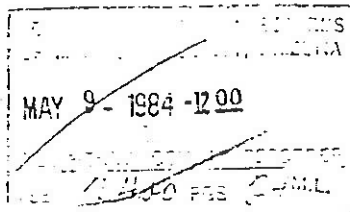


WHEN RECORDED RETURN TO:

Michael V. Mulchay  
PAVILACK, SPACK & MULCHAY, P.C.  
6900 E. Camelback Rd., 7300  
Scottsdale, Arizona 85251



RECEIVED JUN 2 3 1984

DECLARATION OF COVENANTS, CONDITIONS  
AND RESTRICTIONS FOR

PROP RSTR (PRI) MCD RSTR

PARADISE MOUNTAIN SHADOWS

84 251307

RECORDED JUN 2 3 1984

The undersigned, owner of that certain real property, described on Exhibit A attached hereto and incorporated herein by this reference, situated in County of Maricopa, State of Arizona, hereby declares that all of the said property shall be held, sold and conveyed subject to the following easements, restrictions, covenants and conditions, which are for the purpose of protecting the value and desirability of, and which shall run with, the real property and be binding on all parties having any right, title or interest in the described properties or any part thereof, their heirs, successors and assigns; and shall inure to the benefit of each owner thereof.

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ARTICLE I

Definitions

Section 1. "Association" shall mean and refer to PARADISE MOUNTAIN SHADOWS HOMEOWNERS ASSOCIATION, a nonprofit corporation, its successors and assigns.

Section 2. "Common Area" and "Common Elements" shall be synonymous and shall mean all real property and improvements thereon owned by the Association for the common use and enjoyment of the Owners, including the private accessways designated on the Plat. The common area shall be that area so described and designated on the Plat as Tracts C through D, inclusive.

Section 3. "Declarant" shall mean and refer to NBS DEVELOPMENT CORPORATION, an Arizona corporation, its successors, and assigns, if such successors or assigns should acquire more than one undeveloped Lot from the Declarant for the purpose of development.

Section 4. "Developer" and "Builder" shall be synonymous and shall mean and refer to NBS Development Corporation, an Arizona corporation, and its successors and assigns, and to any other contractor who builds for resale a significant number of the houses on the subject property.

Section 5. "First Mortgage" means a first lien deed of trust, as well as a first mortgage, on a townhouse. "First Mortgagee" means the holder of a first mortgage, as well as a beneficiary or trustee under a first deed of trust, its successors and assigns.

Section 6. "Lot," "Parcel," "Townhouse," and "Residence Unit" shall be synonymous and shall mean and refer to any plot of land shown upon the recorded subdivision map or plat of the Properties with the exception of the Common Area.

8136A-3

THIS DOCUMENT IS BEING RE-RECORDED TO CORRECT SCRIVENER'S ERRORS IN EXHIBITS A AND B, AND IN SECTION 2 OF ARTICLE I.

Recorded in official records of Maricopa County, Arizona

DATE JUN 28 1984 - 12 15 FEE 12.50 PGS 25

BILL HENRY, COUNTY RECORDER

Section 7. "Mortgage" includes deed of trust; "Mortgagee" includes a beneficiary under a deed of trust; and "Mortgagor" includes a Trustor under a deed of trust.

Section 8. "Occupant" means a person or persons, including an Owner, legally in possession of a townhouse.

Section 9. "Owner" shall mean and refer to the record fee simple owner, whether one or more persons or entities, of equitable title (or legal title if equitable title has merged) of any Lot which is a part of the Properties. Owner shall not include a person or entity having an ownership 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.

Section 10. "Plat" means the plats of survey of the Property and of all townhouses as recorded in the office of the Maricopa County in Book 266 of Maps, at page 2, and any subsequent additions and/or amendments thereto.

Section 11. "Properties" shall mean and refer to that certain real property hereinbefore described, and such additions thereto as may hereafter be brought within the jurisdiction of the Association.

The aforesaid definitions shall be applicable to this Declaration and also to any supplemental Declaration (unless the context shall prohibit), filed pursuant to Article XI hereof.

## ARTICLE II

### Property Rights

Section 1. Owner's Easements of Enjoyment. Every Owner shall have a right and easement of enjoyment in and to the Common Area which shall be appurtenant to and shall pass with the title to every Lot, subject to the following provisions:

(a) The right of the Association to charge reasonable admission and other fees for the use of any recreational facility situated upon the Common Area.

(b) The right of the Association to suspend the voting rights and right to use of the recreational facilities by an owner for any period during which any assessment against the owner's Lot remains unpaid; and for a period not to exceed 60 days for any infraction of its published rules and regulations.

(c) The right of the Association to dedicate or transfer all or any part of the Common Area to any public agency, authority or utility for such purposes and subject to such conditions as may be agreed to by the members. No such dedication or transfer shall be effective unless an instrument signed by two-thirds (2/3) of each class of members agreeing to such dedication or transfer has been recorded.

(d) The right of the Association to limit the number of guests of members.

(e) The right of the Association to establish uniform rules and regulations pertaining to the use of the Common Area and the recreational facilities thereon.

(f) The right of Developer (and its sales agents and representatives) to the reasonable use of the Common Area for display, sales, leasing and exhibit purposes, which right Declarant hereby reserves to Developer, which reservation of right shall end upon sale of the last unit herein (or as annexed in accordance with Article XI hereof).

Section 2. Delegation of Use. Any Owner may delegate, in accordance with the Bylaws, his right of enjoyment of the Common Area and facilities to the members of his family, his tenants, or contract purchasers who reside on the property.

Section 3. Waiver of Use. No member may exempt himself from personal liability for assessments duly levied by the Association, nor release the Lot owned by him from the liens and charges hereof, by waiver of the use and enjoyment of the Common Area, and the facilities thereon or by abandonment of his Lot.

### ARTICLE III

#### Membership and Voting Rights

Section 1. Membership in the Association, except for membership of the incorporators, the Declarant and the first Board of Directors, shall be limited to record owners of equitable title (or legal title if equitable title has merged) of Parcels constructed or planned to be constructed on the property described above or on any duly annexed property. An owner of a Parcel shall automatically, upon becoming the owner of a Parcel, be a member of the Association, and shall remain a member of the Association until such time as his ownership ceases for any reason, at which time his membership in said Association shall automatically cease. Ownership of a Parcel shall be the sole qualification and criteria for membership. The foregoing is not intended to include persons or entities who hold an interest merely as security for the performance of an obligation.

A membership in the Association shall not be transferred, pledged or alienated in any way, except upon the sale of such Lot and then only to such purchaser, or by intestate succession, testamentary disposition, foreclosure of mortgage of record or other legal process. Any attempt to make a prohibited transfer is void and will not be reflected upon the books and records of the Association. The Association shall record the transfer upon the books of the Association and issue a new membership to a purchaser and thereupon the old membership outstanding in the name of the seller shall be null and void.

The record owner of equitable title (or legal title if equitable title has merged) of each Lot shall be entitled to one membership in the Association, for himself and his family residing in the townhouse, which membership shall be subject to all of the provisions of the Association's Articles of Incorporation, Bylaws, Management Agreement and these Restrictions, as now in effect or duly adopted or amended.

Section 2. Every owner of a Parcel which is subject to assessment shall be a member of the Association. Membership shall

be appurtenant to and may not be separated from ownership of any Parcel which is subject to assessment.

Section 3. The Association shall have two classes of voting membership, as follows:

Class A. Class A members shall be all owners, with the exception of the Declarant, and shall be entitled to one vote for each Parcel owned. When more than one person holds an interest in any Parcel, all such persons shall be members. The vote for such Parcel shall be exercised as they among themselves determine, but in no event shall more than one vote be cast with respect to any Parcel.

Class B. The Class B member(s) shall be the Declarant and shall be entitled to three (3) votes for each Parcel owned or contemplated to be created and annexed to this Declaration and to the Association pursuant to Article XI. Initially, therefore, Declarant shall be entitled to cast its vote based upon 59 townhouses. The Class B membership shall cease and be converted to Class A membership on the happening of either of the following events, whichever occurs earlier:

(a) Within 120 days after the total votes outstanding in the Class A membership equals the total votes outstanding in the Class B membership; or

(b) January 1, 1989.

#### ARTICLE IV

##### Covenant for Maintenance Assessments

Section 1. Creation of the Lien and Personal Obligation of Assessments. The Declarant, for each Parcel owned within the Properties, hereby covenants, and each owner of any Parcel by acquiring an ownership interest therein, whether or not it shall be so expressed in the conveying document, is deemed to covenant and agree to pay to the Association: (1) annual assessments or charges; and (2) special assessments as authorized by the Association's Board of Directors. Such assessment to be established and collected as provided herein.

The annual and special assessments, together with interest, costs of collection and reasonable attorneys' fees, shall be a charge on the land and shall be a continuing lien upon the property against which each such assessment is made. Each such assessment, together with interest, costs of collection and reasonable attorneys' fees, shall also be the personal obligation of the person who was the owner of such property at the time when the assessment fell due. The personal obligation for the delinquent assessments shall not pass to his successors in title unless expressly assumed by them.

Section 2. Purpose of Assessments. The assessments levied by the Association shall be used exclusively to promote the health, safety and general welfare of the residents in the Properties and for the improvements and maintenance of the Common Area (to the extent required by this Declaration), and of the improvements situated upon the Properties. The assessments shall cover the cost of water and sewer and all repairs, replacement and main-

tenance of the Common Area (to the extent required by this Declaration) and all other authorized activities and facilities, including but not limited to, common yard maintenance, sprinkler system, swimming pool, recreational buildings, exterior walls and exterior painting of residence units, roofs of units, exteriors of garages, costs of additional common facilities and improvements, taxes and insurance, as may, from time to time, be authorized by the Association's Board of Directors. A properly executed certificate of the Association as to the status of assessments on a lot is binding upon the Association as of the date of its issuance.

The Board of Directors shall fix the amount of the annual assessment against each Parcel at least thirty (30) days in advance of each annual assessment period. Written notice of the annual assessment shall be sent to every owner subject thereto. The due dates shall be established by the Board of Directors. The Association shall, upon demand, and for a reasonable charge, furnish a certificate signed by a representative of the Association setting forth whether the assessments on a specified Parcel have been paid.

Section 3. Establishment of Assessment. Declarant and each owner of a Parcel covenants for themselves and their heirs, successors and assigns, that such Parcel shall be subject to an assessment, in an amount to be determined by the Association, as permitted by this Declaration of Covenants, Conditions and Restrictions. The amount to be prorated among the members of the Association shall be established annually by the Board of Directors.

At the time of the first conveyance or occupancy (whichever occurs first) of a lot other than to or by the Developer for construction financing or sales purposes, and from time to time thereafter, the Board of Directors or the designated representative shall notify the owner or owners of each Parcel the amount of the estimated annual assessments and shall collect on a monthly or other reasonable basis as determined by the Board each Parcel's proportionate share of said annual assessments. The assessments on a Parcel will commence not less than thirty (30) days nor more than sixty (60) days after the first conveyance or first occupancy of the first Parcel, other than to or by the Developer for construction financing or sales purposes. From and after such first conveyance or occupancy, all units in that phase shall be assessed. The assessment for unoccupied dwellings owned by Developer shall be twenty-five percent (25%) of that charged for occupied or conveyed units. At such time as the Developer conveys such unoccupied unit, the full assessment shall immediately and permanently attach to such unit. Upon the first occupancy of such unit, the full assessment shall also immediately and permanently attach thereto although ownership of that lot be retained by the Developer. In the event funds received by the Association are inadequate to pay for current obligations, Declarant shall be responsible on a current basis for any deficit, excluding delinquencies in payment of assessments by Owners, in the budget of the Association, up to but not exceeding the amount of the regular assessment for lots which it owns and which have been annexed. Said obligation, together with interest thereon at the rate of ten percent (10%) per annum shall constitute a lien on the Property in favor of the Association and the Owners. No assessments shall be levied against Apartment Units in phases not yet annexed.

Section 4. Maximum Annual Assessment. Until January 1 of the year immediately following the conveyance of the first Lot to an Owner, the maximum annual assessment shall be Seven Hundred twenty and no/100 (\$720.00) per Lot.

(a) From and after January 1 of the year immediately following the conveyance of the first Lot to an Owner, the maximum annual assessment may be increased effective January 1 of each year without a vote of the membership by six percent (6%) per annum or a percentage proportionate to the increase, if any, of the Consumer Price Index published by the Department of Labor, Washington, D.C., or any successor agency or successor index (for the preceding year).

(b) From and after January 1 of the year immediately following the conveyance of the first Lot to an Owner, the maximum annual assessment may be increased for the next succeeding year above that permitted by Subsection (a) above by a vote of the members, provided that any such increase shall have the assent of two-thirds of the votes of each class of members who are voting in person or by proxy, at a meeting duly called for this purpose, written notice of which shall be sent to all members not less than thirty (30) days nor more than sixty (60) days in advance of the meeting setting forth the purpose of the meeting. The limitations hereof shall not apply to any change in the maximum and basis of the assessments undertaken as an incident to a merger or consolidation in which the Association is authorized to participate under its Articles of Incorporation.

Section 5. Special Assessments. In addition to the annual assessments authorized above, in any assessment year the Association may levy a special assessment, applicable to that year only, for the purpose of defraying, in whole or in part, the cost of any construction, reconstruction, repair or replacement of a capital improvement upon the Common Area, including fixtures and personal property related thereto, provided that any such assessment shall have the assent of two-thirds (2/3) of the votes of each class of members who are voting in person or by proxy at a meeting duly called for this purpose, or at an annual meeting.

Section 6. Uniform Rate of Assessment. Both annual and special assessments must be fixed at a uniform rate for all Parcels and may be collected on a monthly basis or other reasonable basis as determined by the Board.

Section 7. Effect of Nonpayment of Assessments; Remedies of the Association. Any assessment not paid within thirty (30) days after the due date shall, at the election of the Association, pay a "late charge" in a sum to be determined by the Association, but not to exceed \$10.00 per each monthly delinquent assessment, or six percent (6%) of the amount of such assessment, whichever is higher. The Association may bring, without electing a remedy, any and all actions and seek any and all relief against the owner personally obligated to pay the same, and/or to foreclose the lien against the property in a like manner as a mortgage of real property, and such owner hereby expressly grants to the Association the power of sale in connection with said lien. No owner may waive or otherwise escape liability for the assessments provided for hereby by non-use of the Common Area or abandonment of his Parcel. In any action taken against an owner to collect delinquent assessments, whether through lien foreclosure or otherwise, the owner shall be obligated to pay, in addition to any and all other amounts required herein, all costs and all attorneys' fees incurred by the Association in such action.

Section 8. Subordination of the Lien to Mortgages. The lien of the assessments provided for herein shall be subordinate to the lien of any first mortgage or deed of trust. Sale or transfer of any Parcel shall not affect the assessment lien. However, the sale or transfer of any Parcel pursuant to mortgage foreclosure, deed of trust sale, or any proceeding in lieu thereof, shall extinguish the lien or such assessments as to payments which became due prior to such sale or transfer. No sale or transfer shall relieve such Parcel from liability for any assessments thereafter becoming due or from the lien thereon.

Section 9.

(a) Replacement Fund. The annual maintenance assessment shall include an amount for a replacement fund, which the Board of Directors determines to be adequate for the maintenance, repair and replacement of Common Area improvements and such amount shall be set aside as a pro rata portion of each installment of the maintenance assessments.

(b) Working Capital Fund. The Declarant shall establish a working capital fund for the initial months of the Project operation equal to at least two months estimated common area charge for each lot. Each lot's share of the working capital fund shall be collected and transferred to the Association at the time of conveyance of each lot and maintained in a segregated account for the use and benefit of the Association. The contribution to the working capital fund for each unsold lot in a Phase which has been annexed shall be paid to the Association within sixty (60) days after the date of conveyance of the first lot in such annexed Phase. The purpose of the fund is to insure that the Association will have cash available to meet unforeseen expenditures, or to acquire additional equipment or services deemed necessary or desirable by the Board. Amounts paid into the fund are not to be considered as advance payment of regular assessments.

ARTICLE V

Architectural Control

No building, fence, wall, patio cover, awning, antenna, or other structure shall be commenced, erected or maintained upon the properties, nor shall any exterior addition to, or change or alteration therein, be made until the plans and specifications showing the nature, kind, shape, height, materials and location of the same have been submitted to and approved in writing as to harmony of external design and location in relation to surrounding structures and topography by the Board of Directors of the Association, or by an architectural committee appointed by the Board. In the event said Board, or its designated committee, fails to approve or disapprove such design and location within thirty (30) days after said plans and specifications have been submitted to it, approval will not be required and this Article will be deemed to have been fully complied with.

ARTICLE VI

Party Walls

The rights and duties of the owners of residence units with respect to party walls shall be governed by the following:

(a) Each wall, including patio or balcony walls, which is constructed as part of the original construction of a residence unit, any part of which is placed on the dividing line between separate units, shall constitute a party wall. With respect to any such wall, each of the adjoining owners shall assume the burdens and be entitled to the benefits of these restrictive covenants, and, to the extent not inconsistent herewith, the general rules of law regarding party walls shall be applied thereto.

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

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

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

(e) The right of any owner to contribution from any other owner under this Article shall be appurtenant to the land and shall pass to such owner's successors in title.

(f) In addition to meeting the other requirements of these restrictive covenants and of any building code or similar regulations or ordinances, any owner proposing to modify, make additions to or rebuild his residence unit in any manner which requires the extension or other alteration of any party wall, shall first obtain the written consent of the adjoining owner.

(g) In the event of a dispute between owners with respect to the repair or rebuilding of a party wall or with respect to the sharing of the cost thereof, then, upon written request of one of such owners addressed to the Association, the matter shall be submitted to arbitration under such rules as may from time to time be adopted by the Association. If no such rules have been adopted, then the matter shall be submitted to three arbitrators, one chosen by each of the owners and the third by the two so chosen, or, if the arbitrator cannot agree as to the selection of the third arbitrator within five (5) days, then by any Judge of the Superior Court of Maricopa County, Arizona. A determination of the matter signed by any two of the three arbitrators shall be binding upon the owners, who shall share the cost of arbitration equally. In the event one party fails to choose an arbitrator within ten (10) days after personal receipt of a request in writing for arbitration from the other party, then said other party shall have the right and power to choose both arbitrators.

(h) These covenants shall be binding upon the heirs and assigns of any owners, but no person shall be liable for any act or omission respecting any party wall except such as took place while an owner.

## ARTICLE VII

Exterior Maintenance

Section 1. The Association shall provide exterior maintenance upon the Common Area and each Lot which is subject to assessment hereunder, as follows:

(a) The Association shall paint exterior building surfaces, garages and masonry/block fences.

(b) The Association shall furnish maintenance, repair and replacement of all the Common Elements as part of common expenses subject to the provisions of this Declaration, the Articles of Incorporation and the ByLaws. In addition thereto, the Association shall be responsible for repair, maintenance and replacement of roofs and masonry/block walls on lots, but shall not be responsible for any equipment thereon serving a lot. Such equipment shall be maintained at the expense of the Owner. The Association shall not be responsible for exterior or interior glass surfaces, such being the responsibility of the lot owner.

Section 2. The cost of the maintenance, repair or replacement for which the Association is responsible under Section 1 above shall be assessed uniformly to all owners in accordance with Article IV of this Declaration, except as provided in Section 3 of this Article VII.

Section 3. To the extent an Owner is legally responsible under Arizona law, the cost of any maintenance, repair or replacement which results from the negligence or willfulness of an Owner, an Owner's guest or the occupant of an Owner's Lot, shall be added to such Owner's regular assessment and shall be an assessment, lien and obligation of such Owner and shall become due and payable in all respects as provided in Article IV of this Declaration.

Section 4. For the purpose solely of performing the maintenance, repair and replacement authorized by this Article, the Association, through its duly authorized agents or employees, shall have an easement for maintenance, repair and replacement and the right, after reasonable notice to the Owner, to enter upon any Lot at reasonable hours.

## ARTICLE VIII

Interior and Other Maintenance

Each Owner shall be responsible for the upkeep and maintenance of the interior of his residence unit and garage and for the maintenance, repair and replacement of individual patios or balconies and the wooden fences, windows, private yards and landscaping within the private yard and lot lines. All fixtures and equipment installed within the private yard boundary, lot line or residence unit, including utility lines, pipes, wires, conduits, air-conditioning, heating, and other systems shall be maintained and kept in repair by the Owner thereof. Termite control shall be the responsibility of the Owner.

## ARTICLE IX

Insurance

Insurance shall be carried by the Association on the Property and shall be governed by the following provisions:

Section 1. Authority to Purchase. The Board shall purchase and maintain certain insurance upon the Property, including but not limited to the insurance described in Section 2 below, which insurance is to be purchased by the Association for the benefit of the Association, the Owners, and the First Mortgagees, as their interests may appear. Provisions shall be made for the issuance of certificates of endorsement to the First Mortgagee of any First Mortgage. Such policies and endorsements thereon, or copies thereof, shall be deposited with the Association. The Board shall deliver a copy of the policies or certificate of insurance, or by and through their agent advise the Owners of the coverage of said policies to determine which particular items are included within the coverage so that the Owners may insure themselves as they see fit if certain items are not insured by the Association. Without limiting the generality of the foregoing, it shall be each Owner's responsibility to provide for himself Owner's liability insurance, theft or other insurance covering personal property damage and loss, insurance for each Owner's personal liability, and such other insurance which is not carried by the Association as the Owner desires.

Section 2. Coverage. The Association shall maintain and pay for policies of insurance as follows:

A. A multi-peril type policy covering the entire Property 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 but not limited to vandalism and malicious mischief, in an amount not less than one hundred percent (100%) of the insurable value (based upon replacement cost).

B. A comprehensive policy of public liability insurance covering all of the Common Elements and public ways in the Property in a minimum amount of at least One Million Dollars (\$1,000,000.00) per occurrence, for personal injury and/or property damage. Such insurance policy shall contain a "severability of interest" endorsement which shall preclude the insurer from denying the claim of a Owner because of the negligent acts of the Association and its agents or other Owners.

C. If the Project is located in an area identified by the Secretary of Housing and Urban Development as an area having special flood hazards, a "blanket" policy of flood insurance on the Project must be maintained in the amount of the outstanding principal balances of the First Mortgage loans on the Units comprising the Project or the maximum limit of coverage available under the National Flood Insurance Act of 1968, as amended, whichever is less.

D. The Association must obtain fidelity coverage against dishonest acts on the part of directors, managers, trustees, employees or volunteers responsible for handling funds belonging to or administered by the Association.

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The fidelity bond or insurance must name the Association as the named insured and shall be written to provide protection which is in no event less than one and one-half times the insured's estimated annual operating expenses and reserves. 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.

E. A workmen's compensation policy, if necessary to meet the requirements of law.

F. Such other insurance as the Board shall determine from time to time to be desirable.

Section 3. Provisions Required. The insurance policies purchased by the Association shall, to the extent possible, contain the following provisions:

A. The coverage afforded by such policies shall not be brought into contribution or proration with any insurance which may be purchased by Owner or First Mortgagees.

B. There shall be no subrogation with respect to the Association, its employees, Owners and members of their household and their families and employees, or the Policy(ies) should name said persons as additional insureds.

C. A statement of the name of the insured shall be included in all policies, in form and substance similar to the following:

Paradise Mountain Shadows Homeowners  
Association, for the use and benefit  
of the individual owners (designated  
by name, if required).

D. A standard Mortgagee clause which must be endorsed to provide that any proceeds shall be paid to the Association for the use and benefit of First Mortgagees as their interest may appear, or which must be otherwise endorsed to fully protect the interest of First Mortgagees, their successors and assigns.

E. For policies of hazard insurance, a standard mortgagee clause shall provide that the insurance carrier shall notify the First Mortgagee named at least ten (10) days in advance of the effective date of any reduction in or cancellation of the policy.

F. Any "no other insurance" clause shall exclude insurance purchased by unit Owners or First Mortgagees.

Section 4. First Mortgagee Protection.

A. The Association shall provide each First Mortgagee with a letter wherein the Association agrees to give written notice to each First Mortgagee, or Servicer of a mortgage, or any entity or person designated by such First Mortgagee or Servicer, whenever:

(1) Damage to a Unit covered by a First Mortgage exceeds \$10,000.00; and/or

(2) Damage to the Common Elements and related facilities exceeds \$10,000.00.

Notwithstanding any contrary provision hereof, the Association shall have no duty to give written notices provided for herein to any First Mortgagee, unless such First Mortgagee shall deliver or mail to the Association a notice stating the address of the First Mortgagee to which such written notices are to be sent.

B. Each hazard insurance policy shall be written by a hazard insurance carrier which has a financing rating by Best's Insurance Reports of Class VI or better, or if such rating be discontinued, by a successor thereto or a similar such rating service.

C. Each insurance carrier must be specifically licensed or authorized by law to transact business within the State of Arizona.

D. First Mortgagees may pay overdue premiums, or may secure new insurance coverage on the lapse of a policy, with respect to any insurance required to be maintained by the Association as provided in this part, and First Mortgagees making expenditures therefor shall be owed immediate reimbursement by the Association.

Section 5. Non-Liability of Association/Board. Notwithstanding the duty of the Association to obtain insurance coverage as stated herein, neither the Association nor any Board member shall be liable to any Owner or any other party 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 Owner to ascertain the coverage and protection afforded by the Association's insurance and to procure and pay for such additional insurance coverage and protection the said Unit Owner may desire.

Section 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 townhouse or its appurtenances, or of the Common Elements by an Owner, shall be assessed against that particular Owner.

Section 7. Insurance Claims. The Association, acting by and through its Board, is hereby irrevocably appointed agent for each Owner and for each holder of a First Mortgage or other lien upon a lot, and for each owner of any other interest in the Property, subject to the provisions contained herein, to adjust all claims arising under insurance policies purchased by the Association and to execute and deliver releases upon the payment of claims, and the Board has full and complete power to act for the Association in this regard.

Section 8. FNMA/GNMA or FHLMC. Notwithstanding any provision of this Article IX, if at any time any of the lots are owned by or are covered by Mortgages which are held by the Federal National Mortgage Association ("FNMA"), the Government National Mortgage Association ("GNMA") or the Federal Home Loan Mortgage Corporation ("FHLMC") (or any successor to such entities which performs their present functions), the Board shall at all times carry all casualty, flood and liability insurance and a fidelity

bond in such amounts and containing all provisions as are required from time to time by such entities or such successors, unless such coverage is unavailable or waived by them in writing.

## ARTICLE X

### Damage and Repair

If all or any part of the Property in which the Association owns an interest is damaged or destroyed by fire or other hazard, whether or not it shall be repaired or reconstructed, shall be determined in the following manner:

Section 1. Common Elements. If the damaged property is part of the Common Elements or any property in which the Association owns an interest, it shall be repaired or reconstructed.

Section 2. Residence Units. In the event any townhouse is totally or substantially damaged or destroyed, the repair, reconstruction or replacement thereof shall be paid from the insurance loss proceeds.

Section 3. Insurance Proceeds. An undivided share of such proceeds on account of damage to Common Elements shall be allocated to the Owners according to their membership in the Association. Proceeds, if any, on account of damage to Residence Units shall be held for the Owners of damaged Residence Units in proportion to the cost of repairing the damage suffered by each such Owner, which cost shall be determined by the Association. In the event a mortgagee endorsement has been issued as to a lot, the share of the Owner shall be held in trust for the First Mortgagee and the Owner as their interest may appear.

Section 4. Manner of Disbursements. The proceeds from assessments and insurance shall be disbursed in the following manner:

A. That portion of the insurance proceeds, if any, representing damage to a townhouse shall be used to pay for the reconstruction and repair of said townhouse by disbursements in payment of the costs of such repair and reconstruction to the Owner, or, if there is a mortgage endorsement, then to the Owner and the First Mortgagee jointly.

B. The portion of insurance proceeds representing damage, the reconstruction and repair of which is the responsibility of the Association, shall be disbursed in payment of the costs of such repair and reconstruction in the manner required by the Board and upon approval of an architect qualified to practice in Arizona and employed by the Association to supervise the work.

Section 5. If the insurance proceeds are insufficient to pay all costs of repair and rebuilding, the Board shall levy a special assessment to make up any deficiency, which assessments shall be levied equally against all Owners. If the insurance proceeds exceed the costs of repair and reconstruction, then following completion of such repair and rebuilding, the excess shall be paid over to all owners and their holders of first Mortgages as their respective interests may appear. Each payment to an Owner and his Mortgagee shall be by joint payee check or

draft. The assessment provided for herein shall be secured by the lien provided for in this Declaration.

ARTICLE XI

Annexation

Section 1. Notwithstanding any contrary provision of this Declaration, Declarant reserves the right in its sole discretion and without the consent of any other Owner or mortgagee, provided that the VA determines that the annexation is in accord with the general plan heretofore approved by them, at any time within five (5) years from the date of this Declaration, to annex all or any portion of the following described real property to the Property pursuant to this Declaration:

See Exhibit B attached hereto and incorporated herein by this reference.

Nothing contained in this Declaration shall obligate Declarant to annex any additional phase, land or improvements. Effectuation of any such annexation shall take place when Declarant records a plat describing such Phase, together with a Declaration of Annexation describing the property to be annexed, referring to this Declaration by reference, setting forth the number and description of the lots included within such phase. Thereafter, the property described in such Declaration of Annexation shall be deemed a part of this property. Upon completion of any such annexation, all owners of lots in any such annexed phase shall have those rights and obligations set forth in this Declaration, and shall be treated as if the entire project had been developed at the same time. Upon each such annexation, a new budget shall be prepared and the assessments shall be levied in connection therewith, in accordance with this Declaration.

ARTICLE XII

Use Restrictions

Section 1. The properties are hereby restricted to residential dwellings for residential use and two-car garages, except for improvements within the Common Area. All buildings or structures erected upon said premises shall be of new construction and no building or structures shall be moved from other locations onto said premises, and no subsequent buildings or structures other than residence units, shall be built on any Parcel where the builder theretofore programmed and constructed a Residence Unit. No structures of a temporary character, trailer, basement, tent, shack, garage, barn or other out-building shall be used on any portion of the premises at any time as a residence, either temporarily or permanently.

Section 2. Notwithstanding any provisions herein contained to the contrary, it shall be expressly permissible for the builder of a major portion of said development to maintain during the period of construction and sale of said lots, upon such portion of the premises as such builder may choose, such facilities as in the sole opinion of said builder may be reasonably required, convenient or incidental to the construction and sale of said lots, including but without limitation, a business office, storage area, construction yards, signs, model units and sales office.

Section 3. No animals of any kind shall be raised, bred, or kept in any townhouse or in or upon any Common Elements, except that a single dog, cat or other household pet may be kept in each townhouse, subject to uniform rules and regulations of the Association, and provided that no animal shall be kept, bred or maintained for any commercial purpose. All pets must be leashed or otherwise contained when outside the townhouse and shall not be allowed to run loose. Any owner keeping an animal on the Property shall indemnify and hold harmless the Association for any loss, damage, cost or liability which the Association may sustain as a result of the presence of such animal, whether or not such animal's presence has been approved by the Association. Notwithstanding the generality of the foregoing, after (i) repeated violations of this subparagraph, (ii) ten (10) days' prior written notice to the Owner of such animal(s), and (iii) an opportunity for such Owner to have a hearing before the Board, such animal(s) may be taken from such Owner and given to any local organization whose function is to deal with stray or abandoned animals.

Section 4. No advertising signs (except one of not more than five (5) square feet "for rent" or "for sale" sign per Parcel), billboards, unsightly objects, or nuisances shall be erected, placed or permitted to remain on the premises, nor shall the premises be used in any way or for any purpose which may endanger the health or unreasonably disturb the owner of any home or any resident thereof. Further, no business activities of any kind whatsoever shall be conducted in any building or on any portion of the premises; provided further, however, the foregoing covenants shall not apply to the business activities, signs and billboards, or the construction and maintenance of buildings, if any, of the builder, its agents and assigns during the construction and sale period, and of the Association, its successors and assigns, in the furtherance of its powers and purposes, as herein set forth.

Section 5. All clotheslines, equipment, garbage cans, service yards, woodpiles or storage piles shall be kept screened by adequate planting or fencing so as to conceal them from view of neighboring homes and streets. All rubbish, trash or garbage shall be regularly removed from the premises, and shall not be allowed to accumulate thereon. All clotheslines shall be confined to patio or balconies areas.

Section 6. No vehicle of any type, boat, camper, motorcycle, bicycle, tricycle or other wheeled toy shall be parked or left unattended in any Common Area.

The Board of Directors may from time to time restrict vehicular parking on the Common Areas. Vehicles parked in restricted areas may be towed away at the vehicle owner's expense, including the storage charges.

No vehicle of any type which is abandoned or inoperable shall be stored or kept on any Parcel, parking area, street or drive within this subdivision in such a manner, as to be seen from any other Parcel or from any streets, drives or alleyways within this subdivision.

Section 7. Except in the individual patio areas, no planting or gardening shall be done, and no hedges shall be erected or maintained upon said premises, except such as are installed in accordance with the initial construction of the buildings located thereon or as approved in accordance with Architectural Control provisions in Article V herein. No fences or walls shall be

erected or maintained on any of the Properties without approval of the Architectural Control Committee as provided in this Declaration.

Section 8. The Common Area shall remain undivided, it being agreed that this restriction is necessary in order to preserve the rights of the owners with respect to the operation and management of the Common Area. No owner shall have the right to bring an action for partition, or to subdivide or partition his own lot or the common area.

Section 9. Without prior written approval and the authorization of the Board of Directors, no exterior television, radio, CS or other antennas of any sort shall be placed, allowed or maintained upon any portion of the improvements to be located upon the premises, nor upon any structure situated upon said real property, other than an aerial for a master antenna system, should any such master system or systems be utilized and require any such exterior antenna.

Section 10. No noxious or offensive activity shall be carried on upon any Lot or any part of the Properties, nor shall anything be done thereupon which may be, or may become, an annoyance or nuisance to the neighborhood, or which shall in any way interfere with the quiet enjoyment of each of the owners of his respective dwelling unit, or which shall in any way increase the rate of insurance.

Section 11. The rights and duties with respect to sanitary sewer and water, cable television, electricity, gas and telephone lines and facilities shall be governed by the following:

(a) Whenever water, sanitary sewer, electricity, gas, cable television or telephone connections, lines, cables or any portion thereof, are or have been installed within the Properties, the owner of any Lot or the Association in the case of the Common Area, served by said installation shall have the right, and are hereby granted an easement to the extent necessary therefor, to enter upon or have a utility company enter upon any portion of the Properties in which said installations lie, to repair, replace and generally maintain said installations.

(b) The right granted in subparagraph (a) above shall be only to the extent necessary to entitle the owner or Association serviced by said installation to its full and reasonable use and enjoyment, and provided further that any one exercising said right shall be responsible for restoring the surface of the easement area so used to its condition prior to such use.

(c) In the event of a dispute between owners with respect to the repair or rebuilding of said connections, or with respect to the sharing of the cost thereof, upon written request of one of such owners addressed to the Association, the matter shall be submitted to its Board of Directors, who shall decide the dispute and the decision of the Board shall be final and conclusive on the parties, subject to the right of any party to seek relief in the courts.

Section 12. All owners and occupants shall abide by Bylaws and any rules and regulations adopted by the Association.

Section 13. No lot shall be leased by an owner, nor landlord-tenant relationship established unless such lease or landlord-tenant relationship is in writing and the lessee or tenant has agreed in writing that the lease is subject in all respects to the provisions of the Declaration of Covenants, Conditions and Restrictions, the Articles of Incorporation of the Association, the Bylaws of the Association and all rules and regulations duly adopted by the Association. Said writing shall provide that any failure of the lessee or tenant to comply with the terms of such documents or rules and regulations shall be a default under the lease. No lease shall be permitted for transient or hotel purposes.

#### ARTICLE XIII

##### Duties and Powers of the Association

In addition to the duties and powers enumerated in its Articles of Incorporation and Bylaws, or elsewhere provided for herein, and without limiting the generality thereof, the Association shall:

- (a) Own, maintain and otherwise manage all of the Common Area and all facilities, improvements and landscaping thereon, and all other property acquired by the Association.
- (b) Pay any real and personal property taxes and other charges assessed against the Common Area.
- (c) Have the authority to obtain, for the benefit of all of the Lots and the Common Area, all water, gas, sewer and electric service and refuse collection and to pay for such services to the extent that said services are not individually metered or otherwise directly billed to the individual Lots.
- (d) Grant easements where necessary for utilities and sewer facilities over the Common Area to serve said area and the Lots.
- (e) Have the authority to employ a manager or other persons and to contract with independent contractors or managing agents to perform all or any part of the duties and responsibilities of the Association. The Association, through its Board of Directors, shall have the express authorization, right and power to enter into one or more management agreements with third parties in order to facilitate efficient operation of all buildings, improvements and common elements, including the real property described on Exhibit A attached hereto. It shall be the primary purpose of such management agreements to provide for the administration, management, repair and maintenance of said real property, all improvements thereon designated as common elements, and the exterior walls of the patio homes; and to assess, collect and apply the management and common expenses, and to enforce the Declaration of Covenants, Conditions and Restrictions. The terms of said management agreements shall be as determined by the Board of Directors to be in the best interests of the Association, and shall be subject to the Articles of Incorporation, the Bylaws and this Declaration of Covenants, Conditions and Restrictions affecting said property. Notwithstanding the above, any and all such management agreements

shall be written for a term not to exceed one year, subject to renewal by agreement of the parties for successive one year periods, and shall further provide that said management agreement may be cancelled and terminated by the Board of Directors for any reason whatsoever upon giving thirty (30) days written notice of such cancellation and termination to the managing entity. The Board of Directors shall make all necessary arrangements for continuity of management and maintenance prior to the expiration of the term of any prior management agreements or the termination of the same. Any and all management agreements shall be entered into with a responsible party or parties having considerable experience with the management of a project of this type.

Each owner shall be bound by the terms and conditions of all management agreements entered into by the Owner's Association. A copy of all management agreements shall be available to each owner upon request.

(f) Contract for and pay fire, casualty, liability and other insurance insuring the Association, its property and its Board of Directors and Owners.

(g) Contract for and pay maintenance, gardening, utilities, materials and supplies, and services relating to the Common Area, and to employ personnel necessary for the operation of the project, including legal and accounting services provided, however, that any such service contract shall be limited to a duration of one (1) year unless a longer term is approved by a majority of the members of the Association.

(h) Delegate its powers to its committees, officers and employees.

(i) Provide for maintenance, repair and replacement of all items as provided for in Article VII hereof.

(j) At the request of the public body authorized to accept such and with the approval of two-thirds (2/3) of each class of members, dedicate those portions of the Common Area which are used for vehicular ingress and egress as public streets.

#### ARTICLE XIV

##### Easements

Section 1. Blanket Easement for Utilities. There is hereby created a blanket easement upon, across, over and under the Common Area for ingress, egress, installation, replacing, repairing and maintaining all utilities, including but not limited to, water, sewers, gas, telephones and electricity, irrigation facilities and a master television antenna system. By virtue of this easement, it shall be expressly permissible for the providing electrical, utility and/or telephone company to erect and maintain the necessary poles and other necessary equipment on said property and to affix and maintain electrical and/or telephone wires, circuits and conduits on, above, across and under the roofs and exterior walls of Residence Units. Notwithstanding anything to the contrary contained in this paragraph, no sewers, electrical lines, water lines or other

utilities may be installed or relocated on said premises, except as initially programmed and approved by the major builder of said premises or as approved by the Association's Board of Directors. These easements shall in no way affect any other recorded easements on said premises.

Section 2. Easement for Encroachment Due to Construction.  
Each Residence Unit and the Common Area shall be subject to an easement for encroachments created by construction, settling and overhangs and balconies, as designed or constructed and for the maintenance of same, so long as it stands, shall and does exist. In the event a Residence Unit is partially or totally destroyed and then rebuilt, the owners of all lots agree that minor encroachments on parts of the adjacent patio home or Common Area due to construction shall be permitted and that a valid easement for said encroachment and the maintenance thereof shall exist.

#### ARTICLE XV

##### Private Yards

Section 1. Certain of the Lots include Private Yards, which are defined as the enclosed portions of the lot excluding the building thereon as shown and designated on Exhibit C hereto, being a reduced copy of the Plat.

Section 2. The rights of the respective parties with respect to the use of Private Yards, which may abut a wall of the dwelling unit on the adjoining Lot ("abutting dwelling unit" herein), shall be as follows:

(a) Nothing shall be erected, planted or maintained within such Private Yard area which might impede or interfere with any necessary and reasonable maintenance, repair or restoration of any structural wall located on or adjacent to the abutting dwelling unit. This restriction shall not unreasonably interfere with the right of the Private Yard Owner to use the Private Yard as permitted by Article XV, Section 3 below.

(b) The Owner of the Private Yard shall not drive any nails, screws, bolts or other objects of any kind whatsoever into, nor attach any object to the wall of the abutting dwelling unit.

(c) The Owner of the abutting dwelling unit shall have the responsibility for painting and repairing any structural wall owned by him and facing onto the Private Yard (to the extent such repair and painting is not the obligation of the Association), provided, however, that in the case of damage to such a wall caused by the Owner of the Private Yard, his family, guests, servants, agents, or invitees, such repairs shall be made at the expense of the Owner of the Private Yard. If an action at law be required to enforce payment for such repairs, the prevailing party shall be entitled to recover the costs of suit, including reasonable attorneys' fees. No repairs, additions, alterations and/or restoration of any such structural wall shall be commenced, erected or maintained or the paint colors therefor selected until the plans and specifications, showing the nature, kind, shape, height, materials, location, color and approximate cost thereof shall have been approved by the Architectural Control Committee.

After completion of such repairs, additions, alterations or restoration, the Owner of the abutting dwelling unit shall restore the Private Yard to the condition in which it existed immediately prior to the commencement of such work.

(d) The Owner of the abutting Lot shall have the right of drainage over, across and upon the easement for water resulting from the normal usage of the adjoining Lot and the Owner of the Private Yard shall maintain the easement area in such manner as will not interfere with such drainage.

Section 3. Allowable uses of Private Yards include landscaping, sprinklers, hose bibs, decking, therapeutic pools, barbecue equipment and facilities, and sports and recreational equipment and facilities and as a general recreational, garden and yard area. All other uses, including without limitation construction of any dwelling unit or addition thereto and use of the areas for building, repairing, maintaining or storing boats, trailers, motor homes, automobiles, motorcycles, snowmobiles or other motor vehicles, are prohibited.

Section 4. Every installation or modification of improvements or landscaping on any Private Yard shall be subject to the prior approval of the Architectural Control Committee as provided in Article V hereof. Said Architectural Control Committee may, as a condition to its approval, require the posting of an acceptable surety bond to assure payment of claims which may arise against the Private Yard by reason of the work of improvements thereon. Irrespective of the making of such requirement, should any laborer's or mechanic's lien be recorded against a Common Area, or should the Association be made a party to any action to enforce payment for any work or improvements on a Common Area or a Private Yard, the Association shall have the right to settle and compromise such claim at the expense of the Owner whose Private Yard was improved. Such Owner shall reimburse the Association for any sums expended by it in defense or settlement of any such claim, and all such costs shall become a lien upon such Lot, and such lien may be enforced in the same manner as a Maintenance Assessment levied in accordance with this Declaration of Covenants, Conditions and Restrictions.

Section 5. All boundaries of Private Yards, save those which are structural walls of dwelling units, will be fenced by fences installed by Declarant. No fence shall be moved or removed at any time, and any changes in size or color, shall be subject to review by the Architectural Control Committee pursuant to Article V hereof. Masonry/block wall located on a boundary between two Private Yards, or between a Private Yard and the adjoining Lot, shall be maintained by the Association. Wooden fences located on a private yard or on a boundary between two private yards, or between a private yard and the adjoining lot, shall be maintained by the owner or owners thereof.

Section 6. Each Owner shall keep his Private Yard and all improvements therein or thereon, in good order and repair and free of debris, including but not limited to the seeding, watering and mowing of all lawns, and the pruning and cutting of all trees and shrubbery, all in a manner and with such frequency as is consistent with good property management. In the event an Owner shall fail to maintain his Private Yard and the improvements located thereon, as provided herein, the Association, after notice to the Owner and approval by vote of the Board of Directors, shall have the right to

enter upon said Private Yard to correct drainage and to repair, maintain and restore the Private Yard, fences and any other improvements erected thereon. All costs related to such correction, repair or restoration shall become a lien upon such Owner's lot, and such lien may be enforced in the same manner as a Maintenance Assessment levied in accordance with Article IV hereof.

Section 7. The Association shall have the right at all reasonable times to enter into any Private yard for the purpose of carrying out its obligations of maintenance, repair and replacement.

## ARTICLE XVI

### General Provisions

Section 1. Attorneys' Fees. In the event the Association employs an attorney or attorneys to enforce the collection of any amounts due pursuant to this Declaration or in connection with any lien provided for herein, or the foreclosure thereof, or to enforce compliance with or specific performance of the terms and conditions of this Declaration, the owner, owners and parties against whom the action is brought shall pay all attorneys' fees, costs and expenses thereby incurred by the Association in the event the Association prevails in any such action.

Section 2. Enforcement. The covenants, restrictions, reservations and conditions contained herein shall run with the land and shall be binding upon all persons purchasing, leasing, subleasing, occupying, owning or otherwise having an interest in any lot on said property, their heirs, executors, administrators, successors, grantees and assigns. After the date on which this instrument has been recorded, these covenants, restrictions, reservations and conditions may be enforced by the Association or its Board of Directors, which shall have the right and duty to enforce the same and expend Association monies in pursuance thereof, and also may be enforced by the owner of any lot. Any lien, liability or obligation arising as the result of a breach of said covenants, restrictions, reservations and conditions shall be binding upon and effective against any owner of said premises, other than one whose title thereto is acquired by foreclosure of a mortgage or deed of trust, and sheriff's sale or equivalent proceedings, who shall take title to said premises free and clear of the lien hereof for all said charges pursuant to the provisions of this Declaration that have accrued up to the time of said foreclosure, and subject to the lien hereof for all said charges that shall accrue subsequent to the foreclosure, and provided also that the breach of any of said covenants, restrictions, reservations and conditions may be enjoined, abated or reviewed by appropriate proceedings, notwithstanding the lien or existence of any such mortgage or deed of trust. All instruments of conveyance of any interest of all or any part of said lots shall contain reference to this instrument and shall be subject to the covenants, restrictions, reservations and conditions herein as fully as though the terms and conditions of this instrument were therein set forth in full. The terms and conditions of this instrument shall be binding upon all persons affected by its terms, whether or not express reference is made to this instrument in any such instrument of conveyance. Enforcements shall be by proceedings at law or in equity against any person or persons violating or attempting to violate any covenant either to restrain violation or to recover damages.

Section 3. Saving Clause. The invalidity of any one or more phrases, sentences, clauses, paragraphs or sections 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 and in the event that one or more of the phrases, sentences, clauses, paragraphs or sections contained herein should be invalid or should operate to render this agreement invalid, this agreement shall be construed as if such invalid phrase or phrases, sentence or sentences, clause or clauses, paragraph or paragraphs, sections or sections had not been inserted. In the event that any provision or provisions of this instrument appear to be violative of the Rule against Perpetuities, such provision or provisions shall be construed as being void and of no effect as of twenty-one (21) years after the death of the last surviving incorporator of PARADISE MOUNTAIN SHADOWS HOMEOWNERS ASSOCIATION or twenty-one (21) years after the death of the last survivor of all of said incorporators' children or grandchildren who shall be living at the time this instrument is executed, whichever is the later.

Section 4. Parking. Each townhouse shall have one two-car garage upon its lot. All parking rights in and to the garage are appurtenant to each owner's ownership of his townhouse and cannot be separated from such ownership. The Board shall have full authority to operate, manage and use for and on behalf of all Owners any unassigned parking spaces situated on the Common Elements.

Section 5. Gender. Wherever the context of this document requires, words used in the masculine gender include the feminine and neuter, the singular number the plural and the plural the singular.

Section 6. Amendment. The covenants and restrictions of this Declaration shall run with and bind the land for a term of twenty (20) years from the date this Declaration is recorded, after which time they shall be automatically extended for successive periods of ten (10) years. This Declaration may be amended by an instrument signed by the Owners of not less than seventy-five percent (75%) of the Parcels. Any amendment must be recorded in the Maricopa County Recorder's Office.

As to the Federal National Mortgage Association (FNMA), the Government National Mortgage Association (GNMA), and the Federal Home Loan Mortgage Corporation, so long as may be required to fully amortize any mortgage owned by FNMA, GNMA and FHLMC on any of the residence units; and as to the Federal Housing Administration (FHA), Veterans Administration (VA) or the Federal Home Loan Mortgage Corporation (FHLMC), so long as there is a Class B membership outstanding, no amendment shall be made which would be deemed to be in conflict with, or contrary to, the terms of any promissory note, mortgage, regulatory agreements or document executed by the Association or any of the owners of residence units for the purpose of obtaining insurance or financing involving FNMA, FHA, VA, GNMA or FHLMC without obtaining written approval and consent of FNMA, FHA, VA, GNMA or FLHMC.

Section 7. Annexation. Additional residential property and Common Area may be annexed to the Properties with the consent of two-thirds (2/3) of each class of members.

Section 8. FHA/VA Approval. As long as there is a Class B membership, the following actions will require the prior approval of the Federal Housing Administration or the Veterans Administra-

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tion: Annexation of additional properties, dedication of Common Area, and amendment of this Declaration of Covenants, Conditions and Restrictions.

IN WITNESS WHEREOF, the undersigned, being the Declarant herein, has hereunto set its hand and seal this 5<sup>th</sup> day of May, 1984.

NBS DEVELOPMENT CORPORATION, an Arizona corporation

BY Mark Miller  
Its President

STATE OF ARIZONA            )  
  ) ss.  
County of Maricopa         )

On this, the 5<sup>th</sup> day of May, 1984, before me, the undersigned Notary Public, personally appeared Mark Miller, who acknowledged himself to be the President of NBS DEVELOPMENT CORPORATION, an Arizona corporation, and that he, as such officer, being so authorized, executed the foregoing instrument for the purposes therein contained, by signing the name of the said corporation by himself as such officer.

WITNESS my hand and seal.

Deanna Lee Bell  
Notary Public

My Commission Expires:  
My Commission Expires June 2, 1988

2S1307

~~84-195493~~

EXHIBIT "A"

Lots 1 through 25 and Tracts "C" through "D", PARADISE  
MOUNTAIN SHADOWS, according to Book 266 of Maps, Page  
2, records of Maricopa County, Arizona.

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EXHIBIT "B"

Lots 26 through 59 and Tracts "A" through "B" and "E" through "F", PARADISE MOUNTAIN SHADOWS, according to Book 266 of Maps, page 2, Records of Maricopa County, Arizona.

JICOR TITLE INSURANCE COMPANY OF CALIFORNIA

84 400219

WHEN RECORDED RETURN TO:

Lars O. Lagerman, Esq.  
PAVILACK, SPACK & MULCHAY, P.C.  
6900 E. Camelback Rd., #800  
Scottsdale, Arizona 85251

RECORDED IN OFFICIAL RECORDS OF MARICOPA COUNTY, ARIZONA		
SEP 13 1984 -8 00		
BILL HENRY, COUNTY RECORDER		
FEE	5 <sup>00</sup>	PGS 3 I.G.

AMENDMENT TO DECLARATION OF COVENANTS,  
CONDITIONS AND RESTRICTIONS  
FOR  
PARADISE MOUNTAIN SHADOWS

MCD RSTR

The undersigned, owner of that certain real property,  
situated in Maricopa County, State of Arizona, to wit:

Lots 1 through 25 and Tracts "C" through  
"D", PARADISE MOUNTAIN SHADOWS, according  
to Book 266 of Maps, page 2, Records of  
Maricopa County, Arizona.

WHEREAS, a certain Declaration of Covenants, Conditions  
and Restrictions has been placed on said property and has been  
recorded on May 9, 1984, at No. 84-198493 and re-recorded on  
June 28, 1984, at No. 84-281307, with the Maricopa County  
Recorder's Office;

WHEREAS, as part of said Declaration of Covenants,  
Conditions and Restrictions the right to amend is granted to the  
owners of not less than seventy-five percent (75%) of the lots;

WHEREAS, the undersigned represents the owners of not  
less than seventy-five percent (75%) of the lots; and

WHEREAS, the undersigned is desirous of amending said  
Declaration of Covenants, Conditions and Restrictions.

NOW, THEREFORE, the Declaration of Covenants, Conditions  
and Restrictions for Paradise Mountain Shadows recorded on May 9,  
1984, at No. 84-198493, and re-recorded on June 28, 1984, at No.  
84-281307, with the Maricopa County Recorder's Office, shall be  
amended as follows:

1. Add new Section 5 to Article VII as follows:

Section 5. Each owner whose air-conditioning  
and/or evaporative cooling equipment has been  
installed by Developer on the roof of an  
adjoining lot shall have and is hereby granted  
an easement over said adjoining lot for the  
installation, maintenance, repair and re-  
placement of said air-conditioning and/or  
evaporative cooling equipment.

LAG5-004

84 400249

STATE OF ARIZONA        )  
                                  ) ss.  
County of Maricopa     )

On this, the 25<sup>th</sup> day of August, 1984, before me, the undersigned Notary Public, personally appeared Mark Nulux, who acknowledged himself to be the President of NBS DEVELOPMENT CORPORATION, an Arizona corporation, the owner of Lots 1 through 25, inclusive, of Paradise Mountain Shadows, which constitute more than seventy-five percent (75%) of the Lots in said sub-division, and that as such officer, being authorized so to do, executed the foregoing instrument for the purposes therein contained, by signing the name of the said corporation by himself as such officer.

WITNESS my hand and seal.

Deanna Sue Bell  
Notary Public

My Commission Expires:  
My Commission Expires June 2, 1986

84 400249

STATE OF ARIZONA        )  
                                  ) ss.  
County of Maricopa     )

On this, the 25<sup>th</sup> day of August, 1984, before me, the undersigned Notary Public, personally appeared Mark Nulsen, who acknowledged himself to be the President of NBS DEVELOPMENT CORPORATION, an Arizona corporation, the owner of Lots 1 through 25, inclusive, of Paradise Mountain Shadows, which constitute more than seventy-five percent (75%) of the Lots in said sub-division, and that as such officer, being authorized so to do, executed the foregoing instrument for the purposes therein contained, by signing the name of the said corporation by himself as such officer.

WITNESS my hand and seal.

Deana Sue Bell  
Notary Public

My Commission Expires:  
My Commission Expires June 2, 1986

When recorded, return to:

A. Ulman  
Southwest Management Consultants, Inc.  
14233 North 22nd St.  
Phoenix, AZ 85022

MCD 8974 000

RECORDED IN OFFICIAL RECORDS OF MARICOPA COUNTY, ARIZONA NOV 19 '87 - 8 00		
KEITH POLETIS, County Recorder		
FEE 11 -	PDS 6	P.H.
1		

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SECOND AMENDMENT TO  
DECLARATION OF COVENANTS, CONDITIONS AND RESTRICTIONS  
FOR  
PARADISE MOUNTAIN SHADOWS

This second amendment to Declaration of Covenants, Conditions and Restrictions for Paradise Mountain Shadows is made on this 5th day of October, 1987, by SUN STATE SAVINGS & LOAN ASSOCIATION, an Arizona corporation (the "Successor Declarant").

R E C I T A L S

A. NBS Development Corporation, the prior Declarant, caused to be recorded with the County Recorder of Maricopa County, Arizona, as Instrument Number 84-198493 on May 9, 1984 and re-recorded on June 28, 1984 as Instrument Number 84-281307, a Declaration of Covenants, Conditions and Restrictions for Paradise Mountain Shadows (the "Declaration"), to wit:

Lots 1 through 25 and Tracts "C" through "D", PARADISE MOUNTAIN SHADOWS, according to Book 268 of Maps, page 2, Records of Maricopa County, Arizona.

B. The terms used in this Second Amendment to the Declaration of Covenants, Conditions and Restrictions shall have the same meanings given to those terms in the Declaration.

C. WHEREAS, as part of said Declaration provided that the Declaration could be amended by an instrument signed by the Owners of not less than seventy-five percent (75%) of the lots;

D. WHEREAS, the Successor Declarant is the owner of more than seventy-five percent (75%) of the lots;

E. WHEREAS, the Successor Declarant desires to amend the

Declaration to modify certain of the covenants, conditions and restrictions set forth therein.

NOW, THEREFORE, the Successor Declarant hereby amends the Declaration as follows:

Article I, Section 3 is hereby amended by adding the following sub-paragraph (a) immediately following paragraph 1:

(a) "Successor Declarant" shall mean and refer to SUN STATE SAVINGS & LOAN ASSOCIATION, an Arizona corporation, or any person to whom said Successor Declarant's rights hereunder are specifically assigned by recorded instrument. The terms "Declarant" and "Successor Declarant" shall be interchangeable in the Declaration and the Bylaws of Paradise Mountain Shadows and said Successor Declarant shall have the same rights and obligations as Declarant.

Article IV, Section 4, is hereby deleted in its entirety and the following language substituted in its place:

Section 4. Maximum Annual Assessment. Until January 1 of the year immediately following the conveyance of the first Lot to an Owner, the maximum annual assessment shall be Nine Hundred Sixty and 00/100 (\$960.00) per Lot. Said annual assessments shall be payable in monthly installments.

Article IV, Section 4 (a), is hereby deleted in its entirety and the following language substituted in its place:

(a) From and after January 1 of the year immediately following the conveyance of the first Lot to an Owner, the maximum annual assessment may be increased effective January 1 of each year without a vote of the membership by ten percent (10%) per annum or a percentage proportionate to the increase, if any, of the Consumer Price Index published by the Department of Labor, Washington, D.C., or any successor agency or successor index, whichever is higher.

Article V is deleted in its entirety and the following language substituted in its place:

## ARTICLE V

### Architectural Standards: Architectural Control.

All property which is now or hereafter subjected to the Declaration of Covenants, Conditions and Restrictions for

Paradise Mountain Shadows shall be subjected to architectural and environmental review as provided herein. This review shall be in accordance with this Paragraph and such standards as may be promulgated by the Board of Directors or the Architectural Control Committee as applicable. The Board of Directors shall have the authority and standing on behalf of the Association to enforce in any court of competent jurisdiction its decisions, decisions of said Committee, and any of the other provisions of this Declaration.

a. The Architectural Control Committee ("ACC") shall have exclusive jurisdiction over all original construction and any modifications, additions or alterations to improvements on any portion of the Properties (including, but not limited to, the construction or installation of fences, heating, ventilating, air conditioning and cooling units, solar panels, paint, or any other construction, modification, addition or alteration affecting the exterior appearance of any Residential Unit).

b. The ACC shall promulgate Architectural and Environmental Standards and Application Procedures. It shall make the same available to Owners, builders and developers who seek to engage in development of or construction upon any portion of the common areas and shall conduct its operations in accordance therewith. No original construction, modification, alteration or addition subject to the ACC's jurisdiction shall be commenced until it has been approved or is deemed approved by the ACC as provided herein. Any owner seeking to construct any new improvements or to make any modification, alteration or addition to any existing improvement upon the common areas (or to cause same to be contracted or made) shall first submit to the ACC detailed plans, specifications and elevations relating to the proposed construction.

c. The ACC shall have thirty (30) days after submission of such plans, specifications and elevations to approve or disapprove of the proposed construction, modification, alteration or addition or to request additional information, and, if the ACC disapproves, to give such owner reasonably detailed written reasons for such disapproval. In the event the ACC fails either to approve or disapprove the proposed construction (or to request additional information) within said thirty (30) day period, such proposed construction shall be deemed approved.

d. So long as Successor Declarant owns any portion of the Properties described herein, the Successor Declarant shall have the right, in its sole discretion, to appoint the members of the ACC, none of whom shall be required to reside upon the

Properties. In addition, Successor Declarant shall have the power and authority to assign any part or all of its right to appoint members to the ACC to any assignee of Successor Declarant's rights hereunder (as evidenced by a specific instrument assigning such rights recorded in the office of Maricopa County, Arizona Recorder (or other appropriate governmental office)).

e. Successor Declarant (or an assignee described in section "d" above) shall have the right, but not the obligation, to surrender such appointment power to the Board of Directors at any time prior to the Successor Declarant's (or such assignee's) sale of all of its portions of the Properties.

f. Following the sale by Successor Declarant (or such assignee) of all of its portions of the Properties, or following the earlier surrender, if any, by Successor Declarant (or such assignee) of the appointment power hereby granted, the Board of Directors shall appoint the members of the ACC, none of whom shall be required to reside on the Properties.

g. Notwithstanding the foregoing, the ACC shall have the right, at its option, to delegate the authority granted to it herein with respect to modifications, alterations or additions to existing improvements on the common areas to the appropriate board or committee of any Residential Association, so long as the ACC has determined that such board or committee has in force written review and enforcement practices, procedures and appropriate written guidelines and standards at least equal to those of the ACC. Such delegation may be revoked and jurisdiction resumed at any time by written notice. Any and all decisions by the Residential Association prior to the revocation of such jurisdiction shall be final.

h. Nothing contained herein shall be construed to limit the right of an Owner to remodel the interior of his, her or its Residential Unit or to paint the interior of his, her or its Residential Unit any color desired, except to the extent that such remodeling or painting is visible from outside such Residential Unit or affect the exterior appearance of such Residential Unit.

i. No approval by the ACC of any proposed construction, modification, addition or alteration shall be deemed to replace or be substituted for any building permit or similar approval required by any applicable governmental authority, nor shall any such approval be deemed to make the ACC liable or responsible for any damage or injury resulting or arising from any such

construction, modification, addition or alteration.  
Article XII, Section 5, is hereby deleted in its entirety and the following language substituted in its place:

Section 5. All equipment, garbage cans, service yards, woodpiles or storage piles shall be kept screened by adequate planting or fencing so as to conceal them from view of neighboring homes and streets. All rubbish, trash or garbage shall be regularly removed from the premises, and shall not be allowed to accumulate thereon. All clotheslines shall not be permitted in the patio or balconies areas.

IN WITNESS WHEREOF, the Successor Declarant has executed this Second Amendment to Declarations of Covenants, Conditions and Restrictions for Paradise Mountain Shadows on the day and year first above written.

SUN STATE SAVINGS & LOAN ASSOCIATION,  
an Arizona Corporation

By: \_\_\_\_\_

Mark Grumley

Its: Senior Vice-President

STATE OF ARIZONA            )  
                                  )  SS  
COUNTY OF MARICOPA        )

On this the 5th day of October, 1987 before me, the undersigned Notary Public, personally appeared Mark Grumley, who acknowledged himself to be the Senior Vice-President of Sun State Savings & Loan Association, an Arizona corporation, the owner of Lots 1 through 25 and Tracts "C" through "D", Paradise Mountain Shadows, which constitutes more than seventy-five percent (75%) of the lots, and that as such officer being authorized to do so, executed the foregoing instrument for the purposes therein contained, by signing the name of said corporation by himself, as such officer.

Witness my hand and seal.

---

Clifford D. Ulman, Notary Public

My Commission Expires:

August 5, 1990

Unofficial  
Documents

When Recorded Return To:  
Charles E. Maxwell, Esq.  
Law Offices of Charles E. Maxwell, P.C.  
1350 E. Southern Avenue, Suite 2  
Mesa, Arizona 85204

HELEN PURCELL  
2000-0694010 09/08/2000 03:42  
HESR2 1 OF 1

DECLARATION OF ANNEXATION AND THIRD AMENDMENT  
TO DECLARATION OF COVENANTS, CONDITIONS AND RESTRICTIONS FOR  
PARADISE MOUNTAIN SHADOWS

This Declaration of Annexation and Third Amendment to Declaration of Covenants, Conditions and Restrictions For Paradise Mountain Shadows ("Third Amendment") is made this 31st day of August, 2000, by and between Paradise Mountain Shadows Homeowners Association, an Arizona non-profit corporation ("Association"), and Galleria Homes, L.L.C., an Arizona limited liability company ("Galleria"). (Association and Galleria will be referred to collectively herein as the "Parties".)

**RECITALS**

A. NBS Development Corporation, as Declarant, recorded that certain Declaration of Covenants, Conditions and Restrictions For Paradise Mountain Shadows with the Maricopa County Recorder on May 9, 1984, as Instrument No. 84-198493, and re-recorded on June 28, 1984, as Instrument No. 84-281307 ("Declaration"), which placed restrictions on the property set forth in Exhibit "A" to the Declaration and described as follows:

Lots 1 through 25 and Tracts "C" through "D", PARADISE MOUNTAIN SHADOWS, according to Book 266 of Maps, Page 2, Records of Maricopa County, Arizona (the "Existing Property").

B. The Declaration was amended by that certain Amendment to Declaration of Covenants, Conditions and Restrictions For Paradise Mountain Shadows recorded with the Maricopa County Recorder on September 13, 1984, as Instrument No. 84-400249 ("First Amendment").

C. The Declaration was further amended by that certain Second Amendment to Declaration of Covenants, Conditions and Restrictions For Paradise Mountain Shadows recorded with the Maricopa County Recorder on November 19, 1987, as Instrument No. 87-699101 ("Second Amendment").

D. The Declaration <sup>Unofficial Document</sup> provides in Article XII, Section 1 that the Declarant may at any time prior to May 8, 1989, annex the property set forth in Exhibit "B" to the Declaration and described as follows:

Lots 26 through 59 and Tracts "A" through "B" and "E" through "F", PARADISE MOUNTAIN SHADOWS, according to Book 266 of Maps, Page 2, Records of Maricopa County, Arizona.

E. The Declaration provides in Article XVI, Section 7 that residential property and Common Area may be annexed to the Properties of the Association at any time with the consent of two-thirds (2/3) of each class of members of the Association.

F. Although the Declarant, Successor Declarants and the Association have apparently treated the property described in Exhibit "B" to the Declaration as having been annexed, the Association and Galleria are unable to locate a recorded instrument evidencing the annexation.

G. The Association and Galleria agree that annexation of the

property described in Exhibit "B" to the Declaration is in their mutual interests.

H. On or about September 9, 1999, Galleria acquired title to Lots 26 through 51 and Tracts "A", "B", "E" and "F", PARADISE MOUNTAIN SHADOWS, according to Book 266 of Maps, Page 2, Records of Maricopa County, Arizona (the "Purchased Property"). Galleria is currently attempting to acquire title to Lots 52 through 59 and the related Tracts, including Tract "A", PARADISE MOUNTAIN SHADOWS, according to Book 266 of Maps, Page 2, Records of Maricopa County, Arizona (the "Pending Property"). Galleria hereby consents to the annexation of the Purchased <sup>Unofficial Document</sup> ~~PROPERTY~~ and further consents to the annexation of the Pending Property at such time as it acquires title to such Property, if ever (collectively the "Galleria Property").

I. The Association and Galleria desire to further amend the Declaration to confirm certain obligations and rights of Galleria, to delete certain provisions of the Declaration no longer applicable, and to provide for a phased plan of development and the irrevocable annexation of the Galleria Property.

J. Pursuant to Article XVI, Section 6 of the Declaration, the Declaration may be amended by an instrument signed by the Owners of not less than seventy-five percent (75%) of the Parcels (aka Lots), provided such an amendment is recorded in the Maricopa County Recorder's Office.

K. Pursuant to Article XVI, Section 6 of the Declaration, the Board of the Association has obtained the signed approval of

Owners of not less than seventy-five percent (75%) of the Parcels in the Existing Property for amendment purposes as reflected by the signatures attached hereto.

L. Pursuant to Article XVI, Section 7 of the Declaration, the Board of the Association has obtained the consent of at least two-thirds (2/3) of each class of members in the Existing Property for annexation purposes as reflected by the signature pages attached hereto.

AMENDMENT

NOW THEREFORE, the Parties hereby amend the Declaration to provide as follows:

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1. Definitions. Unless otherwise defined herein, capitalized terms in this Third Amendment shall have the same meaning given to them in the Declaration.

2. Amendment to Article I, Sections 2, 3 (Including Subpart a) And 4. Upon recordation of this Third Amendment, Article I, Sections 3 (including Subpart a) and 4 of the Declaration shall be deleted in their entirety and the last sentence of Article I, Section 2 of the Declaration shall be amended as follows:

"The Common Area shall also be that area so described and designated on the Plat as Tracts A through F, inclusive."

3. Amendment to Article 3, Section 3. Upon recordation of this Third Amendment, Article III, Section 3 of the Declaration shall be amended in its entirety as follows:

"Section 3. The Association shall have only one class of voting membership. Membership shall be that held by each Owner of a Lot irrevocably annexed to the Properties. Subject to the foregoing, Members shall be entitled to one vote for each Lot owned. If a Lot is owned by more than one person, each such person

shall be a member of the Association, but the Owners thereof shall have no more than the one allocated vote thereto and if such persons do not agree upon how the vote allocated to their Lot is to be cast, then the vote shall not be counted."

4. Amendment to Article IV, Section 1. Upon recordation of this Third Amendment, Article IV, Section 1 of the Declaration shall be amended to delete any reference to "Declarant". Moreover, to avoid any oversight, the Declaration, First Amendment and Second Amendment are hereby amended to delete any reference to the terms "Declarant", "Developer" and "Builder".

5. Amendment to Article IV, Section 3. Upon recordation of this Third Amendment, Article IV, Section 3 of the Declaration shall be amended in its entirety as follows:

"Section 3. Establishment of Assessment. Each Owner of a Lot covenants for themselves and their heirs, successors and assigns, that such Lot shall be subject to an assessment, in an amount to be determined by the Association, as permitted by the Declaration. The amount to be prorated among the members of the Association shall be established annually by the Board of Directors. The assessments, together with interest, costs and reasonable attorney fees, other collection expenses and late charges as established herein, if such assessments are not timely paid, shall be a charge against the applicable Lot and shall be a continuing lien upon the Lot against which such assessment is made. The recording of the Declaration constitutes record notice and perfection of any lien arising by virtue of the Declaration. As such, further recordation of any claim of lien is not required. Any lien arising by virtue of the Declaration shall also be exempt under Chapter 8 of Title 33, Arizona Revised Statutes, dealing with homestead and personal property exemptions. Each such assessment, together with interest, costs and reasonable attorney fees, other collection expenses and late charges, shall also be the personal obligation of the person who was the Owner of such Lot at the time when the assessment fell due. By way of additional clarification and not limitation, any fees, charges, late charges, monetary penalties, interest or other amounts charged pursuant to the Declaration, Articles of Incorporation, Bylaws or Rules and Regulations are enforceable as assessments under this Section. Further, the Association's remedies are not exclusive and the pursuit of a money judgment shall not preclude a subsequent action for foreclosure, and vice versa, nor shall any action taken by the Association be deemed an election of remedies. Moreover, the Association shall be entitled

to interest on all unpaid amounts at the highest rate permitted by law, until paid, but in an amount not less than ten percent (10%) per annum."

6. Amendment to Article IX, Section 9. Upon recordation of this Third Amendment, a new Section 9 will be added to Article IX of the Declaration as follows:

"Section 9. Notwithstanding anything herein to the contrary, Galleria will provide insurance coverage for the period of its construction on any of the Galleria Property not irrevocably annexed to the Association, and Galleria will be responsible for such insurance on Galleria Property irrevocably annexed to the Association beyond that insurance normally provided by an association, including any insurance related to development/construction on Galleria Properties."

7. Amendment to Article XII, Section 2. Upon recordation of this Third Amendment, Article XII, Section 2 of the Declaration shall be amended in its entirety as follows:

"Section 2. Galleria will enjoy restricted development rights, which rights will expire on the earlier of any of the following events: (1) eighteen months from execution of this Third Amendment; (2) following the sale, transfer or occupancy of all of Galleria's interests in the Galleria Property to persons or entities other than Galleria; and/or (3) following the sale, transfer or occupancy of any of the Galleria Property to a purchaser without completion of Common Areas related to any such Galleria Property. Development rights will be limited to generally acceptable marketing efforts, including reasonable signage and general unrestricted ability to build out remaining phases without constantly securing Board or Architectural Control approval beyond the plans approved or to be approved by the Board, subject to the following: all materials and workmanship relating to new construction must be similar to the quality of those buildings and Common Areas already constructed and in compliance with generally recognized construction standards; and phases and buildings must be aesthetically compatible and in harmony with the development portion of the Properties, including exterior colors, surfaces, materials and landscaping. (Galleria will have discretion concerning choice of interiors.) Development rights may also include a temporary construction trailer, port-a-john, and a fenced storage area in such locations as approved in advance in writing by the Board, as well as the ability to use completed residences irrevocably annexed into the Association as a business office, sales office and/or as models. Development rights will not include: multiple votes per unit; the right to reduced

assessments; the right to appoint Board Members; the right to appoint committees; the right to amend any of the operative documents governing the Association; the right to replace Board Members; or related rights concerning the operation of the Association. Moreover, Declarant may have no more than a minority position on the Board of Directors of the Association, regardless of the voting power then available to Galleria.

8. Amendment to Article XIV, Section 2. Upon recordation of this Third Amendment, the first sentence of Article XIV, Section 2 of the Declaration shall be amended by adding the following language at the end of said sentence and the following additional sentence:

" . . . , so long as the encroachment is minor ('minor' means not to exceed six inches) and the encroachment is not otherwise intentional. Notwithstanding the foregoing, the Association will allow the encroachments reflected on the plans approved or to be approved by the Board, including the front porch encroachments and the Lot 27 footing encroachment, as permissive uses."

9. Amendment to Article XVI, Section 8. Upon recordation of this Third Amendment, Article XVI, Section 8 of the Declaration shall be amended in its entirety as follows:

"Section 8. Phased Plan of Development. Galleria currently owns the Purchased Property and is negotiating the possible purchase of the Pending Property. Galleria intends to develop the Galleria Property and cause the same to be irrevocably annexed into the Properties pursuant to the terms of the Declaration. Upon execution of this Third Amendment, Lots 34 through 43 and related Common Area Tracts of the Galleria Property will become irrevocably annexed to the Properties and be subject to this Declaration. The remaining phases of the Galleria Property identified below will become irrevocably annexed to the Properties and be subject to the Declaration as more fully set forth below.

The remaining Galleria Property will be identified with the following phase information for irrevocable annexation purposes:

<u>Phase</u>	<u>Lots</u>
One	26-27
Two	28-30
Three	31-33

Four	44-47
Five	48-51
Six	52-55
Seven	56-59

Notwithstanding any other provision herein, the Declaration will not be effective with respect to any of the Lots in Phases One through Seven until the Phase becomes irrevocably annexed to the Properties. A Phase will become irrevocably annexed to the Properties upon the earlier of any of the following events: (1) upon the transfer, sale or occupancy of a Lot by or to a purchaser within a Phase; or (2) twelve months following execution of this Third Amendment. Moreover, no Lot within a Phase or a Phase may be transferred to a purchaser until all Lots within the Phase are substantially complete, the Common Area within the Phase (including all exterior improvements) are substantially complete, and title to the Common Area has been transferred to the Association. Any transfer of a Lot in violation of this provision will result in all Phases immediately becoming irrevocably annexed to the Properties.

Unofficial Document

Individual Phases may ~~not be~~ withdrawn from the Properties, even if no Lots therein have been conveyed to persons or entities other than Galleria, without the written consent of all Owners in the Properties.

Annual assessments shall not commence for any Owners, including Galleria, with respect to Lots within a particular Phase until such Phase(s) has become irrevocably annexed to the Properties. Once a Phase shall become irrevocably annexed to the Properties, all Lots within such Phase(s) shall be subject to all of the terms, provisions and conditions set forth herein, including the obligation to pay full assessments. Notwithstanding anything to the contrary herein, all Phases shall become irrevocably annexed to the Properties by no later than twelve (12) months from the date of execution of this Third Amendment, with the possible exception of Phases Six and Seven, to the extent Galleria or any entity or person associated with Galleria, Steven Santostefano and/or Larry Nelson (hereinafter collectively "Galleria") has not secured title to Phases Six and Seven. In the event Galleria does not secure title to Phases Six and/or Seven within twelve (12) months from execution of this Third Amendment, Galleria agrees to pay the Association an amount not less than twelve months' assessments for each Lot within Phases Six and/or Seven not irrevocably annexed by the end of the twelve-month period and such amounts will be cross-secured by an automatic lien against any other Galleria Property at Paradise Mountain Shadows as well as being the personal obligation of Galleria. Galleria further agrees that if it secures title to Phases Six and/or Seven at any time following the twelve-month period referenced herein, said Phase(s) shall immediately become irrevocably annexed to the Properties without the need for any additional annexation or amendment documents beyond this Third Amendment. Further, if the restricted development rights in

Article XII, Section 2 have expired before Galleria secures title to Phases Six and Seven, Galleria will be given the same restricted development rights for an additional period of six (6) months from transfer of title in order to develop the same.

Galleria may receive credit against assessments due for those Phases irrevocably annexed to the Properties. Subject to the conditions and deadlines set forth in this Third Amendment, Galleria may receive credit towards Association assessments up to 100% of the actual cost of improvements made to the Existing Property, the amounts of which must be approved in writing in advance by the Board. Such improvements to Existing Property may include painting, landscaping and/or pool repairs. No credit will be available following twelve (12) months after execution of this Third Amendment and credits are not transferable nor subject to refund or reimbursement.

Galleria's primary objective is to construct residences on Lots for the sale to third parties. The rental or lease of completed Lots will only be <sup>Unauthorized</sup> ~~resorted~~ to by Galleria as a result of economic necessity. Notwithstanding anything herein to the contrary, the leasing of any Lot by any Owner, including Galleria, will be subject to a requirement that Owners must cause tenants to complete a tenant registration form to be prepared by the Association's Board and to comply with such other requirements as may be set forth in the Association's Rules and Regulations. The tenant registration form may request various information on all occupants and require the tenants to acknowledge receipt of a copy of the Association's documents governing the use of property at Paradise Mountain Shadows, coupled with an acknowledgment that a violation of the Association's documents constitutes a material breach of the lease agreement.

Galleria is undertaking the work of completing the construction on Phases One through Seven of Paradise Mountain Shadows. The completion of that work and the sale of Lots contained in Phases One through Seven is essential to the establishment and welfare of the Properties as a residential community. In order to accomplish this with the least disruption possible, Galleria hereby agrees: (1) to respect the integrity and perimeter of the Existing Property; (2) to consult with the Board with respect to temporary excavations for or placement, or permanent placement of any pipe, wiring or other additions necessary for construction or easements required for the provision of utilities to Phases One through Seven; (3) to respect the Board's decision regarding placement described in Subsection 2 as long as the alternative chosen by the Board is generally at the same risk and expense to Galleria and is feasible given the dictates of any public utility provider; (4) to avoid utilizing present roads and access points whenever possible; and (5) to repair and refurbish the Properties, including, but not limited to roads and lawns which may sustain damage as a result of



PARADISE MOUNTAIN SHADOWS  
HOMEOWNERS ASSOCIATION

*[Signature]*  
By Beverly Morris, President

STATE OF ARIZONA     )  
                                  ) ss.  
County of Maricopa    )

On this 2<sup>nd</sup> day of September, 2000, before me, the undersigned officer, personally appeared Beverly Morris, who acknowledged herself to be the President of Paradise Mountain Shadows Homeowners Association, an Arizona non-profit corporation, and that she, as such officer, being authorized so to do, executed the foregoing instrument on behalf of the Corporation, for the purposes therein contained and affirmed that the requisite percentage of Owners needed to annex additional residential property and Common Area to the Properties and to amend the declaration have done so as evidenced by the signatures attached hereto.

*[Signature]*  
Notary Public

My Commission Expires



c:\wp51\Misc\Decl. Anx

08/02/2000 02:13PM

CONSENT TO AMENDMENT OF DECLARATION OF COVENANTS, CONDITIONS AND RESTRICTIONS FOR PARADISE MOUNTAIN SHADOWS AND FOR ANNEXATION OF ADDITIONAL RESIDENTIAL PROPERTY AND COMMON AREA

I (We) declare that I am (we are) a Lot Owner at Paradise Mountain Shadows, according to Book 266 of Maps, Page 2, Records of Maricopa County, Arizona. I (we) cast my (our) vote and consent to that document entitled "Declaration of Annexation and Third Amendment to Declaration of Covenants, Conditions and Restrictions for Paradise Mountain Shadows", as presented, and my (our) signature herewith is intended to comply with the requirements of Article XVI, Sections 6 and 7 of the Declaration.

Unofficial Document

DATED this 10<sup>th</sup> day of August, 2000.

*Chadwick J. Williams*  
(Signature)

\_\_\_\_\_  
(Signature)

2833 East Tracy Lane #3  
T.HOSNIX AZ 85032  
Address  
Lot No. 19

c:\wp51\Misc\Consent . And

08/02/2000 02:13PM

**CONSENT TO AMENDMENT OF DECLARATION OF COVENANTS, CONDITIONS AND RESTRICTIONS FOR PARADISE MOUNTAIN SHADOWS AND FOR ANNEXATION OF ADDITIONAL RESIDENTIAL PROPERTY AND COMMON AREA**

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Unofficial Document

DATED this 25 day of August, 2000.

x Mike Kelley  
(Signature)

[Signature]  
(Signature)

2829 E. Tracy Ln #2  
PHX 85032  
Address  
Lot No. 23

c:\wp51\Misc\Consent.Amd

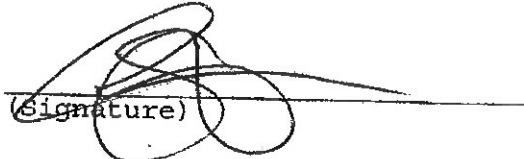
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Unofficial Document

DATED this 26<sup>th</sup> day of August, 2000.

  
(Signature)

\_\_\_\_\_  
(Signature)

2641 Tracy Ln

Address  
Lot No. 4 Unit / Lot 12

c:\wp51\Misc\Consent.Amd

CONSENT TO AMENDMENT OF DECLARATION OF COVENANTS, CONDITIONS AND RESTRICTIONS FOR PARADISE MOUNTAIN SHADOWS AND FOR ANNEXATION OF ADDITIONAL RESIDENTIAL PROPERTY AND COMMON AREA

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Unofficial Document

DATED this 16 day of August, 2000.

*Gene Baird*  
(Signature)

\_\_\_\_\_  
(Signature)

15630 N. 29<sup>TH</sup> ST, #3  
PHOENIX, AZ 85032  
Address  
Lot No. 3

CONSENT TO AMENDMENT OF DECLARATION OF COVENANTS, CONDITIONS AND RESTRICTIONS FOR PARADISE MOUNTAIN SHADOWS AND FOR ANNEXATION OF ADDITIONAL RESIDENTIAL PROPERTY AND COMMON AREA

I declare that I am a Lot Owner at Paradise Mountain Shadows, according to Book 266 of Maps, Page 2, Records of Maricopa County, Arizona. I cast my vote and consent to that document entitled "Declaration of Annexation and Third Amendment to Declaration of Covenants, Conditions and Restrictions for Paradise Mountain Shadows", as presented, and my signature herewith is intended to comply with the requirements of Article XVI, Sections 6 and 7 of the Declaration.

Unofficial Document

<u>Date</u>	<u>Lot No.</u>	<u>Name</u>	<u>Signature</u>
8/12/00	24	Danette Mitchell	Danette Mitchell
8/12/00	2	Nicole Armstrong	Nicole Armstrong
8/12/00	13	Tami Lettloff	Tami Lettloff
8/13/00	25	Nancy W. Miller	Nancy W. Miller

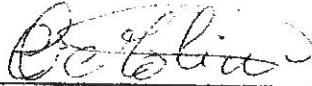
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CONSENT TO AMENDMENT OF DECLARATION OF COVENANTS, CONDITIONS AND RESTRICTIONS FOR PARADISE MOUNTAIN SHADOWS AND FOR ANNEXATION OF ADDITIONAL RESIDENTIAL PROPERTY AND COMMON AREA

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Unofficial Document

DATED this 12 day of August, 2000.



\_\_\_\_\_  
(Signature)

\_\_\_\_\_  
(Signature)

2837 E. TRACY - C. #1  
PHX. AZ - 85032  
Address  
Lot No. 16

c:\wp51\Misc\Consent.Amd

08/02/2000 02:13PM

CONSENT TO AMENDMENT OF DECLARATION OF COVENANTS, CONDITIONS AND RESTRICTIONS FOR PARADISE MOUNTAIN SHADOWS AND FOR ANNEXATION OF ADDITIONAL RESIDENTIAL PROPERTY AND COMMON AREA

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Unofficial Document

DATED this 14<sup>th</sup> day of August, 2000.

*Genevieve J. Kelly*  
(Signature)

\_\_\_\_\_  
(Signature)

15630 N 29<sup>th</sup> St, #5  
PHOENIX, AZ 85032  
Address  
Lot No. 1

c:\wp51\Misc\Consent.Amd

**CONSENT TO AMENDMENT OF DECLARATION OF  
COVENANTS, CONDITIONS AND RESTRICTIONS FOR  
PARADISE MOUNTAIN SHADOWS AND FOR ANNEXATION  
OF ADDITIONAL RESIDENTIAL PROPERTY AND COMMON AREA**

I declare that I am a Lot Owner at Paradise Mountain Shadows, according to Book 266 of Maps, Page 2, Records of Maricopa County, Arizona. I cast my vote and consent to that document entitled "Declaration of Annexation and Third Amendment to Declaration of Covenants, Conditions and Restrictions for Paradise Mountain Shadows", as presented, and my signature herewith is intended to comply with the requirements of Article XVI, Sections 6 and 7 of the Declaration.

Unofficial Document

<u>Date</u>	<u>Lot No.</u>	<u>Name</u>	<u>Signature</u>
8/9/00	17	Lorraine McCarthy	<i>Lorraine McCarthy</i>
8/9/00	#8	Virginia D. Morgan	<i>Virginia D. Morgan</i>
8/9/00	#2	Beverly A. Morris	<i>Beverly A. Morris</i>
8/9/00	#11	BART A MOSER	<i>Bart Moser</i>
08/09/00	4.22	Yvonne S. Whittell	<i>Yvonne S. Whittell</i>
8/12/00	#4	Eric Kunitz	<i>Eric Kunitz</i>
8/12/00	1.100	Robert Herpel	<i>Robert Herpel</i>

CONSENT TO AMENDMENT OF DECLARATION OF COVENANTS, CONDITIONS AND RESTRICTIONS FOR PARADISE MOUNTAIN SHADOWS AND FOR ANNEXATION OF ADDITIONAL RESIDENTIAL PROPERTY AND COMMON AREA

I declare that I am a Lot Owner at Paradise Mountain Shadows, according to Book 266 of Maps, Page 2, Records of Maricopa County, Arizona. I cast my vote and consent to that document entitled "Declaration of Annexation and Third Amendment to Declaration of Covenants, Conditions and Restrictions for Paradise Mountain Shadows", as presented, and my signature herewith is intended to comply with the requirements of Article XVI, Sections 6 and 7 of the Declaration.

Unofficial Document

<u>Date</u>	<u>Lot No.</u>	<u>Name</u>	<u>Signature</u>
8/12/00	18	Faye C. Humphrey	Faye C. Humphrey
_____	_____	_____	_____
_____	_____	_____	_____
_____	_____	_____	_____
_____	_____	_____	_____
_____	_____	_____	_____
_____	_____	_____	_____
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