

**Development Guidelines  
For  
Desert Skyline Estates**

**INFORMATION FOR PROPERTY OWNERS**  
**DESERT SKYLINE ESTATES**

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2. Development Guidelines
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**Declaration**  
**of Covenants, Conditions and Restrictions**  
**For**  
**Desert Skyline Estates**

**March 12, 1984**

**DECLARATION  
OF  
COVENANTS, CONDITIONS AND RESTRICTIONS  
FOR  
DESERT SKYLINE ESTATES**

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**DECLARATION OF COVENANTS, CONDITIONS AND RESTRICTIONS**  
**FOR**  
**DESERT SKYLINE ESTATES**

THIS DECLARATION OF COVENANTS, CONDITIONS AND RESTRICTIONS (the "Declaration") is made and entered into as of the 12 days of March, 1984, by FSC/TREACCAR, an Arizona joint venture general partnership.

**RECITALS**

WHEREAS, Declarant is the record owner of that parcel of real property situated in Maricopa County, Arizona, described on Exhibit "A" attached hereto and by reference made a part hereof (the "Parcel"); and

WHEREAS, Declarant desires to submit and subject the Parcel, together with all buildings, improvements and other permanent fixtures of whatever kind now or hereafter located thereon, and all easements, rights appurtenances and privileges belonging or in any way pertaining thereto (all of which comprise a part of the "Property" as hereinafter defined), to the covenants, conditionals, restrictions, liens, assessments, easements, privileges and rights contained herein; and

WHEREAS, Declarant desires that the Property be developed in accordance with a master plan and general scheme of development into an attractive, exclusive residential development of custom homes to be collectively known as "DESERT SKYLINE ESTATES" (the "Project"); and

WHEREAS, Declarant deems it desirable to establish covenants, conditionals and restrictions upon the Property and each and every portion thereof, and certain mutually beneficial restrictions and obligations with respect to the proper use, occupancy and enjoyment thereof, all for the purpose of enhancing and protecting the value, desirability and attractiveness of the Property and enhancing the quality of life within the Project; and

WHEREAS, it is desirable for the efficient management of the Project to create an owners association to which should be delegated and assigned the powers of managing, maintaining and administering the common areas within the Project and administering and enforcing these covenants, conditions and restrictions and collecting and disbursing funds pursuant to the assessments and charges hereinafter created and to perform such other acts as are herein provided or which generally benefit its members, the Project, and the owners of any interests therein; and

WHEREAS, Desert Skyline Estates Homeowners Association, a non-profit corporation, has been, or will be, incorporated under the laws of the State of Arizona for the purpose of exercising such powers and functions; and



WHEREAS, declarant desires and intends that the owners, mortgagees, beneficiaries and trustees under trust deeds, occupants and all other persons hereinafter acquiring any interest in the Property shall at all times enjoy the benefits of, and shall hold their interests subject to the covenants, conditions, restrictions, liens, assessments, easements, privileges and rights hereinafter set forth, all of which are declared to be in furtherance of a plan to promote and protect the Project.

NOW, THEREFORE, Declarant, for the purposes above set forth, declares that the Property shall hereafter be held, transferred, sold, conveyed, leased, occupied and used subject to the covenants, conditions, restrictions, liens, assessments, easements, privileges and rights hereinafter set forth, all of which shall run with the land and be binding upon the property and all parties having or acquiring any right, title or interest in or to the property or any part thereof, and shall inure to the benefit of each owner thereof, the Association each member of the Association.

## **1. DEFINITIONS**

Unless the context clearly requires otherwise, the following terms used in this Declaration are defined as follows. Defined terms appearing throughout this Declaration with the initial letter of such term capitalized.

1.1 "Articles" means the Articles of Incorporation of the Association, as such be amended from time to time, or of any successor thereto.

1.2 "Assessments" shall include the following:

1.2.1 "Regular Assessment" means the amount which is to be paid by each Member of the Association as such Member's Proportionate Share of the Common Expenses of the Association, as provided in Section 5.3.

1.2.2 "Special Assessment" means a charge a particular Member's Lot, directly attributable to such Member or Lot, to reimburse the Association for costs incurred in bringing the Member or the Lot into compliance with the provisions of this Declaration the Articles, Bylaws, Association Rules or Design Guidelines, or any other charge designated as a special Assessment in this Declaration, the Articles, Bylaws, Association Rules or Design Guidelines, together with attorneys' fees and other charges payable by such member pursuant to the provisions of this Declaration, as provided in section 5.4.

1.2.3 "Reconstruction Assessment" means the amount which is to be paid by each Member representing such Proportionate Share of the cost to the Association for reconstruction of any portion of the Common Areas, as provided in Section 7.

1.2.4 “Capital Improvement Assessment” means the amount which is to be paid by each Member representing such Member’s Proportionate share of the cost to the Association for the installation or construction of any capital improvements on any of the Common Areas which the Association may from time to time authorize pursuant to the provisions of Section 5.5.

1.3 “Association” means Desert Skyline Estates Homeowners Association, an Arizona nonprofit corporation, its successors, and assigns.

1.4 “Association Rules” means the rules and regulations adopted by the Association pursuant to Section 3.10.

1.5 “Board” means the board of Directors of the Association.

1.6 “Building Envelope” means that area designated on a Lot by the Design Review Committee within which the residential dwelling unit, garages, structures, and other improvements may be constructed by an Owner.

1.7 “Bylaws” means the bylaws of the Association adopted in accordance with the Articles, as such Bylaws may be amended from time to time, or of any successor thereto.

1.8 “City” means the City of Scottsdale, Arizona, a municipal corporation of the State of Arizona.

1.9 “Common Areas” means all real property and the improvements or amenities thereon which may from time to time be owned or leased by the Association including, but not limited to, any tracts designated as “common areas” on the Plat, easements, licenses, rights, rights-of-way, and the Private Roads. Common Areas may be abandoned as provided in Section 11.14.

1.10 “Common Expenses” means the actual and estimated costs incurred by the Association in administering, maintaining, and operating the Project, including, but not strictly limited to, the following:

(a) maintenance, management, operation, repair, and replacement of the Common Areas, including the Private Roads, and all other area on the Project which are maintained by the Association;

(b) unpaid Assessments;

(c) maintenance by the Association of areas within the right-of-way of public streets in the vicinity of the Project as provided in this Declaration or pursuant to agreements with the City;

(d) costs of management and administration of the Association, including, but not limited to, compensation paid by the Association to managers, accountants, attorneys, and employees;

(e) the costs of utilities, including but not limited to water, electricity, gas, sewer, trash pick—up disposal which are provided to the Association or the Project and not individually metered or assessed by Lot, landscaping maintenance, CATV and other services which generally benefit and enhance the value and desirability of the Project and which are provided by the Association;

- (f) the costs of fire, casualty, liability, workmen's compensation and other insurance covering the Common Areas;
- (g) the costs of any other insurance obtained by the Association
- (h) reasonable reserves for contingencies, replacements and other purposes as deemed appropriate by the Association, which reserve fund shall be adequate to meet the costs and expenses of maintenance, repairs and replacement of those Common Areas which must be maintained, repaired or replaced on a periodic basis;
- (i) the costs of bonding the members of the Board, the President, any professional managing or any other person handling the funds of the Association;
- (j) taxes paid by the Association;
- (k) amounts paid by the Association for discharge of any lien or encumbrance levied against the Common Areas or portions thereof;
- (l) costs incurred by the Design Review Committee;
- (m) costs incurred by committees established by the Board or the President;
- (n) costs of security guards, and operation of guard gates armor key gates at entrances to the Project from the public streets, and any other security systems or services installed, operated or contracted for by the Association;
- (o) costs of garbage collection service for all Lots; and
- (p) other expenses incurred by the Association for any reason whatsoever in connection with the Common Areas (excepting reconstruction costs and capital improvements as otherwise provided herein), or the costs of any other item or items designated by, or to be provided or performed by the Association pursuant to this Declaration, the Articles, Bylaws. Association Rules or Design Guidelines, or in furtherance of the purposes of the Association or in the discharge of any duties or powers of the Association

1.11 "Compound" means a consolidation of Lots by re-platting, or a re-platting of two or more contiguous Lots to permit a clustering or other relocation of dwellings. A compound may have commonly owned amenities as permitted in Section 11.14 and in accordance with the Design Guidelines.

1.12 "Declarant" means the above recited Declarant, its successors, and assigns.

1.13 "Declaration" means this instrument, as from time to time amended.

1.14 "Default Rate of Interest" means an annual rate of interest equal to the prime rate as announced by The Valley National Bank of Arizona, in Phoenix, Arizona (as the rate charged to its largest and most creditworthy customers) from time to time while interest is accruing (with interest hereunder adjusted as and when said prime rate is adjusted) plus 4% per annum, but never less than 18% (so that if during any periods while interest is accruing said prime rate plus 4% per annum is less than 18%, interest shall accrue during said periods at 18% per annum). Notwithstanding anything herein to the contrary, if, during any periods, the highest lawful rate of interest which may be paid by the Person required to pay the Default Rate of Interest hereunder, despite the provisions hereof, is less than the rate provided above, the interest payable by such Person during said periods shall be the highest lawful rate. If The Valley National Bank of Arizona should cease doing business or no longer announce its prime rate as described

above, the Association may compute interest hereunder upon the announced prime rate of any other bank doing business in Arizona. If banks should cease announcing prime rates, the Association may elect to use 18% as the default Rate of Interest, or may specify the rate, in lieu of said prime rate, for purposes of the computation hereunder which the Association would reasonably have to pay to borrow money at the time.

1.15 “Design Guidelines” means the rules, regulations, restrictions, architectural standards, and design guidelines from time to time adopted by the Design Review Committee pursuant to Section 10.2.

1.16 “Design Review Committee” means the committee provided for in Section 10 hereof.

1.17 “Lot” means a subdivided lot as shown on the Plat. A “Lot” shall not include any Common Areas. A “Lot” includes the residential dwelling unit, garages, structures and other improvements constructed thereon.

1.18 “Majority of Members” means the Members holding more than 50% of the total votes entitled to be cast with respect to a given matter; and any specified fraction or percentage of the Members means the Members holding that fraction or percentage of the total votes entitled to be cast with respect to a given matter. A specified fraction or percentage “of all of the Members” means that fraction or percentage of the total votes of all Members other than Declarant. Unless otherwise specified, any provision herein requiring the approval of the Members means the approval of a Majority of Members.

1.19 “Member” means every Person who holds a Membership in the Association pursuant to Section 3.

1.20 “Mortgage” means any recorded, filed or otherwise perfected instrument concerning the Property or any portion thereof given in good faith and for valuable consideration which is not a fraudulent conveyance under Arizona law as security for the performance of an obligation, including without limitation a deed of trust, but shall not include any instrument creating or evidencing solely a security interest arising under the Uniform Commercial Code. “Mortgagee” means the holder of a note secured by a mortgage, including the trustee and beneficiary under any deed of trust. “Mortgagor” means the party executing a Mortgage. “First Mortgage” means a mortgage which is the first and most senior of all Mortgages upon the same property. “First Mortgagee” means the holder of a First Mortgage.

1.21 “Occupant” means any Person, other than an Owner, in rightful possession of a Lot, whether as a guest, tenant or otherwise.

1.22 “Owner” means the record owner, whether one or more Persons, of fee simple title whether or not subject to any Mortgage, to any Lot which is a part of the Property, including contract sellers, but excluding those having such interest merely as security for the performance of an obligation. In the case of Lots, the fee simple title to which is vested of record in a trustee pursuant to Arizona Revised Statutes, Section 33-801 et seq., legal title shall be deemed to be in the trustor.

1.23 “Parcel” means that parcel of real property referred to in the recitals hereof and described in Exhibit “A” hereto.

1.24 “Person” means an individual, corporation, partnership, trustee, or other entity capable of holding title to real property, and their respective heirs, personal representatives, successors and assigns.

1.25 “Plat” means the plat of subdivision of the Parcel as first recorded in the official records of Maricopa County, Arizona and as thereafter from time to time amended or supplemented, together with all subsequent plats of subdivision for real property annexed to the Property.

1.26 “President” means the duly elected or appointed president of the Association.

1.27 “Private Roads” and “Private Streets” are synonymous and mean any street, roadway, drive, sidewalk, walkway, path or other right-of-way within the Project which has not expressly been dedicated to the public use. In the event that the Association elects to dedicate a Private Road to public use and expenses must be incurred for the purpose of bringing such Private Road into conformance with specifications of the City, such expenses shall be considered costs of capital improvements and subject to the provisions hereof for Capital Improvement Assessments.

1.28 “Project” means the master planned development of the Property, as described in the recitals hereof, to be called “Desert Skyline Estates”.

1.29 “Property” means the Parcel together with all buildings, improvements and other permanent fixtures of whatever kind now or hereafter located thereon, and all easements, rights, appurtenances and privileges belonging or in any way pertaining thereto.

1.30 “Proportionate Share” means that fraction wherein the numerator is one and the denominator is the total number of Lots in the Property according to the Plat.

1.31 “Record” or “Recording” means an instrument of record in, or the act of recording an instrument with, the office of the County Recorder for Maricopa County, Arizona.

## **2. RIGHTS OF ENJOYMENT**

2.1 Members’ Right of Enjoyment. Every Member shall have a non-exclusive easement for use and enjoyment in and to the Common Areas, which right shall be appurtenant to and shall pass with such Member’s membership as herein provided, and shall be subject all of the easements, covenants, conditions, restrictions and other provisions contained in this Declaration, including, without limitation, the follow provisions:

2.1.1 The right of the Association to limit the number of guests of Members and to limit the use of Common Areas by Persons who are not Members, but who are in possession of a Lot or own a portion of, or less than the entire ownership interest of, a Lot.

2.1.2 The right of the Association to establish reasonable rules and regulations pertaining to or restricting the use of the Common Areas by Members or other Persons.

2.1.3 The right of the Association to borrow money for the purpose of improving, replacing, restoring or expanding the Common Areas or adding new Common Areas and, in aid thereof, to mortgage said property, provided that the rights of the lender thereunder shall be subordinated to the rights of the Members.

2.1.4 The rights of the Association to suspend the right of a member or any Person to use the Common Areas or any designated portion thereof during any time in which any Assessment respecting such Member remains unpaid and delinquent, or for a period not to exceed 60 days for any single infraction of the Association Rules or breach of this Declaration, and up to one year for any subsequent violation of the same or similar provision of the Association Rules or this Declaration, provided that any suspension of such right to use the Common Areas, except for failure to pay Assessments, shall be made only by the President, the Board or a duly appointed committee thereof, after notice and hearing given and held in accordance with the Bylaws. Notwithstanding the foregoing, the Association shall not have the right hereunder to suspend any Member's right to use any portion of the Property or Private Roads necessary for such Member to gain access to his Lot.

2.2 Delegation of Use. No Member may delegate his right of use and enjoyment of the Common Areas to any Person, except to the members of his immediate family as provided in Section 3 or to his guests as permitted by the Association Rules.

2.2 Waiver of Use. No Member may exempt himself, and no Member shall be exempt, from personal liability for Assessments or release any Lot owner by him from the liens, charges and other provisions of this Declaration, the Articles, Bylaws, Association Rules or Design Guidelines, by voluntary waiver of, or suspension or restriction of such Member's right to, the use and enjoyment of the Common Areas, or the abandonment of such Member's Lot or membership.

### **3. ASSOCIATION**

3.1 Purpose of Association. The Association has been, or will be, incorporated as a non-profit corporation to serve as the governing body for all the Members for the protection, improvement, alteration, maintenance, repair, replacement, administration and operation of the Project, the assessment of expenses, payment of losses, disposition of casualty insurance proceeds, and other matter as provided in this Declaration, the Articles, Bylaws, Association Rules or Design Guidelines. The Association shall not be deemed to be conducting a business of any kind, and all funds received by the Association shall be held and applied by it for the Members in accordance with the provisions of this Declaration, the Articles and the Bylaws.

3.2 Membership in Association. Each Owner shall be a Member of the Association so long as he shall be an Owner and such membership shall automatically terminate when he ceases to be an Owner. A membership in the Association shall not be transferred, pledged or alienated in any way, except as herein

expressly provided. A Membership shall automatically be transferred to the new Owner upon the transfer of the Lot to which it appertains (and then only to such transferee), whether by sales, interstate succession, testamentary disposition, foreclosure of a Mortgage or other legal process transferring fee simple title to such Lot. Any attempt to make a prohibited transfer of a membership in the Association is void and will not be recognized by or reflected upon the books and records of the Association. In the event any Member fails or refuses to transfer or surrender the membership registered in his name, as herein required, the Association shall have the right to record a transfer upon the books of the Association and issue a new membership as appropriate, and thereupon the old membership outstanding in the name of said Member shall be null and void as though the same had been surrendered.

### 3.3 Voting Rights.

3.3.1 Each Membership in the Association shall be entitled to one vote. In the event that more than one Person holds an interest in any Lot, all such Persons shall be deemed to be Members but they shall collectively hold only a single Membership. The voting for such Lot shall be as they determine among themselves, but in no event shall the vote be split or more than one vote cast with respect for any such Lot. If such Persons are unable to agree on how their single vote is to be cast, their vote shall not be counted.

3.3.2 Notwithstanding the foregoing, in the event that a Member has granted an irrevocable proxy or otherwise pledged the voting right appurtenant to the Membership with respect to his Lot to a Mortgagee as additional security, only the vote of such Mortgagee will be recognized in regard to such special matters if a copy of such proxy or other instrument pledging such vote has been filed with the Association. In the event that more than one such instrument has been filed, the Association shall recognize the rights of the first Mortgagee to so file, regardless of the priority of the Mortgages themselves.

3.4 Assignment of Declarant's Voting Rights. If any lender to whom the Declarant has assigned, or hereafter assigns, as security all or substantially all of its rights under this Declaration succeeds to the interests of the Declarant by virtue of said assignment, the absolute voting right of the Declarant as provided in Section 3.17 shall not be terminated thereby, and such lender shall hold the Declarant's memberships and voting rights on the same terms as they were held by Declarant pursuant hereto.

### 3.5 Board of Directors.

3.5.1 The affairs of the Association shall be conducted by the Board as herein provided and in accordance with the Articles and Bylaws. Except for directors elected by Declarant, each director shall be a Member or the spouse of a Member. If a director shall cease to meet such qualifications during his term, he will thereupon cease to be a director and his place on the Board shall be deemed vacant.

3.5.2 Declarant shall have the absolute power and right to appoint and remove the members of the Board until the expiration of Declarant's control of the Association pursuant to Section 3.17.

3.5.3 Following the expiration of Declarant's control of the Association pursuant to Section 3.17, all or any member of the Board may be removed from office at any time by action of the Members, as follows. Upon the presentation to the President of a petition duly executed by 10% of all of the Members in favor of the removal from office of the member or members of the Board therein named, a referendum of the Members shall be promptly held to determine whether such member or members of the Board should be removed from office. Upon the affirmative vote of two-thirds of all of the Members to remove such member or members of the Board from office, such member or members shall be deemed removed from office. Any vacancy on the Board created by the removal of a member of the Board as herein provided shall be filled by an election of all of the Members in the manner provided in the Articles or Bylaws for the election of directors.

3.6 Duties and Powers of the President.

3.6.1 To the extent not prohibited by law, or as otherwise herein expressly limited, including without limitation Section 3.6.2, the President of the Association shall be empowered to exercise control over the affairs of the Association and to act on behalf of, and bind, the Association in every instance wherein the Association is required or permitted to take any action. The action of the President shall at all times be subject to the review of the Board.

3.6.2 Notwithstanding anything in Section 3.6.1 to the contrary, the President shall not have the power to borrow any funds on behalf of the Association, make any expenditures on behalf of the Association which are, in the aggregate, more than 5% in excess of the total amount of the Association's budget, or increase the amount of or levy any Assessment (except a Special Assessment), without the prior approval of the Board.

3.6.3 The President may appoint such assistants as he deems necessary or appropriate. No compensation shall be paid to any assistant except as provided in the Association's budget or as otherwise approved by the Board.

3.6.4 Any right or power herein given or delegated to the President which cannot be exercised by the President, whether by reason of law or otherwise, shall be deemed to be a right or power to be exercised by the Board.

3.7 President's Determination Binding. In the event of any dispute or disagreement between any Members, or any other Persons subject to this Declaration, relating to the Project, or any question of interpretation or application of the provisions of this Declaration, the Articles, Bylaws, Association Rules or Design Guidelines, the determination thereof by the President shall be final and binding on each and all of such Members or Persons. The President may, at his election, delegate the resolution of such dispute or disagreement to the Board or a committee appointed by the President.

3.8 Approval of Members. Unless elsewhere otherwise specifically provided in this Declaration, the Articles or Bylaws, any provision of this Declaration, the Articles or Bylaws which requires the Vote or written assent of the Members of the Association shall be deemed satisfied by the following:



(a) The vote in person or by proxy of the specified percentage of Members at a meeting duly called and noticed pursuant to the provisions of the Articles or Bylaws dealing with annual or special meetings of the Members.

(b) Written consents signed by the specified percentage of Members as provided in the Bylaws.

(c) If no percentage of Members is otherwise specified, then the vote or written assent of a Majority of Members shall be required.

3.9 Additional Provisions in Articles and Bylaws. The articles and Bylaws may contain any provision relating to the conduct of the affairs of the Association and the rights and powers of its directors, officers, employee, agents and members not inconsistent with law or this Declaration.

3.10 Association Rules. The Board shall be empowered to adopt, amend or repeal such rules and regulations as it deems reasonable and appropriate (the "Association Rules"), binding upon all Persons subject to this Declaration and governing the use and/or occupancy of the Common Areas or any other part of the Project. The Association Rules may include the establishment of a system of fines and penalties enforceable as Special Assessments. The Association Rules shall govern such matters in furtherance of the purposes of the Association, including, without limitation, the use of the Common Areas; provided, however, that the Association Rules may not discriminate among Members except as expressly provided or permitted herein, and shall not be inconsistent with this Declaration, the Articles, Bylaws or Design Guidelines. A copy of the Association Rules as they may from time to time be adopted, amended or repealed or a notice setting forth the adoption, amendment or repeal of specific portions of the Association Rules shall be delivered to each Member in the same manner established in this Declaration for the delivery of notices. Upon completion of the notice requirements, said Association Rules shall have the same force and effect as if they were set forth in and were part of this Declaration and shall be binding on the Members, and all other Persons having any interest in, or making any use of, the Property, whether or not actually received thereby. The Association Rules, as adopted, amended or repealed, shall be available at the principal office of the Association to each Member or other Person reasonably entitled thereto, upon request. In the event of any conflict between any provision of the Association Rules and any provisions of this Declaration, or the Articles, Bylaws or Design Guidelines the provisions of the Association Rules shall be deemed to be superseded by the provisions of this Declaration, the Articles, Bylaws or Design Guidelines to the extent of any such conflict.

3.11 Indemnification. To the fullest extent permitted by law, every director and every officer of the Association, and the members of the Design Review Committee, and Declarant (to the extent a claim may be brought against Declarant by reason of its appointment, removal or control over members of the Board or the Design Review Committee) shall be indemnified by the Association, and every other person serving as an employee or direct agent of the Association, or on behalf of the Association as a member of a committee or otherwise, may, in the discretion of the Board, be indemnified by the Association, against all expenses and liabilities, including attorney's fees, reasonably incurred by or imposed upon him in connection with any proceeding to which he may be a party, or in which he may become involved, by reason of his being or having serviced in such capacity on behalf of the Association (or in the case of Declarant by reason of having appointed, removed or controlled or failed to control members of the Board or the Design Review Committee), or any settlement thereof, whether or not he is a director, officer or member of the Design Review Committee or serving in such other specified capacity

at the time such expenses are incurred, provided that the Board shall determine, in good faith, that such officer, director, member of the Design Review Committee or other person, or Declarant, did not act, fail to act, or refuse to act willfully or with gross negligence or fraudulent or criminal intent in the performance of his duties. The foregoing rights of indemnification shall be in addition to and not exclusive of all other rights to which such persons may be entitled at law or otherwise.

3.12 Non-Liability of Officials. To the fullest extent permitted by law, neither Declarant, the President, the Board, the Design Committee or any other committees of the Association nor any member thereof, nor any directors or officers of the Association, shall be liable to any Member, Occupant, the Association or any other Person for any damage, loss or prejudice suffered or claimed on account of any decision, approval or disapproval of plans or specifications (whether or not defective), course of action, act, inaction, omission, error, negligence or the like made in good faith and which Declarant, the President, the Board, of such committees reasonably believed to be within the scope of their respective duties.

3.13 Easements. In addition to the blanket easements granted in Section 4.1, the Association is authorized and empowered to grant upon, across or under real property owned or controlled by the Association such permits, licenses, easements and rights-of-way for sewer lines, water lines, underground conduits, storm drains, television cable and other similar public or private utility purposes, roadways or other purposes as may be reasonably necessary and appropriate for the orderly maintenance, preservation and enjoyment of the Common Areas or for the reservation of the health, safety, convenience and welfare of the Members, provided that any damage to a Lot resulting from such grant shall be repaired by the Association at its expense.

3.14 Accounting. The Association, at all times, shall keep or cause to be kept true, and correct records of account in accordance with generally accepted accounting principles, and shall have available for the inspection of all Members at reasonable times during regular business hours, such books which shall specify in reasonable detail all expenses incurred and funds accumulated from assessments or otherwise.

3.15 Records. The Association shall, upon reasonable written request and during reasonably business hours, make available for inspection by each Member the books, records and financial statements of the Association together with current copies, as amended from time to time, of this Declaration and the Articles, Bylaws, Association Rules Design Guidelines. Declarant shall be under no obligation to make its own books and records available for inspection by any Member or other Person.

3.16 Managing Agent. All powers, duties and rights of the Association, the President or the Board, as provided by law and herein, may be delegated to a managing agent under a management agreement; provided, however, that no such delegation shall relieve the Association of its obligation to perform any such delegated duty. Any agreement for professional management, or any other contract providing for services of Declarant or any other party, shall not exceed a term of three years, which term may be renewed by agreement of the parties for successive one-year periods, and shall further provide for termination by either party with or without cause and without payment of a termination fee upon 90 days' written notice.

3.17 Declarant's Control of Association. Notwithstanding anything in this Declaration to the contrary, Declarant shall maintain absolute control over the Association, including appointment of the President, the members of the Board, and the members of the Design Review Committee, until the sale or other disposition of the last Lot owned by Declarant, other than in connection with an assignment by Declarant of all or substantially all of its rights under this Declaration (including a pledge or assignment by Declarant to any lender as security). Declarant voluntarily may (but shall not be required to) permit the Members to assume control of the Association at any time.

#### 4. EASEMENTS

4.1 Blanket Easements. There is hereby created a blanket easement upon, across, over and under the Property for ingress and egress (over existing roadways), installing, constructing, replacing, repairing, maintaining and operating all utilities, including but not limited to water, sewer, gas, telephone, electricity, television cable, security systems, and communication lines and systems, and in addition thereto for the use of emergency vehicles of all types. By virtue of the easement, it shall be expressly permissible for the providing utility company to erect (including without limitation underground installation) and maintain the necessary facilities, wires, circuits, conduits, cables and related appurtenances, facilities and equipment on the Property. Notwithstanding anything to the contrary contained in this Section, no easements shall be created nor shall any sewers, electrical lines, water lines or other facilities for utilities be installed or relocated except as initially created and approved by Declarant or thereafter created or approved by the Association. This provision shall in no way affect any other recorded easements on the Property.

4.2 Use of Common Areas. Except for the use limitation provided in section 4.3, each Member shall have the non-exclusive right to use the Common Areas in common with all other Members as required for the purposes of access and ingress and egress to (and use, occupancy and enjoyment of) any Lot owned by such Member of Common Areas available for the use of said Member. Such right to use the Common Areas for purposes of access and ingress and egress shall, subject to the Association Rules, extend to each Member, Occupant and the agents, servants, tenants, family members and invitees of each Member. Such right to use the Common Areas shall be perpetual and appurtenant to each respective Lot, subject to and governed by the Provisions of this Declaration, the Articles, Bylaws and Association Rules and such reasonable limitations and restrictions as may from time to time be contained therein.

4.3 Exclusive Use Rights. Certain areas of the Common Areas may be reserved by the Board for the exclusive control, possession and use of the Owner of a Lot. If such an area serves as access to and from two Lots, the Owners of the two Lots shall have joint control, possession and use of such portion of said areas as reasonably serves both Lots. The exclusive use rights created herein are subject to the blanket utility easement, maintenance, and architectural and landscape control provisions contained in this Declaration and to such reasonable rules and regulations with respect to possession, control, use and maintenance as the Association may from time to time promulgate. Easements are hereby created in favor of and running with each Lot having such an area for the exclusive control and use of each such area. Each Owner, by accepting title to a lot, and each Member shall be deemed to have further ratified the easements and rights to exclusive use created by this Section 4.3.

4.4 Estate Wall Easement. There is hereby created an affirmative easement in favor of the Association, its employees and agents, upon, over and across each Lot adjacent to the perimeter boundaries of the Project for reasonable ingress, egress, installation, replacement maintenance and repair of the estate wall located on the easement therefor as show on the Plat.

4.5 Declarant Easement. There is herby created an affirmative, non-exclusive easement in favor of Declarant for ingress and egress over all Common areas, including without limited Private Streets, and for the right to go over, under and across, and to enter and remain upon all Common Areas for all purposes reasonably related to Declarant's rights and responsibilities hereunder including without limitation the development, advertisement and sale of the Property and any portion thereof. The easement created in this Section 4.5 shall continue until expiration of Declarant's control of the Association pursuant to Section 3.17.

## **5. ASSESSMENTS**

5.1 Creation of Lien and Personal Obligation. Each member, by acceptance of a deed or other conveyance of an interest in a Lot or by acceptances of his membership, is deemed to covenant and agree to pay to the Association: Regular Assessments, Special Assessments, Capital Improvement Assessments, and Reconstruction Assessments, if applicable, such Assessments to be established and collection from time to time as provided in this Declaration. The Assessments, together with interested thereon, late charges, attorneys' fees and court costs, and other costs of collection thereof, as hereinafter provided, shall be a continuing lien upon such Member's Lot (or combined Lots as provided in Section 11.14) against which the Assessments are made. Each Assessment, together with such interest and other costs, shall also be the personal obligation of the Member to whom such Assessment relates. The personal obligation for delinquent payments shall not pass to a Member's successor unless expressly assumed by him. The obligation of all Members who are the Owners of the lots to which such membership appertains for the payment of Assessments shall be joint and several.

5.2 Purpose of Assessments. The Assessments levied by the Association shall be used to promote the recreation, health, safety and welfare of the Members, to enhance the quality of life within the Project, to preserve the value of the Property, to pay the costs of administration of the Association and all other common Expenses, or to otherwise further the interests of the Association. Where a Lot, has separate gas, electrical, sewer or other similar utilities service, the cost of the same shall be the personal obligation of each Member. Maintenance of sewer lines serving a single Lot shall be the responsibility of the Member owning such lot.

### **5.3 Regular Assessments.**

5.3.1. Each Owner shall pay as his Regular Assessment such Owner's Proportionate Share of the Common Expenses. Except as otherwise specifically provided herein, payment of Regular Assessments shall be in such amounts and at such times as may be provided in the Articles and Bylaws or as determined by the Association.

5.3.2 Not later than 60 days prior to the beginning of each fiscal year of the Association, the Association shall make available for review by each Member at the Association's office during reasonable times a pro forma operating statement or budget for the upcoming fiscal year which shall, among other things, estimate the total Common Expenses to be incurred for such fiscal year. The Association shall at that time determine the amount of the Regular Assessment to be paid by each Owner and notify the Owner thereof. Each Owner shall thereafter pay to the Association his Regular Assessment in monthly installments. Each such installment shall be due and payable on the date set forth in the written notice sent to Members.

5.3.3 If the Association determines that the total Regular Assessments for the current year are, or will become, inadequate to meet all Common Expenses for whatever reason, including Common Expenses in excess of the estimated Common Expenses used in preparation of the Association's budget for that year, the President shall then immediately determine the approximate amount of such inadequacy and, with the consent of the Board, issue a supplemental estimate of the Common Expenses and determine the revised amount of Regular Assessments to be paid by each Owner for the balance of the year, and the date or dates when due. If the estimated total Regular Assessments for the current year proves to be excessive in light of the actual Common Expenses, the Association may, at the discretion of the Board, retain such excess as additional working capital or reserves, reduce the amount of the Regular Assessments for the succeeding year, or abate collection of Regular Assessments for such period as it deems appropriate. No reduction or abatement of Regular Assessments because of any such anticipated surplus may diminish the quantity or quality of services upon which the Common Expenses for the year in question are based.

5.4 Special Assessments. Special Assessments shall be levied by the Association against a Member and/or an Owner and his Lot to reimburse the Association for:

5.4.1 Costs incurred in bringing a Member or an Owner and his Lot into compliance with the provisions of this Declaration, or the Articles, Bylaws, Association Rules of Design Guidelines;

5.4.2 Any other charge designated as a Special Assessment in this Declaration, the Articles, Bylaws or Association Rules;

5.4.3 Fines levied or fixed by the Board under Section 10.8 or as otherwise provided herein; and

5.4.4 Attorneys' fees, interest and other costs or charges provided to be paid as, or which are incurred in connection with, a Special Assessment in accordance with this Declaration, the Articles, Bylaws, Association Rules or Design Guidelines.

In the event the Association undertakes to provide materials or services which benefit individual Members or Lots and which can be accepted or not by individual Members, such Members, in accepting such materials or services agree that the costs thereof shall be a Special Assessment.

5.5 Capital Improvement Assessments. In addition to the regular Assessments, the Association may levy in any calendar year a Capital Improvement Assessment applicable to that year only, for the purpose of defraying, in whole or in part, any action or undertaking on behalf of the Association in connection with , or the cost of, any construction or replacement of a described capital improvement upon the Common Areas, including the necessary fixtures and personal property related thereto, to the extent the same is not covered by the provisions affect ting Reconstruction Assessments in Section 7. Without the vote of Majority of Members, the Association shall not impose a Capital Improvement Assessment in any amount which in any one year exceeds five percent of the estimated annual Common Expenses. Any reserves collected by the Association for the future maintenance and repair of the Common Areas, or any portion thereof, shall not be included in determining the foregoing limitation of any annual Capital Improvement Assessment. All amounts collected As Capital Improvement Assessments may only be used for capital improvements and shall be deposited by the Association in a separate bank account to be held in trust for such purposes. Said funds shall not be commingled with any other funds of the Association and shall be deemed a contribution to the capital account of the Association by the Members.

5.6 Uniform Assessment. The Regular Assessment and Capital Improvement Assessment for each Owner shall be uniform.

5.7 Exempt Property. All properties dedicated to and accepted by, or otherwise owned or acquired by, a public authority shall be exempt from the Assessments created herein.

5.8 Date of Commencement of Regular Assessments. The Regular Assessments shall commence as to each particular Member on the first day of the month following the date of conveyance to the Owner of the Lot to which the Membership appertains.

5.9 Time and Manner of Payment; Late Charges and Interest. Assessments shall be due and payable by the Members in such manner and at such times as the Association shall designate. If not paid within ten days after its due date, each such Assessment shall have added to it a late charge equal to 10% of the amount of Assessment and thereafter bear interest at the Default Rate of Interest until paid. The Association may, in its discretion and without waiving the imposition of a late charge or interest in any other instance, waive the late charge and/or interest in any particular instance. A delinquent Member shall also be liable for attorneys' fees and other related costs incurred by the Association as a result of such delinquency, and if any suit, action or arbitration proceeding is brought to collect any such Assessment or charge, then there shall be added to the amount thereof costs of suit and reasonable attorneys' fees to be fixed by the court and included in any judgment or award rendered thereon.

5.10 No Offsets. Assessments shall be payable in the amount specified in the Assessment C. Notice of Assessment and no offsets against such amount shall be permitted for any reason, including, without limitation, a claim that (a) the Association, the Board, the President or the Developer is not properly exercising its duties and powers as provided in this Declaration; (b) Assessment for any period exceed Common Expenses; or (c) a member has made, and elects to make, no use of the Common Areas.

5.11 Homestead Waiver. Each Owner and Member, to the extent permitted by law, hereby waives, to the extent of any liens created pursuant to this Declaration, whether such liens are now in

existence or are created at any time in the future, the benefit of any homestead or exemption laws of the State of Arizona now in effect, or in effect from time to time hereafter.

5.12 Reserves. The reserves included in the Common Expenses which are collected as part of the Regular Assessments shall be deposited by the Association in a separate bank account to be held in trust for the purposes for which they are collected and are to be segregated from and not commingled with any other funds of the Association, except to the extent that the Association's regularly employed accountant deems it desirable to do otherwise on the basis of standard account principles in similar contexts or the laws, tax or otherwise, of the State of Arizona or the United States relating to non-profit corporations or homeowners associations. Such reserves shall be deemed a contribution to the capital account of the Association by the Members. The responsibility of the Board (whether while controlled by Declarant or the Members) shall be only to provide for such reserves as the Board in good faith deems reasonable, and neither the Board or any member thereof shall have any liability to any Member or to the Association if such reserves prove to be inadequate.

5.13 Subordination of Lien. Any lien which arises against a Lot by reason of the failure or refusal of a Member to make timely payment of any Assessment shall be subordinate to the lien of a prior recorded First Mortgage on the Lot, acquired in good faith and for value, except for the amount of the unpaid Assessment which accrues from and after the date on which a First Mortgagee comes into possession of or acquires title to the Lot, whichever occurs first (together with any interest, costs, reasonable attorneys' fees and any late charges related thereto), and if any lien for unpaid Assessments prior to the date the First Mortgagee comes into possession of or acquires title to the Lot has not been extinguished by the process by which such First Mortgagee came into possession of or acquired title to the Lot, such First Mortgagee shall not be liable for unpaid Assessments arising prior to the aforesaid date and upon written request to the Association by such First Mortgagee, such lien shall be released in writing by the Association. Any unpaid Assessments which are extinguished pursuant to the foregoing sentence shall continue to be the personal obligation of the delinquent Member and may also be re-allocated by the Association among all Members as part of the Common Expenses.

5.14 Certificate of Payment. Any person acquiring an interest in any lot shall be entitled to a certificate from the Association setting forth the amount of due but unpaid Assessments related to such Lot, if any, and such person shall not be liable for, nor shall any lien attach to the Lot in excess of, the amount set forth in the certificate, except for Assessments which occur or become due after the date thereof and any interest, costs, attorneys' fees and any late charges related to such Assessments. Nothing herein shall be construed as requiring that the Association take any action required hereunder in any particular instance, but the failure of the Association to take such action at any time shall not constitute a waiver of the right to take such action at a later time or in a different instance.

5.15 Enforcement of Lien. The lien provided for in this Section 5 may be foreclosed by the Association in any manner provided or permitted for the foreclosure of realty mortgages or deeds of trust in the State of Arizona. All of the provisions of this Section 5 relating to the enforcement of the lien provided for herein (including without limitation the subordination provisions in Section 5.13 or the provisions of this Section 5.15) shall apply with equal force in each other instance provided for in this Declaration, the Association Rules or Design Guidelines wherein, it is stated that payment of a particular

Assessment, charge of other sum shall be secured by the lien provided for in this Section 5. Nothing herein shall be construed as requiring that the Association take any action required hereunder in any particular instance, and the failure of the Association to take such action at any time shall not constitute a waiver of the right to take such action at a later time or in a different instance.

5.16 Pledge of Assessment Rights as Security. The Association shall have the power to pledge the right to exercise its assessment powers and rights provided for in this Declaration as security for any obligation of the Association. The Association's power to pledge its assessment powers shall include, but not be limited to, the ability to make an assignment of Assessments which are then payable to, or which will become payable to, the Association; which assignment may then be presently effective but shall allow said Assessments to continue to be paid to the Association and used by the Association as set forth in this Declaration, unless and until the Association shall default on its obligations secured by said assignment.

5.17 Exemption of Unsold Lots. Notwithstanding anything in this Section 7 to the contrary, no Assessments shall be levied upon, or payable with respect to, any Lot owner by Declarant, or an affiliate of Declarant or any partner (or such partner's successors, heirs or devisees) in Declarant to whom the Lot has been distributed by Declarant (as distinguished from having been purchased by the partner), or by any trustee for any of the aforesaid Person, until such Lot has been conveyed by Declarant (or said affiliate, partner or trustee) to a non-affiliated purchaser thereof.

5.18 Buyer Resale Assessment. To ensure that the Association will have adequate funds for operating, maintenance, and capital improvement reserves, to meet its expenses, to purchase necessary equipment or services, or for any other proper Association purpose, in addition to the Assessments set forth in this Article 5, effective as of the date of the recording of this amendment, each Lot conveyed by voluntary sale or transfer (including buyers under agreements for sale), shall be subject to a Buyer Resale Assessment ("Resale Assessment"), payable to the Association in the amount of the \$5,000.00. 2 The Resale Assessment shall be treated as an Assessment pursuant to Article 5 and secured by the lien for Assessments as set forth in Section 5.1 and shall burden the Lot after conveyance of ownership rights in the Lot. The conveyee [the buyer] shall be liable for payment of the Resale Assessment. Unless otherwise directed by the conveyor and conveyee of a Lot, the Association shall collect the Resale Assessment through the close of escrow if the Association is notified of the conveyance and if a title company is used to facilitate a particular conveyance of a Lot. Notwithstanding the above, the conveyor and conveyee may allocate the payment of the Resale Assessment through the escrow process between the conveyor and conveyee in any manner. The failure of the Association to be notified of a conveyance shall not affect the obligation to pay the entire Resale Assessment and shall not be in derogation of the lien against the Lot for the Resale Assessment. If the Resale Assessment is not paid within thirty (30) days of the recording date of the deed or agreement for sale, late charges and other remedies of the Association shall apply according to the Declaration and Arizona law. Funds paid to the Association pursuant to this paragraph may be used by the Association for payment of operating expenses or any other purpose permitted under this Declaration. Resale Assessments made pursuant to this paragraph shall be nonrefundable and shall not be offset or credited against or considered as an advance payment of any other Assessments levied by the Association pursuant to this Declaration or any other obligations arising under this Declaration. No Resale Assessment shall be payable with respect to: (1) the transfer or conveyance of a Lot by devise or intestate succession; (2) a transfer or conveyance of a Lot for estate planning purposes; (3) a transfer or



conveyance to a corporation, partnership or other entity in which the grantor owns a majority interest; (4) a conveyance of an undivided interest in a Lot to the then-existing co-owners of the Lot, unless the Board determines, in its sole discretion, that a material purpose of the transfer or conveyance was to avoid payment of the Resale Assessment in which event a Resale Assessment shall be payable with respect to such transfer or conveyance. The Resale Assessment shall also not apply to involuntary transfers, including but not limited to, deeds after execution sales or trustee's deeds after trustee's sales. The Board of Directors (at its sole discretion and by a majority vote) may increase the Resale Assessment percentage by up to 30% of the prior year's Resale Assessment. The Resale Assessment may only be increased by a greater percentage provided that a majority of the Lot Owners approve of the percentage increase.

## **6. INSURANCE.**

6.1 Authority to Purchase. The Association shall purchase and maintain certain insurance upon the Common Areas including but not limited to the insurance described in Section 6.3. Such policies, and endorsements thereon, or copies thereof shall be deposited with the Association. The Association shall advise the Member of the coverage of said policies in order to permit the Members to determine which particular items are included within the coverage so that the Members may insure themselves as they see fit if certain items are not insured by the Association.

6.2 Member's Responsibility. It shall be each Member's responsibility to provide for himself insurance on his own Lot, his additions and improvements thereto, furnishings and personal property therein, his personal liability to the extent not covered by the public liability insurance obtained by the Association and such other insurance which is not carried by the Association as the Member desires. No Member shall maintain any insurance, whether on his Lot or otherwise, which would limit or reduce the insurance proceeds payable under the casualty insurance maintained by the Association in the event of damage to the improvements or fixtures on the Common Areas.

6.3 Coverage. The Association shall maintain and pay for policies of insurance as follows:

6.3.1 A multi-peril type policy covering all of the Common Areas providing, as a minimum, fire and extended coverage, and all other coverage in kinds and amounts customarily acquired or required for projects similar in construction, location and use including, without limitation, perils normally covered by an "all-risk" policy, in an amount determined by the Association with agreed amount, inflation guard and construction code endorsements, if available.

6.3.2 A policy of comprehensive public liability insurance covering all of the Common Areas in an amount determined by the Association but not less than \$1,000,000.00 per occurrence, for personal injury or death and/or property damage. The scope of such coverage shall include all other coverage in the kinds and amounts customarily acquired or required for projects similar in construction, location and use, including without limitation, liability for not owned and hired automobiles, liability for property of others, liability arising in connection with the operation, maintenance or use of the Common Areas, liability assumed by contract or contractual liability, and liability arising out of any employment contracts of the Association.

6.3.3. The Association shall, at its election, obtain fidelity bond coverage against dishonest acts on the part of directors, officers, managers, trustee, agents, employees or volunteers responsible for handling funds belonging to or administered by the Association. If funds of the Association are handled by a management agent, then fidelity bond coverage shall also be obtained for the officers, employees, or agents thereof handling or responsible for Association funds. The fidelity bond or insurance must name the Association as the named insured and shall be written to provide protection in an amount not less than the lesser of (a) one-half times the Association's estimated annual operating expenses and reserves, (b) a sum equal to three months' aggregate Regular Assessments plus reserves, or (c) the estimated maximum amount of funds, including reserves, in the custody of the Association (and its management agent) at any one time. In connection with such coverage, an appropriate endorsement to the policy to cover any person who serves without compensation shall be added if the policy would not otherwise cover volunteers. Such coverage must name the Association as an obligee.

6.3.4. A worker's compensation policy, if necessary to meet the requirements of law.

6.3.5 A policy of "directors and officers" liability insurance.

6.3.6 Such other insurances, and in such amounts, as the Association shall determine from time to time to be desirable.

6.4 Required Provisions. The insurance policies purchased by the Association shall, to the extent reasonable and available, contain the following provisions:

6.4.1 The coverage afforded by such policies shall not be brought into contribution or proration with any insurance which may be purchased by any Member or First Mortgagee.

6.4.2 The conduct of any one or more Members shall not constitute grounds for avoiding liability on any such policies.

6.4.3 There shall be no subrogation with respect to the Association, its agents or employees, Members, or members of their households or families and employees, and each Mortgagee of all or any part of the Property or of any Lot, or the policy(ies) should name said persons as additional insureds; and, each policy must contain a waiver of any defenses based on co-insurance or invalidity arising from the acts of the insured.

6.4.4 A "severability of interest" endorsement shall be obtained which shall preclude the insurer from denying the claim of a Member because of the conduct or negligent acts of the Association and its agents or other Members.

6.4.5 Any "other insurance" clause shall exclude insurance purchased by Members or First Mortgagees.

6.4.6 Coverage must not be Co-prejudiced by (a) any act of neglect of Members when such act or neglect is not within the control of the Association or (b) any failure of the Association to

comply with any warranty or condition regarding any portion of the Project over which the Association has no control.

6.4.7 Coverage may not be cancelled or substantially modified without at least 30 days' (or such lesser period as the Association may reasonably deem appropriate) prior written notice to the Association.

6.4.8 Any policy of property insurance which gives the carrier the right to elect to restore damage in lieu of a cash settlement must provide that such election is not exercisable without the prior written approval of the Association, or when in conflict with the insurance trust provisions contained herein or any requirement of law.

6.4.9 A recognition of any insurance trust agreement entered into by the Association.

6.4.10 Each hazard insurance policy shall be written by a hazard insurance carrier which has a financial rating as designated in Best's Key Rating Guide of Class VI or better, or if such rating service be discontinued, an equivalent rating by a successor thereto or a similar such rating service. Each insurance carrier must be specifically licensed or authorized by law to transact business within the State of Arizona.

6.4.11 Policies shall not be utilized where, under the terms of the carrier's charter, bylaws or policy, contributions may be required from or assessments may be made against the Members or the Association or loss payments are contingent upon action by the carrier's board of directors, policyholders, or members.

6.5 Non-Liability of Association/Board/President. Notwithstanding the duty of the Association to obtain insurance coverage as state herein, neither the Association nor any Board members nor the President of the Association nor Declarant shall be liable to any Member, Mortgagee or other Person if any risks or hazards are not covered by insurance or if the amount of insurance is not adequate, and it shall be the responsibility of each Member to ascertain the coverage and protection afforded by the Association's insurance and to procure and pay for such additional insurance coverage and protection as the Member may desire.

6.6 Premiums. Premiums upon insurance policies purchased by the Association shall be paid by the Association as a Common Expense, except that the amount of increase over any annual or other premium occasioned by the use, misuse, occupancy or abandonment of a Lot or its appurtenance, or of the Common Areas, by a Member, shall be assessed against that particular Member.

6.7 Insurance Claims. The Association if hereby irrevocably appointed and authorized, subject to the provisions contained herein, to adjust all claims arising under insurance policies purchases by the Association and to execute and deliver releases upon the payment of claims and to do all other acts reasonably necessary to accomplish any of the foregoing. The President of the Association has full and complete power to act for the Association in this regard and may, at his discretion, appoint an authorized

representative, or enter into an insurance trust agreement wherein the trustee shall have authority, to negotiate losses under any policy purchased by the Association.

6.8 Benefit. Except as otherwise provided herein, all insurance policies purchased by the Association shall be for the benefit of, and any proceeds of insurance received by the Association or any insurance trustee shall be held or disposed of in trust for, the Association of the Members, as their interests may appear.

## **7. DAMAGE AND DESTRUCTION OF COMMON AREAS.**

7.1 Duty of Association. In the event of partial or total destruction of the Common Areas, or any improvement thereon, it shall be the duty of the Association to restore and repair the same as promptly as practical pursuant to this Section 7. The proceeds of any casualty insurance maintained pursuant to this Declaration should be used for such purpose, subject to the prior rights of Mortgagees whose interest may be protected by said policies.

7.2 Automatic Reconstruction. In the event that the amount available from the proceeds of any insurance policies for such restoration and repair, together with any uncommitted or unreserved capital of the Association, shall be at least 75% of the estimated costs of restoration and repair, a Reconstruction Assessment against each Member in his Proportionate Share may be levied by the Association to provide the necessary funds for such reconstruction in excess of the amount of the funds available for such purpose. The Association shall thereupon cause the damaged or destroyed Common Areas to be restored to substantially the condition the Common Areas were in prior to the destruction or damage.

7.3 Vote of Members. In the event that the amount available from the proceeds of any insurance policies for such restoration and repair, together with any uncommitted or unreserved capital of the Association, shall be less than 75% of the estimated cost of restoration and repair, the Common Areas shall be replaced or restored unless two-thirds of the Members, at a special meeting held for such purpose, disapprove of such replacement or restoration. If the Members do not disapprove the proposed replacement or restoration, the Association shall levy a Reconstruction replacement or restoration, the Association shall levy a Reconstruction Assessment against each Member in its Proportionate Share and cause the damaged or destroyed Common Areas to be restored as closely as practical to its former condition prior to the destruction or damage. If the Members disapprove of the repair or restoration of the damaged or destroyed improvement on the Common Areas as provided above, the Common Areas so damaged or destroyed shall be cleared and landscaped for community park use or other community use determined by the Association and the costs thereof shall be paid with the insurance proceeds.

7.4 Excess Insurance Proceeds. In the event any excess insurance proceeds remain after any reconstruction by the Association pursuant to this Section, the Association, in its sole discretion, may retain such sums in the general funds of the Association or may distribute all or a portion of such excess to the Members in their Proportionate Shares, subject to the prior rights of Mortgagees whose interest

may be protected by the insurance policies carried by the Association. The rights of a Member or the Mortgagee of a Lot as to such distribution shall be governed by the provisions of the Mortgage encumbering such Lot.

7.5 Use of Reconstruction Assessments. All amounts collected as Reconstruction Assessments shall only be used for the purposes set forth in this Section 7 and shall be deposited by the Association in a separate bank account to be held in trust for such purposes. Such funds shall not be commingled with any other funds of the Association by the Members. Any Reconstruction Assessment shall be secured by the lien provided for in Section 5.

7.6 Contract for Reconstruction. In the event the Association undertakes the repair and restoration of the Common Areas, the Association shall contract with a licensed contractor or contractors who may be required to post a suitable performance or completion bond. The contract with such contractor or contractors shall provide for the payment of a specified sum for completion of the work described therein and shall provide for periodic disbursements of funds, which shall be subject to the prior presentation of an architect's or similar, certificate containing such provisions as may be appropriate in the circumstances and deemed suitable by the Association.

7.7 Insurance Proceeds Trust. Upon receipt by the Association of any insurance proceeds, the Association may cause the insurance proceeds to be paid directly to a bank, savings and loan association, or trust company located in Maricopa County, Arizona as designated by the Association as trustee (the "Insurance Trustee"). Such funds shall be received, held and administered by the Insurance Trustee subject to a trust agreement consistent with the provisions of this Declaration and which shall be entered into between the Insurance Trustee and the Association. Disbursements to contractors performing any repair or reconstruction upon the Property shall be made periodically as the work progresses in a manner consistent with procedures then followed by product lending institutions in Maricopa County, Arizona.

## **8. EMINENT DOMAIN.**

8.1 Definition of Taking. The term "taking" as used in this Section 8 shall mean condemnation by eminent domain or sale under threat of condemnation of all or any portion of the Common Areas.

8.2 Representation in Condemnation Proceedings. In the event of a threatened taking of all or any portion of the Common Areas, the Members hereby appoint the Association through such persons as the Board may delegate to represent all of the Members in connection therewith. The Association shall act in its sole discretion with respect to any awards being made in connection with the taking and shall be entitled to make a voluntary sale to the condemnor in lieu of engaging in a condemnation action.

8.3 Award for Common Areas. Any awards received by the Association on account of the taking of Common Areas shall be paid to the Association. The Association may, in its sole discretion, retain any award in the general funds of the Association or distribute all or any portion thereof to the Members as their interests may appear. The rights of a Member and the Mortgagee of his Lot as to any distribution shall be governed by the provisions of the Mortgage encumbering such Lot.

## **9. MAINTENANCE, REPAIRS AND REPLACEMENTS.**

9.1 Member's Responsibility. Each Member shall furnish and be responsible for, at his own expense, all of the maintenance, repairs and replacements within his own Lot.

9.2 Maintenance of Common Areas. Except as otherwise provided herein to the contrary, maintenance, repairs and replacements of the Common Areas shall be furnished by the Association as part of the Common Expenses, subject to the Bylaws and Association Rules. If, due to the act or neglect of a Member, or the invitee, guest or other authorized visitor of a Member, or an Occupant of such Member's Lot, damage shall be caused to the Common Areas or to a Lot or Lots owned by others, or maintenance, repairs or replacement shall be required which would otherwise be a Common Expense, then such Member shall pay for the damage and for such maintenance, repairs and replacements as may be determined necessary or appropriate by the Association, to the extent not covered by the Association's insurance. Such obligation shall be a Special Assessment secured by the lien provided for in Section 5.

9.3 Right of Access. An authorized representative of the Association, and all contractors, repairmen or other agents employed or engaged by the Association, shall be entitled to reasonable access to each of the Lots as may be required in connection with maintenance, repairs or replacements of or to the Common Areas or any equipment, facilities or fixtures affecting or serving other Lots and the Common Areas, or to perform any of the Association's duties or responsibilities hereunder.

## **10. ARCHITECTURAL AND LANDSCAPE CONTROL.**

10.1 Appointment of Design Review Committee. The Association shall have a Design Review Committee consisting of not less than three nor more than five persons, as specified from time to time in the Design Guidelines by resolution of the Board. Declarant shall initially appoint the members of the Design Review Committee. Declarant shall retain the right to appoint, augment or replace all members of the Design Review Committee until the expiration of Declarant's control of the Association pursuant to Section 3.17 or as otherwise provided in the Design Guidelines. Thereafter, members of the Design Review Committee shall be appointed by the Board. Persons appointed to the Design Review Committee, other than those persons appointed by Declarant, must be Members or satisfy such other requirements as may be set forth in the Design Guidelines. Declarant voluntarily may (but shall not be required to) permit the Members to appoint one or more members of the Design Review Committee at any time.

10.2 Design Guidelines. The Design Review Committee shall establish reasonable procedural rules, regulations, restrictions, architectural standards and design guidelines (the "Design Guidelines"), which the Design Review Committee may, from time to time in its sole discretion, amend, repeal or augment. The Design Guidelines are hereby incorporated herein and shall be deemed to be a part of this Declaration and shall be binding on all Members or other Persons as if expressly set forth herein. A copy of the current Design Guidelines shall at all times be a part of the Association records. The Design Guidelines may include, among other things, those restrictions and limitations set forth below:

10.2.1 Time limitations for the completion, within specified periods after approval, of the improvements for which approval is required pursuant to the Design Guidelines.

10.2.2 Designation of a Building Envelope within a Lot, thereby establishing the maximum developable area of the Lot.

10.2.3 Conformity of completed improvements to plans and specifications approved by the Design Review Committee; provided, however as to purchasers and encumbrancers in good faith and for value, unless notice of noncompletion or nonconformance identifying the violated Lot and specifying the reason for the notice, executed by the Design Review Committee, shall be recorded with the County Recorder of Maricopa County, Arizona, and given to the Member with respect to such Lot within one year of the expiration of the time limitation described in Section 10.2.1 above, or, if later, within one year following completion of the improvement, or unless legal proceedings shall have been instituted to enforce compliance or completion within said one-year period, the completed improvements shall be deemed to be in compliance with plans and specifications approved by the Design Review Committee and in compliance with the architectural standards of the Association and this Declaration but only with respect to purchasers and encumbrancers in good faith and for value.

10.2.4 Such other limitations and restrictions as the Board of Design Review Committee in its reasonable discretion shall adopt, including, without limitation, the regulation of all landscaping (including without limitation absolute prohibition of certain types of landscaping, trees and plants), construction, reconstruction, exterior addition, change or alteration to or maintenance of any building, structure, wall or fence, including without limitation, the nature, kind, shape, height, materials, exterior color, surface texture, and location of any such improvement.

### 10.3 General Provisions.

10.3.1 The Design Review Committee may assess reasonable fees in connection with its review of plans and specifications.

10.3.2 The Design Review Committee may delegate its plan review responsibilities, except final review and approval as may be required by the Design Guidelines, to one or more of its members or architectural consultants retained by the Design Committee. Upon such delegation, the approval or disapproval of plans and specifications by such member or consultants shall be equivalent to approval or disapproval by the entire Design Review Committee.

10.3.3 The address of the Design Review Committee shall be the address established for giving notices to the Association, unless otherwise specified in the Design Guidelines. Such address shall be the place for the submittal of plans and specifications and the place where the current Design Guidelines shall be kept.

10.3.4 The establishment of the Design Review Committee and the procedures herein for architectural approval shall not be construed as changing any rights or restrictions upon Members to maintain or repair their Lots as may otherwise be specified in this Declaration, the Bylaws or Association Rules.

10.3.5 The Design Review Committee shall approve or disapprove any plans and specifications submitted to it in accordance with the Design Guidelines within such period as many be specified in the Design Guidelines.

10.4 Approval and Conformity of Plans. No building, fence, wall or other structure or improvement of whatever type shall be commenced, erected or maintained upon the Property, nor shall there be any addition to or change to the exterior of any residence or other structure or improvement upon a Lot or the landscaping grading or drainage thereof, including, without limitation, the painting (other than painting with the same color of paint as previously existed) of exterior walls, patio covers and fences, except in compliance with plans and specifications therefor which have been submitted to and approved by the Design Review Committee in accordance with the Design Guidelines as to harmony of external design and location in relation to surrounding structures and topography.

10.5 Non-Liability for Approval of Plans. Plans and specifications shall be approved by the Design Review Committee as to style, exterior design, appearance and location, and not approved for engineering design or for compliance with zoning and building ordinances, and by approving such plans and specifications neither the Design Review Committee, the members thereof, the Association, any Member, the President, the Board nor Declarant assumes any liability or responsibility therefor, or for any defect in any structure constructed from such plans and specifications. Neither the Design Review Committee, any member thereof, the Association, the President, the Board or Declarant shall be liable to any Member 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, (c) the development, or manner of development of any property within Desert Skyline Estates, or (d) the execution and filing of an estoppel certificate pursuant to the Design Guidelines, whether or not the facts therein are correct; provided, however, that such action, with the actual knowledge possessed by him, was taken in good faith. Approval of plans and specifications by the Design Review Committee is not, and shall not be deemed to be, a representation or warranty that said plans or specifications comply with applicable governmental ordinances or regulations including, but not limited to, zoning ordinances and building codes.

10.6 Inspection and Recording of Approval. Any member or authorized consultant of the Design Review Committee, or any authorized officer, director, employee or agent of the Association may at any reasonable time enter, without being deemed guilty of trespass, upon any Lot after reasonable notice as provided herein to the Member in order to inspect improvements constructed or being constructed on such Lot to ascertain that such improvements have been or are being build in compliance ascertain that such improvements have been or are being built in compliance with the Design Guidelines and this Declaration. The Design Review Committee shall cause such an inspection to be undertaken within 30 days of a request therefor from any Member as to his Lot, and if such inspection reveals that the improvements located on such Lot have been completed in compliance with this Section 10 and the Design Guidelines, the Design Review Committee shall provide to such Member a notice of such approval in recordable form which, when recorded, shall be conclusive evident of compliance with the provisions of this Section 10 and the Design Guidelines as to the improvements described in such recorded notice, but as to such improvements only.



10.7 Reconstruction of Common Areas. The reconstruction by the Association or Declarant after destruction by casualty or otherwise of any Common Areas which is accomplished in substantial compliance with "as built" plan for such Common Areas shall not require compliance with the provisions of this Section 10 or the Design Guidelines.

10.8 Additional Powers of the Board. The Board may promulgate as a part of the Design Guidelines such additional architectural and landscape standards, rules and regulations as it deems to be appropriate and as are not in conflict with this Declaration. WITHOUT LIMITING THE GENERALITY OF THE PRECEDING SENTENCE, THE BOARD MAY FIX A FINE OF UP TO \$10,000 FOR FAILURE TO OBTAIN REQUIRED APPROVAL FROM THE DESIGN REVIEW COMMITTEE.

## **11. USE AND OCCUPANCY RESTRICTIONS.**

11.1 Residential Use. Each Lot may be used only for residential purposes and none other. No business or commercial building may be erected on any Lot and no business or commercial enterprise or other non-residential use may be conducted on any part thereof. No temporary buildings, structures or trailers may be erected, placed or maintained on any Lot except as expressly permitted by, and in compliance with, the Design Guidelines. Nothing herein contained shall be deemed to limit Declarant's rights as set forth in Section 13.

11.2 Violation of Law or Insurance. No Member shall permit anything to be done or kept in his Lot or in or upon any Common Areas which will result in the cancellation of insurance thereon or which would be in violation of any law.

11.3. Signs. No sign of any kind shall be displayed to the public view or from any Lot or any Common Areas without the approval of the Association or the Design Review Committee, except:  
(a) such signs as may be used by Declarant in connection with the development and sale of Lots in the Project; (b) such signs as may be required by legal proceedings, or the prohibition of which is precluded by law; or, (c) such signs as may be required for traffic control and regulation of Common Areas. No "For Sale" or "For Rent" sign may be posed on any Lot; provided, however, a Member may, in accordance with applicable provisions of the Association Rules, be permitted to post one "For Sale" or "For Rent" notice in a form approved by the Board in a location specified for that purpose by the Board, which may be in a Common Area rather than on the Lot.

11.4 Animals. No animals, including horses or other domestic far animals, fowl or poisonous reptiles of any kind may be kept, bred or maintained in any Lot or in or upon any Common Area, except a reasonable number of commonly accepted household pets in accordance with the Association Rules. No animals shall be kept, bred or raised within the Project for commercial purposes. In no event shall any domestic pet be allowed to run free away from its owner's Lot without a leash, or so as to create a run free away from its owner's Lot without a leash, or so as to create a nuisance. All such domestic pets must be registered with the Association and shall have proof of property immunization presented with said registration.

11.5 Nuisances. No Member shall permit or suffer anything to be done or kept about or within his Lot, or on or about the property, which will obstruct or interfere with the right of other Members, Occupants or Persons authorized to the use and enjoyment of the Common Areas, or annoy Them by unreasonable noises or otherwise, nor will be commit or permit any nuisance or commit or suffer any illegal act to be committed herein. Each Member shall comply with the Association Rules, the requirements of all health authorities and other governmental authorities having jurisdiction over the property.

11.6 Boats and Motor Vehicles. Except as specifically permitted by the Association Rules, (a) no boats, trailers, buses, motor homes, campers or other vehicles shall be parked or stored in or upon the Common Areas or upon a Lot except within an enclosed garage as permitted by the Design Guidelines; (b) no vehicle shall be repaired or rebuilt in any Lot or upon the Common Areas; and (c) nothing shall be parked on the Private Streets except in such parking areas as may be designated by the Association. The Association may remove, or cause to be removed, any unauthorized vehicle at the expense of the owner thereof in any manner consistent with law.

11.7 Lights. No spotlights, flood lights or other high intensity lighting shall be placed or utilized upon any Lot, which in any manner will allow light to be directed or reflected on the Common Areas, or any part thereof, or any other Lot, except as may be expressly permitted by the Association Rules or the Design Guidelines. No tennis courts may be lighted, except if authorized by the Design Review Committee.

11.8 Antennas. No radio, television or other antennas of any kind or nature, or device for the reception or transmission of radio, microwave or other similar signals, shall be placed or maintained upon any Lot except as may be permitted by the Association Rules or in accordance with the Design Guidelines.

11.9 Garbage. No garbage or trash shall be kept, maintained or contained in any Lot so as to be visible from other Lot or the Common Areas. No incinerators shall be kept or maintained in any Lot. No refuse pile, garbage or unsightly objects shall be allowed to be placed, accumulated or suffered to remain anywhere on a Lot.

11.10 Mining. No portion of the Property shall be used in any manner to explore for or remove any water, oil or other hydrocarbons or minerals of any kind or earth substance of any kind.

11.11 Safe Condition. Without limiting any other provision in this Section, each Member shall maintain and keep his Lot at all times in a safe, sound and sanitary condition and repair and shall correct any condition or refrain from any activity which might interfere with the reasonable enjoyment by other Members of their respective Lots or the Common Areas.

11.12 Fires. Other than barbecues, in properly constructed barbecue pits or grills, and firepits in compliance with the Association Rules and the Design Guidelines, or as otherwise expressly permitted in the Association Rules, no open fires shall be permitted on the Lots nor shall any other similar activity or condition be permitted which would tend to increase the insurance rates for the Common Area, or for other Owners.

11.13 Clothes Drying Area. No portion of any Lot shall be used as a drying or hanging area for laundry of any kind, it being the intention hereof that all such facilities shall be provided within the buildings to be constructed on each Lot.

11.14 No Further Subdivision; Compounds. No Lot shall be divided or subdivided. An owner may own more than one Lot which, if contiguous, may be combed into a singled homesite with the consent of the City and the Design Review Committee; provided, however, that any such combination of Lots shall not reduce or alter the voting rights obtained by ownership of each Lot nor shall it reduce or otherwise alter the amount which would have been assessed against the Owner of such Lots pursuant to the terms hereof in the absence of combination. The Owner of such Lots will be entitled to the rights of membership of one Membership for each such Lot. The assessments attributable to each Membership shall be a lien, as provided in Section 5, upon the entire combination of Lots held by the Owner. Notwithstanding anything herein to the contrary, the Owners of two or more contiguous Lots may, with the consent of the City and the Design Review Committee, replat such Lots as a Compound which may include and provide for the construction of common recreation facilities on such Lots, including, for example, a tennis court or swimming pool, in accordance with the Design Guidelines. The lien provided in Section 5 as to each related Lot shall also extend to the interest of the Owner in any such common facilities. If one Owner wishes to combine Lots, or if two or more Owners wish to replat Lots as a Compound, in such manner that it eliminates the need for a portion of the Common Areas owned by the Association (for example, where a cul-de-sac is no longer necessary), and if the combination or Compound and abandonment of Common Areas is approved by the Design Review Committee and the City then such portion of the Common Areas may be deeded by the Association to said Owner or Owners as the Association (and the City, if its consent is required) may specify.

11.15 No Obstructions to Drainage. No Member shall erect, construct, maintain, permit or allow any fence or other improvement or other obstruction which would interrupt the normal drainage of the land or within any area designated on a Plat, or other binding document, as a "drainage easement", except that, with the prior consent of the City and the Design Committee, non-permanent structures, including fences, may be erected in those areas which contain only underground closed conduit storm drainage facilities.

11.16 Entrance Gates. Subject to the easements created in Section 4.5, the Association shall from time to time determine who may have access through the entrance gates to the Project onto the Private Roads. Declarant reserves the unrestricted right of entry and use of such roads for its successors in interest until expiration of Declarant's control of the Association pursuant to Section 3.17 for its employees, agents, invitees, licensees, and guests. The Association may make reasonable rules relating to the right of entry through the entrance gates, but none restricting entry to Members, their tenants and guests or to prospective purchasers of homes or Lots invited by a Member. Any entrance gate may be manned or unmanned as the Board may from time to time elect and may be abandoned, or its hours of manned operation reduced to less than 24 hours per day, at the discretion of the Association.

11.17 Rental of Lots. No Member may lease his Lot except in accordance with the following terms and conditions; (i) the lease must be in writing and for a term of not less than one year, (ii) the entire lot must be leased (that is, for example, a guest house may not be leased separately from the main residence on the Lot), (iii) a Lot may only be leased to a single family unit, and (IV) a copy of any lease must be delivered to the Association promptly upon its execution. A Member who leases his Lot to any Person shall be responsible for assuring compliance by his lessee with all of the provisions of this Declaration, the articles, Bylaws, Association Rules or Design Guidelines, all as amended and supplemented from time to time, and shall be jointly and severally responsible for any violations by his lessee thereof.

11.18 Exterior Coverings. No exterior screening or shade materials of any type including without limitation awnings, shutters, screens and coverings affecting the exterior appearance of any Lot shall be permitted except as expressly authorized by the Association Rules or Design Guidelines.

11.19 Enforcement. The Association or its authorized agents may enter any Lot in which a violation of these restrictions exists and may correct such violation at the expense of the Member owning such Lot. Such expenses, and such fines as may be imposed pursuant to the Bylaws, Association Rules or Design Guidelines, shall be a Special Assessment secured by a lien upon such lot enforceable in accordance with the provisions of Section 5 hereof. All remedies described in Section 14 hereof and all other rights and remedies available at law or equity shall be available in the event of any breach by another Member, Occupant or other Person of any provisions of this Section 11.

11.20 Modification. The Board may modify or waive the foregoing restrictions or otherwise restrict and regulate the use and occupancy of the Property and the Lots by reasonable rules and regulations of general application adopted by the Board from time to time which shall be incorporated into Association Rules.

## **12. RIGHTS OF FIRST MORTGAGEES.**

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

12.2 Liability for Assessments. A First Mortgagee who comes into possession or becomes record Owner of a mortgaged Lot by virtue of foreclosure of the Mortgage, or through any equivalent proceedings, such as but not limited to the taking of a deed or assignment in lieu of foreclosure or acquiring title as a trustee's sale under a first deed of trust, or any third-party purchaser at a foreclosure sale or trustee's sale, will not be liable for such Lot's unpaid dues, charges or Assessments which may accrue prior to the time such First Mortgagee or third-party purchaser comes into possession of such Lot or becomes record Owner of the Lot, whichever occurs first, and shall acquire title free and clear of any lien authorized by or arising out of the provisions of this Declaration which secures the payment of any dues, charges or Assessments accrued prior to the time such First Mortgagee or third-party purchaser either comes into possession of such Lot or becomes record Owner of the Lot. Any such unpaid dues, charges or Assessments against the Lot foreclosed shall be deemed to be a Common Expense charged proratably against all of the Members. Nevertheless, in the event the Member against whom the original

Assessment was made is the purchaser or redemptionor, the lien shall continue in effect and made be enforced by the Association, or by the board, for the respective Lot's Assessment that was due prior to the final conclusion of any such foreclosure or equivalent proceedings. Further, any such unpaid Assessment shall continue to exist as the personal obligation of the defaulting Member to the Association, and the Board may use reasonable efforts to collect the same from said Member even after he is no longer a Member of the Association.

12.3 No Personal Liability. First Mortgagee shall not in any case or manner be personally liable for the payment of any Assessment or charge, nor the observance or performance of any covenant, restriction, or rule and regulation of the Association, or any provision of the Articles or Bylaws, or any management agreement, except for those matters which are enforceable by injunctive or other equitable actions, not requiring the payment of money, except as specifically provided in this Section 12.

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

12.5 Exercise of Owner's Rights. During the pendency of any proceedings to foreclose a First Mortgage (including any period of redemption) or from the time a trustee under a first deep of trust has given notice of sale pursuant to power of sale conferred under a deed of trust and pursuant to law, the First Mortgagee, or a receiver appointed in any such action, may but need not exercise any of all of the rights and privileges of the Member in default including, but not limited to, the right to vote as a member of the Association in the place and stead of the defaulting Member.

12.6 Subject to Declaration. A such time as the First Mortgagee shall come into possession of or become record Owner of a Lot, the First Mortgagee shall be subject to all of the terms and conditions of this Declaration including, but not limited to, the obligation to pay all assessments and charged accruing thereafter, in the same manner as any other Owner.

### **13. EXEMPTION OF DECLARANT FROM RESTRICTIONS.**

Notwithstanding anything contained in this Declaration to the contrary, none of the restrictions contained in This Declaration shall be construed or deemed to limit or prohibit any act of Declarant, its employees, agents and subcontractors, or parties designated by it in connection with the construction, completion, sale or leasing of the Lots, Common Areas or the Property.

### **14. REMEDIES.**

14.1 General Remedies. In the event of any default by any Member, Occupant or other Person under the provisions of this Declaration, the Articles, Bylaws, Association Rules or Design Guidelines, the Association, or its successors or assigns, or its agents, or Declarant, shall have each and all of the rights and remedies which may be provided for in this Declaration, the Articles, Bylaws, Association Rules or

Design Guidelines, or which may be available at possession of the Lot and to rent the Lot and apply the rents received to payment or equity, and may prosecute any action or others proceedings against such defaulting Member, Occupant or other Persons for an injunction, whether affirmative or negative, or for enforcement or foreclosure of the lien herein provided and the appointment of a receiver for the Lot, or for damages, or specific performance, or for judgment for payment of money and collection thereof, or the right to take possession of the Lot and to rent the Lot and apply the rents received to payment of unpaid Assessments an interest accrued thereon, and to sell the same as hereinafter in this Section 14.1 provided, or for any combination of remedies or for any other relief, all without notice and without regard to the value of the Lot or the solvency of such Member. The proceeds of any such rental or sale shall first be paid to discharged court costs, other litigation costs, including without limitation reasonable attorneys' fees, and all other expenses of the proceeding and sale, and all such items shall be taxed against the defaulting Member in a final judgment. Any balance of proceeds after satisfaction of such charges and any unpaid Assessments hereunder or any liens shall be paid to the Member. Upon on the confirmation of the sale, the purchasers thereupon shall be entitled to a deed to the Lot and to immediate possession of the Lot and may apply to the court for a writ of restitution for the purpose of acquiring such possession, and it shall be a condition of any such sale, and the judgment shall so provide, that the purchaser shall take the interest in the property sold subject to this Declaration.

14.2 Expenses of Enforcement. All expenses of the Association or Declarant, or other Person granted rights of enforcement hereunder, in connection with any action or proceeding described or permitted by this Section 14, including court costs and reasonable attorneys' fees and other fees and expenses, and all damages, liquated or otherwise, together with interest thereon until paid at the Default Rate of Interest, shall be charged to and assessed against such defaulting Member or other Person and shall be a Special Assessment against such Member or other Person and the Association shall have a lien as provided in Section 5 therefor. In the event of any such default by any Member or other Person, the Association and Declarant, and the manager or managing agent of the Association, if so authorized by the President, shall have the authority to correct such default and to do whatever may be necessary for such purpose, and all expenses in connection therewith shall be charged to and assessed against such defaulting Member or other Person as a Special Assessment, which shall constitute a lien against the defaulting Member's Lot as provided in Section 5. Any and all such rights and remedies may be exercised at any time and from time to time, cumulatively other otherwise, by the Association or Declarant.

14.3 Legal Action. In addition to any other remedies available under this Section 14, if any Member (either by his conduct or by the conduct of any Occupant of his Lot or family member, guest, invitee or agent) shall violate any of the provisions of this Declaration, or the Articles, Bylaws, Association Rules or Design Guidelines, as then in effect, then the Association, Declarant, or any affected or aggrieved Member, shall have the power to file an action against the defaulting Member for a judgment or injunction against the Member or such other Person requiring the defaulting Member or other Person to comply with the provisions of this Declaration, or the Articles, Bylaws, Association Rules or Design Guidelines, and granting other appropriate relief, including money damages.

14.4 Effect on Mortgage. Anything to the contrary herein notwithstanding, any breach of any of the covenants, restrictions, reservations, conditions and servitudes provided for in this Declaration, or any right of re-entry by reason thereof, shall not defeat or adversely affect the lien of any Mortgage upon

any Lot but, except as herein specifically provided, each and all of said covenants, restrictions, reservations, conditions and servitudes shall be binding upon and effective against any lessee or owner of a Lot whose title thereto is acquired by foreclosure, trustee's sale, sale, deed in lieu of foreclosure or otherwise.

14.5 Limitation on Declarant's Liability. Notwithstanding anything to the contrary herein, it is expressly agreed that neither Declarant (including without limitation any assignee of the interest of Declarant hereunder) nor any partner in Declarant (or in any such assignee) shall have any personal liability to the Association, or any Member or other Person, arising under, in connection with, or resulting from (including without limitation resulting from action of failure to act with respect to) this Declaration except, in the case of Declarant (or its assignee) to the extent of its interest in the Property, and, in the case of a partner in Declarant (or in any such assignee, his interest in Declarant (or such assignee), and in the event of a judgment against Declarant (or any partner or assignee thereof), no execution or other action shall be sought or brought thereon against any other assets, nor be a lien upon such other assets, of the judgment debtor.

## **15. AMENDMENT.**

15.1 Amendment to Declaration. Amendments to this Declaration shall be made by an instrument in writing entitled "Amendment to Declaration" which sets forth the entire amendment. Except as otherwise specifically provided for in this Declaration, any proposed amendment must be approved by a majority of the Board prior to its adoption by the Members. Amendments may be adopted at a meeting of the Members upon the approval thereof of two-thirds of all of the Members or without any meeting if all Members have been duly notified and if two-thirds of all of the Members consent in writing to such amendment. In all events, the amendment when adopted shall bear the signature of the President of the Association and shall be attested by the secretary, who shall state whether the amendment was properly adopted, and shall be acknowledged by them as officers of the Association. Amendments only properly adopted shall be effective upon recording of the Amendment to Declaration in the appropriate governmental office

15.2 Effect of Amendment. It is specifically covenanted and agreed that any amendment to this Declaration properly adopted will be completely effective to amend any and all of the covenants, conditions and restrictions contained herein which may be affected and any or all clauses of this Declaration or the Plat, unless otherwise specifically provided in the Section amended or the amendment itself.

15.3 Amendment of Plat. Except as otherwise provided herein, the Plat may be amended by revised versions or revised portions thereof referred to and described as to effect in an amendment to this Declaration adopted as provided for herein. Copies of any such proposed amendment to the Plat shall be made available for the examination of every Member at the offices of the Association during reasonable times. Such amendment to the Plat shall be effective, once properly adopted, upon recordation in the appropriate governmental office in conjunction with the Declaration amendment.

15.4 Required Approvals. Notwithstanding the provisions of the foregoing sections of this Section 15:

(a) If this Declaration or any applicable provision of law requires the consent or agreement of all Members and/or all lienholders and all trustees and/or beneficiaries under trust deeds, or a specified percentage thereof, for any action specified in this Declaration, then any instrument changing, modifying or rescinding any provision of this Declaration with respect to such action shall be signed by all of the Member and/or all lienholders and trustees and/or beneficiaries under trust deeds, or the specified percentage thereof, as required by this Declaration or by said law.

(b) Until expiration of Declarant's control of the Association pursuant to Section 3.17, this Declaration may not be amended by the Members pursuant to Section 15.1 without the written consent of Declarant, which may be withheld for any reason.

(c) The following provisions of this Declaration may not be amended without the consent of Declarant: Sections 4.5, 13 and 15.5.

15.5 Declarant's Right to Amend. Notwithstanding any other provision of this Section 15, until the expiration of Declarant's control of the association pursuant to Section 3.17, Declarant reserves the right to amend this Declaration without the approval of the Board or the Members; provided, however, that no such amendment shall have the effect of changing the plat of a Member's Lot without the consent of the Member; and provided, further, that after the conveyance of the first Lot to a Member, Declarant may not amend the following provisions of this Declaration without the approval of the Members as provided in Section 15.1: Sections 3.6.2, 4.2, the second sentence of 5.5 and 15.5.

## **16. GENERAL PROVISIONS.**

16.1 Notices. Notices provided for in this Declaration or the Bylaws or Association Rules shall be in writing and shall be addressed to the Association at the address specified in the Bylaws. The Association may designate a different address or addresses for notice by giving written notice of such change of address to all Members at such time. All notices to Members shall be to their respective Lots or to the last address shown on the records of the Association. Any Member may designate a different address or addresses for notice to him by giving written notice of his change of address to the Association. Notices addressed as above shall be deemed delivered when mailed by United States registered or certified mail, or when delivered in person with written acknowledgement of the receipt thereof.

16.2 Captions and Exhibits; Construction. Captions given to various Sections herein, and the Table of Contents for this Declaration, are for convenience only and are not intended to modify or affect the meaning of any of the substantive provisions hereof. The provisions of this Declaration shall be liberally construed to effectuate its purpose of creating a uniform plan for the development and operation of the Property as hereinabove set forth.

16.3 Severability. If any provision of this Declaration, the Articles, Bylaws, Association Rules or Design Guidelines, or any section, clause, sentence, phrase or word, or the application thereof in any circumstance is held invalid, the validity of the remainder of this Declaration, the Articles, Bylaws, Association Rules or Design Guidelines, and of the application of any such provision, section, sentence, clause, phrase or word in any other circumstances, shall not be affected thereby, and the remainder of this



Declaration, the Articles, Bylaws, Association Rules or Design Guidelines shall be construed as if such invalid part were never included therein.

16.4 Rule Against Perpetuities. If any of the options, privileges, covenants or rights created by this Declaration shall be unlawful, void or voidable for violation of the rule against perpetuities, then such provision shall continue only until 24 years after the death of the survivor of the now living descendants of United State Senator Barry Goldwater and United State Senator Dennis DiConcini.

6.5 Mortgage of Lots. Each Member shall have the right, subject to the provisions hereof, to make separate Mortgages for his respective Lot. No Member shall have the right or authority to make or create or cause to be made or created any Mortgage, or other lien or security interest, on or affecting the Property or any part thereof, except only to the extent of his Lot.

16.6 Power of Attorney. Whenever the Association is granted rights, privileges or duties in this Declaration, the President shall have the authority to act for the Association, unless such right and power is herein expressly reserved to the Board. Further, unless otherwise specifically restricted by the provisions of this Declaration, wherever the Association is empowered to take any action or do any act, including but not limited to action or acts in connection with the Common Areas or sale thereof, which may at any time be deemed to require the act of a Member, the Members and each of them hereby constitute and appoint the Association as their attorney-in-fact, as may be appropriate, for the purposes of taking such action or doing such acts including but not limited to executing, acknowledging and delivering any instruments or documents necessary, appropriate or helpful for such purposes. It is acknowledged that this power of attorney is irrevocable and coupled with an interest and that this power of attorney is irrevocable and coupled with an interest and by becoming a Member of the Association or by the acceptance of a deed for a Lot or by signing a contract for purchase of a Lot or by succeeding in any other manner to the ownership of a Lot, or any interest therein, or a membership in the association, each Member shall be deemed and construed to have ratified and expressly granted the above power of attorney.

## **17. RIGHTS AND OBLIGATIONS.**

Each grantee of Declarant by the acceptance of a deed of conveyance, or each purchaser under any contract for such deed of conveyance, or each purchaser under any agreement of sale, or each Person acquiring a membership in the Association, and the heirs, personal representatives, successors and assigns of the foregoing Persons, accepts the same subject to all restrictions, conditions, covenants, reservations, liens and charges, and the jurisdiction, rights and powers created or reserved by this Declaration, and all rights, benefits and privileges of every character hereby granted, created, reserved or declared, and all impositions and obligations hereby imposed shall be deemed and taken to be covenants running with the land and equitable servitudes, and shall bind any Person having at any time any interest or estate in said land, and shall insure to the benefit of any such Person in like manner as though the provisions of this Declaration were recited and stipulated at length in each and every deed of conveyance, purchase contract or instrument evidencing or creating such interest.

IN WITNESS WHEREOF, Declarant has executed this Declaration as of the date first appearing above.

FSX/TREACCAR, an Arizona joint  
venture general partnership

By \_\_\_\_\_

A General Partner

STATE OF ARIZONA

ss.

County of Maricopa

The foregoing instrument was acknowledged before me this 1<sup>st</sup> day of June, 1984, by Thomas H. Treaccar, a general partner of FSC/TREACCAR an Arizona joint venture general partnership, for and on behalf thereof.

\_\_\_\_\_  
Notary Public

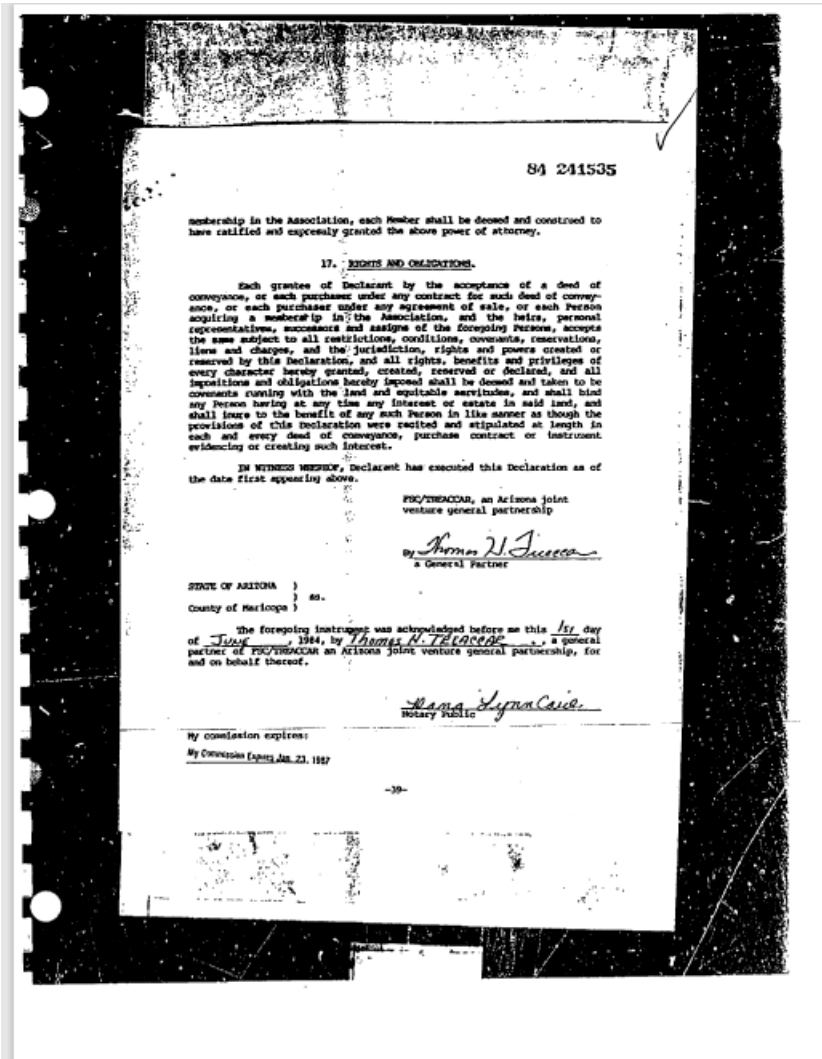
My commission expires:  
January 23, 1987

EXHIBIT "A"

Lots 1 through 48, inclusive, and TRACT "A", DESERT SKYLINE ESTATES, according to the plat of record in the office of the Maricopa County Recorder, in Book 265 of Maps, page 36.

EXCEPT all minerals in said land as reserved to the United States in Patent; and EXCEPTING all uranium, thorium, or other material which is or may be determined to be peculiarly essential to the production of fissionable materials, whether or not of commercial value pursuant to the provisions of the Act of August 1, 1946 (60 Stat. 755), as set forth in the Parent on said land.

FOLLOWING IS THE OFFICIAL SIGNATURE PAGE OF THE CC&R DOCUMENT



**Desert Skyline Estates – Development Guidelines**

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## **Desert Skyline Estates – Development Guidelines**

### **PREAMBLE**

### **Development Guidelines**

To ensure the preservation of the natural desert and to meet the City of Scottsdale regulations regarding natural desert) the concept of maximum allowable building area, called the "Building Envelope", has been developed. All improvements on a Lot must be designed to be within this Building Envelope, including the Residence, accessory buildings, outside patios and terraces, tennis and swimming pools (if permitted by the Development Guidelines) and other improvements or structures on the Lot. Only indigenous or approved non-indigenous plants may be planted within the Building Envelope unless otherwise approved by the Development Review Committee (herein referred to as "THE COMMITTEE"). Outside of the Building Envelope the natural desert must be left undisturbed. Moreover, it is not intended that The Owner design his Residence, or other improvements so as to completely fill the Building Envelope. Designs which, in the opinion of THE COMMITTEE, overwhelm the Building Envelope and are therefore inconsistent with the philosophy of Desert Skyline Estates will not be approved.

Before any conceptual planning is done, the Owner shall consult THE COMMITTEE to determine the location of the Building Envelope. Although the shape and location of the Building Envelope are intended to be somewhat flexible, modifications to the Building Envelope can be made only by THE COMMITTEE and only if the modifications do not result in a significantly adverse impact upon the natural features of the Lot, the neighboring Lots, or the Project as a whole. Since the Building Envelope is a maximum conceptual allowable building area, the construction of walls or other landscape elements will not be permitted to delineate its boundaries.

After development approval has been given by THE COMMITTEE, a revised Building Envelope based on actual plans, which may differ in size and shape from the original conceptual Building Envelope, will be made a part of the public records by recording a Natural Area Easement over the portion of the lot outside of the Building Envelope as required by the City of Scottsdale zoning ordinances. Thereafter, the Building Envelope may be changed only through an amendment process with the City of Scottsdale after obtaining approval of THE COMMITTEE. This process assures, in accordance with applicable City requirements, that the existing natural desert landscape outside of the Building Envelope will be permanently protected from future encroachment of development.

In general, THE COMMITTEE review process is divided into four phases. The first phase includes a predesign meeting to permit the Owner to review his ideas and the natural aspects of his particular Lot with a representative of THE COMMITTEE before any plans are prepared. The second phase provides for the review of conceptual or preliminary plans by THE COMMITTEE before the Owner finalizes his design to insure conformance with the Development Guidelines.

The third phase, the final design review, insures that the final plans and construction drawings are consistent with the previously approved preliminary plans and the Development Guidelines. The final phase includes an inspection by a representative of THE COMMITTEE to determine whether actual construction has been completed in strict compliance with the approved plans and the Development Guidelines.

It is strongly recommended that the Owner retain competent professional services for planning and design. A thorough analysis and understanding of a particular Lot and the Owners special needs and living patterns, as well as the ability to convey to THE COMMITTEE, through drawings and model, the concept

## **Desert Skyline Estates – Development Guidelines**

and design of a proposed Residence or other improvement, are all important elements of the development review process. If the Owner elects to do his own design or to retain non-professional services, and the result in either case is not approved by THE COMMITTEE, THE COMMITTEE has the right to require that an Owner thereafter utilize professional design services.

The development review process was designed to provide adequate checkpoints along the way, so that time and money are not wasted on plans and designs which do not adhere to the Development Guidelines, and all other applicable provisions of the Declaration or rules and regulations of any governmental authority, in order to bring the design review process to a speedy and satisfactory conclusion.

## Desert Skyline Estates – Development Guidelines

### ARTICLE 1 - DEFINITIONS

### Development Guidelines

- I.1 ARCHITECT** - "Architect" means a person appropriately licensed to practice in the State of Arizona.
- I.2 BUILDER** "Builder" means a person or entity engaged by an Owner for the purpose of constructing any improvement within the Project. The Builder and Owner may be the same person or entity.
- I.3 BUILDING ENVELOPE** - "Building Envelope" means that portion of a Lot, which encompasses the maximum allowable developable area of the Lot as specified by THE COMMITTEE. Modification of the Building Envelope can only be made by THE COMMITTEE (and, after recording of the Natural Area Easement, with the consent of the City of Scottsdale).
- I.4 DECLARATION** - "Declaration" means the Declaration of Covenants, Conditions and Restrictions for the Desert Skyline Estates as amended from time to time.
- I.5 DEVELOPMENT GUIDE** - "Development Guide" means the approved preliminary plat including the conceptual Building Envelopes, a copy of which will be on file at THE COMMITTEE office, as such Development Guide may be amended from time to time, of which is incorporated herein by reference.
- I.6 DEVELOPMENT GUIDELINES** "Development Guidelines" means the restrictions, review procedures, and construction regulations adopted and enforced by THE COMMITTEE as set forth herein and as amended from time to time by THE COMMITTEE.
- I.7 THE COMMITTEE** - "The Development Review Committee" means the Design Review Committee established pursuant to the Declaration (Herein after referred to as "THE COMMITTEE").
- I.8 EXCAVATION** - "Excavation" means any disturbance of the surface of the land (except to the extent reasonably necessary for planting of approved vegetation), including any trenching which results in the removal of earth, rock or other substance from a depth of more than 12 inches below the natural surface of land, or any grading of the surface.
- I.9 FILL** - "Fill" means any addition of earth, rock or other materials to the surface of the land which increased the natural elevation of such surface
- I.10 IMPROVEMENT** "Improvement" means changes, alterations, or additions to a Lot including any Excavation, Fill, Residence or buildings, outbuildings, roads, driveways, parking areas, wall, retaining walls, stairs, patios, courtyards, hedges, poles, signs and any structure or other improvement of any type or kind.
- I.11 INDIGENOUS SPECIE** - "Indigenous Specie" means a specie of plants whether ground cover, shrub, cactus or tree which is listed in Appendix C - Indigenous Plant List, or from time to time referenced in the Development Guidelines.
- I.12 LOT** "Lot" means a subdivided lot as shown on the plat.



## **Desert Skyline Estates – Development Guidelines**

**I.13 NATURAL AREA** - "Natural Area" means that portion of the natural desert lying within a Lot but outside the Building Envelope which must remain undisturbed. Appendix C Indigenous Plant List contains all Indigenous Species approved for planting in Natural Area.

**I.14 NATURAL AREA EASEMENT** - "Natural Area Easement" means the easement required by the City of Scottsdale to preserve the Natural Area of a Lot.

**I.15 OPEN SPACE** - "Open Space" means all land, improvements, and other properties now or hereafter designated as such on the Plat, the Declaration or the Association Rules.

**I.16 OWNER** - "Owner" means the Owner of a Lot. For the purposes herein, the Owner may act through an Owner Agent, provided that such agent is authorized in writing to act in such capacity.

**I.17 PRIVATE AREA** "Private Area" means that part of the Building Envelope which is surrounded by walls and in which plants not contained in Appendix E Prohibited Plant List may be planted.

**I.18 PROTECTED PLANTS** - "Protected Plants" means those Indigenous Species of trees or cacti of four-inch caliper or six-foot height or greater.

**I.19 RESIDENCE** - "Residence" means that building or buildings, including any garage or other accessory buildings, used solely for residential purpose constructed on a Lot, and any improvements constructed in connection therewith. "Residence" shall mean a single-family residence.

**I.20 STRUCTURE** - "Structure" means anything constructed or erected on a Lot, the use of which requires location on the ground or attachment to something having location on the ground.

**I.21 TRANSITIONAL AREA** "Transitional Area" means that part of the Building Envelope which is adjacent to a Natural Area and in which only plants contained in Appendix C- Indigenous Plant List and Appendix D Approved Non-Indigenous Plant List may be planted.

**I.22 VISIBLE FROM NEIGHBORING PROPERTY** - "Visible from Neighboring Property" means that an object or activity on a Lot which is or would be in line of sight originating from any point six feet above any other property, including other Lots, assuming that such other property or Lot has an elevation equal to the highest elevation of ground surface of that portion of the Lot upon which such object or activity is located.

## Desert Skyline Estates – Development Guidelines

### ARTICLE II - DEVELOPMENT REVIEW PROCESS

**II.1 SUBMISSION OF PLANS** - Plans and specifications shall be submitted to THE COMMITTEE in accordance with the following submittal and review procedures.

**II.2 REVIEW OF PLANS** - THE COMMITTEE shall conduct reviews of plans during its regular meetings or at such other times as it deem appropriate. Owners, Architects or Builders shall have no right to attend any meeting of THE COMMITTEE unless specifically requested by THE COMMITTEE. THE COMMITTEE will respond in writing within 10 working days after the review (but no later than 30 days after a submittal is complete), provided that the plans are in accordance with the requirements outlined. Results of reviews will not be discussed over the telephone by members of THE COMMITTEE with an Owner, or the Owner's architect or builder. Any responses an Owner may wish to make in reference to issues contained in THE COMMITTEE's notice following review of submitted plans must be addressed to THE COMMITTEE in writing.

**II.3 PRE-DESIGN MEETING** - Prior to preparing preliminary plans for any proposed Improvement, it is mandatory that the Owner and/or his Architect meet with a COMMITTEE member to discuss proposed plans, and to explore and resolve any questions regarding building requirements in Desert Skyline Estates. This informal review is to offer guidance prior to initiating preliminary design.

**II.4 PRELIMINARY SUBMITTAL** Preliminary plans, including all of the exhibits outlined below, are to be submitted to THE COMMITTEE after the Pre-Design Meeting.

**II.4.1** All Preliminary plans shall comply with the requirements of **Appendix B - Approval Check List, Paragraph B.1.**

**II.4.2** Any accessory Improvements contemplated on the Lot must be shown on the preliminary submittal.

**II.4.3** Any other drawings, materials, or samples requested by THE COMMITTEE.

**II.4.4** To assist THE COMMITTEE in its evaluation of the preliminary plans, the Owner shall provide staking at the locations of the corners of the Residence or major Improvements and such other locations as THE COMMITTEE may request.

**II.5 NOTICE TO MEMBERS** - As soon as the submission of preliminary construction drawings is complete. THE COMMITTEE will mail a notice stating that construction drawings have been submitted with respect to the Lot and will be available for review by the Owners during the period, and at the location, stated in the notice. Written comments may be submitted to THE COMMITTEE regarding the construction drawings within ten calendar days of the date of mailing of the notice. The last day for comments shall be set forth in the notice.

**II.6 PRELIMINARY REVIEW** After the notice and comment period, and the staking of the Lot, the preliminary submission of the Owner will be deemed complete. THE COMMITTEE will then review the preliminary plans and provide a written response to the Owner.

## **Desert Skyline Estates – Development Guidelines**

**II.7 FINAL PLANS AND REVIEW** After preliminary approval is obtained from THE COMMITTEE, the following documents are to be submitted for final approval.

**II.7.1** Final plans shall comply with the requirements of **Appendix B Approvals Checklist, Paragraph B.2.**

**II.7.2** Exterior building corners of the proposed Residence or other structures and other major Improvement areas, including the driveway location if requested by THE COMMITTEE, shall be staked on the site for THE COMMITTEE's inspection. All plants proposed for transplanting shall be tagged.

**II.7.3** Final approval by THE COMMITTEE shall be issued in writing; however, at least three days prior to commencement of construction or any other onsite work, the Owner shall notify THE COMMITTEE so that it can make a visual inspection of the Lot to insure that the work will commence as approved.

**II.7.4** Engineering certification of foundations and the securing of a building permit is the responsibility of the Owner and/or Builder- Construction documents (working drawings and specifications) are to be in accordance with the final design and plans approved by THE COMMITTEE. Construction shall not commence until all of the above requirements are satisfied.

**II.8 SUBSEQUENT CHANGES** - Additional construction, landscaping or other Improvements to a Residence or Lott and/or any changes after completion of an approved structure must be submitted to THE COMMITTEE for approval prior to making such changes and/or additions.

**II.9 RESUBMITTAL OF PLANS** - In the event of any disapproval by THE COMMITTEE of either a preliminary or a final submission, a resubmission of plans shall follow the same procedure as an original submittal. An additional Development Review Fee shall accompany each such resubmission as required by THE COMMITTEE.

**II.10 WORK IN PROGRESS - INSPECTION** THE COMMITTEE may inspect all work in progress and give notice of non-compliance. Absence of such inspection and notification during the construction period does not constitute either approval by THE COMMITTEE of work in progress or compliance with) these Development Guidelines or the Declaration.

**II.11 COMPLETED WORK** - Upon completion of any Residence or other Improvement for which final approval was given by THE COMMITTEE, the Owner shall give written notice of completion to THE COMMITTEE.

**II.11.1** Within such reasonable time as THE COMMITTEE may determine, but in no case exceeding 10 days from receipt of such written notice of completion from the Owner or his duty authorized representative, THE COMMITTEE may inspect the Residence and/or Improvements. If it is found that such work was not done in strict compliance with the final plan approved by THE COMMITTEE. THE COMMITTEE shall notify the Owner in writing of such non-compliance within five days after its inspection, specifying in reasonable detail the particulars of non-compliance. The Owner shall be required to remedy all noncompliance items.

**II.11.2** If, upon the expiration of 30 days from the date of such notification by THE COMMITTEE, the Owner shall have failed to remedy such non-compliance, THE COMMITTEE shall notify the Owner and may take such action to remove the non-complying Improvements as is provided for in the Development Guidelines or the Declaration, including without limitation injunctive relief or the imposition of a fine.

## **Desert Skyline Estates – Development Guidelines**

**II.11.3** If, after receipt of written notice of completion from the Owner, THE COMMITTEE fails to notify the Owner of any failure to comply within the provided period following THE COMMITTEEs inspection, the Improvements shall be deemed to be in accordance with the final plan.

**II.12 NON-WAIVER** - The approval by THE COMMITTEE of drawings or specifications for any work done or proposed, or in connection with any other matter requiring the approval of THE COMMITTEE under the Development Guidelines or the Declaration, including a waiver by THE COMMITTEE, shall not be deemed to constitute a waiver of any right to withhold approval as to any similar plan, drawing, specification or matter whenever subsequently or additionally submitted for approval.

**II.13 RIGHT OF WAIVER** - THE COMMITTEE reserves the right to waive or vary any of the procedures or standards set forth herein at its discretion, or good cause shown.

**II.14 ESTOPPEL CERTIFICATE** - Within 30 days after written demand therefore is delivered to THE COMMITTEE by any Owner, and upon payment therewith to THE COMMITTEE of a reasonable fee (from time to time to be fixed by it). THE COMMITTEE shall record an estoppel certificate executed by any two of its members, certifying with respect to any Lot of said Owner, that as of the date thereof either:

**II.14.1** All Improvements and other work made or done upon or within said Lot by the Owner, or otherwise, comply with the Development Guidelines and the Declaration, or

**II.14.2** Such Improvements and/or work do not so comply, in which event the certificate shall also:

**II.14.2.1** Identify the non-complying Improvements and/or work; and

**II.14.2.2** Set forth with particularity the cause or causes for such non-compliance.

**II.14.3** Any purchaser from the Owner, or mortgagee or other encumbrancer, shall be entitled to rely on said certificate with respect to the matters therein set forth, such matters being conclusive as between the Association, THE COMMITTEE, Declarant and the Owners and other interested Persons and such purchaser, mortgagee or other encumbrancer.

**II.15 COMMENCEMENT OF CONSTRUCTION** - Upon receipt of approval from THE COMMITTEE, the Owner shall, as soon as practicable, satisfy all conditions thereof, if any, and diligently proceed with the commencement and completion of all construction, reconstruction, refinishing, alterations and excavations pursuant to the approved plans.

**II.15.1** The Owner shall satisfy all conditions and commence the construction, reconstruction, refinishing, alterations or other work pursuant to the approved plans within one year from the date of such approval.

**II.15.2** If the Owner shall fail to comply with this paragraph, any approval given shall be deemed revoked unless, upon the written request of the Owner made to THE COMMITTEE prior to the expiration of said one-year period and upon a finding by THE COMMITTEE that there has been no change in circumstances, the time for such commencement is extended in writing by THE COMMITTEE.

## **Desert Skyline Estates – Development Guidelines**

**II.15.3** The Owner shall in any event complete construction, reconstruction, refinishing or alteration of the foundation and all exterior surfaces (including the roof, exterior walls, windows and doors) of any improvement on his Lot within one year after commencing construction thereof, except and for so long as such completion is rendered impossible or would result in great hardship to the Owner due to strikes, fires, national emergencies or natural calamities.

**II.15.4** If Owner fails to comply with this paragraph, THE COMMITTEE shall notify the Association of such failure, and the Association, at its option, shall either complete the exterior in accordance with the approved plans or remove the improvement, and the Owner shall reimburse the Association for all expenses incurred in connection therewith.

## Desert Skyline Estates – Development Guidelines

### ARTICLE III - SITE DEVELOPMENT STANDARDS

At Desert Skyline Estates, the climate and the landscape are important factors which must be considered in the design of improvements and alterations to the landscape. The following standards are divided into two general areas for convenience- This article relates to the land and deals with the issues for siting, grading excavation, landscaping and the like- Article IV addresses the design requirements and restrictions for the Residence and other Improvements constructed upon the Lot, including color, height, massing and other design features.

**III.1 LANDSCAPING AND SITE DEVELOPMENT STANDARDS** - The natural desert landscape at Desert Skyline Estates is fragile, can be easily damaged and may take years to grow back once damaged. In addition to the Development restrictions suggested by the environmental studies conducted at Desert Skyline Estates, the City of Scottsdale has developed regulations intended to provide protection of the natural desert areas. Although every effort has been made to integrate the City's regulations into the Standards, each Owner is responsible for reviewing the applicable City regulations and making certain that he complies therewith. As outlined below, each Lot consists of the Natural Area and the Building Envelope, which in turn includes a Transitional Area and a Private Area.

**III.1.1 NATURAL AREA** - The Natural Area is that portion of the Lot which lies outside of the Building Envelope and must remain as natural desert in accordance with the City of Scottsdale regulations. Irrigation of the Natural Area is not permitted. The indigenous vegetation does not require additional water. Irrigation of the Natural Area can lead to disease and death of the native plants, (particularly cactus), attract undesirable insects, and aid in the spread of undesirable plant species or weeds. After approval by THE COMMITTEE, the Owner will be required by the City to execute and record a Natural Area Easement in substantially the form included in **Appendix F - Natural Area Easements**. The Owner will also be required to provide a satisfactory legal description of the Natural area, which may require the preparation of a survey of the Lot at the Owners expense.

**III.1.2 BUILDING ENVELOPE** - The Building Envelope is the portion of each Lot within which all improvements must be built and alterations to the existing landscape may be permitted. The most appropriate Building Envelope has been identified for each Lot based on the natural features of the Lot, views, relationship to adjacent Building Envelopes; and topography. Slight modifications to the Building Envelope may be made by THE COMMITTEE upon application of an Owner as part of the Development Review process.

**III.1.3 TRANSITIONAL AREA** - The Transitional Area is that part of the Building Envelope which is visible from the street and from adjacent properties, and is adjacent to the Natural Area. The plant materials which are permitted to be used in the transitional Area are listed in **Appendix C - Indigenous Plant List** and **Appendix D - Approved Indigenous Plant List**. The purpose of the Transitional Area is to provide gradual transition between the indigenous plant materials permitted within the Private Area without establishing strong contrasts in vegetation elements. The plant materials included with Appendix D for the Transitional Area do not have high water demands and are drought resistant. Minimal irrigation of the Transitional Area will be allowed only with the approval of THE COMMITTEE. Irrigation systems must be carefully designed to limit all irrigation to the Transitional Area, without any over-spray or runoff onto the Natural Area.

## **Desert Skyline Estates – Development Guidelines**

**III.1.4 PRIVATE AREA** - The Private Area is that part of the Building Envelope which is not visible from the street or from adjacent properties because it is hidden behind walls or structures, and is separated from the Natural Area either by a Transitional Area or a design element such as an approved wall or fence. The Private Area is the least restrictive in terms of what plants, shrubs, and trees can be planted therein, which include those plant materials listed in **Appendices C and D**, if first approved in writing by THE COMMITTEE, any other plant not included in **Appendix E - Prohibited Plant List**. The Private Area includes, for example, a courtyard or atrium, or the area behind a wall where non-indigenous plants would be appropriate despite their increased watering needs. The Private Area may be designed as a mini-oasis area, which may be as lush and varied as desired by the Owner.

**III.1.5 PROHIBITED PLANT LIST** - The plant materials set forth in **Appendix E - Prohibited Plant List** include species with characteristics which are potentially destructive to the Natural Areas and indigenous plants by reason of profuse and noxious pollen, excessive height, weed-like characteristics of excessive growth, high water demands and other similar traits. Under no circumstances is it permissible to plant any Prohibited Plant.

**III.1.6 PROTECTED PLANTS** - Protected Plants are those desert plants which, either because of size or age and type, must be protected pursuant to City of Scottsdale regulations. These include the following tree species of four-inch caliper or greater or cacti species six feet or greater in height; ironwood, mesquite, palo verde, saguaro, barrel cactus, ocotillo, and yucca. Improvements should be sited to avoid these protected species if at all possible. THE COMMITTEE must approve any plans for transplanting these species, and it is required that professionals be consulted prior to transplanting any desert plant materials.

**III.2 SITE WORK** - Except as approved by THE COMMITTEE in connection with the construction, reconstruction, or alteration of any improvements for which the Owner has obtained the approval of THE COMMITTEE:

**III.2.1** No excavation or fill shall be created or installed upon any Lot;

**III.2.2** No change in the natural or existing drainage for surface waters shall be made upon any Lot; and

**III.2.3** No Protected Plants shall be damaged, destroyed or removed from any Lot.

**III.2.4** In the event of any violation of 111.2.1 or 111.2.2 above, THE COMMITTEE or the Association may cause such Lot to be restored to its state existing immediately prior to such violation; or, in the event of any violation of 111.2.3 above, cause to be replaced any Protected Plant which has been improperly removed or destroyed with either similar plant in type or size or with such other plant as THE COMMITTEE may deem appropriate.

**III.2.5** The Owner of such Lot shall reimburse THE COMMITTEE or the Association for all expenses incurred by it in performing its obligations under this paragraph; provided however, that with respect to the replacement of any plant the Owner shall not be obligated to pay an amount in excess of the expenses which would have been incurred by THE COMMITTEE or the Association had it elected to replace the damaged, destroyed or removed Protected Plant with a plant similar in type and size. In addition, there are fines which might be imposed under the Native Plant Ordinance by the City of Scottsdale.

## **Desert Skyline Estates – Development Guidelines**

**III.3 PARKING SPACES** Each Residence shall contain parking space within the Lot for at least two automobiles in an enclosed garage either attached to or detached from the main structure of the Residence. Additional parking spaces are highly desirable to accommodate guest parking. No on-street parking will be permitted.

**III.4 NO VISIBLE STORAGE TANKS** - All fuel tanks, water tanks, or similar storage facilities shall either be constructed to be shielded from view by walls or structures, or shall be installed or constructed underground within the Building Envelope. Underground installations are the preferred methods.

**III.5 SITE DRAINAGE AND GRADING** - Site drainage and grading must be done with minimum disruption to the Lot and shall not drain to adjoining Lots, except as established by natural drainage patterns nor cause a condition that could lead to soil erosion on open spaces.

**III.6 SETBACKS** - Houses shall have minimum sixty-foot setbacks from all streets. which area shall remain undisturbed natural desert, except for access drives as heroin below provided.

**III.7 ACCESS DRIVES** - The location of access drive(s) must be approved by the COMMITTEE and be sited to avoid important natural features of a Lot, such as large or significant plant materials, washes or drainageways, and to minimize disruption of the existing landscape.

**III.8 WASHES** - These natural drainageways occur frequently throughout Desert Skyline Estates, and should not be obstructed. improvements shall be sited to avoid these washes, although they can be sited at the edge of a wash, and watts or other improvements may be designed and constructed to bridge washes without obstructing 100-year storm flows.

**III.9 SWIMMING POOLS** - Swimming pools, if any, and their enclosing walls, shall be designed to be visually connected to the Residence, and screened or separated from the Natural Area or direct view of the street or of neighboring properties. They must be constructed in accordance with City of Scottsdale regulations.

**III.10 TENNIS COURTS** - Tennis courts should be fenced and sited for minimal vision impact from the street or from neighboring properties- Protection for the Natural Area must be provided. The construction of tennis courts below grade helps to reduce the need for fencing. No tennis court lighting will be allowed except as permitted in the Declaration.

**III.11 SIGNAGE** - Lighted address identification signs for each residence must conform to a Standard design approved by THE COMMITTEE and kept on file at THE COMMITTEE Office and must be installed by each single-family Lot Owner. No additional signage detached from the Residence will be permitted, except temporary construction signs, real estate signs, or others permitted by the Declaration and approved by THE COMMITTEE.



## **Desert Skyline Estates – Development Guidelines**

**III.12 LIGHTING** An overall lighting plan for Desert Skyline Estates has been designed and approved by THE COMMITTEE and kept on file at THE COMMITTEE Office. The intent of this lighting plan is to create a unified, natural effect which will not interfere or compete with the dramatic night-time panorama of views of the desert, surrounding mountains and the valley below.

**III.12.1** Each driveway will be provided with lighted address identification. THE COMMITTEE may approve additional individual lighting attached to the building, at a height not to exceed twelve feet (12'), where the light source does not broadcast light beyond the building envelope and is concealed from view so as not to result in excessive glare.

**III.12.2** Building lights may be actuated by a switch, motion detector or alarm system, but shall not remain on for long periods, especially at night. In addition, motion detectors shall be adjusted or oriented so that motion from adjacent private properties or the common area street will not be detected.

**III.12.3** Landscape lighting shall be low intensity, does not broadcast light-beyond the building envelope and is concealed from view so as not to result in excessive glare

**III.13 LOT RESTRICTIONS** - Except for Compounds, no more than one Residence may be constructed on any Lot.

**III.14 SITE WALLS** - Site walls shall be limited to those used to enclose or screen transitional area, private area and ground mounted mechanical equipment; and to screen parking and drive areas when required by THE COMMITTEE during the development review process. Walls enclosing these areas shall not be connected together and shall not surround the entire house to form an enclosed "compound" in addition site walls shall not precisely define the building envelope or the setback lines-. Walls shall match the residence in terms of finish, texture and color, and shall not exceed five feet in height, Decorative archways or piers in excess of five feet in height, but not exceeding eight feet, shall be allowed in a site wall enclosing a transitional area at a driveway or walkway penetration into the transitional area subject to approval by THE COMMITTEE. Security gates may be installed in conjunction with the archway or piers and shall not exceed five feet in height.

**III.15 WATER FEATURES** - Water features, including ponds, streams and waterfalls, shall be limited to transitional or private area only and shall be set back and/or screened sufficiently from adjacent streets or residences so as not to be a visual or audible intrusion.

## Desert Skyline Estates – Development Guidelines

### ARTICLE IV - ARCHITECTURAL DESIGN STANDARDS

**IV.1 SIZE OF STRUCTURES** - It is expected that Residences will exceed 3000 gross square feet of enclosed air-conditioned living area. Exceptions for special circumstances or unique design solutions will be considered by THE COMMITTEE, with the burden of proof for the justification of proposed circumstances or unique design solutions falling on the Owner.

**IV.2 HEIGHT OF STRUCTURES** - THE COMMITTEE intends to discourage, and has the right to prohibit, the construction of any Residence or other structure which could appear excessive in height when viewed from the street or other Lots anywhere in the Project. Because the desert landscape is low, scarcely ever reaching two stories and because low buildings will maintain cooler summer temperatures, single story buildings are encouraged at Desert Skyline Estates. They may be sited below grade. The maximum height for any Residence shall not exceed 16 feet. except that the height of one-third of the enclosed living area may exceed 16 feet but not exceed 24 feet. Height shall be measured from the natural grade on the highest side of the improvement to the highest point of the wall or roof or any projection therefrom except chimneys. Where the minimum finish floor elevation is controlled by federal, state and local flood hazard requirements the building height shall be measured from the minimum floor elevation computed by such requirements or the natural grade of the highest side of the improvement, whichever is highest. One chimney on each roof may be constructed to a maximum height not exceeding the minimum distance required by the Uniform Building Code for chimneys to clear adjacent roof and wall surfaces.

**IV.3 EXTERIOR MATERIALS** - Exterior surfaces shall be generally of natural materials that blend and are compatible with the natural landscape. Masonry, stucco or traditional adobe are to be the predominant exterior surfaces. These materials provide an outer surface to withstand the climate extremes. Large expanses of painted surfaces, particularly wood, will not weather well in desert conditions and will not be approved.

**IV.3.1 NO REFLECTIVE FINISHES** No highly reflective finishes (other than glass, which may not be mirrored) shall be used on exterior surfaces (other than surfaces of hardware fixtures), including without limitation, the exterior surfaces of any of the following: roofs, all projections above the roofs, retaining walls, doors, trim, fences, pipes, equipment, mailboxes and newspaper tubes.

**IV.4 COLOR** - The color of external materials must generally be subdued to enhance the color of the natural landscape. Earth tones, generally muted, are recommended, although occasional accent colors which are used judiciously and with restraint may be permitted. The colors of the desert are rich and varied and are highlighted by different light conditions based on time of day and; season of the year. The intent of the project is to allow these colors to flourish. This is achieved by repeating the middle range values of desert colors.

**IV.5 FOUNDATIONS** - All exterior wall materials must be continued down below finish grade thereby eliminating unfinished foundation walls.

## **Desert Skyline Estates – Development Guidelines**

**IV.6 WALLS** - Walls of stucco, stone, or wood, (it used as an accent detail) compatible with the design of the main structure, may be used for privacy, to delineate the Private Areas from the rest of the Building Envelope and as screening for cars and service areas of the Residence- They should be a visual extension of the architecture of the Residence and must be located within the Building Envelope. The colors of wall, if any, must conform to the same color standards as described in Item IV-4 above. They shall not be used to delineate property lines or to arbitrarily designate the Building Envelope.

**IV.7 WINDOWS AND SKYLIGHTS** - Skylights are not recommended because of the excessive heat gain. Windows and clerestories of anodized aluminum, baked enamel or wood are preferred for the desert climate.

**IV.8 BUILDING PROJECTIONS** - All projections from a Residence or other structure including, but not limited to, chimney flues, vents, gutters, downspouts, utility boxes, porches, railings and exterior stairways shall match the color of the surface from which they project, or shall be of approved accent color. In accordance with Item IVA above, any building projection must be within the Building Envelope.

**IV.9 ROOFS** - All roofs shall be of a material, color, and texture approved by THE COMMITTEE. In keeping with the low landscape, roofs should be predominantly flat or of low pitch to reinforce the traditional horizontal desert architecture which emphasize walls instead of roofs. The overall appearance of the Residence will be an important consideration. THE COMMITTEE may approve pitched roofs up to a maximum pitch of 4 in 12. The color of roofs must conform to the color standards set forth in the Development Guidelines which include only muted, light to middle range values of the desert. Dominant colors such as black, white and red detract from the natural colors of the desert. Reflective roof surfaces which cause excessive glare are not allowed.

**IV.10 ANTENNAE** There shall be no antenna of any sort, either installed or maintained, which is visible from Neighboring Property, except as expressly permitted by THE COMMITTEE.

**IV-11 SOLAR APPLICATION** Passive solar application, or the orientation and design of the residence for maximum winter sun gain will reduce the winter heating needs and is encouraged. Solar collectors that can result in excessive glare and reflection are discouraged and can only be approved by THE COMMITTEE if they are integrated into the structures or landscaping on a Lot and are not visible from Neighboring Properties.

**IV.12 PATIOS AND COURTYARDS** - Patios and courtyards should be designed as an integral part of the architecture of the Residence so they can be shaded and protected from the sun by the walls of the Residence. These open areas can take advantage of natural air flow to produce cooler temperatures, by orienting these outdoor spaces inward, encroachment of the desert will be minimized.

**IV.13 SERVICE YARD** - Walls in accordance with Item IV.6 above are required as screening for a service yard, if any, to enclose all above-ground garbage and trash containers, clotheslines, and other outdoor maintenance and service facilities.

**IV.14 GUEST HOUSE** - Such structures should be designed as integral elements with the Residence and should be visually connected by walls, courtyards or other major landscape elements. The guest house must comply with the zoning regulations of the City. No guest house or guest suite may be leased or rented.

## **Desert Skyline Estates – Development Guidelines**

**IV.15 ADDITIONAL CONSTRUCTION AND/OR EXTERIOR CHANGES** - Any changes to the approved plans before, during and after the construction of an Improvement must first be submitted to THE COMMITTEE for approval.

**IV.16 MAILBOX STRUCTURES** - Custom designed mailbox structures which relate to the architecture of the home are required. Mailbox structures shall match home with respect to finish, texture and color. Design and location shall be shown on the drawings submitted to THE COMMITTEE for approval. Each owner may incorporate street address numbers into the design of the mailbox structure. -Care shall be taken to integrate the mailbox structure design into the landscape design- Mailbox structures shall not compete with or be in conflict with the design of the home and shall recede into the background. No mailbox structure shall exceed two and one half feet (2-1/2') in depth and width and four and one half feet (4 1/2') in height above adjacent grade. Mailboxes installed in mailbox structures shall be approved by and installed in accordance with all applicable United States Postal Service regulations, Mailboxes shall be "Mailmaster", as manufactured by Cutler Manufacturing Corporation, or similar.

## **Desert Skyline Estates – Development Guidelines**

### **ARTICLE V - CONSTRUCTION STANDARDS**

In order to assure that the Natural Desert Landscape of each Lot is not damaged during any construction activities, the following construction regulations shall be made a part of the construction contract documents for each Residence or other improvements on a Lot and All Builders, Owners and other Persons shall be bound by them. Any violation by a Builder shall be deemed to be a violation by the Owner of the Lot.

**V.1 PRE-CONSTRUCTION CONFERENCE** - Prior to commencing construction, the Builder and Owner must meet with a representative of THE COMMITTEE to review construction procedures and coordinate construction activities in Desert Skyline Estates.

**V.I.I** A form, to be supplied by THE COMMITTEE, shall be signed by the Builder and Owner acknowledging their understanding of and compliance with construction procedures and standards.

**V.I.2** The Builder shall complete a form, to be supplied by THE COMMITTEE, listing subcontractors and suppliers requiring access to Desert Skyline Estates.

**V.1.3 Builders Deposit** - To assist THE COMMITTEE in causing compliance with these guidelines, each Builder (not the Owner), before commencing any construction, shall post a cash deposit in the amount of two thousand and no/100 dollars (\$2,000.00) with THE COMMITTEE to be held in a special account. In the event of a violation, the Owner shall be notified and required to remedy the violation as expeditiously as possible. Should it become necessary for either THE COMMITTEE or the Homeowners Association to remedy any violation of these guidelines, the costs of such remedy(ies) or any fine(s) imposed shall be charged against the deposit and the Owner shall be responsible for any amount that exceeds the deposit. If a charge is imposed against the deposit, it must be replenished, to the original total, before construction can continue. The Builder's deposit will be refunded upon receipt of the notice of completion by the owner and upon satisfactory completion of all requirements of the Final Construction Review.

**V.2 CONSTRUCTION AREA PLAN** - Prior to the commencement of any construction activity on a Lot, the Owner and Builder shall provide a detailed plan as to the manner in which the natural desert will be protected, and the areas to which all construction activity will be confined to, including: size and location for construction material storage, limits of excavation, drive areas, parking, chemical toilet location, temporary structures, if any, dumpsters, storage of debris, fire extinguishers, utility trenching and construction sign. This plan should identify the methods of protection, such as fencing, flagging, rope, barricades, or other means, to be set up prior to commencement of construction.

**V.3 CONSTRUCTION TRAILERS, PORTABLE FIELD OFFICES, ETC.** - Any Owner or Builder who desires to bring a construction trailer, field office or the like to Desert Skyline Estates shall first apply for and obtain written approval of THE COMMITTEE. THE COMMITTEE will work closely with the Owner or Builder to determine the best possible location there for. Such temporary structures shall be located only in a location approved by THE COMMITTEE and shall be removed upon completion of construction.

**V.4 SANITARY FACILITIES** - Each Owner and Builder shall be responsible for providing adequate sanitary facilities for his construction workers. Portable toilets or similar temporary toilet facilities shall be located only on the site itself or in areas approved by THE COMMITTEE.

## **Desert Skyline Estates – Development Guidelines**

**V.5 VEHICLES AND PARKING AREAS** - Construction crews will not park on, or otherwise use, other Lots or any open space. Private and construction vehicles and machinery shall be parked only in areas designated by THE COMMITTEE. All vehicles will be parked so as not to inhibit traffic, and within the designated areas so as not to damage the natural landscape.

**V.6 CONSTRUCTION ACCESS** - The only approved construction access during the time a Residence or other improvements are being built will be over the approved driveway for the Lot unless THE COMMITTEE approves an alternative access point.

**V.7 SIGNAGE** Temporary construction sign shall be limited to one sign per site not to exceed six square feet of total surface area. The sign shall be free standing and the design and location of such a sign shall be first approved by THE COMMITTEE.

**V.8 DAILY OPERATION** - Daily working hours for each construction site shall be 5:00 AM to 6:00 PM, Monday through Saturday. No hammers or power tools shall be used prior to 6:00 AM- There shall be no construction on Sundays or the following holidays - New Years Day, 4th of July, Thanksgiving and Christmas.

**V.9 OCCUPATIONAL SAFETY AND HEALTH ACT COMPLIANCE (OSHA)** - applicable OSHA regulations and guidelines must be strictly observed at all times.

**V.10 BLASTING** If any blasting is to occur, THE COMMITTEE must be informed far enough in advance to allow it to make such investigation as it deems appropriate to confirm that all appropriate measures, including protective actions, have been taken prior to the blasting. No blasting or impact digging causing seismic vibrations may be done without the approval of THE COMMITTEE. Applicable governmental regulations should also be reviewed prior to any blasting activity.

**V.II EXCAVATION MATERIALS** - Excess excavation materials must be hauled away from Desert Skyline Estates.

**V.12 DUST AND NOISE** - The Contractor shall be responsible for controlling dust and noise from the construction site.

**V.13 DEBRIS AND TRASH REMOVAL** - Owners and Builders shall clean up all trash and debris on the construction site at the end of each day. Trash and debris shall be removed from each construction site at least once a week to a dumping site located off the project. Lightweight material, packaging and other items shall be covered or weighted down to prevent wind from blowing such materials off the construction site. Owners and Builders are prohibited from dumping, burying or burning trash anywhere on the Lot or in Desert Skyline Estates, except in areas, if any expressly designated by THE COMMITTEE. During the construction period, each construction site shall be kept neat and shall be properly policed to prevent it from becoming a public eyesore or affecting other Lots and any open space. Any clean-up costs incurred by THE COMMITTEE or the Association in enforcing these requirements will be billed to the Owner. Dirt, mud or debris resulting from activity on each construction site shall be promptly removed from public and private roads, open spaces and driveways or other portions of Desert Skyline Estates.

## **Desert Skyline Estates – Development Guidelines**

**V.14 CONSERVATION OF LANDSCAPING MATERIALS** - Owners and Builders are advised of the fact that the lots and open spaces contain valuable native plants and other natural landscaping materials that should be absolutely protected during construction, including topsoil, rock outcroppings and boulders and plant materials. Materials that cannot be removed should be marked and protected by flagging, fencing or barriers. THE COMMITTEE shall have the right to flag major terrain features or plants which are to be fenced off for protection- Any trees or branches removed during construction must be promptly cleaned up and removed immediately from the construction site.

**V.15 RESTORATION OR REPAIR OF OTHER PROPERTY DAMAGED** Damage and scarring to other property, including, but not limited to, open space, other Lots, roads, driveways and /or other improvements will not be permitted. If any such damage occurs, it must be repaired and/or restored promptly at the expense of the Person causing the damage or the Owner of the Lot. Upon completion of construction, each Owner and Builder shall clean his construction site and repair all property which was damaged, including but not limited to restoring grades, planting shrubs and trees as approved or required by THE COMMITTEE and repair of streets, driveways, pathways, drains, culverts, ditches, signs, lighting and fencing.

**V.16 MISCELLANEOUS AND GENERAL PRACTICES** - All Owners will be absolutely responsible for the conduct and behavior of their agents, representatives, Builders, contractors, and subcontractors on Desert Skyline Estates. The following practices are absolutely prohibited on Desert Skyline Estates:

**V.16.1** Changing oil on any vehicle or equipment on the site itself or other than at a location designated for that purpose by THE COMMITTEE;

**V.16.2** Allowing concrete suppliers and contractors to clean their equipment other than at locations designated for that purpose by THE COMMITTEE;

**V.16.3** Removing any rocks, plant material, topsoil or similar items from any property of others within Desert Skyline Estates, including construction sites;

**V.16.4** Carrying any type of firearms on the property;

**V.16.5** Using disposal methods or units other than those approved by THE COMMITTEE;

**V.16.6** Careless disposal of cigarettes and other flammable material, at least one 10-pound ABC-rated dry chemical fire extinguisher shall be present and available in a conspicuous place on the construction site at all times;

**V.16.7** Careless treatment or removal of any desert plant materials not previously approved by THE COMMITTEE; and

**V.16.8** No pets, particularly dogs, may be brought onto the property. No pets will be allowed to roam at will throughout Desert Skyline Estates. In the event of any violation hereof, THE COMMITTEE, the Association or Declarant shall have the right to contact the City of Scottsdale or Maricopa County authorities to impound the pets, or to refuse to permit such Builder or subcontractor to continue to work on the property, or to take such other action as may be permitted by law, the Development Guidelines or the Declaration.

## Desert Skyline Estates – Development Guidelines

### APPENDICES

#### APPENDIX A- THE COMMITTEE

**A.1 THE COMMITTEE MEMBERSHIP ORGANIZATION** - THE COMMITTEE shall consist of no more than five members. Each of said persons shall hold his office until terminated by resignation or removal.

**A.2 APPOINTMENT OF MEMBERS** - Except as hereinbelow provided, the right from time to time appoint and remove all members of THE COMMITTEE shall be, as is hereby, reserved to and vested solely in Declarant.

**A.3 RESIGNATION OF MEMBERS** - Any member of THE COMMITTEE may at any time resign from THE COMMITTEE upon written notice delivered to Declarant or to the Association, whoever then has the right to appoint and remove members.

**A.4 DUTIES** - It shall be the duty of THE COMMITTEE to consider and act upon such proposals or plans from time to time submitted to It pursuant to the Development Guidelines, to perform such other duties from time to time delegated to it by the Declaration or the Association, and to amend the Development Guidelines when and in the manner deemed appropriate or necessary by THE COMMITTEE.

**A.5 MEETINGS** - THE COMMITTEE shall meet from time to time as necessary to properly perform its duties hereunder. The vote or written consent of a majority of the members shall constitute an act by THE COMMITTEE unless the unanimous decision of its members is otherwise required by the Declaration or these Development Guidelines. THE COMMITTEE shall keep and maintain a record of all action from time to time taken by THE COMMITTEE at such meetings or otherwise.

**A.6 COMPENSATION** - Unless authorized by the Association, the members of THE COMMITTEE shall not receive any compensation for services rendered. All members shall be entitled to reimbursement for reasonable expenses incurred by them in connection with the performance of any COMMITTEE function or duty. Professional consultants retained by THE COMMITTEE shall be paid such compensation as THE COMMITTEE determines.

**A.7 AMENDMENT OF DEVELOPMENT GUIDELINES** - THE COMMITTEE may, from time to time and in its sole discretion, adopt, amend and repeal by unanimous vote, rules and regulations to be incorporated into, or amendments of the Development Guidelines which, among other things, interpret, supplement or implement the provisions of the Development Guidelines. All such rules and regulations or amendments, as they may from time to time be adopted, amended, or repealed, shall be appended to and made a part of the Development Guidelines and shall thereupon have the same force and effect as if they were set forth in and were a part of the Declaration. Each Owner is responsible for obtaining from THE COMMITTEE a copy of the most recently revised Development Guidelines.

**A.8 NON-LIABILITY** - Neither THE COMMITTEE nor any member thereof shall be liable to the Association or to any Owner or other Person for any damage, loss, or prejudice suffered or claimed on account of:

**A.8.1** The approval or disapproval of any plans, drawings and specifications, whether or not defective;



## **Desert Skyline Estates – Development Guidelines**

**A.8.2** The construction or performance of any work, whether or not pursuant to approved plans, drawings and specifications;

**A.8.3** The development or manner of development of any property;

**A.8.4** The execution and filing of an estoppel certificate whether or not the facts therein are correct; provided however, that such member has, with the actual knowledge possessed by him, acted in good faith; and

**A.8.5** Without in any way limiting the generality of the foregoing, THE COMMITTEE or any member thereof, may, but is not required to, consult with or hear the Association or any Owner or other Person with respect to any plans, drawings or specifications, or any other proposal submitted to THE COMMITTEE.

**A.9 NON-LIABILITY OF THE COMMITTEE AND DECLARANT** - Neither THE COMMITTEE, any member thereof, nor the Declarant or their respective successors or assigns shall be liable in damages to anyone submitting plans to them for approval, or to any Owner or other Person by reason of mistake in judgment, negligence or nonfeasance arising out of or in connection with the approval or disapproval or failure to approve any plans and specifications. Every Owner or their Person who submits plan to THE COMMITTEE for approval agrees, by submission of such plans and specifications, that he will not bring any action or suit against THE COMMITTEE, any member thereof or Declarant, or recover damages. Approval by THE COMMITTEE, any member thereof or the Declarant shall not be deemed to be a representation or warranty that the Owners plans or specifications or the actual construction of a Residence or other Improvements comply with applicable governmental ordinances or regulations, including, but not limited to, zoning ordinances and local building codes. It shall be the sole responsibility of the Owner or other Person submitting plans to THE COMMITTEE or performing any construction to comply therewith.

**A.10 ENFORCEMENT** - These Development Guidelines may be enforced by THE COMMITTEE, the Association or Declarant as provided herein or in the Declaration.

## **Desert Skyline Estates – Development Guidelines**

### **APPENDIX B - APPROVALS CHECKLIST**

#### **B.1 PRELIMINARY SUBMITTAL**

**B.1.1** Site Plan (at no less than 1" = 20') showing the location of the building Envelope, the Residence and all buildings or other major structures, driveway and parking areas, a grading plan, including existing and proposed topography, utility connections and finished floor elevations, including garage.

**B.1.2** Survey prepared by a licensed surveyor or civil engineer showing Lot Boundaries and dimensions, topography on a scale standard in the industry for similar projects, major terrain features, including rock outcroppings and washes, and indicating all Protected Plants, highlighting those plant materials which will be removed during construction or that are within 20 feet of the proposed Improvements. Any Owner submitting plans for approval to THE COMMITTEE shall be responsible for the verification and accuracy of all lot dimensions, grade, elevations and the location of the key features of the natural terrain. Each Owner shall certify to the accuracy thereof before THE COMMITTEE will undertake its review.

**B.1.3** Roof plan and floor plans (1/8" = 1'-0").

**B.1.4** Exterior elevations (all) with both existing and proposed grade lines at same scale as floor plans.

**B.1.5** Sample of all exterior materials and colors

**B.1.6** Development Review Fee in an amount specified by THE COMMITTEE.

#### **B.2 FINAL SUBMITTAL**

**B.2.1** An approximate time schedule indicating starting and completion dates of construction, utility hook-up, completion of landscaping work and anticipated occupancy date.

**B.2.2** Site plan (at no less than 1" = 20') showing location of the Building Envelope, the Residence and all buildings or other major structures, driveway and parking areas, a grading plan, including existing and proposed topography, utility connections and finished floor elevations, including garage.

**B.2.3** Roof plan and floor plans (at no less than 1/8" = 1'-0").

**B.2.4** Samples of all exterior materials and colors and window and glass specifications. Samples must be presented on a 18" x 24" board (at least 1/8" thick) clearly marked with Owner's name, filing date and Lot number. All samples must be identified with manufacturer's name, color and/or number.

**B.2.5** Exterior elevations (all) with both existing and proposed grades shown.

**B.2.6** Wall section and details of exterior decks or patios.

## **Desert Skyline Estates – Development Guidelines**

**B.2.7** Complete landscape plan, of same scale as site plan, showing: areas to be irrigated, if any; proposed plants and sizes thereof; driveway, retainage, decorative features, etc., if not shown elsewhere on architectural plans; and an indication of the area wherein storage of materials and debris will be confined.

**B.2.8** Cross section of structure indicating existing and proposed grade lines on the site.

**B.2.9** A fully executed notarized original copy of Natural Area Easement, including a legal description of the Natural Area, which will be delivered to the City of Scottsdale for recording upon final approval by THE COMMITTEE.

### **B.3 SCOTTSDALE BUILDING PERMIT**

**B.3.1** Upon completion of the above steps, a copy of working drawings approved by THE COMMITTEE is one of the required submittals.

### **B.4 NATURAL AREA EASEMENTS**

**B.4.1** After final approval by THE COMMITTEE, a fully executed and notarized original copy of the Natural Area Easement, including a legal description of the Natural Area, is to be recorded by the City of Scottsdale on an official form.

### **B.5 CONSTRUCTION REGULATIONS**

**B.5.1** Builder and Owner must meet with a representative of THE COMMITTEE prior to commencement of construction.

**B.5.2** Approval from THE COMMITTEE must be obtained prior to commencement of construction.

**B.5.3** A detailed plan must be approved by THE COMMITTEE showing how the Natural Area shall be protected during construction, including size and location for construction material storage, limits of excavation, drive areas, chemical toilet location, temporary structures, if any, dumpsters, storage of debris, fire extinguishers, utility trenching and construction sign. This plan should identify the methods for protection such as fencing, flagging, roper barricades or other means.

### **B.6 CERTIFICATES OF OCCUPANCY**

**B.6.1** Issued by the City of Scottsdale upon completion of construction and all required inspections.

**B.6.2** Upon final site inspection and release by Desert Skyline Estates.

## Desert Skyline Estates – Development Guidelines

### APPENDIX C - INDIGENOUS PLANT LIST

<b>BOTANICAL NAME</b>	<b>COMMON NAME</b>
Acacia greggii	Cat Claw
Ambrosia Deltoidea	Bur sage
Beloperone Californica	Chuparosa
Cercidium Floridum	Blue Palo Verde
Cercidium Microphyllum	Foothill Palo Verde
Cereus Giganteua	Saguaro
Echinocereus Englemannii	Hedgehog Cholla
Encelia Farinosa	Brittle Brush
Ephedra Trifurca	Mormon Tea
Ferocactus Wislezenii	Barrel Cactus
Fouquieria Splendens	Ocotillo
Haplopappus Laricifolia	Turpentine Bush
Holocantha Emoryi	Crucifixion Thom
Hyptis Emoryi	Lavender
Jojoba Simmondsia	Jojoba
Drameria Grayi	White Rantany
Larrea Tridentata	Creosote Bush
Lycium Andersonii	Anderson Lycium
Lycium Fremonti	Wolfberry
Olneya Tesota	Ironwood
Opuntia Acanthocarpa	Staghorn Cholla
Opuntia Bigelovii	Teddy Bear Cholla
Opuntia Phaecantha	Prickly Pear
Prosopis Juliforia	Mesquite
Viguieria Deltoidea .	Golden Eye
Yucca Baccata	Banana Yucca
Zizyphus Obtusifolia	Greythorn

## Desert Skyline Estates – Development Guidelines

### APPENDIX D – APPROVED NON-INDIGENOUS PLANT LIST

THE COMMITTEE has found the plants included in the following list to be inherently compatible with the natural desert existing within Desert Skyline Estates, and encourages their use- Any species not contained herein may not be planted or installed with Desert Skyline Estates without written approval from THE COMMITTEE, after which the species may be included as an approved species. All species of cacti are acceptable for use within Desert Skyline Estates, as are any species not listed below which have been round to indigenous to the Desert Skyline Estates area.

#### BOTANICAL NAME

#### COMMON NAME

#### TREES

Acacia Abyssinica	Abyssinian Acacia
Acacia Anegaria	Mulga
Acacia	Cavenia
Acacia Constricta	White Thorn Acacia
Acacia Eburnia	Needle Acacia
Acacia Farnesiana	Sweet Acacia
Acacia Gregii	Catclaw Acacia
Acacia Millefolia	Santa Rita Acacia
Acacia Pennatula	
Acacia Occidentalis	
Acacia Schaffneri	
Acacia Smallii	Sweet Acacia
Acacia Stenophylla	Shoestring Acacia
Acacia Willardiana	White Bark Acacia
Caesalpinia Cacalaco	
Caesalpinia Mexicana	Mexican Poinciana
Caesalpinia Platyloba	Bird of Paradise
Caesalpinia pumila	Copper Bird of Paradise
Celtis Pallida	Desert Hackberry
Celtis reticulata	Netleaf Hackberry
Palo Blanco	
Cercidium Floridum	Blue Palo Verde
Cercidium Microphyllum	Foothill Palo Verde
Cercidium Praecox	Palo Brea
Sonoran Palo Verde	
Chilopsis Linearis	Desert Willow
	Desert Catalpa
Lysiloma Candida	Palo Blanco
Lysiloma Thomberi	Fem of the Desert
Otneya Tesota	Ironwood
Pithecolobium Brevifolium	Apes Earring
Pithecolobium Flexicaule	Texas Ebony
Pithecolobium Mexicana	Mexican Ebony
Pittosporum Phylliraeoides	Willow Pittosporum
Prosopis Alba	White Mesquite
	Argentine Mesquite

**Desert Skyline Estates – Development Guidelines**

**APPENDIX D – APPROVED NON-INDIGENOUS PLANT LIST CONTINUED**

<b>BOTANICAL NAME</b>	<b>COMMON NAME</b>
<b>TREES</b>	
Prosopis Chilensis	Chilean Mesquite
Prosopis Juliflora	Honey Mesquite
Prosopis Pubescens	Fremont Screwbean
Rhus Ovata	Mountain Laurel
<b>SHRUBS</b>	
Acacia Angustissima	Fern Acacia
Acacia Craspedocarpa	Leather Leaf Acacia
Aloysia Lycioides	White Brush
Agave Species	Century Plants
	Spanish Daggers
Asclepias Sublata	Desert Milkweed
Atriplex Canescens	Four Wing Salt Brush
Atriplex Hyenelytra	Desert Holly
Atriplex Lentiformis	Quail Bush
Atriplex Mutteri	
Atriplex Nummularia	Old Man Salt Bush
Atriplex Polycarpa	Desert Salt Bush
	Cattle Spinach
Atriplex Rhagodioides	
Atriplex Torryi	Nevada Salt Bush (Atriplex Lentiformis var. Torryi)
Basscharis Sarothroides	Desert Broom (male plants only)
Berberis Haematocarpa	Red Barberry
Buddleia Marrubifolia	Woolly Butterfly Bush
	Summer Lilac
Bursera Microphytla	Elephant Tree
Bursera Fagaroides	Elephant Tree
Caesalpinia Giliessi	Yellow Bird of Paradise
Caesalpinia Pulcherrima	Mexican Bird of Paradise
Calliandra Califonica	Fairy Duster
Calliandra Eriophylla	Fairy Duster
	False Mesquite
Calliandra Penninsularis	Fairy Duster
Canotia Hoiacantha	Crucifixion Thom
Cassia Artemesioides	Feathery Cassia
Cassia Biflora	Texas Cassia
Cassia Candoleana	New Zealand Cassia
Cassia Circinnata	
Cassia Goldmannii	
Cassia Leoptophylla	
Cassia Nimophylla	Green Feather Cassia
Cassia Philodinea	Silver Cassia
Cassia Purpussiae	

## Desert Skyline Estates – Development Guidelines

### APPENDIX D – APPROVED NON-INDIGENOUS PLANT LIST CONTINUED

<b>BOTANICAL NAME</b>	<b>COMMON NAME</b>
Cassia Sturtii	Sturts Cassia
Cassia Wislizenii	Shrubby Cassia
Cercocarpus Montanus	Mountain Mahogany
Clianthus Formosus	Sturts Desert Pea
Cordia Parviflora	
Dalea Bicolor	Indigo Bush
Dalea Formosa	Feathery Dalea
Dalea Pulchra	Gregg Dalea
Dalea Spinosa	Smoke Tree
Dalea Wislizenii	Indigo Bush
Dasyliiron Wheelari	Desert Spoon
Dodonea Viscosa	Hop Bush
Éncetia Farinosa	Brittle Bush
Ephedra Trifuca	Mormon Tree
Erigonum Fasciculatum	Buckwheat
Eysenhardia Polystachia	Kidney Wood
Falfugia Paradox	Apache Plume
Forestiera Neomexicana	Desert Olive
Fouquieria Splendens	Ocotillo
Haplopappus Faricifolia	Turpentine Bush
Hesperaloe Funifera	
Hésperaloe Parviflora	Coral Yucca
Holacantha Emoty	Crucifixion Thorn
Hytis Emoryi	Desert Lavender
Jatrophia Cardiophyila	Limber Bush
Jojoba Simmondsia	Jojoba
Justicia Candicans	Firecracker Bush
Justicia Californica	Chuparosa
Justicia Ghiesbreghtiana	Desert Honeysuckle
Larrea Tridentata	Creosote Bush
Leucaena Retusa	Golden Lead Ball Tree
Leucophyllum Frutescens	Texas Sage, Texas Ranger
Leucophyllum Laevigatum	Chihuahuan Sage
Lycium Andersonii	Anderson Thornbush
Lycium Brevipes	Thornbush
Lycium Fremonti	Wolfberry, Tomatillo
Maytenus Phyllanthioides	Gutta Porcha Mayten
Mimosa Biuncifera	Catclaw
	Wait A Minute Bush
Mimosa Dysocarpa	Velvet Pod Mimosa
Nolina Bigelovii	Bigelow Nolina
Nolina Microcarpa	Bear Grass
Penstemon Species	Beard Tongue
Quercus Turbinella	Scrub Oak
Rhamnus Californica	Coffee Berry
Rhamnus Corcea	Redberry

**Desert Skyline Estates – Development Guidelines**

**APPENDIX D – APPROVED NON-INDIGENOUS PLANT LIST CONTINUED**

<b>BOTANICAL NAME</b>	<b>COMMON NAME</b>
Ruellia Californica	
Ruellia Penninsularis	
Salvia Farinacea	Mealy Cup Sage
Salvia Gregii	Texas Red Salvia
Salvia Chamyorioides	Blue Sage
Senecio Salignus	Willow Leaf Groundsel
Sophora Arizonica	Arizona Sophor
Sophora Secundifolia	Mescal Bean
	Texas Mountain Laurel
Tecoma Stans	Arizona Yellow Bells
Tetracoccus	Hallii
Vauquelina Californica	Arizona Rosewood
Viguiera Tomentosa	Golden Eye
Yucca Species	Spanish Dagger
Zauschneria Latifolia	Hummingbird Flower
	California Fuchsia
Zizphuz Obtusifolia	Greythorn, White Curcillo



## **Desert Skyline Estates – Development Guidelines**

### **APPENDIX E - PROHIBITED PLANT LIST**

**E.1** Any species of tree or shrub whose mature height may reasonably be expected to exceed 20 feet, with the exception of native species or those species specifically listed as approved by THE COMMITTEE.

**E.2** All Palms (Palmae) whose mature height may reasonably be expected to exceed 6 feet will be prohibited for aesthetic reasons, as well as their high maintenance requirements. Dwarf varieties whose mature height may reasonably be expected to be less than 6 feet will be allowed only within the confines of a private garden.

**E.3** All Pines (Pinus), Cypress (Cypressus) False Cypress (Chamaecyparis), Juniper, or Cedar (Juniperus) whose mature height may reasonably be expected to exceed 6 feet will be prohibited for aesthetic reasons. Dwarf varieties and those whose mature height may reasonably be expected to be less than 6 feet may be used immediately adjacent to dwellings or connecting structures or within the confines of a private garden.

**E.4** Olive Trees (*Olea europaea*) will be prohibited for the reason of their profuse production of allergy producing pollen, as well as for aesthetic reasons.

**E.5** Oleanders (*Nerium oleander*) and Thevetia (*Thevetia* Species), will be prohibited for aesthetic reasons, as well as for their profuse production of allergy-producing pollen. These poisonous plants will also be prohibited for their high maintenance requirements and excessive height Dwarf varieties are allowed within the confines of a private garden.

**E.6** Fountain Grass (*Pennisetum Setaceum*) will be prohibited as a defined weed, with the potential to spread throughout the development and present a fire hazard.

**E.7** All varieties of Citrus will be prohibited because of their profuse production of allergy producing pollen and for aesthetic reasons. Dwarf varieties are permissible within the confines of a private garden.

**E.8** Common Bermuda Grass (*Cynodon Dactylon*) will be prohibited as a defined weed and for its profuse production of allergy-producing pollen. Lawns and irrigated ground covers will be limited in use to areas confined by walls or other structures. Mineral landscape features, such as ground covers and boulders, will be limited to materials similar in color and appearance to natural materials.

**E.9** Mexican Palo Verde (*Parkinsonia Aculeata*) will be prohibited as a harbinger of pests and its ability to spread throughout the development, thereby altering the present natural desert.

## **Desert Skyline Estates – Development Guidelines**

### **APPENDIX F – NATURAL AREA EASEMENTS**

**F.1** The City of Scottsdale's Hillside Zoning Ordinance, adopted in November of 1977, includes a requirement that a portion of all developments in the Hillside District be retained in their natural desert condition. The purposes of this requirement include the protection of the unusually rich and varied desert vegetation found in and around McDowell Mountain Foothills, the protection of development from flooding and erosion problems, and to create a consistent visual character which reduces the differences of the many diverse land uses expected in the district.

**F.2** These natural areas may occur on either commonly or privately held lands. In all cases, they must be legally secured to assure that they continue as permanent feature of the landscape.

**F.3** The intent is that natural areas be natural desert, free from any improvements and any scars resulting from construction or the improvement of utilities. As long as the vegetation and land surface are not permanently damaged, it is possible to clean and trim in natural areas. Landscaping such areas is not allowed unless needed to repair vegetation which has been destroyed. This repair is the responsibility of the property Owner.

**F.4** Each Lot Owner will be required to record a Natural Area Easement as described in the Development Guidelines in Substantially the form attached hereto.

**Desert Skyline Estates – Development Guidelines**

When recorded, return to:  
CITY OF SCOTTSDALE  
Land and Property Management  
3939 Civic Center Plaza  
Scottsdale, Arizona 85251

Project: \_\_\_\_\_  
Q.S. \_\_\_\_\_  
Log No. \_\_\_\_\_

CITY OF SCOTTSDALE  
NATURAL AREA EASEMENT  
INCLUDING RESTORED DESERT

KNOW ALL MEN BY THESE PRESENTS: That \_\_\_\_\_

---

(hereinafter referred to as "Grantor"), for good and valuable consideration received from the CITY OF SCOTTSDALE, a municipal corporation, in the County of Maricopa, State of Arizona, (hereinafter referred to as "Grantee"), does hereby grant and convey unto said Grantee and its successors and assigns, a perpetual Natural Easement upon, over and across the real property herein described for the purpose of preserving the area in its natural desert state.

The land upon, over and across which this easement is granted is situated in Maricopa County, State of Arizona and is more fully described as follows:

See Exhibit "A" Natural Area Easement Legal Description

See Exhibit "B" Site Plan

The easement granted herein is subject to ail existing right-of-way and easements and matters of record and the following conditions and covenants:

Grantor agrees to and shall restore any natural desert areas disturbed by development of the land by Grantor in accordance with plans by Grantee.

Grantor and/or Grantee shall not use the property described herein in any way consistent with the preservation of said land in permanent open space.

Neither the Grantor nor the Grantee shall grade, grub, excavate or construct any structure of any kind, on or within the Natural Area Easement granted herein, except as approved in writing by Grantor and Grantee; however, nothing herein shall be constructed as affording the public access to any portion of the land described in this easement.

Grantee shall have the right to enter the Grantors land, described herein, to enforce any conditions or covenants contained herein and shaft be permitted to enjoin in a court of law any activity on, or use of, the land described herein which is inconsistent with the preservation of the natural desert within the Natural Area Easement granted herein.

The provisions hereof shall be binding upon the parties hereto, and their heirs, transferees, successors, and assigns.

CITY OF SCOTTSDALE  
NATURAL AREA EASEMENT  
INCLUDING RESTORED DESERT

Page Two

APPROVED AS TO FORM:

\_\_\_\_\_  
City Attorney

Dated this \_\_\_\_\_ day of 20 \_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

STATE OF ARIZONA )

)

COUNTY OF MARICOPA )

)

This instrument was acknowledged before me this \_\_\_\_\_ day of \_\_\_\_\_ 20 \_\_\_\_\_

My Commission Expires \_\_\_\_\_

Notary Public

**Desert Skyline Estates – Development Guidelines**

**APPENDIX G – NATURAL AREA GUIDELINES**

**G.1 PURPOSE** - The success of the Hillside Program requires the retention of natural areas. Natural areas are the lands in the developable portion of the Hillside District which are required to be left in an undisturbed natural state. The retention of natural areas is intended to:

**G.1.1** Allow development while still retaining a natural character

**G.1.2** Retain significant vegetation;

**G.1.3** Preserve the natural drainage systems of the area;

**G.1.4** Provide for visual vistas of the mountains;

**G.1.5** Reduce erosion, scarring and water consumption.

The amount of natural area required increases with the slope of the land. This provides a transition from the normal development pattern to the undeveloped areas of the McDowell Mountains- This requirement also insures that the most environmentally significant and visible portion of the Hillside Development area will be left in the most natural state.

**G.2 ORDINANCE REQUIREMENTS** - All hillsides shall retain a portion of the developable area of each project in a natural state.

**G.2.1 VERIFY WITH ORDINANCE** - The natural area requirements for each slope category shall be fulfilled within the area of that land slope.

<b>Slope Category</b>	<b>% Slope</b>	<b>Min. &amp; to Remain as Natural Area</b>	<b>Min. % Natural Area w/Cluster Incentive</b>
I	Less than 2%	20	40
II	2 -5	25	45
III	5 - 10	35	55
IV	More than 10%	50	70

**G.2.2** Natural area designations may apply toward open space requirements of the underlying zoning district.

**G.2.3** No grading, excavation or construction shall be allowed within areas designated as "natural areas".

**G.2.4** All natural areas shall be legally secured by a natural areas easement prior to the issuance of building permits.

## Desert Skyline Estates – Development Guidelines

### APPENDIX G – NATURAL AREA GUIDELINES CONTINUED

#### G.3 DISTRIBUTION OF NATURAL AREAS

**G.3.1** The retention of natural areas is encouraged:

- G.3.1.1** along natural washes;
- G.3.1.2** adjacent to roadways;
- G.3.1.3** contiguous with the natural area of adjacent properties;
- G.3.1.4** at locations containing significant rock outcroppings;
- G.3.1.5** at locations containing soils with high permeability;
- G.3.1.6** at significant stands or clusters of native vegetation; and
- G.3.1.7** at archaeological sites.

**G.3.2** Natural areas are to be of significant breadth to provide a clearly identifiable setting for man-made structures. Minimum widths should be:

- G.3.2.1** 40 feet along street frontages;
- G.3.2.2** 20 feet along side property lines; and
- G.3.2.3** 30 feet in all other cases.

**G.3.3** Natural areas requirements should not preclude the reasonable use of privately owner Lots:

- G.3.3.1** 50 percent of a privately owned Lot shall count towards the natural area requirement; and
- G.3.3.2** The Developable area of privately owned Lot shall conform to the limitations indicated on the PROPOSED BUILDING ENVELOPE MAP as maintained by THE COMMITTEE.

**G.3.4** Natural areas should make visually accessible:

- G.3.4.1** Where possible, perimeter fences should be discouraged;
- G.3.4.2** Visual access should be provided over or through 70 percent of the length of all fences adjacent to natural areas. Fence heights of 4-1/4 feet maximum of fenestrated treatments are encouraged; and
- G.3.4.3** Minimum from the street to any rear yard natural areas at a minimum of 500 foot intervals.

**G-3-5** Where the natural occurs in front yards, the driveway spacing should occur in the easements provided for that use. Any exceptions shall be reviewed by THE COMMITTEE.

**G.3.6** Areas of exotic plant materials should be clearly separated from the natural area by a minimum 2 foot high solid wall.

**G.3.7** Backwashing of pool filters should not result in ponding or erosion of natural areas. Non-backwashing filters or approved backflow outlets area suggested.

**G.3.8** Natural areas should reflect the character and scale of the natural topography:

- G.3.8.1** Where possible, the edge of a natural areas should follow natural features;
- G.3.8.2** Parallel walls on either side of a natural area should be avoided; and
- G.3.8.3** Straight walls of more than 100 feet in length should be avoided.

## **Desert Skyline Estates – Development Guidelines**

### **APPENDIX G – NATURAL AREA GUIDELINES CONTINUED**

**G.4 OWNERSHIP AND MAINTENANCE** - Single Family Projects may use any of the Three Options Listed below:

**G.4.1 Private Ownership/Private Maintenance:**

**G.4.1.1** Natural areas must be secured with an easement recorded on plat;

**G.4.1.2** Natural areas should also be identified in deed restrictions which will be permanently conveyed with property; and

**G.4.1.3** Easement should clearly state private maintenance responsibility and restrictions to development.

**G.4.2 Private Ownership/Association assumes enforcement responsibility:**

**G.4.2.1** Natural area easement must be recorded with plat;

**G.4.2.2** City review and approval of CC&Rs to insure:

**G.4.2.2.1** Identification of natural area;

**G.4.2.2.2** Establishment of a homeowner association responsible for the perpetuation of the natural areas; and

**G.4.2.2.3** Notification to the City of any proposed amendments.

**G.4.2.3** Homeowners association should provide for:

**G.4.2.3.1** Authorize policing agent;

**G.4.2.3.2** Monthly fees;

**G.4.2.3.3** Anonymous complaint provision; and

**G.4.2.3.4** Yearly report to all owners of purposes and rules.

**G.4.3 Public Ownership:**

**G.4.3.1** Only on major washes, designated vista or scenic corridors;

**G.4.3.2** Subject to Council acceptance; and

**G.4.3.3** Must follow minimum planning guidelines for size and location.

## **DESERT SKYLINE ESTATES DESIGN REVIEW COMMITTEE**

### **Summary of Design Review Procedures**

The following list is intended to assist Owners with regard to the required procedures for construction within Desert Skyline Estates. This list is a summary of the procedures outlined in the DEVELOPMENT GUIDELINES, and should only be used as an overview and not as a substitute for the detailed requirements of the DEVELOPMENT GUIDELINES.

1. Pre-Design Meeting - Prior to preparing preliminary plans, the Owner and/or Architect meet with a Committee member to discuss proposed plans and to resolve any questions regarding building requirements.
2. Submit preliminary construction drawings to a member of the Design Review Committee. All preliminary plans shall comply with the requirements of Appendix B-Approval Check List, Paragraph B-I. To assist the Committee in its evaluation, the Owner shall provide preliminary staking at the locations of the corners of the improvement and such other locations as the Committee may request.
3. Notice to Members - As soon as the submission of preliminary construction drawings is complete, the Committee will mail a notice to members of the association stating that drawings have been submitted and are available for review. Written comments may be submitted to the Committee within ten (10) calendar days of the date of the notice.
4. Preliminary Review - After the notice and comment period, and the staking of the lot, the preliminary submission of the Owner will be deemed complete. The Committee will then review the preliminary plans and provide a written response to the Owner. The Committee will respond in writing within ten (10) working days after review (but no later than thirty (30) days after a submittal is Complete).
5. Pre-Construction Conference - Prior to commencing construction, the Builder and Owner must meet with a representative of the Committee to review construction procedures and coordinate activities in Desert Skyline Estates. At that meeting, the Owner and Builder shall be required to complete the following items:
  - A. Sign the Construction Standards Form-
  - B. Complete the Contractors/Suppliers Listing Sheet.
  - C. Post the required Two Thousand Dollar (\$2,000.00) construction deposit.
6. Submit Notice of Completion Upon satisfactory completion of all requirements at final construction review, construction deposit will be refunded.



**DESERT SKYLINE ESTATES HOMEOWNER'S ASSOCIATION  
DESIGN REVIEW COMMITTEE**

**CONSTRUCTION STANDARDS**

Construction Standards for Desert Skyline Estates have been established to assure that the natural desert landscape of each lot is not unduly damaged, nor any resident of Desert Skyline Estates adversely affected during construction within the subdivision. A copy of Article V, Construction Standards, excerpted from the Development Guidelines is attached and made a part hereof. Some important areas addressed in the Guidelines are as follows:

- All building and landscape plans must first be approved by the Design Review Committee (Committee) before obtaining building and NAOS easement permits from the City of Scottsdale.
- The lot shall be staked to show the location of buildings, NAOS, driveways and property lines.
- Plants and trees shall be designated to remain in place or properly boxed for replanting as per the drawing approved by the City of Scottsdale.
- The Committee must approve the contractor's plan for the protection of the area outside the building envelope which includes size and location for construction material storage, limits of excavation, driveways, chemical toilet location, temporary structures, dumpster, fire extinguishers, utility trenching and construction sign.
- After completion of the above, the lot will be inspected by the Association's architect and a Committee member.
- Prior to beginning site preparation, the required cash bond must be posted, a completed Contractor/Supplier Listing Sheet must be submitted and written approval from the Committee must be obtained\*
- Construction hours are 5:00am till 6:00pm Mon. - Sat. No hammers or power tools are to be used prior to 6:00am. No construction on Sundays, New Years Day, July 4, Thanksgiving or Christmas.

NOTE: Any changes or additions to the originally approved drawings must be submitted to the Committee for approval. If changes are made without Committee approval, the Committee may require removal of this work at the owner/builder's expense.

**DESIGN REVIEW COMMITTEE**

\_\_\_\_\_

Member	Date
--------	------

I have received copies of the Development Guidelines for Desert Skyline Estates and an additional copy of Article V. Construction Standards. I have read, understand and will abide by the standards set forth in those documents. I will inform and provide copies of these standards to all subcontractors and enforce their compliance. I understand that these Guidelines and Construction Standards are for the protection of all property owners in Desert Skyline Estates. Violations are subject to charges and/or fines and any violation by a builder shall be deemed to be a violation by the owner of the lot.

Lot \_\_\_\_\_

Builder \_\_\_\_\_ Date \_\_\_\_\_

Owner \_\_\_\_\_ Date \_\_\_\_\_

**DESERT SKYLINE ESTATES HOMEOWNER'S ASSOCIATION  
DESIGN REVIEW COMMITTEE**

**CONTRACTORS/SUPPLIERS LISTING SHEET**

Lot Number \_\_\_\_\_ Date \_\_\_\_\_  
Owner \_\_\_\_\_ Address \_\_\_\_\_  
Phone \_\_\_\_\_

**GENERAL CONTRACTOR**

Name \_\_\_\_\_ Address \_\_\_\_\_  
Phone \_\_\_\_\_  
Contact Person(s) \_\_\_\_\_

**SUBCONTRACTORS and SUPPLIERS**

Company Name	Contact Person	Phone No.
1. _____	_____	_____
2. _____	_____	_____
3. _____	_____	_____
4. _____	_____	_____
5. _____	_____	_____
6. _____	_____	_____
7. _____	_____	_____
8. _____	_____	_____
9. _____	_____	_____
10. _____	_____	_____

ARTICLES OF INCORPORATION  
OF  
DESERT SKYLINE ESTATES HOMEOWNERS ASSOCIATION

The undersigned, as incorporators, have this date voluntarily associated themselves together for the purpose of forming a private non-profit membership corporation under and by virtue of the laws of the State of Arizona, and do hereby adopt the following Articles of Incorporation:

ARTICLE I  
Name

The name of the corporation is DESERT SKYLINE ESTATES HOMEOWNERS ASSOCIATION.

ARTICLE II  
Definitions

The words and terms used herein shall be deemed to have the same definitions and meanings as in the Declaration of Covenants, Conditions and Restrictions for Desert Skyline Estates, as amended from time to time (the "Declaration"), which was first recorded in the office of the County Recorder of Maricopa County, Arizona, on June 5, 1984, as Instrument Number 84 241535.

ARTICLE III  
Duration

The corporation shall exist perpetually.

ARTICLE IV  
Purposes

The corporation is not organized for the purpose of gaining pecuniary profit. No part of the income or profit or net earnings of the corporation, if any, shall inure to the benefit of any member, director, or officer nor to any other person or entity other than by acquiring, constructing, or providing management, maintenance and care of Association property and other than by a rebate of excess membership dues, fees or assessments. The corporation is formed and its initial business will be to own the Common Areas and serve as the governing body for all of the Members of the corporation, for the protection, improvement, alteration, maintenance, repair, replacement, administration and operation of the Common Areas at Desert Skyline Estates, for the assessment of expenses, for the payment of losses, for the disposition of casualty insurance proceeds, to enforce and implement the terms and provisions of the Declaration and for other matters as provided in the Declaration, these Articles of Incorporation, the Bylaws of the corporation. Without limiting the generality of the foregoing, to the extent authorized by its Board of Directors and in accordance with the provisions of the Declaration, the corporation shall be empowered:

(a) To accept such properties, improvements, rights, and interests as may be conveyed, leased, assigned, or transferred to the corporation; to assume such obligations and duties as may be contained in

any, lease, assignment or transferral to the corporation; to maintain, operate, and otherwise manage all buildings, structures, improvements, landscaping, parking areas, walks, common elements, common areas, recreational areas and facilities now or hereafter constructed on the Property as provided in the Declaration; to pay all taxes and assessments, any, which may properly be levied against properties of the corporation; to repair, rehabilitate and restore all buildings, structures and improvements on the Property; to insure the Property and all buildings and structures thereon as required by the Declaration against such other risks as the Board of Directors shall determine; to make assignments and assessments for maintenance and operating charges as the of Directors shall determine in accordance with the Declaration and the Bylaws of the corporation and to enforce the collection of such assessments; to impose liens against individual Members or Lots to secure the payment of obligations due from Members, and to collect, sue, foreclose or otherwise enforce, compromise, release, satisfy and discharge such demands and liens in accordance with the Declaration; to enforce any and all covenants, restrictions and agreements applicable to the Property; to pay all maintenance, operating and other costs and to do all things and acts which in the discretion of the President or the Board of Directors, as provided in the Declaration, shall be deemed to be in the best interests of the Members of the corporation or for the peace, comfort, safety or general welfare of the Members of the corporation, all in accordance with the Declaration; to make and amend rules and regulations respecting the use of the Property; and, to do all things necessary or appropriate to carry out and to enforce the terms and provisions of the Declaration.

(b) To purchase or otherwise acquire title to Lots or to hold and exercise options to purchase the same, and to lease Lots in the corporation's name as lessee and to sell and lease or to grant options to lease and purchase Lots; and, if the corporation becomes the Owner or lessee of a Lot, to perform all of the obligations of an Owner or lessee thereof and to assume and agree to pay any Mortgage constituting a lien upon the lot.

(c) To develop, construct, purchase, lease, own, improve, maintain, operate and hold real and personal property of every kind and description; to sell, convey, and lease such property; and to mortgage, assign and pledge or otherwise encumber such property.

(d) To borrow money, and to issue notes, bonds, and other evidences of indebtedness in furtherance of any or all of the objects and purposes of the corporation, and to secure the same by mortgage, trust deed, pledge or other lien on or interest in property of the corporation.

(e) To enter into, perform, and carry out leases and contracts of any kind necessary to or in connection with or incidental to the accomplishment of any one or more of the objects and purposes of the corporation.

(f) To make refunds of excess payments from Members, as provided in the Declaration or the Bylaws.

(g) To lend or invest its working capital reserves with or without security.

(h) To act as surety or guarantor, agent, trustee, broker or in any other capacity when appropriate to the fulfillment and the furtherance of its objects and purposes.

(i) To procure all types and kinds of insurance as shall be deemed to be in the best interests of the corporation.

(j) To pledge the right to exercise its assessment powers as security for any obligation, as provided in the Declaration.

(k) In general, to do and perform such acts and things and to transact such business in connection with the foregoing objects and purposes as may necessary and required.

(l) To transact any and all lawful business for which corporations may be incorporated under the laws of the State of Arizona not prohibited by the Declaration or these Articles of Incorporation.

Article V  
Character of Affairs

The character of affairs which the corporation initially intends actually to conduct in Arizona is the fulfillment of all its duties and responsibilities and the exercise of all its rights, powers and prerogatives under the Declaration.

Article VI  
Membership; Classes of Members; Voting Rights

As provided in the Declaration, each owner shall be a Member of the Association so long as he shall be an Owner and such Membership shall automatically terminate when he ceases to be an Owner. A Membership in the Association shall not be transferred, pledged or alienated in any way, except as expressly in the Declaration. A Membership shall automatically be transferred to the new Owner upon the transfer of the lot to which it appertains (and then only to such transferee), whether by sale, intestate succession, testamentary disposition, foreclosure of a Mortgage or other legal process transferring fee simple title to such Lot. Other than its Members, the corporation shall have no shareholders, and no capital stock shall be authorized or issued. The voting rights of the Members shall be as provided in the Declaration.

ARTICLE VII  
Statutory Agent

Fennemore, Craig, von Ammon, Udall & Powers (Attn: GTC), an Arizona professional corporation, whose address is 1700 First National Bank Plaza, 100 West Washington Street, Phoenix, Arizona 85003, is hereby appointed the initial statutory agent of this corporation for the State of Arizona.

ARTICLE VIII  
Board of Directors and Officers

The business, property affairs of the corporation shall be managed, controlled and conducted by a Board of Directors. The number of directors, who shall serve without compensation, shall not be less than 3 nor more than 9, as shall be specified in the Bylaws. The initial Board of Directors shall consist of 3 directors. Except for directors designated by Declarant as provided in the Declaration, each director shall be a Member or the spouse of a Member. If a director shall cease to meet such qualifications during his term, he will thereupon cease to be a director and his place on the shall be deemed vacant. At a meeting held on June 12, 1984 at 10:00 a.m., at 23030 N. Pima Road, Scottsdale, Arizona 85255, Declarant and the

undersigned incorporators elected the following individuals to serve as directors until their successors are elected and qualified, as provided in the Declaration:

Name:	Address:
Thomas H. Treaccar	23030 North Pima Road Scottsdale, Arizona 85255
Larry J. Cerato	4647 North 32nd Street Suite 275 Phoenix, Arizona 85018
Philip E, Ordway	4647 North 32nd Street Suite 275 Phoenix, Arizona 85018

Pursuant to Section 3.5.2 of the Declaration, Declarant shall have the absolute power and right to appoint and remove the members of the Board of Directors until the expiration of Declarant's control of the Association. Thereafter, the members of the Board of Directors shall be elected by a plurality of votes cast at the annual meeting of the Members. A director shall serve until removed or until his successor is duly elected and qualified. The Board of Directors may fill any vacancy occurring on the Board of Directors from whatever cause in the interval between the annual meetings of the Members; provided, however, that if a vacancy on the Board of Directors is created pursuant to Section 3.5.3 of the Declaration, such vacancy shall be filled by an election of the Members at a special meeting of the Members held no more than sixty (60) days after the director is removed from office in accordance with Section 3.5.3 of the Declaration.

The Board of Directors shall have the power to adopt Bylaws and to change or amend the Bylaws as it may from time to time deem appropriate. The Bylaws shall prescribe, among other things, the date of the annual meeting of the Members of the corporation.

The principal officers of the corporation shall be a President, one or more Vice Presidents, a Secretary and a Treasurer, all of whom shall be elected by the Board of Directors. The President shall have those powers, duties and responsibilities provided in the Declaration and the Bylaws.

ARTICLE IX  
Incorporators

The Names and addresses of the incorporators are:

Name:	Address:
Thomas H. Treaccar	23030 North Pima Road Scottsdale, Arizona 85255
Larry J. Cerato	4647 North 32nd Street Suite 275 Phoenix, Arizona 85018

ARTICLE X  
Private Property

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

ARTICLE XI  
Interdealing

No transaction, contract or act of this corporation 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 this corporation, 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 this corporation or such Members or 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 this corporation 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 this corporation 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 XII  
Indemnification

To the fullest extent permitted by law, this corporation shall indemnify any person against expenses incurred by them, including without limitation attorneys' fees, judgements, fines or amounts paid in settlement, actually and reasonably incurred reason of the fact that he or she is or was a director, officer, employee or agent of the corporation, or is or was serving at the request of the corporation as a director, officer, employee or agent of another corporation, partnership, joint venture, trust or other enterprise, provided that the of Directors shall determine in good faith that such person or entity did not act, fail to act, or refuse to act with 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 or entity 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 in any instance in which such person or entity shall have refused unreasonably to permit this corporation, at its expense and through counsel of its own choosing, to defend him or it in the action or to compromise and settle the action.

ARTICLE XIII  
Amendments

These Articles of Incorporation may be amended only at a lawfully held meeting of the Members by the affirmative vote of a Majority of Members then entitled to vote as provided in the Declaration, these Articles of Incorporation or the Bylaws. These Articles of Incorporation shall not be amended to contain any provisions which would be contrary to or inconsistent with the Declaration, and any provision of or purported amendment to these Articles of Incorporation which is contrary to or inconsistent with the Declaration shall be void to the extent of such inconsistency.

IN WITNESS WHEREOF, the undersigned incorporators have hereunto affixed their signatures this 12 day of June, 1984.

  
\_\_\_\_\_  
Thomas H. Treacchar

  
\_\_\_\_\_  
Larry J. Cerato



BYLAWS  
OF  
DESERT SKYLINE ESTATES HOMEOWNERS ASSOCIATION

ARTICLE I  
Identity

Section 1. Declaration. These Bylaws shall govern the of operation of Desert Skyline Estates Homeowners Association (the "Corporation") an Arizona non-profit corporation created pursuant to that certain Declaration of Covenants, Conditions and Restrictions for Skyline Estates recorded on June 5, 1984, as Instrument Number 84 241535, official records of Maricopa County, Arizona (the "Declaration") which by this reference is incorporated herein. Any amendments to the shall automatically be incorporated herein, all references to the Declaration shall be deemed to include any such amendments.

Section 2. Terms. Terms used herein which are defined in the Declaration shall have the same meanings as in the Declaration.

Section 3. Priority of Declaration. The provisions of the Declaration shall have priority over these Bylaws, and any provision hereof which is contrary to or inconsistent with the Declaration shall be void to the extent of such inconsistency.

Section 4. Principal Office. The principal office of the Corporation shall be located initially in Scottsdale, Arizona.

Section 5. Seal. The of Directors may obtain a seal for the Corporation, which shall bear the name of the Corporation the word "Arizona", the word "non-profit", the year of incorporation, and such other matters as the Board of Directors may elect.

ARTICLE II  
Membership

Section 1. Members. Membership in the Corporation shall be limited as set forth in the Declaration and the Articles of Incorporation (the "Articles") of the Corporation.

Section 2. Meetings. Meetings of the Members shall be held at the principal place of business of the Corporation or at such other convenient place as may be designated by the Board of Directors. The first annual meeting of the Members shall be held within 30 days after Declarant no longer has the authority to appoint the members of the Board as provided in the Declaration or at such earlier time as the Board of Directors shall designate. Thereafter, annual meetings of the Members shall be held on the second Thursday of March in each year beginning at 7:00 P.M. Scottsdale time. Special meetings of the Members may be called by the president or by a majority of the members of the Board of Directors. The notice of any special meeting shall state the time and place of such meeting and the purpose thereof. No business shall be transacted at a special meeting, except as stated in the notice, unless by consent of two-thirds of the Members present, either in person or by proxy.

Section 3. Voting. The voting rights of the Members shall be as provided in the Declaration.

Section 4. Notice. Notice of all meetings of the Members stating the time, the place and the objects for which the meeting is called shall be given by the President, Vice-President or Secretary unless notice is waived in writing. Such notice must be in writing and addressed to each Member entitled to vote at such meeting as provided in the Declaration at his address as it appears on the books of the Corporation (or if no such address appears, at his last known address), and shall be mailed not less than ten days nor more than 50 days prior to the date of the meeting. Notice of meetings may be waived before, during or after the meeting.

Section 5. Quorum. A quorum of Members for any meeting shall be constituted by Members represented in person or by proxy and holding a majority of the votes entitled to be cast at the meeting. Unless the vote of a greater number is required by these Bylaws, the Articles, the Declaration or Arizona law, the affirmative vote of a majority of the Members represented at a meeting and entitled to vote shall be binding as the act of the Members.

Section 6. Adjourned Meetings. If any meeting of Members cannot be organized because a quorum has not attended, the Members who are present, either in person or by proxy, may adjourn the meeting to a time not more than 48 hours from the time the original meeting was called.

Section 7. Order of Business. The order of business at all meetings of the Members shall be as follows:

- (a) Roll call and verification of proxies.
- (b) Proof of notice of meeting or waiver of notice.
- (c) Reading of minutes of preceding meeting.
- (d) Reports of officers.
- (e) Reports of committees.
- (f) Appointment of inspectors of election, when required.
- (g) Election of members of the Board of Directors, when required.
- (h) Unfinished business.
- (i) New business.
- (j) Adjournment.

ARTICLE III  
Board of Directors

Section 1. Number and Qualification. The business, property and affairs of the Corporation shall be managed, controlled and conducted by a Board of Directors. The Board of Directors shall consist of three members. The number of directors may be altered from time to time by resolution of a majority vote of the Board of Directors, but only within the limits prescribed by the Articles. In the event of any increase in the number of directors in advance of the annual meeting, each additional director shall be

elected by the then members of the Board of Directors and hold office until his successor is elected and shall qualify. Except for directors designated by Declarant as provided in the Declaration, each director shall be a Member or spouse of a Member. If a director shall cease to meet such qualifications his term, he will thereupon cease to be a director and his place on the Board shall be vacant.

Section 2. Powers and duties. The Board of Directors shall have the powers and duties necessary for the administration of the affairs of the Corporation, and may do all such acts and things as are not by law or otherwise directed to be exercised and done by the Members or the President. The powers of the Board of Directors shall include, but not be limited to, all of the rights and duties of the Board of Directors as set forth elsewhere in these Bylaws, the Articles and the Declaration and shall also include the power to promulgate such rules and regulations pertaining to the rights duties of Members of the Corporation, all other matters, as may be deemed proper and which are consistent with the foregoing. The Board of Directors may delegate to one or more committees thereof, and to other persons, such duties and powers, all as appears to the Board of Directors to be in the best interests of the Corporation and to the extent permitted by law.

Section 3. Election and Term of Office. The election and term of office of the directors shall be as provided in the Articles and the Declaration.

Section 4. Vacancies. Vacancies on the Board of Directors caused by any reason shall be filled by vote of the majority of the remaining directors even though less than a quorum, or by the remaining director if there be only one, and each person so elected shall be a director until his successor is duly elected and shall qualify.

Section 5. Compensation. No compensation shall be to paid to directors for their services as directors. No remuneration shall be paid to a director for services performed by him for the Corporation in any other capacity, unless a resolution authorizing such remuneration shall have been unanimously adopted by the Board of Directors before the services are undertaken. Directors and officers, however, may be reimbursed for any actual expenses incurred in connection with their duties as such officers or directors.

Section 6. Regular Meetings. Regular meetings of the Board of Directors may be held at such time and place as shall be determined, from time to time, by a majority of the directors, but at least two such meetings (including an organizational meeting within ten days of election of directors) shall be held during each fiscal year. Notice of regular meetings of the Board of Directors shall be given to each director, personally or by mail, telephone or telegraph, at least three days prior to the day named for the meeting.

Section 7. Special Meetings. Special meetings of the Board of Directors may be called by the President or Secretary on three days' notice to each director, given personally or by mail, telephone or telegraph, which notice shall state the time, place and purpose of the meeting. Special meetings of the Board of Directors shall be called by the President or Secretary in like manner and on like notice, upon the written request of at least two of the directors.

Section 8. Waiver of Notice. Before, at, or after any meeting of the of Directors, any director may, in writing, waive notice of such meeting, and such waiver shall be deemed equivalent to the giving of such notice. Attendance by a director at any meeting of the Board shall be deemed to be a waiver of notice by

him of the time place thereof. If all the directors are present at any meeting of the Board, no notice shall be required, and any business may be transacted at such meeting.

Section 9. Quorum. A majority of the Board of Directors shall constitute a quorum for the transaction of business, but if at any meeting of the Board there be less than a quorum present, a majority of those present may adjourn the meeting from time to time. Every act or decision done or made by a majority of the directors at a duly held meeting at which a quorum is present shall be regarded as the act of the Board unless the Articles, the Bylaws or the Declaration otherwise specifically requires the affirmative vote of a different number of directors on a specific matter.

Section 10. Adjournments. The Board of Directors may adjourn any meeting from day to day or for such other time as may be prudent or necessary in the interests of the Corporation, provided that no meeting may be adjourned for a period longer than 30 days,

Section 11. Action Taken Without a Meeting. The 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 of the directors. Any action so approved shall have the same effect as though taken at a meeting of the directors.

Section 12. Fidelity Bonds. The Board of Directors may require, in its discretion, that all officers and employees of the Corporation handling or responsible for the Corporation's funds shall furnish fidelity bonds. In the event such bonds are required upon determination of the Board of Directors, the premiums therefor shall be paid by the Corporation.

Section 13. Committees. The Board of Directors may by resolution appoint committees of the Board, which committees shall have the powers and authority designated in the resolution or resolutions establishing them.

#### ARTICLE IV Officers

Section 1. Designation. The principal officers of the Corporation shall be a President, one or more Vice Presidents, a Secretary, and a Treasurer, all of whom shall be elected by the Board of Directors. The directors may appoint an Assistant Secretary and an Assistant Treasurer, and such other officers as in their judgement may be necessary. Any person holding the office of President must be a director. Any one person may hold two or more offices at the same time, except that no one person shall simultaneously hold the office of President and Secretary.

Section 2. Election of Officers. The officers of the Corporation shall be elected from time to time by the Board of Directors.

Section 3. Removal of Officers. Upon an affirmative vote of a majority members of the Board of Directors, any officer may be removed, either with or without cause, and his successor elected.

Section 4. Resignation of Officers. 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 5. Vacancies. A vacancy in any office may be filled by vote of a majority of the Board of Directors. The officer elected to such vacancy shall serve for the remainder of the term of the officer he replaces.

Section 6. President. The President shall be the chief executive officer of the Corporation. He shall preside at all meetings of the members of the Corporation and of the Board of Directors. He shall have all of the general powers and duties which are normally vested in the office of the President of a corporation, but not limited to, the power to appoint committees from the members of the Corporation from time to time as he may in his discretion decide is to assist in the conduct of the affairs of the Corporation. The president shall also have such other powers as provided for in the Declaration.

Section 7. Vice President. The Vice President (or the most senior Vice President, if there shall be more than one) shall take the place of the President and perform his duties whenever the President shall be absent, unable to act or refuses to act. If neither the President nor a Vice President is able to act, the Board of Directors shall appoint some other member of the Board to do so on an interim basis. A Vice President shall also perform such other duties as shall from time to time be imposed upon him by the Board of Directors.

Section 8. Secretary. The Secretary shall keep the minutes of all meetings of the Board of Directors and the minutes of all meetings of the members of the Corporation; he shall have the custody of the seal of the Corporation; he shall have charge of the membership books and such other books and papers as the Board of Directors may direct; and he shall, in general, perform all the duties incident to the office of the Secretary.

Section 9. Treasurer. The Treasurer shall have the responsibility for the Corporation's funds and securities and shall be responsible for keeping full and accurate accounts of all receipts and disbursements in books belonging to the Corporation. He shall be responsible for the deposit of all moneys and other valuable effects in the name, and to the credit, of the Corporation in such depositories as may from time to time be designated by the Board of Directors.

Section 10. Compensation. No compensation shall be paid to officers for their services as officers. No remuneration shall be paid to an officer for services performed by him for the Corporation in any other capacity, unless a resolution authorizing such remuneration shall have been unanimously adopted by the Board of Directors before the services are undertaken.

## ARTICLE V

### Design Review Committee

There shall be a Design Review Committee as provided for in the Declaration. The Design Review Committee shall be appointed in the manner provided for in the Declaration and shall have such duties powers as provided for in the Declaration.

ARTICLE VI  
Miscellaneous

Section 1. Suspension Hearing. Notice of the hearing provided for in paragraph 2.1.4 of the Declaration shall be delivered to the Member or Person at least ten (10) days prior to the hearing. Notice to Members shall be addressed to the last address on record shown on the records of the Corporation. Notice to any other Person shall be to the last known address of the Person. Notices addressed as above shall be deemed delivered when mailed by United States registered or certified mail, or when delivered in person with written acknowledgement of the receipt thereof. The hearing shall be held in Maricopa County, Arizona, at the location and time specified in the notice. At the hearing each interested party, as determined in the sole discretion of the Board of Directors, shall be given the opportunity to present all relevant material, but the hearing shall not be open to the public, except at the discretion of the Board of Directors and with the consent of the noticed Member or Person.

Section 2. Books and Accounts. The Board, at all times, shall keep, or cause to be kept by the Treasurer, true and correct records of account in accordance with generally accepted accounting principles, and shall have available for the inspection of all Members other Persons as specified in the Declaration, if any, at reasonable times, such books which shall specify in reasonable detail all expenses incurred and funds accumulated from assessments or otherwise. The membership records of the Corporation, the Declaration, the Articles and the Bylaws of the Corporation shall likewise be available for inspection by any Owner or Member at the principal offices of the Corporation as provided in the Declaration.

Section 3. Execution of Corporate Documents. With the prior authorization of the Board of Directors, all notes, checks and contracts or other obligations shall be executed on behalf of the Corporation by such officer or officers of the Corporation as said Board shall designate.

Section 4. Fiscal Year. The fiscal year of the Corporation shall be determined by the Board of Directors.

Section 5. Conflict in Documents. In the case of any conflict between the Articles and these Bylaws, the Articles shall control. In the case of any conflict between the Declaration and these Bylaws, the Declaration shall control. In the case of any conflict between the Articles and the Declaration, the Declaration shall control.

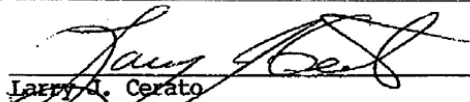
ARTICLE VII  
Amendment of the Bylaws

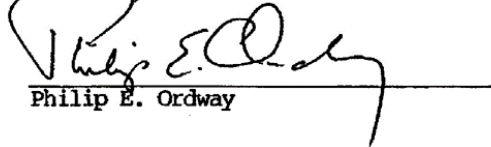
These Bylaws may be amended by the affirmative vote of a majority of the of Directors. These Bylaws may not be amended insofar as such amendment would be inconsistent with the Declaration or the Articles.

IN WITNESS WHEREOF, we, being all of the directors of Desert Skyline Estates Homeowners Association, have hereunto set our hands as of the 12 day of June, 1984.

  
Thomas H. Treacchar

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Larry D. Cerato

  
Philip E. Ordway

**ARTIFACTS FROM ARTICLES OF INCORPORATION AND BYLAWS**

AZ. CORP. COMMISSION  
FOR THE STATE OF AZ.  
FILED

JUL 13 2 12 PM '84

APPR. \_\_\_\_\_  
DATE APPRO. \_\_\_\_\_ FILED \_\_\_\_\_  
TERM \_\_\_\_\_  
DATE \_\_\_\_\_ TIME \_\_\_\_\_

ARTICLES OF INCORPORATION  
OF  
DESERT SKYLINE ESTATES HOMEOWNERS ASSOCIATION

167427

FILED  
JUL 13 '84

APPR. \_\_\_\_\_  
DATE APPRO. \_\_\_\_\_ FILED \_\_\_\_\_  
TERM \_\_\_\_\_  
DATE \_\_\_\_\_ TIME \_\_\_\_\_

The undersigned, as incorporators, have this date voluntarily associated themselves together for the purpose of forming a private non-profit membership corporation under and by virtue of the laws of the State of Arizona, and do hereby adopt the following Articles of Incorporation:


**ARTICLE XIII**  
Amendments

These Articles of Incorporation may be amended only at a lawfully held meeting of the Members by the affirmative vote of a Majority of

Members then entitled to vote as provided in the Declaration, these Articles of Incorporation or the Bylaws. These Articles of Incorporation shall not be amended to contain any provisions which would be contrary to or inconsistent with the Declaration, and any provision of or purported amendment to these Articles of Incorporation which is contrary to or inconsistent with the Declaration shall be void to the extent of such inconsistency.

IN WITNESS WHEREOF, the undersigned incorporators have hereunto affixed their signatures this 12 day of JUNE, 1984.

  
\_\_\_\_\_  
Thomas H. Treacchar

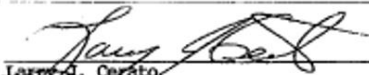
  
\_\_\_\_\_  
Larry J. Cerato


**ARTICLE VII**  
Amendment of the Bylaws

These Bylaws may be amended by the affirmative vote of a majority of the Board of Directors. These Bylaws may not be amended insofar as such amendment would be inconsistent with the Declaration or the Articles.

IN WITNESS WHEREOF, we, being all of the directors of Desert Skyline Estates Homeowners Association, have hereunto set our hands as of the 12 day of JUNE, 1984.

  
\_\_\_\_\_  
Thomas H. Treacchar

  
\_\_\_\_\_  
Larry J. Cerato

  
\_\_\_\_\_  
Philip E. Ordway