

SANDS SCOTTSDALE MASTER HOMEOWNERS ASSOCIATION
COVENANTS, CONDITIONS and RESTRICTIONS

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DECLARATION
OF COVENANTS, CONDITIONS AND RESTRICTIONS

KNOW ALL MEN BY THESE PRESENTS:

THIS DECLARATION, made on the date hereinafter set forth by TRANSAMERICA TITLE INSURANCE COMPANY OF ARIZONA, an Arizona Corporation, as Trustee, hereinafter referred to as "Trustee";

WITNESSETH:

WHEREAS, Trustee is the owner of a certain property in the County of Maricopa, State of Arizona, which is more particularly described as:

See Exhibit "A" attached:

WHEREAS, Trustee will convey the said properties, subject to certain protective covenants, conditions, restrictions, reservations, liens and charges, as hereinafter set forth;

NOW THEREFORE, Trustee hereby declares that all of the properties described above shall be held, sold and conveyed subject to the following easements, restrictions, covenants, and conditions, all of which are for the purpose of enhancing and protecting the value, desirability and attractiveness of the real property, and all of which are hereby declared to be for the benefit of all of the property described herein and the owners thereof, their heirs, successors, grantees and assigns. These easements, covenants, restrictions, and conditions shall run with the real property and shall be binding on all parties having or acquiring any right, title or interest in the described properties or any part thereof, and shall inure to the benefit of each owner thereof. This declaration hereby establishes a plan for the individual ownership of real property estates, consisting of a lot and the improvements contained thereon, and the ownership by a non-profit association comprised of all owners of residences, of all of the

remaining property, both real and personal, which is hereinafter defined and referred to as the “common elements.” Said restrictions establish and impose a general plan for the improvement and development of said property described herein and the adoption and establishment of covenants, conditions and restrictions upon said land and upon any and all residential units constructed or to be constructed thereon, and upon the use, occupancy and enjoyment thereof. Every conveyance of any of said residences or property or portion thereof shall be and is subject to these easements, covenants, conditions and restrictions as follows:

ARTICLE I

DEFINITIONS

Section 1. “Master Association” shall mean and refer to SANDS SCOTTSDALE HOME OWNERS ASSOCIATION.

Section 2. “Association” shall mean and refer to SANDS SCOTTSDALE TOWNHOUSES ONE AND TWO, as well as SANDS SCOTTSDALE TOWNHOUSES THREE AND FOUR, their successors and assigns, as well as any other corporations which may be formed for any other areas which may be developed as townhouse areas.

Section 3. “Properties” or “premises” 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 Master Association.

Section 4. “Common area” and “common elements” shall be synonymous and shall mean all property owned by the Master Association for the common use and enjoyment of the members of the Master Association, including, but not limited to all of the above referred to premises except the land specifically designated as a “lot” or “unit” on the above referred to plat of record and all recorded amendments thereto, except streets dedicated to the public and accepted by a governmental agency. The common elements shall also include all planting areas and sprinklers.

Section 5. "Lot", "unit", and "townhouse", "patio house", "estate home", "single family residence" shall be synonymous and shall mean and refer to a separately designated and legally described freehold estate consisting of any plot of land and the improvements thereon shown upon any recorded subdivision map of the properties with the exception of the common area.

Section 6. "Member" shall mean and refer to every person or entity who holds membership in the Master Association.

Section 7. "Owner" shall mean and refer to the record owner, whether one or more persons or entities, of equitable title (or legal title if equitable title has merged) of any lot which is part of the properties.

Section 8. "Declarant" shall mean and refer to TRANSAMERICA TITLE INSURANCE COMPANY of Arizona, Trustee, and AMERICAN BUILDERS INC., a corporation, as beneficiary, their successors and assigns, if such successors or assigns should acquire more than one undeveloped lot from the Declarant for the purpose of development.

ARTICLE II

MEMBERSHIP

Membership in the Master 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 residences constructed or planned to be constructed on the property described above. An owner of a residence shall automatically, upon becoming the owner of a residence, be a member of the Master Association, and shall remain a member of the Master Association until such time as his ownership ceases for any reason, at which time his membership in said Master Association shall automatically cease. Ownership of a lot 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 Master Association shall not be transferred, pledged or alienated in any way, except upon the sale of such residence 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 Master Association. In the event the owner of any residence should fail or refuse to transfer the membership registered in his name to the purchaser of such residence, the Master Association shall have the right to record the transfer upon the books of the Master Association and issue a new membership to the purchaser and thereupon the old membership outstanding in the name of the seller shall be null and void as though the same had been surrendered.

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

ARTICLE III

VOTING RIGHTS

Section 1. The Master Association shall have two classes of voting membership:

Class A. Class A members shall be all those Owners as defined in Article II. A Class A Member shall be entitled to one vote for each lot owned by said member, as provided above.

Class B. The Class B members shall be the Declarant. The Class B members shall be entitled to three votes for every full unit of residential density authorized by the City

of Scottsdale with respect to the real property described hereinbefore in Exhibit "A", owned by the Declarant. It is calculated that such density number is approximately 488. 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) When the total votes outstanding in Class A membership equal the total votes outstanding in the Class B membership, or
- (b) Five (5) years from the date of this Declaration.

Section 2. In the event any residential unit owner shall be in arrears in the payment of any amounts due under any of the provisions of this Declaration for a period of fifteen (15) days, or shall be in default in the performance of any of the terms of this Declaration for a period of fifteen (15) days, said unit owner's right to vote as a member of SANDS SCOTTSDALE HOME OWNERS ASSOCIATION shall be suspended and shall remain suspended until all payments are brought current and all defaults remedied.

ARTICLE IV

PROPERTY RIGHTS

Section 1. Member's Easements of Enjoyment. Every member shall have a right and easement of enjoyment in and to the common elements, and such easement shall be appurtenant to and shall pass with the title to each and every residence. It is expressly acknowledged and agreed by all parties concerned that this paragraph is for the mutual benefit of all owners of residences of SANDS SCOTTSDALE HOME OWNERS ASSOCIATION and is necessary for the protection of said owners. Such right and easement of enjoyment shall be subject to reasonable rules and regulations as from time to time are promulgated by the Board of Directors, and which may include, but shall not be limited to:

- (a) The right of the Master Association to limit the number of guests of members;
- (b) The right of the Master Association to charge reasonable admission and other fees for the use of any recreational facility situated upon the common areas;
- (c) The right of the Master Association, in accordance with its Articles and By-Laws, to borrow money (but only after all residences have been constructed on the premises and sold by the major builder) for the purpose of improving the common areas and facilities and in aid thereof, to mortgage said property. The rights of such mortgages in said properties shall be subordinated to the rights of the homeowners hereunder; and
- (d) The right of the Master Association to dedicate or transfer all or any part of the common areas 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 members entitled to cast two-thirds (2/3) of the votes of the Class A membership and two-thirds (2/3) of the votes of the Class B membership, if any, has been recorded, agreeing to such Dedication or transfer, and unless written notice of the proposed action is sent to every member not less than thirty (30) days in advance nor more than (60) days in advance.

Section 2. Delegation of Use. Any member may delegate, in accordance with the By-Laws, his right of enjoyment to the common areas and facilities to the members of his family, his tenants, or contract purchasers who reside on the property.

Section 3. Title to the Common Areas. The Declarant hereby covenants for itself, its heirs and assigns, that it will convey fee simple title to the common elements to the Master Association prior to the conveyance of the last lot. Said common elements

shall be free and clear of all liens except normal easements and those conditions, covenants and restrictions at the time of conveyance.

ARTICLE V

COVENANT FOR MAINTENANCE ASSESSMENTS

Section 1. Maintenance Assessments Against the Entire Property.

- A. It is hereby provided that the Master Association shall be responsible for the maintenance, upkeep, pathways and landscaping in the following areas whether they be common areas, street right-of-way, or otherwise, as follows:
- (a) The paseos being established on subsequent residential plots for pathway purposes; and
 - (b) The planting area extending along Indian Bend Road and being that area from the lots' rear fence or wall and extending to the sidewalk parallel to Indian Bend Road; and
 - (c) The planting area extending along Pima Road, and being that area from the lot side or rear fence or wall and extending to the sidewalk parallel to Pima Road; and
- [Please refer to Appendix: Board of Directors Notes: ARTICLE V, Section 1, A (c)]*
- (d) The planting area within and adjacent to the entryway extending north from Indian Bend Road, and
 - (e) Any and all planting and landscaping installed within any of the cul-de-sac street turnaround area.
- B. It is specifically provided that the Master Association shall have no responsibility or liability for the installation or maintenance of any recreational facilities as part of its established functions and duties.

Section 2. Creation of the Lien and Personal Obligation of Assessments. The Declarant, for each lot (patio house, townhouse, estate home and other single family residences), owned within the properties, hereby covenants and each owner of any lot by acceptance of a deed therefore, whether or not it shall be so expressed in any such deed or other conveyance, is deemed to covenant and agree to pay to the Association; (1) annual assessments or charges and (2) special assessment for capital improvements, such assessments to be fixed, established, and collected from time to time as hereinafter provided. The annual and special assessments, together with such interest thereon and costs of collection thereof, as hereinafter provided, 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 such interest, costs and reasonable attorney's 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 obligations that shall not pass to his successor in the title unless it is expressly assumed by them or unless prior to such transfer of title as evidenced by the records of the County Recorder or other appropriate governmental agency, a lien for such assessments shall have been filed in writing, with the County Recorder or other appropriate governmental agency.

Section 3. Purpose of Assessments. The assessments levied by the Master Association shall be used exclusively for the purpose of promoting the recreation, health, safety and welfare of the residents in the properties and in particular for the improvement and maintenance of the properties, services and facilities devoted to this purpose and related to the use and enjoyment of the common area, and of the residences situated upon the properties.

Section 4. Establishment, Bases and Maximum of Assessments. Declarant and the owner of each such residence, for themselves, their heirs, successors, and assigns, further covenant that each such residence shall be subject to an assessment in an

amount to be determined by the Master Association. The amount to be prorated among the members of the Master Association shall be established annually by the Board of Directors. Said amount shall be established after the Board of Directors has met and has examined the annual report to be prepared by the officers.

Section 5. The Assessment of each lot begins on the first of the calendar month following the expiration of thirty (30) days after the close of each owner's escrow.

Section 6. At the time of the first conveyance of each residence unit, and from time to time thereafter, the Board of Directors, or the designated representative, shall notify the owner, or owners, of each residential unit as to the amount of the estimated annual assessment and shall each month collect for each residential unit one-twelfth (1/12) of said residential unit's proportional share of said annual assessment.

Section 7. Until the end of the first fiscal year immediately following the conveyance of the first lot to an owner, the maximum annual assessment shall be \$120.00 per lot. From and after the end of said first fiscal year, the maximum annual assessment may be increased, effective the first day following the end of each fiscal year, if two-thirds (2/3) of the members voting in person or by proxy at a meeting duly called for the purpose of increasing the maximum assessment approve such increase. For the purpose of this section, a duly called meeting is one with the presence of members or of proxies entitled to cast 60% of all of the votes for each class of membership, shall constitute a quorum, with 2/3 of such quorum being authorized to make such determination to increase the maximum assessment.

Section 7-A. It is specifically understood that the Board of Directors shall have the power and right to increase the maximum assessments in any one year up to 10% of the prior year's assessment total without submitting such increase to the members as provided in Section 7 above. However, any annual increase in excess of 10% of the

annual maximum shall be submitted to the membership for approval, as provided in Section 7 above.

Section 8. Special Assessments for Capital Master Improvements. In addition to the annual assessments authorized above, the Master Association may levy in any assessment year, a special assessment applicable to that year only, for the purpose of defraying, in whole or in part, the cost of any construction or reconstruction, unexpected repair or replacement of a described capital improvement upon the Common Area, including the necessary 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, written notice of which shall be sent to all members not less than 30 days nor more than 40 days in advance of the meeting setting forth the purpose of the meeting.

Section 9. For purposes of this Section 8, the presence at a duly called meeting of members or of proxies entitled to cast sixty percent (60%) of all the votes of each class of membership shall constitute a quorum. If the required quorum is not forthcoming at any meeting, another meeting may be called by sending written notice to all members not less than thirty (30) days nor more than sixty (60) days in advance of the meeting, setting forth the purposes of the meeting, and the required quorum at any such subsequent meeting shall be one-half (1/2) of the required quorum at the preceding meeting. No such subsequent meeting shall be held more than sixty (60) days following the preceding meeting.

Section 10. Uniform Rate of Assessment. Both annual and special assessments must be fixed at a uniform rate for all lots and may be collected on a monthly basis. The residential unit pro rata share of any assessments shall be that fractional amount of the total assessment where the denominator is the total of 488 which is the contemplated

maximum number of residential units planned for the entire area. In the event that the number of residential units finally platted is less than 488 then such lesser number shall be the denominator used thereof.

Section 11. Effect of Nonpayment of Assessments and Remedies of the Master Association. Each residential owner, for himself, his heirs, successors, grantees and assigns, covenants that with respect to charges so determined during the period that he is an owner, he will remit these charges directly to such party or parties as directed by the Master Association's Board of Directors.

Section 12. Any assessments which are not paid when due shall be delinquent. Each residential owner further agrees that these charges, if not paid within twenty (20) days after the due date, shall bear interest from the date of delinquency at the rate of eight percent (8%) per annum and shall become a lien upon said owner's lot and residence and shall continue to be such lien until fully paid. The lien, for special assessments as well as annual assessments shall be subordinate to the right of any first mortgage.

Section 13. Each such owner expressly vests in the SANDS SCOTTSDALE HOME OWNERS ASSOCIATION, or its agent, the right and power to bring all actions against such owner personally for the collection of such charges as a debt and to enforce the aforesaid lien by all methods available for the enforcement of such liens including foreclosure by an action brought in the name of the Master Association in a like manner as a mortgage of real property, and such owner hereby expressly grants to the Master Association a power of sale in connection with said lien. The lien provided for in this section shall be in favor of the Master Association and shall be for the benefit of all such residential owners. The Master Association, acting on behalf of the unit owner, shall have the power to bid in an interest foreclosed at foreclosure sale and to acquire and hold, lease, mortgage and convey the same.

Section 14. No owner of a residence may exempt himself from liability of his contribution toward the common expenses by waiver of the use or enjoyment of any of the common elements or by abandonment of his residence.

Section 15. In the event that the need for maintenance or repair is caused through the willful or negligent act of the owner, his family, or guests, or invitees, the cost of such maintenance or repair shall be added to and become a part of the assessment to which such lot is subject.

Section 16. Exempt Property. The following property, subject to this Declaration, shall be exempt from the assessments created herein; (a) all properties dedicated to and accepted by a local public authority; (b) the common areas; and (c) all properties owned by a charitable or non-profit organization exempt from taxation by the laws of the State of Arizona. However, no land or improvement devoted to dwelling use shall be exempt from said assessments except that during the first five (5) years of this development, the original developer shall have the right to be exempt from the monthly assessments as to any of its lot not built upon, provided that the original developer contributes some services and/or some funds each year directly, or indirectly, to the Association to assist generally in helping the Association to meet its requirements.

ARTICLE V – a

COVENANT FOR SEPARATE MAINTENANCE ASSESSMENTS

Section 1. Maintenance assessments against separate subdivision or residential plats – Total Project. It is contemplated that there shall be separate restriction subdivision plats recorded from time to time in the office of the Maricopa County Recorder for the construction and development of Estate Homes, Single Family Homes, Patio Houses, and Townhouses. The townhouses area shall be subject to additional

Associations “to be known as SANDS SCOTTSDALE TOWNHOUSES ONE and TWO and SANDS SCOTTSDALE TOWNHOUSES THREE and FOUR”. THESE TOWNHOUSES AREAS WILL BE SUBJECT TO SEPARATE TERMS, CONDITIONS AND PROVISIONS AS CONTAINED IN SEPARATE Declarations of Covenants, Conditions and Restrictions as they apply to those areas in addition to those terms and conditions contained herein. However, certain of the maintenance costs as briefly referred to herein and more specifically referred to as the additional Declarations of Covenants, Conditions and Restrictions, which will accompany some the additional residential plats hereinbefore later to be recorded.

Section 2 – a. Patio Homes and Patio Houses. There will be a plat recorded at approximately this time for the 25 Patio Homes near the Northeast corner of the project. The recording of that residential plat will be accompanied by Declaration of Covenants, Conditions and Restrictions which will be supplemental to and in addition to these general projects for the use, benefit and obligation of those Patio Home owners.

Section 2 – b. Additional Patio Homes. It is further contemplated that additional units of Patio Homes will be subsequently platted on the Southern portion of the entire project and immediately North of the Patio Homes contemplated to be immediately North of an Estate Homes area and which Estate Homes area will be immediately adjacent to Indian Bend Road. This further Patio Homes area will likewise be recorded with its plat a further Declaration of Covenants, Conditions and Restriction which will be supplemental to and in addition to these general provisions for the use, benefit and obligation of those additional Patio Home owners.

Section 3. Estate Homes. There will be a plat recorded subsequently for the development and construction of Estate Homes with that area to be immediately adjacent to Indian Bend Road and immediately South of a portion of the additional Patio Homes referred to in Section 2-b above. Such Patio Homes plat will also be accompanied

by further Declaration of Covenants, Condition and Restrictions which will be applicable to that platted area and supplemental to and in addition to these general provisions for the use, benefit and obligation of those Estate Homes users.

Section 4. Single Family Homes. There will be a subdivision plat recorded at this time for approximately 55 single family homes in a subdivision to be known as SANDS SCOTTSDALE ONE. The recording of that residential plat will be accompanied by a separate Declaration of Covenants, Conditions and Restrictions which will be supplemental to and in addition to these general provisions for the use, benefit and obligation of those single family home owners.

Section 4-b. Additional Single Family Homes. It is contemplated that there will be a further residential plat covering a portion of the property on the Western portion of the total project for further single family homes. The recording of that additional residential plat will be accompanied by a separate Declaration of Covenants, conditions and Restrictions which are supplemental to and in addition to these general provisions for the use, benefits and obligation of those additional single family home owners.

Section 5-a. Separate and Additional Assessments. The Master Association is hereby designated to perform the maintenance and landscaping of the area described in each of the foregoing residential subdivisions as referred to in Sections 1, 2-a, 2-b, 3, 4-a, and 4-b immediately above. The direct costs of such landscaping expenses in addition to reasonable and adequate administration charges of the Master Association shall be chargeable and assessed and levied separately for each such separate residential plat. The above costs apportioned to each such residential subdivision shall be proportioned equally to the lot owners in each plat separately. All such assessments shall be in accordance with the provision herein of Article 5, Sections 1, 2, 3, 4, 5, 10, 11, 12, 13, 14 and 15 of this Declaration of Covenants, Conditions and Restrictions.

Section 5-b. Above Assessments Additional to Master Association Assessment.

The above described additional special and separate assessments for each residential subdivision shall be in addition to those charges and assessments provided hereinbefore in Article 5 as applicable to the total project.

Section 6. Total Development Plans Not Certain. It is understood and hereby provided that the foregoing references in subsections 2-a, 2-b, Section 3, Section 4 and Section 4-b are not to be interpreted as the final planned development areas but are simply the manner in which the current developer does plan to develop the entire area; however, the said developer is authorized and permitted to so develop the areas so referred to in such sub-sections as is practical and in consideration of developing a well-planned and first class residential area.

ARTICLE VI

ARCHITECTURAL CONTROL

No improvement, whether a building, fence, wall or other structure shall be commenced, erected or maintained on any lot until the plans and specifications for the same showing all constructions details, including the nature, shape, kind, height, materials, floor plans, location and approximate costs thereof, shall have been submitted to and approved in writing by American Builders, Inc., an Arizona Corporation, its successors or assigns. Said Company shall have the right to deny approval of any plans or specifications which are not, in its opinion, suitable or desirable for aesthetic or any other reasons, and shall have the right to take into consideration the harmony and conformity of the building with the surrounding building and the suitability of the same with the surrounding area and the effect of such structure or building as seen from adjacent or neighboring properties. All subsequent exterior additions, replacements, alteration or improvements of any building, fence or wall or other structure, also shall be subject to the prior approval of American Buildings, Inc., its

successors or assigns. Upon the construction and sale of 488 new residences on the premises, or five years from the date of this Declaration, whichever first occurs, all rights and duties imposed hereunder upon American Builders, Inc., its successors or assigns, automatically shall be assigned to and undertaken by an architectural committee composed of the Board of Directors of the Master Association, or by a representative designated by the Board of Directors. The members of such committee shall not be entitled to compensation for services performed pursuant to this paragraph. In the event American Builders, Inc., its successors or assigns (or when applicable, the Board or its designated committee) fails to approve or disapprove such plans and specification within thirty (30) days after submission thereof, approval will not be required and this Article will be deemed to have been fully complied with. This Architectural control does not apply whenever a separate and special homeowners association was established for such homeowners associations' plats, including the Townhouses Associations and any others so established, as those associations would have the architectural control applicable to those plats.

ARTICLE VII

USE RESTRICTIONS

Section 1. Each lot in the premises shall be known as, and limited in use to: a single family residential lot and construction thereon shall be limited to a residence no more than two stories in height. All building or structure erected upon said premises shall be of new construction and no building or structures shall be moved from other location onto said premises. No subsequent building or structure other than residences shall be built on any lot where the builder theretofore programmed and constructed a residence. No structure of a temporary character, trailer, basement, tent, shack, garage, barn or other outbuilding 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 residences to maintain during the period of premises as Declarant may authorize temporary offices, models, yards and signs used in the construction and sale of said residences.

Section 3. No noxious or offensive activity may be carried on or permitted on any lot, nor shall anything be done thereon which may be or become an annoyance or nuisance to the neighborhood; nor shall any part of the premises be used for business, professional, commercial, religious or institutional purposes. Provided, however, the foregoing restrictions shall not apply to the business activities of the construction and maintenance of buildings by the builder, its agents and assigns during the construction and sale period, and/or the Master Association in furtherance of its powers and purposes as herein set forth.

Section 4. No animals, fish or birds of any kind shall be raised, bred, or kept on the premises; except that commonly accepted household pets may be kept, provided that such pets are not kept, bred or maintained for any commercial purposes. No hogs, goats, cows, horses, poultry, rabbits, sheep or pigeons shall be kept on any of said lots.

Section 5. All clotheslines, equipment, service yards, woodpiles or storage piles shall be kept screened by adequate planting or fencing so as to conceal them from view of neighboring residences and streets. An electric garbage disposal unit shall be installed in each residence. To the extent feasible, all rubbish, trash or garbage shall be kept in some containers and not allowed to accumulate on the premises; any rubbish, garage or trash not capable of being kept in said containers shall be kept in other appropriate containers and screened from view of neighboring residences and streets until the date of pickup by a trash collection service. No rubbish, trash or garbage shall be burned on the premises. Incinerators of every kind shall be prohibited. No garbage or trash shall be kept or maintained on the street for more than twenty-four (24) hour period.

Section 6. Gas, electric, power, telephone, water, sewer, cable television and other utility or service lines (used for the general benefit of the lot owners) and other utility or service lines of every kind or character (whether now or hereafter invested or used) shall be placed and kept underground up to the walls of the buildings on the premises (except to the extent, if any, such underground placement may be prohibited by law or, by the nature of the service to be rendered such underground placement prevents the lines from being functional). This restriction shall apply to the service and utility lines for each and every lot and the common areas, as well as to the distribution lines located in the streets or elsewhere in the Subdivisions. However, the foregoing shall not prohibit service pedestals and above ground switch cabinets and transformers, where required.

Section 7. All fences shall be masonry walls only. No such fence or wall shall have any gate opening therein, save and except as limited to one ornamental gate not wider than four feet, and one driveway entrance.

Section 8. No radio or TV antennas shall project above twenty-four (24) inches off the roof, and in no instance be visible from the ground or street.

Section 9. No sign (other than a name and address sign, not exceeding 9" x 30" in size) of any nature whatsoever shall be permitted on any lot; provided, however, that one sign of not more than five square feet may be temporarily erected or placed on a lot for the purpose of advertising the property for rent or sale; and construction and maintenance of buildings by the builders, its agents and assigns during the construction and sale period and/or to the activities of the Master Association in furtherance of its power and purposes as are set forth.

Section 10. No portion of a residential lot but for the entire lot, together with the improvements thereon, may be rented, and then only to a single family.

Section 11. No trucks, buses, trailers, etc. (other than passenger automobiles and electric carts) shall be permitted on any lot without prior approval from American Builders, Inc. (or after the construction and sale of the residences from the Master Association's Board of Directors or its designated representative) with respect to the manner of screening or concealing the same from the view of neighboring property and streets. However, in no event will any such vehicles be permitted on any of the townhouse area lots (Sands Scottsdale Townhouses One and Two) and the other townhouse plats to be recorded, subsequently.

Section 12. There are certain areas within the total project which are contemplated to be attractively landscaped and/or maintained as open areas, and including certain pathway areas, as follows:

- (a) The paseos being established on subsequent residential plats for pathway purposes; and
- (b) The planting area extending along Indian Bend Road and being that area from the lots' rear fence or wall and extending to the sidewalk parallel to Indian Bend Road; and
- (c) The planning area extending along Pima Road, and being that area from the lot side or rear fence or wall and extending to the sidewalk parallel to Pima Road; and
- (d) The planting area within the adjacent to the entry-way extending North from Indian Bend Road; and
- (e) Any and all planting and landscaping installed within any of the cul-de-sac street turnaround areas.

There will be no structures or building built on any kind on these above described areas which will be for the use and benefit of the unit owners in the entire tract.

ARTICLE VII (A)

PARTY WALLS CONSTITUTING PART OF FENCE

The rights and duties of the owners of a residential unit within this project, with respect to party walls which constitute a part of a fence or wall fronting on a common area or a landscaped and planting area being maintained by the Master Association, shall be governed by the following:

- (a) Each such wall, which is constructed as a part of the original construction of the residential structure, shall at all times be maintained in an attractive manner and good repair.
- (b) In the event any such party wall is damaged or destroyed through the act of the adjoining owner, or any of his guests, tenants, licenses, agents or members of his family (whether or not such act is negligent or otherwise culpable), then such owner shall forthwith proceed to rebuild and repair the same to as good condition as formerly without cost to the Master Association.
- (c) In the event any such party wall is damaged or destroyed by some cause other than the act of the adjoining owner, his agents, tenants, licensees, guests or family (including ordinary wear and tear and deterioration from lapse of time), then in such event the Master Association shall proceed forthwith to rebuild or repair the same to as good condition as formerly at its expense to be included in the total annual budget assessable to all unit owners.
- (d) Notwithstanding any other provision of this article an owner who by negligent or willful act causes any such party wall to be damaged shall bear the whole cost of repairing same.

- (e) 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 residential unit in any manner, which requires the extension or other alteration of any such party wall shall first obtain the written consent of the Master Association or Architectural Control Committee.
- (f) In the event of a dispute with respect to the repair or rebuilding such a party wall or with respect to the sharing of the cost thereof, then upon written request addressed to the Association, the matter shall be submitted to arbitration under such rules as may from time to time be adopted. Then the matter shall be submitted to three arbitrators, one chosen by the owner, and one by the Master Association, and the third by the two as chosen; or if the two arbitrators cannot agree as to the selection of the third arbitrator within five 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 owner, who shall share the cost of arbitration, as determined by the arbitrators. In the event one party fails to choose an arbitrator within ten days after 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.

ARTICLE VIII

RIGHTS AND DUTIES OF FIRST MORTGAGEE AND MAJOR BUILDER

Notwithstanding and prevailing over any other provisions of this Declaration, of the Association's Articles of Incorporation or By-Laws, or any rules, regulations of management agreements, the following provisions shall apply to and benefit each holder of a first mortgage upon a townhouse unit (called the first mortgagee) and the major builder:

- (a) The first mortgagee shall not in any case or manner be personally liable for the payment of any assessment or charge, nor for the observance or performance of any covenant, restriction, regulation, rule, Association Articles of Incorporation or By-Laws, or Management Agreement, except for those matters which are enforceable by injunctive or other equitable actions, nor requiring the payment of money, except as hereinafter provided.
- (b) During the pendency of any proceedings to foreclose the first mortgage, including any period of redemption, the first mortgagee (or any receiver appointed in such action) may, but need not, exercise any or all of the rights and privileges of the owner of the mortgaged residence, including but not limited to the right to vote as a member of the Association to the exclusion of the owner's exercise of such rights and privileges.
- (c) At such time as the first mortgagee shall become record owner of a lot and residence said first mortgagee shall be subject to all of the terms and conditions of these Covenants, Conditions and Restrictions, including, but not limited to, the obligation to pay for all assessments and charges, accruing thereafter, in the same manner as any owner.
- (d) The first mortgagee, or any other party acquiring title to a mortgaged residence unit through foreclosure suit or through any equivalent proceedings such as, but not limited to, the taking of a deed in lieu of foreclosure, shall acquire title to the mortgaged residence unit free and clear of any lien authorized by or arising out of any of the provisions of this Declaration which secured the payment of any assessment for charges accrued prior to the final conclusion of any such foreclosure suit or equivalent proceeding, including the expiration date of any period of redemption. Any such obligation of the defaulting owner of the respective townhouse unit to the Association and the Board of Directors shall use reasonable efforts to collect the same from the owner even after he is no longer a member of the Association. There shall be a lien upon the interests of the first mortgagee or

other party which acquires title to a mortgaged unit by foreclosure suit or by equivalent procedures for all assessments authorized by this Declaration which accrue and are assessed after the date the acquirer has acquired title to the unit free and clear of any right of redemption.

ARTICLE IX

GENERAL PROVISIONS

Section 1. Binding Effect and Enforcement. The covenants, conditions, reservations, easements and restrictions contained herein shall run with the land and shall be binding upon all persons purchasing, owning, leasing, sub-leasing or occupying or otherwise having any interest in any townhouse on said property, their heirs, executors, administrators, successors, grantees and assigns. After the date on which this instrument has been recorded, these restrictions may be enforced by (a) 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; (b) American Builders, Inc. (as long as it has an interest in all or any part of the premises); (c) the major builder; (d) the owner of any lot or any one or more of said parties, or (e) any property or homeowners association (as provided for under Section 3 of this Article IV) hereafter having jurisdiction of any nature whatsoever over or with respect to all or any part of the premises. Any person who acquires title to a lot, except through delivery of a sheriff's deed as a result of a foreclosure proceeding or by a deed in lieu of foreclosure, shall take title to such lot subject to the lien hereof for all charges pursuant to Articles V and X that have accrued prior to such acquisition of title, and subsequent to the date said person takes title; and provided also that the breach of any of said restrictions may be enjoined, abated, or reviewed by appropriate proceedings, notwithstanding the lien or existence of any such mortgage. The personal obligation to pay the annual and special assessments as provided in Article V, Section 2 of this instrument shall not pass to a successor in title unless the obligation is expressly assumed by the successor in title or unless, prior to such transfer of title, as evidenced by the records of the

County Recorder or other appropriate governmental agency, a lien for such assessments shall have been filed in writing with the County Recorder or other appropriate governmental agency. All of said townhouse shall contain the restrictions herein by reference to this instrument. However, the terms and conditions of this instrument shall be binding upon all persons affected by its terms regardless of whether any reference is made to this instrument in the deed or other instrument of conveyance. Enforcement shall be by proceedings at law or in equity against any person or persons violating or attempting to violate any covenants either to restrain violations or to recover damages. Provided, however, that a violation of these restrictive covenants, or any one of more of them, shall not affect the lien of any mortgage now of record, or which may be hereafter placed of record upon said lots or any part thereof.

Section 2. Equal Treatment of Owners. No action shall at any time be taken by the Association or its Board of Directors which in any manner would discriminate against any owner or owners in favor of the other owners.

Section 3. Severability. 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 therein, 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, or section 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 SANDS SCOTTSDALE 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, whoever is the later.

Section 4. Gender. The singular, wherever used herein, shall be construed to mean the plural when applicable, and the necessary grammatical changes required to make the provisions hereof apply either to corporations or individuals, men or women, shall in all cases be assumed as though in each case fully expressed.

Section 5. Topical Headings. The marginal or topical headings of the paragraphs contained in this Declaration are for convenience only and do not define, limit or construe the contents of the paragraphs or of this Declaration.

Section 6. Amendment. These covenants, restrictions, reservations and conditions shall remain in full force and effect for a period of twenty (20) years from the date hereof. Thereafter, they shall be deemed to have been renewed for successive terms of ten (10) years, unless revoked or amended by an instrument in writing, executed and acknowledged by the then owners of not less than three-fourths (3/4) of the townhouse units on said property, which said instrument shall be recorded in the office of the Recorder for the County of Maricopa, State of Arizona, within ninety (90) days prior to the expiration of the initial effective period hereof or any ten (10) years extension. Following the expiration of the period of twenty (20) years, from the date hereof, these covenants, conditions and restrictions may be amended at any time by an instrument signed by the then owners of not less than seventy-five percent (75%) of the townhouses on said property. These covenants, conditions and restrictions may be amended during the first twenty (20) year period by an instrument signed by the then owners of not less than ninety percent (90%) of the townhouses on said property.

Section 7. Waiver or Abandonment. The waiver of, or failure to enforce, any breach of violation of any restriction herein contained shall not be deemed to be a waiver or abandonment of such restriction, or a waiver of the right to enforce any subsequent breach or violation as such restriction. The foregoing shall apply regardless of whether any person affected hereby (or having the right to enforce these restrictions) had knowledge of the breach or violation. No restriction contained herein shall be deemed to have been waived or

abandoned unless this Declaration is amended to delete such restriction pursuant to Article IX, Section 6, hereof.

Section 8. Annexation of Additional Properties. Annexation of additional property shall require the assent of two-thirds (2/3) of the Class A members and two-thirds (2/3) of the Class B members, if any, 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 presence of members or of proxies entitled to cast sixty percent (60%) of the votes of each class of membership shall constitute a quorum. If the required quorum is not forthcoming at any meeting, another meeting may be called subject to the notice requirement set forth above and the required quorum at such subsequent meeting shall be one-half (1/2) of the required quorum of the preceding meeting. No such subsequent meeting shall be held more than sixty (60) days following the preceding meeting. In the event that two-thirds (2/3) of the Class A membership or two thirds (2/3) of the Class B membership are not present in person or by proxy, members not present may give their written assent to the action taken thereat.

The foregoing is a retyped copy of the restrictions, conditions and covenants as set forth in instrument recorded in docket 10150, page 42, records of Maricopa County, Arizona.

EXHIBIT "A"

LEGAL DESCRIPTION

SE 1/4 SECTION 1, T2N, R4E.

ZONING LEGALS

The Southeast quarter of Section 1, Township 2 North, Range 4 East of the Gila and Salt River Base and Meridian,

EXCEPT the Northeast quarter of the Northeast quarter of the Southeast quarter of said Section 1;

EXCEPT that certain parcel designated as a Well Site, containing 0.13 acres more or less, situated in the Northeast quarter of the Southeast quarter of the Southeast quarter of said Section 1;

EXCEPT that certain 3 acre parcel, more or less, to be designated as a Park Site situated in the Northwest quarter of the Southeast quarter of said Section 1, being adjacent to "Sands Scottsdale Two" on the North boundary and adjacent to "Sands Scottsdale One" on the East boundary; AND

EXCEPT that certain 6 acre parcel, more or less, to be designated as School Site situated in the Northwest quarter of the Southeast quarter and Southwest quarter of the Southwest quarter of said Section 1, and being adjacent to the aforementioned "Park Site" on the North boundary and being adjacent, in part, to "Sands Scottsdale One" on the East boundary.

Containing 129 acres, more or less.

APPENDIX

BOARD OF DIRECTORS NOTES

(Please note, this is not a legal opinion, nor part of the legally recorded document)

ARTICLE V, Section 1, A (c): Maintenance of Common Area along Pima Road

Pima Road looked very different in 1973 than it does now. In 1973 there was an extension of "Tract B" that is parallel to Pima Road and is part of the Master Community Common Area. When the City of Scottsdale performed improvements to Pima Road, including building the wall parallel to Pima Road, this small piece of "Tract B" was orphaned. There is a private Townhouse Common Area parallel to Pima Road east of the city wall (Tracts F, O & P). Per the Townhouse Association CCRs, this area is owned and maintained by the Sands Scottsdale Townhouse Association for the private use of its Members. This Common Area is behind a locked gate (Tracts F, O & P) and is only accessible by Members of the Sands Scottsdale Townhouses One and Two community. For additional information, please refer to the Townhouse Association CCR document and all references to Tracts F, O & P as well as "common areas."