

Request & Ackup: DRW

DECLARATION OF
COVENANTS, CONDITIONS AND RESTRICTIONS
FOR
COUNTRYSIDE HEIGHTS
LOTS 1-125 AND COMMON AREAS "A" AND "B"

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DECLARATION OF
COVENANTS, CONDITIONS AND RESTRICTIONS
FOR COUNTRYSIDE HEIGHTS

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AMENDED AND RESTATED

DECLARATION OF

COVENANTS, CONDITIONS AND RESTRICTIONS

FOR COUNTRYSIDE HEIGHTS

LOTS 1-125 and Common Areas "A" and B"

THIS DECLARATION, made this 8TH day of DECEMBER, 1989, by FIRST AMERICAN TITLE INSURANCE AGENCY OF PIMA, INC., an Arizona corporation, as Trustee under Trust No. 4303 and U.S. HOME CORPORATION, a Delaware corporation, as Beneficiary, its successors and assigns, hereinafter referred to as "Declarant."

WHEREAS, Declarant is the owner of certain real property in the County of Pima, State of Arizona, described on Exhibit A attached hereto and incorporated by reference herein, which shall hereinafter be referred to as the "Property"; and,

WHEREAS, said Plat designates the areas and dimensions for each Lot on the Property, which Lot areas are numbered 1-125, as well as Common Areas "A" and "B", boundary lines, easements, and setbacks;

WHEREAS, Declarant proposes to construct individual Residential Dwelling Units upon the subdivided portion of the Property and to sell and convey the same, subject to the covenants, restrictions, uses, limitations, obligations, easements, equitable servitudes, charges and liens, hereinafter set forth, each of which is for the benefit of the Property and the subsequent Owners thereof.

NOW, THEREFORE, Declarant hereby declares that the Property is and shall be held, conveyed, encumbered, leased and used subject to the following covenants, conditions, restrictions, uses, limitations, obligations, easements, equitable servitudes, charges and liens all of which are for the purpose of enhancing and protecting the value, desirability and attractiveness of the Property. The covenants, conditions, restrictions, uses, limitations, obligations, easements and equitable servitudes, charges and liens set forth herein shall run with the Property; shall be binding upon all persons having or acquiring any interests in the Property or any part thereof; shall inure to the benefit of and be binding upon Declarant, its successors in interest, and may be enforced by Declarant or its successors in interest, by any Owner or his successors in interest or by any entity having an interest in

their enforcement. The provisions hereof completely amend, restate and supercede that certain Declaration of Covenants, Conditions and Restrictions recorded in Docket 8216 at Pages 2265-2311, Pima County Records.

No provision contained herein shall be construed to prevent or limit Developer's right to complete development of the Property and construction of improvements thereon, or to modify the design of the homes or Residential Dwelling Units to be built upon said Property, nor Developer's right to maintain model homes, construction, sales or leasing offices or similar facilities on the Property, nor Developer's right to post signs incidental to construction, sales or leasing, nor Developer's right to do anything that it may, in its sole discretion, deem necessary and proper for the full development of the Property, including, subject to the conditions of this Declaration, Developer's right to resubdivide all or any portion of the Property.

ARTICLE I

DEFINITIONS

Unless the context otherwise specifies or requires, the following words and phrases when used herein shall have the meanings hereinafter assigned.

Section 1.01. "Annual Assessments" shall mean those assessments levied by Countryside Heights Homeowners Association (hereinafter "Association") and used to promote the health, safety, welfare and recreation of the Members and their guests and family, for the improvement, operation and maintenance of the Common Property, including, but not limited to, the private streets, private drainageways, buffer zone landscaping and for all other purposes set forth in the Articles, Bylaws and this Declaration.

Section 1.02. "Articles" shall mean the Articles of Incorporation of the Association and amendments thereto which are filed in the office of the Arizona Corporation Commission.

Section 1.03. "Board" shall mean the Board of Directors of the Association.

Section 1.04. "Bufferyard" shall mean that certain portion of the Property designated as "BUFFERYARD 'D'" on the Plat and which is subject to an easement in favor of the Association as further described in Section 5.04 herein.

Section 1.05. "Bylaws" shall mean the code of rules adopted for the regulation and management of the affairs of the Association, together with any amendments thereto.

Section 1.06. "Club Member" shall mean and refer to every person and/or entity who holds membership in the Countryside Community Club Association or who has use privileges of the Club Property arising out of Lot Ownership.

Section 1.07. "Common Area(s)" shall mean real property, whether improved or unimproved, designated as Common Areas "A" and "B" on the Plat and owned by the Association for the common use and enjoyment of the Owners.

Section 1.08. "Common Property" shall mean the Common Areas including any personal property now or hereafter owned or leased by the Association.

Section 1.09. "Countryside Community Club" or "Club Property" shall mean all that real property described on Exhibit B attached hereto and incorporated by reference herein, and the improvements now or hereafter located thereon.

Section 1.10. "Countryside Community Club Association" or "C.C.C.A." shall mean that certain nonprofit corporation which is formed for the operation, maintenance, management, administration and improvement of the Countryside Community Club, its successors and assigns.

Section 1.11. "Declarant" means FIRST AMERICAN TITLE INSURANCE AGENCY OF PIMA, INC., an Arizona corporation as Trustee under Trust No. 4303 and not otherwise, and U.S. HOME CORPORATION, a Delaware corporation, as Beneficiary, its successors and assigns if such successors and assigns should acquire more than one undeveloped Lot from the Declarant for the purpose of development.

Section 1.12. "Declaration" or "Restrictions" shall mean this instrument and any amendments thereto.

Section 1.13. "Developer" shall mean U.S. HOME CORPORATION, a Delaware corporation authorized to do business in Arizona, and its successors in interest pursuant to an instrument duly recorded conveying its interest as Developer.

Section 1.14. "Lot" shall mean any plot of land which is part of the Property and is identified upon the recorded Plat of the Subdivision as a Lot, and all improvements thereon which are conveyed or are to be conveyed by Declarant or Developer.

Section 1.15. "Member" shall mean the Owner of a Lot who is entitled to membership in the Association, who has privileges of use and enjoyment of the Common Property, and who has a duty to pay assessments for such privileges, as further provided for herein.

Section 1.16. "Membership Assessments" shall mean those assessments to be paid by each Owner to the C.C.C.A. for privileges of the use and enjoyment of the Club Property and for the purpose of maintaining a fund for the operation, maintenance, management, administration and improvement of the Club Property.

Section 1.17. "Owner(s)" or "Lot Owner" shall mean and refer to (1) the record owner, whether one or more persons or entities, or (2) the holder of equitable or beneficial title (or legal title if same has merged) of any Lot under the executory contract for the sale of real property. The foregoing does not include persons or entities who hold an interest in any Lot merely as security for the performance of an obligation, or a lessee or tenant of an Owner as defined above.

Section 1.18. "Person" shall mean a natural individual or any other entity which the legal right to hold title to real property.

Section 1.19. "Plat" shall mean the Subdivision Plat covering the Property recorded in Book 41, at Pages 99 in the Book of Maps and Plats, Pima County Recorder's Office, Pima County, Arizona.

Section 1.20. "Property" or "Subdivision" shall mean all that real property which is identified in the Plat as Lots 1-125 and Common Areas "A" and "B". The legal description of said property is set forth on Exhibit "A" attached hereto and incorporated by reference herein.

Section 1.21. The "Regulations" shall mean the regulations adopted by the Board pursuant to the Bylaws. .:

Section 1.22. "Residential Dwelling Unit" shall mean all of that permanent physical structure located on the property of the Owner, including but not limited to, the single-family residential dwelling and carport or garage.

Section 1.23. "Residential Dwelling Unit Resident" shall mean the person(s) and family entitled by ownership or by lease agreement to reside in a Residential Dwelling Unit.

Section 1.24. The "Rules" shall mean the rules adopted by the Board pursuant to the Bylaws.

ARTICLE II

GENERAL RESTRICTIONS

All property within the Subdivision shall be held, used and enjoyed subject to the following limitations and restrictions.

Section 2.01. Insurance Rates. Nothing shall be done or kept on any Lot or upon the Common Property which will increase the rate of or which will result in the cancellation of insurance on any such property or which would be in violation of any law.

Section 2.02. Signs. No signs of any kind shall be displayed which are visible from neighboring property without the approval of the Board except:

A. Such signs as may be required by legal proceedings;

B. Such signs as may be used by Developer in connection with the development of the Subdivision and sale of Lots; and

C. Such signs as may be approved by the Board indicating a Lot is for sale or lease.

Where the Board's approval is required, it shall approve the nature, composition, number, size and location of all signs, unless excepted hereunder.

Section 2.03. Animals. No animals of any kind shall be raised, bred, or kept, except that a reasonable number of generally recognized house or yard pets may be kept, provided that they are not kept, bred or maintained for any commercial purpose. No animal shall be allowed to become a nuisance. A "reasonable number" as used in this Section shall ordinarily mean no more than two pets per household; provided, however, that the Board may determine, in its sole and absolute discretion, whether a particular animal is a generally recognized house or yard pet or a nuisance, or whether the number of animals is reasonable.

Section 2.04. Trash Containers. No garbage or trash shall be placed or kept on any property within the Subdivision, except in covered containers of a type, size, and style which have been installed by the Developer or approved by the Board. All rubbish, trash or garbage shall be removed from the Lots and shall not be allowed to accumulate thereon. No incinerators shall be allowed.

Section 2.05. Mail Boxes. The Board shall determine the location, color, size, design, lettering and all other particulars of all mail and paper delivery boxes, and standards, brackets and name signs for same in order that the area be strictly uniform in appearance with respect to the matters referred to in this Section and in order that the boxes comply with standards promulgated by the United States Postal Service.

Section 2.06. Vehicles. The use of all vehicles, including but not limited to trucks, automobiles, bicycles, and motorcycles shall be subject to the Rules, which may prohibit or limit the use of said vehicles, provide parking regulations, or adopt other rules regulating same.

Section 2.07. Backboards. No basketball backboards of any kind shall be erected or attached, by either a permanent or temporary method, to any Residential Dwelling Unit.

Section 2.08. Garage Doors. All garage doors of the Residential Dwelling Units shall remain fully lowered and closed at all times unless the door is being used for purposes of ingress and egress.

Section 2.09. Aerials. No aerial, for use of TV, radio or other form of communication reception, of a temporary or permanent character, shall be erected on any Lot or attached to the principal residence located upon any Lot in this Subdivision unless approved by the Board of Directors.

Section 2.10. Nuisances. After completion of construction of any Residential Dwelling Units and landscaping of Lots, no rubbish or debris of any kind shall be placed or permitted to arise therefrom so as to render any such property or any portion thereof unsanitary, unsightly, offensive or detrimental to any other property in the vicinity thereof or to its occupants. No noise or other nuisance shall be permitted to exist or operate upon such property so as to be offensive or detrimental to its occupants. Without limiting the generality of any of the foregoing provisions, no exterior speakers, horns, whistles, bells or other sound devices, except security devices used exclusively for security purposes, shall be located, used or placed on any such property without the prior written approval of the Board. The Board in its sole discretion shall have the right to determine the existence of any such nuisance.

Section 2.11. Unsightly Articles. No unsightly articles shall be permitted to remain so as to be visible from adjoining Lots or from the street or public way. At no time shall there be any outside storage of commercial vehicles, boats, trailers, campers, motor vehicles, mobile homes or

house trailers of any type on the Property or adjacent thereto. ☒ At no time shall there be any outside storage of motor vehicles in stages of construction, reconstruction, modification or rebuilding of parts of motor vehicles such as frames, bodies, engines or other parts or accessories: Any and all items stored in a carport or garage area shall be stored so as to conceal the same from view from adjoining property or from the street or public way. ☐ Grass, shrub or tree clippings and all clotheslines, machinery, storage piles, wood piles, garbage or trash containers shall be kept within an enclosed structure or appropriately screened from view of adjoining property or from the street or public way except when necessary to make available for collection and then, only the shortest time reasonably necessary to effect such collection. The Board shall have sole discretion in determining if any activity by an Owner is in violation of this Section 2.11.

Section 2.12. Diseases and Insects. No Owner shall permit any thing or condition to exist upon any property within the Subdivision which shall induce, breed or harbor infectious plant diseases or noxious insects.

Section 2.13. Drainage. There shall be no interference with the established drainage pattern over any property within the Subdivision unless adequate provision is made for proper drainage conforming to applicable city and county rules, regulations, ordinances, and drainage criteria, and is approved by Pima County Flood Plain Board. For purposes hereof, "established drainage" is defined as the drainage which exists at the time the overall grading of the Property is completed, or which is shown on any plans conforming to city rules, regulations, ordinances, and drainage criteria approved by the Pima County Flood Plain Board.

Section 2.14. Improvements and Alterations. There shall be no excavation or construction or alteration which in any way alters the exterior appearance of any improvement in the Subdivision, including rocks, stones, gravel or earth without the prior written approval of the Board. No fences, hedges, clotheslines, or walls shall be maintained upon the Property except such as are installed in accordance with the initial construction of building located thereon or as approved by the Board.

Section 2.15. Public Access Easement. Pima County, Arizona, is hereby granted an easement for ingress, egress to, and maintenance and repair of, that certain water retention/detention basin located immediately adjacent to the Subdivision. Said easement is located and designated on the Plat as a "Public Accessway" within a portion of Common Area "A".

Section 2.16. Utility Easements. There is hereby created a blanket easement upon, across, over and under the Property for ingress, egress, installation, replacing, repairing and maintaining all utility and service lines and systems, including but not limited to water, sewers, gas, telephones, electricity, television cable or communication lines and systems, etc. By virtue of this easement, it shall be expressly permissible for the providing utility or service company to install and maintain facilities and equipment on the Property and to affix and maintain wires, circuits and conduits on, in, and under the roofs and exterior walls of Residential Dwelling Units. Notwithstanding anything to the contrary contained in this Section, no sewers, electrical lines, water lines, or other utilities or service lines may be installed or relocated on the Property except as initially designed and installed or thereafter approved by the Board. This easement shall in no way affect any other recorded easements on the Property. In no event shall any portion of the above-mentioned easements for utilities be construed to authorize the placing or installing of sewers, electrical lines, water lines and other utilities under any permanent building structure constructed on the Property. This easement shall be limited to improvements as originally constructed. There shall be an access easement for the delivery and collection of the U.S. Mail.

Section 2.17. Electrical Service and Telephone Lines. All electrical service and telephone lines shall be placed underground and no outside electrical lines shall be placed overhead; provided, however, that if the provisions hereof are waived by the Declarant, it shall not be prohibited from erecting temporary power or telephone structures incident to construction; and further provided, however, that one such waiver shall not constitute a waiver as to other Lots or lines.

Section 2.18. Right of Inspection. During reasonable hours, any member of the Board, or any authorized representative of any of them shall have the right to enter upon and inspect any property within the Subdivision (except the interior of Residential Dwelling Units), for the purpose of ascertaining whether or not the provisions of this Declaration have been or are being complied with, and such persons shall not be deemed guilty of trespass by reason of such entry.

Section 2.19. Violation of Rules. If any Owner, his family, or any licensee, tenant, or lessee or invitee violates the Rules, the Board may impose a special assessment upon such Owner of not more than Fifty Dollars (\$50.00) for each violation and/or may suspend the right of such person to use the Common Property, with the exception of the Owner's right of ingress and egress through the Common Areas, under such condi-

tions as the Board may specify, for a period not to exceed thirty (30) days for each violation. Before invoking any such assessment or suspension, the Board shall give such person notice and a hearing.

Any assessment imposed hereunder which remains unpaid for a period of thirty (30) days or more, shall become a lien upon the Owner's Lot and recorded pursuant to this Declaration.

Section 2.20. Exemption of Developer. Nothing in these Restrictions shall limit the right of Developer to complete excavation, grading, and construction of improvements to any property within the Subdivision owned by Declarant, or to alter the foregoing, including alterations of design or materials or both, or to construct such additional improvements as Developer deems advisable in the course of development of the Subdivision so long as any Lot or Residential Dwelling Unit therein remains unsold, or to use any structure in the Subdivision as a model home or real estate sales or leasing office. The rights of Developer hereunder or elsewhere in the Restrictions may be assigned.

ARTICLE III

OWNERS' PERMITTED USES, RESTRICTIONS AND RIGHTS OF DWELLING UNITS AND LOTS

Section 3.01. Private Residential Purposes. Except as provided for in Section 4.01, Lots and the Residential Dwelling Units thereon shall be occupied and used by the respective Owners solely for private residential use of Owner, his family, tenants and social guests and for no other purpose. No gainful occupation, profession, trade, or non-residential use shall be conducted on any such property, except that Developer may maintain sales or construction offices and sales models on the Property.

Section 3.02. Renting. The Owner shall have the right to lease or rent his Residential Dwelling Unit; provided, however, that any lease agreement, verbal or written, with a tenant or lessee shall provide that any such tenant or lessee shall abide by the Rules, Bylaws, Articles, and the provisions of this Declaration.

Section 3.03. Common Walls. The rights and duties of the Owners with respect to common walls shall be as follows:

A. Each wall, including patio walls, which is constructed as part of the original construction of the

Residential Dwelling Unit, any part of which is placed on the dividing line between separate Residential Dwelling Units, shall constitute a common wall.

With respect to any such wall, each of the adjoining Owners shall assume the burden and be entitled to the benefits recited in this Section 3.03, and to the extent it is consistent with this Section, the general rules of law regarding common walls shall be applied.

B. The Owners of contiguous Residential Dwelling Units who have a common wall shall have reciprocal easements for support and an equal right to use such wall provided that such use by one Owner does not interfere with the use and enjoyment of same by the other Owner.

C. Unless other provisions of this Section 3.03 are applicable, the costs of reasonable repair and maintenance of a common wall shall be shared equally by the Owners who make use of the common wall.

D. In the event any common wall is damaged or destroyed through the act of one adjoining Owner, or any of his guests or agents or members of his family (whether or not such act is negligent or otherwise culpable) so as to deprive the other 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 condition as formerly without cost to the other Owner.

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

F. Notwithstanding anything to the contrary herein contained, there shall be no impairment of the structural integrity of any common wall without the prior consent of the Board. In addition to meeting the other requirements of these Restrictions and of any building code or similar regulation or ordinances, any Owner proposing to modify, make additions to or rebuild his Residential Dwelling Unit in any manner which requires the extension or other alteration of any common wall shall first obtain the written consent of the Board which shall determine the adjoining Owner's preference concerning the proposed modification, extension or alteration of the common wall prior to giving any written consent thereto.

G. In the event of a dispute between Owners with respect to the repair or rebuilding of a common wall or with respect to the sharing of cost thereof, upon written request of one of such Owners delivered to the Association, the matter shall be heard and determined by the Board; the judgment of the Board in this matter shall be final and binding.

Section 3.04. Easement for Encroachments. Each Lot shall be subject to an easement for encroachments created by construction, settling and overhangs, as designed or constructed by the Developer. A valid easement for said encroachments and for the maintenance of same, so long as it exists. In the event Residential Dwelling Units are partially or totally destroyed, and then rebuilt, the Owners agree that minor encroachments of parts of the adjacent Residential Dwelling Units due to construction shall be permitted and that a valid easement for said encroachments and the maintenance thereof shall exist.

Section 3.05. Architectural Control. Except for the original construction and buildout of the Property by Developer, or its assigns and successors in interest, (no building, fence, wall, or other structure shall be commenced, erected or maintained upon a Lot, nor shall any exterior addition to, or change in, or alteration of a Residential Dwelling Unit or the exterior color scheme, roof or finish thereof 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 Board of Directors, or by an architectural committee composed of three (3) or more representatives appointed by the Board. In the event the Board or its designated committee, fails to approve or disapprove such design and location within thirty (30) days after said plans and specifications have been submitted to it, approval will not be required and this Section will be deemed to have been fully complied with.

Section 3.06. Sanitation and Fire Company Services. Each Owner shall be responsible for payment of the cost of all utilities used for his or her Lot. Furthermore, each Owner shall be responsible for obtaining the services of a fire company and trash removal service, unless the Board elects to contract for such services on behalf of the Lot Owners.

ARTICLE IV

OWNERSHIP, USE AND MANAGEMENT OF THE COMMON PROPERTY

Section 4.01. Conveyance of the Common Areas. Declarant shall grant and convey to the Association and the Association shall receive ownership of the Common Areas prior to the sale of any Lot in the Subdivision. Upon such conveyance and grant, the Association shall succeed to all rights, duties and powers with respect to the Common Areas as prescribed by law, and set forth in the Articles, Bylaws and this Declaration.

Section 4.02. Owner's Easements of Enjoyment. Every Owner shall have a right and easement of enjoyment in and to the Common Property which shall be appurtenant to and shall pass with title to every Lot subject to Section 4.03.

Section 4.03. Conditional Use of Common Property. The use of the Common Property by the Owner, his family, tenants, lessees or contract purchasers who reside in a Dwelling Unit is subject to the following conditions:

A. Rules, Regulations and Restrictions. Each Owner agrees that in using the Common Property he will comply with the provisions of the Articles, Bylaws and Rules of the Association and these Restrictions.

B. Delegation of Use. The Owner may delegate his right of enjoyment of the Common Property to the members of his family, his tenants, lessees or contract purchasers who reside in a Residential Dwelling Unit, subject to such Rules, Regulations and limitations as the Association may, from time to time, establish. Such delegation shall not relieve said Owner of his obligations and responsibilities as a Member under the provisions of the Articles, Bylaws, Rules and this Declaration.

C. Easements. Easements may be granted in favor of the general public or portions thereof over certain portions of the parking lots, roads and sidewalks conveyed to the Association for ingress and egress from any sales office or model home complex of Developer or for parking incidental thereto.

Section 4.04. Management. The Board shall control, maintain, manage and improve the Common Property as provided in this Declaration, the Articles and Bylaws. Such right and power of control and management shall be exclusive. In managing the Common Property, the Association hereby accepts all responsibility for the control, maintenance, safety and

liability of such Common Property including the collecting and paying of the taxes assessed by the County Assessor on the Common Areas, and the insurance coverage as provided in Section 5.05.

Section 4.05. Damage. Each Owner shall be liable to the Association for any damage to the Common Property which may be sustained by reason of the negligence or willful misconduct of said Owner or of his family and guests, both minor and adult. In the case of joint ownership of a Lot, the liability of such Owners shall be joint and several, except to the extent that the Association has previously contracted in writing with such joint assessment against the Lot and may be collected in the manner provided for the collection of other assessments.

Section 4.06. Restrictions on Conveyance of Common Areas and Facilities. The Common Areas and property, title to which is held by the Association, may not be alienated, released, transferred, hypothecated or otherwise encumbered without the prior approval of all holders of first mortgage liens on Lots, the consent of two-thirds (2/3) of the Lot Owners and the approval of the Federal Housing Administration or the Veterans Administration (if the Subdivision is approved by the Federal Housing Administration or the Veterans Administration), except that the Association shall at all times have the right to grant and convey to any person or entity easements, or rights of way, in, over, or under any Common Area for the purpose of constructing, erecting, operating or maintaining thereon, therein, and thereunder (1) roads, streets, walks, pathways, driveways, and drainageways; (2) temporary overhead or permanent underground lines, cables, wires, conduits, or other devices for the transmission of electricity for lighting, heating, power, telephone, cable television, and other purposes; (3) sewers, storm drains and pipes, water systems, water, heating and gas lines or pipes; (4) any similar public or quasi-public improvements or facilities; and (5) such improvements as may be permitted under Section 5.04(B) of this Declaration, provided that if ingress or egress to any residence is through the Common Areas, then any conveyance is subject to the Lot Owner's easement for the same.

ARTICLE V

THE ASSOCIATION: THE COUNTRYSIDE HEIGHTS HOMEOWNERS ASSOCIATION

Section 5.01. Organization.

A. Association. The Association is or shall be a nonprofit Arizona corporation charged with the duties set forth in the Articles, Bylaws, and this Declaration. The Association shall be legally constituted and in existence prior to the conveyance of the first Lot.

B. Board of Directors and Officers. The affairs of the Association shall be conducted by the Board of Directors and such officers and committees as the Board may elect or appoint, in accordance with the Articles and Bylaws, as same may be amended from time to time. The composition of the Board shall be defined in the Bylaws.

C. Personal Liability. No member of the Board or any committee of the Association or any officer or employee of the Association, or the Declarant shall be personally liable to any Owner, or to any other party, including the Association, for any damage, loss or prejudice suffered or claimed on account of any act, omission, error, or negligence of the Association, the Board, or any representative or employee of the Association, or any committee, or any officer of the Association, provided that to such person has, upon the basis of such information as may be possessed by him, acted in good faith, without willful or intentional misconduct.

Section 5.02. Membership.

A. Qualification. Each Owner of a Lot (which is subject to assessment) shall be a member of the Association. The foregoing is not intended to include persons or entities who hold an interest in a Lot merely as security for the performance of an obligation. No Owner shall have more than one membership for each Lot owned.

B. Transfer of Membership. Membership of each Owner (including Declarant) in the Association shall be appurtenant to the Lot owned and shall not be transferred, pledged, or alienated in any way except upon the transfer of ownership to said Lot, and then only to the transferee thereof. Any attempt to make a prohibited transfer shall be void. Any transfer of ownership of a Lot shall operate automatically to transfer said membership to the new Owner thereof.

Section 5.03. Voting Rights. The Association shall have two classes of voting membership:

Class A: Class A Members shall be all Owners, with the exception of 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 (1) vote be cast with respect to any Lot.

Class B: The Class B Member shall be the Declarant and shall be entitled to three (3) votes for each Lot owned. 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 the Class A membership equal the total votes outstanding in the Class B membership; or
- (b) on October 1, 1994.

Section 5.04. Maintenance, Repair and Upkeep.

A. Responsibilities of Owner. Maintenance, repair and upkeep of the Lots and Residential Dwelling Units, except as otherwise specifically provided for in Paragraph C of this Section, shall be the sole responsibility of each Owner. All fixtures and equipment installed or located within a Lot, commencing at a point where the utility lines, pipes, wires, conduits or systems enter the Owner's Lot line shall be maintained and kept in repair the Owner thereof. Termite control shall be the responsibility of the Owner. All maintenance and repair of the Lot, all improvements in landscaping thereon including, but not limited to, carports and garages, facia, driveways, sidewalks, utilities, and the Residential Dwelling Unit, shall be the sole obligation and expense of the individual Residential Dwelling Unit Owners. Notwithstanding the foregoing, the Association shall have the responsibility of maintaining the landscaping upon the Bufferyard.

B. Failure to Maintain Standard of Upkeep. An Owner shall do no act nor any work that will impair the structural soundness or integrity of the Lot and Residential Dwelling Unit or impair any easement or hereditament, nor do any act nor allow any condition to exist which will adversely affect the other Lots and Residential Dwelling Units or their Owners. In the event any Owner fails to maintain his Lot or the exterior of his Residential Dwelling Unit in a manner in keeping with the general neighborhood, then the Association, after approval by two-thirds (2/3) of the vote of the Board of Directors, shall have the right, through its agents and

employees, to enter upon the subject property, and to repair, maintain, and restore the Lot, and the exterior of the Residential Dwelling Unit, and any other improvements erected on said Lot. The cost of such exterior maintenance shall be added to and become part of the assessment to which such Lot is subject. The Board in its sole discretion shall also have the right to determine whether or not a Lot or the exterior of a Residential Dwelling Unit is in need of maintenance, repair and upkeep in order to conform to the standards of the general neighborhood, and the Board shall use a reasonably high standard to determine whether such maintenance, repair and upkeep is required so that the Lots as a whole will reflect a high pride of ownership.

C. Responsibilities of Association. The Association, or its duly delegated representative or agent, shall maintain the Common Property including, but not limited to the private streets and drainageways.

The Association shall also maintain the Bufferyard areas of the Lots in accordance with the standards set forth in Pima County, Arizona Zoning Code, Chapter 18.73 "Landscaping, Buffering and Screening Standards."

This article shall in no way be construed to mean that the Association is responsible for those duties of the Owner to maintain those portions of the Property, equipment and fixtures set forth in Section 5.04(A) above.

D. Easement for Bufferyard Maintenance. There is hereby created an easement of ingress, egress and maintenance upon, across, over, and under those portions of the Property designated as "Bufferyard D" upon the Plat and shall be used for those purposes set forth in Section 5.04 C hereof pertaining to Bufferyard maintenance by the Association. This easement shall inure to the benefit of the Association and its agents, employees, and independent contractors or assigns.

Section 5.05. Insurance Requirements.

A. Casualty Insurance on Insurable Common Property. The Association shall keep all Common Property, whether real or personal, insured against loss or damage by fire for the full insurance replacement cost thereof, and may obtain insurance against such other hazards and casualties as the Association may deem desirable. The insurance coverage with respect to the Common Property shall be written in the name of, and the proceeds thereof shall be payable to the Association. Insurance proceeds shall be used by the Association for the repair or replacement of the property for which the insurance was carried. Premiums for all insurance carried by the Association are common expenses included in the Annual Assessments made by the Association.

In addition to casualty insurance on the Common Property, the Association, through the Board of Directors, may elect to obtain and continue in effect, on behalf of all Owners, adequate blanket casualty and fire insurance in such form as the Board of Directors deems appropriate in an amount equal to the full replacement value, without deduction for depreciation or coinsurance, of all of the Residential Dwelling Units, including the structural portions and fixtures thereof, owned by such Owners. Insurance premiums from any such blanket insurance coverage, and any other insurance premiums paid by the Association shall be a common expense of the Association to be included in the regular Annual Assessments of the Owners, as levied by the Association. The insurance coverage with respect to the Residential Dwelling Units shall be written in the name of, and the proceeds thereof shall be payable to, the Association as trustee for the Owners.

B. Replacement or Repair of Property. In the event of damage to or destruction of any part of the Common Property, the Association shall repair or replace the same from the insurance proceeds available. If such insurance proceeds are insufficient to cover the costs of repair or replacement of the property damaged or destroyed, the Association may make a Reconstruction Assessment against all Owners to cover the additional cost of repair or replacement not covered by the insurance proceeds, in addition to any other assessment made against such Owner.

In the event that the Association is maintaining blanket casualty and fire insurance on the Residential Dwelling Units on the Lots of the Property, the Association shall repair or replace the same from insurance proceeds available.

C. Annual Review of Policies. All insurance policies shall be reviewed at least annually by the Board of Directors in order to ascertain whether the coverage contained in the policies is sufficient to make any necessary repairs or replacement of the property which may have been damaged or destroyed.

ARTICLE VI

COVENANTS FOR ASSESSMENTS

Section 6.01. Creation of the Lien and Personal Obligation to Pay Assessments. Each Owner, by acceptance of a deed to any Lot, whether or not it shall be so expressed in such deed is deemed to covenant and agree to pay the Associa-

tion: (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 Lot and shall be a continuing lien upon the property against which each assessment is made. Delinquent assessments, together with interest, costs, and reasonable attorneys' fees, shall also be the personal obligation of the person who was the Owner of such Lot at the time when the assessment was levied. The personal obligation for delinquent assessments shall not pass to his successors in title unless expressly assumed by them.

Section 6.02. Purpose of Annual Assessments. The Annual Assessments levied by the Association shall be used exclusively to promote the recreation, health, safety and welfare of the Members and their guests, for the improvement and maintenance of the Common Property including, but not limited to, the operation and maintenance of the private streets, the payment of ad valorem taxes levied upon the Common Area, the payment of ad valorem taxes levied upon the common areas, drainageways, sewer system and the recreational facilities, and for all other purposes set forth in the Articles, Bylaws and this Declaration.

Section 6.03. Basis and Maximum of Annual Assessments. Until January 1 of the year immediately following the conveyance of the first lot to an Owner, the maximum Annual Assessment, exclusive of Membership Assessments, shall be Three Hundred Dollars (\$300.00).

A. From and after January 1 of the year immediately following the conveyance of the first Lot to an Owner, the maximum Annual Assessment may be increased effective January 1 of each year without a vote of the membership in an amount the greater of 6 percent or in conformance with the rise, if any, of the Consumer Price Index (for U.S. City Average--All Urban Consumer--published by the Department of Labor, Washington, D.C.) for the preceding month of July.

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 above that established by the Consumer Price Index formula by a vote of the Members for the next succeeding two (2) years and at the end of each such period of two years, for each succeeding period of two years, provided that any such change 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 thirty (30) days nor more

than sixty (60) days in advance of the meeting setting forth the purpose of the meeting. The limitations hereof shall not apply to any change in the maximum and basis of the assessments undertaken as an incident to a merger or consolidation in which the Association is authorized to participate under its Articles of Incorporation.

C. The Board of Directors may fix the Annual Assessment at an amount not in excess of the maximum.

Section 6.04. Special Assessments for Capital Improvements. In addition to the Annual Assessments authorized above, the 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, reconstruction, repair or replacement of a capital improvement upon the Common Property, including fixtures and personal property related thereto, provided that any such assessment shall have the assent of two-thirds (2/3) of the votes of each class of Members who are voting in person or by proxy at a meeting duly called for this purpose.

Section 6.05. Notice and Quorum for Any Action Authorized Under Sections 6.03 and 6.04. Written notice of any meeting called for the purpose of taking any action authorized under Sections 6.03 or 6.04 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 twenty-five percent (25%) 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 requirements, and the required quorum at the subsequent meeting shall be one-half (1/2) of the required quorum at the preceding meeting. Such subsequent meeting shall be held not more than sixty (60) days following the preceding meeting.

Section 6.06. 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.

Section 6.07. 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 a Lot to an Owner. 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 in the event of its increase or decrease from the last Annual Assessment. The due dates of

such assessments, partial payment for which may become due on a periodic basis, 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 assessment on a specified Lot has been paid. A properly executed certificate of the Association as to the status of assessments on a Lot is binding upon the Association as of the date of its issuance.

Section 6.08. Effect of Nonpayment of Assessments; Remedies of the Association. Each Owner shall be deemed to covenant and agree to pay to the Association the assessments provided for herein, and hereby agrees to the enforcement of the assessments in the manner herein specified.

If an assessment is not paid within thirty (30) days after the due date, the assessment is deemed delinquent and shall bear interest at the rate of twelve percent (12%) per annum. Late payments shall first be credited toward interest due, then toward assessments first due. In the event the Association employs an attorney for collection of any assessments, whether by suit or otherwise, or to enforce compliance with or specific performance of the terms and conditions of this Declaration, or for any other purpose in connection with the breach of this Declaration, each Owner agrees to pay reasonable attorneys' fees and costs thereby incurred in addition to any other amounts due or any other relief or remedy obtained against said Owner. In the event of a default in payment of any such assessment when due, in which case the assessment shall be deemed delinquent, and in addition to any other remedies herein or by law provided, the Association may enforce each such obligation in any manner provided by law or in equity or without any limitation of the foregoing, by either or both of the following procedures.

A. Enforcement by Suit. The Board may cause a suit at law to be commenced and maintained in the name of the Association against an Owner to enforce each such assessment Obligation. Any judgment rendered in any such action shall include the amount of delinquency, together with interest thereon at the maximum rate permitted by law from the date of the delinquency until paid, court costs, and reasonable attorneys' fees in such amount as the court may adjudge against the delinquent Owner or Member.

B. Enforcement by Lien. There is hereby created a right of claim of lien, with power of sale, on each and every Lot to secure payment to the Association of any and all assessments levied against any and all Owners together with interest thereon at the maximum rate permitted by law per annum from the date of delinquency until paid, and costs of collection which may be paid or incurred by the Association in

connection therewith, including reasonable attorneys' fees. At any time within ninety (90) days after the occurrence of any default in the payment of any such assessment, the Association, or any authorized representative may, but shall not be required to, make a written demand for payment to the defaulting Owner, on behalf of the Association. Said demand shall state the date and amount of the delinquency. Each default shall constitute a separate basis for demand or claim or lien but any number of defaults may be included within a single demand or claim of lien. If such delinquency is not paid within ten (10) days after delivery of such demand, or, even without such a written demand being made, the Association may elect to file such a claim of lien on behalf of the Association against the Lot of the defaulting Owner. Such a claim of lien shall be executed and acknowledged by an officer of the Association, and shall contain substantially the following information:

- (1) The name of the delinquent Owner;
- (2) The legal description of the Lot against which claim of lien is made;
- (3) The total amount claimed to be due and owing for the amount of delinquency, interest thereon, collection costs, and reasonable attorneys' fees (with any proper offset allowed);
- (4) That the claim of lien is made by the Association pursuant to this Declaration; and,
- (5) That a lien is claimed against said Lot in an amount equal to the amount stated.

Upon recordation of a duly executed original or copy of such a claim of lien, and mailing a copy thereof to said Owner, the lien claimed therein shall immediately attach and become effective in favor of the Association as a lien upon the Lot. Such a lien shall have priority over all claims of liens created subsequent to the recordation of the claims of lien thereof, except only tax liens for real property taxes on any Lot, assessments on any Lot in favor of any municipal or other governmental assessing unit, and the lien of any first mortgage. Any such lien may be foreclosed by appropriate action in court or in the manner provided by law for the foreclosure of a realty mortgage or trust deed as set forth by the laws of the State of Arizona, as they may be changed or amended. The lien provided for herein shall be in favor of the Association and shall be for the benefit of all other Owners. The Association shall have the power to bid in at any foreclosure sale and to purchase, acquire, hold, lease, mortgage, and convey any Lot. In the event such foreclosure

is by action in court, reasonable attorneys' fees, court costs, title search fees, interest and all other costs and expenses shall be allowed to the extent permitted by law. Each Owner hereby expressly waives any objection to the enforcement and foreclosure of this lien in this matter. Notwithstanding the foregoing, the failure by an Owner to pay assessments provided for herein shall not constitute a default under any federally insured mortgage.

Section 6.09. No Exemption of Owner. No Owner is exempt from liability for payment of assessment by waiver of the use of enjoyment of the Common Property, or by abandonment of his Lot except as specifically provided in Section 6.11.

Section 6.10. Subordination of the Lien to Mortgages. The lien of the assessment 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, 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 of any Lot shall relieve such Lot from liability for any assessments thereafter becoming due or from the lien thereof.

Section 6.11. Mortgage Protection and Additional Assessment as Common Expense. Notwithstanding and prevailing over any other provision of this Declaration, or the Association's Articles or Bylaws, or the Rules, the following provisions shall apply to and benefit each holder of a first mortgage upon a Lot (called the first mortgagee):

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 observation or performance of any covenant, restriction, regulation, rule, article or bylaw, except for those matters which are enforceable by injunctive or other equitable actions, not requiring the payment of money, except as hereinafter provided.

B. During the pendency of any proceeding to foreclose the first mortgage, including any period of redemption, the first mortgagee (or receiver appointed in such action) may, but need not, exercise any or all of the rights and privileges of the Owner of the mortgaged Lot, 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, said first mortgagee shall be subject to all of the terms and conditions of these Restriction-

tions, 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 Lot through foreclosure suit or through any equivalent proceeding such as, but not limited to, the taking of a deed in lieu of foreclosure, shall acquire title to the mortgaged Lot free and clear of any lien authorized by or arising out of any of the provisions of this Declaration or Bylaws which secures 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, except as follows: Any such unpaid assessment against the Lot foreclosed against may be treated as an expense common to all of the Lots, which expense may be collected by a pro rata assessment against each of the Lots, including the Lot foreclosed against and which pro rata assessment may be enforced as a lien against each Lot in the manner provided for other assessments.

Any such unpaid assessment shall nevertheless continue to exist as the personal obligation of the defaulting Owner of the respective Lot to the Association, the Board 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 interest of the first mortgagee or other party which acquires title to a mortgaged Lot by foreclosure suit or by equivalent procedures for all assessments authorized by these Restrictions which accrue and are assessed after the date the acquirer has acquired title to the Lot free and clear of any right of redemption.

ARTICLE VII

COUNTRYSIDE COMMUNITY CLUB MEMBERSHIP AND USE PRIVILEGES

Section 7.01.

A. CCCA Organization. The CCCA is, or shall be, a non-profit Arizona corporation, charged with the duties set forth in the CCCA Articles, CCCA Bylaws, and this Declaration. The Association shall be legally constituted and in existence prior to the conveyance of the first Lot.

B. CCCA Board of Directors and Officers. The affairs of the CCCA shall be conducted by the Board of Directors and such officers and committees as the Board may elect or appoint, in accordance with the Articles and Bylaws,

as the same may be amended from time to time. The composition of the Board shall be defined in the Bylaws.

C. Personal Liability. No member of the CCCA Board of Directors, or any committee of the CCCA, or any officer or employee of the CCCA, or the Declarant, shall be personally liable to any Owner, or to any other party including the CCCA, for any damage, loss, or prejudice suffered or claimed on account of any act, omission, error, or negligence of the CCCA, the Board, or any representative or employee of the CCCA, or any committee, or any officer of the CCCA, provided that such person has, upon the basis of such information as may be possessed by such person, acted in good faith without willful or intentional misconduct.

Section 7.02. Use Privileges. The Residential Dwelling Unit Resident's membership to the Countryside Community Club shall carry with it the privilege for all members of such resident's immediate family to use and enjoy the facilities of the Club Property. The name of each Residential Dwelling Unit Resident and the name of all persons in such resident's immediate family who reside upon the Lot shall be registered by the Member with the C.C.C.A.

Section 7.03. Conditional Use of Club Property. The use of the Club Property by the Owner, his family, guests, tenants or lessees is subject to the following conditions:

A. Guests. Those persons with use privileges of the Club Property, by way of Lot ownership or by way of Residential Dwelling Unit residency, may be allowed to have guests use the recreational facilities provided that such guests are accompanied by at least one (1) person holding use privileges by said ownership or residency. An additional guest fee may be charged in an amount and in a manner to be determined by the Board of Directors of the C.C.C.A.

B. Rules, Regulations, Articles, Bylaws and the Declaration. All persons and their guests using the facilities of the Club Property must abide by the rules and regulations promulgated by the by the C.C.C.A., the C.C.C.A. Articles and Bylaws, and these Restrictions. Any person failing to abide by the foregoing may have their use privileges suspended as the C.C.C.A. may see fit. In the event of a suspension of privileges pursuant to this Section, there shall be no suspension or termination of the Owner's duty to pay those Membership Assessments provided for herein.

C. Security Deposit and Clean-Up Fee. The C.C.C.A. may charge a reasonable security deposit and clean-up fee for the use of any recreational facility situated upon Club Property.

D. Special Assessment. The C.C.C.A. may impose a special assessment of not more than Fifty Dollars (\$50.00) upon an Owner for violation of the Rules by him or his family or any licensee, guest, tenant or invitee and/or to suspend the right of an Owner to use the Club Property for any period during which any assessment against his Lot remains unpaid, and, after notice and hearing by the Board, for a period not to exceed thirty (30) days for any infraction of these Restrictions, the C.C.C.A. Bylaws, Rules, Articles, and/or any other rules formally promulgated by the C.C.C.A.

E. Easements. Such easements which have been granted in favor of the general public over certain portions of the parking lots, roads and sidewalks conveyed to the C.C.C.A. for ingress and egress from any sales office or model home complex of Developer, or for parking incidental thereto, as may be recorded prior to conveyance of such parking lots, roads or sidewalks to the C.C.C.A., or as the C.C.C.A. may grant.

Section 7.04. Management. The CCCA shall control, maintain, manage and improve the Club Property. Such right and power of control and management shall be exclusive in managing the Club Property. The CCCA, subject to the provisions of this Declaration, the Articles of Incorporation of the CCCA, the Bylaws of the CCCA, and the provisions of that certain covenant upon the Club Property recorded in Book 7811 at Page 733-739, Pima County records, shall be responsible for the control, maintenance, safety and liability including, but not limited to, the operation and maintenance of the recreational facilities located upon the Club Property, the collection and payment of the taxes assessed by the County Assessor on Club Property, and for the maintenance of insurance coverage for the Association and the Club Property as provided for in this Declaration, the Articles of Incorporation of the CCCA or the Bylaws of the CCCA.

Section 7.05. Disclosure of Nonexclusive Use of Club Property. The use of the Club Property by the Lot Owner, the Owner's family, guests, tenants or lessees shall be nonexclusive. The Lot Owner's privilege of use and enjoyment of the Club Property may be subject to use privileges of those Lot Owners within those certain properties legally described on Exhibit C attached hereto and incorporated by reference herein.

Section 7.06. Damages. Each Owner shall be liable to the C.C.C.A. for any damage to the Club Property which may be sustained by reason of the negligence or willful misconduct of said Owner or of his family and guests, both minor and adult. In the case of joint ownership of a Lot, the liability

of such Owners shall be joint and several, except to the extent that the C.C.C.A. has previously contracted in writing with such joint Owners to the contrary. The amount of such damage shall be an assessment against the Lot and may be collected by the C.C.C.A. in the manner provided for the collection of other assessments herein.

ARTICLE VIII

COVENANTS FOR CLUB MEMBERSHIP ASSESSMENTS

Section 8.01. Creation of the Lien and Personal Obligation to Pay Assessments. Each Owner, by acceptance of a deed to any Lot, whether or not it shall be so expressed in such deed is deemed to covenant and agree to pay to the C.C.C.A. the Membership Assessments provided for herein. The assessments provided for herein, and with respect to delinquent payments thereof, an amount equal to interest, costs, and reasonable attorneys' fees for collection, shall be a continuing lien upon the property against which each assessment is made, and shall also be the personal obligation of the person who was the Owner of such Lot at the time when the assessment was levied. The personal obligation for delinquent assessments shall not pass to his successors in title unless expressly assumed by them.

Section 8.02. Purpose of Membership Assessments. The assessments provided for herein shall be used exclusively to promote the recreation, health, safety and welfare of the Members and their guests, for the improvement and maintenance of the Club Property including but not limited to the operation and maintenance of all recreational facilities located within the Club Property, and for all purposes set forth in the Articles and Bylaws of the C.C.C.A. and this Declaration.

Section 8.03. Uniform Rate of Assessment. Membership Assessments must be fixed at a uniform rate for all Lots and may be collected on a monthly basis.

Section 8.04. Date of Commencement of Annual Membership Assessments: Due Dates. The annual Membership Assessments provided for herein shall commence as to all Lots on the first day of the month following the conveyance of a Lot to an Owner (except as limited by Section 9.07 herein). The first annual assessment shall be adjusted according to the number of months remaining in the C.C.C.A.'s fiscal 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 in the event of its increase or decrease from the last annual assess-

ment. The due dates of such assessments, partial payment for which may become due on a periodic basis, shall be established by the Board of Directors. The C.C.C.A. shall, upon demand, and for a reasonable charge, furnish a certificate signed by an officer of the C.C.C.A. setting forth whether the assessment on a specified Lot has been paid. A properly executed certificate of the C.C.C.A. as to the status of assessments on a Lot is binding upon the C.C.C.A. as of the date of its issuance.

Section 8.05. Effect of Nonpayment of Assessments; Remedies of the C.C.C.A. Each Owner shall be deemed to covenant and agree to pay to the C.C.C.A. the assessments provided for herein, and agrees to the enforcement of the assessments in the manner herein specified.

If an assessment is not paid within thirty (30) days after the due date, the assessment shall be deemed delinquent and shall bear interest at the rate of twelve percent (12%) per annum. Late payments shall first be credited toward interest due, then toward assessments first due. In the event the C.C.C.A. employs an attorney for collection of any assessments, whether by suit or otherwise, each Owner agrees to pay reasonable attorneys' fees and costs thereby incurred in addition to any other amounts due or any other relief or remedy obtained against said Owner. In the event of a default in payment of any such assessment when due, and in addition to any other remedies herein or by law provided, the C.C.C.A. may enforce each such obligation in any manner provided by law or in equity, or without any limitation of the foregoing, by either or both of the following procedures.

A. Enforcement by Suit. The Board may cause a suit at law to be commenced and maintained in the name of the C.C.C.A. against an Owner to enforce each such assessment obligation. Such suit shall demand judgment to include the amount of delinquency, together with interest thereon at the maximum rate permitted by law from the date of the delinquency until paid, court costs, and reasonable attorneys' fees in such amount as the court may adjudge against the delinquent Owner or Member.

B. Enforcement by Lien. There is hereby created a right of claim of lien, on each and every Lot to secure payment to the C.C.C.A. of any and all assessments levied against any and all Owners together with interest thereon at the rate at twelve percent (12%) per annum from the date of delinquency until paid, and costs of collection which may be paid or incurred by the C.C.C.A. in connection therewith, including reasonable attorneys' fees. At any time after the occurrence of any default in the payment of any such assessment, the C.C.C.A., or any authorized representative

may, but shall not be required to, make a written demand for payment to the defaulting Owner, on behalf of the C.C.C.A. Said demand shall state the date and amount of the delinquency. Each default shall constitute a separate basis for demand or claim of lien but any number of defaults may be included within a single demand or claim of lien. If such delinquency is not paid within ten (10) days after delivery of such demand, the C.C.C.A. may elect to file such a claim of lien on behalf of the C.C.C.A. against the Lot of the defaulting Owner. Such a claim of lien shall be executed and acknowledged by an officer of the C.C.C.A., and recorded in the Pima County Recorder's Office and shall contain substantially the following information:

- (1) The name of the delinquent Owner;
- (2) The legal description of the Lot against which claim of lien is made;
- (3) The total amount claimed to be due and owing for the amount of delinquency, interest thereon, collection costs, and reasonable attorneys' fees (with any proper offset allowed);
- (4) That the claim of lien is made by the C.C.C.A. pursuant to this Declaration; and,
- (5) That a lien is claimed against said Lot in an amount equal to the amount stated.

Upon recordation of a duly executed original of such a claim of lien, the lien claimed therein shall immediately attach and become effective in favor of the C.C.C.A. as a lien upon the Lot. Such a lien shall have priority over all claims of liens created subsequent to the recordation thereof, except only tax liens for real property taxes on any Lot, assessments on any Lot in favor of any municipal or other governmental assessing unit, and the lien of any first mortgage. Any such lien may be foreclosed by appropriate action in Court or in the manner provided by law for the foreclosure of a realty mortgage as set forth by the laws of the State of Arizona, as they may be changed or amended. The lien provided for herein shall be in favor of the C.C.C.A. and shall be for the benefit of all other Owners. The C.C.C.A. shall have the power to bid in at any foreclosure sale and to purchase, acquire, hold, lease, mortgage, and convey any Lot. In the event such foreclosure is by action in court, reasonable attorneys' fees, court costs, title search fees, interest and all other costs and expenses shall be allowed to the extent permitted by law. Each Owner hereby expressly waives any objection to the enforcement and foreclosure of this lien in this matter. Notwithstanding the

foregoing, the failure by Owner to pay assessments provided for herein shall not constitute a default under any federally insured mortgage.

Section 8.06. No Exemption of Owner. No Owner is exempt from liability for payment of assessment by waiver of the use of enjoyment of the Club Property, or by abandonment of his Lot except as specifically provided in Section 8.08.

Section 8.07. Subordination of the Lien to Mortgage. The lien of the assessment 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.

Section 8.08. Mortgage Protection and Additional Assessment as Common Expense. Notwithstanding and prevailing over any other provision of this Declaration, or the C.C.C.A. Articles or Bylaws, or the Rules, the following provision shall apply to and benefit each holder of a first mortgage upon a Lot (called the first mortgagee): The first mortgagee shall not by reason of the mortgage, be personally liable for the payment of any assessment or charge, nor for the observation or performance of any covenant, restriction, regulation, rule, article or bylaw, except for those matters which are enforceable by injunctive or other equitable actions, not requiring the payment of money, except as herein-after provided.

ARTICLE IX

GENERAL PROVISIONS

Section 9.01. Term. The covenants, conditions, and restrictions of this Declaration shall remain in full force and effect for a period of twenty (20) years from the date this Declaration is recorded. Thereafter, they shall be deemed to have been renewed and automatically extended for successive periods of ten (10) years each unless the Owners of a majority of the Lots elect to terminate the covenants, conditions and restrictions.

Section 9.02. Amendments. This Declaration may be amended by an instrument in writing signed and acknowledged by the President and Secretary of the Association certifying that such amendment has been approved by the vote or written consent of the then Owners of not less than two-thirds (2/3) of the Lots and Declarant and such amendment shall be effective upon its recordation with the Pima County Recorder. Regardless of whether the Declarant is the Owner of any Lot, any amendment to the Declaration which affects any portion of this Section 9.02, or the Owner's rights or obligations with

respect to the Club Property or the C.C.C.A. shall require the prior written approval of the C.C.C.A. and shall also require, so long as U.S. Home Corporation, a Delaware corporation, owns any right, title, or interest in any property legally described in Exhibit "C" attached hereto, the prior written approval of U.S. Home Corporation. This right of approval of U.S. Home Corporation is personal to U.S. Home Corporation. Such right may be assigned by U.S. Home Corporation to a successor in interest or assign, if, and only if, specific reference is made to this right contained in Section 6.02 of this Declaration. If the Subdivision is approved by the Federal Housing Administration or the Veterans Administration, then any amendment to this Declaration shall require the prior approval of the Federal Housing Administration or the Veterans Administration as long as Developer remains a member of the C.C.C.A., as long as the Developer holds a legal, equitable or beneficial interest in or title to the Club Property.

Section 9.03. Exercise of Declarant's Rights. Developer, as beneficiary of FIRST AMERICAN TITLE INSURANCE AGENCY OF PIMA, INC., Trust 4303, or any assignee or successor-in-interest to Developer's rights hereunder, shall have the complete authority to exercise Declarant's rights arising out of this Declaration, the Articles or Bylaws, unless such exercise directly affects title to the Club Property.

Section 9.04. Enforcement and Non-Waiver.

A. Enforcement. Except as otherwise provided herein, the C.C.C.A., or any Owner, shall have the right to enforce by any proceeding at law or in equity, all restrictions, conditions, covenants, reservations, liens or charges now or hereafter imposed by provision of this Declaration.

B. Prerequisite to Litigation. In the event of a dispute between an Owner, the C.C.C.A., Declarant or Developer, the complainant, if any Owner as an absolute condition precedent to instituting a legal action against C.C.C.A., Declarant or Developer respondent, must first serve notice in writing on respondent in the manner hereinafter provided, advising him of the alleged grievance, the action or results desired and a date and time convenient for a meeting; the respondent shall have a minimum of fifteen (15) days, but not to exceed thirty (30) days, from receipt of said notice, in which to conduct a meeting for the purpose of arriving at a settlement of the controversy with complainant.

C. Violation and Nuisance. Every act or omission whereby any provision of this Declaration is violated in whole or in part is hereby declared to be a nuisance and may

be enjoined or abated, whether or not the relief sought is for negative or affirmative action, by Declarant, the Developer, the C.C.C.A., or any Owner or group of Lot Owners within the Subdivision.

D. Violation of Law. Each and every provision of this Declaration and any amendment hereto shall be subject to all applicable state, county, municipal or local ordinances and subdivision regulations and any future amendments thereto. Any violation of any state, county, municipal or local law, ordinance or regulation pertaining to the ownership, occupation or use of any property within the Subdivision is hereby declared to be a violation of these Restrictions and subject to any or all of the enforcement procedures set forth herein or in the Bylaws.

E. Remedies Cumulative. Each remedy provided by these Restrictions is cumulative and not exclusive.

F. Non-Waiver. Failure by Declarant, the C.C.C.A. or by any Owner to enforce any of the provisions of these Restrictions at any time shall not constitute a waiver of the right thereafter to enforce any such provision or any other provisions of these Restrictions.

Section 9.05. Mortgage Protection. Notwithstanding any other provision of this Declaration, no amendment of this Declaration shall operate to defeat and render invalid the rights of the beneficiary under any Deed of Trust or mortgagee of a mortgage upon a Lot made in good faith for value, and recorded prior to the recordation of such amendment, provided that after the foreclosure of any such Deed of Trust or mortgage such Lot shall remain subject to this Declaration as amended.

Section 9.06. Construction.

A. Interpretation. The provisions of this Declaration shall be liberally construed to effectuate their purpose of creating a uniform plan for the development and operation of the Subdivision. This Declaration shall be construed and governed by the laws of the State of Arizona.

B. Restriction Severable. Notwithstanding the provisions of the foregoing paragraph A, each of the provisions of this Declaration shall be deemed independent and severable, and the invalidity or partial invalidity of any provision or portion thereof shall not affect the validity or enforceability of any other provision.

C. Rule Against Perpetuities. In the event the provisions hereunder are determined by a court of

competent jurisdiction to be violative of the rule against perpetuities by reason of the period of time herein stated for which the same shall be effective, then in that event said periods of time shall be reduced to a period of time which shall not violate the rules against perpetuities as set forth in the laws of the State of Arizona.

D. Singular Includes Plural. Unless the context requires a contrary construction, the singular shall include the plural and the plural the singular; and the masculine, feminine or neuter shall each include the masculine, feminine and neuter.

E. Captions. All captions and titles used in this Declaration are intended solely for convenience or reference purposes only and in no way define, limit, or describe the intent and meaning of the provisions hereof.

Section 9.07. Savings Clause and Obligation of Developer to Pay Assessments. Notwithstanding anything stated herein to the contrary, Developer shall have full and complete authority to perform such acts which it deems necessary for the development, and sale of Lots and Residential Dwelling Units within the Subdivision. Developer shall only be responsible for payment of any assessments established pursuant to this Declaration or the Bylaws on Completed Lots owned by Developer, excepting Lots with improvements thereon used by Developer as models and sales office. For purposes of this Section 9.07 "Completed Lots" shall mean any Lot with a Residential Dwelling Unit ready for occupancy as a home that is in the condition of any other Residential Dwelling Unit sold to persons living in the Subdivision (e.g., carpet, kitchen countertops and cabinets, plumbing and lighting fixtures, etc., installed).

Although Developer may contribute to the maintenance of the Club Property, it is understood that Developer is not and shall not be held liable for the payment of any assessment of any nature whatsoever provided for in this Declaration or Bylaws by virtue of its ownership of Lots within the Subdivision unless such ownership is of Completed Lots as herein defined, and that Developer's failure to pay said assessments shall not give rise to any right of imposing any lien or encumbrance upon Lots owned by Developer as security for the payment of said assessment unless Developer has failed to pay said assessments on Completed Lots as herein defined.

Section 9.08. Delivery of Notices and Documents. Any written notice or other documents relating to or required by this Declaration may be delivered either personally or by mail. If by mail, it shall be deemed to have been delivered

seventy-two (72) hours after a copy of same has been deposited in the United States mail; postage prepaid, certified or registered mail addressed as follows: If to the C.C.C.A. to:

Countryside Community Club Association
c/o U. S. Home Corporation
5501 N. Swan, Suite 125
Tucson, Arizona 85718

If to an Owner, to the address of any Lot within the Subdivision owned, in whole or in part, by him or to any other address last furnished by an Owner to the C.C.C.A.; and if to the Declarant:

U.S. Home Corporation
5501 N. Swan, Suite 125
Tucson, Arizona 85712

provided, however, that any such address may be changed at any time by the party concerned by delivering written notice of change of address to the C.C.C.A. Each Owner of a Lot shall file the current mailing address of such Owner with the C.C.C.A. and shall promptly notify the C.C.C.A. in writing of any subsequent change of address.

Section 9.09. Right to Change Project Name. For purposes of this Declaration and the Bylaws, the project has been named Countryside Heights. Declarant hereby reserves the right to change the name of the project to any other name of its choosing at any time in the future.

Section 9.10. FHA/VA Approval. As long as Developer retains membership in the C.C.C.A. as provided for in the Articles of Incorporation for the C.C.C.A., the following actions will require the prior approval of the Federal Housing Administration or the Veterans Administration: Annexation of additional properties, dedication of Club Property, and amendment of this Declaration of Covenants, Conditions and Restrictions.

Section 9.11. Binding Effect. By acceptance of a deed or acquiring any ownership interest in any of the property included within this Declaration, each person or entity, for himself, or itself, his heirs, personal representatives, successors, transferees and assigns, binds himself, his heirs, personal representatives, successors, transferees and assigns, to all of the provisions, restrictions, covenants, conditions, rules or regulations now or hereafter imposed by this Declaration and amendments thereof. In addition each such person by so doing thereby acknowledges that this Declaration sets forth a general scheme for the Property and hereby evidences his interest that all restrictions, conditions, covenants, rules and regulations contained herein shall run

with the land and be binding on all subsequent and future Owners, grantees, purchasers, assignees, and transferees thereof. Furthermore, each such person fully understands and acknowledges that this Declaration shall be mutually beneficial, prohibitive and enforceable by the various subsequent and future Owners.

Section 9.12. Conflict Provisions. In the event of a conflict between the provisions of this Declaration and the Articles or the Bylaws, this Declaration shall prevail. In the event of a conflict between the Articles and Bylaws, the Articles shall prevail.

IN WITNESS WHEREOF, Declarant has executed this Declaration the day and year first above written.

FIRST AMERICAN TITLE INSURANCE
AGENCY OF PIMA, INC.
as Trustee under Trust No.
4303

U.S. HOME CORPORATION, a
Delaware corporation, as
Beneficiary of Trust
No. 4303

By: [Signature]
Its: TRUST OFFICER

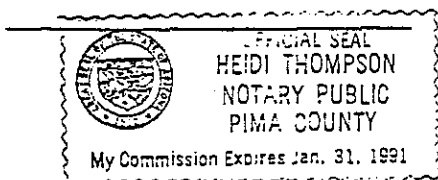
By: [Signature]
Its: DIVISION PRESIDENT

STATE OF ARIZONA)
) ss.
COUNTY OF PIMA)

SUBSCRIBED, SWORN TO AND ACKNOWLEDGED before me this 8th day of December, 1989, by Brigitte Ekhave, who is known to me to be duly authorized by FIRST AMERICAN TITLE INSURANCE AGENCY OF PIMA, INC., under Trust No. 4303 and not otherwise, to execute the within instrument for and on behalf of the corporation for the purposes therein contained.

Heidi Hapke nee Thompson
Notary Public

My Commission Expires:



STATE OF ARIZONA)
) ss.
COUNTY OF PIMA)

SUBSCRIBED, SWORN TO AND ACKNOWLEDGED before me this
8th day of December, 1989, by Garv W. Aalen,
Division President, who is known to me to be duly
authorized by U.S. HOME CORPORATION, a Delaware corporation,
to execute the within instrument for and on behalf of the
corporation for the purposes therein contained.

Mary Ann Mendoza
Notary Public

My Commission Expires:

September 25, 1990



EXHIBIT A

COUNTRYSIDE HEIGHTS

(Lots 1-125 and Common Areas "A" and "B")

LOTS 1-125, COMMON AREA "A" (private streets) AND
COMMON AREA "B" (drainageways) OF PIMA COUNTY, ARIZONA, AS
SHOWN BY MAP ON FILE IN BOOK 41 OF MAPS AND PLATS AT PAGE 99,
PIMA COUNTY RECORDS.

EXHIBIT B

All of that portion of the South half of Section 24 in Township 12 South of Range 12 East, Gila and Salt River Base and Meridian, Pima County, Arizona, more particularly described as follows:

Beginning at the western most corner of Lot 35 in Countryside, Lots 1 thru 190, a subdivision on record in the office of the County Recorder of Pima County, Arizona in Book 31 of Maps and Plats at Page 5 thereof;

Run thence south $34^{\circ} 16' 21''$ west, a distance of 81.56 feet to a point on the southwesterly right of way line of Bald Eagle Avenue as shown in Book 6026 of Dockets at Pages 41b thru 422 thereof, said point being the TRUE POINT OF BEGINNING;

Run thence south $44^{\circ} 24' 39''$ east along said right of way line a distance of 411.96 feet to a point;

Thence south $25^{\circ} 00' 21''$ west, a distance of 171.22 feet to a point;

Thence south $11^{\circ} 00' 21''$ west, a distance of 262.00 feet to a point;

Thence north $68^{\circ} 14' 39''$ west, a distance of 78.00 feet to a point;

Thence south $55^{\circ} 33' 21''$ west, a distance of 601.00 feet to a point;

Thence north $61^{\circ} 26' 39''$ west, a distance of 389.62 feet to a point on a curve at which point the radius of said curve bears south $67^{\circ} 39' 10''$ east;

Thence northeasterly around said curve to the right whose radius is 353.00 feet a distance of 243.73 feet to a point of reverse curvature;

Thence northeasterly around said curve to the left whose radius is 1002.00 feet, a distance of 483.29 feet to a point of tangency;

Thence north $34^{\circ} 16' 21''$ east, a distance of 404.80 feet to a point, said point being the TRUE POINT OF BEGINNING.

Less any portion of a well site as described in Book 6189 of Dockets at Page 285 thereof.

Said parcel containing 10.35 acres more or less.

EXHIBIT C

CLUB MEMBERS PROPERTY

All of those portions of the Southwest quarter of Section 24 in Township 12 South of Range 12 East, Gila and Salt River Base and Meridian, Pima County, Arizona, more particularly described as follows:

Parcel A

Lots 1 thru 190 and Block 'A' of COUNTRYSIDE, Pima County, Arizona, as shown by map on file in Book 31 of Maps and Plats at Page 5, Pima County Records, EXCEPTING therefrom Block 'A' thereof.

Parcel B

Lot 191 thru 447 and Blocks 'B,' 'C' & 'D' of COUNTRYSIDE, Pima County, Arizona, as shown by map on file in Book 32 of Maps and Plats at Page 83, Pima County Records, EXCEPTING therefrom Blocks 'B,' 'C' & 'D' thereof.

Parcel C

Blocks 1, 6, & 8 of COUNTRYSIDE, Blocks 1 thru 10, Pima County, Arizona, as shown by map on file in Book 36 of Maps and Plats at Page 42, Pima County Records.

Parcel D

Lots 1 thru 72, COUNTRYSIDE SHADOWS, Pima County, Arizona, as shown by map on file in Book 37 of Maps and Plats at Page 37, Pima County Records.

Parcel E

Lots 1 thru 239, COUNTRYSIDE TERRACE, Pima County, Arizona, as shown by map on file in Book 37 of Maps and Plats at Page 51, Pima County Records.

Parcel F

Lots 240 thru 398 and Block 'A' of COUNTRYSIDE TERRACE, Pima County, Arizona, as shown by map on file in in Book 37 of Maps and Plats at Page 53, Pima County Records, EXCEPTING therefrom Block 'A' thereof.

Said parcels, A thru F, containing 304.00 acres.