

The Trails 3 & 4 CC&Rs

When recorded return to:

PIONEER NATIONAL TITLE INSURANCE COMPANY

3033 North Central Avenue, Suite 200

Phoenix, Arizona 35012

Attn: Builder Services Department

Trust No . 20,425

DECLARATION OF COVENANTS, CONDITIONS AND RESTRICTIONS THE TRAILS AT SCOTTSDALE III

THIS DECLARATION, made on the date hereinafter set forth by PIONEER TRUST COMPANY OF ARIZONA, an Arizona corporation, as trustee, hereinafter referred to as "Declarant".

Declarant is the owner of certain property in the City of Scottsdale, County of Maricopa, State of Arizona, which is more particularly described in Exhibit A, attached hereto.

Declarant hereby declares that all of the properties described above, together with any properties hereafter added or annexed as provided herein, 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 or assigns, and shall inure to the benefit of each owner thereof.

ARTICLE I

DEFINITIONS

Section 1. "Association" shall mean and refer to The Trails at Scottsdale III Association, an Arizona corporation, its successors and assigns.

Section 2. "Developer" shall mean and refer to any person or entity which is or may be subdividing and/or selling residential Lots as a portion of THE TRAILS AT SCOTTSDALE III, or constructing residential dwellings for sale to individual buyers.

Section 3. "Owner" shall mean and refer to the record owner, whether one or more persons or entities, of a fee simple title to any Lot which is part of the Properties, including contract sellers, but excluding those having such interest merely as security for the performance of an obligation.

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Section 4. "Properties" shall mean and refer to that certain real property hereinbefore described, and such additions thereto, as shown on Exhibit C, hereinafter be brought within the jurisdiction of the Association.

Section 5. "Common Area" shall mean and refer to all real property owned by the Association for the common use and enjoyment of the Owners. The Common Area to be owned by the Association at the time of the conveyance of the first Lot as described in Exhibit B attached hereto, and such additional areas as described in Exhibit C that may hereinafter be brought within the jurisdiction of the Association.

Section 6. "Lot" shall mean and refer to any plot of land shown upon any recorded subdivision map of the Properties with the exception of the Common Area.

Section 7. "Declarant" shall mean and refer to Pioneer Trust Company of Arizona, an Arizona corporation, as trustee, 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 8. "Mortgage" shall mean and refer to any instrument given as security for the performance of an obligation, including without limitation deeds of trust. "Mortgagee" means a party secured by a Mortgage; and "Mortgagor" means the person executing such Mortgage as security.

ARTICLE II

PROPERTY RIGHTS

Section 1 Owners' 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 or other facilities 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 his Lot remains unpaid; and for a period not to exceed sixty (60) days for 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 of each class of members agreeing to such dedication or transfer has been recorded.

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

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ARTICLE III

MEMBERSHIP AND VOTING RIGHTS

Section 1. Every Owner of a Lot 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 Lot which is subject to assessment.

Section 2. The Association shall have two classes of voting membership:

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

Class B. The Class B member(s) shall be the Declarant and shall be entitled to three votes for each Lot owned or contemplated to be created and annexed to this Declaration and to the Association pursuant to Article XI, Section 4. Initially therefore, Declarant shall be entitled to cast its votes based upon three hundred and one (301) Lots. The Class 8 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 the Class A membership equal the total votes outstanding in the Class B membership,
- (b) January 1, 1986.

ARTICLE IV

COVENANT FOR ASSESSMENTS

Section 1. Creation of the Lien and Personal Obligation of Assessments. The Declarant, for each Lot 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 such deed, is deemed to covenant and agree to pay to the Association: (1) annual assessments or charges, and (2) special assessments for capital improvements, such assessments to be established and collected as hereinafter provided.

The annual and special assessments, together with interest, costs 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 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 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 recreation, health, safety and welfare of the residents in the Properties and for the improvements and maintenance of the Common Area.

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Section 3. 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 \$174.00 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 each year without a vote of the membership by an amount not more than the greater of the following two amounts: (i) five percent (5%) above the maximum assessment for the previous year, or (ii) the percentage increase in the Consumer Price Index United States - All Urban Consumers - All Items, published by the United States Department of Labor, Bureau of Labor Statistics (the "Index") for the previous 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 by an amount greater than that permitted under subparagraph (a) above by a vote of two-thirds (2/3) of each class of members who are voting in person or by proxy at a meeting duly called for this purpose.

(c) the Board of Directors may fix the annual assessment at an amount not in excess of the maximum.

(d) for the purpose of this Section 3, if the Index should be discontinued or revised, such other index or computation with which it is replaced shall be used in order to obtain substantially the same result as would be obtained if the Index had not been discontinued or revised.

Section 4. Special Assessment for Capital Improvements. In to the annual assessments authorized above, the Association may 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, reconstruction, repair or replacement of a capital improvement upon the Common Area or replacement of damaged or destroyed improvements upon the Common Area.

Section 5. Notice and Quorum for any Action Authorized Under Sections 3 and 4. Written notice of any meeting called for the purpose of taking any action authorized under Sections 3 or 4 shall be sent to all members not less than thirty (30) days nor more than sixty (60) days in advance of the meeting. At the first such meeting called, the presence of members or of proxies entitled to cast fifty percent (50%) of all the votes of each class of membership shall constitute a quorum. If the required quorum is not present, another meeting may be called subject to the same notice requirement, and the required quorum at the 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 6. 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. Declarant/Developer shall pay assessments on each Lot owned by Declarant/Developer shown on any recorded subdivision plat

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which is subject to these restrictions, which Lot is intended for residential use. Should any home located on any such Lot become occupied during Declarant/Developer's ownership of said Lots, Declarant/Developer shall pay the full monthly assessment. For unoccupied homes and Lots owned by Declarant/Developer shall pay an amount equal to twenty-five percent

(25%) at the regular monthly and special assessment for each Lot so owned.

Section 7. Date of Commencement of Annual Assessments: Due Dates. The annual assessments provided for herein shall commence as to all Lots on the first day of the month-following the conveyance of the Common Area. The first annual assessment shall be adjusted according to the number of months remaining in the calendar year. The Board of Directors shall fix the amount of the annual assessment against each Lot 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 an officer of the Association setting forth whether the assessments on a specified Lot have been paid.

Section 8. Effect of Nonpayment of Assessments: Remedies of the Association. Any assessment not paid within thirty (30) days after the due date shall bear interest from the due date at the maximum rate of interest per annum then prevailing with FHA/VA. The Association may bring an action at law against the Owner personally obligated to pay the same or foreclose the lien against the property. No Owner may waive or otherwise escape liability for the assessments provided for herein by nonuse of the Common Area or abandonment of his Lot.

Section 9. Subordination of the Lien to Mortgages: The lien of the assessments provided for herein shall be subordinate to the lien of any first Mortgage. Sale or transfer of any Lot shall not affect the assessment lien. However, the sale or transfer of any Lot pursuant to Mortgage foreclosure (including without limitation the exercise by the trustee of a power of sale thereunder), or any proceeding in lieu thereof, shall extinguish the lien of such assessments as to payments which became due prior to such sale or transfer. No sale or transfer shall relieve such Lot from liability for any assessments thereafter becoming due or from the lien thereof.

ARTICLE V

ARCHITECTURAL CONTROL

Section 1. Architectural Approval: No building, fence, wall or other structure shall be commenced, erected or maintained upon the Lots, nor shall any exterior addition to or change or alteration therein, including patio covers, trellises, antennas, exterior color, major repairs and maintenance, be made until the plans and specifications showing the nature, kind, shape, height, materials and location of the same shall 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 Architectural Committee provided for in Section 2 hereof. In the event said Committee, or its designated representatives, 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.

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Section 2. Appointment of Architectural Committee: Declarant shall initially appoint the Architectural Committee consisting of three (3) members, who shall remain in office until the first anniversary date of the issuance of the final Public Report on the Property. Thereafter, Declarant shall have the right to appoint a majority of the members of the Architectural Committee and the Board shall have the power to appoint one member of the Architectural Committee until such time as ninety percent (90%) of the Lots in the Property have been sold, or until the third (3rd) anniversary date of the issuance of the final Public Report on the Property, including annexed Property, whichever first occurs. From and after such time or event, as the case may be, the Architectural Committee shall be appointed by the Board and shall be composed of three (3) or more representatives who must be members of the Association. Any member appointed to the Architectural Committee by Declarant need not be a member of the Association. In the event of the death or resignation of any member of the Architectural Committee prior to the time when the Board is vested with authority, Declarant shall have the right to appoint such member's successor.

Section 3. General Provisions: The members of the Architectural Committee shall not be entitled to any compensation for services performed pursuant to this covenant.

Section 4. Appeal: In the event plans and specifications submitted to the Architectural Committee are disapproved thereby, the party or parties making such submission may appeal in writing to the Board. The written request must be received by the Board not more than thirty (30) days following the final decision of the Architectural Committee. The Board shall submit such request to the Architectural Committee for review, whose written recommendations will be submitted, to the Board. Within forty-five (45) days following receipt of the request for appeal, the Board shall render its written decision. The failure of the Board to render a decision within said forty-five (45) day period shall be deemed a decision in favor of the appellant.

Section 5. Nonliability of Architectural Committee, Board or Declarant: Neither Declarant, the Architectural Committee or the Board or any member thereof, nor their duly authorized representatives shall be liable to the Association, or to any Owner for any loss, damage or injury arising out of or in any way connected with the performance of the duties hereunder, unless due to willful misconduct or bad faith. The Architectural Committee shall not be responsible for reviewing, nor shall its approval of any plan or design be deemed approval of, any plan or design from the standpoint of structural safety or conformance with building or other codes.

Section 6. Variance: The Architectural Committee may authorize variances from compliance with any of the architectural provisions of the Declaration, when circumstances such as topography, natural obstructions, hardship, aesthetic or environmental consideration may require. Such variances must be evidenced in writing, must be signed by at least two (2) members of the Architectural Committee, and shall become effective upon recordation in the Office of the County Recorder of Maricopa County. If such variances are granted, no violation of the covenants, conditions and restrictions contained in this Declaration shall be deemed to have occurred with respect to the matter for which the variance was granted. The granting of such a variance shall not operate to waive any of the terms and provisions of this Declaration for any purpose except as to the particular property and particular provision hereof covered by the variance, nor shall it affect in any way the Owners obligation to comply with all governmental laws and regulations affecting his use of the premises, including but not limited to zoning ordinances and lot set-back lines or requirements imposed by the County of Maricopa, the City of Scottsdale, or any other governmental authority.

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ARTICLE VI

PARTY WALLS

The rights and duties of the Owners of Lots 291 through 344 and 427 through 452, within The Trails at Scottsdale III with respect to party walls shall be governed by the following:

(a) each wall, including patio walls which is constructed as part of the original construction of the townhouse dwelling unit, any part of which is placed on the dividing line between separate Lots, 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) in the event any such party wall is damaged or destroyed through the act of one adjoining Owner or his tenants so as to deprive the other adjoining Owner of the full use and enjoyment of such wall, then the first of such Owners shall forthwith proceed to rebuild and repair the same to as good conditions as formerly without cost to the adjoining Owner.

(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 or his tenants (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 townhouse 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

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the cost thereof, then upon written request 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 two arbitrators 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 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 as took place while an Owner.

ARTICLE VII

DAMAGE OR DESTRUCTION OF PROPERTY

In the event any Common Area or improvement thereof is damaged or destroyed by an Owner or his tenants, such Owner does hereby irrevocably authorize the Association to repair said damage, and the Association shall so repair said damage in a good workmanlike manner in substantial conformance with the original plans and specifications. The Owner shall then repay the Association in the amount actually expended for such repairs.

In the event any townhouse on Lots described in Article VI above, is damaged or destroyed by an Owner or his tenants, such Owner shall, within sixty (60) days from the occurrence of the damage or destruction, enter into a binding bona fide contract for the repair and rebuilding of the exterior of said townhouse and any damage to the exterior of adjacent townhouses or property in a good workmanlike manner in conformance with the original plans and specifications used in the construction of said townhouses. In the event such Owner refuses or fails to so repair and rebuild any and all such damage to the exterior of the townhouse and adjacent property within a reasonable time, not to exceed six (6) months from the date of the occurrence of the damage or destruction, the Association by and through its Board of Directors, is hereby irrevocably authorized by such Owner to repair and rebuild any such townhouse and/or adjacent property in a good workmanlike manner in conformance with the original plans and specifications of the townhouses. The Owner shall then repay the Association in the amount actually expended for such repairs.

Each Owner further agrees that these charges for repairs, if not paid within ten (10) days after completion of the work, shall be delinquent and shall become a lien upon said Owner's Lot and townhouse and shall continue to be such lien until fully paid. Said lien shall be subordinate to any first Mortgage on the subject property. Said charges shall bear interest from the date of delinquency at the maximum rate of interest per annum then prevailing with FHA/VA. The

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amount of principal and interest owed by said Owner to the Association shall be a debt and shall be collectable by any procedure allowed by the laws of the State of Arizona.

Each such Owner, by his acceptance of a deed to a Lot and townhouse, hereby expressly vests in the Association or its agent the right and power to bring all actions against such Owner for the collection of such charges and to enforce the aforesaid lien by all methods available for the enforcement of such liens, and such Owner hereby expressly grants to the Association a power of sale in connection with said lien.

Nothing contained in this Article VII shall be construed in any way so as to relieve any insurance company from the payment of any and all amounts which would be payable under any policy or policies had not this Article been inserted.

ARTICLE VIII

REPAIR AND MAINTENANCE

Section 1. Repair and Maintenance by Association: Without limiting the generality of the statement of duties and powers contained in this Declaration, the Articles, Bylaws or Association Rules, the Association shall have the duty to accomplish the following upon Common Area in such manner and at such times as the Board shall prescribe:

- a. maintain, repair, restore, replace and make necessary improvements to Common Area, including but not limited to:
 - (1) chemical weed treatment as necessary or proper to maintain desert landscaping within Common Area;
 - (2) watering as necessary or proper to maintain said desert landscaping;
 - (3) periodic raking as necessary or proper to maintain said desert landscaping;
 - (4) repair of any damage to perimeter wall as is located upon a part of the Common Area and enforcement of obligations of each Owner of a Lot wherein such perimeter wall is in part located to maintain such portion of wall as is located upon the Lot owned by said Owner; and
 - (5) maintenance of retention area and collection facility free of debris or any other obstruction as necessary or proper in order that storm waters may be received and dissipated therein)
 - (6) maintenance of grass areas, landscaping and sprinkler system in Common Areas. (b) maintain all other Common Areas, facilities, equipment, services or aesthetic components of whatsoever nature as may from time to time be necessary.

Section 2. Repair and Maintenance by Owner: Except as the Association shall be obligated to maintain and repair as may be Provided in this Declaration, every Owner shall:

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(a) maintain the roof and the exterior walls of his residence on his Lot in good condition and repair.

(b) install and thereafter maintain in attractive condition landscaping in yard areas open to view-from other Lots or Common Area.

Section 3. Standards for Maintenance and Installation:

(a) maintenance of the exterior of improvements shall be accomplished in accordance with reasonable Architectural Standards adopted from time to time by the Architectural Committee and, if required by the Architectural Standards, only after approval of the Architectural Committee.

(b) all portions of the yard on each Lot which are unimproved and subject to view from Common Area or other Lots shall be landscaped by the Owner thereof on or before a date six (6) months from the original conveyance of such Lot by Declarant. Thereafter, such landscaping shall be maintained by the Owner in an attractive condition according to any rules promulgated by the Board.

(c) all block walls and fences located on or near the perimeter of Lots shall not be changed or modified by the Owners without the prior written approval of the Architectural Committee. In the event said walls and fences are totally or partially destroyed, the Owner shall cause reconstruction to commence within ninety (90) days from the date of such destruction and thereafter shall cause such construction to be diligently and continuously prosecuted to completion.

Section 4. Right of Association to Maintain and Install: In the event any Owner fails to maintain the exterior of his residence or to install and thereafter maintain landscaping on his Lot in accordance with this Article, the Association may, but shall not be obligated to, cause such maintenance and installation to be accomplished as hereinafter set forth.

- a. upon finding by the Board of a deficiency in such maintenance or installation, the Board shall give notice of deficiency to the Owner which shall briefly describe the deficiency and set a date for hearing before the Board or a committee selected by the Board for such purpose. The Board may delegate its powers under this subsection to a duly appointed committee of the Association.
- b. such hearing shall be held not less than ten (10) nor more than thirty (30) days from the date of such notice.
- c. such hearing shall be conducted according to such reasonable rules and procedures as the Board shall adopt and which shall provide the Owner with the right to present oral and written evidence and to confront and cross examine any person offering at such hearing evidence adverse to such Owner. If the Board or any such committee renders a decision against the Owner, it shall further set a

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date by which the deficiency is to be corrected by the Owner. A decision of such committee may be appealed to the Board, but a decision of the Board shall be final.

- d. if the deficiency continues to exist after the time limitation imposed by a final decision of the Board or any such committee, the Board or such committee may cause such maintenance or installation to be accomplished. (e) in the event the Board or such committee elects to cause such maintenance or installation to be accomplished, the following shall apply:

(1) the Owner shall have no more than ten (10) days following the receipt thereby of written notice of such election from the Board or such committee to select a day or days upon which such maintenance or installation work shall be accomplished;

(2) the date which said Owner selects shall be not less than fifteen (15) days nor more than forty-five (45) days following the last day of said ten (10) day period;

(3) if said Owner does not select such day or days within said ten (10) day period, the Board or such committee may select a day or days upon which such work may be accomplished which shall be not less than twenty-five (25) nor more than fifty-five (55) days from the last day of said ten (10) day period; and

(4) unless the Owner and the Board otherwise agree, such maintenance or installation shall take place only during daylight hours on any day, Monday through Friday, excluding holidays.
(f) if the Association pays for all or any portion of such maintenance or installation, such amount shall be a Special Assessment against the affected Owner and his Lot.

Section 5. Common Walls and Fences: In the event any portion of a common wall or fence is damaged or destroyed, from any cause, other than the act or negligence of either adjoining Owner, it shall be repaired at the joint expense of the adjoining Owners, provided if such damage extends only to one side of such a wall or fence such damage shall be repaired solely at the expense of the Owner of the Lot upon the side where such damage occurred.

Section 6. Right of Entry: The Association shall have the right to enter upon any Lot in connection with any maintenance, repair or construction in the exercise of the powers and duties of the Association, provided except for an emergency believed to endanger persons or property, any such entry shall be during daylight hours after forty-eight (48) hours or more advance written notice to occupant explaining need and nature of entry required.

Section 7. Control of Common Area: Declarant, its subcontractors and agents and employees of the same shall have the right to come on the Common Area to complete the construction of any landscaping or other improvement to be installed on the Common Area. In the event that any of Declarant's subcontractors are contractually obligated to maintain the landscaping and/or other improvements on the Common Area, such maintenance shall not be assumed by the Association until the termination of such contractual obligation.

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ARTICLE IX

EASEMENTS

Section 1. Amendment to Eliminate Easements: This Declaration cannot be amended to modify or eliminate the easements reserved to Declarant without prior written approval of Declarant.

Section 2. Nature of Easements: Unless otherwise set forth herein, any easement reserved to Declarant herein shall be nonexclusive.

Section 3. Owners' Rights and Duties; Utilities and Cable Television: Wherever sanitary sewer house connections, water house connections, electricity, gas, telephone and cable television lines or drainage facilities are installed within the Property, the Owners of any Lot served by said connections, lines or facilities shall have the right and there is hereby reserved to Declarant, together with the right to grant and transfer the same to Owners, an easement to the full extent necessary for the full use and enjoyment of such portion of such connections which service his Lot, and to enter upon the Lots owned by others, or to have utility companies or cable TV company enter upon the Lots owned by others, in or upon which said connections, lines or facilities, or any portion thereof lie, to repair, replace and generally maintain said connections as and when the same may be necessary as set forth below, provided that such Owner or utility company or cable TV company shall promptly repair any damage to a Lot caused by such entry as promptly as possible after completion of work thereon.

Section 4. Utilities: Easements over the Property for the installation and maintenance of electric, telephone, cable television, water, gas, sanitary sewer lines and drainage facilities as are needed to service the Property are hereby reserved by Declarant, together with the right to grant and transfer the same; provided, however, such easements shall not unreasonable interfere with the use and enjoyment by the Members of their Lots.

Section 5. Construction and Sales: There is hereby reserved to Declarant, Declarant's sales agents and representatives, easements for construction, display, maintenance, sales and exhibit purposes in connection with the erection and sale or lease of Lots both within the Property and upon real property owned by Declarant within the vicinity Of the Property, including right to maintain upon Lots owned by Declarant a Model Home Complex, which Model Home Complex may include displays and sales office for sale of flooring, drapes and other home improvements in connection with residential sales of Declarant, such easements to continue until all Lots within the Property and any areas annexed have been developed and thereafter sold.

Section 6. Association Rights: There is hereby reserved to Declarant easements over the Property, together with the right and obligation to grant and transfer the same to the Association, for the purpose of permitting the Association to discharge its obligations as described in this Declaration.

Section 7. Easement to Maintain Encroachments: There is hereby reserved to Declarant, and each conveyance by Declarant of a Lot shall convey to the Grantee and the Association, an easement appurtenant to said Lot for the maintenance of minor encroachments of the residence or walls or fences of such Lot, as such are initially constructed by Declarant or exist upon reconstruction of such residence or walls or fences or modifications thereof pursuant to plans and specifications approved by the Architectural Committee. Such minor encroachments may include, but are not limited to, encroachments by overhanging eaves, encroachments due to

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unintentional error in placement of wall or fence, and encroachment due to settlement. Each such easement includes the right of entry upon the adjoining Lot or common area at reasonable times, in a reasonable manner and upon reasonable notice to the Owner thereof for the purpose of maintaining, repairing or restoring such improvement as so encroaches.

Section 8. Common Area Easements: There is hereby Reserved to Declarant and each conveyance by Declarant of a Lot a Nonexclusive easement appurtenant to each Lot for ingress, egress and recreational purposes over the Common Area as then existing and as may be later added to by conveyance to the Association. Such easement, when granted to Owners shall be subject to the rights of the Association and Members with regard to the Common Area as set forth in Article II hereof entitled "Property Rights".

Section 9. Common Walls and Fences: Those Owners who have a common wall or fence adjoining their Lot and such a wall or fence dividing the Lot upon which their homes are constructed, shall equally have the right to maintain such wall or fence except that each shall have the exclusive right to the use of the interior surface of the wall or fence on his side. In the event that any portion of such wall or fence is damaged or destroyed, both parties shall be deemed to hold mutual easements for such access over adjoining property as is necessary or appropriate for repair or reconstruction.

Section 10. Creation of Easements: Each of the easements provided for in this Declaration shall be deemed to be established upon the recordation of this Declaration, and shall thenceforth be deemed to be covenants running with the land for the-use and benefit of the Lots superior to all other encumbrances applied against or in favor of any portion of the Property which is the subject of this Declaration. In furtherance of the easements provided for in this Declaration, the individual grant deeds to Lots may, but shall not be required to, set forth said easements.

ARTICLE X

USE RESTRICTIONS

Section 1. Animals: No animals, livestock or poultry of any kind shall be raised, bred or kept on any Lot, except that dogs, cats or other household pets may be kept provided that they are not kept, bred or maintained for any commercial purposes.

Section 2. Signs: No advertising signs (except one of not more than four (4) square feet "for rent" or for sale" sign per Lot), billboards, unsightly objects or nuisances shall be erected, placed or permitted to remain on the Properties, nor shall the Properties be used in any way or for any purpose which may endanger the health or unreasonably disturb any Owner of any townhouse or any resident thereof. Further, no business activities of any kind whatever shall be conducted in any building or in any portion of the Properties. Provided, further, however, the foregoing covenants shall not apply to the business activities signs and billboards, or the construction and maintenance of buildings, models, if any of the builder, its agents and assigns, during the construction and sale period, and of the Association, its successors and assigns, in furtherance of its powers and purposes as herein set forth.

Section 3. Clotheslines: 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

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view of neighboring residences and streets. All rubbish, trash or garbage shall be regularly removed from the Properties and shall not be allowed to accumulate thereon. All clotheslines shall be confined to patio areas.

Section 4. Common Areas: The Common Area shall remain undivided and shall at all times be owned by the Association or its successors, 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.

Section 5. Vehicles: No vehicle of any type which is abandoned or inoperable shall be stored or kept on any Lot or on any of the Common Areas within the Properties in such a manner as to be seen from any other Lot or from any streets or alleyways within the Properties.

Section 6. Lights: Except as initially installed by the developer, no spotlights, floodlights or other high intensity lighting shall be placed or utilized on any Lot which will allow light to be directed or reflected on any other Lot. No window air conditioners shall be installed in any window of any home which window is visible from the Common Area ~ r any other Lot.

Section 7. Temporary Structures: No structure of temporary character, trailer, basement, tent, shack, garage, barn or other outbuildings shall hereafter be used on any Lot at any time, either temporarily or permanently.

Section 8. Nuisance: No obnoxious or offensive activity shall be carried on, in or upon any Lot, or the Common Area, no shall anything be done thereon which may be or may become an annoyance or nuisance to the neighborhood or which may in any way interfere with the quiet enjoyment of each of the Owners of his respective Lot or which shall in any way increase the rate of insurance.

Section 9. Antennas: Antennas for reception of television and radio signals of less than ten (10) feet in height from highest point of the roof of the residence upon a Lot may be erected. No other antennas or device for the transmission or reception of television or radio signals or any other form of electromagnetic radiation shall be erected, used or maintained outdoors on any Lot, whether attached to a building or structure or otherwise, without written approval of the Association. The Association shall consider in addition to normal architectural appearance considerations, whether the use of such device will be a nuisance and interfere with television and radio reception of Owners of other Lots.

Section 10. Extraction of Minerals: No oil drilling oil development, oil refining, quarrying or mining operations of any kind shall be permitted on the Property, nor shall oil wells, tanks, tunnels or mineral excavations be permitted upon the surface of any portion of the Property or within five hundred (500) feet below the surface of the Property nor shall oil, or natural gas be erected, maintained or permitted upon any portion thereof.

Section 11. Drainage: No Owner may interfere with or alter the grading established by Declarant or in any manner impede the drainage pattern within the Property which exists as of the date of the sale of the first Lot, or in any way interfere with or impede the drainage from any Lot into the drainage system established by Declarant.

Section 12. Common Walls: Those Owners who have a common wall adjoining their Lots shall equally have the right to the use of such wall, except that each shall have the exclusive right to

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the use of the interior surface of the wall on his side. Neither Owner shall use any portion of a wall as to interfere with the use and enjoyment of the other Owner.

Hi-fi speakers, television sets, radios and other noise or vibration causing appliances and equipment shall be placed with sufficient space between such items and any common wall so as to minimize noise transmission which may interfere with the enjoyment of the other Owner.

Section 13. Window Covers: Curtains, drapes, shutters or blinds may be installed as window covers. No window shall be covered with aluminum foil or similar material.

Section 14. Unsightly Items: All weeds, rubbish, debris, or unsightly material or objects of any kind shall be regularly removed from each Lot and shall not be allowed to accumulate thereon. All clotheslines, refuse containers, woodpiles, storage area, machinery and equipment shall be prohibited upon any Lot unless obscured from the view of adjoining streets or portions of the Property from a height of six (6) feet or less. Any fence or screen required by this Section shall comply with the Architectural Standards or any other standards promulgated by the Board as to size, color or other qualification for permitted fences or screens.

Section 15. View Restriction: No vegetation, improvement, maintained on any Lot in such location or of such height as to obstruct the view from any other Lot. Each Owner shall be responsible for periodic trimming and pruning of all hedges, shrubs, and trees located on his Lot so as not to obstruct the view of adjacent Owners. In the event of a dispute between Owners as to the obstruction of a view, such dispute shall be submitted to the Architectural Committee whose decisions in such matters shall be binding. Any such obstruction shall, upon request of the Architectural Committee be removed or otherwise altered to the satisfaction of the Architectural Committee by the Owner of the Lot upon which the obstruction is located.

Section 16. No Further Subdivision: No Lot may be further subdivided without the prior approval of the Board; provided, however, that nothing in this Section shall be deemed to prevent an Owner from, or require the approval of the Board for: (1) selling a Lot or (2) transferring or selling any Lot to more than one person to be held by them as tenants in common, joint tenants, tenants by the entirety or as community property.

ARTICLE XI

GENERAL PROVISIONS

Section 1. Enforcement: The Association, or any Owner, shall have the right to enforce, by any proceeding at law or in equity, all restrictions, conditions, covenants, reservations, liens and charges now or hereafter imposed by the provisions of this Declaration. Failure by the Association or by any Owner to enforce any covenant or restriction herein contained shall in no event be deemed a waiver of the right to do so thereafter.

Section 2. Severability: Should any of the covenants contained in this Declaration be void or be or become unenforceable in law or in equity, the remaining portions of this Declaration shall, nevertheless, be and remain in full force and effect.

Section 3. Amendment: The covenants and restrictions of this

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Declaration shall run with and bind the land for a term of thirty (30) 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 during the first thirty (30) year period by an instrument signed by not less than ninety percent (90%) of the Lot Owners and thereafter by an instrument signed by not less than seventy-five percent (75%) of the Lot Owners. Any amendment must be recorded.

Section 4. 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, except that all or any portion of The Trails at Scottsdale IV which is described in Exhibit C may be annexed to the Properties at any time without a vote of the Owners by the recordation of a declaration of annexation executed by Declarant.

Section 5. FHA/VA Approval: As long as there is a Class B membership, the following will require the prior approval of the Federal Housing Administration or the Veterans Administration: annexation of additional properties or Common Area and amendment of this Declaration of Covenants, Conditions and Restrictions.

Section 6. Construction: The provisions of this Declaration shall be liberally construed to effectuate its purpose of creating a plan for the development of a residential community or tract and for the maintenance of the Property. The Article and Section headings have been inserted for convenience only, and shall not be deemed limitations in resolving questions or interpretation or construction.

Section 7. Singular Includes Plural: Whenever the context of this Declaration requires same, the singular shall include the plural and the masculine shall include the feminine.

Section 8. Cumulative Remedies: All rights, options and remedies of Declarant, the Association, the Owners or Mortgagees under this Declaration are cumulative, and no one of them shall be exclusive of any other, and Declarant, the Association, the Owners and the Mortgagees shall have the right to pursue any one or all of such rights, options and remedies or any other remedy or relief which may be provided by law, whether or not stated in this Declaration.

Section 9. Conflicts: In case of any Conflict between this Declaration and the Articles of Incorporation or Bylaws of the Association, this Declaration shall control.

Section 10. Nuisance: The result of every act or omission, any provision, condition, restriction, covenant, easement or reservation contained in this Declaration is violated in whole or in part, is hereby declared to be and constitutes a nuisance, and every remedy allowed by law or equity against a nuisance, either public or private, shall be applicable against every such result, and may be exercised by the Architectural Committee, the Association, or any other Owner in the Property. Such remedy shall be deemed cumulative and not exclusive.

IN WITNESS WHEREOF, the undersigned, being the Declarant herein, has hereunto set its hand
October 2, 1980.

STATE OF ARIZONA)) ss. County of Maricopa) and seal this 2 day of October, 1980

PIONEER TRUST COMPANY OF ARIZONA, As Trustee ~, By Trust Officer

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On this 2nd day of October, 1980, before me, the undersigned Notary Public, personally appeared, who acknowledged himself to be of Pioneer Trust Company of Arizona, an Arizona corporation, and that he as such officer being authorized so to do, executed the within instrument for the purposes therein contained by signing the name of said corporation, as Trust Officer, by himself as such officer.

WITNESS my hand and official seal.

My Commission Expires:

EXHIBIT "A.

Lots At to 344, inclusive, and lots 427 to 452, inclusive, THE TRAILS AT SCOTTSDALE III, according to Book 212 of Maps, page 3 and certificate of Correction recorded in Docket 13725, page 4~)4 (lots 443 and 452) and Certificate of Correction record. in Docket 13725, page 495 (Tracts "R" and IS") and Certificate of Correction recorded in Docket 14211, page 449 (Lots 2~12, 293, 294 and 295 and Tract "Rae), records of Maricopa County, Arizona.