such committee or serving in such other specified capacity at the time such expenses are incurred, provided that the Board shall determine, in good faith, that such officer, director, or other person, did not act, fail to act, or refuse to act willfully or with gross negligence or fraudulent or criminal intent in the performance of their duties. The foregoing rights of indemnification shall be in addition to any not exclusive of all other rights to which such person may be entitled at law or otherwise.

**Section 3.** The covenants, restrictions, reservations, and conditions contained herein shall run with the land and shall be binding upon all persons purchasing, leasing, sub-leasing, or occupying any home on said property, their heirs, executor, administrators, successors, grantees, and assigns. After the date on which this instrument has been recorded, these covenants, restrictions, reservations, and conditions may be enforced by one or more of the following: (i) the Association by and through its Board of Directors which shall have the right and duty to enforce the same and expend the Association's monies pursuant thereto; and/or (ii) by any Member or Members.

**Section 4.** Invalidation of any one of these covenants or restrictions by judgment or by Court Order shall not effect, in any manner, any other provisions, which provisions shall remain in full force and effect.

**Section 5.** The covenants and restrictions of this Declaration shall run for a term of twenty (20) years from the date this Declaration is recorded, after which time it shall automatically be extended for successive periods of ten (10) years. This Declaration may be amended by an instrument signed by the Members of not less than sixty seven percent (67%) of the Lots or such greater number as shall then be legally required by laws of the State of Arizona. Any amendment must be recorded.

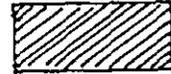
**Section 6.** The singular, whenever used herein, shall be construed to mean the plural when applicable, and the necessary grammatical changes required to make the provisions hereof apply, either to corporation or individuals and men or women shall, in all cases, be assumed as though, in each case, fully expressed.

# MOUNTAIN VIEW ESTATES

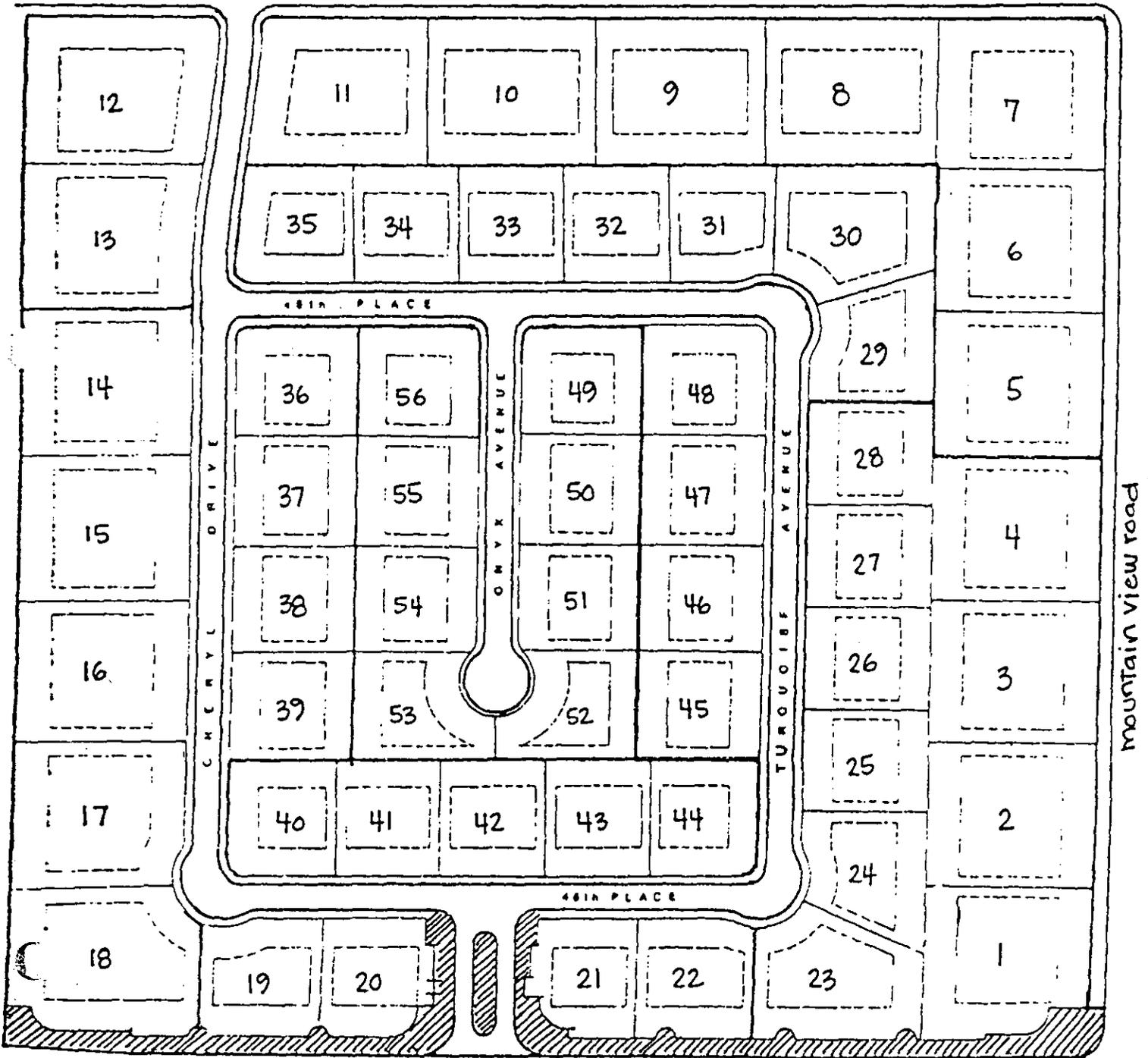


Exhibits A and B

Common Area



607A STREET



**Landscape and Maintenance Guidelines  
For Mountain View Estates**

A. Landscaping (front yards)

1. The Town of Paradise Valley recommends the use of plants that are low in water usage, require minimum maintenance, and will still thrive and look attractive in the desert climate.
2. The planting of canopy trees is recommended to soften the appearance of the hard surfaces of the streets and to shield residents, homes, and passersby from the heat and pollution.
3. Where space or other concerns make trees impractical, native shrubs, ground cover, and wildflowers should be planted.
4. Where granite is used, it should be desert colored.
5. As a safety precaution, spiny plants such as opuntia (prickly pear/cholla) or fero cactus (barrels) should be planted and maintained at least six feet from paths or roadways.

B. Maintenance

1. Plant material, which dies, and irrigation systems that fail should be replaced within thirty (30) days of their demise or failure.
2. All landscaping and gravel areas shall be maintained and kept in a healthy, neat, clean, weed-free condition.
3. All borders and walls shall be edged regularly.
4. Debris, i.e., weeds, grass, stones, rocks, dirt etc., should be cleaned from the street in front of the homeowner's property.
5. Construction material and/or recreational equipment, which is broken, damaged, or sitting dormant should be removed from the "neighbor visible" portion of the homeowner's property.