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Declaration of Covenants, Conditions and  
Restrictions for Warner Ranch Village Unit I

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## DECLARATION OF COVENANTS, CONDITIONS AND RESTRICTIONS

FOR

## WARNER RANCH VILLAGE UNIT I

This Declaration of Covenants, Conditions and Restrictions is made as of the 10th day of May, 1985, by PIONEER TRUST COMPANY OF ARIZONA, an Arizona corporation, as Trustee of its Trust No. 20,722 (hereinafter referred to as "Declarant"), and SUNRISE LIMITED PARTNERSHIP, an Illinois limited partnership doing business in the State of Arizona as S Limited Partnership (hereinafter referred to as "Developer").

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

Declarant, as Trustee of its Trust No. 20,722, is the owner of fee title to the real property described on Exhibit "A" hereto ("the Initial Property") and on Exhibit "B" hereto ("the Annexable Property"). Developer is the sole beneficiary of said trust. Developer and Declarant intend by this Declaration to impose upon the Initial Property mutually beneficial restrictions under a general plan of improvement for the benefit of all owners of residential property within the Initial Property and of all owners of residential property within such parts, if any, of the Annexable Property as may hereafter be submitted to this Declaration, as provided herein. Developer and Declarant desire to provide a flexible (yet common) and reasonable procedure for the overall development of the Initial Property and such parts, if any, of the Annexable Property as may hereafter be subjected to

this Declaration, and to establish a method for the administration, maintenance, preservation, use and enjoyment of such property as is now or may hereafter be subjected to this Declaration, as provided herein.

NOW, THEREFORE, Developer and Declarant hereby declare that all of the property described on Exhibit "A" hereto (and such additional property, if any, as may hereafter be subjected to this Declaration in accordance with the provisions of Article VI hereof) shall be held, sold and conveyed subject to the following easements, restrictions, covenants and conditions, which are for the purpose of protecting the value and desirability of and which shall run with the real property now and hereafter subjected to this Declaration and which shall be binding on all parties having any right, title or interest in said real property or any part thereof, and their heirs, personal representatives, successors and assigns, and shall inure to the benefit of each owner of all or any part thereof.

#### Article I

##### Definitions

Section 1. "Articles" shall mean and refer to the Articles of Incorporation of the Association, as the same may be amended from time to time in accordance with the provisions thereof and with the applicable provisions of this Declaration, the Bylaws and the statutes and regulations of the State of Arizona.

Section 2. "Association" shall mean and refer to Warner Ranch Village Unit I Association, an Arizona non-profit corporation, and its successors and assigns.

Section 3. "Board of Directors" or "Board" shall mean and refer to the group or body of persons elected in accordance with the provisions of the Articles, the Bylaws and the statutes and regulations of the State of Arizona, in which group or body is vested the management of the affairs of the Association, and shall be equivalent in meaning to the term "board of directors," as defined in A.R.S. Section 10-1002(b), as in effect at the date hereof.

Section 4. "Bylaws" shall mean and refer to the Bylaws of the Association, as the same may be amended from time to time in accordance with the provisions thereof and with the applicable provisions of this Declaration, the Articles and the statutes and regulations of the State of Arizona.

Section 5. "Common Area" shall mean all real property (including the improvements thereto) owned by the Association for the common use and enjoyment of the Owners. The Common Area to be owned by the Association at the time of the conveyance of the first Lot to a retail purchaser shall be the property described on Exhibit "C" attached hereto and incorporated herein by reference.

Section 6. "Common Expenses" shall mean and include the actual and estimated expenses of operating the Association, including any reasonable reserves, all as may be found to be

necessary and appropriate by the Board pursuant to this Declaration or pursuant to the Articles or the Bylaws.

Section 7. "Developer" shall mean and refer to Sunrise Limited Partnership, an Illinois limited partnership doing business in the State of Arizona as S Limited Partnership, and any assignee of any of the rights and duties granted or reserved to the Developer herein, which assignment shall be evidenced by a duly executed and acknowledged instrument recorded with the Recorder. The term "Developer" shall in no event mean or refer to a retail Lot buyer.

Section 8. "Eligible Mortgage Holder" shall mean and refer to any holder (as evidenced by an instrument recorded with the Recorder) of a First Mortgage who or which shall have made written request to the Association for notice of any proposed action that, pursuant to Article IX, Section 2 hereof or Article IX, Section 13 hereof, requires the consent of a specified percentage of Eligible Mortgage Holders (which written request must contain the name and address of said Eligible Mortgage Holder and the Lot number or street address of the Lot securing the First Mortgage held by said Eligible Mortgage Holder).

Section 9. "First Mortgage" shall mean and refer to a Mortgage secured by a Lot which has priority over any and all other Mortgages secured by such Lot.

Section 10. "Lot" shall mean and refer to a lot into which the Property is subdivided as set forth in (a) that certain plat of Warner Ranch Village Unit I recorded in Book 282 of Maps, page 19, in the office of the Maricopa County, Arizona Recorder

(as said plat may be amended), or (b) any other plat or plats hereafter recorded with the Recorder with respect to any additional property hereafter subjected to this Declaration pursuant to Article VI hereof. In no event shall the term "Lot" mean or refer to all or any part of the Common Area.

Section 11. "Master Association" shall mean and refer to Warner Ranch Association, an Arizona non-profit corporation.

Section 12. "Master Declaration" shall mean and refer to that certain Declaration of Covenants, Conditions and Restrictions for Warner Ranch recorded on January 24, 1985, at Recorder's No. 85 033713 in the office of the Maricopa County, Arizona Recorder.

Section 13. "Member" shall mean and refer to a person or entity entitled to membership in the Association, as provided herein, provided, however, that there shall be only one Class "A" membership for each Lot, as further provided in Article III below.

Section 14. "Mortgage" shall include a recorded deed of trust, as well as a recorded mortgage, which, in either case, is secured by a Lot or any other part of the Property.

Section 15. "Mortgagee" shall include a beneficiary or holder of a recorded deed of trust, as well as a mortgagee under a recorded mortgage, which, in either case, is secured by a Lot or any other part of the Property.

Section 16. "Mortgagor" shall include the trustor of a recorded deed of trust, as well as a mortgagor under a recorded



mortgage, which, in either case, is secured by a Lot or any other part of the Property.

Section 17. "Owner" shall mean and refer to the owner (as evidenced by an instrument recorded with the Recorder), whether one or more persons or entities, of fee simple title to a Lot or, in the case of any valid and outstanding executory agreement of sale recorded with the Recorder with respect to a Lot, the seller under such agreement of sale. The term "Owner" shall exclude in all cases any party holding an interest merely as security for the performance of an obligation.

Section 18. "Person" means a natural person, corporation, partnership, trustee or other legal entity.

Section 19. "Phase" shall mean and refer (a) in the case of the Initial Property, to any one of the portions of the Initial Property described and identified by a phase number or letter (or number and letter) on Exhibit "D" attached hereto and incorporated herein by reference, and (b) in the case of any part of the Annexable Property from time to time hereafter subjected to this Declaration pursuant to Article VI hereof, to any one of the portions thereof designated as a "Phase" in the instrument effecting such subjection which is recorded with the Recorder pursuant to Article VI hereof. In the event that the instrument effecting the subjection to this Declaration of any part of the Annexable Property does not divide such part into Phases, then such part shall be deemed to constitute a single Phase for purposes of Article VIII hereof. The numbers or letters (or numbers

and letters) assigned to Phases hereby or by a subsequent instrument subjecting to this Declaration any part(s) of the Annexable Property are and shall be for reference only and shall not control the order of development or sale of Lots within any Phase or from Phase to Phase. Developer shall retain full discretion as to the order and timing of the development and sales of Lots within any Phase or from Phase to Phase.

Section 20. "Plat" shall mean that certain plat of Warner Ranch Village Unit I recorded in Book 282 of Maps, page19, in the office of Maricopa County, Arizona Recorder, and, in the event any portion or all of the Annexable Property is hereafter subjected to this Declaration pursuant to Article VI hereof, the term "Plat" shall also encompass and include each and every additional or supplemental plat (however denominated) which is recorded with the Recorder and to which such portion (or all) of the Annexable Property is subjected.

Section 21. "Property" shall mean and refer to the real property described in Exhibit "A" attached hereto and shall further refer (a) to such additional property, if any, as may hereafter be subjected to this Declaration in accordance with Article VI hereof and (b) to such additional property as is now or may hereafter be owned in fee simple by the Association.

Section 22. "Recorder" shall mean and refer to the County Recorder for Maricopa County, Arizona, or such other governmental authority, office or official with which or whom the applicable laws of the State of Arizona prescribe that documents affecting title to real property in the area including the

Property are to be recorded or filed for public record. Further, the term "recorded" shall include "filed" or "lodged" or any similar term indicating placing such an instrument of public record with the Recorder.

Section 23. "Residential Unit" shall mean any structure constructed on a Lot which is intended for use and occupancy as a residence by a single household.

## Article II

### Property Rights

Every Owner shall have a non-exclusive right and easement of enjoyment in, to and over the Common Area, subject to any restrictions or limitations contained herein or in any instrument conveying to the Association or subjecting to this Declaration such property, and subject further to the reasonable rules and regulations of the Association. Any Owner may assign his, her or its right of enjoyment to (and share the same with) the members of his or her household and assign the same to and share the same with his, her or its tenants and invitees subject to the provisions of this Declaration and to reasonable regulation by the Board and otherwise in accordance with such procedures as the Board may adopt.

## Article III

### Membership and Voting Rights

Section 1. Membership. The Association shall have two (2) classes of membership, Class "A" and Class "B," as follows:

(a) Class "A". There shall be one Class "A" membership in the Association for each Lot. Each such membership shall be held by the Owner (from time to time) of such Lot and shall be appurtenant to and may not be separated from ownership of such Lot. The foregoing is not intended to include persons who hold an interest merely as security for the performance of an obligation, and the giving of a security interest shall not terminate an Owner's membership. Further, so long as the Class "B" membership described in subsection (b) below shall be in existence, neither Developer nor any assignee of Developer's Class "B" membership rights shall be deemed to have a Class "A" membership (or votes appurtenant to a Class "A" membership). No Owner, whether one or more persons, shall have more than one membership per Lot owned. In the event any Lot is owned by two or more persons or entities, whether by joint tenancy, tenancy in common, community property or otherwise, the membership as to such Lot shall be joint, provided, however, that such owners shall jointly designate to the Association in writing one of their number who shall have the power to vote said membership, and, in the absence of such designation and until such designation is made, the Board shall make such designation and such designation shall be binding for all purposes. In no event shall more than one (1) Class "A" membership exist for each Lot.

(b) Class "B". Class "B" members shall be Developer and any assignee of all or any part of Developer's Class "B" membership rights.

Section 2. Voting. The voting rights of the Class "A" and Class "B" members are as follows:

(a) Class "A". Each Class "A" member shall be entitled on all issues to one (1) vote for each Lot with respect to which such member holds the interest required for membership by Section 1 hereof. When more than one person holds such interest in any Lot, there shall be only one (1) vote with respect to such Lot, which vote shall be exercised by the person designated to exercise the power to cast such vote, as provided in Section 1 of this Article III. Any attempt to cast a vote appurtenant to a Lot in a manner inconsistent with the aforescribed designation shall result in the suspension of the power to cast such vote until such time as such vote is cast in accordance with such designation. Any Owner of a Lot which is leased or which is subject to a valid, outstanding and recorded executory agreement of sale may, in the lease, agreement of sale or other written instrument, assign the voting right appurtenant to the Lot to the lessee of the Lot or to the purchaser of the Lot under such agreement of sale, as applicable, provided that a copy of such instrument is furnished to the Secretary of the Association prior to any meeting.

(b) Class "B". The Class "B" member or members shall be entitled to three (3) votes for each Lot with respect to which such member holds the interest required for membership by Section 1 hereof. Developer shall have the right, at any time and from time to time, to assign all or any part of its voting rights

appurtenant to its Class "B" membership rights (as well as all or any other rights appurtenant thereto) to one or more persons or entities acquiring, for purposes of development and sale, any part of the property described on Exhibit "A" or Exhibit "B" hereto. Further, Developer shall have the right, at any time and from time to time, to designate an individual or individuals to exercise Developer's voting rights (whether appurtenant to Class "A" or Class "B" membership), provided, however, that such designation shall not act as an assignment by Developer of its membership or voting rights hereunder. Upon the earlier to occur of (i) June 1, 1989, or (ii) the time at which the total number of Class "A" votes outstanding (as determined above) equals (or exceeds) the total number of Class "B" votes outstanding (as determined above), the Class "B" membership shall terminate and be deemed converted to a Class "A" membership, whereupon the membership and voting rights of Developer and any assignee of Developer's Class "B" membership rights shall be determined in accordance with subsections 1(a) and 2(a), above.

#### Article IV

##### Maintenance

The Association shall maintain and keep in good repair the Common Area, the cost of such maintenance to be a Common Expense of the Association. This maintenance shall include, but not be limited to, maintenance, repair and replacement, subject to any insurance then in effect, of (a) all landscaping and other

flora, structures and improvements situated upon the Common Area, including, but not limited to, any perimeter or boundary walls, (b) private streets (if any), and (c) landscaping and flora in or upon public rights-of-way within or immediately adjacent to the Property, and maintenance and repair of any drainage easements which are upon, or constitute a part of, the Common Area, except that landscaping, flora and boundary or perimeter walls upon or in public rights-of-way for Warner Road, Warner Ranch Drive and Forest Street abutting the Property or any part thereof shall be the responsibility of the Master Association pursuant to Article IV of the Master Declaration. In addition, the Association shall be responsible for maintaining and keeping in good repair on each and every Lot, as a Common Expense of the Association, the landscaping and flora situated in or upon the "front yard" of each and every Lot. For purposes hereof, the "front yard" of a Lot shall mean and refer to such portion of that Lot as is adjacent to or abutting public or private roadways or adjacent to or abutting any part of the Common Area, except where such portion of that Lot is screened from view from such roadways or Common Area by a wall or other structure. Each Owner shall be responsible for the maintenance, cleaning, painting, repair and general care of the Residential Unit and any other structure existing or constructed upon such Owner's Lot, and, in particular, each Owner shall cause the exterior of said Residential Unit or other structure to be maintained in good condition and repair and in an attractive state consistent

with general community standards within the Property. In the event that the Association shall determine by the affirmative vote of a majority of Members represented in person or by valid proxy at a meeting called for such purpose that any Owner is in breach of such Owner's obligation to cause the exterior of the Residential Unit or other structure on such Owner's Lot to be maintained in good condition and repair and in an attractive state consistent with general community standards within the Property, the Association shall promptly give such Owner written notice of such determination, including a reasonably detailed list or description of the repairs, maintenance or other work required to cure such Owner's breach, and in the event the Owner shall not have cured such breach within thirty (30) days after the date of said written notice, the Association shall cause the repairs, maintenance or other work to be performed so as to cure such Owner's breach, and the Association's costs in doing so, together with interest from the date of expenditure at the rate set forth in Article X, Section 8 of this Declaration, shall constitute a lien on such Owner's Lot, which lien shall have the priority and may be enforced in the manner described in Article VIII, Section 4 of this Declaration. The Association shall have an easement on, over, across and through each Lot to permit it to carry out its duties and obligations under this Article IV. The provision of services in accordance with this Article shall not be deemed to be discrimination in favor of or against any Owner. Except as expressly provided in this Section, the Association shall have no responsibility to maintain any areas within



the Property (including, but not limited to, public streets) which are dedicated to or the responsibility of a municipality or other governmental entity.

#### Article V

##### Insurance and Fidelity Bonds; Casualty Losses

##### Section 1. Insurance to be Obtained by the Association.

(a) Hazard Insurance. The Board, acting on behalf of the Association, shall obtain and maintain at all times insurance for all insurable improvements on the Property, including, but not limited to, the Common Area and each Lot, against loss or damage by fire or other hazards, casualties and risks embraced within the coverage of the standard "extended coverage" policy available from time to time in the State of Arizona, against all other perils customarily covered for similar types of projects (including those covered by the standard "all risk" endorsement available from time to time in the State of Arizona), and against loss or damage due to vandalism and malicious mischief. Said insurance shall be in an amount equal to 100% of the current replacement cost, from time to time, without deduction for depreciation, of all such insurable improvements (excluding land, foundations, excavations and other items usually excluded from such insurance coverage, but including fixtures and building service equipment and personal property and supplies owned by the Association), with such amount to be redetermined annually

(and upon the subjection of any portion, or all, of the Annexable Property to the effect of this Declaration if such subjection results in an addition to the Property of property upon which are situated improvements required to be insured hereunder).

The policy or policies providing such insurance shall provide that (i) any insurance trust agreement will be recognized, (ii) the insurer shall waive any right of subrogation against the Owners, the Board or the Association, and their respective agents, employees, guests and household members, (iii) such insurance shall not be cancelled, invalidated or suspended by reason of any acts or omissions of any owner (or of such Owner's invitees, agents, employees or household members) or of any member, officer or employee of the Board without a prior written demand to the Board that any such act or omission be cured and without providing a sixty (60) day period within which the Board may cure same (or cause the same to be cured), (iv) such insurance coverage shall be primary, and shall in no event be brought into contribution with any insurance maintained by individual Owners or their Mortgagees, and (v) the coverage afforded by such policy or policies shall not be prejudiced by any act or omission of any Owner or any occupant of a Lot (or their agents) when such act or omission is not within the control of the Association.

The policy or policies providing such insurance shall also contain (if available at no additional cost or at such additional cost as is not demonstrably unreasonable) the

following endorsements (or their equivalents): (i) "agreed amount" and "inflation protection" endorsements; (ii) "increased cost of construction" endorsement; (iii) "contingent liability from operation of building laws or codes" endorsement; and (iv) "demolition cost" endorsement. The policy or policies providing such insurance shall also contain a steam boiler and machinery endorsement providing coverage in an amount not less than the lesser of \$2,000,000 or the insurable value of the building(s) housing such boiler and machinery.

Unless a higher maximum deductible amount is required by applicable law, each policy providing the insurance coverage described in this Subsection 1(a) shall provide for a deductible not to exceed the lesser of \$10,000 or one percent (1%) of the face amount of such policy.

(b) Liability Insurance. The Board, acting on behalf of the Association, shall obtain and maintain at all times a comprehensive general liability policy insuring the Association, each member of the Board and each Owner, against any liability to the public or to any Owner (and such Owner's invitees, agents, employees and household members) arising out of or incident to the ownership and/or use of the Common Area. The Board, with the assistance of the insurer(s) providing such coverage, shall review annually (and upon the subjection of any portion, or all, of the Annexable Property to the effect of this Declaration) the amounts of coverage afforded by said comprehensive general liability policy or policies, but in no event shall said policy

or policies provide coverage less than One Million Dollars (\$1,000,000.00) for bodily injury and property damage for any single occurrence. The policy or policies providing such insurance shall, by specific endorsement or otherwise, preclude denial by the insurer(s) providing such insurance of a claim under such policy or policies because of negligent acts or omissions of the Association or any Owner(s).

(c) Flood Insurance. In the event any part of the Property is in a "special flood hazard area," as defined by the Federal Emergency Management Agency (or its successors), the Board, acting on behalf of the Association, shall obtain (and maintain at all times during which any part of the Property is in such a "special flood hazard area") a "master" or "blanket" policy of flood insurance covering all insurable improvements on the Property, including, but not limited to, the Common Area and each Lot, and covering any personal property situated from time to time within such improvements (to the extent such personal property is normally covered by the standard flood insurance policy available from time to time in the State of Arizona). Said insurance shall be in an amount not less than the lesser of (i) 100% of the current replacement cost, from time to time, of all such insurable improvements (and such insurable personal property) located in the "special flood hazard area," or (ii) the maximum coverage available for such insurable improvements and insurable personal property under the National Flood Insurance Program. Unless a higher maximum deductible amount is required

by applicable law, the policy providing such insurance shall provide for a deductible not to exceed the lesser of \$5,000 or one percent (1%) of the face amount of such policy.

(d) General Provisions Governing Insurance. The insurance required to be obtained under Subsections 1(a), 1(b) and 1(c) of this Article V shall be written in the name of the Association as trustee for each of the Owners and for each holder of a Mortgage secured by a Lot (as their respective interests may appear) and shall be governed by the provisions hereinafter set forth:

(i) All policies shall be written with one or more companies authorized to provide such insurance in the State of Arizona;

(ii) Exclusive authority to adjust losses under policies in force on property owned by the Association shall be vested in the Board;

(iii) In no event shall the insurance coverage obtained and maintained by the Board hereunder be brought into contribution with insurance purchased by individual owners, occupants or their Mortgagees, and the insurance carried by the Association shall be primary;

(iv) Subject to the requirement of item (ii) of the first paragraph of Subsection 1(a) above, the Board shall be required to make every reasonable effort to secure insurance policies that will provide for a waiver of subrogation by the insurer as to any claims against the Board or the Owners and

their respective tenants, servants, agents and guests (if securing same will impose on the Association no additional cost or only such reasonable cost as the Board may determine, in its discretion);

(v) Each policy providing such insurance coverage shall require the applicable insurer to give not less than ten (10) days written notice to the Association, and to each holder of a First Mortgage which shall have given such insurer written notice of such holder's interest in the Property (which notice must include the name and address of such holder), of any cancellation or material modification of such policy.

(e) Fidelity Bonds. The Board, acting on behalf of the Association, shall obtain and maintain at all times adequate fidelity bond coverage to protect against dishonest acts on the part of officers, directors and employees of the Association and all others who handle, or are responsible for handling, funds held or administered by the Association, whether or not such officers, directors, employees or others receive compensation for services they render to or on behalf of the Association. Any independent management agent which handles funds for the Association shall also obtain (and pay for) such fidelity bond coverage with respect to its own activities (and those of its directors, officers and employees, whether or not such directors, officers or employees receive compensation for services rendered). Such fidelity bonds (i) shall name the Association as obligee, (ii) shall be issued by one or more companies authorized

to issue such bonds in the State of Arizona and (iii) shall be in an amount sufficient to cover the maximum total of funds reasonably expected by the Board to be in the custody of the Association or such agent at any time while such bond is in force, but in no event shall the amount of such fidelity bond coverage be less than the sum of three (3) months' general assessments on all Lots, plus the total of funds held in the Association's reserves. Each such fidelity bond shall provide that the issuer thereof shall provide not less than ten (10) days written notice to the Association and to each Eligible Mortgage Holder before such bond may be cancelled or substantially modified for any reason.

(f) Workers' Compensation Insurance. The Board, acting on behalf of the Association, shall obtain and maintain workers' compensation insurance if and to the extent necessary to meet the requirements of applicable law.

(g) Cost of Insurance. All premiums for the insurance or bonds required to be obtained by the Board by this Section 1 shall be Common Expenses (except that, as provided in Subsection 1(e) above, the cost of the fidelity bond required to be furnished by any independent management agent shall be paid by such agent). The Board shall not be liable for failure to obtain or maintain any of the insurance coverage required by this Section 1, or for any loss or damage resulting from such failure, if such failure is due to the unavailability of such insurance coverage from reputable companies authorized to provide such

insurance in the State of Arizona, or if such insurance coverage is available only at a demonstrably unreasonable cost.

Section 2. Insurance to be Obtained by the Owners.

(a) Public Liability Insurance. It shall be the individual responsibility of each Owner to provide, as such Owner sees fit and at such Owner's sole expense, comprehensive public liability insurance against loss or liability for damages and any expense of defending against any claim for damages which might result from the ownership, use or occupancy of such Owner's Lot.

(b) Contents Insurance. It shall be the individual responsibility of each Owner to provide, as such Owner sees fit and at such Owner's sole expense, fire, liability, theft and any other insurance covering fixtures and personal property in the Residential Unit (or in any other structure) upon such Owner's Lot.

Section 3. Casualty Losses.

(a) Damage and Destruction.

(i) Immediately after any damage or destruction by fire or other casualty to all or any part of the property required to be insured by the Association under Section 1 above, the Board or its duly authorized agent shall (a) proceed with the filing and adjustment of all claims arising under such insurance, (b) obtain reliable and detailed estimates of the cost of repair or reconstruction of the damaged or destroyed property, and (c) upon receipt of the proceeds of such insurance and except as is



otherwise provided herein, use such proceeds to repair or reconstruct the damaged or destroyed property. Repair or reconstruction, as used in this Article V, means repairing or restoring the property in question to substantially the same condition as that in which it existed prior to the fire or other casualty (or, where applicable, replacing the damaged or destroyed property with property substantially similar to the damaged or destroyed property as it existed prior to such damage or destruction).

(ii) Any major damage or destruction to the property required to be insured by the Association under Section 1 above shall be repaired or reconstructed unless (a) at a special meeting of the Members of the Association duly noticed and convened within sixty (60) days after the occurrence of such damage or destruction, the Members determine, by a vote of Owners owing not less than seventy-five percent (75%) of all Lots, not to so repair or reconstruct, and (b) Eligible Mortgage Holders representing at least fifty-one percent (51%) of all Lots subject to First Mortgages held by Eligible Mortgage Holders concur in such determination not to so repair or reconstruct, and (c) the office of the City Attorney for the City of Tempe, Arizona, concurs in such determination not to so repair or reconstruct (or waives in writing its right to concur in or disapprove such determination); provided, however, that notwithstanding any such vote not to repair or reconstruct, the Association shall repair or reconstruct any damaged or destroyed improvement or structure on any Lot upon the written demand of (aa) the Owner of such Lot, or

(bb) the Owner of a Lot adjacent to that on which the damage or destruction occurred, if the Residential Unit on such adjacent Lot shares a common wall with the structure or improvement damaged or destroyed. If for any reason either the amount of the insurance proceeds to be paid as a result of such damage or destruction, or reliable and detailed estimates of the cost of repair or reconstruction, or both, are not made available to the Association within said period, then the period shall be extended until such information shall be made or become available; provided, however, that such extension shall not exceed sixty (60) days. The Board shall determine whether any minor damage or destruction to the Common Area should be repaired or reconstructed.

(iii) In the event that it is determined in the manner described above that the damage or destruction of any part of the Common Area shall not be repaired or reconstructed and no alternative improvements are authorized, then and in that event such property shall be maintained by the Association in a neat and attractive condition as an undeveloped portion of the Common Area.

(b) Excess or Deficiency of Proceeds. If the damage or destruction for which the insurance proceeds are paid is to be repaired or reconstructed and such proceeds are not sufficient to defray the cost thereof, the Board shall, without the necessity of a vote of the Members, levy an equal assessment against the Owner of each Lot. Additional assessments may be made in

like manner at any time during or following the completion of any repair or reconstruction. If the funds available from insurance exceed the cost of repair, such excess shall be used to meet Common Expenses.

#### Article VI

##### Annexation of Additional Property

Developer and Declarant contemplate, as of the date hereof, that one or more portions (and perhaps all) of the Annexable Property may from time to time be added and annexed to the Property and subjected to the provisions of this Declaration and, therefore, while neither Developer nor Declarant shall have any obligation or duty to so add and annex all or any portion of the Annexable Property, or to subject all or any portion of the Annexable Property to the provisions of this Declaration, Developer and Declarant hereby reserve the right, privilege and option from time to time hereafter to add and annex to the Property and to subject to the provisions of this Declaration (and to the jurisdiction of the Association) any part(s) or all of the Annexable Property, without the vote of the Members and without notice to or approval of any holder, insurer or guarantor of any Mortgage, provided, however, that the right, privilege and option reserved in this sentence shall expire and terminate June 1, 1990. Except for property contained within the Annexable Property, neither Declarant nor Developer intends to add or annex any additional property or common area to the Property,

and additional property and common area not included within the Annexable Property may be annexed to the Property only (a) by the affirmative vote of two-thirds (2/3) of the votes of each class of Members represented in person or by valid proxy at a meeting of Members duly called for that purpose, and (b) with the approval of the applicable percentage of Eligible Mortgage Holders, as provided in Article X, Section 2 hereof. Notwithstanding the foregoing, so long as the Class "B" membership is in existence no additional property (whether or not a part of the Annexable Property) may be annexed to the Property without the prior approval of the Federal Housing Administration and the Veterans Administration. Further, no property (whether or not a part of the Annexable Property) may be added or annexed to the Property without the express written consent of each owner of all or any part of the property proposed to be added or annexed. Upon approval of any addition or annexation of property to the Property to the extent required by this Section, Declarant or Developer (as applicable), in the case of addition or annexation of all or any part of the Annexable Property, or the President and Secretary of the Association, in the case of any other addition or annexation, shall execute, acknowledge and record with the Recorder an instrument effecting and evidencing such addition or annexation (which instrument shall also be duly executed and acknowledged by each owner of all or any part of the property being added or annexed), and such addition or annexation shall be deemed effective only upon such recordation.

Upon the effective date of any such addition or annexation, as provided above, (i) the property so added or annexed shall immediately be and become a part of the Property and subject to all of the provisions hereof, (ii) any Lot then or thereafter constituting a part of the added or annexed property, and the Owner of such Lot thereof, shall thereupon be subject to all of the provisions of this Declaration (including, but not limited to, the provisions of Articles II, III, IV and VIII hereof), (iii) any part or parts of the property added or annexed which is or are designated or declared to be Common Area shall thereupon be subject to the provisions of this Declaration (including, but not limited to, the provisions of Articles II and IV hereof), and (iv) improvements then or thereafter situated upon the added or annexed property shall be subject to the provisions of this Declaration (and to the jurisdiction of the Association) and shall be reasonably consistent, in terms of quality of construction, with the improvements situated upon the Property prior to such annexation.

Nothing herein shall constitute a representation, warranty or covenant that Declarant, Developer, any successor or assign of Declarant or Developer, or any other person will subject any additional property to the provisions of this Declaration, nor shall Declarant, Developer, any successor or assign of Declarant or Developer, or any other person be obligated so to do, and Declarant and Developer may, by written instrument executed by both Declarant and Developer and recorded with the

Recorder, waive their right so to do, in whole or in part, at any time or from time to time.

## Article VII

### Rights and Obligations of the Association

Section 1. The Common Area. The Association, subject to the rights of the Owners set forth in this Declaration, shall be responsible for the exclusive management and control of the Common Area and shall keep the Common Area in good, clean, attractive and sanitary condition, order and repair, pursuant to the terms and conditions hereof.

Section 2. Personal Property and Real Property for Common Use. The Association, through action of the Board, may acquire, hold and dispose of tangible and intangible personal property and real property, except that, subject to the provisions of Article X, Section 4 hereof, and subject further to the provisions of Article X, Section 2 and Article X, Section 11 hereof, no dedication, sale or transfer of all or any part of the Common Area shall be made or effective unless approved by not less than two-thirds (2/3) of the votes of each class of Members represented in person or by valid proxy at a meeting of Members duly called for such purpose. The Board, acting on behalf of the Association, shall accept any real or personal property, leasehold or other property interests within, adjacent to or related to all or any part of the Property as may be conveyed or assigned to the Association by Developer (or any

assignee of Developer's rights hereunder) (including, but not limited to, such parts of the Common Area as may now or hereafter be held by Developer).

Section 3. Rules and Regulations. The Association, through the Board, may make and enforce reasonable rules and regulations governing the use of the Property, which rules and regulations shall be consistent with the rights and duties established by this Declaration. Sanctions for violation of such rules and regulations or of this Declaration may be imposed by the Board and may include suspension of the right to vote and the right to use the recreational facilities on the Common Area, and, where approved by a majority vote of each class of Members represented in person or by valid proxy at a meeting of Members duly called for such purpose, may also include reasonable monetary fines. No suspension of an Owner's right to vote or of the right of such Owner (or such Owner's tenants, invitees or other occupants of such Owner's Lot) to use the recreational facilities on the Common Area due to a violation of the rules and regulations of the Association may be for a period longer than sixty (60) days.

Section 4. Availability of Books, Records and Other Documents. The Association shall maintain complete and current copies of this Declaration, the Articles, the Bylaws and all rules and regulations of the Association (as well as any amendments to the foregoing) and of the books, records and financial statements of the Association, and, upon the prior written

request to the Association by any Owner or by any holder, insurer or guarantor of a First Mortgage, shall make the same available for inspection, at reasonable times and under reasonable circumstances, by such Owner or such holder, insurer or guarantor.

Section 5. Audited Financial Statements. In the event any holder, insurer or guarantor of a First Mortgage submits to the Association a written request for an audited financial statement of the Association for the most recently concluded fiscal year of the Association, the Association shall promptly deliver such an audited financial statement to such holder, insurer or guarantor, and in the event no such audited financial statement has been prepared for the most recently concluded fiscal year, the Association shall cause the same to be prepared and delivered to such holder, insurer or guarantor as soon as reasonably possible. The cost of having such an audited financial statement prepared shall be a Common Expense.

Section 6. Implied Rights. The Association may exercise any other right or privilege given to it expressly by this Declaration, the Articles or the Bylaws, and every other right or privilege reasonably to be implied from the existence of any right or privilege given to it herein or reasonably necessary to effectuate any such right or privilege.



## Article VIII

Assessments

Section 1. Creation of Assessments. In order to provide funds to enable the Association to meet its financial and other obligations and to create appropriate reserves, there is hereby created a right of assessment exercisable by the Board. Assessments shall be for Common Expenses and shall be allocated equally among all Lots.

Each Owner, by acceptance of his, her or its deed with respect to one or more Lots, is deemed to covenant and agree to pay the assessments authorized or permitted hereby. All such assessments, together with interest from the date due at a rate equal to ten percent (10%) per annum, and together with such costs and reasonable attorneys' fees as may be incurred in seeking to collect such assessments, shall be a charge on the land and shall be a continuing lien upon the Lot against which each assessment is made.

Each such assessment, together with interest, costs and reasonable attorneys' fees as provided above, shall also be the personal obligation of the person who or which was the Owner of a Lot at the time the assessment arose with respect to such Lot, provided, that the personal obligation for delinquent assessments shall not pass to the successors in title of such Owner unless expressly assumed by such successors.

General Assessments for each fiscal year shall be due and payable in equal semi-annual installments on or before the

first day of January and the first day of July of such fiscal year. Special Assessments, if any, shall be paid in such manner and on such dates as may be fixed by the Board. In addition to any other powers of collection or enforcement granted hereunder, in the event any assessments with respect to a Lot are delinquent, the Board shall have the right, in its sole discretion, to accelerate the date on which assessments with respect to such Lot are due and payable.

The General Assessments provided for herein shall not commence until October 1, 1985, and for the period beginning October 1, 1985 and ending December 31, 1985 shall not exceed sixty dollars (\$60) per month for each Lot. For the fiscal year beginning January 1, 1986 and ending December 31, 1986, the General Assessments shall not exceed seven hundred twenty dollars (\$720) per year for each Lot. Thereafter, without the affirmative vote of two-thirds (2/3) of the votes of each class of Members represented in person or by valid proxy at a meeting of Members duly called for such purpose, such assessments shall not be increased at a rate greater than the percentage increase for the applicable fiscal year over the immediately preceding fiscal year in the Consumer Price Index -- All Urban Consumers (1967 = 100 Base) published by the Bureau of Labor Statistics of the U.S. Department of Labor (or its successor governmental agency), or, if such index is no longer published by said Bureau or successor agency, in the index most similar in composition to such index. Assessments shall be payable in respect of a Lot (including any

Lot owned by Developer) from the date upon which title to said Lot, or any other Lot within the Phase containing said Lot, shall first be conveyed to a retail purchaser, and such assessments shall be payable regardless of whether a Residential Unit or other structure is situated upon such Lot on such date. As to any Lot owned by Developer with respect to which assessments shall have commenced as provided in the preceding sentence, the assessment payable by Developer with respect to such Lot shall be an amount equal to twenty-five percent (25%) of the assessment which would otherwise be payable hereunder with respect to such Lot if it were owned by an Owner other than Developer. No assessments shall be payable with respect to a Lot so long as Developer shall own all of the Lots within the Phase containing said Lot. As to any Lot conveyed by Developer to an Owner, assessments as to such Lot shall be prorated between Developer and such Owner as of the close of escrow with respect to such Lot (or, if no escrow is utilized, upon recordation of the deed conveying such Lot to such Owner). The numbers or letters (or numbers and letters) assigned to the Phases are for reference only, and Developer shall retain full discretion as to the order and timing of its development and sales of Lots within any Phase or from Phase to Phase.

No Owner shall be relieved of his, her or its obligation to pay any of the assessments provided or permitted hereunder by abandoning or not using his, her or its Lot or the Common Area.

The Association shall, upon the written request of any Owner or the holder, insurer or guarantor of any Mortgage and upon payment of such reasonable charge as may be determined by the Board, furnish to the requesting party a certificate, executed by an officer of the Association, stating the date to which assessments with respect to the Lot specified in the request have been paid and the amount, if any, of any assessments which have been levied with respect to said Lot but remain unpaid as of the date of such certificate, which certificate shall be binding upon the Association as to the matters set forth therein as of the date thereof.

Section 2. Computation of Assessment; Annual Budget.

The Board shall prepare and adopt an estimated annual budget for each fiscal year of the Association. Such budget shall take into account the estimated Common Expenses and cash requirements of the Association for the year. The annual budget shall also take into account the estimated net available cash income for the year, if any, from the operation or use of any of the Common Area. The annual budget shall provide for a reserve for contingencies for the year (and for subsequent fiscal years) and a reserve for replacements, all in such reasonably adequate amounts as shall be determined by the Board. The Board shall cause a copy of the budget and a statement of the amount of the assessments to be levied against each Lot for the following fiscal year to be delivered or mailed to each Owner not less than sixty (60) days following the meeting of the Board at which such budget shall have been adopted.

Section 3. Special Assessments. In addition to the General Assessments authorized in Section 1, the Association may levy a Special Assessment in any year, provided, however, that any Special Assessment shall be effective only with the approval of not less than two-thirds (2/3) of the votes of each class of Members represented in person or by valid proxy at a meeting of Members duly called and convened to consider such Special Assessment. Special Assessments shall be allocated equally among all Lots.

Section 4. Lien for Assessments. The assessments provided for herein shall constitute a lien on each Lot prior and superior to all other liens, except (1) all taxes, bonds, assessments and other levies which, by law, would be superior thereto, and (2) the lien or charge of any First Mortgage made in good faith and for value. Such liens may be foreclosed in the manner provided by law for the foreclosure of mortgages. The sale or transfer of any Lot pursuant to a mortgage foreclosure or any proceeding in lieu thereof shall extinguish the lien of the assessments provided for herein as to payments which became due prior to such sale or transfer, but no such sale or transfer shall relieve such Lot from liability for any assessments becoming due after such sale or transfer, or from the lien thereof.

The Association shall have the power to bid for any Lot at any sale to foreclose the Association's lien on the Lot, and to acquire and hold, lease, mortgage and convey the same. During the period any Lot is owned by the Association following any such

foreclosure no right to vote shall be exercised appurtenant to said Lot and no assessment shall be assessed or levied on or with respect to said Lot, provided, however, that the Association's acquisition and ownership of a Lot under such circumstances shall not be deemed to convert the same into Common Area. Suit to recover a money judgment for unpaid assessments, rent, interest and attorneys' fees shall be maintainable without foreclosing or waiving the lien securing the same.

Section 5. Notice and Quorum for Meetings to Consider Special Assessments and Certain Increases in General Assessments.

Notwithstanding any other provision hereof or of the Articles, the Bylaws or the rules and regulations of the Association, written notice of any meeting called for the purpose of (a) approving the establishment of any Special Assessment, as required by Article VIII, Section 3 hereof, or (b) approving any increase in the General Assessment greater than that permitted by application of the Consumer Price Index formula as set forth in Article VIII, Section 1 hereof, shall be sent to all Members not less than thirty (30) days nor more than sixty (60) days prior to the date of said meeting. At the first meeting thus called to consider the particular Special Assessment or increase in General Assessment, a quorum shall consist of sixty percent (60%) of the votes in each class of Members (whether represented in person or by valid proxy), provided, however, that if a quorum, as so determined, is not present at said first meeting, a second meeting may be called (subject to the same notice

requirements as set forth above) to consider the same issue, and a quorum at said second meeting shall be one-half (1/2) of the required quorum at the first meeting, as described above. Such second meeting may not be held more than sixty (60) days after the first meeting.

Section 6. Developer's Obligation for Operating Deficiencies. So long as the Class "B" membership exists, Developer shall pay and contribute to the Association, within thirty (30) days after the end of each fiscal year of the Association, or at such other times as may be requested by the Board, such funds as may be necessary, when added to the assessments levied by the Association pursuant to this Declaration, to provide for (i) the operation and maintenance of the Common Area and the recreational facilities located thereon, (ii) the maintenance of adequate reserve accounts, and (iii) the performance by the Association of all other obligations of the Association under this Declaration or under the Articles or the Bylaws.

## Article IX

### Party Walls

Section 1. General Rules of Law to Apply. Each wall (including fence walls and common walls between Residential Units) which is built by or on behalf of Developer on the dividing line between two Lots shall constitute a party wall, and, to the extent not inconsistent with the provisions of this Article IX, the general rules of law regarding party walls and liability

for property damages due to negligent or willful acts or omissions shall apply thereto.

Section 2. Repair and Maintenance. No Owner or resident of any Lot (or any guest, invitee, employee or agent of such Owner or resident) shall do or permit any act (or omit to do any act) that will or does damage, destroy or impair the structural soundness or integrity of any party wall, or which would cause any party wall to be exposed to the elements, and, in the event any such Owner, resident, guest, invitee, employee or agent does or permits any such act (or so omits to do any act), such Owner's or resident's liability with respect to such damage, destruction, impairment or exposure shall be determined in accordance with applicable law.

Section 3. Sharing of Repair and Maintenance. In the event any repair, maintenance or reconstruction of any party wall shall be necessary (other than due to the negligence or willful act or omission of the Owner or resident of one Lot, or such Owner's or resident's guests, invitees, employees or agents) the cost thereof shall be borne equally by the Owners and/or residents of the Lots having in common such party wall, and in the event any Owner (or resident) fails or refuses timely to pay such Owner's (or resident's) share of such cost, the other Owner (or resident) shall have the right to pay in full such cost and recover from such Owner (or resident) such Owner's (or resident's) share of such cost (together with interest as provided in Article X, Section 8 of this Declaration).



## Article X

General Provisions

Section 1. Term. The covenants, conditions and restrictions of this Declaration (a) shall run with and bind the Property, (b) shall inure to the benefit of and shall be enforceable by the Association or by the owner of any property subject to this Declaration, their respective legal representatives, heirs, successors and assigns, and (c) shall remain in full force and effect until January 1, 2036, at which time said conditions, covenants and restrictions, unless revoked by an affirmative vote of Members owning not less than seventy-five percent (75%) of all Lots, shall automatically be extended for successive periods of twenty-five (25) years each, until revoked in the manner provided above. Notwithstanding any such revocation of this Declaration, each Owner of a Lot (and such Owner's occupants, tenants, residents, guests and invitees) shall nevertheless have a permanent easement across the Common Area for access to such Lot and for access to and use of such recreational facilities as may exist on the Common Area at the time of such revocation.

Section 2. Amendment. Except as otherwise provided herein (and subject to the provisions of Sections 10, 11, 12, 13 and 14 of this Article X), this Declaration may be amended only by the affirmative vote (in person or by proxy) or written consent of Members owning at least seventy-five percent (75%) of all Lots. No amendment to this Declaration shall be effective unless and until such amendment shall be recorded with the

Recorder. In addition to and notwithstanding the foregoing, (a) so long as the Class "B" membership exists, no amendment to this Declaration shall be effective without the prior approval of the Federal Housing Administration and the Veterans Administration, and (b) no amendment of a material nature to this Declaration (or to the Articles or the Bylaws) shall be effective unless approved by Eligible Mortgage Holders representing at least fifty-one percent (51%) of all Lots subject to First Mortgages held by Eligible Mortgage Holders. A change to any of the following would be considered to be a change of a material nature:

- (i) provisions relating to voting rights in the Association;
- (ii) provisions relating to assessments, assessment liens or subordination of assessments;
- (iii) provisions relating to reserves for maintenance and repairs;
- (iv) provisions relating to Owners' rights to use the Common Area;
- (v) boundaries of any Lot;
- (vi) conversion of any Lot into Common Area or vice versa;
- (vii) addition or annexation of property to, or withdrawal of property from, the Property, or addition or annexation of any property to, or withdrawal of any property from, the Common Area (except pursuant to Article VI hereof,

which shall neither be considered to be an amendment for purposes of this Section 2 nor require the consent of any Member or Eligible Mortgage Holder);

(viii) provisions relating to insurance or fidelity bonds;

(ix) provisions relating to the leasing of Lots (or Residential Units thereon);

(x) provisions relating to the right of an Owner to sell or transfer such Owner's Lot;

(xi) restoration or repair of any structures or improvements (including, but not limited to, Residential Units) on the Property following a hazard damage or condemnation in a manner other than as specified in this Declaration;

(xii) any action to dissolve or otherwise terminate the Association or the legal status of the Property after substantial destruction or condemnation of improvements on the Property occurs; or

(xiii) any provisions that expressly benefit the holders, insurers or guarantors of Mortgages.

In the event a proposed addition, amendment or change to this Declaration, the Articles or the Bylaws is deemed by the Board as not being of a material nature, the Association shall nevertheless provide written notice to each Eligible Mortgage Holder of the proposed addition, amendment or change (and of the Board's determination that the same is not of a material nature), and

each Eligible Mortgage Holder which shall not have made written response to such notice within thirty (30) days after the date of such notice shall automatically be deemed to have approved the proposed addition, amendment or change.

Section 3. Indemnification. The Association shall indemnify every officer and director of the Association against any and all expenses, including attorneys' fees, reasonably incurred by or imposed upon any officer or director of the Association in connection with any action, suit, or other proceeding (including settlement of any suit or proceeding, if approved by the then Board of Directors) to which he or she may be a party by reason of being or having been an officer or director of the Association, except for their own individual willful misfeasance, malfeasance, misconduct or bad faith. The officers and directors shall have no personal liability with respect to any contract or other commitment made by them, in good faith, on behalf of the Association (except indirectly to the extent that such officers or directors may also be Members of the Association and therefore subject to assessment to fund a liability of the Association), and the Association shall indemnify and forever hold each such officer and director free and harmless against any and all liability to others on account of any such contract or commitment. Any right to indemnification provided for herein shall not be exclusive of any other rights to which any officer or director, or former officer or director of the Association, may be entitled.

Section 4. Easements for Utilities, Etc. There is hereby reserved to the Association the power to grant blanket easements upon, across, over and under all of the Common Area for ingress, egress, installation, replacing, repairing, and maintaining master television antenna systems, security and similar systems, and all utilities, including, but not limited to, water, sewers, telephones, cable television and electricity, provided, that no such easement shall interfere with a Residential Unit or its reasonable use and such easements shall require the holder of the easement to repair any damage caused to the property of any Owner. Should any entity furnishing a service covered by the general easement herein provided request a specific easement by separate recordable document, the Association shall have the right to grant such easement on said property in accordance with the terms hereof.

Section 5. No Partition. No person acquiring any interest in the Property or any part thereof shall have a right to, nor shall any person seek, any judicial partition of the Common Area. This Section shall not be construed to prohibit the Board from acquiring and disposing of tangible personal property nor from acquiring or disposing of title to real property (other than disposition of title to the Common Area) which may or may not be subject to this Declaration.

Section 6. Severability. Invalidation of any one of these covenants or restrictions by judgment or court order shall in no way affect any other provisions which shall remain in full force and effect.

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

Section 8. Enforcement. The Association shall have the standing and power to enforce the provisions of this Declaration and the provisions of any other recorded document pertaining to any Lot or Lots and its costs in doing so, including, but not limited to, reasonable attorneys' fees, together with interest thereon from the date the costs are expended at a rate equal to ten percent (10%) per annum, shall constitute a lien on all Lots owned by the Owner or Owners against whom the action is taken, which lien shall have the priority and may be enforced in the manner described in Section 4 of Article VIII hereof. Further, any Owner shall have the standing and the right to bring an action against the Association for any violation or breach by the Association of any provision hereof or of the Articles or the Bylaws.

Section 9. Property Held in Trust. Any and all portions of the real property described on Exhibits "A," "B" and "C" hereto which are held in a subdivision or other trust or trusts (or similar means of holding title to property), the beneficiary of which trust(s) is Developer, shall be deemed for

all purposes hereunder to be owned by Developer and shall be treated for all purposes hereunder in the same manner as if such real property were owned in fee by Developer. No conveyance, assignment or other transfer of any right, title or interest in or to any of such real property by Developer to any such trust (or the trustee thereof) or to Developer by any such trust (or the trustee thereof) shall be deemed for purposes of this Declaration to be a sale of such real property or any right, title or interest therein.

Section 10. FHA/VA Approval. So long as the Class "B" membership is in existence, the following actions shall not be taken without the prior approval of the Federal Housing Administration and the Veterans Administration: (a) annexation of additional properties to the Property; (b) dedication of any part or all of the Common Area; or (c) amendment of this Declaration.

Section 11. Notices to Certain Mortgage Holders, Insurers or Guarantors. The Association shall give timely written notice of any of the following actions, events or occurrences to any holder, insurer or guarantor of a Mortgage who or which, prior to such action, event or occurrence, shall have made written request to the Association for such notice (which written request shall state the name and address of such holder, insurer or guarantor and the Lot number or street address of the Lot to which the applicable Mortgage pertains):

(a) Any condemnation or casualty loss that affects either a material portion of the Property or the Lot securing the applicable Mortgage;

(b) Any delinquency lasting sixty (60) days or more in payment of any assessments or other charges owed to the Association by the Owner of the Lot securing the applicable Mortgage, or any other breach or default hereunder by the Owner of the Unit securing the applicable Mortgage which is not cured within sixty (60) days after notice thereof from the Association to such Owner;

(c) Any lapse, cancellation or material modification of any insurance policy or fidelity bond maintained by the Association; or

(d) Any proposed action which requires the consent of a specified percentage of Eligible Mortgage Holders, as provided in Article X, Section 2 hereof.

Section 12. Dissolution or Termination of the Association or Legal Status of the Property. No action to dissolve or otherwise terminate the Association or the legal status of the Property for any reason other than the substantial destruction or condemnation of the Property shall be taken without the consent of Eligible Mortgage Holders representing not less than sixty-seven percent (67%) of all Lots subject to First Mortgages held by Eligible Mortgage Holders.

Section 13. Approval of Amendments by Tempe City Attorney's Office. No amendment to this Declaration shall be effective unless and until approved by the office of the City Attorney for the City of Tempe, Arizona (or unless and until said office shall waive, in writing, its right to approve or disapprove any specific amendment submitted to it).



Section 14. Amendments Requested by Governmental Agency. Notwithstanding any other provision of this Declaration, Developer shall have the right to amend all or any part of this Declaration to such extent and with such language as may be requested by the Federal Housing Administration, Veterans Administration, Federal National Mortgage Association, Federal Home Loan Mortgage Corporation or other similar governmental agency as a condition to such agency's approval of this Declaration or of the residential development encompassing the Property. Any such amendment shall be effected by Developer's recording with the Recorder an instrument executed by Developer and appropriately acknowledged, specifying the governmental agency requesting such amendment and setting forth the appropriate amendatory language. Recording of such amendment shall constitute conclusive proof of such governmental agency's request for such amendment. Such amendment shall be effective, without the consent or approval of any other person or entity, on and as of the date the same is recorded with the Recorder, and shall thereupon and thereafter be binding upon any and all Owners or other persons having any interest in all or any part of the Property. Except as expressly provided in this Section 14, neither Developer nor any other person(s) shall have the right to amend this Declaration except in accordance with and pursuant to the other provisions and requirements of this Declaration.

Section 15. Relationship to Master Declaration. This Declaration shall be in addition and subordinate to the Master

Declaration, and the Property (including, but not limited to, each Lot) shall be subject not only to this Declaration but also to all of the provisions of the Master Declaration, including, but not limited to, the provisions of Article IX (entitled "Architectural Standards; Architectural Control Committee") and Article X (entitled "Use Restrictions") of the Master Declaration (provided, however, that to the extent any provision of this Declaration imposes upon the Property or any part thereof any added or greater restriction than is contained in the Master Declaration, such added or greater restriction shall control). All Owners and Members shall not only be entitled to the rights and privileges and subject to the duties and obligations granted and imposed by or pursuant to this Declaration but shall also be entitled to the rights and privileges and subject to the duties and obligations granted and imposed by or pursuant to the Master Declaration. Any and all assessments or other charges levied or imposed by or pursuant to this Declaration shall be in addition to any and all assessments or other charges levied or imposed by or pursuant to the Master Declaration.

IN WITNESS WHEREOF, the undersigned have executed this Declaration as of the day and year first set forth above.

DEVELOPER:

SUNRISE LIMITED PARTNERSHIP, an Illinois limited partnership doing business in the State of Arizona as S Limited Partnership

By UDC ADVISORY SERVICES, INC., an Illinois corporation, its General Partner

By *David L. Gilliam*  
Its *Treasurer*

DECLARANT:

PIONEER TRUST COMPANY OF ARIZONA, an Arizona corporation, as Trustee of its Trust No. 20,722 and not personally

By *Brian W. Barkycomb*  
Its *TRUST OFFICER*

APPROVED:

City Attorney for  
City of Tempe, Arizona

By *C. Brad Wootford*

CITY OF TEMPE, ARIZONA  
COUNTY OF MARICOPA

ss.

This instrument was presented before me this *9th* day of

*May*, 19*85*. *C. Brad Wootford*

in witness whereof, I have hereunto set my hand and official seal,

*Chris L. McKeon* NOTARY PUBLIC

My Commission Expires Aug. 27, 1988

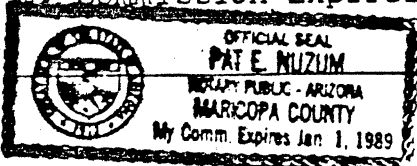
STATE OF ARIZONA )  
 )  
County of Maricopa ) SS.

On this 7<sup>th</sup> day of May, 1985, before me, the undersigned officer, personally appeared Boyd L. Gilligan, who acknowledged himself to be TREASURER of UDC ADVISORY SERVICES, INC., an Illinois corporation which is General Partner of SUNRISE LIMITED PARTNERSHIP, an Illinois limited partnership doing business in the State of Arizona as S Limited Partnership, and that he, in such capacity, being authorized so to do, executed the foregoing instrument for the purposes therein contained by signing the name of said Corporation and said Partnership by himself.

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

Pat E. Nuzum  
Notary Public

My Commission Expires:



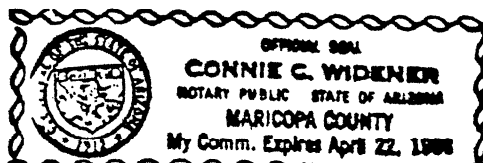
STATE OF ARIZONA )  
 )  
County of MARICOPA ) SS.

On this 14<sup>th</sup> day of May, 1985, before me, the undersigned officer, personally appeared Brian W. Burkyoung, who acknowledged himself to be Trust Officer of PIONEER TRUST COMPANY OF ARIZONA, an Arizona corporation, as Trustee of its Trust No. 20,722 and not personally, and that he, in such capacity, being authorized so to do, executed the foregoing instrument for the purposes therein contained by signing the name of the Corporation by himself.

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

Connie C. Widener  
Notary Public

My Commission Expires:



## EXHIBIT "A"

A portion of the East half of the Northwest Quarter of Section 22, T1S, R4E, of the Gila and Salt River Base and Meridian, Maricopa County, Arizona, more particularly described as follows:

BEGINNING at the North-Quarter corner of said Section 22;

THENCE N  $89^{\circ} 50' 37''$  W., 914.34 feet along the North line of said Section 22;

THENCE S  $00^{\circ} 06' 49''$  E., 55.00 feet to the TRUE POINT OF BEGINNING;

THENCE S  $89^{\circ} 50' 37''$  E., 861.09 feet;

THENCE S  $44^{\circ} 50' 37''$  E., 28.28 feet;

THENCE S  $00^{\circ} 09' 23''$  W., 545.00 feet;

THENCE S  $00^{\circ} 47' 39''$  W., 102.47 feet to a point of curvature with a circular curve concave to the West and having a radius of 1270.00 feet;

THENCE Southerly along the arc of said curve through a central angle of  $02^{\circ} 09' 19''$  a distance of 47.77 feet to a point of non-tangency having a radial bearing of N  $83^{\circ} 03' 38''$  W.;

THENCE N  $89^{\circ} 50' 37''$  W., 871.83 feet;

THENCE N  $00^{\circ} 06' 49''$  W., 715.01 feet to the TRUE POINT OF BEGINNING.

Above described property also known as Tract "B" and Tract "C" of "Warner Ranch", Book 277, Page 29, MCR.

## EXHIBIT "B"

A portion of the West half of the Northeast Quarter of Section 22, T1S, R4E, of the Gila and Salt River Base and Meridian, Maricopa County, Arizona, more particularly described as follows:

BEGINNING at the North Quarter Corner of said Section 22;

THENCE S  $43^{\circ} 46' 46''$  E., 76.38 feet to the TRUE POINT OF BEGINNING;

THENCE S  $89^{\circ} 50' 13''$  E., 719.15 feet;

THENCE S  $44^{\circ} 50' 13''$  E., 28.28 feet;

THENCE S  $00^{\circ} 09' 47''$  W., 265.00 feet to a point of curvature with a circular curve concave to the West having a radius of 470.00 feet;

THENCE Southwesterly along the arc of said curve through a central angle of  $97^{\circ} 53' 03''$  a distance of 802.95 feet to a point of tangency;

THENCE N  $81^{\circ} 57' 10''$  W., 223.66 feet;

THENCE N  $37^{\circ} 45' 38''$  W., 21.51 feet to a point on a circular curve concave to the West and having a radius of 1330.00 feet and a radial bearing of N.  $83^{\circ} 53' 30''$  W.;

THENCE Northerly along the arc of said curve through a central angle of  $01^{\circ} 19' 27''$  a distance of 30.74 feet to a point of tangency;

THENCE N  $04^{\circ} 04' 03''$  E., 107.56 feet;

THENCE N  $00^{\circ} 09' 23''$  E., 545.00 feet;

THENCE N  $45^{\circ} 09' 35''$  E., 28.28 feet to the TRUE POINT OF BEGINNING.

Above described property also know as Tract "G" and a portion of Tract "F" of "Warner Ranch", Book 277, Page 29, MCR.

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EXHIBIT "C"

Tracts A through F, inclusive, Warner Ranch Village Unit I, according to the plat recorded in Book 282 of Maps, page 19, in the office of the Maricopa County, Arizona Recorder.

## EXHIBIT "D"

Phases and Lots within Warner Ranch Village Unit I, according to the plat recorded in Book 282 of Maps, page 19, in the office of the Maricopa County, Arizona Recorder.

<u>Phase Number</u>	<u>Lots Included within the Phase</u>
1	26-53, inclusive; <u>and</u> 81-104, inclusive
2	1-10, inclusive; <u>and</u> 54-69, inclusive
3	11-25, inclusive; <u>and</u> 70-80, inclusive