

PEAK UNIT ONE  
COMPILED DECLARATION  
OF  
COVENANTS, CONDITIONS AND RESTRICTIONS

This Compiled Declaration of Covenants, Conditions and Restrictions contains all provisions set forth in the original Declaration of Covenants, Conditions & Restrictions for The Peak Unit One (1985), as amended by the Amended Declaration of Covenants, Conditions and Restrictions for The Peak Unit One (1985), the Second Amended Declaration of Covenants, Conditions and Restrictions for Peak Unit One (1988), the Third Amended Declaration of Covenants, Conditions and Restrictions for Peak Unit One (1993), the Fourth Amended Declaration of Covenants, Conditions and Restrictions for The Peak Unit One aka Highland Place (1993), and the Fifth Amended Declaration of Covenants, Conditions and Restrictions for The Peak Unit One aka Highland Place (1994).

WITNESSETH:

WHEREAS, Successor Declarant is the owner of lots comprising that certain real property located in Maricopa County, Arizona and described on Exhibit "A" attached hereto (hereinafter referred to as the "Property"); and

WHEREAS, the Property was previously subject to those certain Covenants, Conditions and Restrictions recorded on February 22, 1985 at Recorder's Number 85-079048 in the records of the Maricopa County Recorder's Office (the "Original CC&R's"); and

WHEREAS, the Original CC&R's were modified and amended pursuant to the terms and conditions of the Amended Declaration of Covenants, Conditions and Restrictions dated May 17, 1985 and recorded on May 21, 1985 at Recorder's Number 85-232393 in the records of the Maricopa County Recorder's Office (the "First Amendment"); and

WHEREAS, the Original CC&R's, as modified by the First Amendment, were further modified and amended pursuant to the terms and conditions of a Second Amended Declaration of Covenants, Conditions and Restrictions dated November 30, 1988 and recorded on March 2, 1989 at Recorder's Number 89-097495 in the records of the Maricopa County Recorder's Office (the "Second Amendment"); and

WHEREAS, the Original CC&R's, as modified by the First Amendment and the Second Amendment, were further modified and amended pursuant to the terms and conditions of a Third Amended Declaration of Covenants, Conditions and Restrictions dated February 26, 1993, and recorded on February 26, 1993 at Recorder's Number 93-169493 in the records of the Maricopa County Recorder's Office (the "Third Amendment"); and

WHEREAS, the Original CC&R's, as modified by the First Amendment, the Second Amendment and the Third Amendment, were further modified and amended pursuant to the terms and conditions of a Fourth Amended Declaration of Covenants, Conditions and

Restrictions dated November 5, 1993, and recorded on April 21, 1994 at Recorder's Number 94-0322671 in the records of the Maricopa County Recorder's Office (the "Fourth Amendment"); (for purposes hereof, the Original CC&R's, as modified by the First Amendment, Second Amendment, Third Amendment, and Fourth Amendment are referred to herein collectively as the "Existing CC&R's"); and

WHEREAS, the Declarant recorded a plat on the property at Book 280 of Maps, Page 1, in the records of the Maricopa County Recorder's Office; and

WHEREAS, Successor Declarant has succeeded to all the rights held by Janis/Smith Joint Venture, an Arizona joint venture, the original Declarant under the original CC&R's and the First Amendment; and

NOW THEREFORE, Declarant hereby declares that the Property and all parts thereof shall be held, conveyed, hypothecated, encumbered, leased, occupied, built upon or otherwise used, improved or transferred, in whole or in part, subject to the Restrictions which are hereinafter set forth, and to any subsequent Amendments thereto, and which are for the purpose of establishing a common plan for the protection, maintenance, development, improvement, and enhancements of the Property, and which shall run with the Property and be binding upon all parties having any right, title or interest in the Property or any part thereof, their heirs, successors and assigns, and shall inure to the benefit of each owner thereof.

## ARTICLE I

### DEFINITIONS

Section 1. "Architectural Committee" shall mean the committee created pursuant to Article IV hereof.

Section 2. "Association" shall mean and refer to the Highland Place Property Owners Association.

Section 3. "Declarant" shall mean and refer to THE SMITH PROJECT, composed of Clyde B. Smith and Floyd D. Smith, an Arizona joint venture.

Section 4. "Declaration" shall mean the covenants, conditions and restrictions herein set forth in this entire document, as the same may be amended from time to time.

Section 5. "Right-of-Way Area" shall mean and refer to that portion of the Property so designated in Article III, Section 1 of this Declaration.

Section 6. "Improvement" shall mean the buildings, fences, walls, hedges, plantings, planted trees and shrubs and any and all structures and landscaping of any type and kind in, on or about the Property.

Section 7. "Lot" shall mean and refer to any separate parcel of real property shown upon any recorded subdivision map of the entire Property.

Section 8. "Owner" shall mean and refer to the record owner of equitable title (or legal title if it has merged with equitable title) of any lot, whether such owner comprises one or more persons or entities.

Section 9. "Property" shall mean and refer to that certain real property hereinbefore described.

Section 10. "Visible From Neighboring Property" shall mean with respect to any given object that such object is or would be visible to a person six feet tall, standing on any part of such neighboring property at an elevation no greater than the elevation of the base of the object being viewed.

## ARTICLE II

### USE RESTRICTIONS

Permitted uses, conditions and restrictions for all of the Property covered by this Declaration shall be limited to those which follow:

Section 1. Single Family Residential Use. All of the Property shall be used, improved and devoted exclusively to single family residential use. However, an Owner may conduct a business activity from a Lot so long as: (a) the existence or operation of the business activity is not Visible From Neighboring Property or otherwise detectable by sight, sound, vibration or smell from outside the Lot; (b) the business activity conforms to all applicable zoning ordinances or requirements for the Property; (c) the business activity is conducted solely on the Lot; (d) the business activity does not involve persons coming to the Lot or the door-to-door or other solicitation of Owners; and (e) the business activity is consistent with the residential character of the Property and does not constitute a nuisance or a hazardous or offensive use or threaten the security or safety of other Owners, as may be determined from time to time in the sole discretion of the Board of Directors. The terms "business" and "trade" as used in this Section shall be construed to have ordinary, generally accepted meanings, and shall include, without limitation, any occupation, work or activity undertaken on an ongoing basis which involves the provision of goods or services to persons other than the provider's family and for which the provider receives a fee, compensation or other form of consideration, regardless of whether: (a) such activity is engaged in full or part time; (b) such activity is intended or does generate a profit; or (c) a license is required for such activity. No construction on any structure may be commenced without prior written approval of the Architectural Committee established herein. No structure whatever, other than one private single family residence, together with a private garage for not more than four (4) cars, a guest house, and servants' quarters shall be erected, placed or permitted to remain on any Lot. A private garage, customary outbuildings or guest house shall not be erected until the main residence is constructed, but such private additional buildings may be constructed simultaneously with the main residence. All such garages, outbuildings and guest houses must be attached to the main dwelling either by walls, patio or carport so as to make one continuous unit. No boat, truck, mobile home, trailer, camper or recreation vehicle shall be used as a living area while located on

the Property. No dwelling house shall be erected on any Lot which shall have a floor area of less than three thousand five hundred (3,500) square feet, exclusive of open porches, carports, garages, guest houses or servants' quarters. No dwelling house or other structure on any lot shall have a height exceeding twenty-six (26) feet for greater than one-third (1/3) of the total roof area of such structure, the remaining two-thirds (2/3) of such structure shall not exceed nineteen (19) feet in height.

Section 2. Animals. No animals, including horses, poultry or livestock of any kind, shall be maintained on any portion of the Property. However, Owners may keep a reasonable number of dogs, cats, fish, or birds of a variety commonly kept as household pets, but only if they are kept, bred or raised thereon solely as domestic pets and not for commercial purposes. No such animal shall be allowed to make an unreasonable amount of noise or become a nuisance. No structure for the care, housing or confinement of any permitted animal shall be maintained so as to be Visible From Neighboring Property. Upon the written request of any Owner, the Architectural Committee shall conclusively determine, in its sole and absolute discretion, whether, for the purposes of this paragraph, a particular animal is a nuisance or whether the number of dogs, cats, fish, or birds on any portion of the Property is reasonable. Any decision rendered by an Architectural Committee shall be enforceable as other restrictions contained herein.

Section 3. Antennas. No antenna or other device for the transmission or reception of television or radio signals or any other form of electromagnetic radiation shall be created, used or maintained outdoors on any portion of the Property, whether attached to a building or structure or otherwise, unless prior written approval of the Architectural Committee has been obtained.

Section 4. Utility Service. No lines, wires or other devices for the communication or transmission of electric current or power, or lines, wires, or cables for use in connection with telephone, television or radio or other devices, shall be erected, placed or maintained anywhere in or upon any portion of the Property unless the same shall be contained in conduits or cables installed and maintained underground or concealed in or on buildings or other structures unless prior written approval of the Architectural Committee has been obtained. No provisions hereof shall be deemed to forbid the erection of temporary power or telephone structures incident to the construction of buildings or structures previously approved in writing by the Architectural Committee.

Section 5. Improvements and Alterations. No improvement, alteration, repair, excavation or other work which in any way alters the exterior appearance of any Improvement or any portion of the Property from its natural or improved state as existing on the date of this Declaration and no building, fence, wall or other structure shall be commenced, erected, maintained, improved, altered, made or done until the plans and specifications for the same in all construction details, including shape, height, materials, floor plans, colors, location and approximate costs all have been submitted to and approved in writing by the Architectural Committee. The Architectural Committee shall have the right to refuse to approve any plans or specifications or grading plans which are not suitable or desirable in its sole discretion and opinion, for aesthetic or other reasons and in so passing upon such plans, specifications and grading plans, and without any limitation on the foregoing, it shall have the right to take into consideration the suitability of the proposed improvements, the materials of which it is to be built, the site upon which it is proposed to be

erected, the extent to which natural growth and terrain would have to be altered, the harmony thereof with the surroundings and the effect of the Improvement as planned on the outlook from the adjacent or neighboring property(ies). All subsequent additions to or changes in or alterations in any Improvement, including exterior color scheme, shall be subject to the prior written approval of the Architectural Committee. No changes or deviations in or from such plans and specifications once approved, shall be made without the prior written approval of the Architectural Committee. All decisions of the Architectural Committee shall be final and no Owner or other party shall have recourse against the Architectural Committee for its refusal to approve any such plans and specifications. However, the approval of the Architectural Committee of any item submitted to it shall not be unreasonably withheld. The Architectural Committee shall not be liable for damages, including expenses and costs of all kinds, to anyone submitting plans for approval or making any other request of the Committee, nor to any Owner, lessee, assignee or sublessee of the Property or any portion thereof by reason of mistake in judgment, negligence or nonfeasance of itself, its agents or employees, arising out of, directly or indirectly, or in connection with the approval or disapproval, or failure to approve, any plans or other requests and each and every Owner agrees not to bring action or suit to recover any such damages against the Architectural Committee or any of the members thereof.

Section 6. Temporary Occupancy. No trailer, tent, shack, garage or barn, and no temporary buildings or structures of any kind shall be used at any time for a residence on any portion of the Property either temporary or permanent. Temporary buildings or structures used during the construction of a dwelling on any such Property shall be removed immediately after the completion of construction.

Section 7. Trailers and Motor Vehicles. Except with the prior written approval of the Architectural Committee, no mobile home, boat, recreational vehicle, trailer of any kind, truck, camper, or other similar vehicle, or permanent tent or similar structure shall be kept, placed, or maintained, or constructed, reconstructed or repaired upon any portion of the Property or on any street (public or private) within the Property, in such a manner as will be Visible From Neighboring Property, provided however, that the provisions of this paragraph shall not apply to emergency vehicle repairs or temporary construction shelters or facilities maintained during, and used exclusively in connection with, the construction of any Improvement previously approved in writing by the Architectural Committee. Garages shall be used for parking vehicles and storage purposes only and shall not be converted for living or recreational activities. Except as provided above, only automobiles in operating condition shall be parked in designated uncovered parking areas on the Property.

Section 8. Landscaping and Landscaping Maintenance. All front yard landscaping and landscaping upon portions of the Property which are Visible From Neighboring Property shall only be installed in accordance with a landscaping plan which has been previously submitted to and approved in writing by the Architectural Committee. Plans submitted to the Architectural Committee for the construction of the residence on a Lot shall include a detailed landscaping plan for such Lot. The landscaping pursuant to an approved plan must be completed by the Owner of a Lot within sixty (60) days following completion of construction of a residence on such Lot. No substantial change to accepted landscaping after installation of such landscaping on the Lot pursuant to a previously approved plan may be made by the Owner of any Lot without the prior

written approval of the Architectural Committee. Each Owner of a Lot within the Property shall at all times keep and maintain all shrubs, trees and plantings of every kind on the Lot neatly trimmed, properly cultivated, and free from trash, weeds, and other unsightly material. In the event any Owner fails to landscape his Lot or maintain the landscaping on his Lot in accordance herewith, the Association shall have the right (but not the obligation) to do so and shall charge Owner the reasonable cost of removal of such items and cause such landscaping to be done at the Owner's expense. Such charges together with interest at the highest lawful rate for contracting parties shall be paid by the Owner to the Association within thirty (30) days after demand therefor and shall create a claim enforceable in the same manner as other assessments provided for in this Declaration including the recording of liens against such Lot(s).

Section 9. Nuisances. No rubbish or debris of any kind shall be placed or permitted to accumulate upon or adjacent to any portion of a Lot nor shall a Lot be used in whole or in part for the storage of any property or thing that will cause a Lot or any part thereof to appear in any unclean or untidy condition or that will be unsightly, offensive, obnoxious or detrimental, nor shall any substance, thing or material be kept or used upon a Lot or any part thereof that will emit a foul, offensive or obnoxious odor or that will cause any noise that will or might disturb the peace, quiet, comfort, serenity or tranquility of the occupants of neighboring property(ies). No nuisance of whatever kind or description shall be permitted to exist or operate upon a Lot so as to be offensive, unsanitary, unsightly or detrimental to any other Lot in the vicinity thereof or to its occupants. Without limiting the generality of the foregoing provision, no exterior speakers, horns, whistles, bells or other sound devices, except previously approved code complying security devices used exclusively for security purposes, shall be located, used or placed on any portion of a Lot. The Architectural Committee in the exercise of its sole discretion, shall have the right to determine the existence of any nuisance whether described herein or not. Noise caused by improperly muffled motor vehicles will not be permitted. Construction machinery and equipment must be operated within the manufacturer's recommendation and specifications and only during reasonable working hours. No such work to be performed on Sundays.

Section 10. Lawful Use. No immoral, improper, offensive or unlawful use shall be made of any portion of the Property, and all valid laws, zoning ordinances and regulations of all federal, state, county and municipal government bodies having jurisdiction thereof shall be observed.

Section 11. Leasing. No Owner of a Lot may lease less than the entire Lot. All leases must be in writing and for residential purposes only. All leases must provide that the terms of the lease are subject in all respects to the provisions of the Declaration (including any rules adopted in accordance therewith) and that any violation of the Declaration or the rules by the lessee or their guests, invitees, or other occupants of the Lot shall be a default under the lease. Any sublease or assignment of a lease shall be for the entire remainder of the lease term. No Lot may be leased for a term of less than thirty (30) days. No Lot may be used or offered for use for timeshare purposes. At least ten (10) days before commencement of the lease term, the Owner shall provide the Association with the following information: (a) the commencement date and expiration date of the lease term; (b) the names and contact information for each of the lessees and any other adult(s) who will occupy the Lot during the lease term; (c) a description and the license plate numbers of the lessees' and occupants' vehicles; and (d) the Owner's offsite address, telephone number, and

email address in the event of an emergency involving the Lot. Any Owner who leases a Lot must provide the lessee with copies of the Declaration and any rules adopted in accordance therewith. The Owner shall be liable for any violation of the Declaration or the rules by the lessees and their guests, invitees, or other occupants of the Lot and, in the event of any such violation, the Owner, upon demand of the Association, shall immediately take all necessary actions to correct any such violations. Subject to the provisions of the Declaration, the Board of Directors shall be entitled to adopt, amend, and repeal rules and regulations governing the leasing of Lots (including advertisements).

Section 12. Maintenance of Improvements. No Improvement on a Lot shall be permitted to fall into disrepair, and all Improvements shall at all times be kept in good condition and repair, adequately painted and otherwise finished. Each Owner shall maintain in good repair the exterior surfaces of each Improvement on said Owner's Lot, including but not limited to walls, roofs, porches, patios, and appurtenances. Nothing shall be done in or to any Improvement which will impair the structural integrity of any Improvement except in connection with any alterations and repairs permitted or required by the Architectural Committee. In the event of damage or destruction from any cause whatsoever to all or any portion of an Improvement, the Owner of the Lot shall promptly repair, reconstruct or restore the same, or cause the same to be repaired, reconstructed, or restored, to the condition existing prior to such damage or destruction. Each Owner shall also maintain in good condition and repair all paved, concrete, and other artificially-surfaced areas, including driveways and walkways located on the Owner's Lot.

Section 13. Trash Containers and Collection. No garbage or trash shall be placed or kept on any property within the Property except in covered containers of a type, size and style which are previously approved in writing by the Architectural Committee. In no event shall such containers be maintained so as to be Visible From Neighboring Property except to make the same available for collection, and then, only for the shortest period of time reasonably necessary to effect such collection. The Architectural Committee shall have the right, in its sole discretion, to require all Owners to subscribe to a trash collection service. All rubbish, trash, or garbage shall be removed from the Lots and shall not be maintained or used, and no rubbish, trash, garbage or debris shall be burned by open fire or otherwise on any portion of the Property.

Section 14. Clothes Drying Facilities. Outside clotheslines or other outside facilities for the drying or airing of clothes shall not be erected, placed or maintained on any portion of the Property unless they are erected, placed or maintained exclusively within an acceptable fenced service yard or otherwise concealed and shall not be Visible From Neighboring Property.

Section 15. Right of Inspection. During reasonable hours, and after notice, except in the event of an emergency, any member of the Architectural Committee or any authorized representative of the Architectural Committee shall have the right to enter upon and inspect any portion of the Property and the Improvements thereon for the purpose of ascertaining whether 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 16. Mineral Exploration. No portion of the Property shall be used in any manner to explore for or to remove any water, oil or other hydrocarbons, minerals of any kind, sand, gravel, earth or any earth substance of any kind.

Section 17. Machinery and Equipment. No machinery or equipment of any kind shall be placed, operated or maintained upon or adjacent to any portion of the Property except such machinery or equipment as is usual and customary in connection with the use, maintenance or construction of a residence, appurtenant structures, or other Improvements at the time such construction or maintenance is occurring.

Section 18. Diseases and Insects. No Owner shall permit any thing or condition to exist upon any property within the Property which shall induce, breed or harbor infectious plant diseases or noxious insects or other living organisms.

Section 19. Setback Requirements. With the exception of Lots numbered 1 and 2, no building shall be erected on any Lot, any wall of which is closer than sixty (60) feet to the front line of said Lot, closer than thirty (30) feet to any side line, or closer than sixty (60) feet to the back line hereof. However, the Architectural Committee, in any event, may by affirmative action and in the exercise of its sole discretion, permit minor variances from the setback requirements set forth herein. Prior to requesting a variance from the Architectural Committee, the Owner shall, however, be required to obtain at his/her own expense all necessary permits and variances from the City of Scottsdale. In the absence of contrary rules established by the Architectural Committee, setback lines on irregular lots shall be determined in accordance with provisions of applicable zoning ordinance of the City of Scottsdale.

Section 20. Fences. No chainlink boundary fence, grape stake fence or other fence which fails in the opinion of the Architectural Committee to harmonize with the design of a single family residence shall be erected on the Property. Any fence put within twenty (20) feet of the front line of a Lot shall not exceed three (3) feet in height unless a variance is previously obtained in writing by the Architectural Committee in the exercise of its sole discretion. No fence and/or wall at any time shall exceed six (6) feet in height, except as approved by the Architectural Committee in conjunction with approval of plans and specifications for a tennis court. Installation of a fence shall otherwise comply with the applicable ordinance of the City of Scottsdale.

Section 21. Tennis Courts. Tennis courts will be permitted only if, in the prior judgment of the Architectural Committee, after proper application, the proposed tennis court is not detrimental to the view from surrounding properties and does not materially interfere with the harmonious and orderly development of the Property or necessitate unreasonable destruction to the natural growth and terrain of the Property. The granting by the Architectural Committee of the application of any Owner for a tennis court or the approval of his plans and specifications shall not entitle any other Owner to have his application granted or have his plans and specifications approved. Such applications shall be considered on a case by case basis.

Section 22. Signs. No signs whatever (including, but not limited to, commercial, political or similar signs) which are Visible From Neighboring Property shall be erected or maintained on the Property or any part thereof, except (a) such signs as may be required by legal proceedings (b)



not more than one (1) residential identification sign with a total face area not in excess of fifty-four (54) square inches on each side, (c) during the time of construction of any building or other Improvement one (1) job identification sign not larger than three (3) square feet, (d) one (1) sign advertising the Lot as for sale or rent, which sign shall not be larger than eighteen inches by twenty-four inches (18" x 24") and shall be made of metal or fiberboard and mounted on a single metal stake so that the bottom of the sign is no more than twenty-four inches (24") above ground level, and (e) such other signs, the nature, number and location of which have been approved by the Architectural Committee.

Section 23. Roof Mounted Air Conditioning Units. No air conditioning units, air coolers, furnaces or similar equipment may be mounted on the roof of any dwelling unit or building located on any portion of the Property.

Section 24. Lights and Reflective Material; Solar Ray Panels and Solar Collector Units.

(a) Spot lights or other lights which may reflect upon or cause glare to neighboring property will not be allowed. Foil or other light-reflective material may not be placed or maintained in the windows or glass areas of any structure erected on any portion of the Property. Other reflective articles, including reflective house sidings and roofing material are prohibited unless erected and maintained so as not to be Visible From Neighboring Property.

(b) No solar ray panels or collector units or other type of solar energy device and similar equipment may be installed, constructed or mounted on the roof of any dwelling unit or building or located on any portion of the Property so as to be Visible From Neighboring Property. The installation, construction or mounting of all such panels, units, devices and equipment must be approved in advance in writing by the Architectural Committee.

(c) Notwithstanding the foregoing the Architectural Committee may, in its sole discretion, approve additional building materials which it deems aesthetically acceptable and which, considering the state of the industry, were not reasonably contemplated by the Declarant.

Section 25. Roofs and Flashings. No asbestos, wood or other shingle roofs or light-reflective roofs are permitted to be constructed or maintained on any structure within the Property, and all roof materials, metal flashings, vents, gutters, down spouts, wires and pipes must be approved in writing in advance by the Architectural Committee and are required to be matched or coordinated with the wall color and texture of the Residence. Changes in color or material of the roof after the structure is built must have the prior written approval of the Architectural Committee.

Section 26. Aluminum Doors and Windows. All aluminum doors, windows, or arcadia doors must be anodized in a natural earth-tone color approved in advance in writing by the Architectural Committee.

Section 27. Restriction on Further Subdivision. No Lot within the Property shall be further subdivided or separated into smaller lots or parcels by any Owner, and no portion less than all of

any Lot nor any easement or other interest therein shall be conveyed or transferred by any Owner. However, a Lot that has already been combined may be split so as to revert back to the original boundaries and dimensions of the Lot as shown on the “Final Plat for The Peak Unit One,” recorded in Book 280 of Maps, Page 1, records of the Maricopa County Recorder’s Office, or any amendment thereto approved by the Association in writing. Lots may be combined with the prior written approval of the Architectural Committee. In the event of a Lot split or Lot combination, the Owner shall be required to obtain at its expense all necessary approvals from the City of Scottsdale.

Section 28. Water Company Exemption. Nothing contained in this Declaration shall be construed to apply to existing easements or activities of any water company servicing the area nor shall it prevent the future maintenance by any such water company or its agents of existing facilities or the erection and maintenance of new facilities or to prevent the carrying on of all reasonable activities of any such water company on the Property or any part thereof.

### ARTICLE III

#### RIGHT-OF-WAY AREA, EASEMENTS AND MAINTENANCE AREAS

Section 1. Right-of-Way Area. The term “Right-of-Way Area” as used herein shall mean that portion of the public street and right-of-way along the Property as might be dedicated by Declarant to the City of Scottsdale, Arizona, for street purposes between the property line of a Lot and the paved portion of the public street and right-of-way. To the extent an Owner is permitted to use any portion of the Right-of-Way Area, the provisions of this Declaration shall apply. Each Owner of a Lot lying adjacent to the Right-of-Way Area shall use said Right-of-Way Area only in accordance with this Declaration and the criteria therefor established by the Architectural Committee and any laws applicable thereto. Each Owner of a Lot lying adjacent to the Right-of-Way Area shall at all times continuously maintain the Right-of-Way Area and all landscaping installed in or upon it in good condition and repair at his expense and in accordance with the criteria established by the Architectural Committee. If any Owner fails to comply with his obligation to provide maintenance hereunder, the Association shall have the right (but not the obligation) to make such repairs and provide such maintenance as the Board may deem necessary in the exercise of its sole discretion, and shall charge the Owner the reasonable cost thereof, which charges together with interest at the rate of fifteen percent (15%) per annum until paid, shall be paid by the Owner to the Association within thirty (30) days after demand therefor and shall create a claim enforceable in the same manner as assessments provided for in this Declaration.

Section 2. Maintenance of “Outside Right-of-Way Area.” The term “Outside Right-of-Way Area” as used herein shall mean that portion of the recorded rights-of-way for the Property adjacent to the Property lying between the paved portion of said streets and the outside boundary lines of the recorded rights-of-way for said streets. If the Outside Right-of-Way is not maintained in good condition and repair by the City of Scottsdale, the Association shall have the right (but not the obligation) to provide such maintenance and care as the Board of Directors of the Association in the exercise of its discretion may deem advisable.

Section 3. Utility Easements. There is hereby created a blanket easement upon, across, over and under the above-described Property for reasonable ingress, egress, installation, replacing, repairing and maintaining all utilities, including but not limited to water, sewers, gas, telephone, electricity, television cable and communication lines and systems. By virtue of this easement it shall be expressly permissible for providing electrical and/or telephone companies access to erect and maintain the necessary equipment on said Property and to affix and maintain electrical and/or telephone wires, conduits and circuits on, above, across and under the Property. Notwithstanding anything to the contrary contained in this paragraph, no sewers, electrical lines, water lines, television cable and communication lines and systems, or other utilities may be installed or relocated on said Property except as initially programmed and approved by the Declarant or thereafter approved by the Architectural Committee or by the Association's Board of Directors. This easement shall in no way affect any other recorded easement on the Property.

Section 4. Maintenance Areas. In addition to the areas that may be maintained, improved and cared for by the Association pursuant to the Declaration and for the general appearance and betterment of the Property, the Association shall have the authority to improve and provide maintenance and care for such other areas or parcels of property (including without limitation, entry ways to the Property and landscaped medians which may be constructed within the dedicated rights-of-way within the Property) as may be designated by the Board of Directors of the Association in the exercise of its sole discretion, such areas being hereinafter referred to as "Maintenance Areas." The authority provided for herein shall be subject to such authorization as may be required by the City of Scottsdale and shall be valid and binding notwithstanding that such Maintenance Areas may not be owned by the Association or by any Owner.

## ARTICLE IV

### ARCHITECTURAL COMMITTEE

Section 1. Membership – Architectural Committee: The Architectural Committee shall consist of no more than five (5) members, each of whom shall be an Owner of a Lot. Any member of the Architectural Committee may be removed from his or her position with or without cause by the Board of Directors. Any member of the Architectural Committee may resign at any time by giving written notice to the Board of Directors, the President or the Secretary. Such resignation shall take effect on the date of receipt of such notice or at any later time specified therein. The acceptance of such resignation shall not be necessary to make it effective. In the event of a vacancy on the Architectural Committee for any reason, the Board of Directors shall be entitled to fill such vacancy by majority vote. The Association has previously recorded notices identifying the names of the individuals serving on and/or noting any changes to the composition of the Architectural Committee. From and after the recording of this amendment, the Association hereby provides notice that it will no longer record any notices identifying the names of the individuals serving on and/or noting any changes to the composition of the Architectural Committee.

Section 2. Decisions of the Architectural Committee – Approval or Disapproval. All decisions of the Architectural Committee shall be by affirmative majority vote. The Architectural Committee's approval or disapproval of a request made pursuant to these restrictions shall be in writing. In the event the Architectural Committee fails to approve or

disapprove any matter within thirty (30) days after final plans and specifications have been submitted to it, the applicant may give notice to the Architectural Committee by certified or registered mail at the address specified in Article VI, Section 8 that applicant is demanding approval or disapproval. In the event the Architectural committee fails to approve or disapprove any matter within fourteen (14) days after actual receipt of such demand, approval will not be required and the requirement of prior written approval of the Architectural Committee shall be deemed to have been fully complied with. If an application is amended, supplemented or modified, whether at the request of the Architectural Committee or not, the thirty (30) day period shall cease and shall begin to run anew commencing on the date of submission of the amendment, supplementation or modification of the application.

Section 3. Purpose. The declared purpose of the Architectural Committee provided for herein is to assure that the character, design, exterior materials, color, roof, proportions, elevation and siting of each Improvement shall be in harmony with its surroundings and shall not be offensive or aesthetically detrimental to neighboring property using reasonable and generally accepted criteria of aesthetic and architectural judgment in addition to the specific limitations set forth in these Restrictions. In addition to all other standards, the Architectural Committee may deny any application if it determines in its sole discretion that the quality, materials, amount of floor space, cost of construction, or probable fair market value, are not in keeping with the majority of residences in the subdivision at the time of the application. The Architectural Committee is hereby authorized to adopt sign regulations and to change them from time to time.

Section 4. Variations. The Board and/or the Architectural Committee, in the exercise of discretion, are hereby authorized to grant variances from the requirements of the Restrictions set forth in the Declaration as the Board and/or the Architectural Committee shall deem appropriate under the circumstances, so long as the use permitted by such variance shall not result in an unsafe, unsanitary, or aesthetically displeasing condition and shall not result, in the opinion of the Board and/or the Architectural Committee, in a substantial departure from the common plan of development contemplated by the Declaration. In addition, all portions of the Property shall continue at all times to be subject to any and all applicable zoning laws and ordinances, provided, however, that where the provisions of the Declaration are more restrictive than such laws or ordinances, the provisions of the Declaration shall control.

Section 5. Rules and Regulations. The Architectural Committee shall have the power to establish such rules and regulations governing its activities and governing the procedures for applying for Architectural Committee approval, as it may deem advisable.

Section 6. Nonwaiver. The approval by the Architectural Committee of any plans, drawings or specifications for any matter requiring prior written approval by virtue of this Declaration, shall not be deemed to constitute a waiver of any right to withhold approval of any similar plan, drawing, specification or matter subsequently submitted for approval.

Section 7. Nonliability. Neither the Board of Directors of the Association nor the Architectural Committee nor any member thereof shall be liable to the Association, to any Owner or to any other party for any damage, loss or prejudice suffered or claimed on account of (a) the

approval or disapproval of any plans, drawings or specifications, whether or not defective or deficient, (b) the construction or performance of any work whether or not pursuant to approved plans, drawings and specifications, (c) the development of any portion of the Property or (d) the execution and filing of any estoppel certificate whether or not the facts therein are correct; provided however, that with respect to the liability of a member of the Board of Directors or the Architectural Committee, such member has acted in good faith on the basis of such information as may be possessed by him. Without in any way limiting the generality of the foregoing provisions of this Section 7, the Board of Directors or the Architectural Committee or any member thereof may, but is not required to, consult with or hear the views of the Association or any Owner with respect to any plans, drawings, specifications or any other proposals submitted to the Board of Directors or the Architectural Committee.

## ARTICLE V

### ASSOCIATION

Section 1. The Association. The Association is a non-profit Arizona corporation charged with the duties and invested with the powers prescribed by law and set forth in the Articles of Incorporation, the Bylaws for the Association and the Declaration. Neither the Articles nor the Bylaws shall for any reason be amended or otherwise changed or interpreted so as to be inconsistent with this Declaration. The Property and all parts thereof is known as “The Peak aka Highland Place.” The Association is named “Highland Place Property Owners Association” (hereinafter referred to as the “Association”).

The Association shall be governed by and in accordance with the requirements set forth herein and shall be organized for the purposes and with the powers set forth herein. By acceptance of a deed or by acquiring any ownership interest in any of the real 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 become automatically members of the Association, subject to the rights and obligations set forth herein.

Section 2. Membership and Voting Rights. Every Owner of a Lot shall be a member of the Association. Membership shall be appurtenant to and may not be separated from ownership of any lot.

(a) Owners shall be entitled to one (1) vote for each Lot owned. When more than one (1) 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.

The vote for each Lot must be cast as a unit, and fractional votes shall not be allowed. In the event that joint Owners are unable to agree among themselves as to how their vote or votes shall be cast, they shall lose their right to vote on the matter in question. If an Owner or Owners casts a vote representing a certain Lot, it will thereafter be conclusively presumed for all purposes that he or they were acting with the authority and

consent of all other Owners of the same Lot. In the event more than one (1) vote is cast for a particular Lot, none of said votes shall be counted and said votes shall be deemed void. Furthermore, and notwithstanding any provision in the Existing CC&R's to the contrary, including, without limitation, Section 3 and Section 4 of Article VI of the Second Amendment, the denominator of the fraction used to compute the percentage of votes or signatures, as applicable, required to determine the passage or failure of any issue subject to a vote of, or requiring confirmation by, the membership of the Association shall be determined not on the basis of the total number of Owners or members within the Association, but upon the aggregate number of votes then eligible to be cast by the voting membership as established on a per Lot basis in accordance herewith. In the event any Owner is in arrears in the payment of any assessment levied or charge imposed by the Association in accordance with Section 3 of this Article V for a period of thirty (30) days or more, such Owner's right to vote as a member of the Association shall be automatically suspended and shall remain suspended until all payments, including accrued interest and attorneys' fees, are brought current. The Board of Directors shall have the right, but not the obligation, to suspend an Owner's right to vote as a member of the Association during any period in which the Owner has failed to comply with any other requirements and obligations of this Declaration.

(b) Each member shall have such other rights, duties and obligations as set forth in the Articles of Incorporation and Bylaws of the Association as they may be amended from time to time.

(c) The Association membership of each Owner of a Lot within the Property shall be appurtenant to said Lot. The rights and obligations of an Owner and membership in the Association shall not be assigned, transferred, pledged, conveyed or alienated in any way except upon transfer of ownership to the Owner's Lot and then only to the transferee of ownership to such Lot or by intestate succession, testamentary disposition, foreclosure of a mortgage of record, exercise of a power of sale under a deed of trust or such other legal process as is now in effect or as may hereinafter be established under or pursuant to the laws of the State of Arizona. Any attempt to make a prohibited transfer shall be void. Any transfer of ownership to a Lot shall operate to transfer said membership to the new Owner thereof.

(d) The affairs of the Association shall be conducted by a Board of at least three (3) Directors with the assistance of such officers designated in the Articles or Bylaws.

### Section 3. Funds and Assessments.

(a) Creation of the Lien and Personal Obligation of Assessments. Each Owner of any Lot by acceptance of a deed therefor, whether or not it shall be so expressed in such deed, is deemed to covenant and agree to pay to the Association:

(i) Annual assessments or charges; and

(ii) Special assessments for capital improvements, such assessments to be established and collected as hereinafter provided. The annual and special assessments, together with late fees, interest at the rate of fifteen percent (15%) per annum until paid, costs and reasonable attorney's 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 late fees, interest at the rate of fifteen percent (15%) per annum until paid, costs, and reasonable attorney's fees shall also be the personal obligation of the person who is the Owner of such property at the time when the assessment fell due.

(b.) Purpose of Assessment. The assessments levied by the Association shall be used exclusively to promote the health, safety and welfare of the residents in the properties and for the improvement, maintenance and replacement of the Right-of-Way Area and of the improvements situated or to be situated thereon and any other real or personal property owned by the Association, for a building reserve account, and to comply with all of the obligations of the Association hereunder, all in accordance with this Declaration and the Articles of Incorporation of the Association.

(c.) Annual Assessments – Maximum Amounts. The annual assessment is currently two thousand one hundred eighty dollars (\$2,180.00) in 2021 and will increase to two thousand five hundred eight dollars (\$2,508.00) in 2022. Until January 1 of the year immediately following the establishment of the Association, the maximum annual assessment shall be \$3,000.00 per each Lot, whether improved, developed or undeveloped.

(i) The maximum annual assessment may be increased each year not more than fifteen percent (15%) above the maximum assessment for the previous year without a vote of the membership.

(ii) The maximum annual assessment may be increased above fifteen percent (15%) by a two-thirds (2/3) vote of the members who are voting in person or by absentee ballot at a meeting duly called for that purpose.

(d) Special Assessments for Capital Improvements. In addition to the annual assessments authorized above, the Association may levy, in any assessment year, in a special assessment payable in not more than the next succeeding ten (10) years for the purpose of defraying in whole or in part the cost of any construction, reconstruction, repair or replacement of any landscaping or other improvement, provided that any such assessment shall have the consent of two-thirds (2/3) of the votes of the members who are voting in person or by absentee ballot at a meeting duly called for that purpose.

(e) Meetings – Notice and Quorum for Action Authorized Under Sections (c) and (d) Above. Written notice of any meeting called for the purpose of taking any action authorized under Section (c) and (d) above shall be sent to all members not less than ten (10) days nor more than fifty (50) days in advance of the meeting. At the first such meeting called, the presence of members (either in person or through absentee ballot) entitled to

cast more than fifty percent (50%) of all votes of the 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.

(f) Uniform Rate of Assessment. Both annual and special assessments are fixed at a uniform rate for all Lots. Annual assessments are payable in twelve (12) equal installments due on the first day of each month of the year in which the annual assessment is imposed. Late fees equal to ten percent (10%) of the unpaid monthly assessment shall be charged for assessments paid on or after the sixteenth (16th) day of the month in which such assessment is due. Special assessments shall be payable as determined by the Board of Directors.

(g) Statement of Assessments. The Association shall, upon demand, furnish a certificate signed by an officer of the Association setting forth whether the assessments on a specified Lot has been paid.

(h) Enforcement of Assessments. Each assessment levied hereunder shall be a separate, distinct and personal debt and obligation of the Owner or Owners against whom the same is assessed, and shall constitute a lien and charge upon the Lot to which the assessment relates. Each Owner, by acceptance of a deed relating to a Lot or Lots or by acceptance of any other document or instrument conveying an ownership interest therein, whether or not it shall be so expressed in any such deed or other document or instrument, are and shall be deemed to covenant and agree to pay to the Association the assessments, both annual and special, provided for herein, and agree to the enforcement of the assessments in the manner herein specified. In the event the Association employs an attorney or attorneys for collection of any assessment, 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, costs, and late fees thereby incurred in addition to any other amounts due from the Owner 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 any one or all of the following procedures:

(i) Enforcement by Suit. The Association may bring a suit at law against each Owner or Owners to enforce each such assessment obligation. Each Owner agrees that any judgment rendered in any such action shall include a sum for reasonable attorney's fees in such amount as the Court may adjudge against the defaulting Owner, plus all Court costs and necessary expenses incurred by the Association, plus late fees and interest on the amount of said assessment at the rate of fifteen percent (15%) from the date the assessment becomes delinquent until paid in full.



(ii) Enforcement by Lien. The amount of the lien shall include the amount of all unpaid assessments, late fees, costs of collection, and attorneys' fees and costs, plus interest on the amount of the assessment at the rate of fifteen percent (15%) from the date the assessment becomes delinquent until paid in full, plus a lien charge to cover recording and legal expenses incident thereto. The amount of said lien charge may be increased or decreased by the Board of Directors in its sole discretion. 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 the exercise of a power of sale in a trust deed, as elected by the Association, as set forth by the laws of the State of Arizona, as the same 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 non-delinquent or defaulting Lot Owners. The Association shall have the power to bid in its interest at any foreclosure sale and to purchase, acquire, hold, lease, mortgage and convey any Lot. Each Owner hereby expressly waives any objection to the enforcement and foreclosure of this lien in this manner and also hereby expressly waives the defense of the Statute of Limitations applicable to the bringing of any suit or action thereon.

(i) Subordination of the Lien to Mortgages. The lien of the assessments provided for herein shall be subordinate to the lien of any first mortgage or trust deed. Any person acquiring title or coming into possession of a Lot through foreclosure of a first mortgage or trustee's sale conducted by the holder of the first deed of trust shall acquire title free and clear of any claims for unpaid assessments and charges against the Lot which became payable prior to the acquisition of the Lot by such person. Any other sale or transfer of any Lot shall not affect the assessment lien. No sale or transfer shall relieve a Lot Owner or a Lot from liability for any assessments thereafter becoming due or from the lien thereof.

Section 4. Control of Architectural Committee. Notwithstanding any contrary provision of this Declaration, the Architectural Committee shall consist of such regular members and alternative members as may be determined by the Board of Directors of the Association and the Board of Directors of the Association may thenceforth in the exercise of its sole discretion, assume any or all of the duties, obligations or functions of the Architectural Committee as provided for in this Declaration, and shall have the power, at any time and from time to time to promulgate, adopt, amend and repeal reasonable rules and regulations governing the Architectural Committee, applications thereto, Architectural Committee procedures and criteria for architectural control.

Section 5. Professional Management. The Association may engage the services of a professional manager or a professional management company to maintain the Right-of-Way Area, to collect assessments, to attend to the security within the Property and to perform such other duties and to fulfill such other functions as may be determined by the Board of Directors of the Association.

Section 6. Dissolution of Association. At any time, the Association may be dissolved by the recording with the Maricopa County Recorder of a Declaration of Dissolution duly signed by Owners representing two-thirds (2/3) of the Lots, and by compliance with all applicable laws and regulations governing the dissolution of corporations.

## ARTICLE VI

### GENERAL PROVISIONS

Section 1. Enforcement. The Association, or any Owner, shall have the right to enforce, by a 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 an owner to enforce any covenant or restriction herein contained shall in no event be deemed a waiver of the right to do so thereafter, nor shall such failure to enforce give rise to any claim or cause of action against the Association or such Owner.

Section 2. Severability. Invalidation, illegality, or unenforceability of any one of these covenants or restrictions by statutes, judgment or court order shall in no way affect any other provisions of this Declaration, which shall remain in full force and effect.

Section 3. Amendment. This Declaration may be amended by a vote of the Owners representing not less than sixty-six and two-thirds percent (66 2/3%) of the Lots. Any amendment must be recorded.

Section 4. Annexation. Additional residential property and Common Area may be annexed to the Property with the consent of Owners representing eighty percent (80%) of the Lots.

Section 5. Violations and Nuisances. Every act of 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 the Association or any Owner or Owners of Lots within the Property. However, any other provisions to the contrary notwithstanding, only the Association may enforce by self-help any provisions of said Restrictions. An Owner may not exercise any of the Association's remedies to enforce payment of any assessments levied or other charges imposed pursuant to Section 3 of Article V of this Declaration.

Section 6. Violation of Law. Any violation of any state, municipal, or local law, ordinance or regulation, including zoning laws, pertaining to the ownership, occupation, or use of any property within the Property is hereby declared to be a violation of this Declaration and subject to any or all of the enforcement procedures set forth in said Declaration.

Section 7. Remedies Cumulative. Each remedy provided by this Declaration is cumulative and exclusive.

Section 8. Delivery of Notices and Documents. Except as otherwise provided in this amended Declaration, any written notice or other documents relating to or required by these Restrictions 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 deposited in the United State mail, postage prepaid, addressed as follows:

If to the Association, at the principal office of the corporation as shown on the records of the Arizona Corporation Commission; if to the Architectural Committee: P.O. Box 13324, Scottsdale, Arizona 85267.

If to an Owner, to the address of any Lot within the Property owned, in whole or in part, by him or to any other address last furnished by an Owner to the Association; provided however, that any such address may be changed at any time by delivering a notice to the Association in writing of any subsequent change of address.

When the title to a Lot is changed or transferred in any manner, the Owner of such Lot shall on the close of escrow thereof file with the Association a written notice specifying the nature of each such change or transfer and the names of every person or entity who is the record owner of the equitable or legal title of such Lot.

Section 9. Recording. Any notice, change of membership, amendment or other document required by this Declaration to be recorded, shall be recorded with the County Recorder of Maricopa County, shall be properly indexed and shall refer to this Declaration as said Declaration may be subsequently amended.

Section 10. The Declaration. By acceptance of a deed or by acquiring any ownership interest in any of the real property included with 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 and regulations now or hereafter imposed or authorized by this Declaration or any amendments thereof. In addition, each such person by so doing thereby acknowledges that this Declaration sets forth a general scheme for the improvement and development of the real property covered thereby and hereby evidences his interest that all the 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 provision shall be mutually beneficial, prohibitive and enforceable by the various subsequent and future Owners.

Section 11. Zoning and Use. Zoning, use, rights and requirements in force by the City of Scottsdale governing the Property shall be R1-190. It is the express intention of the Declarants by virtue of these Covenants, Conditions and Restrictions that strict adherence to the R1-190 conditions occur. Should there be an inconsistency between terms and conditions of these Covenants, Conditions and Restrictions and those provided for by the R1-190 requirements, the latter shall prevail.

**EXHIBIT "A"**

**LEGAL DESCRIPTION:**

**The Northwest quarter of the Northwest quarter of Section 8, Township 4 North, Range 5 East of the Gila and Salt River Base and Meridian, Maricopa County, Arizona.**

**EXCEPT all mineral and uranium, thorium or any other material which is or may be determined to be peculiarly essential to the production of fissionable materials as reserved in the patent of said land.**