

HOLD FOR  
J.L. VANCE

When recorded, return to:

James E. Brown, Esq.  
Mallin & Brown  
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Phoenix, AZ 85012

MOD RSTR (DF)

RECORDED IN OFFICIAL RECORDS  
OF MARICOPA COUNTY, ARIZONA  
JUL 07 '89 -4 55  
HELEN PURCELL, County Recorder  
FEE 14 PGS 10 HC

FIFTH AMENDMENT TO

89-311223

DECLARATION OF COVENANTS, CONDITIONS AND RESTRICTIONS

CANYON CREST UNIT I

THIS FIFTH AMENDMENT TO THE DECLARATION OF COVENANTS, CONDITIONS AND RESTRICTIONS -- CANYON CREST UNIT I (the "Fifth Amendment") is entered into this 24 day of June, 1989, by CANYON CREST ASSOCIATION, INC., an Arizona non-profit corporation, hereinafter referred to as the "Association".

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

WHEREAS, the Declaration of Covenants, Conditions and Restrictions was recorded for the following described property on June 22, 1973, in Docket 10192, pages 798-814, was amended by First Amendment to Declaration of Covenants, Conditions and Restrictions, recorded at Docket 11236, pages 563-566, and further amended by Second Amendment to Declaration of Covenants, Conditions and Restrictions -- recorded at Docket 13110, pages 1514-1515, and further amended by Third Amendment to Declaration of Covenants, Conditions and Restrictions -- recorded at Document No. 85 497676, records of Maricopa County Recorder, Maricopa County, Arizona:

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Lots 1 through 141, inclusive, CANYON CREST UNIT ONE, according to the plat of record in the office of the County Recorder of Maricopa County, Arizona in Book 161 of Maps at page 46, together with Tracts A,B,C,D,E,F,G,H,I,J,K,L,M,N,O and P;

and,

WHEREAS, said Declaration of Covenants, Conditions and Restrictions provides in Article XIII, Section 3, that it may be amended by an instrument signed by not less than fifty-one percent (51%) of each class of members; and

WHEREAS, The Bank of Scottsdale/Paradise Valley is the owner of over fifty-one percent (51%) of the lots in the above-described property, thereby possessing over fifty-one percent (51%) of Class A voting rights, and is therefore entitled to approve this amendment; and

WHEREAS, there is only Class A membership, Class B membership having ceased and having been Unofficial Document converted into Class A membership as of December 31, 1975, pursuant to Article III, Section 2 of said Declaration of Covenants, Conditions and Restrictions;

NOW THEREFORE, the Association hereby amends said Declaration of Covenants, Conditions and Restrictions as follows:

1. Article VI, Section 2 of the original Declaration of Covenants, Conditions and Restrictions is deleted in its entirety and restated as follows:

Section 2. Exterior Maintenance of Dwelling Unit.

(a) The Association shall provide for and maintain the landscaping within each improved lot including the trees, shrubs, grass and walks, but excluding any landscaping in the private patio

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area of each lot.

(b) If a unit owner fails to maintain the exterior of his or her dwelling unit, as required pursuant to Article VII, Section 3, added to the original Declaration of Covenants, Conditions and Restrictions by this Fifth Amendment, the Board of Directors or a management company employed by the Association shall, at its election, deliver to said dwelling unit owner a notice requiring the dwelling unit owner to provide for or make enumerated painting, maintenance, repairs or replacements. In the event said dwelling unit owner fails to perform or provide for the performance of such painting, maintenance, repair or replacement within thirty (30) days from the date of the notice, the Association, at its option, may make or contract for such painting, maintenance, repairs or replacements and invoice said dwelling unit owner for the cost of such services, adding thereto a twenty percent (20%) supervision charge.

(c) In view of the Unofficial Document that the Canyon Crest Unit One buildings house more than one dwelling unit, in the event the Association determines that a dwelling unit owner's roof requires maintenance, repair, or replacement to a roof of a building to which that owner's unit forms a part, the Association may give the aforementioned notice to all dwelling unit owners in that building to make the necessary maintenance, repairs or replacements in accordance with Article VI, Section 2(b) above.

(d) The Association may at its option create rules and regulations to ensure compliance with and enforcement of the

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requirements of this Fifth Amendment.

2. Article VII of the original Declaration of Covenants, Conditions and Restrictions is amended by adding Section 3 as follows:

Section 3. Exterior Maintenance.

(a) Each dwelling unit owner shall be individually liable and responsible for and shall provide for all exterior maintenance, repair and replacement of his or her respective dwelling unit or lot as follows: maintenance, repair and/or replacement of roofs, gutters and downspouts, fences, driveways, glass surfaces, maintenance of unimproved lots, landscaping within the private patio area of his or her respective lot, patio covers or other additions located within private patio areas, and exterior building surfaces of the dwelling unit (including painting), as well as all painting, maintenance, repair and replacement arising out of or caused by the willful or negligent act of the owner, his family, guests or invitees, or arising out of or caused by any of the perils covered by a standard form fire insurance policy with extended coverage endorsement thereon, or arising out of or caused by flood, earthquake or other acts of God.

(b) All work to be performed by any dwelling unit owner which requires that it be performed by a licensed contractor shall be performed by a licensed contractor.

(c) All painting, maintenance, repairs and replacements are subject to architectural control as set forth in Article X of the Declaration of Covenants, Conditions and Restrictions.



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(d) Failure of a dwelling unit owner to provide for or make enumerated painting, maintenance, repairs or replacements to the dwelling unit, as provided for in Article VI, Section 2, added to the original Declaration of Covenants, Conditions and Restrictions by this Fifth Amendment, shall render the dwelling unit owner liable for an assessment for costs and charges, as provided for in Article VI, Section 2 and Article V, Section 8.1 of the Declaration of Covenants, Conditions and Restrictions, both of which are added to the Declaration of Covenants, Conditions and Restrictions by this Fifth Amendment.

3. Article V, Section 1 of the original Declaration of Covenants, Conditions and Restrictions is amended by adding subsections (4) and (5) to the first sentence thereof as follows:

(4) assessments and fines for failure to provide for or make enumerated painting, maintenance, repairs or replacements to dwelling unit (s), as provided for in Article V, Section 8.1, added to the original Declaration of Covenants, Conditions and Restrictions by this Fifth Amendment, and (5) fines levied by the Association.

4. Article V, Section 1 of the original Declaration of Covenants, Conditions and Restrictions is amended by deletion of all matter following the first sentence thereof and by addition of the following:

The above listed assessments, charges and fines, together with interest, costs, and reasonable attorneys' fees, shall each be a charge on the Lot and each shall be a continuing lien upon the Lot

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against which each such assessment, charge or fine is made. Each such assessment, charge or fine, together with interest, costs and reasonable attorneys' fees, shall be the personal obligation of the Owner of such Lot at the time of the assessment, charge or fine. The personal obligation for delinquent assessments, charges and fines shall not pass to said Owner's successors in title unless expressly assumed by them.

5. Article V of the original Declaration of Covenants, Conditions and Restrictions, as amended by this Fifth Amendment, is amended by adding Section 8.1 as follows:

Section 8.1. Assessment for Failure to Provide for or Make Enumerated Painting, Maintenance, Repairs or Replacements to Dwelling Unit(s). Upon the performance of work by or for the Association, as provided for in Article VI, Section 2(b) of the Declaration of Covenants, Conditions and Restrictions, added thereto by this Fifth Amendment, the costs and charges provided for in Article VI, Section 2(b), including the supervision charge, shall become an assessment pursuant to Article V, Section 1 of the original Declaration of Covenants, Conditions and Restrictions, as amended in this Fifth Amendment. The Association shall have the same rights and remedies to assess and collect such assessments as are available to the Association for the assessment and collection of all assessments, as provided for in Article V, Section 9 of the original Declaration, of Covenants, Conditions and Restrictions.

In the event that any provision of this Fifth Amendment shall conflict with any provisions of the Declaration of Covenants,

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Conditions and Restrictions of Canyon Crest Unit One, the provisions of this Fifth Amendment shall supersede and take precedence.

By its signature affixed hereto, the Association hereby consents and agrees to this Fifth Amendment to the Declaration of Covenants, Conditions and Restrictions, as amended, and further signifies that in all other respects, the original Declaration of Covenants, Conditions and Restrictions, as amended, shall remain in full force and effect.

IN WITNESS WHEREOF, this Fifth Amendment has been executed as of the date first above written.

CANYON CREST ASSOCIATION, INC.,  
an Arizona nonprofit corporation

Unofficial Document  
BY

*Charles F. Ebel*

Charles F. Ebel  
Its President

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STATE OF ARIZONA       )  
                              ) ss.  
County of Maricopa     )

ON THIS, the 24 day of June, 1989, before me, the undersigned Notary Public, personally appeared CHARLES F. EBEL, President of CANYON CREST ASSOCIATION, INC., an Arizona nonprofit corporation.

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

Jan A. Brown  
Notary Public

My Commission Expires:

Nov 6, 1991

Unofficial Document

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**APPROVAL OF FIFTH AMENDMENT**

STATE OF ARIZONA                    )  
   ) ss.  
 County of Maricopa                )

Daniel R. Govinsky, who declares himself to be the  
Senior Vice President of The Bank of Scottsdale/Paradise  
 Valley, hereby states that The Bank of Scottsdale/Paradise Valley  
 is the owner of Lots 32-50 inclusive, Lots 55-71 inclusive, Lots  
 82-118 inclusive, Lots 123-126 inclusive and Lots 131-133  
 inclusive, CANYON CREST UNIT ONE. In such capacity, he has read the  
 foregoing Fifth Amendment to Declaration of Covenants, Conditions  
 and Restrictions, and hereby approves the form and contents  
 thereof.

THE BANK OF SCOTTSDALE/PARADISE VALLEY

Unofficial Document

By

Its Senior Vice President

ON THIS, the 23 day of May, 1989,  
 before me, the undersigned Notary Public, personally appeared  
Daniel R. Govinsky, who acknowledged himself to be the  
Senior Vice President of THE BANK OF SCOTTSDALE/PARADISE  
 VALLEY, and that he/she, as such Senior Vice President,  
 being authorized so to do, executed the Approval of Fifth Amendment  
 in the capacity thereon stated for the purposes therein contained.

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

Sharon K. Hillery  
Notary Public

My Commission Expires:

2-16-91

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