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DECLARATION OF COVENANTS, CONDITIONS, AND RESTRICTIONS

FOR

CAÑADA HILLS

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DECLARATION OF COVENANTS, CONDITIONS, AND RESTRICTIONS

FOR

CANADA HILLS

THIS DECLARATION OF COVENANTS, CONDITIONS, AND RESTRICTIONS is executed to be effective as of the 27th day of July, 1987, by CANADA HILLS DEVELOPMENT LIMITED PARTNERSHIP, an Arizona limited partnership, CANADA HILLS RESORT SITE LIMITED PARTNERSHIP, an Arizona limited partnership, and CANADA HILLS COMMERCIAL SITE LIMITED PARTNERSHIP, an Arizona limited partnership.

RECITALS

A. Declarant is the owner and developer of approximately Eight Hundred (800) acres of land located generally between Naranja Road on the north, Lambert Lane on the south, La Cholla Boulevard on the west, and the Monte de Oro Subdivision on the East, to be known and developed under the name "Canada Hills".

B. Declarant desires to develop Canada Hills in stages as a planned area development with residential and commercial areas, together with recreational areas, developed and undeveloped open spaces, pedestrian and equestrian trails, bicycle paths, and other facilities.

C. As part of the development of Canada Hills and without obligation so to do, Declarant intends to dedicate portions of Canada Hills to the public and to Record various additional covenants, conditions, and restrictions in the form of separate Tract Declarations, which shall cover the portions of Canada Hills specified in such Tract Declarations.

D. Declarant desires and intends that the Covered Property shall be held, sold, and conveyed subject to the easements, restrictions, covenants, and conditions in this Declaration, which: (i) are for the purpose of protecting the value, desirability, attractiveness, and natural character of the Covered Property; (ii) shall run with all of the real property comprising the Covered Property; (iii) shall be binding upon all parties having any right, title, or interest in any part of the Covered Property; and (iv) shall inure to the benefit of all parties having any right, title, or interest in any part of the Covered Property, and their successors and assigns.

E. Declarant desires to form an Arizona nonprofit corporation to be known as the "Canada Hills Community Association," which shall be the "master association" (excluding all Subsidiary Associations) for the purposes of, among other things: (i) holding title in fee or otherwise to the Common Areas; (ii)

preserving the values and amenities of the Covered Property, in regard to which the Association shall be delegated certain powers to administer and maintain the Common Areas and enforce this Declaration and the Development Guidelines adopted pursuant to this Declaration; and (iii) establishing, collecting, disbursing, and enforcing the Assessments and other charges imposed or created in this Declaration.

F. In regard to Declarant's formation of the Association and without obligation so to do, Declarant may, in Declarant's sole discretion, seek approval of this Declaration and of the Association by FHA, VA, FNMA, FHLMC, or any other Agencies whose approval Declarant deems necessary or desirable in Declarant's sole discretion.

G. Until such time as the Association is incorporated, Declarant shall and does hereby reserve to itself, its successors and assigns, the right to exercise the powers, rights, and duties granted to or imposed upon the Association under this Declaration.

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

ARTICLE I

DEFINITIONS

As used in this Declaration, the following terms shall have the following meanings:

1.1 "Additional Covenants" shall mean the covenants, restrictions, reservations, charges, servitudes, assessments, conditions, liens, or easements in addition to those provided for in this Declaration that are provided for in any Tract Declaration or any Recorded contract, deed, declaration, or other instrument that may be permitted under this Declaration;

1.2 "Additional Property" shall mean the real property more particularly described as Sections 2, 3, 4, 9, 10, 11, 14, and 15 Township 12 South, Range 13 East, of the Gila and Salt River Base and Meridian, Pima County, Arizona, and any development to be completed thereon;

1.3 "Affiliate" shall mean a Person controlled by, controlling, or under common control with Declarant;

1.4 "Agency" or "Agencies" shall mean FHA, VA, FNMA, FHLMC, and any other governmental agencies or financial institutions;

1.5 "Annual Assessments" shall mean the regular annual assessments levied by the Board pursuant to Section 8.2 of this Declaration;

1.6 "Apartment Parcel" shall mean a Parcel designated in a Development Site Plan or a Tract Declaration for use as a Residential Apartment Development;

1.7 "Apartment Unit" shall mean a Dwelling Unit located within an Apartment Parcel, the occupancy of which is governed by a rental agreement as defined in A.R.S. § 33-1310(11);

1.8 "Articles" shall mean the Articles of Incorporation of the Association, as amended or restated from time to time, on file with the Arizona Corporation Commission;

1.9 "Assessments" shall mean all Annual Assessments, Special Assessments, Maintenance Assessments, and Special Use Fees;

1.10 "Assessment Lien" shall mean the charge and continuing servitude and lien against a Lot or Parcel for payment of Assessments;

1.11 "Assessment Period" shall mean each period for which Assessments are to be levied against a Lot or Parcel pursuant to this Declaration, as more particularly described in Section 8.8 of this Declaration;

1.12 "Association" shall mean the "Cañada Hills Community Association", an Arizona nonprofit corporation, its successors and assigns;

1.13 "Association Rules" shall mean the rules and regulations adopted by the Association pursuant to Sections 6.3 and 12.2 of this Declaration;

1.14 "Board" shall mean the Board of Directors of the Association;

1.15 "Bylaws" shall mean the Bylaws of the Association, as amended or restated from time to time;

1.16 "Cañada Hills Planned Area Development" shall mean the area plan document at any time in effect for Cañada Hills prepared in accordance with Article 10-3 of the Oro Valley Zoning Code Revised and approved by the Town or any other governmental entity having the authority to approve and regulate planned area developments located in the Town, as the same may be amended from time to time;

1.17 "Commercial Use" shall mean all nonresidential uses of the Covered Property permitted by the Oro Valley Zoning Code Revised;

1.18 "Common Areas" shall mean all real property and the improvements or amenities thereon and all personal property and

facilities that shall from time to time be owned, controlled, or operated by the Association, including but not limited to areas used for landscaping, flood control, drainage, bicycle or jogging paths, parks, recreational areas, open spaces, walkways, equestrian trails, and pedestrian and vehicular ingress and egress including real property to be dedicated to the public upon expiration of a period of time, but only until such real property is dedicated, and real property upon which the Association has been granted easements for construction, maintenance, or repair in a Development Site Plan, Recorded subdivision plat, Tract Declaration, or deed or other conveyance accepted by the Association;

1.19 "Concept Site Plan" shall mean a document that shows the tentative distribution of land uses with the Covered Property at any time in effect for Cañada Hills and approved by the Town or any other governmental entity having the authority to approve and regulate planned area developments located in the Town, as the same may be amended from time to time;

1.20 "Condominium Parcel" shall mean a Parcel designated in a Development Site Plan or a Tract Declaration for use as a Residential Condominium Development;

1.21 "Condominium Unit" shall mean a Dwelling Unit constituting a "unit" in a "condominium", together with any appurtenant interest in all "common elements", as such terms are defined in Chapter 9, Title 33, of the Arizona Revised Statutes, as it may be amended from time to time;

1.22 "Covered Property" shall mean the property more particularly described on Exhibit A attached to and incorporated into this Declaration, plus the Additional Property, if and to the extent annexed;

1.23 "Declarant" shall mean Cañada Hills Development Limited Partnership, an Arizona limited partnership, Cañada Hills Resort Site Limited Partnership, an Arizona limited partnership, and Cañada Hills Commercial Site Limited Partnership, an Arizona limited partnership, and the successors and assigns of their rights and powers hereunder;

1.24 "Declaration" shall mean this Declaration of Covenants, Conditions, and Restrictions for Cañada Hills, as amended or supplemented from time to time;

1.25 "Delinquent Amount" shall mean any Assessment, or installment thereof, not paid when due;

1.26 "Design Review Committee" shall mean the committee formed pursuant to Article IV of this Declaration;

1.27 "Development Area Classification" shall mean a classifi-

cation contained in Section VI of the Plan that designates the type of development and the uses that may exist upon portions of the Covered Property;

1.28 "Development Guidelines" shall mean the guidelines promulgated by the Board pursuant to Section 4.3 of this Declaration;

1.29 "Development Site Plan" shall mean a site plan, covering all or any portion of the Covered Property, that is prepared in accordance with the requirements of the Plan and Articles 4-5 and 4-11 and Section 10-303 of the Oro Valley Zoning Code Revised, as it may be amended from time to time, approved by the Town or any other governmental entity having the authority to approve and regulate site plans to be located in the Town (including without limitation any landscape and irrigation plans), Recorded after the Recording of this Declaration, and subordinate to this Declaration;

1.30 "Dwelling Unit" shall mean any building, or part thereof, situated upon a Lot or Parcel and intended for use and occupancy as a residence by a Single Family, excluding any model home or model apartment until such model home or model apartment has been sold or leased for use and occupancy as a residence by a Single Family;

1.31 "Eligible Insurer or Guarantor" shall mean a governmental insurer or guarantor of a First Mortgage who has requested notice of certain matters from the Association in accordance with Section 16.1 of this Declaration;

1.32 "Eligible Mortgage Holder" shall mean a First Mortgagee who has requested notice of certain matters from the Association in accordance with Section 16.1 of this Declaration;

1.33 "Excluded Property" shall mean the property described on Exhibit B attached to and incorporated into this Declaration;

1.34 "Exempt Property" shall mean portions of the Covered Property not subject to Assessments, except if pursuant to Sections 8.7, 11.2, or 11.3 of this Declaration, which shall be the following areas now or hereafter located within Canada Hills:

1.34.1 all Government Property;

1.34.2 a Parcel restricted to use as a school or church, unless and to the extent that the applicable Tract Declaration or other appropriate Recorded instrument indicates such a Parcel is subject to Assessments;

1.34.3 all Common Areas for so long as Declarant or the Association is the owner thereof; and

1.34.4 all Limited Common Areas;

1.35 "FHA" shall mean the Federal Housing Administration;

1.36 "FHLMC" shall mean the Federal Home Loan Mortgage Corporation;

1.37 "First Mortgage" shall mean any mortgage or deed of trust on any Lot or Parcel, or portion thereof, with first priority over any other mortgage or deed of trust encumbering such Lot or Parcel, or portion thereof;

1.38 "First Mortgagee" shall mean the holder of any First Mortgage;

1.39 "FNMA" shall mean the Federal National Mortgage Association;

1.40 "Funds" shall mean all funds and property collected and received by the Association from any source;

1.41 "Government Property" shall mean all land and improvements owned by or dedicated to a public or governmental agency or authority for so long as the public or governmental agency or authority is the owner or beneficiary thereof, except for land or improvements, or both, owned or operated by a public or governmental agency or authority acting in a proprietary capacity or owned or operated as a Dwelling Unit;

1.42 "Index" shall mean the Revised Consumer Price Index for All Urban Consumers published by the Bureau of Labor Statistics of the United States Department of Labor, for U.S. City Average, All Items (1967 = 100); "Beginning Index" shall mean the Index published for October, 1986, and "Comparison Index" shall mean the Index published for October of the then current Assessment Period;

1.43 "Limited Common Areas" shall mean all areas of any Parcel now or hereafter designated on a Development Site Plan, Tract Declaration, or Recorded subdivision plat as an area to be used in common by some or all of the Owners or Occupants of a particular Parcel or subdivision but not by all Owners or Occupants of the Covered Property;

1.44 "Lot" shall mean:

1.44.1 an area of real property designated as a "lot" on a Tract Declaration, Development Site Plan, or Recorded subdivision plat approved by Declarant covering any Parcel, or a portion thereof, which area of real property is limited by a Tract Declaration, Development Site Plan, or other Recorded instrument to Single Family Residential Use;

1.44.2 a Condominium Unit; or

1.44.3 an Apartment Unit.

The term "Lot" shall not include Exempt Property;

1.45 "Maintenance Assessments" shall mean the assessments, if any, levied by the Board pursuant to Sections 8.7 and 11.2 of this Declaration;

1.46 "Maximum Annual Assessment" shall mean the amount established by or in accordance with Section 8.4 of this Declaration;

1.47 "Member" shall mean any Owner, including Declarant for so long as Declarant is a Class A or Class B Member;

1.48 "Membership" shall mean the amalgam of rights and duties of Owners, including Declarant, with respect to the Association;

1.49 "Merger Candidate" shall mean any other nonprofit corporation whose objectives, methods, taxable status, and format of operation are similar to those of the Association;

1.50 "Net Acre" shall mean a gross acre of Forty-Three Thousand Five Hundred Sixty (43,560) square feet less any dedicated rights-of-way and Common Areas;

1.51 "Non-Residential Parcel" shall mean a Parcel restricted under a Tract Declaration, Development Site Plan, or other Recorded instrument to Commercial Use;

1.52 "Occupant" shall mean:

1.52.1 each Tenant who resides on the Covered Property and the licensees, guests, and members of the immediate family of each Tenant who reside on the Covered Property;

1.52.2 each Owner who resides on the Covered Property and the licensees, guests, and members of the immediate family of each Owner who reside on the Covered Property; and

1.52.3 such persons as the Board, in its absolute discretion, may authorize;

1.53 "Owner" shall mean a Record holder of beneficial or equitable title, and legal title if legal title has merged with the beneficial or equitable title, to the fee simple interest in any Lot or Parcel. Owner shall not include: (a) Persons having an interest in a Lot or Parcel merely as security for the performance of an obligation; or (b) a Tenant of a Lot or Parcel. Owner shall include a purchaser under a contract for the conveyance of

real property, a contract for deed, a contract to convey, an agreement for sale, or any similar contract through which a seller has conveyed to a purchaser equitable title in a Lot or Parcel under which the seller is obligated to convey to the purchaser the remainder of the seller's title in the Lot or Parcel, whether legal or equitable, upon payment in full of all monies under the contract. Owner shall not include a purchaser under a purchase contract and receipt, escrow instructions, or similar executory contract that is intended to control the rights and obligations of the parties to executory contracts pending the closing of a sale and purchase transaction. In the case of Lots or Parcels, the fee simple title to which is vested in a trustee pursuant to a subdivision trust agreement or similar agreement, the beneficiary of any such trust who is entitled to possession of the Lot or Parcel shall be deemed to be the Owner. If fee simple title to a Lot or Parcel is vested in a trustee pursuant to A.R.S. §§ 33-801 et. seq., for purposes of this Declaration legal title shall be deemed to be held by the trustor or the trustor's successor of Record, and not by the trustee. An Owner shall include any Person who holds Record title to a Lot or Parcel in joint ownership or as an undivided fee interest;

1.54 "Parcel" shall mean any area of Canada Hills that is defined and limited to a specific development type or land use by a Tract Declaration, Development Site Plan, or Recorded subdivision plat; as well as any portion, pad, or subparcel thereof, if such portion, pad, or subparcel shall have been created by a parcel split or subdivision approved or permitted in accordance with Section 5.5 of this Declaration. Notwithstanding the preceding sentence, a Parcel other than a Non-Residential Parcel shall cease being a Parcel upon Recording of a Development Site Plan, subdivision plat, or declaration of condominium creating Lots in regard thereto. In the case of a staged development, the term "Parcel" shall include areas not yet covered by a Development Site Plan, Recorded subdivision plat, or declaration of condominium creating Lots;

1.55 "Party Walls" shall mean shared walls or fences between contiguous Lots or Parcels;

1.56 "Permitted Purposes" shall mean use as a golf course and for activities incidental thereto;

1.57 "Person" shall mean a corporation, partnership, joint venture, individual, trust, or any other legal entity;

1.58 "Plan" shall mean the Canada Hills Planned Area Development and the Concept Site Plan at any time in effect for Canada Hills and approved by the Town or any other governmental entity having the authority to approve and regulate planned area developments located in the Town, as the same may be amended from time to time. A current copy of the then applicable Plan shall be on file

at all times in the Association office. If required by the Town or any Agency, the Plan shall be Recorded;

1.59 "Recorded Assessment Lien" shall mean an Assessment Lien with respect to which the Board has Recorded a notice of lien covering the Delinquent Amount plus interest and accrued collection costs against the applicable Lot or Parcel;

1.60 "Record," "Recording," and "Recorded" shall mean placing or having placed a document of public record in the Official Records of Pima County, Arizona;

1.61 "Residential Apartment Development" shall mean a development comprised of Apartment Units and the surrounding area that is integrated into the development and is under the same ownership;

1.62 "Residential Condominium Development" shall mean a development comprised of Condominium Units and the surrounding Limited Common Areas;

1.63 "Restriction Period" shall mean the period of fifteen (15) years after the date this Declaration is Recorded;

1.64 "Single Family" shall mean a group of persons living together and maintaining a common single nonprofit housekeeping unit, together with their domestic servants;

1.65 "Single Family Parcel" shall mean a Parcel designated in a Development Site Plan or a Tract Declaration for Single Family Residential Use, excluding Apartment Parcels and Condominium Parcels;

1.66 "Single Family Residential Use" shall mean use of the Covered Property for Dwelling Units;

1.67 "Special Assessments" shall mean the assessments, if any, levied by the Board pursuant to Section 8.5 of this Declaration;

1.68 "Special Use Fees" shall mean any fees charged by the Association for use of the Common Areas pursuant to Sections 3.1 and 12.1 of this Declaration;

1.69 "Subsidiary Association" shall mean an Arizona nonprofit or profit corporation or an unincorporated association, its successors and assigns, established for the purpose of administering and enforcing the provisions of any Tract Declaration;

1.70 "Subsidiary Committee" shall mean any committee or group having a function similar to that of the Design Review Committee and formed or created pursuant to a Tract Declaration;

1.71 "Taking" shall mean condemnation by eminent domain or sale or other transfer under threat of condemnation;

1.72 "Tenant" shall mean a Person occupying any part of the Covered Property under any type of rental agreement, whether such rental agreement is within the definition set forth in A.R.S. § 33-1310(11) or not;

1.73 "Town" shall mean the Town of Oro Valley, Arizona;

1.74 "Tract Declaration" shall mean any declaration of covenants, conditions, and restrictions or like instrument Recorded after the Recording of this Declaration in regard to one or more Parcels or portions thereof, or group of Lots, by the Owner of such Parcels or portions thereof, or group of Lots, that is subordinate to this Declaration;

1.75 "VA" shall mean the United States Veterans' Administration; and

1.76 "Visible From Neighboring Property" shall mean, with respect to any given object, that such object is or would be visible to a Person six (6) feet tall, standing at ground level on neighboring property.

ARTICLE II

PROPERTY AND PERSONS BOUND BY THIS DECLARATION

2.1 General Declaration. Declarant intends to develop Cañada Hills in accordance with the Plan and to dedicate or convey to other Persons Lots, Parcels, or other portions of the Covered Property. As portions of Cañada Hills are developed, Declarant, without obligation, may approve for Recordation or Record one or more Tract Declarations that will, among other things, create Parcels, designate Common Areas and Limited Common Areas, and establish such additional covenants, conditions, and restrictions as may be appropriate for the respective portions of Cañada Hills. Declarant hereby declares that all of the Covered Property is and shall be held, conveyed, hypothecated, encumbered, leased, occupied, built upon, or otherwise used, improved, or transferred, in whole or in part, subject to this Declaration and any Tract Declarations applicable thereto, as amended or modified from time to time. Notwithstanding the preceding sentence, except for any restrictions imposed in this Declaration upon Owners and Occupants concerning the use and maintenance of Covered Property and except as otherwise expressly provided in this Declaration, Government Property shall not be subject to this Declaration. This Declaration is declared and agreed to be in furtherance of a general plan for the development and sale of the Covered Property and is established for the purpose of enhancing the value, desirability, and attractiveness of the Covered Property. This Declaration

shall run with the Covered Property for all purposes and shall be binding upon and inure to the benefit of Declarant, the Association, and all Owners and Occupants of the Covered Property and their successors and assigns. Nothing in this Declaration or in any Tract Declaration shall be construed to prevent Declarant from modifying any part of the Plan with respect to property as to which a Tract Declaration has not been Recorded, or from dedicating or conveying portions of Canada Hills for uses other than as a Lot, a Parcel, or Common Area.

2.2 Owners and Occupants Bound. Upon the Recording of this Declaration, this Declaration shall be binding upon all Owners and Occupants of the Covered Property and their successors and assigns, whether or not stated in any document or deed transferring any interest in any Parcel or Lot to or from such Owners or Occupants.

2.3 Association Bound. Upon the incorporation of the Association, this Declaration shall be binding upon and benefit the Association, and its successors and assigns.

2.4 Subsidiary Associations Bound. Upon the incorporation or other formation of any Subsidiary Association, this Declaration shall be binding upon and shall benefit such Subsidiary Association, and its successors and assigns.

ARTICLE III

EASEMENTS AND RIGHTS OF ENJOYMENT IN THE COMMON AREAS

3.1 Easements and Rights of Enjoyment. Each Owner shall have a nonexclusive easement for use and enjoyment in and to the Common Areas, which nonexclusive easement shall be appurtenant to and shall pass with the title to each Owner's Lot or Parcel. All Occupants shall have a nonexclusive nontransferable temporary license to use and enjoy the Common Areas so long as they remain Occupants. The foregoing grants and rights are subject, among other things, to the following limitations:

3.1.1 The right of the Association pursuant to this Section and Section 12.1 of this Declaration to charge reasonable Special Use Fees for the use of the Common Areas. The Special Use Fees shall be set by the Board from time to time, in its absolute discretion. Special Use Fees shall be charged only for actual entry upon or utilization of those Common Areas selected by the Board to be subject to Special Use Fees, and shall be intended to collect revenue from the actual users of such selected Common Areas so that all of the costs of operating such selected Common Areas are not borne by all of the Owners through Annual Assessments, but rather are borne, at least in part, by the Owners, Occupants, and other persons utilizing such selected Common Areas;

3.1.2 The right of the Association to suspend the voting rights and the rights to use and enjoy the Common Areas of any Owner or Occupant, as the case may be:

(a) for any period during which an Assessment remains delinquent;

(b) for a period not to exceed sixty (60) days for any infraction of this Declaration, a Tract Declaration, the Association Rules, or the Development Guidelines; or

(c) for successive sixty (60) day periods if any such delinquency or infraction is not corrected during any preceding suspension period;

3.1.3 The right of the Association to limit the number of guests of an Owner or Occupant, or the number of Persons from a Non-Residential Parcel, who may use the Common Areas; and

3.1.4 The right of the Association to regulate use of the Common Areas in accordance with this Declaration.

3.2 Association's Right of Ingress and Egress. Declarant hereby retains and reserves for itself and the Association a nonexclusive easement for ingress and egress over the Covered Property to enable Declarant, the Association, and their contractors, employees, representatives, and agents to implement the provisions of this Declaration.

3.3 Errant Golf Ball Easement. Declarant hereby retains for itself and its agents, licensees, guests, invitees, successors, and assigns a nonexclusive easement for the escape or propulsion of errant golf balls, whether on the ground or through the air, onto, upon, or over any portions of the Covered Property; provided, however, that this easement shall not be interpreted to allow ingress or egress over the Covered Property by any Person to retrieve golf balls or to allow any Person to deliberately land golf balls on the Covered Property.

3.4 Delegation of Use. Any Owner or Occupant, in accordance with the Association Rules and this Declaration, may delegate the Owner's or Occupant's rights of use and enjoyment in the Common Areas to family members, employees, customers, or guests subject to the limitations set forth in this Declaration and in the Association Rules; provided, however, the Association Rules may limit the number of Persons from a Non-Residential Parcel who may have access to the Common Areas.

3.5 Waiver of Use. No Owner shall be exempted from personal liability for Assessments, or the Owner's Lot or Parcel released from liens or charges arising under this Declaration or any Tract

Declaration, by waiver of any rights of use or enjoyment of the Common Areas.

ARTICLE IV

DESIGN REVIEW COMMITTEE

4.1 Organization of Design Review Committee. The Board shall establish a Design Review Committee and shall adopt the procedural rules and regulations for the performance of the duties of the Design Review Committee. The Design Review Committee shall be organized as follows:

4.1.1 Powers and Duties. The Design Review 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 Tract Declaration or similar recorded instrument approved in advance by the Board. Without limiting the generality of the foregoing, it shall be the duty of the Design Review Committee to consider and act upon all proposals or plans submitted to it pursuant to the provisions of this Declaration or the Development Guidelines, including approval of all landscaping to be planted or placed upon the Covered Property, to perform any other duties delegated to it by the Board, and to carry out all other duties imposed upon it by this Declaration;

4.1.2 Committee Composition. The Design Review Committee shall consist of five (5) regular members and one (1) alternate member. A member shall not be required to satisfy any particular qualification for membership and may be a member of the Board, an officer of the Association, or an officer, agent, or employee of Declarant;

4.1.3 Alternate Members. In the event of the absence or disability of a regular member of the Design Review Committee, the remaining regular members, even though less than a quorum, may designate the alternate member to act as a substitute regular member for an absent or disabled regular member for the duration of such absence or disability;

4.1.4 Term of Office. Unless a member of the Design Review 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 new member appointed to replace a regular or alternate member who has resigned or been removed shall serve such member's unexpired term. Members of the Design Review Committee who have resigned, been removed, or whose terms have expired may be reappointed;

4.1.5 Appointment and Removal. Except as provided in Section 4.1.8 of this Declaration, the right to appoint and remove all regular and alternate members of the Design Review Committee

at any time shall be and is hereby vested solely in the Board; provided, however, that no regular or alternate member may be removed from the Design Review Committee by the Board except by the vote or written consent of at least fifty-one percent (51%) of the members of the Board;

4.1.6 Resignations. Any regular or alternate member of the Design Review Committee may at any time resign from the Design Review Committee by giving written notice thereof to the Board;

4.1.7 Vacancies. Except as provided in Section 4.1.8 of this Declaration, vacancies on the Design Review Committee, however caused, shall be filled by the Board. A vacancy or vacancies on the Design Review Committee shall be deemed to exist in the case of the death, resignation, or removal of any regular or alternate member; and

4.1.8 Control by Declarant. In order to enhance the aesthetic and economic value of the Covered Property and to maintain uniformity of architectural and landscaping standards throughout the Covered Property, until the date set forth in Section 7.3.2 of this Declaration (unless otherwise specified in a Tract Declaration, a Recorded deed from Declarant, or a notice given to the Association by Declarant that Declarant desires to relinquish its rights under this Section 4.1.8) Declarant shall have the right:

(a) to appoint all regular and alternate members of the Design Review Committee; and

(b) to supplement and amend the Development Guidelines, as deemed necessary by Declarant, but only to the extent that such changes are in general conformity with the standards encompassed in this Declaration or a particular Tract Declaration.

4.2 Meetings and Compensation of Design Review Committee. The Design Review Committee shall meet from time to time as necessary to perform its duties hereunder. Subject to Section 4.1.3 of this Declaration, the vote or written consent of a majority of the regular members shall constitute the act of the Design Review Committee. The Design Review Committee shall keep and maintain a written record of all actions taken by it. Although members of the Design Review Committee shall not be paid for their services, consultants hired by the Design Review Committee, if authorized by the Board, may be paid for their services at the discretion of the Board. Notwithstanding the foregoing, for so long as Declarant is in control of the Design Review Committee pursuant to Section 4.1.8 of this Declaration, members of the Design Review Committee may be paid for their services at the discretion of the Board.

4.3 Development Guidelines. Subject to the written approval of the contents thereof by Declarant for so long as Declarant is in control of the Design Review Committee pursuant to Section 4.1.8 of this Declaration, the Board shall adopt, and may from time to time amend, supplement, and repeal, the Development Guidelines. The Development Guidelines shall interpret, implement, and supplement this Declaration, and shall set forth procedures for Design Review Committee review and the standards for development within the Covered Property. The Development Guidelines shall have the same force and effect as the Association Rules. Notwithstanding the foregoing or any other provisions of this Declaration: (a) Declarant hereby reserves to itself the right to Record Tract Declarations wherein Declarant shall have the right to establish and enforce architectural standards for Non-Residential Parcels; and (b) the Association, any applicable Subsidiary Association, or Declarant shall not by act or omission change, waive, or abandon any scheme of regulations or their enforcement pertaining to the architectural design or the exterior appearance of any buildings or structures within Canada Hills without the prior written approval of the Class B Member, if any, two-thirds (2/3) of the Class A Members other than Declarant or two-thirds (2/3) of First Mortgagees, based upon one (1) vote for each First Mortgage encumbering Covered Property that is not Exempt Property.

4.4 Obligation to Obtain Approval.

4.4.1 No building, fence, wall, pool, roadway, driveway, or other structure or improvement, nor any excavation, grading, or other work, shall be commenced, erected, repaired, or maintained within the Covered 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, antennas, exterior walls, fences, the color of any structure or improvement, or the drainage or grading on any Lot or Parcel, except in compliance with plans and specifications therefor that have been submitted to and approved by the Design Review Committee and any applicable Subsidiary Committee in accordance with this Declaration and the Development Guidelines.

4.4.2 No trees, bushes, shrubs, plants, or other landscaping shall be planted or placed upon the Covered Property except in compliance with plans and specifications therefor that have been submitted to and approved by the Design Review Committee and any applicable Subsidiary Committee in accordance with this Declaration and the Development Guidelines.

4.4.3 No material changes or deviations in or from the plans and specifications for any work to be done on the Covered Property, once approved by the Design Review Committee and any applicable Subsidiary Committee, shall be permitted without approval of the change or deviation by the applicable committees.

4.5 Waiver. The approval by the Design Review Committee or any Subsidiary Committee of any plans, drawings, or specifications for any work done or proposed, or for any other matter requiring the approval of the Design Review Committee or any applicable Subsidiary 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.

4.6 Liability. Neither Declarant nor the Design Review Committee nor any member thereof shall be liable to the Association, any Owner or Occupant, or any other party for any damage, loss, or prejudice suffered or claimed on account of:

4.6.1 the approval or disapproval of any plans, drawings, or specifications, whether or not defective;

4.6.2 the construction or performance of any work, whether or not pursuant to approved plans, drawings, or specifications;

4.6.3 the development of any Lot or Parcel; or

4.6.4 the execution and filing of any estoppel certificate or statement, whether or not the facts therein are correct; provided, however, that with respect to the liability of a member of the Design Review Committee, such member has acted in good faith on the basis of the information possessed by such member.

Without in any way limiting the generality of any of the foregoing provisions of this Section 4.6, the Design Review Committee, or any member thereof, may, but is not required to, consult with or hear the views of the Association or any Owner or Occupant with respect to any plans, drawings, specifications, or any other proposal submitted for review.

4.7 Appeal to Board. Except as provided in this Section 4.7 and in Section 4.10 of this Declaration, any Owner or Occupant aggrieved by a decision of the Design Review Committee may appeal the decision to the Board in accordance with procedures to be established in the Development Guidelines. In the event the decision of the Design Review Committee is overruled by the Board on any issue or question, the prior decision of the Design Review Committee shall be deemed modified to the extent specified by the Board. Notwithstanding the foregoing, for so long as Declarant retains control over the Design Review Committee as provided in Section 4.1.8 of this Declaration, no Owner or Occupant shall have the right to appeal any decision of the Design Review Committee to the Board and the Design Review Committee's decision shall be final.

4.8 Fee. The Board may establish a reasonable processing fee to defer the costs of the Design Review Committee in considering

any requests for approvals submitted to the Design Review Committee or for appeals to the Board, which fee shall be paid at the time the request for approval or review is submitted.

4.9 Inspection. Any member or authorized consultant of the Design Review Committee, or any officer, director, employee, or agent of the Association, may at any reasonable time and without being deemed guilty of trespass enter upon any Lot or Parcel, after reasonable notice to the Owner or Occupant of such Lot or Parcel, in order to inspect the improvements constructed or being constructed on such Lot or Parcel to ascertain that the improvements have been or are being built in compliance with the Development Guidelines, this Declaration, and any applicable Tract Declaration.

4.10 Declarant's Jurisdiction over Non-Residential Parcels. Notwithstanding the other provisions of this Article IV or any other provision of this Declaration, Declarant shall have all of the rights and powers of the Design Review Committee (or the Board or appropriate Subsidiary Committee, as applicable) with respect to all Non-Residential Parcels and all buildings, fences, walls, pools, roadways, driveways, and other structures, improvements, and landscaping thereon (including, but not limited to, all exterior additions to or changes or alterations in any such structure or improvement); provided, however, that such rights and powers shall vest in and be exercisable only by the Design Review Committee (or the Board or appropriate Subsidiary Committee, as applicable) upon the first to occur of: (a) the date as of which approved buildings and other improvements have been completed (as evidenced by certificates of occupancy issued by the appropriate governmental authority), in accordance with plans and specifications approved by Declarant, upon all Non-Residential Parcels and on all other property within Canada Hills designated for nonresidential purposes by the Plan or a Development Site Plan, as amended from time to time; or (b) the date specified in a Recorded instrument executed by Declarant expressly waiving its right to exercise the rights and powers conferred upon it by this Section 4.10 (or, if no date is specified, the date of recordation of such Recorded instrument). All decisions made by Declarant in its exercise of the rights and powers conferred upon it by this Section 4.10 shall be final and binding and shall not be subject to appeal to, or review by, the Board. No variances of any of the restrictions set forth in this Declaration with respect to NonResidential Parcels and no consents or approvals required or permitted to be given by the Board, the Design Review Committee, or any Subsidiary Committee pursuant to this Declaration relating to Non-Residential Parcels shall be granted or given without the prior written consent of Declarant until the earlier of the two dates specified in (a) and (b) of this Section 4.10.

ARTICLE V

LAND USE CLASSIFICATIONS, PERMITTED USES, AND RESTRICTIONS

5.1 Land Use Classifications. As portions of the Covered Property are readied for development in accordance with the Plan, any number of land uses permitted by the applicable Development Area Classification may be fixed in a Tract Declaration. Each Tract Declaration shall be construed as a supplement to this Declaration and as fully a part of this Declaration as if all of the provisions of the Tract Declaration were set forth in this Declaration; provided, however, that if any provision of a Tract Declaration is inconsistent with any provision of this Declaration, the provision of this Declaration shall control. The land use restrictions established by a Tract Declaration shall not be changed except as specifically permitted by this Declaration and such Tract Declaration. Unless otherwise specifically provided in this Declaration and subject to applicable zoning laws, the definitions and characteristics of the specific permitted and prohibited uses of the real property within a particular portion of the Covered Property shall be set forth in the respective Tract Declarations.

5.2 Covenants, Conditions, Restrictions, and Easements Applicable to Single Family Residential Uses. The following covenants, conditions, restrictions, and reservations of easements and rights shall apply to all Lots and Parcels included within Covered Property that is not within a Non-Residential Parcel, and to the Owners and Occupants thereof:

5.2.1 General. No structure whatsoever, other than one private, single family residence, together with a private garage for not more than four cars and one guest residence, one stable if allowed pursuant to this Declaration and any applicable Tract Declaration, one gazebo, one tennis court, one swimming pool, and one storage facility (all approved by the Design Review Committee in accordance with this Declaration) shall be erected, placed, or permitted on any Lot.* No gainful occupation, profession, trade, or other nonresidential use shall be conducted on any Lot or Parcel. The entire (but not less than all, of a) Dwelling Unit may be leased to a Single Family Tenant from time-to-time by the Owner, subject to the provisions of this Declaration, any applicable Tract Declaration, and the Association Rules;

5.2.2 Animals. No animal, livestock, poultry, or fowl of any kind, including horses, other than a reasonable number of generally recognized house pets, shall be maintained on or in any Lot or Parcel and then only if they are kept or raised thereon solely as domestic pets and not for commercial purposes, except that one horse on each Lot may be maintained in any Parcel(s) designated as equestrian tracts in a Tract Declaration or a Development Site Plan. No domestic pets shall be permitted to

make an unreasonable amount of noise or create a nuisance. No farm animals, water fowl, or reptiles shall be permitted within the Covered Property. No structure for the care, housing, or confinement of any permitted pet, except horses, shall be Visible From Neighboring Property. Notwithstanding the foregoing, no permitted pets shall be kept on or in any Lot or Parcel that result in an annoyance to other Owners or Occupants in the vicinity;

5.2.3 Temporary Occupancy and Temporary Buildings. No trailer, basement of any incomplete building, tent, shack, garage, barn, or temporary structure of any kind shall be used as a residence, whether temporary or permanent. Temporary structures used during construction shall be removed immediately after completion of such construction;

5.2.4 Maintenance of Landscaping and Driveways. Unless otherwise provided in a Tract Declaration, each Owner shall be responsible for the proper maintenance of all landscaping in the following locations:

(a) on the Owner's Lot or Parcel (including setback areas located thereon);

(b) portions of the Common Area adjacent to an Owner's Lot or Parcel that are on the Lot's or Parcel's side of any wall erected on the Common Area; and

(c) public right-of-way areas between sidewalks (or bicycle paths or equestrian trails) and the street curb on the Owner's Lot or Parcel, or other public or easement areas adjacent to the Owner's Lot or Parcel, except that if the maintenance of such areas has been assumed in writing by the Association, a utility, or a governmental or similar authority, the Owner shall be responsible for such maintenance for only as long as such entities are not fulfilling their maintenance responsibility.

As used in this Section 5.2.4, maintenance shall include but not be limited to keeping the areas neatly trimmed, cultivated, and free of trash, weeds, and unsightly material. Landscaping may be required to be placed on a Lot or Parcel within certain time frames established by the Design Review Committee or an applicable Subsidiary Committee, if any. Each Owner shall maintain in good condition and repair all paved and concrete areas, including driveways, roadways, and parking areas, located on the Owner's Lot or Parcel;

5.2.5 Nuisances; Construction Activities. No rubbish or debris of any kind shall be permitted to accumulate upon or adjacent to any Lot or Parcel so as to create a nuisance or render any such Lot or Parcel or activity thereon unsanitary, unsightly, or offensive. Although normal construction activities shall not

be considered a nuisance or otherwise prohibited, Lots and Parcels shall be kept in a neat and tidy condition during construction periods. The Design Review Committee, the applicable Subsidiary Committee, if any, and the Declarant are 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 or Parcel, nor shall anything be done on any Lot or Parcel that may be or may become an annoyance or nuisance to persons or property in the vicinity of such Lot or Parcel or in Canada Hills, or which shall interfere with the quiet enjoyment of each of the Owners and Occupants;

5.2.6 Diseases and Insects. No Owner or Occupant shall permit any thing or condition to exist upon any Lot or Parcel that shall induce, breed, or harbor infectious plant diseases or noxious insects;

5.2.7 Repair of Buildings. No building or improvement on any Lot or Parcel 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 IV of this Declaration, such building or improvement shall be immediately repaired, rebuilt, or demolished by the Owner or Occupant thereof, as applicable;

5.2.8 Antennas and Dishes. No antenna or other device for the transmission or reception of television or radio signals or any other form of electromagnetic radiation shall be erected or placed upon a Lot or Parcel, or on any improvement or building thereon, unless approved in advance by the Design Review Committee and the applicable Subsidiary Committee, if any;

5.2.9 Mineral Exploration. No Lot or Parcel 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;

5.2.10 Garbage. No garbage or trash shall be allowed, stored, or placed on a Lot or Parcel except in sanitary, covered containers. In no event shall such containers be 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 Parcel and shall not be allowed to accumulate thereon. No outdoor incinerators shall be kept or maintained on any Lot or Parcel;

5.2.11 Clothes Drying Facilities. No outside clothes-lines or other facilities for drying or airing clothes shall be placed on any Lot or Parcel;

5.2.12 Machinery and Equipment. No machinery or equipment of any kind shall be placed, operated, stored, or maintained upon any Lot or Parcel except:

(a) such machinery or equipment as is usual and customary in connection with the use, maintenance, or construction (during the period of construction) of a building, appurtenant structures, or improvements thereon; or

(b) that which Declarant or the Association may require for the development, operation, and maintenance of Canada Hills;

5.2.13 Signs. 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 or Parcel except:

(a) signs required by legal proceedings;

(b) a maximum of two identification signs for Dwelling Units, each with a maximum face area of seventy-two (72) square inches or less; and

(c) signs, including "for sale" and "for lease" signs, builder signs, lender signs, and subdivision, condominium, and apartment identification signs, the nature, number, location, content, and design of which shall be approved in advance in writing by the Design Review Committee and the applicable Subsidiary Committee, if any;

5.2.14 Recorded Utility Easements. There is hereby created a blanket easement for ingress and egress upon, over, and under each Lot, each Parcel, the Common Areas, and the Limited Common Areas for the installation, replacement, repair, and maintenance of all utility equipment and service lines and systems, as such equipment, lines, and systems are installed in connection with the development of the Lots, Parcels, Common Areas, and Limited Common Areas, and the construction of buildings and improvements thereon. Utility or service facilities and equipment may be affixed and maintained on, in, and under the roofs and exterior walls of buildings on the Lots, Parcels, Common Areas, and Limited Common Areas. Notwithstanding anything to the contrary contained in this Section 5.2.14, no utility or service equipment or lines shall be installed or relocated on any Lot, any Parcel, the Common Areas, or the Limited Common Areas except as approved by the Declarant or the Design Review Committee and the Subsidiary Committee, if any, if such authority has been delegated

to such committees, or, if installed after Recordation of a Tract Declaration, as approved by the Owner, the Design Review Committee, and the Subsidiary Committee, if any;

5.2.15 Party Walls. The rights and duties of Owners of contiguous Lots or Parcels that have Party Walls shall be as follows:

(a) each Owner shall have the right to use the Party Wall, provided that such use does not interfere with the other Owner's use and enjoyment thereof;

(b) if a Party Wall is damaged or destroyed through the act of an Owner or Occupant, or any of their agents, guests, or family, whether or not such act is negligent or willful, the Owner shall be obligated to rebuild and repair the Party Wall at the Owner's sole expense. Any dispute over an Owner's liability shall be resolved as provided in Section 5.2.15(d) of this Declaration;

(c) in the event any Party Wall is damaged or destroyed other than by the act of an adjoining Owner or Occupant, or any of their agents, guests, or family, or deteriorates from ordinary wear and tear, it shall be the joint obligation of all Owners whose Lots or Parcels adjoin such Party Wall to immediately rebuild and repair the damaged or destroyed Party Wall, such expense to be ratably divided among the Owners on the basis of the amount of frontage of their respective Lots or Parcels on the damaged or destroyed Party Wall;

(d) in the event of a dispute between Owners with respect to a Party Wall or the sharing of the cost thereof, the Owners shall submit the dispute to the Design Review Committee, whose decision shall be binding unless appealed to the Board, in which event the Board's decision shall be binding and final. Notwithstanding any such decision, no Owner is prohibited from seeking indemnity from the party causing any damage to a Party Wall;

(e) notwithstanding the foregoing and unless otherwise indicated in a Tract Declaration, in the case of Party Walls between Common Areas and Lots or Parcels or constructed by Declarant or the Association on Common Areas within a Lot or Parcel, the Association shall be responsible for all maintenance thereof, subject to the provisions of Sections 8.7, 11.2, and 11.3 of this Declaration and subject to the responsibility of each Owner of a Lot or Parcel adjacent thereto for painting and repairing the portion of the Party Wall facing the Owner's Lot or Parcel, unless such Party Wall is a part of the Common Area and otherwise maintained by the Association; and

(f) this Section 5.2.15 shall not and is not

intended to control or relate to Party Walls between Condominium Units, nonresidential condominium units, Residential Condominium Developments, or nonresidential condominium developments;

5.2.16 Overhead Encroachments. No tree, shrub, or planting of any kind shall be allowed to overhang or encroach upon any public right-of-way, equestrian trail, bicycle path, or any other pedestrian way from ground level to a height of eight (8) feet, without the prior written approval of the Design Review Committee and the applicable Subsidiary Committee, if any;

5.2.17 Trucks, Trailers, Boats, and Motor Vehicles. No motor vehicle classed by the manufacturer's rating as exceeding 3/4-ton, motor home, mobile home, trailer, camper shell, detached camper, boat, boat trailer, snowmobile, jet ski, or other similar equipment or vehicle shall be parked, maintained, constructed, reconstructed, repaired, or stored on any Lot or Parcel or on any street so as to be Visible From Neighboring Property including but not limited to any Common Area, Limited Common Area, or street. No automobile, motorcycle, motorbike, or other motor vehicle shall be constructed, reconstructed, repaired, or, if inoperable, stored upon any Lot, Parcel, or street so as to be Visible From Neighboring Property including but not limited to any Common Area, Limited Common Area, or street. The foregoing limitation on parking shall not apply to:

(a) pickup trucks of less than 3/4-ton capacity with camper shells not exceeding seven (7) feet in height measured from ground level or mini-motor homes not exceeding seven (7) feet in height and eighteen (18) feet in length that are parked as provided in Section 5.2.18 of this Declaration and that are used on a regular and recurring basis for basic transportation;

(b) temporary facilities maintained during and used exclusively in connection with construction activities; provided, however, that such activities are approved in advance in writing by the Design Review Committee and the applicable Subsidiary Committee, if any; or

(c) the parking or storage of emergency or utility company vehicles in an area designated for such parking on a Tract Declaration or on a Development Site Plan approved pursuant to Section 5.5 of this Declaration;

5.2.18 Parking. It is the intent of Declarant to eliminate on-street parking as much as possible in Canada Hills. Vehicles shall be kept in garages, carports, residential driveways, other designated parking areas, or as otherwise required in a Tract Declaration. The Association may adopt additional parking restrictions including the establishment of fines and assessments for their violation. The Association may also delegate its

authority to enforce such parking restrictions to the appropriate Subsidiary Associations;

5.2.19 Right of Entry During Reasonable Hours. During reasonable hours and upon reasonable notice, any member or authorized representative of the Design Review Committee or the Board shall have the right to enter upon and inspect any Lot, Parcel, or improvements thereon, except for the interior portions of any completed Dwelling Unit, to determine compliance with this Declaration. Any such person shall not be deemed guilty of trespass by reason of such entry;

5.2.20 Declarant's Exemption. Nothing contained in this Declaration shall be construed to prevent the construction, installation, or maintenance by Declarant or its agents of improvements or signs deemed necessary or convenient by Declarant, in its sole discretion, to the development or sale of property within Canada Hills;

5.2.21 Health, Safety, and Welfare. In the event uses of, activities in, or facilities within a Parcel or Lot are deemed by the Board to be a nuisance or to adversely affect the health, safety, or welfare of Owners or Occupants, the Board or the Design Review Committee may make rules restricting or regulating their presence;

5.2.22 Model Homes. Nothing contained in this Declaration or in an applicable Tract Declaration shall prohibit the construction and maintenance of model homes, model apartments, sales offices, apartment rental offices, property management offices, and parking incidental thereto, by persons engaged in the construction, marketing, rental, or management of Dwelling Units within the Covered Property; provided, however, that such models are open only during reasonable hours and otherwise are in compliance with the provisions of this Declaration and rules, regulations, and ordinances of the Town. Except with respect to model homes and sales offices owned or operated by Declarant, model apartments, apartment rental offices, property management offices, or as approved in writing by Declarant, all model homes and sales offices shall cease to be used, as such at any time that the Owner (or lessee thereof as the case may be) is not actively engaged in the construction and sale of Dwelling Units within the Covered Property; and

5.2.23 Incidental Uses. Subject to any rules, regulations, or ordinances of the Town, the Board may approve, regulate, and restrict incidental uses of property within a Development Area Classification. By way of example and not of limitation, the Board may permit private roadways, tennis and/or swimming clubs intended primarily for the benefit of all or certain Owners, tennis courts, swimming pools, and other recreational facilities.

5.3 Variances. The Board may, in its sole discretion and only in extenuating circumstances, grant variances from the restrictions set forth in this Article V or in any Tract Declaration if the Board determines that:

5.3.1 Either:

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

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

5.3.2 The activity permitted under the requested variance will not have a substantially adverse effect on other Owners and Occupants and is consistent with the high quality of life intended for Canada Hills. 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 possible under the particular circumstances. All decisions of the Board shall be final and nonappealable.

5.4 Utility Service. Throughout Canada Hills all lines, wires, or other devices for the communication or transmission of electric current or power, including telephone, television, and radio signals, shall be contained in conduits or cables installed and maintained underground or concealed in, under, or on structures approved in writing in advance by the Design Review Committee and the applicable Subsidiary Committee, if any. The foregoing restriction shall not apply to overhead power lines existing on the date hereof or to any utility lines classified as being in excess of 15 KV. Temporary power or telephone structures incident to construction activities shall be permitted but only with the prior written approval of the Design Review Committee and the applicable Subsidiary Committee, if any.

5.5 Restriction on Further Subdivision, Property Restrictions, and Rezoning. All proposed Development Site Plans or subdivision plats for any portion of the Covered Property, or any amendment or modification thereto, shall be approved, in writing, by the Class B Member, if any, or, by the Board, if there is no Class B Member, prior to: (a) submission thereof to the Town or any other governmental entity having the authority to approve Development Site Plans or subdivision plats for the Covered Property; or (b) commencement of construction on the applicable Covered Property. Except with respect to Covered Property owned by Declarant, no Lot or Parcel, or portion thereof, shall be further subdivided and no portion less than all of any such Lot or Parcel, or any easement or other interest therein, shall be conveyed or transferred by any Owner without the prior written

approval of the Class B Member, if any, or by the Board, if there is no Class B Member, which approval must be evidenced on the Development Site Plan, Recorded subdivision plat, or other instrument evidencing such subdivision, transfer, or grant of easement or other interest. No portion of a Lot but for the entire Lot, together with the improvements thereon, may be rented, and then only to a Single Family. Except with respect to Covered Property owned by Declarant, no Tract Declaration, or further covenants, conditions, restrictions, or easements, or any amendments or modifications thereto, shall be Recorded against any Lot or Parcel without the written approval of the Class B Member, if any, or the Board, if there is no Class B Member (or the Design Review Committee and the applicable Subsidiary Committee, if any, if such authority has been delegated to such Committees) being evidenced on the Recorded instrument and without such approval such Tract Declaration or further covenants, conditions, restrictions, and easements, or any amendments or modifications thereto, shall be null and void. All Tract Declarations or other Recorded covenants, conditions, or restrictions, or any amendments or modifications thereto, shall be consistent with and subordinate to this Declaration. No applications for rezoning, variances, or use permits shall be filed without the prior written approval of the Class B Member, if any, and then only if such proposed zoning, variance, or use is in compliance with this Declaration, any applicable Tract Declaration, and the Plan. The Board may, in its sole discretion, delegate in writing to the Design Review Committee or to applicable Subsidiary Committees, or both, authority to exercise all or any of the Board's authorities or duties under this Section 5.5.

ARTICLE VI

ORGANIZATION OF ASSOCIATION

6.1 Formation of Association. The Association shall be a nonprofit Arizona corporation charged with the duties and vested with the powers prescribed by law and set forth in the Articles, the Bylaws, and this Declaration. Neither the Articles nor the Bylaws shall be amended or interpreted to be inconsistent with this Declaration.

6.2 Board of Directors and Officers. The affairs of the Association shall be conducted by the Board and such officers as the Board may elect or appoint in accordance with the Articles and the Bylaws. The initial Board and each Board thereafter for so long as there is a Class B Member shall consist of three (3) Members or other persons. Commencing with the first annual meeting of the Members when there is no longer a Class B Member, the Board shall consist of, and the voting Members shall elect, five (5) directors, all of whom must be Members or an individual designated by a corporate, partnership, or other nonindividual Member. The foregoing reference to five (5) directors shall be

subject to increase in the number of directors as provided in the Bylaws. The term of each of the Directors shall be for one (1) year until there is no longer a Class B Member. Thereafter the initial terms shall be one (1) Director for a one (1) year term, two (2) Directors for a two (2) year term, and two (2) Directors for a three (3) year term, thus establishing a staggered Board. In succeeding years, all directors shall be elected for a three (3) year term. The Board may appoint various committees at its discretion. The Board may also appoint or engage a manager to be responsible for the day-to-day operation of the Association and the Common Areas. The Board shall determine the compensation to be paid to the manager and any other employees of the Association.

6.3 Association Rules. By a majority vote of the Board, the Association may, from time to time and subject to the provisions of this Declaration, adopt, amend, and repeal the Association Rules. The Association Rules may, among other things, restrict and govern the use of the Common Areas; provided, however, that the Association Rules shall not discriminate among Owners and Occupants except to reflect their different rights and obligations as provided in this Declaration, and shall not be inconsistent with this Declaration, the Articles, or the Bylaws. The Association Rules shall be intended to enhance the preservation and development of the Covered Property and the Common Areas. Upon adoption, the Association Rules shall have the same force and effect as if they were set forth in this Declaration. A copy of the Association Rules as adopted, or amended, shall be available for inspection at the office of the Association.

6.4 Personal Liability. No Board member, officer, committee member, employee, or representative of the Association shall be personally liable to any Owner or Occupant or to any other person, including the Association, for any damage, loss, costs, fees (including reasonable attorneys' fees and expert witness fees), or prejudice suffered or claimed on account of any of their acts, omissions, errors, or negligence; provided, however, that the limitations set forth in this Section 6.4 shall not apply to any person who has failed to act in good faith or has engaged in willful or intentional misconduct.

6.5 Subsidiary Associations. In the event any homeowners' or similar Subsidiary Association is formed by an Owner, other than Declarant, of a Parcel or portion thereof, or group of Lots, such Subsidiary Association's governing documents (including any declaration of covenants, conditions, and restrictions or other Recorded restrictions and any amendments or supplements thereto) shall not be effective unless they have been approved in writing in advance by the Class B Member, if any, or the Board if there is no Class B Member, and they specify that such Parcel or portion thereof, or group of Lots, the Subsidiary Association, and the Subsidiary Association's members are subject and subordinate to this Declaration, the Development Guidelines, the Articles, the

Bylaws, and the Association Rules. Declarant and the Association shall have no right to be a member of or to have any voting rights in a Subsidiary Association unless the governing documents thereof otherwise so provide. The Board may delegate to a Subsidiary Association the responsibility and duty of billing and collecting for some or all of the Assessments.

6.6 Mergers or Consolidations. The Association shall have the right, power, and authority to participate in mergers or consolidations with Merger Candidates. Merger or consolidation of the Association with a Merger Candidate must be approved in advance by Members holding at least two-thirds (2/3) of the votes in each class of Members of the Association, whether in person or by proxy, at a meeting duly called for such purpose. The Association's properties, rights, and obligations shall be transferred to and assumed by the surviving or consolidated corporation by operation of law, or, alternatively, the properties, rights, and obligations of the Merger Candidate shall be transferred by operation of law to the Association as the surviving corporation. The surviving or consolidated corporation, at a minimum, shall have the same administrative responsibilities and enforcement rights established by this Declaration with regard to the Covered Property. In addition, for so long as there is a Class B Member, any such merger or consolidation shall be subject to the approval by any Agency if so required by the Agency.

ARTICLE VII

MEMBERSHIPS AND VOTING

7.1 Votes of Owners of Lots and Parcels. Every Owner of a Lot or Parcel that is not Exempt Property shall automatically be a Member of the Association and shall remain a Member for so long as such ownership continues. Each Owner of a Lot or Parcel that is not Exempt Property shall have the following applicable number of votes in the Association:

7.1.1 If a Class A Member, one (1) vote for each Lot owned; if the Class B Member, three (3) votes for each Lot owned;

7.1.2 In the case of the Owner of an Apartment Parcel upon which construction has not been completed, a Condominium Parcel upon which a condominium declaration has not been Recorded, or a Single Family Parcel that has not been divided into Lots, eight (8) votes for each Class A Member and twenty-four (24) votes for the Class B Member for each Net Acre owned within such an Apartment Parcel, Condominium Parcel, or Single Family Parcel (in the case of fractional Net Acres, rounding to the nearest whole number of acres, e.g., 1.4 Net Acres = 8 or 24 votes, as applicable; 1.5 Net Acres = 16 or 48 votes, as applicable). All votes attributable to such Parcel pursuant to this Section 7.1.2 shall

cease when the property ceases to be a Parcel because all of the area therein is divided into Lots or dedicated to the public; and

7.1.3 In the case of the Owner of a Non-Residential Parcel, eight (8) votes for each Class A Member and twenty-four (24) votes for the Class B Member for each Net Acre owned (in the case of fractional Net Acres, rounding to the nearest whole number of acres, e.g., 1.4 Net Acres = 8 or 24 votes, as applicable; 1.5 Net Acres = 16 or 48 votes, as applicable); provided, however, that if a commercial condominium is established, Declarant or the Board, as applicable, may allocate votes in a manner deemed appropriate so that the allocated votes do not exceed eight (8) per Net Acre for each Class A Member or twenty-four (24) per Net Acre for the Class B Member.

Each Owner's Membership in the Association shall be appurtenant to and may not be separated from ownership of the Lot or Parcel to which the Membership is attributable. There shall be only the Memberships for each Lot and Parcel as are described in this Declaration. Memberships shall be shared by any joint owners of, or owners of undivided interests in, the property interests to which such Memberships are attributable. Memberships attributable to a Lot or Parcel shall not be increased because of joint or undivided multiple ownership thereof.

7.2 Declarant. Declarant shall be a Member of the Association for so long as it holds a Class A or Class B Membership.

7.3 Voting Classes. The Association shall have two classes of voting Members:

7.3.1 Class A. Class A Members shall be all Owners except Declarant, until the conversion of Declarant's Class B Membership to Class A Membership(s) as provided in Section 7.3.2 of this Declaration. Subject to the authority of the Board to suspend an Owner's voting rights in accordance with the provisions of this Declaration, a Class A Member shall have the number of votes provided in Section 7.1 of this Declaration. Notwithstanding the foregoing, a Class A Member other than Declarant shall not be entitled to vote with respect to any of the Covered Property in regard to which the Owner is paying only a reduced Assessment pursuant to Section 8.3 of this Declaration; and

7.3.2 Class B. The Class B Member shall be Declarant. As of the date hereof, Declarant shall be deemed to have 13,584 votes. The Class B Membership shall cease and be converted to Class A Memberships on the happening of the first of the following events:

(a) the date that is one hundred twenty (120) days after the date that the total votes of the Class A Members owning

Covered Property that is not Exempt Property equals the total votes of the Class B Member; or

(b) fifteen (15) years after the first Lot is owned by a Class A Member other than Declarant.

7.4 Right to Vote. No change in the ownership of a Lot or Parcel shall be effective for voting purposes until the Board receives written notice of such change together with satisfactory evidence thereof. The vote for each Member must be cast as a single unit. Fractional votes shall not be allowed. In the event that a Lot or Parcel is owned by more than one person and such Owners are unable to agree as to how their vote or votes shall be cast, they shall not be entitled to vote on the matter in question. If any Owner casts a vote or votes representing a certain Lot or Parcel, the Owner shall be conclusively presumed to be acting with the authority and consent of all other Owners of such Lot or Parcel unless objection thereto is made to the Board, in writing, at or prior to the time the vote or votes are cast. In the event more than one person casts or attempts to cast a vote for a particular Lot or Parcel, all such votes shall be deemed void.

7.5 Members' Rights. Each Member shall have the rights, duties, and obligations set forth in this Declaration, the Articles, the Bylaws, the Association Rules, and the Development Guidelines, as the same may be amended from time to time.

7.6 Transfer of Membership. Except as otherwise provided in this Declaration, the rights, duties, and obligations of a Class A Member cannot and shall not be assigned, transferred, pledged, conveyed, or alienated in any way except upon transfer of ownership of such Class A Member's Lot or Parcel and then only to the transferee thereof. Such transfer may be effected by deed, intestate succession, testamentary disposition, foreclosure, or other legal process authorized under Arizona law. Any attempt to make a nonapproved form of transfer shall be void. Any transfer of ownership in a Lot or Parcel shall operate to transfer the Membership appurtenant thereto to the new Owner.

7.7 Adjustment in Votes of the Class B Member. In the event the development of Canada Hills contemplated by the Plan is not pursued to completion by Declarant, and an affirmative statement of abandonment of any or all parts thereof is Recorded by Declarant or, alternatively, Declarant makes a "constructive abandonment" of the development of Canada Hills, then, in either such event, the number of votes attributable to the Class B Member pursuant to Section 7.1 of this Declaration shall be reduced by the number of votes attributable to the area so abandoned, as determined using the Plan in effect immediately prior to such abandonment. For purposes of this Section, a "constructive abandonment" shall be deemed to have occurred when Declarant shall have failed to make

substantial progress towards planning for the continued implementation of the Plan during a five (5) year period, unless such failures are due to strikes, acts of God, war, riot, insurrection, or other acts beyond the control of Declarant.

ARTICLE VIII

ASSESSMENTS AND CREATION OF LIEN

8.1 Creation of Assessment Lien; Personal Obligation of Lot or Parcel Owner. Declarant, for each Lot and Parcel, hereby covenants and agrees, and each Owner by acceptance of a deed therefor (whether or not it should be expressed in any such deed or other instrument) is deemed to covenant and agree to pay the Assessments to the Association when due. The amount and time for payment of the Assessments shall be determined by the Board pursuant to this Declaration and the Articles and Bylaws. The Assessments, together with interest thereon and the costs, reasonable attorneys' fees, and expert witness fees, if any, incurred by the Association in connection with the enforcement and collection thereof or in otherwise enforcing this Declaration, shall be a charge and continuing servitude and lien upon the Lot or Parcel against which such Assessments are made and, in addition, shall be the personal obligation of the Owner of such Lot or Parcel at the time when such Assessments become due and payable.

8.2 Annual Assessments. The Association by and through the Board shall levy the Annual Assessments. The Annual Assessments levied by the Association shall be used to promote the recreation, health, safety, and welfare of the Owners and Occupants, to enhance the quality of life within the Covered Property, to preserve the value of the Covered Property, to pay the costs of administration of the Association and the maintenance of the Common Areas, and to otherwise further the interests of the Association as the Board deems appropriate. Subject to the provisions of Section 8.4 of this Declaration, the Board may, during an Assessment Period, revise the amount of the Annual Assessment in order to meet expenses that exceed the amounts previously budgeted by the Association and collect such increased Annual Assessment in accordance with Section 8.9 of this Declaration. The Annual Assessment for each Net Acre in a Non-Residential Parcel shall always equal six times the Annual Assessment for each Lot. The Annual Assessment for each Net Acre in a Single Family Parcel that has not been subdivided into Lots, a Condominium Parcel as to which a condominium declaration has not been Recorded, or an Apartment Parcel upon which construction has not been completed shall be equal to six times the Annual Assessment for each Lot.

8.3 Rate of Assessment. Subject to Sections 8.4 and 8.5 of this Declaration, the amount of the Annual Assessments and Special Assessments shall be fixed at least thirty (30) days before

expiration of the then current Assessment Period by the Board, in its sole discretion, but always in the ratios provided for in Section 8.2 of this Declaration, except as follows:

8.3.1 The Owner of a Lot or Parcel other than a Non-Residential Parcel shall pay only twenty-five percent (25%) of the Annual Assessments for such Lot or Parcel until the earliest of:

(a) the completion of a Dwelling Unit thereon;

(b) three (3) months from the commencement of construction of a Dwelling Unit thereon; or

(c) twenty-four (24) months from the date of purchase by the Owner of the Parcel, the Lot, or the Parcel from which such Lot was established; and

8.3.2 The Owner of a Non-Residential Parcel shall pay only twenty-five percent (25%) of the Annual Assessment otherwise attributable to such Parcel until the earliest of:

(a) the completion of a building on the Parcel;

(b) six (6) months from the commencement of construction of a building on the Parcel; or

(c) twenty-four (24) months from the date of purchase of the Parcel by the Owner.

For purposes of this Section 8.3, a Dwelling Unit or other building shall be deemed completed when, in the opinion of the Board, the Dwelling Unit or building is ready for occupancy or, if a commercial rental building, is ready for the installation of interior Tenant improvements. If an Owner ceases to qualify for the applicable reduced payment provided for hereinabove during an Assessment Period, the Owner shall immediately notify the Board, in writing, of the change in status and the Annual Assessments shall be prorated between the applicable rates on a per diem basis. Failure of an Owner to notify the Board of the Owner's change in status shall not prevent or preclude the reinstatement of the increased payment obligation pursuant hereto from taking effect as of the applicable date provided in this Declaration.

8.4 Maximum Annual Assessment. The Annual Assessment may not exceed the Maximum Annual Assessment which shall be determined as follows:

8.4.1 Through December 31, 1987, the Maximum Annual Assessment for each Lot shall be \$120.00, the Maximum Annual Assessment for each Non-Residential Parcel shall be \$720.00 per Net Acre in the Parcel, and the Maximum Annual Assessment for each Single Family Parcel that has not been subdivided into Lots, each

Condominium Parcel as to which a condominium declaration has not been Recorded, and each Apartment Parcel upon which construction has not been completed shall be \$720.00 per Net Acre in such Parcel;

8.4.2 Thereafter, the Maximum Annual Assessment for each year may be increased by the Board, effective as of January 1 of each year, without a vote of the Owners, by no more than the greater of:

(a) five percent (5%) of the Maximum Annual Assessment in effect during the prior year; or

(b) an amount equal to the amount of increase in the Index during the prior year, if any, calculated as follows: If the Comparison Index has increased over the Beginning Index, the Maximum Annual Assessment for the immediately succeeding Assessment Period shall be calculated by multiplying the then effective Maximum Annual Assessment by a fraction, the numerator of which is the Comparison Index and the denominator of which is the Beginning Index. In no case, however, shall the Maximum Annual Assessment calculated pursuant to the preceding formula ever be less than the immediately preceding Maximum Annual Assessment. If the Index is eliminated or its method of determination is changed, the foregoing formula shall be altered, if possible, so as to achieve substantially the same effect as the foregoing formula. If this is not possible, a new formula shall be adopted by the Board; and

8.4.3 From and after January 1, 1988, the Maximum Annual Assessment for an Assessment Period may be increased above the Maximum Annual Assessment for such Assessment Period otherwise determined under Section 8.4.2 of this Declaration by an affirmative vote of Members holding at least two-thirds (2/3) of the votes in each class of Members represented in person or by proxy at a meeting of the Members of the Association duly called for such purpose, except that if the utility charges paid by the Association in the twelve (12) month period prior to the subject Assessment Period are in excess of those paid during the twelve (12) month period immediately preceding such prior twelve (12) month period, or such utility charges increase unexpectedly during the course of the subject Assessment Period, the Board may increase the Maximum Annual Assessment otherwise determined under Section 8.4.2 of this Declaration for the subject Assessment Period by the additional utility costs without the Membership vote described in this Section 8.4.3.

8.5 Special Assessments. The Association may levy a Special Assessment for the purpose of defraying, in whole or in part, the cost of any construction, reconstruction, repair, or replacement of a capital improvement owned by the Association or for defraying other extraordinary expenses; provided, however, that such Special Assessment shall have the prior assent of two-thirds (2/3) of the

votes of each class of Members voting in person or by proxy at a meeting of the Association duly called for such purpose. Special Assessments shall be assessed uniformly among the Owners, except that Owners qualifying for a reduced Annual Assessment pursuant to Section 8.3 of this Declaration shall also be required to pay only twenty-five percent (25%) of the Special Assessments otherwise chargeable to such Owner unless such Owner is determined by the Board to be directly benefitted by the improvement financed in whole or in part by such Special Assessment, whereupon the Owner shall pay the full amount of the Special Assessment.

8.6 Notice and Quorum for Any Action Authorized Under Sections 8.4 and 8.5. Written notice of any meeting of the Members of the Association called for the purpose of conducting a vote required under Sections 8.4 or 8.5 of this Declaration shall be sent to all Members not less than thirty (30) days nor more than fifty (50) days in advance of such meeting. At such meeting, the presence of Members or of proxies entitled to cast sixty percent (60%) of all the votes (exclusive of suspended voting rights) of each class of Members shall constitute a quorum. If the required quorum is not present, another meeting shall be called for such purpose, subject to the foregoing notice requirements, and the required quorum at the subsequent meeting shall be one-half (1/2) of the quorum required at the initially scheduled meeting. The subsequent meeting shall be held within sixty (60) days following the date of the initially scheduled meeting.

8.7 Maintenance Assessments. In addition to any Annual Assessment or Special Assessment and the Assessments arising under Section 11.2, the Board shall have the authority to levy and collect Maintenance Assessments for costs and expenses arising out of or attributable to the special characteristics or needs of a particular Lot or Parcel, or if the Owner of a Lot or Parcel contracts with the Association for the Association to provide particular maintenance services in regard to such Owner's Lot or Parcel.

8.8 Annual Assessment Period. The Assessment Period shall be the calendar year, except that the first Assessment Period shall commence upon the first day of the month following conveyance of any real property to the Association as Common Area and shall terminate on December 31 of such year. The Board may, in its sole discretion, from time to time, change the Assessment Period by Recording an instrument specifying the new Assessment Period.

8.9 Billing and Collection Procedures. The Board shall have the right to adopt procedures for the purpose of making, billing, and collecting the Assessments, which procedures may include delegating to the applicable Subsidiary Association the authority and obligation of billing and collecting the Assessments. Written notice of the Assessment to be paid by each Owner during the next Assessment Period shall be given to each Owner not less than

thirty (30) days before the beginning of each new Assessment Period. The failure of the Association to send a bill to an Owner shall not relieve such Owner of the Owner's liability for an Assessment. No Recorded Assessment Lien shall be foreclosed or otherwise enforced until the Owner has been given not less than thirty (30) days written notice thereof prior to the commencement of such foreclosure or enforcement. The notice shall be addressed to the Owner at the address of the Owner on the records of the Association. It shall be the responsibility of the Owner to inform the Association in writing of a change of address. The Association shall be under no duty to refund any payments received by the Association, even if the ownership of a Lot or Parcel changes during an Assessment Period. Any successor Owner shall be given credit for any unrefunded prepayments made by a prior Owner. In case the Owner of a Lot or Parcel having a right to pay a reduced Assessment as provided in this Declaration fails to notify the Board when the payment amount should be increased, such Owner shall nonetheless be liable for the increased amount of the Assessment and such Owner's failure to notify the Board shall not relieve such Owner of the liability for the increased Assessment.

8.10 Collection Costs, Interest on Delinquent Amounts, and Assessment Lien. Any Delinquent Amount shall have added thereto a late charge of fifteen percent (15%) if such Delinquent Amount is not paid within fifteen (15) days after its due date. In addition, the Delinquent Amount shall bear interest from fifteen (15) days after its due date until paid at a rate equal to the greater of: (a) twelve percent (12%) per annum; or (b) the then prevailing highest interest rate on loans insured by FHA or VA in Phoenix, Arizona. The Owner shall be liable for all costs, including but not limited to reasonable attorneys' fees, expert witness fees, and collection agency fees, that may be incurred by the Association in collecting any Delinquent Amount. The Board may also Record an Assessment Lien against the applicable Lot or Parcel and may establish a fixed fee to be reimbursed to the Association for the Association's costs in Recording such Assessment Lien, processing the delinquency, and Recording a release of the Assessment Lien. The foregoing fee shall be treated as a collection cost of the Association secured by the Recorded Assessment Lien. The Board's failure to Record an Assessment Lien against a Lot or Parcel shall not be deemed to invalidate or extinguish the Assessment Lien with respect to such Lot or Parcel.

8.11 Statement of Payment. Upon receipt of a written request from any Owner or Occupant, the Board, within a reasonable time thereafter, shall issue to the requesting party a written statement stating that as of the date of the statement:

8.11.1 All Assessments (including collection fees, if any in regard thereto) have been paid with respect to the specified Lot or Parcel; or

8.11.2 If such have not been paid, the amount then due and payable.

The Association may make a reasonable charge for the issuance of such statement, which charge shall be paid when such statement is requested. Any such statement shall be conclusive and binding with respect to any matter set forth therein.

8.12 Exempt Property. Exempt Property shall be exempt from Assessments (except if assessed pursuant to Sections 8.7, 11.2, or 11.3 of this Declaration) and the Assessment Lien, provided, however, that should any Exempt Property cease to be Exempt Property for any reason, it shall thereupon be subject to Assessments, prorated as of the date it ceased to be Exempt Property, and the Assessment Lien.

ARTICLE IX

ENFORCEMENT AND THE ASSESSMENT LIEN

9.1 Association Remedies to Enforce Assessments. If any Owner fails to pay any Assessments when due, the Association may, and each Owner hereby authorizes the Association to, enforce the payment thereof and the Assessment Lien and Recorded Assessment Lien by taking either or both of the following actions, concurrently or separately (and by exercising either remedy the Association does not prejudice or waive its right to exercise the other remedy):

9.1.1 Bringing an action at law or in equity against the Owner to recover judgment against the Owner, who is personally liable for the Assessments; and

9.1.2 Foreclosing the Recorded Assessment Lien against the appropriate Lot or Parcel in accordance with then prevailing Arizona law relating to the foreclosure of realty mortgages (including the right to recover any deficiency) and, at the Association's option, the Association may bid for and purchase the Lot or Parcel at any foreclosure sale.

9.2 Subordination of Assessment Lien. The Assessment Lien shall be superior to all charges, liens, or encumbrances that are or may be imposed on any Lot or Parcel except:

9.2.1 The lien of any mortgage or deed of trust that was Recorded prior to this Declaration;

9.2.2 The lien for taxes or other governmental assessments that is deemed superior hereto by applicable law; and

9.2.3 The lien of any First Mortgage Recorded before the

Delinquent Amount that is the subject of the Assessment Lien became due.

Sale or transfer of any Lot or Parcel shall not affect the Assessment Lien; provided, however, the sale or transfer of any Lot or Parcel pursuant to foreclosure or any proceeding in lieu thereof of any of the liens described in this Section 9.2 shall extinguish the Assessment Lien only as to payments which became due prior to such sale or transfer. No other sale or transfer shall relieve a Lot or Parcel from the Assessment Lien arising in regard to any Assessment becoming due before such sale or transfer.

9.3 Release of Recorded Assessment Lien. Upon the complete curing of any default for which a Recorded Assessment Lien was Recorded by the Association, the Association shall Record an appropriate release of the Recorded Assessment Lien.

ARTICLE X

USE OF ASSOCIATION FUNDS

10.1 Use of Association Funds. In addition to the powers enumerated in the Articles and Bylaws, the Association shall apply all Funds for the common good and benefit of the Covered Property, the Owners, and Occupants. The Funds may be used, among other things, to insure, acquire, construct, alter, maintain, provide, and operate, in any manner whatsoever, any and all land, properties, improvements, services, projects, programs, studies, and systems, within or without the Covered Property, which may be necessary, desirable, or beneficial to the general common interests of the Owners and Occupants.

10.2 Borrowing Power. The Association may borrow money in such amounts, at such rates, upon such terms and security, and for such periods of time as the Board deems necessary or appropriate.

10.3 Association's Rights in Spending Funds From Year to Year. The Association shall not be obligated to spend in any year all Funds received by it in such year, and the Board may carry forward as surplus any balances remaining. The Association shall not be obligated to reduce the amount of the Annual Assessment in the succeeding year if a surplus exists, from a prior year.

ARTICLE XI

MAINTENANCE

11.1 Common Areas and Public Rights-of-Way.

11.1.1 Areas of Association Responsibility. The Association, or its duly delegated representative, shall maintain and otherwise manage all Common Areas; provided, however, that the

Association shall not be responsible for providing or maintaining the landscaping or structures on any Common Areas located on or within Lots or Parcels unless:

(a) such landscaping or structures are intended for the general benefit of the Owners and Occupants or are within easements intended for the benefit of the Association; and

(b) the Association assumes in writing the responsibility for such maintenance and such instrument is Recorded.

The Association shall also maintain any landscaping and other improvements not located on Lots or Parcels but located within the Covered Property if such areas are intended for the benefit of Owners and Occupants, unless such areas are to be maintained by a governmental entity or public utility and in fact are being maintained by such entity or utility or are the responsibility of an Owner pursuant to Section 5.2.4 of this Declaration. Common Areas to be maintained by the Association may be identified on Development Site Plans, Recorded subdivision plats approved by Declarant, or in Tract Declarations or deeds from Declarant, but the failure to so identify such areas shall not affect the Association's rights or responsibilities with respect thereto.

11.1.2 Declaration of Responsibilities. In the event any Development Site Plan, Recorded subdivision plat, Tract Declaration, Recorded deed restriction, or this Declaration permits the Association to determine whether Owners of certain Lots or Parcels shall be responsible for maintenance of certain Common Areas or public rights-of-way, the Board shall have the sole discretion to determine whether the Association or an individual Owner should be responsible for such maintenance, considering cost, uniformity of appearance, location, and other relevant factors. The Board may cause the Association to contract with others for the performance of such maintenance and other obligations of the Association and, in order to promote uniformity and harmony of appearance, the Board may also cause the Association to contract to provide maintenance services to Owners of Lots and Parcels having such responsibilities in exchange for the payment of such fees as may be agreed upon by the Association and the Owner.

11.1.3 Level Of Maintenance. The Board shall be the sole judge as to the appropriate level of maintenance of all Common Areas.

11.2 Assessment of Certain Maintenance Costs. If the need for maintenance or repair of areas maintained by the Association is caused through the willful or negligent act or omission of any Owner or Occupant, or such Owner's or Occupant's family, guests, licensees, agents, employees, or customers, the cost of such maintenance or repair shall be added to and become a part of the

Assessments to which such Owner and such Owner's Lot or Parcel is subject and shall be secured by the Assessment Lien, and by a Recorded Assessment Lien if deemed appropriate by the Board. Any charges to be paid by an Owner in connection with a maintenance contract entered into by the Association pursuant to Section 11.1 of this Declaration shall also become a part of such Assessments and be secured by the Assessment Lien, and by a Recorded Assessment Lien if deemed appropriate by the Board.

11.3 Improper Maintenance and Use of Lots and Parcels. In the event any portion of any Lot or Parcel is maintained so as to present a nuisance, or substantially detracts from or affects the appearance or quality of any neighboring Lot, Parcel, or other area, or is used in a manner that violates this Declaration or any Tract Declaration, or in the event the Owner or Occupant of any Lot or Parcel fails to perform such Owner's or Occupant's obligations under this Declaration, any Tract Declaration, the Association Rules, or the Development Guidelines, the Association, by Board resolution, may make a finding to such effect, specifying the particular condition(s) that exist, and give notice to the Owner of such Lot or Parcel that unless specified corrective action is taken within a specified time period the Association, at such Owner's cost, may take whatever action is appropriate to compel compliance including, without limitation, appropriate legal action. If at the expiration of the specified time period the requisite corrective action has not been taken by the Owner, the Association is hereby authorized and empowered, at its sole discretion, to cause corrective action to be taken or to commence appropriate legal action and the cost thereof, including court costs, expert witness fees, and reasonable attorneys' fees, shall be added to and become a part of the Assessments to which the offending Owner and the Owner's Lot or Parcel is subject and shall be secured by the Assessment Lien, and by a Recorded Assessment Lien if deemed appropriate by the Board.

ARTICLE XII

RIGHTS, POWERS, AND DUTIES OF ASSOCIATION

12.1 Rights, Powers, and Duties of the Association. In addition to the rights and powers of the Association set forth in this Declaration, the Association shall have such rights and powers as are set forth in the Articles and Bylaws, together with such rights, powers, and duties as may be reasonably necessary in order to effect all of the objectives and purposes of the Association as set forth in this Declaration. The foregoing rights and powers shall include, among other things, the right to establish and collect Special Use Fees in regard to some or all of the Common Areas and to establish and collect monetary penalties for violation of this Declaration. A copy of the Articles and Bylaws shall be available for inspection at the office of the Association during reasonable business hours.

12.2 Rules and Regulations. In addition to the right to adopt rules and regulations on the matters expressly mentioned elsewhere in this Declaration, the Association, acting through the Board, shall have the right to adopt, amend, and repeal rules and regulations with respect to all other aspects of the Association's rights, activities, and duties, provided such rules and regulations are not inconsistent with the provisions of this Declaration, the Articles, and the Bylaws. Upon adoption, the Association Rules shall be enforceable in the same manner as this Declaration and shall have the same force and effect as if they were set forth in and were a part of this Declaration.

12.3 Association's Rights of Enforcement. The Association, as the agent and representative of the Owners, shall have the right, but not the obligation, to enforce, by any appropriate action at law or in equity, the provisions of this Declaration and all Additional Covenants that:

12.3.1 Shall have been executed pursuant, or subject, to the provisions of this Declaration; or

12.3.2 Otherwise shall indicate that the provisions of such instrument were intended to be enforced by the Association or by Declarant.

If the Association shall fail or refuse to enforce the provisions of this Declaration or the Additional Covenants after receipt of written request to enforce from any Owner, then any Owner may enforce them by any appropriate action, whether against the Association, another Owner or Occupant, or any other Person, and whether at law or in equity.

12.4 Contracts with Others. Subject to the restrictions and limitations contained in this Declaration, the Articles, the Bylaws, and the laws of the State of Arizona, the Association may enter into contracts with others, including Declarant and Affiliates, and such contracts shall not be invalidated by the fact that one or more directors or officers of the Association are employed by or otherwise affiliated with Declarant or any Affiliates; provided, however, that the fact of such employment or affiliation shall be previously disclosed or made known to the other members of the Board acting upon such contract or transaction and, provided further, that the transaction or contract is fair and reasonable. Notwithstanding the foregoing, any contract entered into by the Association must be for a term not exceeding three (3) years and must be terminable, without penalty, by the Association for cause at any time and without cause upon no more than thirty (30) days notice.

12.5 Procedure for Change of Use of Common Areas. Upon adoption of a resolution by the Board stating that the then current use of a specified part of the Common Area is no longer in

the best interests of the Owners and Occupants and the approval of such resolution by a majority of the votes of each class of Members voting in person or by proxy at a meeting duly called for such purpose, the Board shall have the power and right to change the use thereof (and in connection therewith to take whatever actions are required to accommodate the new use), provided such new use: (a) also shall be for the common benefit of the Owners and Occupants; and (b) shall be consistent with this Declaration, any Recorded deed, Tract Declaration, Recorded restrictions, or zoning regulations.

12.6 Procedure for Transfers of Common Areas. The Association shall have the right to dedicate or transfer all or any part of the Common Areas to any public authority or utility provided that:

12.6.1 Such a transfer or dedication does not have a substantial adverse effect on the enjoyment of the Common Areas by the Owners and Occupants; and

12.6.2 It is required by the Plan, a Development Site Plan, a Recorded subdivision plat, a zoning stipulation or ordinance, or an agreement with the Town.

Except as authorized above, no such dedication or transfer shall be effective without the prior written approval of the Class B Member, if any, and two-thirds (2/3) of the Class A Members other than Declarant or two-thirds (2/3) of First Mortgagees, based upon one (1) vote for each First Mortgage encumbering Covered Property that is not Exempt Property. The Association shall have the right to change the size, shape, or location of the Common Areas, to exchange the Common Areas for other property or interests which shall become Common Areas, to encumber all or any part of the Common Areas, and to abandon or otherwise transfer Common Areas to a nonpublic authority upon the prior written approval of the Class B Member, if any, and two-thirds (2/3) of the Class A Members other than Declarant or two-thirds (2/3) of First Mortgagees, based upon one (1) vote for each First Mortgage encumbering Covered Property that is not Exempt Property.

ARTICLE XIII

TERM, AMENDMENTS, AND TERMINATION

13.1 Term; Method of Termination. This Declaration shall be effective upon its Recordation and, as amended from time to time, shall continue in full force and effect for a term of twenty (20) years from the date of its Recordation. Thereafter, this Declaration shall be automatically extended for successive periods of ten (10) years each, unless there is an affirmative vote to terminate this Declaration by the then Owners casting ninety percent (90%), or such greater percentage as may be required by applicable law, of the total votes then entitled to be cast by each class of

Members at an election held for such purpose within six (6) months prior to the expiration of the initial term hereof or any ten (10) year extension. In addition, this Declaration may be terminated at any time if ninety percent (90%), or such greater percentage as may be required by applicable law, of the votes then entitled to be cast by each class of Members shall be cast in favor of termination at an election held for such purpose. If the necessary votes and consents are obtained, the Board shall Record a certificate of termination, duly executed by the President or Vice President of the Association and attested to by the Secretary of the Association. Upon the Recording of the certificate of termination this Declaration shall have no further force and effect and the Association thereupon shall be dissolved in accordance with the terms of its Articles and Bylaws and the laws of the State of Arizona.

13.2 Amendments. This Declaration may be amended by Recording a certificate of amendment, duly executed by the President or Vice President of the Association and attested to by the Secretary of the Association. Except as required by applicable law, amendments to this Declaration shall not be required to affect the Covered Property in a uniform manner. The certificate of amendment shall set forth in full the text of the amendment adopted, and, except as provided in Section 13.3 of this Declaration shall certify that at an election duly called the Owners casting seventy-five percent (75%) of the votes then entitled to be cast at the election, or such greater percentage as may be required by applicable law, voted affirmatively for the adoption of the amendment. Notwithstanding the foregoing, this Declaration may be amended by a Recorded instrument (or counterpart instruments) executed by Declarant and seventy-five percent (75%), or such greater percentage as may be required by applicable law, of the Owners other than Declarant.

13.3 Right of Amendment if Requested by Agency. Anything in this Article to the contrary notwithstanding, Declarant reserves the right to amend this Declaration or a Tract Declaration as may be requested or required by FHA, VA, FNMA, FHLMC, or any other Agency with whom Declarant elects to do business as a condition precedent to such Agency's approval of this Declaration or an applicable Tract Declaration, or by any federally chartered lending institution as a condition precedent to such institution's lending funds upon the security of any Lot or Parcel or purchasing loans secured thereby. Any such amendment shall be effected by Declarant's Recording a certificate of amendment duly executed and acknowledged by Declarant specifying the Agency or the lending institution requesting the amendment and setting forth the requested or required amendment(s). Recordation of such a certificate shall be deemed conclusive proof of the Agency's or institution's request or requirement and such certificate, when Recorded, shall be binding upon all of the Covered Property recited as being covered by such certificate and all persons

having an interest in such Covered Property. It is the desire of Declarant to retain control of the Association and the Association's activities during the period of planning and development of Canada Hills. If any amendment requested or required pursuant to the provisions of this Section 13.3 deletes, diminishes, or alters such control, Declarant shall have the right to prepare, provide for, and adopt as an amendment hereto other and different control provisions which shall be binding upon the Covered Property and the Owners and Occupants without a vote of the Owners. Except as provided in this Section 13.3 Declarant shall not have any right to amend this Declaration or a Tract Declaration otherwise than in accordance with and pursuant to the provisions of Section 13.2 of this Declaration.

ARTICLE XIV

ANNEXATION OF PROPERTY

14.1 Annexation of Additional Property. Declarant may, at its sole discretion and without the approval, assent, or vote of the Association or other Owners, from time to time until seven (7) years after Recordation of this Declaration, annex to the Covered Property the Additional Property or any portion or portions thereof, provided that FHA, VA, FNMA, FHLMC, or any other Agency, as the case may be and to the extent they or each of them may be involved with the annexation of property into the Covered Property, has approved the annexation. To effect such annexation, a Supplementary Declaration of Covenants, Conditions, and Restrictions, as described in Section 14.2 of this Declaration, covering the Additional Property (or the applicable portion or portions thereof) shall be executed and Recorded by Declarant. The Recordation of such Supplementary Declaration of Covenants, Conditions, and Restrictions shall constitute and effectuate the annexation of the Additional Property (or the applicable portion or portions thereof) described therein, making such Additional Property (or the applicable portion or portions thereof) and the Owners and Occupants thereof subject to this Declaration and the jurisdiction of the Association.

14.2 Supplementary Declarations. The annexations authorized under Section 14.1 of this Declaration shall be made by Recording a Supplementary Declaration of Covenants, Conditions, and Restrictions. A Supplementary Declaration of Covenants, Conditions, and Restrictions may contain such complementary additions to and modifications of this Declaration as may be necessary to reflect the different character, if any, of the Additional Property (or the applicable portion or portions thereof). In no event, however, shall any such Supplementary Declaration of Covenants, Conditions, and Restrictions revoke or conflict with this Declaration or any Tract Declaration. If the Additional Property (or the applicable portion or portions thereof) is annexed, the number of Lots or Parcels shall be as provided by the Plan, Declarant shall

be entitled to additional votes as determined in accordance with Section 7.1 of this Declaration, and the Additional Property (or applicable portion or portions thereof) shall thereupon become fully a part of the Covered Property subject to all provisions of this Declaration, including without limitation the provisions regarding Assessments. All improvements to any Common Areas in the Additional Property (or the applicable portion or portions thereof) shall be substantially completed prior to annexation of the Additional Property (or the applicable portion or portions thereof) and shall be consistent with any improvements to the Common Areas in the Covered Property in terms of quality of construction.

14.3 Excluded Property; Automatic Annexation. The Excluded Property is not subject to this Declaration. Declarant shall, by Recorded instrument, restrict the Excluded Property for the Restriction Period to the Permitted Purposes. The Excluded Property, or portions thereof, shall automatically be annexed into the Covered Property after the expiration of the Restriction Period immediately upon the happening of any one of the following events:

(a) the request of the Owner that the Owner's portion of the Excluded Property be annexed;

(b) the cessation of use of the Excluded Property for the Permitted Purposes for a period of six (6) consecutive months, or if due to damage or destruction of the improvements constructed thereon or a closing of any golf course located thereon for renovation or design, for a period of twelve (12) consecutive months, whereupon the portion of the Excluded Property that has ceased to be used for the Permitted Purposes shall be annexed; or

(c) the commencement of construction of any improvements on the Excluded Property by any Person other than Declarant for any purpose other than the Permitted Purposes, whereupon the portion of the Excluded Property where such improvements are located shall be annexed.

Upon annexation, the Owner of the annexed Excluded Property shall thereupon become subject for all purposes to this Declaration and the jurisdiction of the Association and the annexed Excluded Property shall become a part of the Covered Property and subject to all provisions of this Declaration, including without limitation the provisions regarding Assessments. The Excluded Property so annexed shall thereupon be restricted to the Development Area Classification designated by Declarant, if Declarant is the Class B Member, or if Declarant is no longer the Class B Member, as agreed to in writing by the Owner of the annexed Excluded Property and the Board in a Recorded instrument, and as approved by the Town or any other governmental entity having the authority to approve and regulate planned area developments

located in the Town. The annexed Excluded Property shall be subject to any additional restrictions set forth in the Recorded instrument executed by the Owner of the annexed Excluded Property and the Board. Anything in the foregoing to the contrary notwithstanding, the Excluded Property may not be used for any purpose other than the Permitted Purposes until and unless it has been annexed hereunder, and any use thereof or construction thereon shall not be deemed to give any Person any rights to continue to use the Excluded Property or portions thereof for such other use or purpose after annexation hereunder. The Association shall, within a reasonable time after annexation, record a supplement to this Declaration giving notice of the annexation of the Excluded Property; provided, however, a failure to do so shall not affect the automatic nature of the annexation described in this Section 14.3. Declarant makes no representation or warranty that the Excluded Property will continue to be used, after expiration of the Restriction Period, for the Permitted Purposes.

ARTICLE XV

EMINENT DOMAIN AND INSURANCE INVOLVING THE COMMON AREA

15.1 Eminent Domain. In the event of a threatened Taking of all or any portion of the Common Area, the Owners hereby appoint the Board and such persons as the Board may delegate to represent all of the Owners in connection with the Taking. The Board shall act, in its sole discretion, with respect to any awards made or to be made in connection with the Taking and shall be entitled to make a voluntary sale to the condemnor in lieu of engaging in a condemnation action. Any awards received on account of the Taking shall be paid to the Association. In the event of a Taking, the Board may, in its sole discretion, retain any award in the Funds or distribute pro rata all or a portion thereof to the Owners (taking into account a reduction in the distribution to those Owners paying reduced amounts for Assessments pursuant to this Declaration) and all holders of liens and encumbrances, as the interests of such Owners, lienors, and encumbrancers may appear of Record.

15.2 Authority to Purchase Insurance. The Association shall purchase and maintain: (i) comprehensive general liability insurance upon the insurable Common Areas; (ii) fire and extended coverage insurance upon the insurable Common Areas on a current replacement cost basis in the amount of the full current replacement cost; and (iii) such other insurance (including but not limited to officers' and directors' liability insurance and fidelity insurance) as may be required by FHA, VA, FNMA, FHLMC, or any other Agency, or as the Board, in its absolute discretion, may determine. The Association shall be the named insured in all policies of insurance. 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 insurance coverage is not available in the State of Arizona at a reasonable cost and on other reasonable terms and conditions.

15.3 Individual Responsibility. It shall be the responsibility of each Owner or Occupant to provide, at the sole expense of the Owner or Occupant, insurance on the Owner's or Occupant's real or personal property interests on or within the Covered Property, including, but not limited to, additions and improvements thereto, furnishings, and personal property therein, and the Owner's or Occupant's personal liability to the extent not covered by the property and public liability insurance, if any, obtained by the Association. Each Owner and Occupant shall also provide such other insurance not carried by the Association as such Owner or Occupant desires. No Person shall maintain any insurance that would limit or reduce in any manner the insurance proceeds payable under the insurance maintained by the Association in the event of damage to the improvements or fixtures on the Common Areas. Neither the Association, any Board member, or Declarant shall be liable to any Owner, Occupant, mortgagee or other encumbrancer, or other Person, if any risks or hazards are not covered by the insurance obtained by the Association or if the amount of such insurance is not adequate.

15.4 Insurance Claims. The Association is hereby irrevocably appointed and authorized by the Owners to adjust all claims arising under insurance policies purchased by the Association and to execute and deliver releases upon the payment of claims, and to do all other acts reasonably necessary to accomplish any of the foregoing. The Board has full and complete power to act for the Association in this regard and may, at its discretion, appoint an authorized representative or committee, or enter into an insurance trust agreement wherein the trustee shall have authority, to negotiate losses under any policy purchased by the Association.

15.5 Insurance Proceeds. Any insurance proceeds payable to the Association in connection with the loss of any Common Areas shall be used for the repair, replacement, or reconstruction of the damaged or destroyed Common Areas, unless otherwise approved in writing by the Class B Member, if any, and two-thirds (2/3) of the Class A Members other than Declarant or two-thirds (2/3) of First Mortgagees, based upon one (1) vote for each First Mortgage encumbering Covered Property that is not Exempt Property. If any excess insurance proceeds remain after any repair, replacement, or reconstruction of damaged or destroyed Common Areas, the Association, in its sole discretion, may retain such sums in the Funds or may distribute all or a portion of such sums to the Owners in the proportion that the Owners would pay Special Assessments, subject to the prior rights of any mortgagees or other encumbrancers whose interests may be protected by the insurance policies carried by the Association.

ARTICLE XVI

RIGHTS OF FIRST MORTGAGEES

16.1 Notification to First Mortgagees. Upon receipt by the Association of a written request from an Eligible Insurer or Guarantor or Eligible Mortgage Holder informing the Association of its correct name and mailing address and identifying the Lot or Parcel, or portion thereof, to which the request relates, the Association shall provide such Eligible Mortgage Holder or Eligible Insurer or Guarantor with timely written notice of the following:

16.1.1 Any condemnation loss or any casualty loss that affects a material portion of the Common Areas;

16.1.2 Any default in the performance of any obligation to be performed pursuant to this Declaration, including without limitation any delinquency in the payment of Assessments or any other charges owed by an Owner whose Lot or Parcel, or portion thereof, is encumbered by a First Mortgage held, insured, or guaranteed by such Eligible Mortgage Holder or Eligible Insurer or Guarantor, if such default or delinquency is not cured within sixty (60) days;

16.1.3 Any lapse, cancellation, or material modification of any insurance policy or fidelity bond maintained by the Association; and

16.1.4 Any proposed action that requires the consent of a specified percentage of Eligible Mortgage Holders as set forth in Section 16.2 of this Declaration.

16.2 Approval Required for Amendment to Declaration, Articles, or Bylaws. The approval of Eligible Mortgage Holders representing at least fifty-one percent (51%) of the votes in the Association that are allocated to Owners whose Lots or Parcels are subject to First Mortgages held by Eligible Mortgage Holders shall be required to make amendments of a material nature to this Declaration, the Articles, or the Bylaws. A change to any of the following shall be considered material:1

16.2.1 Voting rights;

16.2.2 Assessments, Assessment Liens, or subordination of Assessment Liens;

16.2.3 Reserves for maintenance, repair, and replacement of Common Areas;

16.2.4 Responsibility for maintenance and repairs;

16.2.5 Reallocation of interests in the Common Areas or Limited Common Areas or rights to their use;

16.2.6 Boundaries of any Lot or Parcel;

16.2.7 Convertibility of Lots or Parcels into Common Areas or vice versa;

16.2.8 Expansion or contraction of Canada Hills, or the addition, annexation, or withdrawal of property to or from the Covered Property;

16.2.9 Insurance or fidelity bonds;

16.2.10 Leasing of Lots or Parcels;

16.2.11 Imposition of any restrictions on an Owner's right to sell or transfer the Owner's Lot or Parcel;

16.2.12 A decision by the Association to establish self-management when professional management had been required previously by an Eligible Mortgage Holder;

16.2.13 Restoration or repair of any Common Areas (after hazard damage or partial condemnation) in a manner other than that specified in this Declaration;

16.2.14 Any action to terminate this Declaration after substantial destruction or condemnation occurs; or

16.2.15 Any provisions that expressly benefit First Mortgagees, Eligible Mortgage Holders, or Eligible Insurers or Guarantors.

Any actions to terminate this Declaration for reasons other than substantial destruction or condemnation of the Covered Property shall require the approval of Eligible Mortgage Holders representing at least sixty-seven percent (67%) of the votes in the Association that are allocated to Owners whose Lots or Parcels are subject to First Mortgages held by Eligible Mortgage Holders.

Any First Mortgagee who receives a written request to approve additions or amendments to this Declaration, the Articles, or the Bylaws that are not material and who does not submit a response to the requesting party within thirty (30) days after the request is made shall be deemed to have approved such request. As an example and without limiting the determination of materiality in any way, any addition or amendment to this Declaration, the Article, or the Bylaws shall not be considered material if it is for the purpose of correcting technical errors or for clarification only.

16.3 Prior Written Approval of First Mortgagees. Except as provided by statute in case of condemnation or substantial loss to the Common Areas, unless at least two-thirds (2/3) of all First Mortgagees based upon one (1) vote for each First Mortgage encumbering Covered Property that is not Exempt Property or Class A Members (other than Declarant or other sponsor, developer, or builder) have given their prior written approval, the Association shall not be entitled to:

16.3.1 By act or omission, seek to abandon, partition, subdivide, encumber, sell, or transfer the Common Areas. The granting of easements for public utilities or for other public purposes consistent with the intended use of the Common Areas shall not be deemed a transfer within the meaning of this Section 16.3.1;

16.3.2 Change the method of determining the obligations, Assessments, dues, or other charges that may be levied against an Owner;

16.3.3 By act or omission change, waive, or abandon any scheme of regulations or their enforcement pertaining to the architectural design or the exterior appearance of any buildings or structures within Cañada Hills, the exterior maintenance of any buildings or structures within Cañada Hills, including common fences and driveways, the upkeep of lawns and plantings within Cañada Hills, and the maintenance of any Common Areas;

16.3.4 Fail to maintain fire and extended coverage insurance on insurable Common Areas on a current replacement cost basis in the amount of the full current replacement cost of the insurable Common Areas; or

16.3.5 Use hazard insurance proceeds for losses to any Common Areas for any purpose other than the repair, replacement, or reconstruction of the damaged or taken Common Areas.

16.4 Condemnation or Insurance Proceeds. No Owner, or any other party, shall have priority over any rights of any First Mortgagee pursuant to its mortgage or deed of trust in the case of a distribution to such Owner of insurance proceeds or condemnation awards for losses to or a Taking of Common Areas.

16.5 Payment of Charges by First Mortgagees. First Mortgagees may jointly or singly pay taxes or other charges that are in default and that may or have become charges against any Common Areas, and may pay overdue premiums on hazard insurance policies or secure new hazard insurance coverage for Common Areas in the case of lapse of a policy. First Mortgagees making such payments are due immediate reimbursement from the Association.

16.6 Right of Inspection of Records. Any Owner, First

Mortgagee, or Eligible Insurer or Guarantor shall be entitled to: (a) inspect current copies of this Declaration, the Articles, the Bylaws, the Development Guidelines, the Association Rules, and the books, records, and financial statements of the Association during normal business hours; and (b) receive, upon written request therefor, an audited financial statement of the Association for the immediately preceding fiscal year of the Association, free of charge to the requesting party.

16.7 Conflicting Provisions. In the event of any conflict or inconsistency between the provisions of this Article XVI and any other provision of this Declaration, the provisions of this Article XVI shall prevail; provided, however, that in the event of any conflict or inconsistency between the different Sections of this Article XVI or between the provisions of this Article XVI and any other provision of this Declaration with respect to the number or percentage of Members, Owners, First Mortgagees, Eligible Mortgage Holders, or Eligible Insurers or Guarantors that must consent to an amendment of this Declaration, the Articles, or the Bylaws, or certain actions of the Association as specified in Sections 16.1, 16.2, or 16.3 of this Declaration, the provision requiring the consent of the greatest number or percentage of Members, Owners, First Mortgagees, Eligible Mortgage Holders, or Eligible Insurers or Guarantors shall prevail. Notwithstanding the foregoing or any other provision of this Declaration, the Declarant, without the consent of any Owner or First Mortgagee being required, shall have the right to amend this Declaration, the Articles, or the Bylaws in order to conform this Declaration, the Articles, or the Bylaws to the requirements or guidelines of FNMA, FHLMC, VA, FHA, or any other Agency whose approval of this Declaration, the Articles, or the Bylaws is required by law or requested by Declarant.

ARTICLE XVII

MISCELLANEOUS

17.1 Interpretation of the Covenants. Except for judicial construction, the Association, by its Board, shall have the exclusive right to construe and interpret the provisions of this Declaration, including without limitation, the land use restrictions in Article V of this Declaration and in any Tract Declaration. In the absence of any adjudication to the contrary by a court of competent jurisdiction, the Association's construction or interpretation of the provisions thereof shall be final, conclusive, and binding as to all persons and property benefited or bound by this Declaration.

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

17.3 Rule Against Perpetuities. If any of the interests, privileges, covenants, or rights created by this Declaration shall be unlawful, void, or voidable for violation of the rule against perpetuities or any related rule, then such provision shall continue until twenty-one (21) years after the death of the last survivor of the descendants of the President of the United States living on the date this Declaration is Recorded.

17.4 Change of Circumstances. Except as otherwise expressly provided in this Declaration, no change of conditions or circumstances shall operate to extinguish, terminate, or modify any of the provisions of this Declaration.

17.5 Declarant's Disclaimer of Representations. Notwithstanding anything to the contrary in this Declaration, Declarant makes no warranties or representations whatsoever that the plans presently envisioned for the complete development of Canada Hills can or will be carried out, or that any real property now owned or hereafter acquired by it is or will be subjected to this Declaration, or that any such real property (whether or not it has been subjected to this Declaration) is or will be committed to or developed for a particular (or any) use, or that if such real property is once used for a particular use, such use will continue in effect. While Declarant has no reason to believe that any of the provisions contained in this Declaration are or may be invalid or unenforceable for any reason or to any extent, Declarant makes no warranty or representation as to the present or future validity or enforceability of any provisions of this Declaration. Any Owner acquiring a Lot or Parcel in reliance on one or more of the provisions in this Declaration shall assume all risks of the validity and enforceability thereof and by acquiring the Lot or Parcel agrees to hold Declarant harmless therefrom.

17.6 Successors and Assigns. Any reference in this Declaration to Declarant shall include any successors or assigns of Declarant's rights and powers hereunder. Any such assignment shall be evidenced by a Recorded instrument executed by Declarant and its successors or assigns.

17.7 Gender and Number. Wherever the context of this Declaration so requires, words used in the masculine, feminine, or neuter gender shall include the other genders; words in the singular number shall include the plural, and words in the plural number shall include the singular.

17.8 Captions. All captions, titles, or headings of the Articles and Sections in this Declaration are for the purpose of reference and convenience only and Declarant intends that they shall be disregarded in interpreting the provisions of this Declaration.

17.9 Notices. If notice of any action or proposed action by

the Board or any committee or of any meeting is required by applicable law, this Declaration, or any resolution of the Board to be given to any Owner or Occupant, then, unless otherwise specified in this Declaration, by applicable law, or in the resolution of the Board, such notice requirement shall be deemed satisfied if notice of such action or meeting is published once in any newspaper in general circulation within the Town or Canada Hills. This Section 17.9 shall not be construed to require that any notice be given if not otherwise required and shall not prohibit satisfaction of any notice requirement in any other manner.

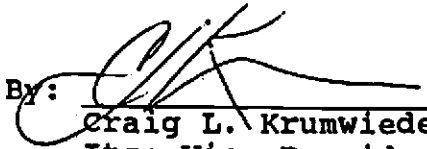
17.10 FHA/VA Approval. If this Declaration has been initially approved by FHA or VA in connection with any loan programs made available by FHA or VA in regard to the Covered Property, then for as long as there is a Class B Member, the following actions will require the prior approval of FHA or VA, as applicable, unless the need for such approval has been waived by FHA or VA: (i) dedication, conveyance, or mortgage of Common Areas (except where such dedication or change is required as fo the date hereof by the Town); (ii) annexation of additional property; and (iii) amendments of this Declaration.

IN WITNESS WHEREOF, Declarant has caused this Declaration to be duly executed on the date set forth on page one of this Declaration.

CANADA HILLS RESORT SITE LIMITED
PARTNERSHIP, an Arizona limited
partnership

By: CANADA HILLS MANAGEMENT LIMITED
PARTNERSHIP, an Arizona limited
partnership
Its: General Partner

By: CANADA HILLS DEVELOPMENT
CORPORATION, an Arizona
corporation
Its: Managing General
Partner

By: 
Craig L. Krumwiede
Its: Vice President

CANADA HILLS COMMERCIAL SITE
LIMITED PARTNERSHIP, an Arizona
limited partnership

By: CANADA HILLS MANAGEMENT LIMITED
PARTNERSHIP, an Arizona limited
partnership
Its: General Partner OL36

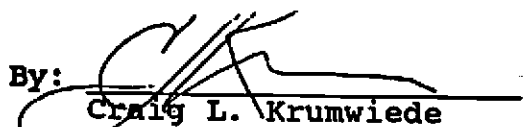
By: CANADA HILLS DEVELOPMENT
CORPORATION, an Arizona
corporation
Its: Managing General
Partner

By: 
Craig L. Krumwiede
Its: Vice President

CANADA HILLS DEVELOPMENT LIMITED
PARTNERSHIP, an Arizona limited
partnership

By: CANADA HILLS MANAGEMENT LIMITED
PARTNERSHIP, an Arizona limited
partnership
Its: General Partner

By: CANADA HILLS DEVELOPMENT
CORPORATION, an Arizona
corporation
Its: Managing General
Partner

By: 
Craig L. Krumwiede
Its: Vice President

STATE OF ARIZONA)
) ss.
County of Maricopa)

The foregoing instrument was acknowledged before me this 29th day of July, 1987, by Craig L. Krumwiede, the Vice President of CANADA HILLS DEVELOPMENT CORPORATION, an Arizona corporation, on behalf of the corporation as the Managing General Partner of CANADA HILLS MANAGEMENT LIMITED PARTNERSHIP, an Arizona limited partnership, the General Partner of CANADA HILLS RESORT SITE LIMITED PARTNERSHIP, an Arizona limited partnership.

Melitta Elison
Notary Public

My Commission Expires:

11/14/88

STATE OF ARIZONA)
) ss.
County of Maricopa)

The foregoing instrument was acknowledged before me this 29th day of July, 1987, by Craig L. Krumwiede, the Vice President of CANADA HILLS DEVELOPMENT CORPORATION, an Arizona corporation, on behalf of the corporation as the Managing General Partner of CANADA HILLS MANAGEMENT LIMITED PARTNERSHIP, an Arizona limited partnership, the General Partner of CANADA HILLS COMMERCIAL SITE LIMITED PARTNERSHIP, an Arizona limited partnership.

Melitta Elison
Notary Public

My Commission Expires:

11/14/88

STATE OF ARIZONA)
) ss.
County of Maricopa)

The foregoing instrument was acknowledged before me this 29th day of July, 1987, by Craig L. Krumwiede, the Vice President of CANADA HILLS DEVELOPMENT CORPORATION, an Arizona corporation, on behalf of the corporation as the Managing General Partner of CANADA HILLS MANAGEMENT LIMITED PARTNERSHIP, an Arizona limited partnership, the General Partner of CANADA HILLS DEVELOPMENT LIMITED PARTNERSHIP, an Arizona limited partnership.

Phyllis E. Egan
Notary Public

My Commission Expires:

11/14/88