

WHEN RECORDED RETURN TO:
McDowell Mountain Ranch
Limited Partnership
7590 East Gray Road, Suite 204
Scottsdale, Arizona 85260
Attn: Curtis Smith



OFFICIAL RECORDS OF
MARICOPA COUNTY RECORDER
HELEN PURCELL

96-0172324 03/14/96 04:09

FRANK 1 OF 1

DECLARATION
OF COVENANTS, CONDITIONS AND RESTRICTIONS
FOR
ONE HUNDRED HILLS

THIS Declaration of Covenants, Conditions and Restrictions (hereinafter termed the "Declaration") is made on this 11th day of March, 1996, by McDowell Mountain Ranch Limited Partnership, an Arizona limited partnership (hereinafter sometimes termed "Declarant").

W I T N E S S E T H:

WHEREAS, the Declarant is the Owner of the real property located in Scottsdale, Arizona, which is described on Exhibit A (the "Property") attached hereto.

NOW, THEREFORE, Declarant hereby declares that all of said real property (hereinafter sometimes referred to as One Hundred Hills) shall be held, sold, and conveyed subject to the easements, restrictions, covenants, and conditions contained in this Declaration which are for the purpose of protecting the value and desirability of, and which shall run with said Property, and be binding on all parties having any right, title or interest in said real property or any part thereof, their heirs, successors, and assigns, and shall inure to the benefit of each Owner thereof.

ARTICLE 1
DEFINITIONS

Section 1.1. "Architectural Committee" shall mean the committee established by the Board pursuant to Section 3.1 of this Declaration.

Section 1.2. "Architectural Committee Rules and Guidelines" shall mean the rules adopted by the Architectural Committee, as said rules may be amended from time to time.

Section 1.3. "Articles" shall mean the Articles of Incorporation of the Association which have been, or will be, filed in the Office of the Corporation Commission of the State of

Arizona, as said Articles may be amended from time to time.

Section 1.4. "Association" shall mean "One Hundred Hills Homeowners Association", an Arizona nonprofit corporation.

Section 1.5. "Association Rules" shall mean the rules and regulations adopted by the Association, as the same may be amended from time to time.

Section 1.6. "Board" shall mean the Board of Directors of the Association.

Section 1.7. "Builder" shall mean a person or entity who is engaged in residential real estate development and who purchases one or more Lots from the Declarant for the purpose of constructing Improvements thereon for sale.

Section 1.8. "Bylaws" shall mean the Bylaws of the Association, as such Bylaws may be amended from time to time.

Section 1.9. "Common Area" shall mean (i) all land, together with all Improvements situated thereon which the Association at any time owns in fee or in which the Association has a leasehold interest for as long as the Association is the owner of the fee or leasehold interest, (ii) all land within the Property which the Declarant, by this Declaration or other instrument recorded with the Office of the Maricopa County Recorder, makes available for use by Members and evidences its intent to convey to the Association at a later date, (iii) all land within the Property which the Declarant indicates on a Plat is to be used for landscaping, water retention or detention, drainage and/or flood control for the benefit of the Property and is to be dedicated to the public or the City of Scottsdale upon the expiration of a fixed period of time, but only until such land is so dedicated, and (iv) all land within the Project which is owned privately or by a governmental agency for which the Association has accepted responsibility for maintenance, and for which the Association benefits by limited use, full use or aesthetic consistency.

Section 1.10. "Declarant" shall mean McDowell Mountain Ranch Limited Partnership, an Arizona limited partnership, its successors and any person or entity to whom it may expressly assign its rights under this Declaration.

Section 1.11. "Declaration" shall mean the covenants, conditions and restrictions herein set forth in this entire document, as same may from time to time be amended or supplemented.

Section 1.12. "First Mortgage" shall mean and refer to any mortgage or deed of trust with first priority over any other mortgage or deed of trust.

Section 1.13. "First Mortgagee" shall mean and refer to the holder of any First Mortgage.

Section 1.14. "Improvement" shall mean buildings, roads, driveways, parking areas, fences, walls, rocks, hedges, plantings, planted trees and shrubs, and all other structures or landscaping Improvements of every type and kind.

Section 1.15. "Lot" shall mean any parcel of real property designated as a Lot on a Plat.

Section 1.16. "Master Association" shall mean the McDowell Mountain Ranch Community Association to which all

members of the One Hundred Hills Homeowners Association are subject.

Section 1.17. "Master Declaration" shall mean the Declaration of Covenants, Conditions, Restrictions, Assessments, Charges, Servitudes, Liens, Reservations and Easements for McDowell Mountain Ranch recorded in Document No. 94-0730728, records of Maricopa County, Arizona as the same may be amended from time to time.

Section 1.18. "Member" shall mean any person, corporation, partnership, joint venture, or other legal entity who is an Owner of a Lot within the Property or is the Owner of all or any portion of Parcel H prior to Parcel H being fully subdivided and subjected to one or more Plats.

Section 1.19. "Membership" shall mean a Membership in the Association and the corresponding rights, privileges and responsibilities of the Owners, Builders and Declarant, respectively.

Section 1.20. "Owner" shall mean the record Owner, whether one (1) or more persons or entities, of beneficial or equitable title (and legal title if the same has merged with the beneficial or equitable title) to the fee simple interest of a Lot. Owner shall not include (i) the Purchaser of a Lot under an executory contract for the sale of real property, (ii) persons or entities having an interest in a Lot merely as security for the performance of an obligation, or (iii) a lessee or tenant of a Lot. In the case of Lots, the fee simple title to which is vested in a trustee pursuant to Arizona Revised Statutes, Section 33-801, et seq., the Trustor shall be deemed to be the Owner. In the case of Lots, 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 shall be deemed to be the Owner.

Section 1.21. "Parcel H" shall mean that portion of the Property described as Parcel H on Exhibit A attached to this Declaration.

Section 1.22. "Plat" shall mean collectively (i) the plat of Parcel G-North at McDowell Mountain Ranch, recorded in Book 399 of Maps, page 37, records of Maricopa County, Arizona (individually, the "G-North Plat"), (ii) the plat of Parcel G-South at McDowell Mountain Ranch recorded in Book 403 of Maps, page 39, records of Maricopa County, Arizona (individually, the "G-South Plat"), and (iii) any other plat recorded in the office of the Maricopa County Recorder over any portion of the Property, and all amendments, supplements and corrections thereto.

Section 1.23. "Project Documents" shall mean this Declaration and the Articles, Bylaws, Association Rules, and Architectural Committee Rules and Guidelines.

Section 1.24. "Property" or "Project" shall mean the real property described on Exhibit A attached to this Declaration.

Section 1.25. "Purchaser" shall mean any person or entity other than the Declarant and any Builder who by means of a voluntary transfer acquires a legal or equitable interest in a Lot other than (a) a leasehold interest (including renewable

options) of less than five (5) years or (b) as security for an obligation.

Section 1.26. "Single Family" shall mean a group of one (1) or more persons each related to the other by blood, marriage or legal adoption; or a group of persons not all so related, together with their domestic servants not to exceed three (3) in number, who maintain a common household in a dwelling.

Section 1.27. "Single Family Residential Use" shall mean the occupation or use of a residence by a Single Family in conformity with this Declaration and the requirements imposed by applicable zoning laws or other state, county, or municipal rules and regulation.

Section 1.28. "Visible From Neighboring Property" shall mean, with respect to any given object, that such object is, or would be, visible to a person six (6) feet tall, standing on any part of such neighboring property at an elevation no greater than the elevation of the base of the object being viewed.

ARTICLE 2 THE ASSOCIATION

Section 2.1. Rights, Powers, and Duties. The Association shall be a nonprofit Arizona corporation charged with the duties and invested with the powers prescribed by law and set forth in the Articles, Bylaws, and this Declaration together with such rights, powers and duties as may be reasonably necessary to effectuate the objectives and purposes of the Association as set forth in this Declaration.

Section 2.2. Board of Directors and Officers. The affairs of the Association shall be conducted by a Board of Directors and such officers and committees as the Board may elect or appoint, in accordance with the Articles and the Bylaws.

Section 2.3. Personal Liability. No member of the Board or of any committee of the Association, no officer of the Association, and no other employee or representative of the Association shall be personally liable to any Member, or to any other person, including the Association, for any damage, loss or prejudice suffered or claimed on account of any act, omission, error or negligence of the Association, the Board, any representative or employee of the Association, or any committee, committee member or officer of the Association; provided, however, the limitations set forth in this Section 2.3 shall not apply to any person who has failed to act in good faith or has engaged in willful or intentional misconduct.

Section 2.4. Association Rules. The Board may, from time to time, and subject to the provisions of this Declaration, adopt, amend and repeal rules and regulations pertaining to: (i) the management, operation and use of the Common Area including, but not limited to, any recreational facilities situated upon the Common Area; (ii) minimum standards for any maintenance of Lots; or (iii) the health, safety or welfare of the Owners and

residents. In the event of any conflict or inconsistency between the provisions of this Declaration and the Association Rules, the provisions of this Declaration shall prevail. The Association Rules shall be enforceable in the same manner and to the same extent as the covenants, conditions and restrictions set forth in this Declaration.

Section 2.5. Approval by Master Association. All Members of the Association are also members of the Master Association. The provisions of this Declaration are subject and subordinate to the provisions of the Master Declaration, the provisions of the Articles of Incorporation and Bylaws of the Master Association; and the provisions of the McDowell Mountain Ranch Rules, the McDowell Mountain Ranch Association Rules, and the Design Guidelines established by the Master Association.

ARTICLE 3 ARCHITECTURAL COMMITTEE

Section 3.1. Establishment. The Declarant shall establish an Architectural Committee to perform the functions of the Architectural Committee set forth in this Declaration and to adopt the procedural rules and regulations for the performance of such duties, including procedures for preparation, submission and determination of the application for any approvals required by this Declaration. The Architectural Committee shall consist of such number of regular members as the Declarant may designate and such members shall be appointed by the Declarant. The appointees need not be architects, Owners or residents and do not need to possess any special qualifications of any type except such as the Declarant may, in its discretion, require. The Architectural Committee Rules and Guidelines shall interpret and implement this Declaration by setting forth the procedures for Architectural Committee review and the standards for development within the Property. The Architectural Committee Rules and Guidelines may also include provisions requiring the establishment of landscaping on Lots pursuant to specific timetables. Subject to the provisions of this Article, the decision of the Architectural Committee shall be final on all matters submitted to it pursuant to this Declaration.

Section 3.2. Appeal. Any Owner aggrieved by a decision of the Architectural Committee may appeal the decision to the Board in accordance with procedures to be established by the Board. If the Board fails to allow an appeal or if the Board, after the appeal, again rules in a manner aggrieving the appellant, the decision of the Board is final. In the event the decision of the Architectural Committee is overruled by the Board on any issue or question, the prior decision of the Architectural Committee shall be deemed modified to the extent specified by the Board and, for purposes of this Declaration, such decision, as so modified, shall thereafter be deemed the decision of the Architectural Committee. In this regard, the Board shall have the authority to modify or overrule the decision of the Architectural Committee on any matter presented to it.

Section 3.3. Fee. The Architectural Committee may establish a reasonable processing fee to defer the costs of the Association in considering any requests for approvals submitted to it, which fee shall be paid at the time the request for approval is submitted. The Architectural Committee may employ an architect and other design professionals and the fees for such services shall be included in review fees.

Section 3.4. Appointment of Architectural Committee Members. Subject to the provisions of Section 3.1., Architectural Committee members are appointed by the Declarant and may be replaced at the discretion of the Declarant. Declarant's right to appoint Architectural Committee members shall cease and the Board shall be vested with that right and all other rights of the Declarant pertaining to the Architectural Committee two (2) years after the date on which the Class B membership is extinguished, at such time Declarant and any Builder no longer owns any of the Property, or when such right is expressly relinquished by Declarant to the Board in writing, whichever condition occurs first.

Section 3.5. Non-Liability for Approval of Plans. Plans and specifications shall be approved by the Architectural Committee as to style, exterior design, appearance and location, but the Architectural Committee takes no responsibility for engineering design or for compliance with zoning and building ordinances, and by approving any member thereof, the Association, any member, the Board, nor the Declarant assumes any liability or responsibility therefor, or for any defect in any structure constructed from such plans and specifications. Neither the Architectural Committee, any member thereof, the Association, the Board nor the Declarant shall be liable to any Owner or other person for any damage, loss or prejudice suffered or claimed on account of (a) the approval or disapproval of any plans, drawings and specifications, whether or not defective, (b) the construction or performance of any work, whether or not pursuant to approved plans, drawings and specifications, or (c) the development, or manner of development, of any the Property. Approval of plans and specifications by the Architectural Committee is not, and shall not be deemed to be, a representation or warranty, whether express or implied, that said plans or specifications comply with applicable governmental ordinances or regulations including, without limitation, zoning ordinances and building codes, and industry standards for design or construction.

Section 3.6. Conformance with Master Association. All Lots within the Property are subject to the Master Association and its Design Review Committee. All architectural submittals must also be approved in advance by the Design Review Committee of the Master Association.

Section 3.7. Waiver of Approval Process. The Architectural Committee may, in its sole discretion, elect to waive its right to review plans and specifications for Improvements, alterations, repairs, excavations, landscaping or other work as set forth in this Declaration if an Owner shall first obtain approval or disapproval from the Design Review

Committee of the Master Association and deliver such approval or disapproval to the Architectural Committee. If such election is made, then the decision of the Design Review Committee of the Master Association shall be deemed to serve as the decision of the Architectural Committee.

ARTICLE 4 MEMBERSHIP

Section 4.1. Parcel H. Declarant currently owns Parcel H and anticipates that Parcel H will be subdivided in the future, by one or more Plats, into approximately 114 Lots. Until all or a portion of Parcel H is subdivided and a Plat or Plats is/are recorded, for purposes of this Declaration, Parcel H shall be deemed to include 114 Lots and Membership in the Association (and the number of Lots for voting purposes) shall be based upon 114 Lots. If Parcel H is fully subdivided by a single Plat, from and after the date upon which such Plat is recorded, Parcel H will have allocated to it the number of Lots as shown on such Plat and Membership in the Association shall be based upon the Lots shown in the Plat. If Parcel H is partially subdivided, from and after the date upon which each Plat for a portion of Parcel H is recorded, the portion of Parcel H which has not been subdivided shall have allocated to it Lots equal to 114 Lots minus the number of Lots included within the Plat or Plats which have been recorded with respect to that portion or those portions of Parcel H which has been subdivided, and for that portion or those portions which have been subdivided by Plats, the number of Lots set forth on such Plat or Plats shall be determinative as to the number of Lots allocable to that portion or portions of Parcel H.

Section 4.2. Identity of Members. Membership in the Association shall be limited to Owners of Lots and Parcel H prior to Parcel H being fully subdivided and subjected to one or more Plats. An Owner of a Lot, or all or any portion of Parcel H prior to it being fully subdivided and subject to one or more Plats, shall automatically, upon becoming the Owner thereof, be a Member of the Association and shall remain a Member of the Association until such time as Ownership ceases for any reason, at which time Membership in the Association shall automatically cease.

Section 4.3. Transfer of Membership. Membership in the Association shall be appurtenant to each Lot and to Parcel H and a Membership in the Association shall not be transferred, pledged or alienated in any way, except upon the transfer of ownership of a Lot or Parcel H and then only to such transferee, or by intestate succession, testamentary disposition, foreclosure of mortgage of record or other legal process. Any attempt to make a prohibited transfer shall be void and shall not be reflected upon the books and records of the Association.

ARTICLE 5
VOTING RIGHTS

Section 5.1. Classes of Members. The Association shall have three (3) classes of voting membership:

Class A. Class A Members shall be all Owners of Lots, with the exception of the Declarant and Builders. Each Class A Member shall be entitled to one (1) vote for each Lot owned.

Class B. The Class B Member initially shall be the Declarant. The Class B Member shall be entitled to nine (9) votes for each Lot owned, including the Lots allocated to that portion of Parcel H which has not been subdivided by a Plat. The Class B Membership shall cease and be converted to Class A Membership on the happening of either of the following events, whichever occurs earlier:

(a) Within ninety (90) days after the number of Class A votes exceeds the sum of Class B and Class C votes; or

(b) January 1, 2010.

The Class B Membership of Declarant shall cease and be converted to Class C Membership when and if the Declarant notifies the Association in writing that it relinquishes its Class B Membership; however, if at such time there is no Class C Membership, the Class B Membership shall be converted to Class A Membership.

Class C. The Class C Members shall be all Builders. Each Class C Member shall be entitled to one vote for each Lot owned; however, if the Declarant elects to convert its Class B Membership to a Class C Membership, the Class C Membership of all Builders shall cease upon such election of Declarant and shall be converted to Class B Membership, thereby entitling each Builder to nine (9) votes for for each Lot owned by such Builder. A Builder who is converted from Class C Membership to Class B Membership may at any time elect to convert its Class B Membership back to a Class C Membership upon written notice to the Association.

Section 5.2. Joint Ownership. When more than one (1) person is the Owner of any Lot, all such persons shall be Members. The vote for such Lot shall be exercised as they among themselves determine, but in no event shall more than one (1) ballot be cast with respect to any Lot. The vote or votes for each such Lot must be cast as a unit, and fractional votes shall not be allowed. In the event that joint Owners are unable to agree among themselves as to how their vote or votes shall be cast, they shall lose their right to vote on the matter in question. If any Owner casts a ballot representing a certain Lot, it will thereafter be conclusively presumed for all purposes that the Owner was acting with the authority and consent of all other Owners of the same Lot. In the event more than one (1) ballot is cast for a particular Lot, none of said votes shall be counted and said votes shall be deemed void.

Section 5.3. Corporate Ownership. In the event any Lot is owned by a corporation, partnership, limited liability company or other association, the corporation, partnership, company or association shall be a Member and shall designate in writing at the time of acquisition of the Lot an individual who shall have the power to vote said Membership, and in the absence of such designation and until such designation is made, the chief executive officer, if any, of such corporation, partnership, company or association shall have the power to vote the Membership, and if there is no chief executive officer, then the Board of Directors, managing member or general partner of such corporation, partnership, company or association shall designate who shall have the power to vote the Membership.

Section 5.4. Suspension of Voting Rights. In the event any Owner is in arrears in the payment of any assessments or other amounts due under any of the provisions of the Project Documents for a period of fifteen (15) days, said Owner's right to vote as a Member of the Association shall be suspended and shall remain suspended until all payments, including collection and/or attorneys' fees, are brought current, and an Owner's right to vote as a Member of the Association may also be suspended for a period not to exceed sixty (60) days for any infractions of the Project Documents and for successive sixty (60) day periods if the infraction has not been corrected.

ARTICLE 6 COVENANT FOR MAINTENANCE ASSESSMENTS

Section 6.1. Creation of the Lien and Personal Obligation of Assessments. The Declarant, for each Lot owned by it or deemed owned by it while Declarant owns Parcel H, hereby covenants, and each Owner of a Lot, by becoming the Owner thereof, whether or not it is expressed in the deed or other instrument by which the Owner acquired ownership of the Lot, is deemed to covenant and agree to pay to the Association: (1) annual assessments, (2) supplemental assessments, and (3) special assessments for capital improvements as hereafter set forth. The annual, supplemental, and special assessments, together with costs and reasonable attorneys' fees, shall be a charge on the land and shall be a continuing lien upon the Lot against which each such assessment is made. Each such assessment, together with costs, and reasonable attorneys' fees, shall also be the personal obligation of the Owner of such Lot at the time when the assessment became due. The personal obligation for delinquent assessments shall not pass to the Owner's successors in title unless expressly assumed by them. However, such exemption does not apply to any other obligation of the successor in title of the Owner to correct any violation of the Project Documents. The transfer of title shall not extinguish any assessment lien except a transfer pursuant to foreclosure of a superior lien in which the assessment lien has been extinguished by such foreclosure proceeding.

Section 6.2. Purpose of the Assessments. The

assessments levied by the Association shall be used exclusively for the upkeep, maintenance, and improvement of the Common Area and such portions of the Lots, and such portions of the Improvements located thereon, as the Association is obligated to maintain under Sections 10.1, 10.2 and 11.2 of this Declaration, for operating the Association, to enable the Association to perform its obligations under this Declaration and for promoting the recreation, health, safety and welfare of the Owners and residents of Lots within the Property. Assessments may also be used for the purpose of providing and maintaining a security gate and/or security personnel for the benefit of all Members.

Section 6.3. Maximum Annual Assessment.

(a) Until January 1 of the year immediately following the conveyance of the first Lot to a Purchaser, the maximum annual assessment for each Lot shall be one thousand twenty dollars (\$1,020.00).

(b) From and after January 1 of the year immediately following the conveyance of the first Lot to a Purchaser, the Board may, without a vote of the membership, increase the maximum annual assessment during each fiscal year of the Association by an amount proportional to the amount of increase during the prior fiscal year in the Consumer Price Index for All Urban Consumers (All Items), U.S. City Average, published by the United States Department of Labor, Bureau of Labor Statistics (1982-84 = 100), or in the event said index ceases to be published, by any successor index recommended as a substitute therefor by the United States government; or ten (10%), whichever is greater.

(c) From and after January 1 of the year immediately following the conveyance of the first Lot to a Purchaser, the maximum annual assessment may be increased by an amount greater than the maximum increase allowed pursuant to (b) above, only by a vote of Members entitled to cast at least two-thirds (2/3) of the votes entitled to be cast by Members who are voting in person or by proxy at a meeting duly called for such purpose, or by a two-thirds (2/3) majority of each class of vote as long as there is a Class B and/or a Class C vote.

(d) The Board may fix the annual assessment in any amount not in excess of the maximum annual assessment. While there is still a Class B Membership, the Board, in its sole discretion, may adjust the annual assessment, not to exceed the maximum annual assessment, at any time during the fiscal year to reflect a phasing in of Association services. Such adjustments shall not be considered supplemental assessments as described in Section 6.4. below.

Section 6.4. Supplemental Assessments. In the event the Board shall determine that its funds budgeted or available in any fiscal year are, or will become, inadequate to meet all expenses of the Association, for any reason, including, without limitation, nonpayment of assessments by the Members, it shall immediately determine the approximate amount of such inadequacies for such fiscal year, prepare a supplemental budget and levy a supplemental assessment against each Lot in such amount as the Board deems necessary in order to obtain the amount of such

inadequacies. Notice of any such supplemental assessment shall be given to each Owner. The supplemental assessment shall be paid on such dates, and in such installments, as may be determined by the Board. No supplemental assessment shall be levied by the Board until such assessment has been approved by Members entitled to cast at least two-thirds (2/3) of the votes entitled to be cast by Members who are voting in person or by proxy at a meeting duly called for such purpose, or a two-thirds (2/3) majority of each class as long as there is a Class B and/or a Class C vote.

Section 6.5. Special Assessments and Perimeter Fence Assessments. (a) In addition to the annual assessments authorized above, the Association may levy, in any assessment year, a special assessment applicable to that fiscal year only for the purpose of defraying, in whole or in part, the cost of any construction, reconstruction, repair or replacement of a capital improvement of the Common Area, including fixtures and personal property related thereto, or for any other lawful Association purpose, provided that any such assessment shall have the assent of Members having at least two-thirds (2/3) of the votes entitled to be cast by Members who are voting in person or by proxy at a meeting duly called for such purpose, or a two-thirds (2/3) majority of each class as long as there is a Class B and/or a Class C vote. (b) In addition to any other assessment authorized in this Declaration, the Association may levy, in any assessment year, an assessment known as the "Perimeter Fence Assessment" against the Owners of Lots in Parcels G-North and G-South, for the purpose of defraying, in whole or in part, the cost of complying with the Association's obligations under Section 11.2 hereof to repair, reconstruct and maintain (including but not limited to painting) the perimeter fence walls for Parcels G-North and G-South. No such "Perimeter Fence Assessment" shall require approval by the Members. The amount of any such "Perimeter Fence Assessment" against a Parcel G-North or G-South Lot shall be based upon the Association's determination, in its sole and absolute discretion, as to the allocable portion of such total cost to the respective Lots, based upon the total square footage of perimeter wall fencing located upon a particular Lot.

Section 6.6. Notice and Quorum for Any Action Authorized Under Sections 6.3(c), 6.4 and 6.5(a). Written notice of any meeting called for the purpose of taking any action authorized under Section 6.3(c), 6.4 or 6.5 shall be sent to all Members not less than thirty (30) days nor more than sixty (60) days in advance of the meeting. At the first such meeting called, the presence of Members or proxies entitled to cast sixty percent (60%) of all the votes of each class of Members shall constitute a quorum. If the required quorum is not present, another meeting may be called subject to the same notice requirement, and the required quorum at the subsequent meeting shall be one-half (1/2) of the required quorum at the preceeding meeting. No such subsequent meeting shall be held more than sixty (60) days following the preceeding meeting.

Section 6.7. Uniform Rate of Assessment/Declarant

Exemptions. Annual, supplemental and special assessments (other than special assessments under Section 6.5(b)) must be fixed at a uniform rate for all Lots owned by Class A Members. As long as Declarant is the Class B Member, Declarant shall not pay annual, supplemental and special assessments for Lots owned by Declarant or deemed owned by Declarant while Declarant owns any unsubdivided portion of Parcel H, but instead shall pay the shortage, if any, between all income from assessments and other sources and the actual operating cost of the Association (the "Subsidy"). When the Declarant ceases to be a Class B Member, as provided for in Section 5.1., Declarant shall pay annual, supplemental and special assessments on each Lot owned by Declarant or deemed owned by Declarant while Declarant owns any unsubdivided portion of Parcel H, in an amount equal to twenty-five percent (25%) of the amount paid by Class A Members until the earlier of (i) conveyance of each of such Lots by Declarant to a Purchaser or Builder, or (ii) occupancy of any such Lot by a Purchaser, at which time, for each such Lot, Declarant shall be subject to the same assessments as Class A Members.

Section 6.8. Builder Obligation. While Class C Members, Builders shall not pay annual, supplemental and special assessments for Lots owned by Builders, but instead shall pay a prorata portion of the Subsidy which Declarant is obligated to pay as set forth in Section 6.7 in accordance with the terms of Subsidy Agreement(s) between Declarant and such Builders on file from time to time with the Declarant. If the Class B Membership of Declarant terminates prior to the termination of the Class C Membership of the Builders, the obligation of the Declarant to pay the subsidy (and the obligation of the Builders to pay their prorata portion thereof) shall terminate and the Builders (whether Class B or Class C Members) shall pay the same twenty-five percent (25%) reduced assessment as the Declarant as set forth in Section 6.7. Notwithstanding anything contained in this Section 6.8 to the contrary, any Lot owned by a Builder (whether Class B or Class C Members) on which a residence has been built and occupied (except for model homes owned by Builders, which shall be assessed in the same manner as all other Lots owned by Class C Members) shall be subject to the same assessments as Class A Members.

Section 6.9. Date of Commencement of Annual Assessments; Due Dates. The annual assessments provided for herein shall commence as to each Lot on the first day of the month following the conveyance of the first Lot to a Purchaser. The first annual assessment shall be adjusted according to the number of months remaining in the fiscal year of the Association. The Board shall fix the amount of the annual assessment against each Lot at least thirty (30) days in advance of each annual assessment period. Written notice of the annual assessment shall be sent to every Owner subject thereto. The Board may require that the annual assessment be paid in installments and in such event the Board shall establish the due dates for each installment. The Association shall, upon demand, and for a reasonable charge, furnish a certificate signed by an officer of

the Association setting forth whether the assessments on a specified Lot have been paid. Any such certificate, when duly issued as herein provided, shall be conclusive and binding with respect to any matters therein stated as against any bona fide purchaser of, or lender on, the Lot in question.

Section 6.10. Working Capital Fund. To insure that the Association shall have adequate funds to meet its expenses or to purchase necessary equipment or services, each Purchaser who purchases from the Declarant or a Builder a Lot on which a residence has been constructed shall pay to the Association immediately upon becoming the Owner of the Lot, a sum equal to .15% of the total sales price of the Lot and residence. With respect to Lots upon which no residence has been constructed, the amount payable to the Association pursuant to this Section shall be an amount equal to .60% of the total sales price of the Lot. Funds paid to the Association pursuant to this Section may be used by the Association for payment of operating expenses, funding reserves, or any other purpose permitted under this Declaration. Payments made pursuant to this Section shall be nonrefundable and shall not be offset or credited against or considered as advance payment of any assessments levied by the Association pursuant to this Declaration.

Section 6.11. Transfer Fee. Each person or entity other than Declarant or a Builder who purchases a Lot shall pay to the Association immediately upon becoming the Owner of the Lot a transfer fee in such amount as is established from time to time by the Board except that no transfer fee shall be payable with respect to the purchase of a Lot to which a payment would be due and owing to the Association pursuant to Section 6.10 of this Declaration.

Section 6.12. Effect of Nonpayment of Assessments; Remedies of the Association. Any assessment, or any installment of an assessment (or in the case of a Builder, any share of the Subsidy) not paid within fifteen (15) days after the assessment, or the installment of the assessment, or the share of the Subsidy, first became due shall bear a monthly late charge to be set by the Board. Any assessment, or any installment of an assessment, or the share of the Subsidy, which is delinquent shall become a continuing lien on the Lot against which such assessment was made. The lien shall be perfected by the recording of a "Notice of Claim of Lien" which shall set forth (1) the name of the delinquent Owner as shown on the records of the Association, (2) legal description, street address and number of the Lot against which the lien is made, (3) the amount claimed as of the date of the recording of the notice including lien recording fees, late charges and reasonable attorneys' fees, (4) the name and address of the Association. The Association's lien shall have priority over all liens or claims created subsequent to the recording of the Notice of Claim of Lien except for tax liens for real property taxes on the Lot, assessments on any Lot in favor of any municipal or other governmental body and the liens which are specifically described in Section 6.12 of this Declaration.

Before recording a lien against any Lot, the

Association shall make a written demand to the defaulting Owner for payment of the delinquent assessments, together with late charges and reasonable attorneys' and collection fees, if any. Said demand shall state the date and amount of the delinquency. Each default shall constitute a separate basis for a demand or claim of lien, but any number of defaults may be included within a single demand or claim of lien. If such delinquency is not paid within ten (10) days after delivery of such demand, the Association may proceed with recording a Notice of Claim of Lien against the Lot of the defaulting Owner. The Association shall not be obligated to release any lien recorded pursuant to this Section until all delinquent assessments, lien fees, late charges and reasonable attorneys' fees have been paid in full whether or not all of such amounts are set forth in the Notice of Claim of Lien.

The Association shall have the right, at its option, to enforce collection of any delinquent assessments together with lien fees, late charges, reasonable attorneys' and collection fees and any other sums due to the Association in any manner allowed by law including, but not limited to, (a) bringing an action at law against the Owner personally obligated to pay the delinquent assessments and such action may be brought without waiving any lien securing any such delinquent assessments or (b) bringing an action to foreclose its lien against the Lot in the manner provided by law for the foreclosure of a realty mortgage. The Association shall have the power to bid at any foreclosure sale and to purchase, acquire, hold, lease, mortgage and convey any and all Lots purchased at such sale.

Section 6.13. Subordination of the Lien to Mortgages. The lien of the assessments provided for in this Declaration shall be subordinate to the lien of any First Mortgage. Sale or transfer of any Lot shall not affect the assessment lien. However, the sale or transfer of any Lot pursuant to judicial or nonjudicial foreclosure or any proceeding in lieu thereof with respect to a First Mortgage shall extinguish the lien of such assessment as to payments which become due prior to such sale or transfer. No sale or transfer shall relieve such Lot from liability for any assessments thereafter becoming due or from the lien thereof.

Section 6.14. Exemption of Owner. No Owner of a Lot may be exempt from liability for annual, supplemental, or special assessments levied against the Lot or for other amounts which may be owed to the Association under the Project Documents by waiver and non-use of any of the Common Area and facilities, or by the abandonment of the Lot.

ARTICLE 7 PERMITTED USES AND RESTRICTIONS

Section 7.1. Master Declaration. In addition to the following provisions of this Article 7, the Property is subject to each and every permitted use and restriction contained in Article IV of the Master Declaration.

Section 7.2 Residential Use. All Lots shall be used, improved, and devoted exclusively to residential use by a Single Family. No trade or business may be conducted on any Lot or in or from any residence, except that an Owner or other resident may conduct a business activity within a residence so long as; (i) the existence or operation of the business activity is not apparent or detectable by sight, sound or smell from outside the residence; (ii) the business activity conforms to all applicable zoning ordinances or requirements for the Covered Property; and (iii) the business activity does not involve persons coming on to the Lot or the door-to-door solicitation of Owners or other residents in the Covered Property; and (iv) the business activity is consistent with the residential character of the Covered Property and does not constitute a nuisance or a hazardous or offensive use or threaten security or safety of other residents in the Covered Property, as may be determined from time to time in the sole discretion of the Board. The terms "business" and "trade" as used in this Section shall be construed to have ordinary, generally accepted meanings, and shall include, without limitation, any occupation, work or activity undertaken on an ongoing basis which involves the provision of goods or services to persons other than the provider's family and for which the provider receives a fee, compensation or other form of consideration, regardless of whether; (i) such activity is engaged in full or part time; (ii) such activity is intended or does generate a profit; or (iii) a license is required for such activity. The leasing of an entire residence by the Owner thereof shall not be considered a trade or business within the meaning of this Section.

Section 7.3 Animals. No animals, birds, fowl, poultry, or livestock, other than a reasonable number of generally recognized house or yard pets, shall be maintained on any property and then only if they are kept, bred, or raised thereon solely as domestic pets and not for commercial purposes. No animal shall be allowed to make an unreasonable amount of noise, or to become a nuisance. No structure for the care, housing or confinement of any animal shall be maintained so as to be Visible From Neighboring Property. Upon the written request of any Owner, the Board shall determine whether, for the purposes of this Section, a particular animal is a generally recognized house or yard pet, or nuisance, or whether the number of animals on any such property is reasonable. Any decision rendered by the Board shall be enforceable to the same extent as other restrictions contained in this Declaration.

Section 7.4. Antennas. No antenna, satellite dish or other device for the transmission or reception of television or radio signals or any other form of electromagnetic radiation shall be erected, used or maintained outdoors on any property, whether attached to a building or structure or otherwise, without prior written approval by the Architectural Committee.

Section 7.5. Roof Mounted Equipment. No roof mounted equipment of any kind including, but not limited to, solar collectors, evaporative coolers, air conditioners, and ventilating systems shall be permitted without the written

approval of the Architectural Committee.

Section 7.6. Utility Service. Except as approved in writing by the Architectural Committee, no lines, wires, or other devices for the communication or transmission of electric current or power, including telephone, television, and radio signals, shall be erected, placed or maintained anywhere in or upon any property unless the same shall be contained in conduits or cables installed and maintained underground or concealed in, under or on buildings or other structures approved by the Architectural Committee. No provision hereof shall be deemed to forbid the erection of temporary power or telephone structures incidental to the construction of buildings or structures approved in writing by the Architectural Committee.

Section 7.7. Improvements and Alterations. No Improvements, alterations, repairs, excavations, landscaping or other work which in any way alters the exterior appearance of any Property or the Improvements located thereon, from its natural or improved state existing on the date such Property was first conveyed in fee by Declarant or a Builder to a Purchaser, shall be made or done without the prior written approval of the Architectural Committee, except as otherwise expressly provided in this Declaration. No building, fence, wall, landscaping, residence, or other structure shall be commenced, erected, maintained, improved, altered, made or done without the prior written approval of the Architectural Committee. No change or deviations in or from such plans and specifications once approved shall be made without the prior written approval of the Architectural Committee. Subject to the provisions of Section 3.2 above, all decisions of the Architectural Committee shall be final and no Owner or other parties shall have recourse against the Architectural Committee for its refusal to approve any such plans and specifications or plot plan, including lawn area and landscaping.

Section 7.8. Temporary Occupancy. No trailer, basement of any incomplete building, tent, shack, garage or barn, and no temporary buildings or structure of any kind shall be used at any time, on any portion of the Property, for a residence, either temporary or permanent. Temporary buildings or structures used during the construction of a dwelling on any such property shall be removed immediately after the completion of construction.

Section 7.9. Trailers and Other Vehicles. No motor vehicle classed by manufacturer rating as exceeding 3/4-ton, mobile home, recreational vehicle, travel trailer, tent trailer, trailer, camper shell, detached camper, boat, boat trailer, or other similar equipment or vehicle may be parked, maintained, constructed, reconstructed or repaired on any Lot or on any street on the Property so as to be Visible From Neighboring Property, Common Areas or the streets; provided, however, that the provisions of this Section shall not apply to pickup trucks of 3/4-ton or less capacity with camper shells not exceeding seven (7) feet in height measured from ground level and mini-motor homes not exceeding seven (7) feet in height and eighteen (18) feet in length which are used on a regular and

recurring bases for basic transportation.

Section 7.10. Nuisances. No rubbish, debris, petroleum products or similar product of any kind shall be placed or permitted to accumulate upon or adjacent to any property, and no odors shall be permitted to arise therefrom, so as to render any such property or any portion thereof unsanitary, unsightly, offensive or detrimental to any other property in the vicinity thereof or to its occupants. No nuisance shall be permitted to exist or operate upon any such property so as to be offensive or detrimental to any other property in the vicinity thereof or to its occupants. Without limiting the generality of any of the foregoing provisions, no exterior speakers, horns, whistles, bells, or other sound devices, except security devices used exclusively for security purposes, shall be located, used, or placed on any such property without the prior approval of the Board.

Section 7.11. Trash Containers and Collection. No garbage or trash shall be placed or kept on any property except in covered containers of a type, size and style which are approved by the Architectural Committee. In no event shall such containers be maintained so as to be Visible From Neighboring Property except to make the same available for collection and then, only for the shortest time reasonably necessary to effect such collection. The Board shall have the right to require all Owners to place their garbage or trash containers at a specific location for collection, or to require all Owners to subscribe to a trash collection service. All rubbish, trash, and garbage shall be removed from the Lots and shall not be allowed to accumulate thereon. No incinerators shall be kept or maintained on any Lot. No garbage or trash containers shall be kept or placed on any grass or other landscaped area.

Section 7.12. Clothes Drying Facilities. Outside clotheslines or other outside facilities for drying or airing clothes shall not be erected, placed, or maintained on any property so as to be Visible From Neighboring Property, Common Areas or the street.

Section 7.13. Machinery and Equipment. No machinery or equipment of any kind shall be placed, operated, or maintained upon or adjacent to any property except such machinery or equipment as is usual and customary in connection with the use, maintenance, or construction of a residence, appurtenant structures, or other improvements, and except that which Declarant or the Association may require for the operation and maintenance of the Property.

Section 7.14. Restriction on Further Subdivision. No Lot shall be further subdivided or separated into smaller Lots by any Owner, and no portion less than all of any such Lot shall be conveyed or transferred by any Owner without the prior written approval of the Board.

Section 7.15. Signs. No signs whatsoever (including, but not limited to, "For Sale", "For Lease", commercial, advertising, political, and similar signs) shall be erected or maintained anywhere on the Property including but not limited to, the inside or outside of windows in any building located on the

Property, except such signs as may be required by legal proceedings or otherwise approved herein.

Section 7.16. Planting, Landscaping, and Fences. No planting or landscaping shall be done, and no fences, hedges, or walls shall be erected or maintained on any Lot without the prior written approval of the Architectural Committee. No gate in any fence or wall shall exceed four feet in width.

Section 7.17. Mineral Exploration. No property shall be used in any manner to explore for, or to remove any water, oil, or other hydrocarbons, minerals of any kind, gravel, earth, or any earth substance of any kind.

Section 7.18. Diseases and Insects. No Owner shall permit any thing or condition to exist upon any property which shall induce, breed or harbor infectious plant diseases or noxious insects.

Section 7.19. Trash and Debris. Each Owner of a Lot, when installing or constructing Improvements on the Lot, shall provide a place for the daily collection and storage of trash and debris and will remove such trash and debris on a reasonable schedule. No Owner of a Lot will allow any nuisance to occur on his Lot or adjacent to his Lot other than the reasonable result of construction activity. The Board shall be the sole judge as to whether or not undue nuisance is occurring and upon notice from the Board to the Lot Owner, any such nuisances identified by the Board shall be corrected.

Section 7.20. Maintenance of Lawns and Plantings. Each Owner of a Lot shall keep all shrubs, trees, hedges, and plantings of every kind located on his Lot neatly trimmed, and shall keep all such areas properly cultivated and maintained and free of trash, weeds and other unsightly material.

Section 7.21. Repair of Building. No building or structure on any Lot shall be permitted to fall into disrepair, and each such building and structure shall at all times be kept in good condition and repair and adequately painted or otherwise finished. In the event any building or structure is damaged or destroyed, then, subject to the approvals required within this Declaration, such building or structure shall be immediately repaired or rebuilt or shall be demolished.

Section 7.22. Overhead Encroachments. No tree, shrub, or planting of any kind on any Lot shall be allowed to overhang or otherwise to encroach upon any sidewalk, street, pedestrian way or other area from ground level to a height of eight (8) feet without the prior written approval of the Architectural Committee.

Section 7.23. Motor Vehicles. No automobile, motorcycle, motorbike or other motor vehicle shall be constructed, reconstructed or repaired upon any Lot or street in the Property, and no inoperable vehicle, including but not limited to vehicles with flat tires may be stored or parked on any such Lot or street so as to be Visible From Neighboring Property or to be visible from Common Areas or streets; provided, however, that the provisions of this section shall not apply to emergency vehicle repairs or temporary construction shelters or facilities maintained during, and used exclusively in connection

with, the construction of any Improvement approved in writing by the Architectural Committee.

Section 7.24. Parking. Vehicles of all Owners and residents and of their guests and invitees, are to be kept in garages, carports, residential driveways of the Owner, and other designated parking areas wherever and whenever such facilities are sufficient to accommodate the number of vehicles at a Lot; provided, however, this section shall not be construed to permit the parking in the above described areas of any vehicle whose parking on the Project is otherwise prohibited or the parking of any inoperable vehicle. Notwithstanding the foregoing, vehicles may not be parked on the streets overnight.

Section 7.25. Right of Entry. During reasonable hours and upon reasonable notice to the Owner or other occupant of a Lot, any member of the Architectural Committee, any member of the Board, or any authorized representative of either shall have the right and license to enter upon and inspect any Lot, and the Improvements thereon, except for the interior portions of any completed residence for the purpose of ascertaining whether or not the provisions of this Declaration, the Architectural Committee Rules and Guidelines, or the Association Rules have been or are being complied with and such persons shall not be deemed guilty of trespass by reason of such entry.

Section 7.26. Towing of Vehicles. The Board shall have the right to have any truck, mobile home, travel trailer, tent trailer, trailer, camper shell, detached camper, recreational vehicle, boat, boat trailer or similar equipment or vehicle or any automobile, motorcycle, motorbike, or other motor vehicle which is parked, kept, maintained, constructed, reconstructed or repaired in violation of this Declaration towed away at the sole cost and expense of the owner of the vehicle or equipment. Any expense incurred by the Association in connection with the towing of any vehicle or equipment shall be paid to the Association upon demand by the owner of the vehicle or equipment. If the vehicle or equipment is owned by an Owner, any amounts payable to the Association shall be secured by the assessment lien, and the Association may enforce collection of suit amounts in the same manner provided for in this Declaration for the collection of assessment.

Section 7.27. Health, Safety and Welfare. In the event additional uses, activities, and facilities are deemed by the Board to be a nuisance or to adversely affect the health, safety or welfare of Owners or residents, the Board may make rules restricting or regulating their presence on the Project as part of the Association Rules or may direct the Architectural Committee to make rules governing their presence on Lots as part of the Architectural Committee Rules and Guidelines.

Section 7.28. Restriction on Liability of the Association, the Declarant, and any Builder. The Declarant intends to construct a guardhouse or gated entry (which may or may not be manned) on one of the private streets leading into the Project in order to limit access and to provide more privacy for the Owners and residents. Each Owner and resident, and their families, guests and invitees acknowledge that the guardhouse may

restrict or delay entry into the Project by the Police, the Fire Department, ambulances and other emergency vehicles or personnel and there is no assurance that the existence of the guardhouse or gated entry (whether or not manned) will provide any safety or security for Owners and residents. Each Owner and resident, for themselves and for and on behalf of their families, guests and invitees, agree to assume the risk that the guardhouse or gated entry will restrict or delay entry to the Project by emergency vehicles and personnel. Neither the Declarant, the Association, any Builder, nor any director, officer, agent or employee of the Declarant, the Association, or any Builder shall be liable to any Owner or resident or their families, guests or invitees for any claims or damages resulting, directly or indirectly, from the construction, existence or maintenance of the guardhouse or gated entry.

Section 7.29. Exterior Lights. In order to provide lighting for the streets within the G-North Plat and the G-South Plat, each Lot within said Plats shall have two exterior lights on the front exterior wall of its garage, which lights shall be operated by a photo cell; such lights (including the photo cell) must be approved in advance by the Architectural Committee as to type, size, design, color, bulb type and intensity and location. Each Owner shall maintain such exterior lights on that Owner's Lot in good working order and repair, and shall replace bulbs and otherwise repair the lights (and photo cell) as necessary and in accordance with any guidelines or regulations promulgated by the Architectural Committee pursuant to this Section. To assist Owners, the Architectural Committee may promulgate guidelines or regulations with respect to such lights, including without limitation their type, size, design, color, location, bulb type and intensity, and hours of operation.

Section 7.30. Exemption from Restrictions. Notwithstanding any other provision of the Project Documents, the Declarant and Builders and their duly authorized agents, employees and representatives shall have the right and an easement to maintain sales or leasing offices, management and construction offices, business offices, storage areas, construction yards, models, parking areas and advertising signs throughout the Property on one or more Lots owned by the Declarant or Builders or on the Common Area while the Declarant or Builders are selling Lots.

ARTICLE 8 EASEMENTS

Section 8.1. Utility Easement. There is hereby created a blanket easement upon, across, over, and under the Common Area for ingress, egress, installation, replacing, repairing, and maintaining all utilities, including, but not limited to water, sewers, gas, telephones, electricity, and a cable television system. By virtue of this easement, it shall be expressly permissible for the providing utility to erect and maintain the necessary facilities and equipment on the Common

Area. This easement shall in no way affect any other recorded easements on the Common Area.

Section 8.2. Easement for Encroachments. In the event a wall, landscaping, or other approved improvement on a Lot or the Common Area encroaches upon another Lot or the Common Area, and such encroachment is inadvertent and has no significant adverse impact on the adjacent property, an easement for such encroachment is hereby given and the right to determine whether such encroachment causes a significant adverse impact shall be determined by the Architectural Committee upon request by either of the parties. When such determination is made by the Architectural Committee, that determination is binding on all parties.

Section 8.3. Easements for Ingress and Egress. Easements for ingress and egress are hereby reserved to the Declarant, the Owners, and their family, guests, tenants, and invitees for pedestrian traffic over, through and across sidewalks, paths, walks, and lanes as the same from time to time may exist upon the Common Area; and for vehicular traffic over, through and across such portions of the Common Area as from time to time may be paved and intended for such purposes; and for such other purposes reasonably necessary to the use and enjoyment of a Lot or the Common Area.

Section 8.4. Association's Easement For Performing Maintenance Responsibilities. The Association shall have an easement upon, across, over and under the Common Area and the Lots for the purpose of repairing, maintaining and replacing the Common Area and those portions of the Lots which the Association is obligated to maintain under Article 10 of this Declaration.

Section 8.5. Drainage Easements Among Owners. Wherever drainage, as estimated by the Declarant, flows from one (1) Lot under or through one (1) or more other Lots, said drainage flow shall not be impeded, diverted, or otherwise changed. These easements shall include, but are not limited to, receiving the runoff from roofs and drainage under and through garden walls.

Section 8.6. Use and Benefit Easements.

(a) There is hereby created a series of perpetual easements (the "Easement Areas") over portions of the Lots within the G-South Plat (the "G South Lots") for the benefit of the adjacent G South Lot(s). The G-South Plat shows the general and approximate location of the Easement Areas and the Easement Areas are shown on the G-South Plat for illustrative purposes only. Exhibit B attached hereto describes in general the manner in which the use and benefit easements operate for the illustrative Lots shown thereon. The length and width of each Easement Area shall be determined by the type of residence constructed on the adjoining G South Lots, the building setback restriction pertaining to such Lot and the placement of the entry gateway. The initial location and dimensions of each Easement Area shall be shown on the building permit plans submitted to the City of Scottsdale for the construction of a residence on the G South Lot; however, the final location and dimensions of each Easement Area shall be determined by the as-built location of (i) the

walls of the residences on adjoining G South Lots, (ii) the side yard fence walls, and if applicable (iii) driveways in front Easement Areas. The effect of these easements is to subject a portion of each G South Lot to easement(s) in favor of the adjacent Lot(s), but most Lots also benefit from similar easement(s) over portions of the adjacent G South Lot(s). When a G South Lot is benefitted by a particular easement or easements, the G South Lot is referred to herein as a "Benefitted Lot" with respect to such easement or easements. When a G South Lot is subject to a particular easement or easements in favor of another G South Lot, the G South Lot which is subject to the easement(s) is referred to herein as a "Burdened Lot" with respect to such easement or easements.

(b) The Owner of a Benefitted Lot shall have the right to enter onto the Easement Area of a Burdened Lot and use the Easement Area for patio, garden, recreation and drainage purposes. Landscaping (including flowers, plants, lawn and sprinklers), swimming pool decking, and patio decking may be installed, kept and maintained in the Easement Area if the top surface of the patio or decking is at least six inches below the finished floor of the residence on the Burdened Lot. The Easement Area may also be used to locate readily movable outdoor furniture, portable barbeque equipment and other portable items. A part of the driveway leading to the garage of the residence on a Benefitted Lot may also be constructed on an Easement Area of a Burdened Lot. The Owner of a Benefitted Lot shall have the exclusive right to use the Easement Area on a Burdened Lot except as provided herein and the Owner of a Burdened Lot shall not use such area or interfere with the use of the Easement Area by the Owner of the Benefitted Lot. The Owner of a Benefitted Lot shall be responsible for the upkeep and repair of the Easement Area on the adjoining Burdened Lot.

(c) Except as provided herein, without the consent of the Architectural Committee, an Easement Area shall not be used for (i) any permanent installation of any kind, including, but not limited to, air conditioning equipment, a swimming pool, swimming pool heating or filtering equipment, spa, jacuzzi or plumbing fixtures or equipment other than sprinklers; or (ii) erection or maintenance of any structure which may impede or interfere with any necessary maintenance, repair or restoration of any common or party wall; or (iii) storage of wood next to the wall of the residence on the adjoining Lot. No use shall be made of an Easement Area which will become an annoyance or nuisance to the Owner of the Burdened Lot. The Owner of a Benefitted Lot shall not construct a fireplace, planter box, barbecue, wall, fence, fountain or other structure which is to attach or connect to the wall of the residence on a Burdened Lot. Without the prior written approval of the Architectural Committee, no landscaping, walls or other Improvements shall be constructed within any Easement Area before the residence on the adjoining Burdened Lot has been constructed.

(d) The grant of each use easement is subject to the right of the Burdened Lot Owner to utilize the Easement Area for (i) locating any fireplace chimney which is attached to the

residence located on the Burdened Lot; (ii) drainage from the roof of the residence constructed on the Burdened Lot onto the Easement Area; (iii) maintenance, repair and replacement of the wall, roof eaves, and any fireplace chimneys of the residence constructed on the Burdened Lot and any authorized common or party wall constructed along or within the Easement Area; (iv) drainage over, across and upon the Easement Area for water resulting from the normal use of the Burdened Lot; and (v) access over any Front Easement Area in order to obtain ingress and egress to and from the rear or side yard of the Burdened Lot. The Owner of a Benefitted Lot shall construct or install any Improvements on or in the Easement Area in a manner that will not impede drainage from the Burdened Lot. Except in the event of an emergency, prior to entering an Easement Area for permitted maintenance purposes, the Owner of the Burdened Lot shall notify the Owner of the Benefitted Lot and shall schedule a mutually convenient time to perform said maintenance. The Owner of the Burdened Lot shall have no liability for damage to or removal of any decoration or landscaping within the Easement Area which is necessarily occasioned by such repair, maintenance or restoration; provided, however, that the Owner of the Burdened Lot shall use reasonable care to avoid damage to any furniture, fixtures or equipment and landscaping within the Easement Area. Anything herein to the contrary notwithstanding, with the exception of any driveway Improvements for the benefit of a Benefitted Lot which are located in the Front Easement Area of a Burdened Lot (which driveway Improvements shall be maintained by the Owner of the Benefitted Lot), the Owner of the Burdened Lot shall be responsible for the maintenance of the Front Easement Area (unless such maintenance has been assumed by the Association). As used herein, the phrase "Front Easement Area" shall mean the Easement Area which adjoins a street within the Project and is located in front of the side yard entry gatewall. Without the consent of the Architectural Committee, no doors, windows or openings of any kind shall be constructed, kept or maintained in any residence wall which adjoins an Easement Area.

(e) Notwithstanding anything contained herein to the contrary, the Owner of a Benefitted Lot shall not construct any Improvements on, in or about the Easement Area without the approval of the Architectural Committee to the extent such approvals are required by the Project Documents. The Benefitted Lot Owner shall also obtain whatever permits or other consents may be required by law to construct such Improvements. Without limiting the foregoing, Owners will need to obtain building permits from the City of Scottsdale in constructing various of the Improvements which are permitted in the Easement Areas, and in so doing, will need to comply with, among other things, City setback requirements, which setbacks will be from the property lines for the Lot and not from the common or party wall constructed along or within the Easement Area.

(f) Upon the conveyance of any Lot from the Declarant or a Builder to an individual Owner, the Owner and each successive Owner shall obtain and maintain in force a comprehensive general liability insurance policy insuring against liability incident to

the use of the Easement Areas by the Owner of the Benefitted Lot. Said policy shall designate as additional named insured(s) the Owner(s) of the adjoining Burdened Lot(s). The limits of such insurance shall be not less than \$300,000 covering all claims for death of or injury to any person and/or property damage in any single occurrence, and such amount may be increased from time to time by the Association, in the Board's discretion, upon written notice to all Owners.

(g) The Owner of a Burdened Lot shall not be liable for any loss, cost, damage or expense arising out of any accident or other occurrence causing death of or injury to any person and/or damage to any property by reason of the use of any Easement Area located upon the Burdened Lot, and the Owner of each adjoining Benefitted Lot agrees to indemnify and hold harmless the Owner of each adjoining Burdened Lot, its heirs, successors, and assigns, for, from and against each and every loss, cost, damage, and expense, including attorneys' fees, arising from such accident or occurrence.

(h) Each use and benefit easement shall be appurtenant to the applicable Benefitted Lot, shall run with the applicable Benefitted Lot, and shall inure to the benefit of the Owner of the applicable Benefitted Lot, its heirs, successors, and assigns. The rights and obligations of the Owner of the applicable Burdened Lot shall run with the applicable Burdened Lot and shall inure to the benefit of the Owner of the applicable Burdened Lot, its heirs, successors and assigns.

ARTICLE 9 PROPERTY RIGHTS

Section 9.1. Owners' Easement of Enjoyment. Every Owner shall have a right and easement of enjoyment in and to the Common Area. Said easement shall be appurtenant to and shall pass with the title to every Lot subject to the following provisions:

(a) the right of the Association to adopt reasonable rules and regulations governing the use of the Common Area and all facilities located thereon;

(b) the right of the Association to dedicate or transfer all or any part of the Common Area to any public agency, authority, or utility for such purposes and subject to such conditions as may be agreed to by the Members; provided, however, that no such dedication or transfer shall be effective unless evidenced by an instrument signed by at least two-thirds (2/3) of each class of Members, except that the Board may make a dedication for transfer without consent of the Members, providing such transfer is of minimal value and causes no adverse impact to the Members;

(c) the right of Declarant and Builders and their agents and representatives, in addition to the rights set forth elsewhere in this Declaration, to the non-exclusive use, without charge, of the Common Area for

maintenance of sales facilities, and display and exhibit purposes.

Section 9.2. Delegation of Use. Any Owner may delegate, subject to this Declaration and the Association Rules, his right of enjoyment to the Common Area and facilities to the members of his family, his tenants, his guests or invitees, provided such delegation is for a reasonable number of persons and at reasonable times, and in accordance with reasonable Association Rules.

Section 9.3. Limitations. An Owner's right and easement of enjoyment in and to the Common Area shall not be conveyed, transferred, alienated or encumbered separate and apart from an Owner's Lot. Such right and easement of enjoyment in and to the Common Area shall be deemed to be conveyed, transferred, alienated or encumbered upon the sale of any Owner's Lot, notwithstanding that the description in the instrument of conveyance, transfer, alienation or encumbrance may not refer to the Common Area.

ARTICLE 10 MAINTENANCE

Section 10.1. Maintenance of Common Area by the Association. The Association shall be responsible for the maintenance, repair and replacement of the Common Area and may, without any approval of the Owners being required, do any of the following:

(a) Reconstruct, repair, replace or refinish any Improvement or portion thereof upon any such area (to the extent that such work is not done by a governmental entity, if any, responsible for the maintenance and upkeep of such area);

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

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

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

Section 10.2. Exterior Maintenance By Association. In addition to the maintenance, repair and replacement of the Common Area and the Improvements located thereon, the Association shall maintain, repair and replace the landscaping and other Improvements on any area within, or immediately adjacent to the Project, providing the Board agrees that such maintenance shall be in the best interest of all the Members and agrees to such maintenance in writing. In addition, the Association shall

repair and maintain the perimeter fence walls as set forth in Section 11.2 herein.

Section 10.3. Maintenance By Owners. Each Owner shall be solely responsible for that portion of the maintenance, repair and replacement of such Owner's Lot and Improvements which are not maintained by the Association as described in Sections 10.1 and 10.2, and as such Owner may be obligated to maintain in accordance with Section 8.6 herein. Without limiting the generality of the foregoing, each Owner shall be responsible for the upkeep and maintenance and repair of all Natural Area Open Space ("NAOS") located on or within the boundary of the Owner's Lot.

Section 10.4. Damage or Destruction of Common Area by Owners. No Owner shall in any way damage or destroy any Common Area or interfere with the activities of the Association, in connection therewith. No Owner shall in any way interfere with the maintenance responsibilities of the Association, including, but not limited to, landscaping, street maintenance, and wall maintenance. Any expenses incurred by the Association by reason of any such act of an Owner, its guests, licensees, tenants, family members, agents, grantees or assignees, shall be paid by said Owner, upon demand, to the Association to the extent that the Owner is liable therefor under Arizona law, and such amounts shall be a lien on any Lots owned by said Owner and the Association may enforce collection of any such amounts in the same manner as provided elsewhere in this Declaration for the collection and enforcement of assessments.

Section 10.5. Nonperformance by Owners. In the event any portion of any Lot is so maintained as to present a public or private nuisance, or as to substantially detract from the appearance or quality of the surrounding Lots or other areas of the Project which are substantially affected thereby or related thereto, or in the event any portion of a Lot is being used in a manner which violates the Project Documents, or in the event the Owner of any Lot is failing to perform any of its obligations under the Project Documents with respect to the maintenance repair or replacement of the Improvements located on such Lot, the Board may, by resolution make a finding to such effect, specifying the particular condition or conditions which exist, and pursuant thereto give written notice thereof to the Owner by mail to the mailing address of the Lot and make demand that corrective action be taken within fourteen (14) calendar days of the day of the notice. If at the expiration of the said fourteen (14) day period the requisite corrective action has not been taken, the Board shall be authorized and empowered to cause such action to be taken, including but not limited to the hiring of an attorney to take action on behalf of the Board, whether by informal pre-suit action or by formal legal proceedings. The costs of any action taken by the Board as set forth herein, including but not limited to incidental and taxable costs, attorney's fees, and any fines assessed against any Owner shall be added to and become a part of the assessment to which the offending Owner and the Owner's Lot is subject and shall be secured by the assessment lien.

ARTICLE 11
PARTY WALLS AND PERIMETER WALLS

Section 11.1. Rights and Duties of Adjoining Owners.
The rights and duties of Owners of Lots with respect to party walls shall be governed by the following provisions:

(a) Each wall or fence which is placed on the dividing line between separate Lots shall constitute a party wall. With respect to any such wall, each of the adjoining Owners shall assume the burden and be entitled to the benefit of the restrictive covenants contained in this Declaration, and to the extent not inconsistent with this Declaration, the general rules of law regarding party walls shall be applied;

(b) The cost of reasonable repair and maintenance of a party wall shall be shared by the adjoining Owners of such wall in proportion to the use thereof, without prejudice, however, to the right of any Owner to call for a larger contribution from the adjoining Owner under any rule of law regarding liability for negligent or willful acts or omissions;

(c) In the event any such party wall is damaged or destroyed by some cause other than the act of one (1) of the adjoining Owners, his agents, tenants, licensees, guests or family (including ordinary wear and tear and deterioration from lapse of time) then, in such event, both such adjoining Owners shall proceed forthwith to rebuild or repair the same to as good condition as formerly at their joint and equal expense;

(d) Notwithstanding any other provision of this Article, an Owner who, by his negligent or willful act, causes any party wall to be exposed to the elements shall bear the whole cost of furnishing the necessary protection against such elements;

(e) The right of any Owner to contribution from any other Owner under this Article shall be appurtenant to the land and shall pass to such Owners and their successors in title;

(f) In addition to meeting the other requirements of this Declaration and of any other city code or similar regulations or ordinances, any Owner proposing to modify, make additions to build or rebuild a party wall in any manner which requires construction, extension or other alteration, shall first obtain the written consent of the adjoining Owner and the Architectural Committee;

(g) In the event of a dispute between Owners with respect to the repair or the rebuilding of a party wall or with respect to sharing of the cost thereof, then, upon written request of one of such Owners addressed to the Association, the matter shall be submitted to the

Architectural Committee whose decision shall be final; and
(h) The provisions of this Article shall be binding upon the heirs and assigns of any Owners, but no person shall be liable for any act or omission respecting the party wall except such as took place while he was an Owner.

Section 11.2. Perimeter Walls. Perimeter fence walls for Parcels G-North and G-South (which shall consist of fence walls located either wholly on a Lot or on a common boundary line of the Lot and adjoining Common Area which separate the back or side yard of a Lot from Common Area) shall be repaired, reconstructed and maintained by the Association. If any such perimeter fence wall is located wholly upon a Parcel G-North or Parcel G-South Lot, the Association shall have a non-exclusive access easement over the portion of any such Lot located outside the perimeter fence wall in order to enable the Association to comply with its maintenance, reconstruction and repair obligations under this Section. Notwithstanding the foregoing provisions of this Section, the Owner of the Lot upon which such perimeter fence wall is located shall be responsible for painting the side of such perimeter fence wall which faces the residence constructed or to be constructed upon such Lot.

ARTICLE 12 INSURANCE

Section 12.1. Scope of Coverage. Commencing not later than the time of the first conveyance of a Lot to an individual Owner other than the Declarant, the Association shall maintain adequate insurance for Common Area liability to extend to those areas the Association may agree to maintain pursuant to Article 10 herein, officers and directors liability, liability of committees appointed by the Board, property, fidelity and any other coverage deemed necessary by the Board.

Section 12.2. Certificates of Insurance. An insurer that has issued an insurance policy under this Article shall issue certificates or a memorandum of insurance to the Association and, upon request, to any Owner, mortgagee or beneficiary under a deed of trust. Any insurance obtained pursuant to this article may not be cancelled until thirty (30) days after notice of the proposed cancellation has been mailed to the Association, each Owner and each mortgagee or beneficiary under deed of trust to whom certificates of insurance have been issued.

Section 12.3. Repair and Replacement of Damaged or Destroyed Property. Any portion of the Common Area damaged or destroyed shall be repaired or replaced promptly by the Association unless (a) repair or replacement would be illegal under any state or local health or safety statute or ordinance, or (b) Owners owning at least eighty percent (80%) of the Lots vote not to rebuild. The cost of repair or replacement in excess of insurance proceeds and reserves shall be paid by the Association. If the entire Common Area is not repaired or

replaced, insurance proceeds attributable to the damaged Common Area shall be used to restore the damaged area to a condition which is not in violation of any state or local health or safety statute or ordinance and the remainder of the proceeds shall be distributed to the Owners on the basis of an equal share for each Lot.

Section 12.4. Owner's Responsibility. It is the responsibility of each Owner of a Lot to maintain insurance on his Lot and Improvements thereon.

ARTICLE 13 GENERAL PROVISIONS

Section 13.1. Enforcement. The Association, or any Owner, shall have the right to enforce, by any proceeding at law or in equity, all restrictions, conditions, covenants, reservations, liens and charges now or hereafter imposed by the provisions of this Declaration. Failure by the Association or by any Owner to enforce any covenant or restriction herein contained shall in no event be deemed a waiver of the right to do so thereafter.

Section 13.2. Severability. Invalidation of any one (1) of these covenants or restrictions by judgment or court order shall in no way affect any other provisions which shall remain in full force and effect.

Section 13.3. Duration. Unless amended in accordance with Sections 13.4 or 13.5 below, the covenants and restrictions of this Declaration shall run with and bind the Property for a term of twenty (20) years from the date this Declaration is recorded, after which time they shall be automatically extended for successive periods of ten (10) years.

Section 13.4. Amendment by Owners. This Declaration may be amended during the first twenty (20) year period by the positive vote or written approval of Owners representing not less than ninety percent (90%) of the Lots, and thereafter by Owners representing not less than seventy-five percent (75%) of the Lots. The amendment must be signed by an officer of the Association who attests that the amendment was approved pursuant to the above required number of votes and/or written approvals. Amendments must be recorded with the office of the Maricopa County Recorder.

Section 13.5. Amendment by Board. Notwithstanding anything to the contrary in this Declaration, the Board shall have the right, but not the obligation, to amend this Declaration, without obtaining the approval or consent of any other Owner or mortgagee, in order to conform the Declaration to the requirements or guidelines of the Federal National Mortgage Association, the Federal Home Loan Mortgage Corporation, the Federal Housing Administration, the Veterans Administration or other government or government approved agencies when such modification is required to qualify for the use of the services, insurance, or other guarantees provided by such agencies.

Section 13.6. Violations and Nuisance. Every act or omission whereby any provision of this Declaration is violated in whole or in part is hereby declared to be a nuisance and may be enjoined or abated, whether or not the relief sought is for negative or affirmative action, by Declarant, the Association or any Owner.

Section 13.7. Violation of Law. Any violation of any state, municipal, or local law, ordinance or regulation, pertaining to the ownership, occupation or use of any property within the Property is hereby declared to be a violation of this Declaration and subject to any or all of the enforcement procedures set forth herein.

Section 13.8. Remedies Cumulative. Each remedy provided herein is cumulative and not exclusive.

Section 13.9. Delivery of Notices and Documents. Any written notice or other documents relating to, or required by, this Declaration may be delivered either personally or by mail. If by mail, it shall be deemed to have been delivered twenty-four (24) hours after a copy of same has been deposited in the United States mail, postage prepaid. Each Owner of a Lot shall file the correct mailing address of such Owner with the Association, and shall promptly notify the Association in writing of any subsequent change of address.

Section 13.10. Binding Effect. By acceptance of a deed or by acquiring any interest in any of the Property subject to this Declaration, each person or entity, for himself or itself, his heirs, personal representatives, successors, transferees and assigns, binds himself, his heirs, personal representatives, successors, transferees and assigns, to all of the provisions, restrictions, covenants, conditions, rules, and regulations now or hereafter imposed by this Declaration and any amendments thereof. In addition, each such person by so doing thereby acknowledges that this Declaration sets forth a general scheme for the improvement and development of the Property and hereby evidences his interest that all the restrictions, conditions, covenants, rules and regulations contained in this Declaration shall run with the land and be binding on all subsequent and future Owners, grantees, purchasers, assignees, lessees and transferees thereof. Furthermore, each such person fully understands and acknowledges that this Declaration shall be mutually beneficial, prohibitive and enforceable by the various subsequent and future Owners. Declarant, its successors, assigns and grantees, covenants and agrees that the Lots and the membership in the Association and the other rights created by this Declaration shall not be separated or separately conveyed, and each shall be deemed to be conveyed or encumbered with its respective Lot even though the description in the instrument of conveyance or encumbrance may refer only to the Lot.

Section 13.11. Management Agreements. Any agreement for professional management of the Association or any other contract providing services to the Association, shall not exceed one (1) year.

Section 13.12. Gender. The singular, wherever used in this Declaration, shall be construed to mean the plural when

applicable, and the necessary grammatical changes required to make the provisions of this Declaration apply either to corporations or individuals, men or women, shall in all cases be assumed as though in each case fully expressed.

Section 13.13. Topic Headings. The marginal or topical headings of the Sections contained in this Declaration are for convenience only and do not define, limit or construe the contents of the Sections or this Declaration.

Section 13.14. Survival of Liability. The termination of Membership in the Association shall not relieve or release any such former Member from any liability or obligation incurred under or in any way connected with the Association during the period of such Membership, or impair any rights or remedies which the Association may have against such former Member arising out of, or in any way connected with such Membership and the covenants and obligations incidental thereto.

Section 13.15. Construction. In the event of any discrepancies, inconsistencies or conflicts between the provisions of this Declaration and the Articles, Bylaws, Association Rules or Architectural Committee Rules and Guidelines, the provisions of this Declaration shall prevail.

Section 13.16. Joint and Several Liability. In the case of joint ownership of a Lot, the liabilities and obligations of each of the joint Owners set forth in, or imposed by, this Declaration, shall be joint and several.

Section 13.17. Attorneys' Fees. In the event the Association employs an attorney to enforce any lien granted to it under the terms of this Declaration, or to collect any assessments or other amounts due from an Owner, or to enforce compliance with or recover damages for any violation or noncompliance with the Project Documents, the offending Owner or other person or entity shall pay to the Association, upon demand, all attorney fees and court costs incurred by the Association, whether or not suit is filed, which fees and costs shall be secured by the assessment lien.

Section 13.18. Declarant's Right To Use Similar Name. The Association hereby irrevocably consents to the use by any other nonprofit corporation which may be formed or incorporated by Declarant of a corporate name which is the same or deceptively similar to the name of the Association provided one (1) or more words are added to the name of such other corporation to make the name of the Association distinguishable from the name of such other corporation. Within five (5) days after being requested to do so by the Declarant, the Association shall sign such letters, documents or other writings as may be required by the Arizona Corporation Commission in order for any other corporation formed or incorporated by the Declarant to use a corporate name which is the same or deceptively similar to the name of the Association.

IN WITNESS WHEREOF, the Declarant has caused this Declaration to be executed as of the day and year first above written.

MCDOWELL MOUNTAIN RANCH
LIMITED PARTNERSHIP, an
Arizona limited partnership

By: McDowell Mountain Ranch,
Inc., an Arizona corporation,
its General Partner

By: Curtis E. Smith
Curtis E. Smith

Its: President

STATE OF ARIZONA)
) ss
County of Maricopa)

The foregoing was acknowledged before me this
12th day of March, 1996, by Curtis E. Smith, the
President of McDowell Mountain Ranch, Inc., an Arizona corporation,
General Partner of McDowell Mountain Ranch Limited Partnership, an
Arizona limited partnership, on behalf thereof.

Leslie D. Savage
Notary Public

My Commission Expires:

My Commission Expires Sept. 6, 1997

IN WITNESS WHEREOF, Edmunds-Toll Limited Partnership, an Arizona limited partnership, has hereunto caused its name to be signed by the signature of its duly authorized official as of the day and year below.

EDMUNDS-TOLL LIMITED
PARTNERSHIP, an Arizona
limited partnership

By: *Stephen H. Edmunds*
Its: *Managing Member*

STATE OF ARIZONA)
) ss
County of Maricopa)

The foregoing was acknowledged before me this
12th day of March, 1996, by *Stephen H. Edmunds*,
Edmunds, a duly authorized officer of Edmunds-Toll
Limited Partnership, an Arizona limited partnership.

Anita L. Guffey
Notary Public

My Commission Expires:

December 10, 1998

March 12, 1996
Job No. 900506

EXHIBIT "A"

LEGAL DESCRIPTION

FOR

PARCELS G-NORTH, G-SOUTH AND H

PARCEL #1

All of McDowell Mountain Ranch Parcel G South, a subdivision recorded in Book 403, Page 9, Maricopa County, Arizona Records.

EXCEPT THEREFROM, that portion of Paradise Lane (a roadway) that is delineated and labelled as a public street.

PARCEL #2

All of McDowell Mountain Ranch Parcel G North, a subdivision recorded in Book 399, Page 37, Maricopa County, Arizona Records.

EXCEPT THEREFROM, that portion of Paradise Lane (a roadway) that is delineated and labelled as a public street.

PARCEL #3

All of the following described Parcel H.

That part of Sections 3 and 4 of T. 3 N., R. 5 E., G. & S. R. B. & M., Maricopa County, Arizona, described as follows:

The basis of bearings for the bearings used in this description are from the North line of the N.E. $\frac{1}{4}$ Section 4, T. 3 N., R. 5 E., G. & S. R. B. & M., having a bearing of N. 89° 59' 05" W.

From the N. $\frac{1}{4}$ corner of the said Section 3, measure thence S. 00° 46' 21" E. 378.28 feet to the point of beginning; thence S. 49° 20' 43" E. 200.00 feet; thence S. 20° 26' 08" W. 325.00 feet; thence S. 25° 17' 38" W. 624.91 feet; thence S. 03° 51' 24" W. 470.00 feet; thence S. 58° 07' 59" E. 375.16 feet; thence S. 87° 13' 40" E. 475.56 feet; thence

LEGAL DESCRIPTION

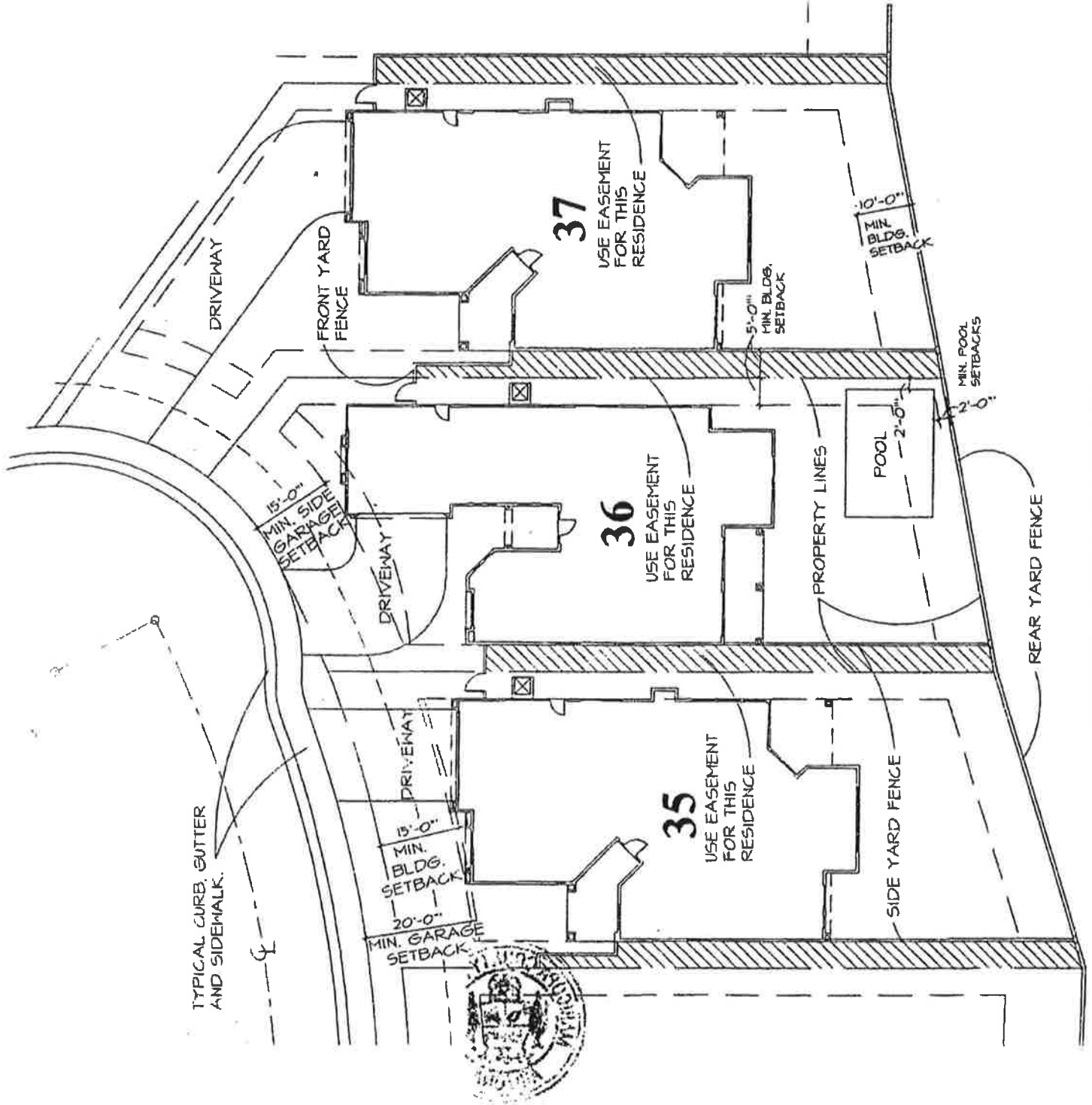
JOB NO. 900506

MARCH 12, 1996

PAGE NUMBER TWO

N. 85° 57' 47" E. 337.38 feet; thence S. 04° 59' 15" E. 95.00 feet; thence S. 81° 06' 35" W. 415.09 feet; thence S. 25° 48' 27" W. 222.11 feet; thence S. 44° 08' 57" W. 571.41 feet; thence S. 24° 31' 29" E. 175.87 feet; thence N. 86° 43' 46" E. 385.63 feet; thence S. 27° 00' 46" E. 114.49 feet; thence S. 52° 00' 05" W. 203.04 feet; thence S. 09° 18' 36" W. 309.07 feet; thence S. 72° 04' 19" E. 355.00 feet; thence S. 55° 54' 18" W. 765.28 feet; thence S. 69° 22' 28" W. 525.00 feet; thence S. 01° 48' 58" W. 400.00 feet; thence N. 88° 11' 02" W. 410.21 feet; thence N. 24° 31' 40" W. 566.08 feet; thence N. 45° 00' 00" W. 388.91 feet; thence N. 32° 59' 52" W. 459.05 feet; thence N. 87° 41' 56" W. 609.80 feet to the beginning of a curve to the left having a radius point bearing S. 02° 18' 04" W. 640.00 feet; thence Westerly 493.92 feet along the arc of this curve through 44° 13' 04" of central angle; thence N. 11° 30' 04" E. 502.37 feet; thence N. 05° 24' 00" E. 70.00 feet; thence N. 29° 50' 50" E. 584.30 feet; thence N. 46° 13' 24" E. 761.73 feet; thence S. 79° 08' 26" E. 249.47 feet; thence N. 48° 21' 59" E. 60.21 feet; thence N. 02° 44' 03" W. 187.24 feet; thence N. 34° 38' 14" E. 350.00 feet; thence N. 06° 25' 34" E. 294.85 feet; thence S. 83° 18' 58" E. 644.38 feet; thence N. 47° 36' 01" E. 826.04 feet; thence N. 05° 18' 07" W. 305.00 feet; thence N. 64° 49' 48" E. 85.00 feet to the point of beginning.

EXHIBIT B



TYPICAL LOT LAYOUT / EASEMENT PLAN

March 12, 1996
Job No. 900506

EXHIBIT "A"

LEGAL DESCRIPTION

FOR

PARCELS G-NORTH, G-SOUTH AND H

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From the N.¼ corner of the said Section 3, measure thence S. 00° 46' 21" E. 378.28 feet to the point of beginning; thence S. 49° 20' 43" E. 200.00 feet; thence S. 20° 26' 08" W. 325.00 feet; thence S. 25° 17' 38" W. 624.91 feet; thence S. 03° 51' 24" W. 470.00 feet; thence S. 58° 07' 59" E. 375.16 feet; thence S. 87° 13' 40" E. 475.56 feet; thence

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One Hundred Hills
BYLAWS OF
ONE HUNDRED HILLS HOMEOWNERS ASSOCIATION

ARTICLE I
NAME AND LOCATION

The name of the corporation is One Hundred Hills Homeowners Association, hereinafter referred to as the "Association". The location of the principal office of the Association shall be as provided in the Articles of Incorporation. Meetings of Members and directors may be held at such places within the State of Arizona, County of Maricopa, as may be designated by the Board of Directors.

ARTICLE II
DEFINITIONS

The words and terms used herein shall be deemed to have the same meanings as are given those words and terms in that certain Declaration of Covenants, Conditions, and Restrictions, dated March 11, 1996, 1996 recorded on March 14, 1996, 1996 as Document #96-0172324 in the office of the County Recorder of Maricopa County, Arizona (the "Declaration"), as the same may be from time to time amended. The term "Declarant" shall refer to McDowell Mountain Ranch Limited Partnership, an Arizona limited partnership.

ARTICLE III
MEETING OF MEMBERS

* Section 1. Annual Meetings. The first annual meeting of the Members shall be held within one year of the date of Incorporation, the date of which shall be determined by the Board, at such place and hour as may be set by the Board, and each subsequent regular annual meeting of the Members shall be held on the same day of the same month of each year thereafter. If the day for the annual meeting of the Members is a legal holiday, the meeting will be held at the same hour on the first day following which is not a legal holiday.

Section 2. Special Meetings. Special meetings of the Members may be called at any time by the President or by the Board of Directors, or upon written request of the Members who are entitled to vote one-fourth (1/4) of all of the votes of the Class A membership.

Section 3. Notice of Meetings. Written notice of each meeting of the Members shall be given by, or at the direction of, the Secretary or person authorized to call the meeting, by mailing a copy of such notice, postage prepaid, not less than fifteen (15) days nor more than fifty (50) days before such meeting to each Member entitled to vote thereat, addressed to the Member's address last appearing on the books of the Association, or supplied by such Member to the Association for the purpose of

notice. Such notice shall specify the place, day and hour of the meeting and, in the case of a special meeting, the purpose of the meeting.

Section 4. Quorum. The presence at the meeting of Members entitled to cast, or of proxies entitled to cast, one-tenth (1/10) of the votes of each class of membership shall constitute a quorum for any action except as otherwise provided in the Articles of Incorporation, the Declaration, or these Bylaws. If, however, such quorum shall not be present or represented at any meeting, the Members entitled to vote thereat shall have power to adjourn the meeting from time to time, without notice other than announcement at the meeting, until a quorum as aforesaid shall be present or be represented.

Section 5. Proxies. At all meetings of Members, each Member may vote in person or by proxy. All proxies shall be in writing and filed with the Secretary. Every proxy shall be revocable and shall automatically cease upon conveyance by the Member of his Lot or termination of his lease.

ARTICLE IV

BOARD OF DIRECTORS; SELECTION; TERM OF OFFICE

Section 1. Number. The affairs of this Association shall be managed by a Board of Directors, who need not be Members of the Association. The Board shall have the exclusive right of determining the affairs of the Association. The Board shall consist of three (3) directors. The Board initially shall consist of the three (3) directors designated in the Articles.

Section 2. Term of Office. The directors designated in the Articles, or such directors as the Declarant may appoint, shall hold office until the first annual meeting following the termination of the Class B Membership. At the first annual meeting following termination of the Class B Membership, the Class A Members (and Class C Members as long as such Class shall exist) shall elect one (1) director for a term of three (3) years and one (1) director for a term of two (2) years, and one (1) director for a term of one (1) year. At each annual meeting thereafter, the Members shall elect directors to replace those directors whose terms have expired and all such directors shall be elected for a term of three (3) years. The length of terms may be modified by the Members and the number of directors may be increased to not more than nine (9) by the vote of the Members or the Board. In the event of an increase in the number of directors, the Members, at the first annual meeting after the increase, shall designate the terms for the new directorships. If the new directorships are created and filled by the Board between annual meetings, the newly elected directors shall serve until the next annual meeting of the Members.

Section 3. Removal and Vacancies. Any director may be removed from the Board, with or without cause, by a majority vote of the Members of the Association, with the exception of any directors appointed by the Declarant during the term of the Class B Membership. Directors appointed by the Declarant may be removed and replaced by the Declarant. In the event of the

death, resignation, or removal of a director, his successor shall members of the Board and such successor shall serve for the unexpired term of his predecessor.

Section 4. Compensation. No director shall receive compensation for any service he may render to the Association in such capacity. However, any director may be reimbursed for his actual expenses incurred in the performance of his duties as a director and may receive a salary or wages if he is employed by the Association in a capacity in addition to serving as a director.

Section 5. Action Taken Without a Meeting. The Board of Directors shall have the right to take any action in the absence of a meeting which they could take at a meeting by obtaining the written approval of all the directors. Any action so approved shall have the same effect as though taken at a meeting of the Board.

ARTICLE V NOMINATION AND ELECTION OF DIRECTORS

Section 1. Election. Until the Class B Membership terminates, the Declarant shall have the right to appoint directors. At the first annual meeting after the termination of the Class B Membership and thereafter, directors shall be elected by the Members.

Section 2. Voting. Election to the Board of Directors shall be by secret written ballot. At such election the Members or their proxies may cast, in respect to each vacancy, as many votes as they are entitled to exercise under the provisions of the Declaration. The persons receiving the largest number of votes shall be elected.

ARTICLE VI MEETINGS OF DIRECTORS

Section 1. Regular Meetings. Regular meetings of the Board of Directors may be held without notice, at such place and hour as may be fixed from time to time by the Board. Should said meeting fall upon a legal holiday, then that meeting shall be held at the same time on the next day which is not a legal holiday.

Section 2. Special Meetings. Special meetings of the Board of Directors shall be held when called by the President of the Association, or by a majority of the directors, after not less than three (3) days notice to each director.

Section 3. Quorum. A majority of the number of directors shall constitute a quorum for the transaction of business. Every act or decision done or made by a majority of the directors present at a duly held meeting at which a quorum is present shall be regarded as the act of the Board.

ARTICLE VII
POWERS AND DUTIES OF THE BOARD OF DIRECTORS

Section 1. Powers. The Board of Directors shall have power to:

(a) adopt and publish rules and regulations governing the use of the Common Area, the personal conduct of the Members and their guests thereon, and any other matters contemplated by the Declaration or Articles and to establish penalties for the infraction thereof;

(b) suspend the voting rights and right to use of the Common Area of a Member during any period in which such Member shall be in default in the payment of any assessment levied by the Association. Such rights may also be suspended (i) for a period not to exceed sixty (60) days for infraction of the Declaration or Association Rules and (ii) for successive sixty (60) day periods if any such infraction is not corrected during any prior sixty (60) day suspension period; however, no such suspension may be made toward restricting the use of the Common Area, which would prevent the use and enjoyment of the Owner's Lot as a residence or restrict his access or parking rights;

(c) exercise for the Association all powers, duties and authority vested in or delegated to this Association and not reserved to the membership by other provisions of these Bylaws, the Articles, or the Declaration;

(d) declare the office of a member of the Board of Directors to be vacant in the event such member shall be absent from three (3) consecutive regular meetings of the Board of Directors; and

(e) employ a manager, independent contractors, or such other employees as they deem necessary and to prescribe the duties of such persons.

Section 2. Duties. It shall be the duty of the Board of Directors to:

(a) cause to be kept a complete record of all of its acts and corporate affairs and to present a statement thereof to the Members at the annual meeting of the Members, or at any special meeting when such statement is requested in writing by one-fourth (1/4) of the Class A Members who are entitled to vote;

(b) supervise all officers, agents and employees of this Association, and to see that their duties are properly performed;

(c) as more fully provided in the Declaration, to:

(1) fix the amount of the annual assessment against each Lot at least thirty (30) days in advance of each annual assessment period; and

(2) take such action, as and when the Board deems such action appropriate but after notice as provided in the Declaration, to foreclose the lien against any property for which assessments are not paid and/or to bring an action at law against the

Member personally obligated to pay the same.

(d) issue, or to cause an appropriate officer to issue, upon demand by any person, a certificate setting forth whether or not any assessment has been paid. A reasonable charge may be made by the Board for the issuance of these certificates. If a certificate states an assessment has been paid, such certificates shall be conclusive evidence of such payment, as against any bona fide Purchaser of, or lender on, the Lot in question;

(e) procure and maintain adequate liability and hazard insurance on the general Common Area;

(f) cause all officers or employees having fiscal responsibilities to be bonded, as it may deem appropriate;

(g) provide for the operation, care, upkeep and maintenance of all of the Common Area and borrow money on behalf of the Association when required in connection with any one (1) instance relating to the operation, upkeep and maintenance for the Common Area; provided however, the consent of Members having at least two-thirds (2/3) of the total votes in the Association shall be obtained either in writing or at a meeting called and held for such purpose in accordance with the provisions of these Bylaws in order for the Association to borrow in excess of five thousand dollars (\$5,000.00).

(h) in the exercise of its discretion, enforce by legal means the provisions of the Declaration, Articles and Bylaws; and

(i) prepare and adopt an annual budget for the Association prior to the commencement of each fiscal year.

ARTICLE VIII OFFICERS AND THEIR DUTIES

Section 1. Enumeration of Offices. The officers of the Association shall be a President and Vice President, who shall at all times be members of the Board of Directors, a Secretary and Treasurer.

Section 2. Election of Officers. The election of officers shall take place at the first meeting of the Board of Directors following each annual meeting of the Members.

Section 3. Term. The officers of this Association shall be elected annually by the Board and each shall hold office for one (1) year unless removed or otherwise disqualified to serve.

Section 4. Special Appointments. The Board may elect such other officers as the affairs of the Association may require, each of whom shall hold office for such period, have such authority, and perform such duties as the Board may from time to time determine.

Section 5. Resignation and Removal. Any officer may be removed from office with or without cause by the Board. Any officer may resign at any time by giving written notice to the Board, the President or the Secretary. Such resignation shall

take effect on the date of receipt of such notice or at any later time specified therein and, unless otherwise specified therein, the acceptance of such resignation shall not be necessary to make it effective. -

Section 6. Vacancies. A vacancy in any office may be filled by appointment by the Board. The officer appointed to such vacancy shall serve for the remainder of the term of the officer replaced.

Section 7. Multiple Offices. The offices of Secretary and Treasurer may be held by the same person. No person shall simultaneously hold more than one (1) of any of the other offices except in the case of special offices created pursuant to Section 4 of this Article.

Section 8. Duties. The duties of the officers are as follows:

(a) President The President shall preside at all meetings of the Board of Directors; shall see that orders and resolutions of the Board are carried out; shall sign all leases, mortgages, deeds and other written instruments; and shall cosign all checks and promissory notes.

(b) Vice President The Vice President shall act in the place and stead of the President in the event of his absence or inability or refusal to act and shall exercise and discharge such other duties as may be required of him by the Board.

(c) Secretary The Secretary shall record the votes and keep the minutes of all meetings and proceedings of the Board and of the Members; keep the corporate seal of the Association and affix it on all papers requiring said seal; serve notice of meetings of the Board and of the Members; keep appropriate current records showing the Members of the Association together with their addresses; and perform such other duties as required by the Board.

(d) Treasurer The Treasurer shall receive and deposit in appropriate bank accounts all monies of the Association, and shall disburse such funds as directed by resolution of the Board of Directors; shall sign all checks and promissory notes of the Association; shall keep proper books of account; and shall prepare an annual budget and statement of income and expenditures to be presented to the membership at its regular annual meeting and delivered to the Members.

(e) Delegation The Board may delegate the duties listed above or other duties to a manager or managing agent, or other; however, such delegation shall not relieve any member of the Board of his responsibility for such duties.

ARTICLE IX COMMITTEES

The Board of Directors shall appoint committees as deemed appropriate in carrying out the purpose of the Association.

ARTICLE X
BOOKS AND RECORDS

The books, records and papers of the Association shall at all times, during reasonable business hours, be subject to inspection by any Member. The Declaration, the Articles, and the Bylaws of the Association shall be available for inspection by any Member at the principal office of the Association, where copies may be purchased at reasonable cost.

ARTICLE XI
ASSESSMENTS

As more fully provided in the Declaration, each Member is obligated to pay to the Association, annual assessments, supplemental assessments, and special assessments which are secured by a continuing lien upon the property against which the assessment is made. Any assessments which are not paid when due shall be delinquent. If the assessment is not paid on the due date, the assessment shall bear a late charge as outlined in the Declaration, and the Association may bring an action at law against the Owner personally obligated to pay the same or foreclose the lien against the property, as provided in the Declaration. Late charges, costs, and reasonable attorney's fees of any such action shall be added to the amount of such assessment. No Owner may waive or otherwise escape liability for the assessments provided for herein by nonuse of the Common Area or abandonment of his Lot.

ARTICLE XII
CORPORATE SEAL

The Association may have a seal in circular form having within its circumference the words: ONE HUNDRED HILLS HOMEOWNERS ASSOCIATION.

ARTICLE XIII
AMENDMENTS

Section 1. Amendments. These Bylaws may be amended in a manner not inconsistent with the Declaration or Articles, at a regular or special meeting of the Members, by a vote of a majority of a quorum of Members present in person or by proxy; provided however, the Federal Housing Administration ("FHA") or the Veterans Administration ("VA"), as applicable, shall have the right to veto amendments while there is a Class B membership if the Declaration and these Bylaws have been initially approved by the FHA or VA in connection with any loan programs made available by FHA or VA and any loans have been made within One Hundred Hills which are insured or guaranteed by FHA or VA.

Section 2. Right of Amendment if Requested by Governmental Agency or Federally Chartered Lending Institutions. Anything in the Bylaws to the contrary notwithstanding, the Board

reserves the right to amend all or any part of the Bylaws to such an extent and with such language as may be requested by the FHA or the VA and to further amend the Bylaws to the extent requested by any other federal, state or local governmental agency which requests such an amendment as a condition precedent to such agency's approval of the Bylaws or by any federally chartered lending institution as a condition precedent to lending funds upon the security of any Lot(s). It is the desire of the Declarant to retain control of the Association and its activities through the Board of Directors during the anticipated period of planning and development of One Hundred Hills and until the Class B membership ceases pursuant to Article 5, Section 5.1, of the Declaration. If any amendment requested pursuant to the provisions of this Section deletes, diminishes or alters such control, the Board shall have the right to prepare, provide for and adopt as an amendment hereto, other and different control provisions.

ARTICLE XIV INDEMNIFICATION

To the extent it has the power to do so under the Arizona Nonprofit Corporation Act, Arizona Revised Statutes Section 10-0001, et seq., the Association shall indemnify any person who was, or is, a party or is threatened to be made a party to any threatened, pending or completed action, suit or proceeding, whether civil, criminal, administrative or investigative, other than an action by, or in the right of, the Association, by reason of the fact that he is or was a member, director, officer, employee or agent of another corporation, partnership, joint venture, trust or other enterprise, against expenses, including attorneys' fees, and against judgments, fines and amounts paid in settlement actually and reasonably incurred by him in connection with such action, suit or proceeding if he acted, or failed to act, in good faith and in a manner he reasonably believed to be in or not opposed to the best interest of the Association and, with respect to any criminal action or proceeding, had no reasonable cause to believe his conduct was unlawful. Indemnification of any such person shall be made in accordance with the procedures set forth in the Arizona Nonprofit Corporation Act.

ARTICLE XV INTERPRETATION

In the case of any conflict between the Articles of Incorporation and these Bylaws, the Articles shall control; and in the case of any conflict between the Declaration and these Bylaws, the Declaration shall control.

**ARTICLE XVI
FISCAL YEAR**

The Fiscal year of the Association shall begin on the 1st day of January and end on the 31st day of December, of each year, except that the first fiscal year shall begin on the date of incorporation of the Association and shall end on the 31st day of December thereafter.

CERTIFICATION

I, the undersigned, do hereby certify:

THAT I am the duly elected and acting Secretary of the ONE HUNDRED HILLS HOMEOWNERS ASSOCIATION, an Arizona nonprofit corporation, and,

THAT the foregoing Bylaws constitute the original Bylaws of said Association, as adopted by unanimous written consent of the Board of Directors thereof, on the _____ day of _____, 1996.

IN WITNESS WHEREOF, I have hereunto subscribed my name this _____ day of _____, 1996.

Secretary

ARTICLES OF INCORPORATION
OF
ONE HUNDRED HILLS HOMEOWNERS ASSOCIATION

STATE OF ARIZONA
ACC/TAX
DATE FILED

AUG 05 1996

ARTICLE I

NAME

DATE APR 8-5-96
TERM
BY *Chris [illegible]*

The name of the corporation is ONE HUNDRED HILLS HOMEOWNERS ASSOCIATION (the "Association").

0784143-2

ARTICLE II

PURPOSE OF THE ASSOCIATION

The object and purpose for which this Association is organized is to perform the duties and obligations of the Association as set forth in the Declaration of Covenants, Conditions and Restrictions for One Hundred Hills, dated the 11th of March, 1996, recorded March 14, 1996 as Document #96-0172324 in the office of the County Recorder of Maricopa County, Arizona, as the same may be amended from time to time (the "Declaration"). In furtherance of, and in order to accomplish the foregoing object and purpose, the Association may transact any and all lawful business for which nonprofit corporations may be incorporated under Chapter 22 of Title 10, Arizona Revised Statutes, as it may be amended from time to time (the "General Nonprofit Corporation Law").

ARTICLE III

CHARACTER OF BUSINESS

The character of the business which the Association intends to conduct in Arizona is to fulfill the duties and obligations of the Association as set forth in the Declaration.

ARTICLE IV

STATUTORY AGENT

FC Service Corporation, an Arizona professional corporation, whose address is Two North Central Avenue, Suite 2200, Phoenix, AZ 85004-2390, Attention: Lesa J. Storey, is hereby appointed the initial statutory agent of the corporation for the State of Arizona.

ARTICLE V

BOARD OF DIRECTORS

The number of directors constituting the initial Board of Directors shall be three (3). The names and addresses of the initial directors of the Association who shall serve until the first annual meeting of the members or until their successors are elected and qualified are as follows:

1 1 4 6 0 0 6 2 9

the Members, may amend the Bylaws in order to conform the Bylaws to the requirements or guidelines of the Federal National Mortgage Association, the Federal Home Loan Mortgage Corporation, the Federal Housing Administration, the Veterans Administration or any federal, state or local government agency whose approval of the Project, the Plat or the Declaration is required by law or requested by the Declarant.

ARTICLE XI

OFFICERS

The following persons shall be the initial officers of the Association and shall hold the positions opposite their names until the first annual meeting of the Association or until their successors have been elected and qualified:

Curtis E. Smith	President
Mark A. Hammons	Vice President
Allen P. Haytens	Secretary/Treasurer

ARTICLE XII

DISSOLUTION

The Association may be dissolved with the assent given in writing and signed by the Owners representing not less than two-thirds (2/3) of the authorized votes of the Association membership. Upon dissolution of the Association, other than incident to a merger or consolidation, the assets of the Association shall be dedicated to an appropriate public agency to be used for purposes similar to those for which this Association was created as the Board of Directors shall determine. In the event that such dedication is refused acceptance, such assets shall be granted, conveyed, or assigned to any nonprofit corporation, association, trust or other organization to be devoted to such similar purpose as the Board of Directors shall determine.

ARTICLE XIII

AMENDMENTS

These Articles may be amended by Members representing at least seventy-five percent (75%) of the total authorized votes entitled to be cast by Members of the Association; provided, however, that the Board, without a vote of the Members, may amend these Articles in order to conform these Articles to the requirements or guidelines of the Federal National Mortgage Association, the Federal Home Loan Mortgage Corporation, the Federal Housing Administration, the Veterans Administration or any federal, state or local governmental agency whose approval of the Project, the Plat or the Declaration is required by law or requested by the Declarant. Amendments require consent of the Declarant as long as the Declarant owns any Lot within the Project.

ARTICLE XIV

PRIVATE PROPERTY

The Members, directors and officers of the Association shall not be individually or personally liable for the debts or other liabilities of the corporation, and the private property of the Members, directors and officers of the Association shall be forever exempt from corporate debts or liabilities of any kind whatsoever.

ARTICLE XV

INTERDEALING

No transaction, contract or act of the Association shall be either void or voidable or in any other way affected or invalidated by reason of the fact that any officer, director or Member of the Association, or any other corporation or other entity of which he may be an officer, director, member or shareholder, is in any way interested in such transaction, contract or act, provided the interest of such officer, director or Member is disclosed to or known by the members of the Board of Directors of the Association or such directors as shall be present at any meeting at which action is taken upon any such transaction, contract or act. Nor shall any such officer, director or Member be accountable or otherwise responsible to the Association for, or in connection with, any such action, contract or transaction or for any gains or profits realized by him by reason of the fact that he, or any other corporation or other entity of which he is an officer, director, member or shareholder, is interested in any such transaction, contract or act. Any such officer, director or Member, if he is a director, after making full disclosure of his interest, may be counted in determining the existence of a quorum at any meeting of the Board of Directors of the Association which shall authorize or take action upon any such transaction, contract or act, and he may vote at any such meeting to authorize, adopt, ratify or approve any such transaction, contract or act to the same extent as if he, or any other corporation or other entity of which he is an officer, director, member or shareholder, were not interested in such transaction, contract or act.

ARTICLE XVI

INDEMNIFICATION

The Association shall indemnify any and all of its directors and officers, and former directors and officers, against expenses incurred by them, including legal fees, or judgments or penalties rendered or levied against any such Person in a legal action brought against any such Person for acts or omissions alleged to have been committed by any such Person while acting within the scope of his or its authority as a director or officer of the Association, or exercising the powers of the Board of Directors, provided that the Board of Directors shall determine in good faith that such Person did not act, fail to act, or refuse to act with

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gross negligence or with wrongful, fraudulent or criminal intent in regard to the matter involved in the action. Notwithstanding anything to the contrary expressed herein, the Board of Directors shall have the right to refuse indemnification as to expenses in any instance in which the Person to whom indemnification would otherwise have been applicable shall have incurred expenses without approval by the Board of Directors which are excessive and unreasonable in the circumstances and are so determined by the Board of Directors, and as to expenses, judgments, or penalties in any instance in which such Person shall have refused unreasonably to permit the Association, at its own expense and through counsel of its own choosing, to defend him or it in the action or to compromise and settle the action. The Association shall also indemnify the employees, committee members and direct agents of the Association as provided in the Declaration in the same manner and with the same limitations as provided above with respect to directors and officers. The foregoing rights of indemnification shall be in addition to and not exclusive of all other rights to which such directors, officers, committee members, employees or agents may be entitled.

DATED this 5th day of August, 1956.


Curtis E. Smith, Incorporator

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STATUTORY AGENT CONSENT

FC Service Corporation, having been designated to act as statutory agent, hereby consents to act in that capacity until it is removed, or submits its resignation, in accordance with applicable law.

Dated: August 5, 1996

FC SERVICE CORPORATION

By: *Lesia J. Storey*
Lesia J. Storey
2 North Central Avenue
Suite 2200
Phoenix, AZ 85004

One Hundred Hills Homeowners Association
c/o FirstService Residential (Scottsdale)
9000 East Pima Center Parkway Suite 300
Scottsdale, AZ 85258



May 2, 2019

MARTIN PLADGEMAN / JACQUELINE ANN PLADGEMAN
16022 N 113TH WAY
SCOTTSDALE AZ 85255 USA

RE: One Hundred Hills Homeowners Association - Fine
16022 N 113th Way Scottsdale AZ 85255 / Account #: 443003-0040-02

Dear Martin Pladgeman,

Pursuant to the fine and violation policy of the One Hundred Hills Homeowners Association and in conjunction with our previous efforts to obtain your compliance with the Covenants, Conditions and Restrictions (CC&R's) and Rules and Regulations you agreed to follow.

This letter will serve to inform you that a \$500.00 fine has been levied against you.

Continued failure to comply will lead to additional fines and/or legal actions from the Association. Our recent inspection confirms that you are still not in compliance of the following violation:

Violation Type: Nuisance - Excessive Noise

First Inspection Date: Friday, April 26, 2019

Last Inspection Date: Friday, April 26, 2019

Compliance Date: Friday, April 26, 2019

Comments: The guards reported complaints about multiple teens entering the gate on foot after hours, multiple cars traveling at a high rate of speed through the community and excessive noise coming from your property in which the police were called. This was also noted as not the first time this has happened.

Please include this fine amount in your next assessment payment. You have the right to appeal this penalty in person by requesting to be placed on the agenda at the next board meeting or by submitting a written appeal to the Board of Directors in care of FirstService Residential. Please notify your Community Manager if you wish to be placed on the agenda for a hearing at the next Board of Directors meeting date. Failure to resolve this issue through the hearing process will result in subsequent fines in accordance with the Association's fine policy and potential legal action. Fines are enforced pursuant to the Association's governing documents and Arizona law. You have the option to petition for an administrative hearing on this matter in the Arizona Department of Real Estate pursuant to ARS Section 32-2199.01. We are available to assist you Monday through Friday between the hours of 08:00 AM and 05:00 PM.

Sincerely,

Jonathan Tutelo
Community Manager
jonathan.tutelo@fsresidential.com
Ph: 480-551-4300
Fax: 480-551-6000

HOA_0054



Kistler
INCIDENT REPORT

684-19-4

GATE/ACCT.# 684 DATE 4/27/19 INCIDENT REPORT # 190405
GATE NAME One Hundred Hills PAGE 1 OF 2
REPORT BY S/O A. R. Keen SHIFT HOURS 0600-1400
RESIDENT NAME Martin Pladgerman LOT #
RESIDENT ADDRESS 16022 N. 2117th way
HOME TELEPHONE 623-516-0029 WORK TELEPHONE 602-377-7859
REASON FOR REPORT Party situation - excessive noise - gate running
DATE OCCURRED 4/26/19 TIME OF INCIDENT After 1000hrs
DATE REPORTED 4/26/19 TIME REPORTED 0918 4/27/19
POLICE OFFICER NAME Scottsdale Police BADGE #
FIRE DEPT. NAME BADGE #
POLICE/FIRE DEPT. D. R. NUMBER
PERSON/S INVOLVED as listed below
VEHICLE INVOLVED DESCRIBE

DETAILS OF INCIDENT WHO WHAT WHEN WHERE HOW ACTION YOU TOOK
PRINT IN BLACK INK

After 1000hrs - 4/26/19 - This morning, 4/27/19, I received multiple reports of after-hours activity at our entrance on the part of teenagers attempting to gain access to the complex AFTER our officer Mike Kapas went off duty at 10:00 PM. - As follows -

- (1) 1005 hrs - Multiple vehicles were observed by residents as waiting to attempt entry through the entrance gate by following a resident. The result of these attempts was that the gate ARM prevented them from entering.
- (2) 1007-1009 hrs - Multiple teenagers were observed entering the complex on foot.
- (3) 1015 hrs - Multiple vehicles with teenagers in them were observed entering the complex at a high rate of speed through the EXIT gate after a resident exited the complex. These teens were observed racing past the resident and entering through the exit gate before it closed.
- (4) Scottsdale Police were called by someone and multiple Police vehicles entered the complex.

continued on Page 2

SECURITY OFFICERS SIGNATURE A. R. Keen
SUPERVISOR SIGNATURE A. R. Keen
ORIGINAL COPY TO ACCOUNT

(USE CONTINUATION SHEET IF NEEDED)



INCIDENT CONTINUATION SHEET

GATE/ACCT# 684 DATE 4/27/19 INCIDENT REPORT# 684-19-4
GATE NAME One Hundred Hills PAGE 2 OF 2
REPORT BY S/O A.R. Keen
NATURE OF REPORT Party Situation - Excessive Noise - gate running
CONTINUE WITH INCIDENT REPORT

There was no definitive testimony about what the Police did or did not do but we did have a Police Presence in our community.

This is the SECOND event of this nature regarding a Notre Dame celebrations party being held at our near Resident Pladgeman's home. For the second time this party was out-of-hand with residents complaining about excessive noise and multiple vehicles parked on both sides of the street. For the second time we had teenagers who were attempting to and even succeeding at gaining entrance to the complex for our officer went off-duty.

I've included with this report the complete list of guests that were given access to this party at the Pladgeman's. We have a consensus at the guardhouse that something needs to be done about this situation involving these parties at the Pladgeman's. It's not so very long ago that we had this exact same situation with a tenant in our complex by the name of Picollo.

We will not take action from the guardhouse as this was an after-hours circumstance. We will leave it to leadership to take the action that is deemed necessary. This report is simply to make leadership aware of this Pladgeman situation.

END

SECURITY OFFICER SIGNATURE

A.R. Keen

SUPERVISOR SIGNATURE

(USE CONTINUATION SHEET IF NEEDED)

ONE HUNDRED HILLS HOMEOWNERS ASSOCIATION

FINE POLICY and APPEAL PROCESS

Amended July 1, 2018

Pursuant to Article II, Section 2.4 of the Declaration of Covenants, Conditions and Restrictions for One Hundred Hills Homeowners Association, Inc, recorded at Instrument No. 96-0172324 in the records of Maricopa County, Arizona (the "Declaration"), the Board of Directors of One Hundred Hills Homeowners Association Inc. (the "Association") has resolved and adopted this Policy providing for notice and an opportunity to be heard to an owner prior to the imposition of a monetary penalty for certain violations of the Declaration, as may be amended from time to time, and any track declaration or plat governing any portion of One Hundred Hills, or any architectural committee rules, Association rules and/or regulations, and any landscape or design guidelines adopted by the Board of Directors of the Association (collectively, the "Governing Documents").

The Board of Directors intends to impose monetary penalties as authorized by A.R.S. Section 33-1803. The Board of Directors, when imposing monetary penalties reserves the right to enforce the Governing Documents in any other legal manner. The following Fine Policy and Fine Appeal Process is intended to be a guide only and is not intended to create any rights or obligations. The Board of Directors reserves the right to impose a monetary penalty on the first date of a violation, to accrue the fine daily until the violation is cured, and to impose fines in the amounts in excess of those set forth in the fine schedule of the Fine Policy.

FINE POLICY

The following Fine Policy shall be followed for the ONE HUNDRED HILLS HOMEOWNERS ASSOCIATION for any and all violations relating to Declaration of Covenants, Conditions and Restrictions or the Association Rules & Design Guidelines.

FIRST NOTICE:

An initial notice of the violation shall be sent to the Homeowner via regular mail requesting compliance within ten (10) days, except for the violations that fall outside the ten (10) day notice policy. This notice shall contain information of the violation appeal process, as described in this document, **NO FINE, NOTICE OF HEARING.**

CONTINUING VIOLATIONS:

If the violation continues or re-occurs within a six (6) month time period, without resolution and after the first notice a continuing violation notice may be sent to the Homeowner via regular mail. This notice shall contain information of the Violation appeal process, as described in this document. A fine of \$100.00 shall be assessed for each occurrence of the violation until the violation is resolved. In addition, the Board shall have the right to remedy the violation and/or take legal action; the cost of which shall be billed to the Homeowner and collected as allowed by Arizona Revised Statutes. This notice, and future notices, shall contain information of the violation appeal process as described in the VIOLATION APPEAL PROCESS as described in this document. A \$100.00 FINE will be assessed per occurrence. **\$100 FINE IMPOSED PER OCCURANCE, NOTICE OF HEARING.**

FINES:

For violations relating to the condition of the property, no fine shall be imposed without first providing a written warning (FIRST NOTICE) to the Homeowner describing the violation and stating that failure to stop the violation within no less then ten (10) days or another recurrence of the same violation within six (6) months of the original violation shall make the Homeowner subject to imposition of a fine.

This Fine Policy is in addition to any and all other remedies provided for by laws of the State of Arizona and the Declaration of Covenants, Conditions and Restrictions of One Hundred Hills Homeowners Association and any amendments thereto and the use hereof does not inhibit the Association exercising any other rights of enforcement.

FINE POLICY

The following Fine Policy shall be followed for the ONE HUNDRED HILLS HOMEOWNERS ASSOCIATION for all violations not previously listed in this Policy. This Policy may also include those violations relating to the prior FINE POLICY.

- 1. Courtesy Letter – Sent to homeowner specifying violation of Association CC&Rs, Rules and Regulations or other governing documents, the possibility of fines and outlining state statute regarding a hearing on the violation. Homeowner has 10 days to remedy the violation.**
- 2. Second Letter Notice – Association fines homeowners account \$25 with another 10 days to cure the violation.**
- 3. Third Letter Notice – Fine is increased to \$50 against homeowner account with 10 more days to cure the violation.**

- 4. Fourth Letter Notice – Fine is increased to \$75 against homeowner account with 10 more days to cure the violation.**
- 5. Fifth Letter Notice – Fine is increased to \$100 against homeowner account with 10 more days to cure violation.**

Continuing Violations: If a violation is not cured by homeowner after the fifth notice, a \$100 fine will be added every 10 days to the account until the violation is resolved, all amounts being cumulative.

Note: A homeowner who receives a written notice that the condition of the owner's property is in violation of a requirement of the Association's documents may provide the Association with a written response by certified mail to the Association's address **within ten (10) business days after the date of the notice.**

VIOLATION APPEAL PROCESS

When a violation notice is sent to a Homeowner, the notice includes a statement notifying the Homeowner that they have the **"RIGHT OF APPEAL"**. When a Homeowner wants to appeal a violation, they must send the Management Company written notice that they are requesting an appeal of the violation.

- Appeals shall be received within five (5) days of the date of the fine notification (violation letter).
- Appeals shall demonstrate extenuating circumstances which require deviation from the CC&R's and/or Community Rules and Design Review Guidelines.
- Appeals shall include all pertinent backup information to support the existence of the extenuating circumstances. · All decisions of the Board are final and may not be further appealed. · Any appeal that does not meet the above requirements shall not be heard by the Board and shall be considered **DENIED**.
- The Homeowner appealing the violation will be given written notice that the appeal is scheduled.
- The appeal shall be heard in Executive Session.
- The Board President will introduce all parties.
- Lengthy discussions are not a part of an appeal process.
- The Homeowner who is appealing will be asked to state their case and present any documentation that is applicable.
- Each Board Member will have the opportunity to ask the Homeowner specific questions regarding the appeal.
- Upon completion of the question and answer period, the Board President will state that the appeal has been heard and the Board will make their decision in closed session. Then "Written Notice" will be given to the Homeowner of the Board's decision within seven (7) days working days.

If the appeal is denied, the Homeowner must bring the violation into compliance within fourteen (14) days. If the violation still exists after fourteen (14) days, the Homeowner will be fined **\$200** every fourteen (14) days until the violation is corrected. In addition, the Board of Directors may seek legal action to remedy the violation.

Violations that fall outside of the 10-day notice policy include, but are not limited to:

- 1. Parking a Recreational Vehicle in the community. Vehicles are allowed in the community for loading and unloading purposes only. Owner will be required to remove the vehicle from the community within 4 hours. No overnight parking of recreation vehicles is allowed. The fine for non-compliance will be \$100 per day.**
- 2. Staging any construction, landscape, or other materials on the street must be removed by the end of business day. No storing of construction, landscape, or any other materials is allowed on roadways. Owner will receive a fine of \$100.00 per day.**
- 3. Placing bulk trash on the street outside of the posted times. Owner will receive notice and an opportunity to be heard for the first offense. All additional offenses, even if not consecutive, will receive an immediate \$100.00 fine.**
- 4. Parking a vehicle on the street overnight. Owner will receive notice and an opportunity to be heard for the first offense. All additional offenses, even if not consecutive, will receive an immediate \$100.00 fine.**
- 5. Violation of Saturday, Sunday or Holiday work rules. Owner will receive notice and an opportunity to be heard for the first offense. All additional offenses, even if not consecutive, will receive an immediate \$100.00 fine.**
- 6. Leasing a portion (less than 100%) of a total property (including the rental of a casita or guest house) as outlined in The One Hundred Hills Homeowners Association Covenants, Conditions and Restrictions ARTICLE 7.2. Owner will receive notice and an opportunity to be heard for the first offense. If there is no response from the homeowner within 10 days of notification, there will be an immediate \$1,000 fine. If there is a continuing offense, a \$1,000 fine will be levied every 10 days, until the offense is cured.**
- 7. Failure to comply with the Real Estate Sign Policy. Owner will receive notification to either remove the sign or comply with the policy within 48 hours of receiving notice. The fine for non-compliance will be \$100 per day.**

- 8. Any activity that adversely affects the quiet enjoyment of the neighboring properties is expressly prohibited. Owner will receive a warning notice and an opportunity to be heard for the first offense. The second offenses will receive an immediate \$500.00 fine, and all additional offenses will receive a \$1000.00 fine.**
- 9. Failure to receive approval for modifications to the outside of a property via an Architectural Submittal Form, will result in a violation. If the Architectural Approval Form is not received by the Association within 3 business days of notification, a fine of \$100.00 per day will be levied.**
- 10. The flying of drones over neighboring properties is prohibited. Owner will receive notice and an opportunity to be heard for the first offense. All additional offenses, even if not consecutive, will receive an immediate \$100.00 fine.**
- 11. The blowing of, or the placing of, landscape or other debris onto community property is prohibited. Owner will receive notice and an opportunity to be heard for the first offense. All additional offenses, even if not consecutive, will receive an immediate \$100.00 fine.**
- 12. The trimming of trees or bushes on other than homeowner owned property is prohibited. Owner will receive notice and an opportunity to be heard for the first offense. All additional offenses, even if not consecutive, will receive an immediate \$500.00 fine.**

Notwithstanding the above provisions, nothing in this Enforcement Policy will limit the Board of Directors' right to seek immediate injunctive relief at anytime regardless of the presence or absence of notices hereunder, for any violation that the Board of Directors determines in its sole and absolute discretion constitutes a material danger to persons or property, requires immediate action or for any other substantial reason. The Board of Directors reserves the right to take any action permitted by law or the CC&Rs, in addition to the above mentioned fine policy.



P.O. Box 268994
Oklahoma City, OK 73126
Fax 877.217.1389

September 5, 2019

One Hundred Hills HOA
C/O First Service Residential
9000 E Pima Center Parkway #300
Scottsdale, AZ 85258

Attn: Jonathan Tutelo

Re: **INSURED:** One Hundred Hills HOA
 POLICY NO.: **606644951**
 CLAIM NO: **3013152399**
 DATE OF LOSS: **7-9-19**
 RE: **Martin Pladgeman v One Hundred Hills HOA**

Dear Mr. Turelo,

Mid Century Insurance Company, a member of the Farmers Insurance Group, acknowledges receipt and has evaluated the matter presented by Martin Pladgeman. The complaint filed against the Condominiums Association alleges that a fine was assessed against his residence that was not in accordance with the rules and by-laws of the HOA.

We have carefully considered all of the information provided to us and the policy issued to One Hundred Hills Homeowners Association (The HOA). Based upon this review we will disclaim this matter from coverage. The reasons for our coverage declination are set forth more fully below.

The purpose of this letter is to provide you with our coverage analysis and to give you an opportunity to provide us with any additional information, which you feel, may impact our analysis of this claim.

We realize the allegations being made may be unsubstantiated. However, we must refer to these allegations as a basis for determining how your policy will apply. Our coverage determination is not intended to imply that any of the allegations are true or have merit.

By issuance of this letter, Mid Century does not waive nor shall it be estopped from relying upon additional coverage defenses to disclaim coverage. This letter is intended to advise you of the

HOA_0062

grounds upon which coverage has been disclaimed based upon the information it has been provided at this time.

Background Facts

On April 26, 2019 there appears to have been a party at the residence of Mr. Pladgeman, 16022 N 113th Way in the HOA. It is reported that a number of teenagers bypassed the gate system at the community and snuck in and there was a noise complaint. This was reported to security and they in turn reported it to the board. Board president Steve Kistler authorized the assessment of a \$500.00 fine on April 29, 2019 and it was processed. Written notice was made to Mr. & Mrs. Pladgeman on May 2, 2019. They claim that the right to appeal and notice requirements of the HOA were not followed.

At this time Mr. Pladgeman has filed a multi-count complaint. Count I-Breach of Duty-as to requirements under state law and under the HOA by-laws and rules. Count II-Preliminary and permanent injunction to stop any further such actions as unfair. Count III-Declaratory Relief in which plaintiff wants the judge to rule the fine procedure was a violation of the by-laws and rules in order to stop the HOA members from assessing such fines. Count IV-Breach of the duty of Good Faith and Fair Dealing under AZ law in the handling of the fine assessment and Count V-Breach of Contract as to the issuance of the fine in violation of the by-laws and rules protocols. The damages demanded, beyond the injunctive relief and the declaratory relief, is for attorney fees and any other relief the court deems appropriate.

Relevant Policy Information

One Hundred Hills Homeowners Association has been provided coverage under Mid Century Insurance Company Condominium Liability Coverage policy, number 0606644951, with a policy period 01/11/2019 to 01/11/2020. The policy is written with 2,000,000.00 per occurrence and 4,000,000.00 aggregate general liability limits. The policy utilizes the Condominium Liability Coverage Form, E-3314, 3rd Edition, which reads in part as follows:

A. Coverages

1. Business Liability

- a. We will pay those sums that the insured becomes legally obligated to pay as damages because of "bodily injury", "property damage", "personal and advertising injury" to which this insurance applies. We will have the right and duty to defend the insured against any "suit" seeking those damages. However, we will have no duty to defend the insured against any "suit" seeking damages for "bodily injury", "property damage", "personal and

advertising injury” to which this insurance does not apply. We may at our discretion, investigate any “occurrence” and settle any claim or “suit” that may result.

We now refer you to Section F. Liability and Medical Expenses Definitions;

3. "Bodily injury" means bodily injury, sickness or disease sustained by a person, including death resulting from any of these at any time.
13. "Occurrence" means an accident, including continuous or repeated exposure to substantially the same general harmful conditions.
14. "Personal and advertising injury" means injury, including consequential "bodily injury", arising out of one or more of the following offenses:
 - a. False arrest, detention or imprisonment;
 - b. Malicious prosecution;
 - c. The wrongful eviction from, wrongful entry into, or invasion of the right of private occupancy of a room, dwelling or premises that a person occupies, committed by or on behalf of its owner, landlord or lessor;
 - d. Oral or written publication of material that slanders or libels a person or organization or disparages a person's or organization's goods, products or services;
 - e. Oral or written publication of material that violates a person's right of privacy;
 - f. The use of another's advertising idea in your "advertisement"; or
 - g. Infringing upon another's copyright, trade dress or slogan in your "advertisement".
17. "Property damage" means:
 - a. Physical injury to tangible property, including all resulting loss of use of that property. All such loss of use shall be deemed to occur at the time of the physical injury that caused it; or
 - b. Loss of use of tangible property that is not physically injured. All such loss of use

shall be deemed to occur at the time of the "occurrence" that caused it.

18. "Suit" means a civil proceeding in which damages because of "bodily injury", "property damage", "personal and advertising injury" to which this insurance applies are alleged. "Suit" includes:

- a. An arbitration proceeding in which such damages are claimed and to which the insured must submit or does submit with our consent; or
- b. Any other alternative dispute resolution proceeding in which such damages are claimed and to which the insured submits with our consent.

The requested reimbursement for funds expended by the elected board president and issued by the then board treasurer does not meet the definition of an 'occurrence.' None of the damages meet the definition of a "bodily injury" or a "property damage" or a "personal and advertising injury" which is precedent for coverage under the Insuring Agreement. Therefore we must respectfully disclaim coverage under Coverage A Insuring Agreement.

The following exclusion applies under Section B-1, Exclusions:

B Exclusions

1. Applicable To Business Liability Coverage
This insurance does not apply to:

a. Expected Or Intended Injury

"Bodily injury" or property damage" expected or intended from the standpoint of the insured.

b. Contractual Liability

"Bodily injury" or "property damage" for which the insured is obligated to pay damages by any reason of the assumption of liability in a contract or agreement. This exclusion does not apply to liability for damages:

- (1) That the insured would have in the absence of the contract or agreement; or:
- (2) Assumed in a contract or agreement that is an 'insured contract' provided the "bodily injury" or "property damage" occurs subsequent to the execution of

the contract or agreement. Solely for the purposes of liability assumed in an 'insured contract' reasonable attorney fees and necessary litigation expenses incurred by or for a party other than an insured are deemed to be damages because of "bodily injury" or "property damage" provided:

- (a) Liability to such party for, or for the cost of, that party's defense has also been assumed in the same 'insured contract' and
- (b) Such attorney fees and litigations expenses are for defense of that party against a civil or alternative dispute resolution proceeding in which damages to which this insurance applies are alleged.

Exclusion a. excludes coverage for "Property damage" that was expected or intended from your standpoint. The imposition of a lien is clearly done with intention as a result, exclusion 2. a. quoted above excludes coverage for this matter in its entirety.

Exclusion b. of the Mid-Century policy excludes coverage for "Property Damage" for which the insured is obligated to pay damages by reason of the assumption of liability in a contract or agreement. To the extent that One Hundred Hills HOA may be found to have initiated or imposed the fine/lien incorrectly and therefore are unable to collect on the fine/lien this policy is not applicable to any breach of contract issues or any contractual issues in regards to failure to satisfy a contract or agreement.

As a result of the exclusion quoted and discussed above, this matter is expressly excluded from coverage under Coverage A of your Commercial General Liability Coverage Form. As a result, we must respectfully disclaim coverage under the Condominium Liability Coverage form.

We now address the Directors and Officers Policy afforded to this policy package. We must direct your attention to the insuring agreement located within Section A of your Directors & Officers Liability Coverage Form, E-9122 6th edition which states:

A. Coverages

1. Insuring Agreement

- a. We will pay the 'loos' which you become legally obligated to pay as a result of a "Claim" against any insured for any "wrongful acts" committed by any insured person. The "wrongful acts" must be committed in the conduct of management responsibilities for the organization. We will have the right and duty to defend you against any such 'claim', even if any of the allegations are groundless, false or fraudulent.

- b. However, we will have no duty to defend you against any “claim” for “wrongful acts” to which this insurance does not apply. We may at our discretion, investigate any “wrongful act” and settle any “claim” that may result.

But:

- (1) The amount we will pay for “loss” is limited as described in Limits Of Insurance; and
- (2) Our right and duty to defend end when we have used up the applicable limit of insurance in the payment of “loss”.

No other obligation or liability to pay sums or perform acts or services is covered unless explicitly provided for under 2. Supplementary Payments. A “claim” by a person or organization seeking damages will be deemed to have been made when notice of such “claim” is received and recorded by any insured or by us, whichever comes first.

All “claims” arising out of the same or related “wrongful acts” will be deemed to be one “claim” and shall be deemed to have been made at the time the first of those “claims” is made against any insured.

Additional terms unique to this policy contained above are defined as follows:

“Advertisement” means a notice that is broadcast or published to the general public or specific market segments about your goods, products or services for the purpose to attracting customers or supporter.

“Claim” means:

- a. A written demand for monetary damages or non-monetary relief;
- b. A civil proceeding, commenced by the service of a complaint or similar pleading;
- c. A criminal proceeding commenced by the return of an indictment, or
- d. A formal administrative or regulatory proceeding commenced by the filing of a notice of charges, formal investigative order or similar document.

“Loss” means the total amount which the insured becomes legally obligated to pay as damages, judgments or settlements on account of all “claims” made against the insured for “wrongful acts” to which this insurance applies. “Loss” does not include:

- a. Defense costs
- b. Taxes, fines or penalties,

- c. The cost to comply with any injunctive or other non-monetary relief or any agreement to provide such relief, or
- d. The multiple portion of any multiplied damage award or punitive or exemplary damages.

“Wrongful act” means any negligent acts, errors, omissions or breach of duty committed by an insured in their capacity as such.

The following policy information applies under this policy.

C Who is an Insured

The term insured when used in this Coverage Form includes:

1. The Named Insured listed in the Declarations and its ‘subsidiaries’.
2. Any person who has been, now is or shall become:
 - a. A duly elected director or trustee of an insured organization;
 - b. Duly elected or appointed officer of an insured organization;
 - c. An employee or committee member of an insured organization whether or not salaried, and
 - d. Any members of an insured organization acting at the direction of the organization’s Board of Directors or Trustees on behalf of the organization in a voluntary capacity.

The following exclusion applies under this policy

B Exclusions

This insurance does not apply to “claims”:

1. For any “bodily injury”, “property damage”, personal and advertising injury;
2. Relating to or arising from an insured’s dishonesty, fraud or willful violation of law, if a judgment or other final adjudication adverse to such insured establishes such insured committed such dishonest, fraudulent or willful conduct;

The complaint arises out of alleged wrongful acts by the association as it relates to the assessment of a fine after the April 26, 2019 noise complaints. Plaintiff is claiming a violation of the by-laws and rules concerning the implementation of the notice and fine and lists a number of counts alleging breach of duty. Breach of Contract, Breach of the Duty of Good Faith and Fair Dealing under Arizona statute and is requesting both injunctive relief and declaratory relief as well as attorney fees and costs.

The Directors and Officers policy form, as noted above, does not cover ‘bodily injury’, ‘property damage’ or any ‘personal and advertising injury’ that could apply to the allegations made by the claimant. The Directors & officers policy form has clear definitions and the allegations in the complaint alleged conduct that may fail to meet the definition of “wrongful act” or “loss” listed above. The complaint does not actually make any monetary requests as to damages. This reservation of rights letter is intended to set forth the Mid Century Insurance Company’s reservations with regard to insurance coverage that could arise from this litigation.

Coverage Discussions/Analysis

As indicated in the insuring agreement cited above, the Condominium Liability coverage will pay those sums an insured is legally obligated to pay as damages because of “bodily injury”, “property damage”, or “personal and advertising injury” to which this insurance applies due to an “occurrence”. Based upon the information available it does not appear that this claim for injunctive relief, declaratory relief and the alleged Breach of Duty, Breach of Contract or the Breach of Duty of Good Faith and Fair Dealing under prevailing Arizona statute meets the definitions of ‘bodily injury’, ‘property damage’, advertising injury’ or ‘personal injury’. Nor does it appear to meet the definition of an ‘occurrence’ As such we cannot extend coverage under this policy form as the “occurrence” trigger has not been met. The claims made D&O coverage form part of this package of insurance has express exclusions to claims pursued, and found by adjudication, for any alleged dishonesty. Under such an outcome the D&O coverage form potentially may not extend coverage to this matter. However, at this time, the D&O does appear to trigger to this matter.

Conclusion

For the reasons cited above, we must respectfully issue a partial disclaimer of coverage. By naming the specific grounds for disclaiming coverage and/or the duty to defend, we do not waive any rights or any other provisions and conditions of the policy of insurance. We specifically reserve all rights and remedies under the policy including the right to file a declaratory action.

As there are coverage issues involved as outlined above, we will proceed to handle this matter under a reservation of rights. If you receive any additional correspondence and/or a lawsuit, please forward it to us immediately for review and further consideration of coverage. While there may be an obligation to defend pursuant to the Contractors Error Or Omission coverage form, indemnification is dependent on the determination of the applicability of the above quoted exclusions and endorsement as discussed above.

The position outlined above is based upon our investigation and information secured through this date. If you have any additional information regarding this matter that you would like us to consider, or if a lawsuit is filed in relation to this matter, please direct it to the attention of Redmond

Walsh, Sr. Commercial Claims Representative for review and consideration. She can be reached at (248) 288-9209. Any additional information received will be promptly reviewed.

Sincerely,
Mid Century Insurance Exchange

A handwritten signature in black ink, appearing to read "Michael Cottle", is enclosed within a rectangular border.

Michael Cottle
Commercial Claims Supervisor
Business Insurance Liability Claims-Central East Zone

CC: kmeyer1@farmersagent.com