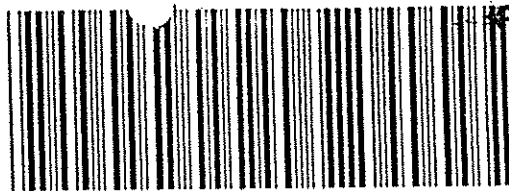


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CASAS DEL CIELO

DECLARATION OF  
COVENANTS, CONDITIONS,  
AND RESTRICTIONS

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## DECLARATION OF COVENANTS, CONDITIONS, AND RESTRICTIONS

This declaration is to be effective the \_\_\_\_\_ day of \_\_\_\_\_, 1994, by VMB Investment as the original "Developer". The Developer declares that the property shall be held, sold, and conveyed subject to the following easements, restrictions, covenants, and conditions, which shall run with the Property as defined herein below, and which is subjected to this Declaration and which shall be binding on all parties having any right, title, or interest in such Property or any part thereof, and their heirs, personal representatives, successors, and assigns, and shall inure to the benefit of each Owner of all or any part thereof.

1. Property. The Original Developer is the recorded owner of real property ("the Property") in Maricopa County, Arizona, described as Casas Del Cielo, a subdivision according to the plat recorded in Book 375 of Maps, page 12, records of Maricopa County, Arizona.

2. Scope. This declaration provides for extensive control of the Property by the Developer including, but without limitation: (i) control of the Association, of the type and design of the Improvements which may be built within the Property and the uses which may be made to the Property and its Common Areas: (ii) The right to amend this declaration and the acceptance thereof, every person acquiring any right, title, or interest to any Lot acknowledges, agrees to, and accepts the Developer's control of the Property and the limited liability of the Developer and its agents as provided in this Declaration. Such limitation is an integral part of this Declaration and the Developer's general plan for the development and operation of the Property. As used herein, the term "Developer" shall be deemed to include, as the context requires, the Original Developer, and successor Developer or all of them, and their respective successors and or assigns.

2.1 Right to Add Lands. The Developer, at his election, shall have the right to extend from time to time the Property subject to this Declaration to other adjacent property. Such additional Land, when added, shall become part of the Property. Any and all land added, and the Owners thereof, shall be subject to and bound by this Declaration. The procedure for adding new land to be subject to this Declaration shall be as follows:

The Developer shall record in the office of the County Recorder of Maricopa County, Arizona a supplement to this Declaration (hereinafter called "supplemental declaration") signed by the Developer, which Supplemental Declaration shall (a) describe the new land being subjected to this Declaration, (b) state such lands and the improvements thereon, and the present owners and persons subsequently becoming Owners of Lots within said lands, shall be subject to and bound by all of the terms of this Declaration except any stated additions, deletions, or other changes or modifications, if any, have been made in the

use restrictions with respect to such new land.

3. Purpose. Pursuant to the provisions hereof, the Developer intends :

3.1 To sell and convey the Property, or portions thereof, and, in doing so, to place upon the Property mutual and beneficial assurances, restrictions, conditions, covenants, reservations, easements, liens, charges, and development standards under a plan of improvements for the benefit of the Property and its owners;

3.2 That the Property be developed in accordance with the applicable provisions of the Zoning Ordinance, as and when amended, in compliance with the general plan for the development of the Property by Single Family Residences and related facilities;

3.3 To establish covenants, conditions, and restrictions upon the Property 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 Property, and

3.4 To incorporate and maintain as a nonprofit corporation the 56th and Dove Valley Homeowner's Association, for the purposes stated in paragraph 6 hereof; so as to preserve the values and amenities of the Property and to which shall ultimately be delegated the power of maintaining and administering the Common Areas, administering and enforcing this Declaration and collecting and disbursing the Assessments herein created.

4. Establishment. The Developer intends to develop the Property in accordance with the general plan depicted on the Plat. The Property will be developed with Single Family Residences mutually utilizing the Common Areas. This Declaration establishes a general plan for the improvement of the Property and its use, occupancy, and enjoyment.

5. Use and Occupancy Restrictions.

5.1 Residential. Each Lot shall be used only for residential purposes. No business or commercial use or commercial building may be erected on any Lot, and no business or commercial enterprise shall be conducted from or upon any Lot, except for "home occupations" as defined and allowed under the Zoning Ordinance. No temporary buildings, structures, or trailers may be erected, placed, or maintained on any Lot, except as expressly approved and permitted by the Design Review Board. No Lot shall be used for a hotel or other lodging or transient service or purpose except that a Lot may be used by Owner for the temporary housing of guests of the Owner at no charge. No Lot shall be leased or rented except in its entirety.

5.2 Construction. No building, structure, or other Improvements of any kind may be erected, altered, modified, or placed on any Lot without the prior written approval of the Design Review Board. Except for any perimeter walls installed to enclose the boundaries of the Property as limited by the applicable provisions of the Zoning Ordinance, all improvements shall be located to comply with the applicable provisions of the Zoning Ordinance which are summarized as follows:

The stipulations of approval of zoning case #98-92-2 Front and Rear yard setbacks of twenty-five (25) feet. Side yard setback of twelve (12) feet.

The "Front Yard", "Side Yard", and "Rear Yard" refer to those portions of the Lot as defined by the Zoning Ordinance. No improvements shall be erected, installed, maintained, or altered outside of the "Improvement Envelopes", except for drainage structures installed by the "Original Developer", driveways, and landscaping of areas controlled by the Design Review Board. No structure whatever, other than one single story single family residence, together with a single story private garage, guest house, servant's quarters and customary outbuildings and one or more ramadas, pergolas, or similar improvements shall be permitted to remain on any Lot. All homes shall be single story having a single story living area not exceeding twenty (20) feet in height as defined by the Zoning Ordinance, or such height allowed by Zoning. No main residence shall be erected which shall have a floor area of less than two thousand two hundred (2,200) square feet, exclusive of open porches, garages, guest houses, servant's quarters, and/or customary outbuildings.

A private garage, a guest house, and/or customary outbuildings may be erected either simultaneously with or after the erection of the main residence but not before the main residence has been erected. All garages shall be of a size adequate to contain no fewer than two full size automobiles. All such garages, guest houses, servant's quarters, and customary outbuildings shall be attached to the main residence either by walls, fences, or patios so as to make one contiguous unit.

5.3 Landscaping. Landscaping shall be in compliance with the Zoning Ordinance, as it applies to the Property, and other applicable state, municipal, or county statutes, ordinances, or regulations, including those dealing with native plant preservation. A landscaping plan shall be submitted to the Design Review Board together with the proposed plan for Improvements on any Lot pursuant to paragraph 9 and be in compliance with the Architectural Guidelines which pertain to landscaping. All front yards shall have desert landscaping.

5.4 Accessories. Accessories such as, without limitation, heating and air conditioning equipment, trash receptacles, sports apparatus, service yards, and clothes lines and other exterior fixtures, shall be permitted only if screened from the view of neighboring Lots and with the prior written approval of the Design Review Board.

5.4.1 Antennas. No antenna or other device for the transmission or reception of television or radio signals or any form of electromagnetic radiation shall be erected, used, or maintained outdoors on any portion of the Property, whether attached to a building or structure or otherwise. The Association shall have the right to determine whether such devices shall be permitted on any Lot. Satellite dishes may be installed if screened properly and approved by the Design Review Board.

5.4.2 Roof Mounted Air Conditioning Units. No air conditioning units, air coolers, furnaces, or other mechanical equipment may be mounted on the roof of any dwelling unit or building located on any Lot.

5.4.3 Lights. Spotlights or other lights which may reflect upon or cause glare to neighboring property, including sport court or swimming pool lights, shall not be allowed. All street lights shall be shoebox lights of a height, type, and design approved by the Design Review Board.

5.4.4 Reflective Materials. Foil or other light-reflective material shall not be placed or maintained in the windows or glass of any Improvement erected on any Lot. Other reflective articles, including reflective house sidings and roofing material, shall not be maintained on any Lot. No glass used in the construction of any Improvement on any Lot shall have a reflectance in excess of twenty (20) percent.

5.4.5 Roofs and Flashings. No asbestos shingle roofs, wood shake roofs, light-reflective roofs, or flat roofs (unless fully concealed by a parapet wall so as not to be visible from Neighboring Property) shall be constructed or maintained on any Lot. No concrete tile roofs shall be constructed on any Lot, except flat concrete shake roofs that have the approval of the Design Review Board for said roof's compatibility with the style and color scheme of the Improvement and the Improvements on adjacent Lots.

5.5 Vehicles. Vehicles shall be parked and kept only in garages or designated parking areas and shall not be parked in the streets at any time for any reason except temporarily with the prior written approval of the Association Board. No vehicle, regardless of age, ownership, condition, or appearance shall remain on any Lot in any manner which could be construed as being stored, neglected, or abandoned, or otherwise not in active use except within an enclosed or other structure approved in advance by the Design Review Board. The Association Board may adopt specific rules and regulations pertaining to recreational vehicles, boats, trailers, and other vehicles other than standard passenger automobiles.

5.6 Utilities. All gas, electric power, telephone and other utility and service conduits, connections and lines shall be located either underground or concealed in, under, or on buildings or other structures, except when prohibited by law. Service pedestals, transformers, switch cabinets and similar installations may be located above ground but shall be screened from the view of neighboring Lots as provided in paragraph 5.4. No outside speakers or amplifiers shall be permitted except with the prior approval of the Design Review Board,



subject to the regulations of the Association Board concerning noise level and time of use. All outside lighting shall be of a type that does not annoy other Owners and shall be subject to approval by the Design Review Board.

5.7 Signs. No "For Sale" or other advertising sign, billboard, or display of any kind shall be permitted except in areas designated in advance by the Original Developer, successor Developer, or the Association Board. Street names and numbers, mailing addresses, and other identification and directory designations, markings, and insignia shall be permissible only as installed by the Developer or as approved in advance by the Design Review Board. All signs shall comply with applicable laws and ordinances including without limitation any sign ordinance of the City of Phoenix.

5.8 Maintenance. All Lots shall be kept in good condition and repair with the Improvements adequately painted. No garbage, trash, rubbish, or debris shall be burned on a Lot or be placed or allowed on a Lot except within containers complying with City of Phoenix requirements. Replacement or maintenance shall be subject to regulation by the Association Board. No Lot shall be allowed to present an unsightly appearance, endanger the health of Owners, emanate offensive odors or noises, or constitute an aggravation, annoyance, or nuisance.

5.9 Subdivision. No Lot shall be further subdivided or separated into smaller or different portions or conveyed or encumbered in less than the full dimension as set forth in the Plat and no Lot shall contain less than approximately twenty thousand (20,000) square feet of land surface area. Dedication, conveyance or other granting of easements to public or quasi-public entities may not be permitted without the prior written approval of the Association Board. Two or more Lots may be combined so as to become one Lot at the discretion of the Developer or any successor Developer at any time prior to the sale of such Lots to an Owner other than the Developer or a successor Developer; or thereafter only with the prior written approval of the Association Board and, in either event, the combined Lots shall be deemed one Lot for purposes hereof. The Developer, successor Developer, or Association Board may require, as a precondition of any such combination, that the Owner of such combined Lots continue to be liable for Assessments as though there had been no combination of Lots.

5.10 Mining. No exploration or mining operations of any kind shall be permitted whether involving discovery, location, removal, milling, or refining and whether related to water, oil, gas, hydrocarbons, gravel, uranium, geothermal steam or otherwise.

5.11 Animals. No animals, reptiles, birds or other creatures shall be permitted or kept on a Lot except that commonly accepted household pets such as dogs, cats, birds, and fish in reasonable numbers may be maintained within a Lot for domestic but not commercial purposes. Household pets shall be restrained by fence, cage, or leash at all times and shall not be allowed to eliminate excrement in the Common Areas or other Lots. The Association shall determine what a commonly accepted household pet is, and shall determine a

reasonable number of such pets.

5.12 Modification. The Association Board may modify or waive the foregoing restrictions or otherwise regulate the use and occupancy of the property and Lots by reasonable rules and regulations adopted by the Board from time to time as provided in paragraph 6.5.

5.13 Enforcement. The Association, or its authorized agent, may enter any Lot in which a violation of these restrictions exists and may correct such violation at the expense of the Owner thereof. The expenses so incurred by the Association, and such fines as may be imposed pursuant to the Bylaws or the Association Rules, shall be a Special Assessment secured by a lien upon the Lot enforceable in accordance with the provisions of paragraph 8.

5.14 Exemption. In developing the property and constructing the Improvements, the Developer shall not be subject to the limitations of paragraph 5 and nothing contained in this Declaration shall prohibit or interfere with such activities by the Developer or its agents. The Developer may utilize any portion of the Property (except Lot previously conveyed to Owner other than the Developer) for any and all construction and sales activities. During such time as it retains ownership, all Lots owned by the Developer are free of the use and other restrictions of this Declaration and the Developer may make such use of its Lots as permitted by law notwithstanding that such use would otherwise would be prohibited by this Declaration. All Improvements constructed or installed by the Developer shall be permissible without necessity for approval by the Design Review Board or others and notwithstanding any restriction or prohibition to the contrary set forth herein.

## 6. 56th and Dove Valley Homeowner's Association Inc.

### 6.1. Organization.

6.1.1 Purpose of the Association. The Association has been incorporated as a non-profit, membership corporation to serve as a governing body of the Members for the protection, improvement, alteration, maintenance, repair, replacement, administration, and operation of the Property, the assessment of expenses, payment of losses, disposition of casualty insurance proceeds and other matters as provided in this Declaration, the Articles, the Bylaws, and the Association Rules. The Association shall not be deemed as conducting a business of any kind. 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. The Association shall have no power to issue stock. The Articles and the Bylaws shall not be construed or amended so as to be inconsistent with this Declaration.

6.1.2. Subsidiary Associations. The Association shall have the right to form one or more subsidiary associations for the purpose or purposes deemed appropriate by the

Association Board. Without limiting the generality of the foregoing, one or more subsidiary associations may be formed for the operation and maintenance of any specific area located within the Property. However, such subsidiary association shall be subject to this Declaration and may not take any action to lessen or abate the rights of the Owners as provided herein.

6.1.3. Board of Directors and Officers. The affairs of the Association shall be conducted by the Board of Directors (the "Association Board"), such officers as the Association Board may elect or appoint, in accordance with the Articles and Bylaws. The Association Board shall consist of an odd number but not less than three nor more than seven members as may be prescribed from time to time by the Articles or Bylaws.

6.2 Powers and Duties. The Association shall have such rights, duties, and powers as are prescribed by law and as set forth herein and in the Articles and Bylaws.

6.3 Membership. Every Owner of a Lot shall be a member of the Association. Membership shall be appurtenant to and may not be separated from ownership of a Lot. The rights and obligations of an Owner and membership in the Association shall not be assigned, transferred, pledged, conveyed, or alienated in any way except upon transfer of ownership of an Owner's Lot and then only to transferee of ownership of such Lot. Provided, however, that the Original Developer or any successor Developer may assign absolutely or conditionally or both its voting rights for any and all Lots then owned by it to any successor developer, subject to any limitations provided for in any such assignment. Any attempt to make a prohibited transfer shall be void. Any transfer of ownership of a Lot shall operate to transfer membership to the new Owner. In order to assist the Association Board in maintaining its books and records and in the orderly transaction of its affairs, all requests and other communications by Members of the Association Board shall be in writing and the Association Board may disregard any other form of communication.

6.4 Voting Rights. The Association shall have two classes of voting Members.

6.4.1. Class A. Class A shall consist of all Owners except the Developer each of whom shall be entitled to one vote for each Lot owned.

6.4.2. Class B. Class B shall be the Original Developer who shall be entitled to ten votes for each Lot owned either directly or beneficially, through a trust or other arrangement, or shall include any successor developer, subject to any limitations imposed on any absolute or conditional transfer or assignment of such Class B voting rights by the Original Developer or any successor Developer. The Class B membership shall cease and be converted to Class A membership upon the happening of either of the following events whichever occurs earlier.

6.4.2.1. Upon conveyance to an Owner, other than a Developer, of the last Lot owned by any Developer to any Person as Lot Owner; or

6.4.2.2. Five years from the date of this Declaration.

6.4.3. Suspension. If any Owner shall be in arrears in the payment of any amounts due under any of the provisions of this Declaration for a period of 15 days, or shall be in default of any other terms of this Declaration for a period of 15 days, that Owner's rights to vote as a Member shall be suspended automatically and shall remain suspended until all payments are made and defaults cured.

6.4.4. Procedure. The votes for each Lot shall be cast as a unit, and a division of the votes shall not be allowed. If joint Owners are not able to agree amongst themselves as to how their vote or votes shall be cast, they shall lose their right to vote on the matter in question. If any Owner or Owners cast a vote or votes representing a certain Lot it thereafter will be conclusively presumed for all purposes that the voter(s) were acting with the authority and consent of all the other Owners of that Lot. In the event that more than one voter casts the vote or votes for a particular Lot, none of the votes shall be counted and such vote shall become void. The candidate or motion receiving the highest number of votes shall be deemed elected or carried. At the option of the Association Board, the election of Members of the Association Board may be by written ballot duly mailed to the Members or at a meeting of the Members.

6.4.5. Articles and Bylaws. Each Member shall have such other rights, duties, and obligations as are set forth in the Articles and the Bylaws.

6.5. The Association Rules. By a majority vote of the Association Board, the Association may from time to time and subject to the provisions of this Declaration, adopt, amend, and repeal rules and to be known as the "Association Rules". The Association Rules may restrict and govern the use of any area by any Owner, the family of such Owner or guest, invitee, or licensee of such Owner; provided however, that the Association Rules may not discriminate among the Articles, or the Bylaws. A copy of the Association Rules as they may be from time to time amended, adopted, or repealed shall be mailed or otherwise delivered to each Owner and may be recorded. The Association Rules shall have the same force and effect as if they were set forth in and were a part of this Declaration. The Association Board shall have the right to impose fines for violations of the Association Rules and if such fines are not paid within 10 days after written notice to the Owner in violation, the fines may, at the Association Board's direction, become a lien on the Lot of the Owner and enforceable as to any other lien created by paragraph 8. Each occasion of violation and each day during which such violation continues shall be deemed a separate offense subject to a separate and additional fine.

6.6. Personal Liability. No member of the Association Board, or any committee or officer of the Association, or compensated or voluntary manager or any employee or agent or any member of the Design Review Board shall be personally liable to any Owner or any other party, including the Association, for any damage, loss, or prejudice claimed or suffered on account of any act, omission, error, or negligence of the Association, the Association

Board, its manager or any other representative or employee of the Association, the Design Review Board, or any other committee or any other officer of the Association, provided that such person has, upon the basis of such information as may be possessed by him, acted in good faith, without willful or intentional misconduct. Officers and Directors of the Association shall be indemnified against personal liability for acts or omissions in the manner set forth in the Articles.

## 7. Covenants for Maintenance.

7.1 Owners. Each Owner shall be responsible for and bear the expense of all of the maintenance, repairs, and replacements for his Lot and its Improvements including all areas and features not herein expressly provided to be maintained by the Association. In such repair and maintenance, an Owner shall not interfere with, hinder, or damage any Common Area or the Improvements of any other Lot. The removal, replacement, installation, or repair of any fence, wall, or other component of a Lot, placed or constructed by the Developer or any Owner, on within, or about any utility or other easement or service line or system shall be the responsibility of the Owner, either directly or through increased Assessments at the option of the Association Board. Additionally, if repairs or maintenance of areas to be repaired and maintained by the Association are caused by the negligent or willful acts or omissions of the Owner, his family, licensees, guests, tenants, or invitee, the cost of such repair or maintenance shall be the responsibility of the Owner either directly or indirectly through the use of a Special Assessment, at the option of the Association Board. Repair or maintenance of the interior or exterior of any Lot or its Improvements, undertaken by the Association because of the failure or neglect of the Owner, shall be the responsibility of the Owner, either directly or through Special Assessment by the Association, at the option of the Association Board, except as defined in paragraph 7.2 pertaining to drainage and open space easements.

7.2 Association. The Association shall be responsible for and bear the cost of the repair and maintenance of the Common Areas and facilities, signs, street signs, sign walls and the like if and as installed by the Original Developer or the Association even if not located in the Common Areas; and all portions of the property outside of the boundary of the Lots and public streets. The Association may repair and maintain Lots, or portions thereof, as are not properly constructed, landscaped or maintained by the Owners. The costs of the repair and maintenance undertaken by the Association shall be allocated among the Owners pursuant to the provisions of paragraph 8. The Association shall maintain landscaping installed by the Original Developer, including drainage and open space easements.

7.3 Association Right of Access. An authorized representative of the Association, and all contractors, repairmen, and other agents employed or engaged by the Association, shall be entitled to reasonable access to such of the Lots as may be required in connection with the maintenance, repair or replacement of or to the Common Areas and otherwise as

necessary to perform any of the Association's duties or responsibilities hereunder.

## 8. Covenants for Assessments.

8.1 Creation of Lien and Personal Obligation. By accepting any interest in a Lot each Owner thereof covenants and agrees to pay to the Association: Regular Assessments, Special Assessments, and Capital Improvement Assessments, if applicable. Such Assessments shall be established and collected from time to time as provided by this Declaration. The Assessments together with interest thereon, late charges, attorney's fees, court costs, and other costs of collection thereof, as provided herein shall be a continuing lien upon such Lot (or combined Lots) against which such Assessments are made. Each Assessment, together with interest and other costs, also shall be the personal obligation of Owner of such Lot at the time when the Assessment becomes due. The personal obligation for delinquent Assessments shall not pass to an Owner's successors in title unless expressly assumed by such successors albeit the lien shall continue irrespective of the change in ownership.

The obligation of an Owner to pay Assessments shall not be affected by the incompleteness of or any diminished use with respect to the Common Areas or the abandonment of a Lot.

8.2 Purpose of Assessment. The Assessments levied by the Association shall be used to promote the recreation, health, safety, and welfare of the Owners including, without limitation, the purposes described in paragraph 4, and for the improvement and maintenance of the Property and the Common Areas including, without limitation, the payment of taxes, governmental assessments, insurance premiums, repair, maintenance, and construction costs, landscape maintenance, and supervision, management, and related expenses.

8.3 Regular Assessments. Regular Assessments shall be determined by the Association Board in such manner as shall be set forth in the Bylaws. Written notice of the amount of the Regular Assessments and the due date shall be provided to the Owners not less than ten days prior to the due date although the failure to provide such notice shall not relieve any Owner from the obligation to pay such Regular Assessments. The first Regular Assessment period shall not commence earlier than the first day of the first month following the conveyance of the first Lot to an Owner other than the Developer. Upon demand and for a reasonable charge, Association Board shall furnish to any Owner a certificate setting forth whether the Assessments on his Lot are paid, and if unpaid, the unpaid amount. The certificate, when signed by an officer or director shall be binding upon the Association as of the date of issuance.

8.4 Special Assessments. If the Association Board determines that any repairs or maintenance of areas to be repaired or maintained by the Association arise from the negligent or willful acts of an Owner, his family, licensees, guests, tenants, or invitees; if the

Association incurs expenses to maintain a Lot because of the failure or neglect of an Owner; if the Association incurs expenses in causing the Owner to comply with this Declaration, the Articles, Bylaws, or the Association Rules, may obtain reimbursement of such expenses from the Owner through issuance of a Special Assessment for that purpose. Written notice of the Special Assessment and the due date shall be provided to the Owner not less than ten days prior to the due date, although the failure to provide such notice shall not relieve the Owner of the obligation to pay such Special Assessment.

8.5 Capital Improvement Assessments. The Association Board shall have the right and power to impose Capital Improvement Assessments to provide for the construction of recreational and other facilities in the Common Areas, or for the alteration, demolition, removal or reconstruction of the Common Areas, from time to time, as in its discretion appears to be in the best interests of the Association and the Property. Any such alteration, demolition, removal, construction or addition shall be authorized by an affirmative vote of Members of the Association Board at a duly called meeting at which a quorum is present, and ratified, by a majority vote of Members present in person or by proxy. For purposes of this paragraph, the presence at a duly called meeting of the Members or proxies entitled to cast 51% of the votes of the Membership shall constitute a quorum. If the required quorum is not forthcoming at any such meeting, another meeting may be called by sending written notice to all Members not less than ten days and not more than twenty days in advance of such meeting, setting forth the purpose of the meeting and the required quorum shall be one-half of the required quorum of the preceding meeting. Capital Improvement Assessments shall be payable at the same time and in addition to the Regular Assessments or, at the option of the Board, at different times or in one installment.

8.6 Assessment Rate. The pro rata share of the total Regular or Capital Improvement Assessments to be born by each Lot shall be the "Assessment Rate" for that Lot. The Assessment Rate shall be uniform for all Lots, except that the Association Board may vary the Assessment to a Lot to reflect the extent of use attributable to that Lot. The Lot(s) owned by any Developer other than the Original Developer shall be subject to payment of Assessments in the same manner as any other Lot. Assessments may continue to be imposed on combined Lots if and as provided in paragraph 5.9.

8.7 Remedies. Each Owner shall be deemed to covenant and agree to pay to the Association the Assessments provided for herein on or before the due date, as established by the Association Board, and agrees to the enforcement of the Assessments as herein specified. In the event the Association employs attorneys for collection of any Assessment, whether by suit or otherwise, or to enforce compliance with specific performance of the terms and conditions of this Declaration, the applicable Owner shall pay reasonable attorney's fees and costs thereby incurred in addition to any other amount due or any other relief or remedy obtained against such Owner. In the event of a default in the payment of any Assessment when due, the Assessment shall be deemed delinquent, and, in addition to any other remedies herein or by law provided, the Association may enforce such obligation in any manner provided for by law or in equity, or without limitation, of the foregoing by

either or both of the following procedures:

8.7.1 Suit. The Association Board may cause a lawsuit to be commenced and maintained in the name of the Association against an Owner to enforce the payment of any delinquent Assessment. Any judgment rendered for the Association in any such action shall include, without limitation, the amount of the delinquency, interest from the date of the delinquency at the "Default Rate" which shall be the greater of one per cent per annum above the prime rate of Bank One (Arizona) Phoenix, Arizona, or its successor, or eighteen per cent per annum, court costs and reasonable attorney's as determined by the court.

8.7.2 Lien. There is hereby created a lien, with private power of sale, on each and every Lot to secure payment to the Association of any and all Assessments levied against any and all Owners, interest thereon at the Default Rate from the date of delinquency, and all costs of collection which may be incurred or paid by the Association in connection therewith including, without limitation, costs and reasonable attorney's fees. After the occurrence of any default in the payment of any Assessment, the Association Board, or its authorized representative, may, but shall not be required to, make a written demand for payment to the defaulting Owner, on behalf of the Association. The demand shall state the date and amount of the delinquency. Each default shall constitute a separate basis for demand or lien, but any number of defaults may be within a single demand or lien. If such delinquency is not paid after delivery of such demand, or, even without such written demand being made, the Association Board may elect to file a claim of lien on behalf of the Association against the Lot(s) of the defaulting Owner. However, a claim of lien is not required and any and all delinquent Assessments shall be a continuing lien on the Lot with or without the preparation or recording of a claim of lien. A claim of lien may be executed, acknowledged by any officer of the Association, and shall contain substantially the following information: the name of the delinquent Owner; the legal description and street address of the Lot; the amount due including interest thereon, collection costs and reasonable attorney's fees; and that the lien is claimed by the Association pursuant to this Declaration. Upon the occurrence of the delinquent Assessment or the recordation of a duly executed original or copy of the claim of lien, the lien immediately shall attach and become effective in favor of the Association as a lien upon the Lot against which such Assessment was levied. Except as provided in paragraph 8.7.3 hereof, the lien shall have priority over all liens or claims created subsequent to the due date of the first delinquent Assessment for which the lien is claimed. Any lien may be foreclosed by appropriate action in court in the manner provided by law for the foreclosure of a realty mortgage or for the enforcement of a deed of trust, with private power of sale, as set forth by the laws of Arizona, as and if amended. The lien shall be in favor of the Association and shall be for the benefit of all of the Owners. The Association shall have the right to purchase at the sale and power to bid in any foreclosure or trustee's sale and to purchase, acquire, hold, lease, mortgage, and convey any Lot. In the event that such foreclosure is by action in court, reasonable attorney's fees, court costs, title search fees, interest at the Default Rate, and all other costs and expenses shall be allowed to the extent permitted by law. Each Owner, on becoming an Owner of the Lot, hereby expressly approves the foregoing and waives any objection to the enforcement



and foreclosure of the lien in this manner.

8.7.3 Subordination of Lien. The lien for the Assessments provided for herein shall be subordinate to the lien of the First Mortgage on the Lot. Sale or transfer of any Lot shall not affect the Assessment lien. However, the sale or transfer of any lot pursuant to mortgage foreclosure or any proceeding similar to or in lieu thereof shall extinguish the lien of such Assessment as to payments which become due prior to such sale or transfer. No sale or transfer shall relieve such Lot from any liability from any Assessments thereafter becoming due or from the lien thereof. Sale or transfer shall not relieve the previous Owner from personal liability for Assessments that became due while such Owner was the Owner.

8.7.4 Offsets. All Assessments shall be payable in the amounts specified in the notice of Assessments and no offsets shall be permitted for any reason including, without limitation, a claim that (i) the Association, the Association Board, or the Developer is not properly exercising his duties and powers as provided in this Declaration; (ii) Assessments for any period exceed Common Expenses; or (iii) a Member has made no use of the Common Areas.

8.7.5 Homestead Waiver. Each Owner, to the extent permitted by law, hereby waives, to the extent of any liens created for the Association pursuant to this Declaration, whether such liens are now in existence or created 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.

## 9.0 Architectural Control.

9.1 Organization There shall be a Design Review Board organized as follows:

9.1.1 Design Review Board Composition. The Design Review Board shall consist of three members who shall be appointed initially by the Developer. At his option, but without a requirement or responsibility to do so, and then only as long as the Original Developer owns ten or more Lots, Casas Del Cielo or its designated representative may be one member of the Design Review Board. The Developer shall retain the right to appoint, augment, or replace all members of the Design Review Board (other than the Casas Del Cielo member, if so appointed) until all of the Lots are sold or conveyed by the Developer to Owners other than the Original Developer or any successor Developers until after the date of this Declaration, whichever first occurs. Thereafter, members of the Design Review Board shall be appointed by the Association Board. The Developer may, but need not, permit the Association Board to appoint one or more members of the Design Review Board at any time. Persons appointed to the Design Review Board, other than those persons appointed by the Developer, must satisfy such requirements as may be established from time to time by the Developer or the Design Review Board. The address of the Design Review Board shall be the address established for the giving of notice to the Association, unless

otherwise specified by the Design Review Board.

9.1.2 Alternate Members. In the event of the absence or disability of one or two of the regular members of the Design Review Board, the remaining regular member or members, even though less than a quorum, may designate either or both of the alternate members to act as substitutes for the absent or disabled member or members for the duration of such absence or disability.

9.1.3 Term of Office. Design Review Board members and alternates shall have a renewable one year term of office. The one year term of office shall commence on the date of appointment and shall terminate one year thereafter irrespective of the commencement or termination date of the term of office of other members of the Design Review Board. Any member of the Design Review Board may resign at any time and may be removed by the Association Board (except that Casas del Cielo may not be removed if it elects to act as a member or designate a member under paragraph 9.1.1 and as limited therein.)

9.1.4 Design Limits. The Design Review Board shall establish procedural rules, regulations, restrictions, architectural standards, and design guidelines which the Design Review Board, in its sole discretion, may from time to time amend, repeal, or augment including:

9.1.4.1 Time Limitations. Time limitations for the completion of construction, within specified periods after the approval of the Improvements by the Design Review Board.

9.1.4.2 The placement, design, materials, and color of any perimeter walls placed on or near the boundaries of any Lot or Improvement Envelope, subject to the applicable provisions of the Zoning Ordinance.

9.1.4.3 Conformity with Approved Plans. Requirements for the conformity of the Improvements with plans and specifications approved by the Design Review Board; provided, however, as purchasers and encumbrances in good faith for fair value, the completed Improvements shall be deemed to be in compliance with the architectural standards of the Association and its Declaration, unless: (a) Notice of noncompletion or non-conformance identifying the violating Lot and specifying the reason for the notice, executed by the Design Review Board, shall be recorded with the Maricopa County Recorder, and be given to the Owner within one year of the expiration of the time limitation described in paragraph 9.1.4.1 or within one year following completion of Improvements, whichever is later; or (b) Legal proceedings shall have been instituted to enforce compliance or completion of the Improvements.

9.1.4.5 Other Restrictions. Such other limitations and restrictions as the Design Review Board, in its sole discretion, shall adopt, without limitation, the regulation of all

landscaping (including, without limitation, the absolute prohibition of certain types of landscaping, trees, and plants), construction, reconstruction, exterior addition, change, alteration or maintenance of any building, structure, perimeter walls or interior fences including, without limitation, the nature, kind, shape, height, materials, exterior color, surface texture and location of such Improvements.

9.2 Duties. It shall be the duty of the Design Review Board to consider and act upon any and all proposals or plans submitted to it pursuant to the terms hereof, to perform other duties delegated to it from the Association Board, and to carry out all other duties imposed upon it by this Declaration.

9.3 Meetings and Compensation. The Design Review Board shall meet from time to time as necessary to perform its duties hereunder. Subject to the provisions of paragraph 9.1.2 the vote or written consent of any two regular members at a meeting or otherwise, shall constitute the act of the Design Review Board. The Design Review Board shall keep and maintain a written record of all actions taken by it at such meetings or otherwise. Members of the Design Review Board shall be entitled to compensation for their services only if and as provided by the Association Board.

9.4 Waiver. The approval or disapproval by the Design Review Board of any plans, drawings, or specifications for work done or proposed, or for any other matter requiring the approval of the Design Review Board, shall be in writing and shall not be deemed to waive any right to approve or not approve any similar plans, drawings, or specifications or matters subsequently submitted for approval.

9.5 Liability. Neither the Design Review Board nor any member thereof shall be liable to the Association, any Owner, or to any other party for damage, loss, or prejudice claimed or suffered on account of approval or disapproval of any plans, drawings, or specifications, whether or not defective; the construction or performance of any work, whether or not pursuant to approved plans, drawings, and specifications; the development of any portion of the Property; or the execution and filing of any estoppel certificate, whether or not the facts contained therein are correct; provided that with respect to liability of a member of the Design Review Board, such member has acted in good faith on the basis of such information as may be possessed by him. Without in any way limiting the generality of the foregoing provisions, the Design Review Board, or any member thereof may, but is not required to, consult with or hear the views of the Association or any Owner with respect to any plans, drawings, specifications, or other proposals submitted to the Design Review Board. The Design Review Board shall not be deemed to have approved or disapproved any proposal unless in writing signed by two current, regular members. The Original Developer, VMB Investment, shall have no liability on account of the appointment or failure to appoint a Casas Del Cielo member or designated representative to the Design Review Board.

9.6 Time for Approval. In the event the Design Review Board fails to approve or disapprove in writing within 45 days after complete plans and specifications have been

submitted to it, the approval will not be required and this paragraph will be deemed to have been waived as to such plans and specifications.

9.7 General Provisions. The Design Review Board may assess reasonable fees in connection with its review of plans and specifications. The Design Review Board may delegate its plan review responsibilities, except final plan review and approval, to one or more of its architectural consultants retained by it. Upon such delegation, the approval or disapproval of such plans and specifications by such member or consultants shall be equivalent to approval or disapproval by the Design Review Board. The Design Review Board may promulgate such additional architectural and landscape standards, rules, and regulations as it deems appropriate and as are not in conflict with this Declaration. The Design Review Board may assess a fine of up to \$100.00 per day for any failure to obtain the required approval from the Design Review Board and such fine shall be imposed upon the applicable Owner by a Special Assessment by the Association as provided in paragraph 8.4. The establishment of the Design Review Board and procedures herein for architectural approval shall not be construed to diminish any obligation of the Owners to maintain or repair their Lots as otherwise may be provided in this Declaration or Association Rules.

9.8 Architectural Compatibility. It is the Developer's express intention that there be harmony (but not uniformity) of architectural character between Improvements on adjacent Lots specifically, and among all Improvements on the Lots generally. Accordingly, Improvements on Lots shall conform with the requirements of the Architectural Guidelines and shall be southwestern, Mediterranean or territorial design, and no Improvements shall be Tudor or colonial design; provided however, the Design Review Board shall have the authority to approve the design of the Improvements.

## 10. Property Rights and Easements.

10.1 Owner's Easements of Enjoyment. Every Owner shall have a nonexclusive right and easement to the Common Areas which shall be appurtenant to and shall pass with the title to every Lot, subject to the following:

10.1.1 Fees. The Association shall have the right to limit the number of guests of Owners and to charge reasonable admission and other fees for the use of any portion of the Common Areas except streets and walks. No provision of this Declaration shall be construed to deprive any Owner of access to his Lot.

10.1.2 Suspension. The Association shall have the right to suspend the voting rights and right to use the Common Areas by an Owner for any period during which any Assessment against his Lot remains unpaid or such Owner is otherwise in violation of this Declaration or the Association Rules.

10.1.3 Dedication. The Association shall have the right to dedicate or transfer any part of the Property to any public agency, authority, or utility for such purposes and subject to such conditions as may be agreed to by the Association Board.

10.1.4 Conveyance. The Developer or the Association Board shall have the right to create easements and rights-of-use to and for the benefit of properties in the vicinity of the Property or for the Common Areas or for one or more Lots whether for parking, access or otherwise.

10.1.5 Reserved Areas. Certain portions of the Common Areas ("Reserved Areas") may be reserved by the Developer for the exclusive control, possession, and use of a certain Owner or Owners. If a Reserved Area serves as access to or from two or more Lots, the Owners of the applicable Lots shall have joint control, possession, and use of the Reserved Area and each such Owner shall have an easement of use thereof. The right of the Owners to use the Reserved Areas shall be subject to the blanket utility easement, maintenance, architectural, and landscape control provisions of this Declaration, to all easements on the Plat, and to such reasonable rules and regulations with respect to possession, control, use, and maintenance as the Association Board may from time to time promulgate.

10.2 Blanket Easement. There is hereby created a blanket easement upon, across, over, and under the Property and the Lots for ingress, egress, installation, replacing, repairing, and maintaining all utility and service lines and systems including, without limitation, water, sewer, gas, telephone, electricity, and television cable and communications lines and systems. By virtue of this easement, it shall be permissible for the providing utility, service company, and the Association and their agents to install and maintain facilities and equipment on the Property and to affix and maintain wires, circuits, and conduits on, in, or under the roofs, and exterior walls of the Improvements. Notwithstanding any contrary provisions hereof, no sewers, electrical lines, water lines, or other utility or service lines may be installed or relocated except as initially planned and approved by the Developer or thereafter as approved by the Design Review Board. This blanket easement shall in no way affect any other recorded easements. There shall be an access easement over the Common Areas for the collection and delivery of U.S. mail. Each Lot and the Common Areas are subject to an easement for storm water drainage and runoff from other Lots and the Common Areas.

10.3 Common Driveways. As the Lots are designed and the Improvements constructed thereon, each Owner is to have vehicular and pedestrian access to his Lot by means of streets, and as to certain Lots, by means of a common driveway located wholly or partially upon an adjacent Lot or upon the Common Areas. Each Owner of a Lot served by common driveway shall have and is hereby granted a nonexclusive easement for free and unrestricted vehicular and pedestrian access to his Lot by means of the common driveway. The easement shall be for the benefit of and appurtenant to each Lot served by the common driveway. Neither the Association nor any Owner of any Lot over which any

portion of a common driveway traverses shall in any way interfere with the easement or access to the Lot thereby. Except with respect to the foregoing, the existence of a common driveway shall not affect ownership or maintenance rights or responsibilities and each Owner (or the Association as to that portion of a common driveway located within the Common Areas) shall own and maintain that portion of the common driveway located within the Owner's Lot with no right of contribution from any other Owner sharing the common driveway.

10.4 Title to Common Areas. In its discretion, the Developer may convey all or any portion of the Common Areas, or any other Property, to the Association at any time. The developer shall convey the Common Areas to the Association upon cessation of Class B membership in the Association as provided in 6.4.2 hereof, or at such earlier date as the Developer may elect in its discretion. This right to hold title to the Common Areas shall remain with the Original Developer, who may, nonetheless, assign and convey such title and control to a successor Developer subject to such terms and conditions as may be imposed thereon by the Original Developer.

10.5 Original Plat Tracts. Tract "A" of the original Plat is Common Area streets and Tracts "B", "C", "D", and "F" are Common Area open space belonging to the Association. Tract "E" is reserved for a municipal well site.

11. Damage or Destruction. In the event any Improvements are damaged or destroyed from any cause, within 60 days from the date of the occurrence of the damage or destruction, its Owner shall begin repair and rebuilding of the Improvements (and damage to adjacent Lots or property for which such Owner may be legally responsible) in a workmanlike manner in conformity with the original plans and specifications used in the construction thereof, subject to such changes as are then required by applicable laws, ordinances, and governmental regulations, and shall complete the repair and rebuilding in a reasonably expeditious manner not to exceed one year from the date of damage or destruction. The one year period shall be extended by the period of any delays resulting from occurrences or circumstances which are beyond the control of the Owner and his contractor. Such repair and restoration shall be at the expense of the Owner, although the Association Board shall reimburse to the Owner any such expense covered by insurance proceeds received by the Association therefor. In the event the Owner refuses or fails to commence or to complete such rebuilding within the time required, then the Association, by and through its Board, hereby is irrevocably authorized by such Owner to undertake such repair and rebuilding in a good and workmanlike manner in conformity with the original plans and specifications of the Improvements and the then applicable law. The Owner shall repay the Association, upon demand, the amount actually expended for such repairs together with interest at the Default Rate of expenditure until paid. Each Owner further agrees that charges for repairs, if not paid within 10 days after demand, shall be delinquent and shall become a lien upon the Lot and the personal obligation of the Owner in the manner provided for Assessments. Such charges shall bear interest at the Default Rate and shall constitute a debt collectable

by the Association from the Owner through any lawful procedures. Each Owner vests in the Association or its agents the right and power to bring all actions against such Owner for the collection of such charges and to enforce the lien by all methods available for the enforcement of such liens, including those provided for Assessments, and such Owner grants to the Association a private power of sale in connection with the lien. The lien shall be subordinate to the lien of any First Mortgage. Nothing contained herein shall be construed in any way so as to relieve any insurance company from payment of any and all amounts which would be payable under any policy or policies. In the event of a dispute between an Owner and the Association Board with respect to the extent of necessary repairs or cost thereof, then upon written request of either the Owner or the Association Board, the matter shall be submitted to arbitration in accordance with applicable rules and procedures of the American Arbitration Association and A.R.S. 12-1501 et. seq.

12. Insurance. The Association Board or its authorized agent shall have the authority to obtain insurance for all Improvements situated on the Common Areas, against loss or damage by fire or other hazards under the broadest reasonably available coverage in an amount sufficient to cover the full replacement cost of any repair or reconstruction work in the event of damage or destruction from any insurable hazards; may obtain a broad form of public liability policy covering all Common Areas, and all damage or injury caused by the negligence of the Association or its agents; and may obtain such other insurance as it deems necessary at the time for any purpose. At the Association Board's discretion, premiums for all such insurance may be Common Expenses subject to inclusion in the Assessments. All such insurance shall be written in the name of the Association. The Association Board may require that fire and extended coverage insurance and liability insurance on individual Lots be written either by a carrier selected by the Association Board or by any carrier qualified to transact insurance business in Arizona with a financial rating of at least A status as rated in the most recent edition of Best's Insurance Reports. The Association Board may establish minimum coverages for insurance on individual Lots. Premiums for insurance obtained on individual Lots, either by the Association Board or by the Owner, shall not be part of the Common Expense, but shall be an expense of the Lot so covered and a debt owed by the Owner, and shall be collectable by any lawful procedures. In addition, if the debt is not paid within 10 days after notice of such debt, such amount may, at the Association Board's discretion, become a lien upon such Owner's Lot and, if so, it shall continue to be a lien until fully paid. The lien shall be subordinate to the lien of any First Mortgage.

13. Mortgage. During the pendency of any proceeding to foreclose a First Mortgage, including any period of redemption, the First Mortgagee (or any receiver appointed in such action) may, but need not, exercise any or all of the rights and privileges of the Owner of said mortgaged Lot, including the right to vote as a Member of the Association to the exclusion of the Owner's exercise of such rights and privileges.

13.1 Foreclosure. The Mortgagee or any other party acquiring title to a mortgaged Lot through foreclosure suit or through any equivalent proceeding such as, without limitation, the taking of a deed without foreclosure, shall acquire title to the Lot free and clear of any lien authorized by or arising out of any of the provisions of this Declaration which secure the payment of any Assessment accrued prior to the conclusion of the foreclosure suit or equivalent proceeding, including the expiration date of any period of redemption, except as follows: Any such unpaid Assessment against the Lot foreclosed against may be treated as a Common Expense applicable to all of the Lots, including the Lot(s) foreclosed against, which expense may be collected by pro rata Assessment against all Lots subject to the Assessment nevertheless such unpaid Assessment shall continue to exist as a personal obligation of the defaulting Owner of the Lot to the Association. There shall be a lien upon the interest of the mortgagee or other party acquiring title to a mortgaged Lot by foreclosure or equivalent proceeding for all Assessments authorized by this Declaration which accrue or are assessed after the date the Mortgagee has acquired title to the Lot free and clear of all rights of redemption.

#### 14. General Provisions.

14.1 Enforcement. The provisions of this Declaration shall be construed as covenants running with the land and as equitable servitudes for the benefit of and binding upon all persons purchasing, owning, leasing, subleasing, occupying, or otherwise having any right, title, or interest in any of the Property, or their heirs, personal representatives, executors, administrators, successors, grantees, and assigns, irrespective of whether referred to in a deed or other instrument of conveyance. After the date on which this Declaration has been recorded, this Declaration may be enforced by any one or more of the following: the Association, the Developer, or the Owner or Owners of any Lot. The Developer shall have no obligation to enforce this Declaration. Prior to initiating legal action to enforce this Declaration against the Association or the Developer, an Owner shall notify the Developer and the Association in writing of the grievance and the nature of any violation asserted hereof and the Developer and the Association shall have 45 days thereafter within which to cure or eliminate such violation. Enforcement shall be by proceedings at law or in equity against the person or persons violating or attempting to violate any provision, whether to restrain violation, to recover damages, or otherwise. If any party employs attorneys to enforce a lien or the collection of any amounts due pursuant to this Declaration, or to interpret or enforce compliance with or specific performance of the terms and conditions of this Declaration, the prevailing parties shall be entitled to receive all reasonable attorney's fees and costs thereby incurred from the party against whom judgment is entered in any such action. Nothing herein shall be deemed to indicate that damages constitute an adequate remedy for violations hereof.

14.1.1 Waiver or Abandonment. The waiver of or failure to enforce any breach or violation hereof shall not be deemed to be a waiver or abandonment of such provision, or a waiver of the right to enforce any subsequent breach or violation hereof. The foregoing



shall apply regardless of whether any person affected hereby (or having the right to enforce this Declaration) had knowledge of the breach or violation. No provision contained herein shall be deemed to have been waived or abandoned unless this Declaration is amended to delete such provision.

14.2 Equal Protection. This Declaration shall be applied to all similarly situated Owners without discrimination.

14.3 Severability. The invalidity of any one or more provisions hereof shall not affect the remaining portions of this instrument or any part thereof, all of which are inserted conditionally on their being held valid in law. In the event that one or more of the provisions hereof should be invalid or should operate to render this Declaration invalid, this Declaration shall be construed as if such provision had not been inserted.

14.4 Gender. The singular, whenever used herein, shall be construed to mean the plural when applicable, and the necessary grammatical changes required to make the provisions hereof apply either to corporations or individuals, men or women, shall in all cases be assumed as though in each case fully expressed.

14.5 Topical Headings. The marginal or topical headings of the paragraphs contained in this Declaration are for convenience only and do not define, limit, or construe the contents of the paragraphs or of this Declaration.

14.6 Amendment. This Declaration shall remain in full force and effect for a period of 20 years from the date of this amended Declaration in 1994. Thereafter it shall be deemed to have been renewed for successive terms of ten years each, unless revoked, amended by an amendment in writing executed and acknowledged by the then Owners of not less than two-thirds of the Lots within one year after the expiration of the initial effective period hereof, or any ten year extension. This Declaration may be amended at any time by the then Owners of not less than seventy-five percent of the Lots. Notwithstanding the foregoing or any provisions herein to the contrary, this Declaration may be revoked by the Original Developer acting alone, or any successor or assign of the Original Developer which is granted in writing the right to amend this Declaration, without the consent or approval of any Owner or any others, at any time on or before one year after the sale of the last Lot to an Owner other than the Developer or any successor Developer.

15. Definitions. The following terms used in this Declaration are defined as follows and appear throughout this Declaration with the initial letter of each word of such term capitalized:

15.1 "Architectural Guidelines" shall be a set of standards to be followed in the design and construction of Improvements on each Lot.

15.2 "Articles" the articles of incorporation of the Association, as and when amended, which are, or shall be, filed with the Arizona Corporation Commission.

15.3 "Assessments" shall include the following:

15.3.1 "Regular Assessment" 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 paragraph 8 hereof.

15.3.2 "Special Assessment" a charge against a Member, Lot Owner, or Lot, directly attributable to such Member, Owner, or Lot, to reimburse the Association for costs and expenses incurred by the Association as a result of the action or neglect of the Owner, his family, licensees, guests, tenants, or invitees, or in causing the Member, the Owner, or the Lot to comply with this Declaration, the Articles, the Bylaws, or the Association Rules, together with reasonable attorney's fees and other charges payable with respect thereto as herein provided.

15.3.3 "Capital Improvements Assessment" the amount which is to be paid by each Member as his 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 including, without limitation, the costs to the Association of the reconstruction of any portion of the Common Areas.

15.4 "Association" the 56th and Dove Valley Homeowner's Association, an Arizona nonprofit corporation, its successors and assigns.

15.5 "Association Board" the Board of Directors of the Association.

15.6 "Association Rules" the rules and regulations adopted by the Association Board pursuant to paragraph 6.5.

15.7 "Bylaws" the bylaws of the Association, as and when amended.

15.8 "City" the City of Phoenix, Arizona or such successor municipality or governmental jurisdiction as hereafter may replace or supersede the City of Phoenix.

15.9 "Common Areas" all property and the improvements and equipment thereon which may be owned by the Association for the mutual use and enjoyment of the Owners. The Common Areas shall encompass the letter-designated tracts shown on the Plat (except tract E) and all other portions of the Property, if any, outside of the Lots and public streets as shown on the Plat and shall include, without limitation, any fence or wall enclosing the Property, any gate house, security gate, bridge, roadway, sidewalk, curb, gutter, landscaping, parking area, right-of-way, trail, drainage course, natural area, and utility line or system located on the Property but outside the boundaries of the Lots or public streets.

15.10 "Common Expenses" the actual and estimated costs incurred in administering, maintaining, and operating the Property and the Association including, without limitation, the following :

15.10.1 Maintenance, management, operation, and repair of the Common Areas and of such areas within the right-of-way of public streets within the Property or in the vicinity of the Property as may be provided in this Declaration or pursuant to agreements with the City, including private roads, drainage easements, open space easements abutting public streets and all other areas of the Property which are to be maintained by the Association;

15.10.2 Unpaid Assessments;

15.10.3 Costs of management and administration of the Association including, without limitation, compensation paid by the Association to managers, accountants, attorneys, employees, and agents;

15.10.4 The costs of utilities including, without limitation, water, electricity, gas; sewer, trash pickup and disposal, which are provided to the Association or the Property and not individually metered or assigned to a Lot, and landscaping maintenance and other services which generally benefit and enhance the Property and which are provided by the Association.

15.10.5 The costs of fire, casualty, liability, worker's compensation, and other insurance covering the Common Areas or otherwise obtained by the Association;

15.10.6 Taxes and other governmental assessments on the Common Areas;

15.10.7 Amounts paid by the Association for discharge of any lien or encumbrance levied against the Common Areas or portions thereof;

15.10.8 Design Review Board costs and expenses;

15.10.9 Security, security guards, operation of guard and key gates, if any are so employed by the Developer, any successor Developer, or the Association, at their option, at the entrances to the Property from public streets, and any other security systems or services installed, operated, or contracted for by the Association;

15.10.10 The costs of bonding the members of the Association Board, officers of the Association, any professional managing agent, or any other person handling the funds of the Association;

15.10.11 Sums determined by the Association Board to be prudent for the establishment for contingencies, replacements, and other purposes as deemed appropriate

by the Association Board, which reserve funds shall be adequate to meet the costs and expenses of taxes, insurance, maintenance, repairs, and replacement of Common Areas and fixtures within which must be maintained, repaired, or replaced on a periodic basis; and,

15.10.12 The cost of any other item or items to be provided or performed by the Association pursuant to this Declaration, the Articles, the Bylaws, the Association Rules, or in the furtherance of the purposes of the Association in the discharge of any of the duties or powers of the Association, together with all other expense incurred by it for any reason whatsoever in connection with the Property, except capital improvements costs and expenses which shall be allocated as provided in paragraph 8.5.

15.11 "Declaration" this instrument and the provisions herein, as and if amended.

15.12 "Design Review Board" the Board provided for in paragraph 9 hereof.

15.13 "Developer" or "Original Developer" includes VMB Investment as the original developer, its successors and assigns.

15.14 "First Mortgage or Mortgage" any mortgage, deed of trust, or agreement for sale made in good faith, for value, duly executed and recorded so as to create a lien that is prior to the lien of any mortgage, deed of trust, or agreement for sale. The mortgagee, beneficiary, and vendor of such mortgage, deed of trust, or agreement of sale, respectively, shall be referred to as the Mortgagee.

15.15 "Improvements" the buildings, garages, fixtures, streets, roads, driveways, parking areas, interior fences, interior and perimeter walls, hedges, plantings, trees and shrubs, and all other structures and landscaping of every type and kind located on the Property.

15.16 "Improvement Envelope" the area within a Lot within which all Improvements on the Lot must be located; provided, however, that Improvements constructed by the original Developer or successor Developer as required by the City shall be constructed where required by the City. In no case shall the Improvement Envelope on any lot have an area greater than 10,000 (ten thousand) square feet, exclusive of the area of the driveway.

15.17 "Lot" each component of the Property which has been divided by the Plat into a separate unit for use as a Single Family Residence regardless of whether any Improvements have been constructed thereon. The Lots include all of the Property except the Common Areas and the public streets. Each Lot shall have a minimum of 20,000 (twenty thousand) square feet of land surface area.

15.18 "Member" every person, corporation, partnership, joint venture, or other legal entity which is a Member of the Association as provided in paragraph 6 hereof.

15.19 "Minimum Setback" the distance required between the boundary lines of a Lot and the Improvements on the Lot as provided by the applicable provisions of the Zoning Ordinance.

15.20 "Owner" the record owner, whether one or more persons or entities, of equitable title (or legal title if same has merged) of any Lot. Owner shall include the purchaser of a Lot under an executory contract for the sale of real property. Owner does not include a mortgagee or other persons who hold an interest in a Lot merely as security for the performance of an obligation.

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

15.22 "Plat" the original subdivision plat of the Property recorded in Book 375, of Maps, page 12, Recorder's No. records of Maricopa County, Arizona.

15.23 "Property" the property described in the Plat and such additions thereto or subtractions therefrom as may be made by the Developer.

15.24 "Single Family" a group of one or more persons each related to the other by blood, marriage, legal adoption or cohabitation, together with their domestic servants, who maintain a common household within a Lot.

15.25 "Single Family Residence" a Lot occupied and used by a Single Family in conformity with this Declaration and the requirements imposed by the Zoning Ordinance and other applicable state, county, or municipal statutes, ordinances, rules, or regulations.

15.26 "Single Story" a structure having single level living areas not exceeding 20 feet in height as defined by the Zoning Ordinance.

15.27 "Successor Developer" any person who acquires an option to purchase four or more lots from the original Developer for the purposes of development, resale, or both, or who is otherwise a successor to or assignee of the original Developer, or its immediate successor(s) or assign (s).

15.28 "Supplemental Declaration" a supplement to this Declaration for the purpose of adding additional lands or making modifications to this Declaration.

15.29 "Vehicles" automobiles, trucks, buses, campers, motor homes, recreational vehicles, travel trailers, motorcycles, boats, and all other apparatus of mechanized transport.

15.30 "Visibility from Neighboring Property" shall mean with respect to a given object that such object is or would be visible to a person 6 feet tall, standing on any part of such

neighboring property, at an elevation of the base of the object being viewed.

15.31 "Zoning Ordinance" collectively, the Zoning Code of the City, as and if amended, including without limitation, the applicable Development Standards and Zoning Stipulations and the stipulations pertaining to approval of the Plat.

neighboring property, at an elevation of the base of the object being viewed.

15.31 "Zoning Ordinance" collectively, the Zoning Code of the City, as and if amended, including without limitation, the applicable Development Standards and Zoning Stipulations and the stipulations pertaining to approval of the Plat.

VMB INVESTMENT, an Arizona  
General Partnership

By: \_\_\_\_\_  
Luigi Talarico, Vice President

\_\_\_\_\_  
Date

Subscribed and sworn to before me  
this \_\_\_ of \_\_\_\_\_, 1994.

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

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







OFFICIAL RECORDS OF  
 MARICOPA COUNTY RECORDER  
 HELEN PURCELL  
 96-0857058 12/09/96 04:37  
 BECKY 1 OF 1

WHEN RECORDED, RETURN TO:

David W. Kreutzberg, Esq.  
 Squire, Sanders & Dempsey  
 40 North Central Avenue, Suite 2700  
 Phoenix, Arizona 85004

FIRST AMENDMENT TO DECLARATION OF  
 COVENANTS, CONDITIONS AND RESTRICTIONS

(Casas del Cielo)

THIS FIRST AMENDMENT is made and entered into this \_\_\_ day of November, 1996 by UNITED HOMES, INC., an Arizona corporation ("Developer") and is as follows:

W I T N E S S E T H:

WHEREAS, Developer is the owner of those certain lots described on the attached Exhibit A which is incorporated herein by this reference, which property constitutes all but five (5) lots within Casas del Cielo, according to the plat of record in Book 375 of Maps, page 12, records of the Maricopa County, Arizona Recorder (the "Subdivision"); and

WHEREAS, the Subdivision is subject to that certain Declaration of Covenants, Conditions and Restrictions dated May 19, 1994 and recorded May 20, 1994 in Document No. 94-0405735 (the "Declaration") executed by VMB Investment, an Arizona general partnership ("VMB"); and

WHEREAS, by virtue of the Special Warranty Deed from VMB to Developer, Developer is the assignee of and has succeeded to the right of VMB to be the Developer for all purposes under the Declaration, but Developer has not assumed and shall not be responsible for any prior accrued obligations, liabilities or responsibilities of VMB; and

WHEREAS, Developer desires to amend the Declaration and has the right and authority to do so by virtue of owning more than seventy-five per cent (75%) of the Lots within the Subdivision, satisfying the requirements of Section 14.6 of the Declaration.

NOW, THEREFORE, Developer hereby amends the Declaration as follows:

1. The last sentence of Section 5.4.5 of the Declaration is deleted.

2. The last sentence of Section 15.16 is deleted and replaced by the following:

"In no case shall the Improvement Envelope on any lot have an area greater than that prescribed by the City of Phoenix."

3. As of this date the Design Review Board under Section 9.1.1 of the Declaration is designated by Developer to be Ruth Goodwin, David Neale and John Goodwin, which is subject to change as provided in that section.

Except as provided herein to the contrary, all terms and provisions of the Declaration as previously set forth shall remain in full force and effect. In the event of a conflict between the terms and provisions of this First Amendment and the terms and provisions of the Declaration, the terms and provisions of this First Amendment shall prevail.

IN WITNESS WHEREOF, the undersigned has executed this First Amendment to be effective on the date set forth above.

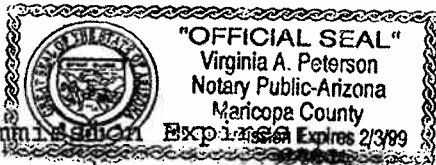
UNITED HOMES, INC., an Arizona corporation

By

*[Signature]*  
Its Vick PRES.

STATE OF ARIZONA     )  
                                   ) ss.  
County of Maricopa    )

The foregoing instrument was acknowledged before me this \_\_\_\_\_ day of 11-7, 1996, by DAVID J. Neale, the V.P. of UNITED HOMES, INC., an Arizona corporation, for and on behalf of said corporation.



*Virginia A. Peterson*  
Notary Public

2/3/99

EXHIBIT "A"

Lots 1-50; Lot 54; and Lots 57-68, in the Casas del Cielo subdivision, a subdivision recorded in Book 375 of Maps, page 12, records of Maricopa County, Arizona.



OFFICIAL RECORDS OF  
MARICOPA COUNTY RECORDER  
HELEN PURCELL

99-0875939 09/20/99 03:53

VEZENIA 73 OF 90

PHOENIX TITLE INSURANCE COMPANY

WHEN RECORDED, RETURN TO:

David W. Kreutzberg, Esq.  
Squire, Sanders & Dempsey L.L.P.  
40 North Central Avenue, Suite 2700  
Phoenix, Arizona 85004

SECOND AMENDMENT TO DECLARATION OF  
COVENANTS, CONDITIONS AND RESTRICTIONS

(Casas del Cielo)

THIS SECOND AMENDMENT is made and entered into this 24th day of June, 1998 by UNITED HOMES, INC., an Arizona corporation ("Developer") and is as follows:

W I T N E S S E T H:

WHEREAS, Developer is the owner of at least seventy-five per cent (75%) of the lots located in Casas del Cielo, according to the plat of record in Book 375 of Maps, page 12, records of the Maricopa County, Arizona Recorder (the "Subdivision"); and

WHEREAS, the Subdivision is subject to that certain Declaration of Covenants, Conditions and Restrictions dated May 19, 1994 and recorded May 20, 1994 in Document No. 94-0405735 as amended by the First Amendment dated November \_\_, 1996 and recorded December 9, 1996 as Document No. 96-0857058 (collectively, the "Declaration"); and

WHEREAS, Developer desires to amend the Declaration and has the right and authority to do so pursuant to Section 14.6 of the Declaration.

NOW, THEREFORE, Developer hereby amends the Declaration to change the reference to "two thousand two hundred (2,200)" in the third to last line of the third paragraph of Section 5.2 on Page 3 of the Declaration to be "two thousand (2,000)".

Except as provided herein to the contrary, all terms and provisions of the Declaration as previously set forth shall remain in full force and effect. In the event of a conflict between the terms and provisions of this Second Amendment and the terms and provisions of

the Declaration, the terms and provisions of this Second Amendment shall prevail.

IN WITNESS WHEREOF, the undersigned has executed this Second Amendment to be effective on the date set forth above.

UNITED HOMES, INC., an Arizona corporation

BY: Ruth A Goodwin  
Its Vice President

STATE OF ARIZONA     )  
                                  ) ss.  
County of Maricopa    )

The foregoing instrument was acknowledged before me this \_\_\_\_\_ day of 24th June 1998, by RUTH A GOODWIN, the Vice President of UNITED HOMES, INC., an Arizona corporation, for and on behalf of said corporation.

Susan Kay Stolfuss  
Notary Public

My Commission Expires:

