

7.7 Annual Assessment Period: The period for which the Annual Assessment is to be levied (the "Assessment Period") shall be the calendar year, except that the first Assessment Period shall commence upon the incorporation of the Association and shall terminate on December 31st of that year. The Board in its sole discretion from time to time may change the Assessment Period by recording with the County Recorder of Apache County, Arizona, an instrument specifying the new Assessment Period.

7.8 Billing and Collection Procedures: The Board shall have the right to adopt procedures for the purpose of making, billing and collecting the Annual and Special Assessment, Maintenance Charges and Special Use Fees provided that said procedures are not inconsistent with the provisions hereof. The failure of the Association to send a bill to a Member shall not relieve any Member of his liability for any Assessment or charge under this Declaration, but the Assessment Lien therefor shall not be foreclosed or otherwise enforced until the Member has been given not less than fifteen (15) days written notice prior to such foreclosure or enforcement, at the address of the Member on the records of the Association, that the Assessment or any installment thereof is or will be due and of the amount owing. Such notice may be given at any time prior to or after the delinquency of such payment. It shall be the responsibility of the Member to inform the Association in writing of a change of address. The Association shall be under no duty to refund any payments received by it even though the ownership of a Membership changes during an Assessment Period; successor Owners of Lots shall be given credit for prepayments, on a prorated basis, made by prior Owners. In case the Owner of a Membership becomes liable for payment of an increased sum pursuant to 7.3 during the Assessment Period, he shall notify the Association but his failure to notify the Association shall not relieve him of the liability for such amounts. Annual Assessments shall be collected on a monthly, quarterly or annual basis as determined by the Board and Special Assessments shall be collected as specified by the Board unless otherwise determined by the resolution of the Members of the Association approving the Special Assessment.

7.9 Collection Costs and Interest on Delinquent Assessments: Any Assessment, Maintenance Charge, Special Use Fee or installment thereof not paid when due shall be deemed delinquent and shall bear interest from ten (10) days after the due date until paid at a rate equal to the greater of (a) twelve percent (12%) per annum, (b) the then prevailing interest rate on new loans guaranteed by the Veterans Administration, or (c) the rate set by the Board, and the Member shall be liable for all costs, including attorneys'

fees, which may be incurred by the Association in collecting the same. The applicable interest rate on delinquent Assessments and other charges shall be determined on a daily basis or as otherwise provided by the Board. In addition, the Board may charge a late fee for all delinquent payments. The Board may also record a Notice of Delinquency against any Lot as to which an Assessment, Special Use Fee or Maintenance Charge is delinquent and constitutes a lien and may establish a fixed fee to reimburse the Association for the Association's cost in recording such Notice, processing the delinquency and recording a notice of payment, which fixed fee shall be treated as a collection cost of the Association secured by the Assessment Lien. Upon the complete curing of any default for which a Notice of Delinquency was recorded by the Association, the Association shall record an appropriate release of such notice. Notwithstanding the recording of any Notice of Delinquency, the obligation of each Owner to pay Assessments, Maintenance Charges, Special Use Fees and other amounts payable hereunder shall be secured by a continuing Assessment Lien.

7.10 Evidence of Payment of Assessments and Maintenance Charges: Upon receipt of a written request and within a reasonable period of time thereafter, the Association shall issue to the requesting party a written certificate stating (a) that all Annual and Special Assessments, Special Use Fees and Maintenance Charges (including interest, costs and attorneys' fees, if any, as provided in Section 7.9 have been paid with respect to any specified Lot as of the date of such certificate, or (b) if such have not been paid, the amount(s) due and payable as of such date. The Association may make a reasonable charge for the issuance of such certificates, which charge must be paid at the time the request for any such certificate is made. Any such certificate shall be conclusive and binding with respect to any matter therein stated as against any bona fide purchaser of, or lender on, the Lot in question.

ARTICLE VIII

ENFORCEMENT OF PAYMENT OF ASSESSMENTS AND MAINTENANCE CHARGES AND OF ASSESSMENT LIEN

8.1 Association as Enforcing Body: As provided in Section 11.2, the Association and the Members shall have the right to enforce the provisions of this Declaration.

8.2 Association's Remedies to Enforce Payment of Assessments and Maintenance Charges: If any Member fails to pay the Annual or Special Assessments, Special Use Fees or Maintenance Charges when due, the Association may enforce the payment thereof and/or the Assessment Lien by taking either or both of the following

actions, concurrently or separately (and by exercising either of the remedies hereinafter set forth, the Association does not prejudice or waive its right to exercise the other remedy):

(a) Bring an action at law and recover judgment against the Member personally obligated to pay the Annual or Special Assessments, Special Use Fees or the Maintenance Charges;

(b) Foreclose the Assessment Lien against the appropriate Lot in accordance with the then prevailing Arizona law relating to the foreclosure of realty mortgages (including the right to recover any deficiency), and the Lot may be redeemed after foreclosure sale as provided by law. The Association may bid on the subject property at such a foreclosure sale.

Notwithstanding subordination of an Assessment Lien as described in 8.3, the delinquent Member shall remain personally liable for the Assessments and related costs after his Membership is terminated by foreclosure or deed in lieu of foreclosure or otherwise.

8.3 Subordination of Assessment Lien: The Assessment Lien shall be subordinate to any first mortgage lien held by, or first deed of trust of which the beneficiary is a lender who has lent funds with the Lot as security, or held by the lender's successors and assigns, and shall also be subject and subordinate to liens for taxes and other public charges which by applicable law are expressly made superior. Except as above provided, the Assessment Lien shall be superior to any and all charges, liens or encumbrances which hereafter in any manner may arise or be imposed upon each Lot. Sale or transfer of any Lot shall not affect the Assessment Lien; provided, however, that if the sale or transfer is pursuant to foreclosure of a mortgage or a deed of trust to which the Assessment Lien is subordinate, or pursuant to any trustee's sale or proceeding in lieu thereof, the purchaser at the mortgage foreclosure or deed of trust sale, or any grantee taking by deed in lieu of foreclosure, shall take the Lot free of the Assessment Lien for all Assessments and Maintenance Charges that have accrued up to the date of issuance of a sheriff's or trustee's deed or deed in lieu of foreclosure; provided, however, that such mortgage or deed of trust foreclosure sale purchaser or grantee shall take subject to all Annual and Special Assessments, Special Use Fees, Maintenance Charges and the Assessment Lien therefor accruing subsequent to the date of issuance of a sheriff's or trustee's deed or deed given in lieu of foreclosure. Nothing herein shall prohibit the Board from reallocating the amount of any Assessment Lien extinguished hereunder against all Owners as part of an Annual or Special Assessment.

ARTICLE IX

ASSOCIATION FUNDS

9.1 Purposes for Which Association's Funds May Be Used: The Association shall apply all funds and property collected and received by it (including the Annual and Special Assessments, fees, loan proceeds, surplus funds and all funds and property received by it from any other source) for the common good and benefit of Noble Mountain Estates and the Members and Residents by devoting said funds and property, among other things, to the acquisition, construction, alteration, maintenance, provision and operation, by any manner or method whatsoever, of any kind and all land, properties, improvements, facilities, services, projects, programs, studies and systems, within or without Noble Mountain Estates, which may be necessary, desirable or beneficial to the general common interests of Noble Mountain Estates, the Members and the Residents. The following are some, but not all, of the areas in which the Association may seek to aid, promote and provide for such common benefit: maintenance of rights-of-way and drainage areas within and adjoining Noble Mountain Estates, recreation, liability insurance, communications, ownership and operation of recreational and other facilities, transportation, health, utilities, public services, reserve accounts, safety, and indemnification of officers and directors of the Association. The Association may use its funds for any purposes for which a municipality may expend its funds under the laws of the State of Arizona or such municipality's charter. The Association also may expend its funds in any manner as permitted under the laws of the State of Arizona for a nonprofit corporation.

9.2 Borrowing Power: The Association may borrow money in such amounts, at such rates, upon such terms and security, and for such periods of time as the Board deems necessary or appropriate.

9.3 Association's Rights in Spending Funds From Year to Year: The Association shall not be obligated to spend in any year all the sums received by it in such year (whether by way of Annual or Special Assessments, fees or otherwise), and may carry forward as surplus any balances remaining. The Association shall not be obligated to reduce the amount of Annual Assessment in the succeeding year if a surplus exists from a prior year and the Association may carry forward from year to year such surplus as the Board in its discretion may determine to be desirable for the greater financial security of the Association and the accomplishment of its purposes.

9.4 Eminent Domain: The term "taking" as used in this Section shall mean condemnation by eminent domain or sale under threat of condemnation. In the event of a threatened taking of all or any portion of the Common Area, the Owners hereby appoint the Board and such persons as the Board may delegate to represent all of the Members in connection with the taking. The Board shall act in its sole discretion with respect to any awards made or to be made in connection with the taking and shall be entitled to make a voluntary sale to the condemnor in lieu of engaging in a condemnation action. Any awards received on account of the taking shall be paid to the Association. In the event of a total or partial taking, the Board may, in its sole discretion, retain any award in the general funds of the Association or distribute pro rata all or a portion thereof to the Owners and all holders of liens and encumbrances, as their interests may appear of record, at a uniform rate per Membership.

9.5 Insurance:

(a) Authority to Purchase. The Association shall maintain insurance against liability incurred as a result of death or injury to persons or damage to property on the Common Areas or upon other areas maintained by the Association, in a total amount of not less than One Million Dollars (\$1,000,000). If reasonably available, the Association shall obtain officers and directors liability insurance in an amount deemed prudent by the Board. In the event the Noble Mountain Estates project has been approved by FHA, VA, FNMA or FHLMC and any loans have been made, insured, guaranteed or purchased through all or any of such agencies or entities, then the Association shall obtain and maintain such insurance as may be required by the approving agency(ies) or entity(ies). In addition the Association may carry any other insurance coverage which the Board in its discretion deems necessary or desirable. The deductible shall be paid by the party who would be liable for the loss or repair in the absence of insurance.

(b) Individual Responsibility. It shall be the responsibility of each Owner and Resident or other person to provide for himself insurance on his property interests within Noble Mountain Estates, including, but not limited to, his additions and improvements thereon, furnishings and personal

property therein, his personal liability to the extent not covered by the property and public liability insurance obtained by the Association, if any, and such other insurance as such person desires. No person shall maintain any insurance which would limit or reduce in any manner the insurance proceeds payable under any insurance maintained by the Association in the event of damage to the improvements or fixtures on the Common Areas. Neither the Association or any Board member nor the Declarant shall be liable to any person or mortgagee if any risks or hazards are not covered by the insurance obtained by the Association or if the amount of insurance is not adequate.

(c) Insurance Claims. The Association is hereby irrevocably appointed and authorized by the Owners to adjust all claims arising under insurance policies purchased by the Association and to execute and deliver releases upon the payment of claims, and to do all other acts reasonably necessary to accomplish any of the foregoing. The Board has full and complete power to act for the Association in this regard and may, at its discretion, appoint an authorized representative or committee, or enter into an insurance trust agreement wherein the trustee shall have authority to negotiate losses under any policy purchased by the Association. All proceeds from insurance acquired by the Association shall be payable to the Association. Any proceeds resulting from damage to the Common Areas shall be used to repair the damage, unless otherwise approved by a majority of the votes of each class of Members at a meeting called for such purpose. Any excess proceeds may be retained by the Association as reserves or to reduce future assessments or, if distributed to Members, such proceeds shall be distributed to Members and their mortgagees as their interests may appear at a uniform rate per Membership.

9.6 Reserve Fund: From the Annual Assessments received by the Association, the Board shall establish an adequate reserve fund for the maintenance, repair and replacement of the improvements on the Common Areas.

ARTICLE X

MAINTENANCE

10.1 Common Areas and Private Rights-Of-Way:

(a) Areas of Association Responsibility. The Association, or its duly delegated representative, shall maintain and otherwise manage all Common Areas and the improvements thereon.

(b) Standard of Care. The Board shall use a reasonably high standard of care in providing for the repair, management and maintenance of the Common Areas and other properties maintained by the Association, however, the Board shall be the sole judge as to the appropriate maintenance of all such areas. The Common Areas and other areas and equipment maintained by the Association shall be used at the risk of the user and the Association shall not be liable to any person or entity for any claim, damage or injury occurring thereon or related to the use thereof.

(c) Delegation of Responsibilities. In the event any subdivision plat, deed restriction or this Declaration permits the Board to determine whether or not Owners of certain Lots will be responsible for maintenance of certain Common Areas or Private right-of-way areas, the Board shall have the sole discretion to determine whether or not it would be in the best interest of the Owners and Residents of Noble Mountain Estates for the Association or for an individual Owner to be responsible for such maintenance, considering cost, uniformity of appearance, location and other factors deemed relevant by the Board. The Board may cause the Association to contract with others for the performance of the maintenance and other obligations of the Association under this Article X.

10.2 Assessment of Certain Maintenance Costs: In the event that the need for maintenance or repair of Common Areas, structures and other property maintained by the Association is caused through the willful or negligent act of any Owner, or that Owner's family, guests, or tenants, the cost of such maintenance or repairs shall be added to and become a part of the Assessment to which such Owner and the Owner's Lot is subject and shall be secured by the Assessment Lien. Any charges or fees to be paid by the Owner of a Lot pursuant to 10.1(c) in connection with a contract entered

into by the Association with an Owner for the performance of an Owner's maintenance responsibilities shall also become a part of such Assessment and shall be secured by the Assessment Lien.

10.3 Improper Maintenance and Use of Lots: In the event any portion of any Lot is so maintained or not maintained as to present a nuisance, or substantially detract from the appearance or quality of the surrounding Lots or other areas of Noble Mountain Estates which are substantially affected thereby or related thereto, or in the event any portion of a Lot is being used in a manner which violates this Declaration, or in the event the Owner of any Lot is failing to perform any of its obligations under this Declaration, or the Noble Mountain Rules, the Board may by resolution make a finding to such effect, specifying the particular condition or conditions which exist, and pursuant thereto give notice thereof to the offending Owner that unless corrective action is taken within fifteen (15) days, the Board may cause such action to be taken at said Owner's cost. If at the expiration of said fifteen day period of time the requisite corrective action has not been taken, the Board shall be authorized and empowered to cause such action to be taken and the cost thereof including costs and attorneys' fees shall be added to and become a part of the Assessment to which the offending Owner and the Owner's Lot is subject and shall be secured by the Assessment Lien. Except in the case of emergency repairs, the Association shall institute judicial proceedings before any item of construction is altered or demolished.

10.4 Easement for Maintenance Responsibilities: The Association shall have an easement upon, across, over and under the Lots, for the purpose of repairing, maintaining and replacing the Common Areas, Common Area improvements, and other areas maintained by the Association and for the purpose of performing all of the Association's other rights, duties and obligations hereunder.

ARTICLE XI

RIGHTS AND POWERS OF ASSOCIATION

11.1 Association's Rights and Powers As Set Forth in Articles and Bylaws: In addition to the rights and powers of the Association set forth in this Declaration, the Association shall have such rights and powers as are set forth in its Articles and Bylaws, which shall include all rights and powers as may be reasonably necessary in order to effect all the objectives and purposes of the Association as set forth herein. After incorporation of the Association, a copy of the Articles and Bylaws of the Association shall be available for inspection by Members, prospective purchasers, and mortgagees at the office of the Association during reasonable business hours.

11.2 Enforcement of Provisions of This and Other Instruments: The Association, as the agent and representative of the Owners, shall have the right (without obligation) to enforce, by any proceeding at law or in equity, the Covenants set forth in this Declaration and/or any and all covenants, restrictions, reservations, charges, servitudes, assessments, conditions, liens or easements provided for in any contract, deed, declaration or other instrument which (a) shall have been executed pursuant to, or subject to, the provisions of this Declaration, or (b) otherwise shall indicate that the provisions of such instrument were intended to be enforced by the Association or by Declarant. Sanctions may include reasonable monetary fines and suspension of the right to vote and right to use recreational facilities on the Common Areas. In the event suit is brought or arbitration is instituted or an attorney is retained by the Association to enforce the terms of this Declaration or other document as described in this Section 11.2 and the Association prevails, the Association shall be entitled to recover, in addition to any other remedy, reimbursement for attorneys' fees, court costs, costs of investigation and other related expenses incurred in connection therewith including, but not limited to, the Association's administrative costs and fees. Said attorneys' fees, costs and expenses shall be the personal liability of the breaching Owner and shall also be secured by the Assessment Lien against said Owner's Lot. If the Association shall fail or refuse to enforce this Declaration or any provision hereof for an unreasonable period of time after written request by a Member to do so, then any Member may enforce the provisions of the Declaration at his own expense by any appropriate action, whether in law or in equity, but regardless of the outcome, no expenses of the action shall be paid for by the Association. Nothing contained herein shall be construed to prohibit any Owner from instituting a legal proceeding against the Association for the failure to comply with this Declaration or the provisions of any other instrument described in this Section.

11.3 Contracts With Others for Performance of Association's Duties: Subject to the restrictions and limitations contained herein, the Association may enter into contracts and transactions with others, including the Declarant and its affiliated companies, and such contracts or transactions shall not be invalidated or in any way affected by the fact that one or more directors or officers of the Association or members of any committee are employed by or otherwise connected with Declarant or its affiliates, provided that the fact of such interest shall be disclosed or known to the other directors acting upon such contract or transaction, and provided further that the transaction or contract is fair and reasonable. Any such director, officer or

committee member may be counted in determining the existence of a quorum at any meeting of the Board or committee of which he is a member which shall authorize any contract or transaction described above or grant or deny any approval sought by the Declarant, its affiliated companies or any competitor thereof and may vote thereat to authorize any such contract, transaction or approval with like force and effect as if he were not so interested. Notwithstanding anything to the contrary contained herein, during the period when the Declarant has a Class B vote, any professional management contract entered into by the Association must be terminable with or without cause, upon no more than ninety (90) days written notice and without payment of any penalty.

11.4 Procedure for Change of Use of Association Land:
Upon (a) adoption of a resolution by the Board stating that in the Board's opinion the then present use of a designated part of the Association Land or of the Association's interest in other Common Areas is no longer in the best interests of the Owners and Residents and (b) the approval of such resolution by a majority of the votes of each class of Members at a meeting duly called for such purpose, the Board shall have the power and right to change the use thereof (and in connection therewith, construct, reconstruct, alter or change the buildings, structures and improvements thereon in any manner deemed necessary by the Board to accommodate the new use), provided such new use (i) shall be for the benefit of the Owners and Residents, and (ii) shall be consistent with any deed restrictions and zoning regulations restricting or limiting the use of the land. Alternatively, the Board upon satisfaction of subsection (a) above may, in lieu of calling a meeting, notify in writing all Owners of the proposed change of use and of their right to object thereto and, if no more than ten percent (10%) of the Class A Memberships eligible to vote object in writing within thirty (30) days after receipt of such notice, the proposed transaction shall be deemed approved by the Members and a meeting of the Members shall not be necessary.

11.5 Procedure for Alteration of Common Area: The Association shall have the right to dedicate or transfer all or any part of the Common Areas to any public authority or utility. In addition, the Association shall have the right to change the size, shape or location of the Common Areas, to exchange the Common Areas for other property or interests which become Common Areas, and to abandon or otherwise transfer Common Areas (to a nonpublic authority) upon (a) the adoption of a resolution by the Board stating that ownership and/or use of the relevant Common Area is no longer in the best interests of the Owners and Residents and that the change desired shall be for their benefit and shall not substantially adversely affect them and (b) the approval of such

resolution by a majority of the votes of each class of Members, voting in person or by proxy, at a meeting called for such purpose. Alternatively, the Board upon satisfaction of subsection (a) above may, in lieu of calling a meeting pursuant to subsection (b) above, notify in writing all Owners of the proposed transaction and of their right to object thereto and, if no more than ten percent (10%) of the Class A Members eligible to vote object in writing within thirty (30) days after receipt of such notice, the proposed transaction shall be deemed approved by the Members and a meeting of the Members shall not be necessary.

ARTICLE XII

DESIGN REVIEW COMMITTEE

12.1 Establishment: A Design Review Committee shall be established to perform the functions of the Design Review Committee set forth in this Declaration. The Design Review Committee shall consist of three regular members and such number of alternate members as the Board may designate. During the first ten (10) years following the recordation of this document or until such time as the Declarant has relinquished its appointment rights, all members and alternates of the Committee shall be appointed by the Declarant. Thereafter the members of the Design Review Committee shall be appointed by the Board. The Declarant may voluntarily relinquish its right to appoint all or some of the members of the Design Review Committee by recording an amendment to the Declaration executed by the Declarant alone. Members of the Design Review Committee need not be architects, Owners or Residents and need not possess any special qualifications of any type.

12.2 Meetings; Guidelines: The Design Review Committee shall keep a record of the minutes of all meetings. A quorum for any such meeting shall consist of a majority of the regular members of the Committee and the concurrence of a majority of the regular committee members shall be necessary for any decision of the Design Review Committee. Alternate member(s) may participate at any meeting in lieu of absent regular member(s), may constitute a quorum by his (their) presence and shall have all of the authority of a regular member while so participating. The Design Review Committee shall promulgate Design Guidelines and Rules to be used in rendering its decisions, including procedures for the preparation, submission and determination of applications for approval. The Design Guidelines and Rules shall be fair and reasonable, shall be consistent with the provisions of this Declaration, the Articles and Bylaws, and shall have the same force and effect as if set forth herein. In the event of inconsistency between rules adopted by the Board and the Design Guidelines and Rules, the Design Guidelines and

Rules will control. A copy of the Design Guidelines and Rules shall be available for inspection at the office of the Association during reasonable business hours. Members of the Committee shall not be entitled to compensation for their services, unless otherwise approved by the Board.

12.3 Discretion of Committee; Liability: The Design Review Committee shall be under no duty or obligation to pass upon, approve or disapprove any structural stability matter or matters pertaining to the stability of footings or foundations or matters pertaining to geological conditions involved in any foundation or footings and may indicate on any plans or specifications or drawings or other materials or in any certificate that the Committee has not passed upon, approved or disapproved any such matters. All actions of said Committee authorized under this Declaration, including without limitation the approval or disapproval of plans, specifications, drawings, plot plans, grading plans and height, as well as other matters in which the Committee is authorized hereunder to act, shall be in the sole and complete discretion of said Committee. Neither the Design Review Committee nor any member thereof shall be liable 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;
- (b) the construction or performance of any work, whether or not pursuant to approved plans, drawings and specifications;
- (c) the development of any property within Noble Mountain Estates;
- (d) the execution of any estoppel certificate, whether or not the facts therein are correct; or
- (e) the enforcement of this Declaration and the Design Guidelines and Rules;

provided, however, that with respect to the liability of a Committee member, such member has acted in good faith on the basis of such information as may be possessed by him. The approval by the Design Review Committee of any plans, specifications or other matter shall not be deemed to constitute a waiver of any right to withhold approval of any similar plans, specifications or other matter subsequently submitted for approval.

12.4 Response Within Thirty (30) Days: Any approval required under this Declaration by the Design Review Committee shall not be withheld unreasonably. Failure by such Committee to send notice of its approval or disapproval of a request within thirty (30) days after such request is filed with the Committee shall waive the approval requirement. Notice of disapproval shall be written and it shall set forth the reason or reasons for the disapproval. Notwithstanding Section 14.10, no request shall be deemed filed with a Committee until it is actually received, and all submissions to the Committee shall be made by certified mail or personal delivery. In any event, after the expiration of one (1) year from the completion of construction of any structure, work, improvement, alteration, or landscaping, the said structure, work, improvement, alteration, or landscaping shall, in favor of purchasers or encumbrancers in good faith and for value, be deemed to be in compliance with all the provisions of the approval of the Design Review Committee, unless, within such one year period, actual notice of noncompliance executed by the Design Review Committee shall appear of record in the office of the County Recorder of Apache County, or a complaint has been filed to enforce compliance.

12.5 Committee's Certificate: Any approval of any plans and specifications or other matter by the Design Review Committee given or made pursuant to the provisions of this Declaration which is evidenced by a certificate signed by at least a majority of the members of said Committee shall be irrevocable and not subject to change by such Committee. Any such certificate may be conclusively relied upon by all parties, including, but not limited to, any Owner, tenant or purchaser of any Lot or Dwelling Unit or of any interest therein; by any lender taking any Lot as security; and by any title insurance company. Any such certificate may be recorded by said Committee in the office of the County Recorder of said Apache County.

12.6 Appeal: All decisions made by the Design Review Committee members appointed by the Declarant shall be final and nonappealable except as hereafter set forth. At any time after the earlier of (a) ten (10) years from the date of the recording of this Declaration, or (b) the date when the Declarant has relinquished its right to appoint the Design Review Committee members, any Owner or other Resident aggrieved by a decision of the Design Review Committee may appeal the decision to the Board in accordance with procedures to be established by the Board. In the event the decision of the Design Review Committee is overruled by the Board on any issue or question, the prior decision of the Design Review Committee shall be deemed modified to the extent specified by the Board and, for purposes of this Declaration, such decision, as so modified, shall thereafter be deemed the decision of the Design Review Committee.

12.7 Fee: The Board may establish a reasonable processing fee to cover the costs of the Association and the Design Review Committee in considering any requests for approvals submitted to it, which fee shall be paid at the time the request for approval is submitted.

ARTICLE XIII

TERM; AMENDMENTS; TERMINATION

13.1 Term; Method of Termination: This Declaration shall be effective upon the date of recordation hereof and, as amended from time to time, shall continue in full force and effect for a term of twenty (20) years from the date this Declaration is recorded. From and after said date, this Declaration, as amended, shall be automatically extended for successive periods of ten (10) years each. This Declaration may be terminated at any time if two-thirds of the authorized votes of each class of Members shall be cast in favor of termination at an election held for such purpose. If the necessary votes are obtained, the Board shall cause to be recorded with the County Recorder of Apache County, Arizona, a Certificate of Termination, duly signed by the President or Vice President and attested by the Secretary or Assistant Secretary of the Association, with their signatures acknowledged. Thereupon these Covenants shall have no further force and effect, and the Association shall be dissolved pursuant to the terms set forth in its Articles. Any Association funds remaining following such termination and dissolution shall be distributed to the Members and their mortgagees as their interests may appear at a uniform rate per Membership.

13.2 Amendments: This Declaration may be amended by recording with the County Recorder of Apache County, Arizona, a Certificate of Amendment, duly signed and acknowledged as required for a Certificate of Termination in Section 13.1. The Certificate of Amendment shall set forth in full the amendment adopted, and, except as provided hereafter, shall certify that at an election duly called and held for this purpose pursuant to the provisions of the Articles and Bylaws, the Members casting seventy-five percent (75%) of the votes cast at the election voted affirmatively for the adoption of the amendment; provided, however, that for the purpose of an election to amend this Declaration, the Declarant shall have only one vote per Class B Membership. The Declaration may be amended with respect to all or any portion of Lots covered hereby. Within ten (10) years from the date of recording this Declaration and so long as the Declarant is the owner of any Lot in Noble Mountain Estates this Declaration may be amended or terminated only

with the written approval of the Declarant. This Declaration may not be amended to reduce or alter the rights of the Declarant without the approval of the Declarant. The Declarant alone may amend this Declaration at any time to amend as permitted in Section 13.3 hereafter. In addition, at any time, the Declarant alone shall have the right to amend the Declaration to comply with applicable law or to correct any error or inconsistency in the Declaration if the amendment does not adversely affect the rights of any Owner.

13.3 Right of Amendment if Requested by Governmental Agency or Federally Chartered Lending Institutions: Anything in this Article to the contrary notwithstanding, Declarant reserves the right to amend all or any part of this Declaration to such extent and with such language as may be requested by the Federal Housing Administration ("FHA"), the Veterans Administration ("VA"), the Federal Home Loan Mortgage Corporation ("FHLMC") or the Federal National Mortgage Corporation ("FNMA") and to further amend to the extent requested by any other federal, state or local governmental agency which requests such an amendment as a condition precedent to such agency's approval of the Declaration, or by any federally chartered lending institution as a condition precedent to lending funds upon the security of any Lot(s) or any portions thereof. Any amendment shall be effected by the recordation by Declarant of an Amendment duly signed by or on behalf of the authorized agents of Declarant with their signatures acknowledged, specifying the federal, state or local governmental agency or the federally chartered lending institution requesting the amendment and setting forth the amendatory language requested by such agency or institution. Recordation of the Amendment shall be deemed conclusive proof of the agency's or institution's request for such an Amendment, and such Amendment, when recorded, shall be binding upon all of Noble Mountain Estates and all persons having an interest therein.

ARTICLE XIV

MISCELLANEOUS

14.1 Interpretation of the Covenants: Except for judicial construction, the Association, by its Board, shall have the exclusive right to construe and interpret the provisions of this Declaration. In the absence of any adjudication to the contrary by a court of competent jurisdiction, the Association's construction or interpretation of the provisions hereof shall be final, conclusive and binding as to all persons and property benefited or bound by the Covenants hereof.

14.2 Severability: Any determination by any court of competent jurisdiction that any provision of this Declaration is invalid or unenforceable shall not affect the validity or enforceability of any of the other provisions hereof.

14.3 Change of Circumstances: Except as otherwise expressly provided in this Declaration, no change of conditions or circumstances shall operate to extinguish, terminate or modify any of the provisions of this Declaration.

14.4 Rules and Regulations: In addition to the right to adopt rules and regulations on the matters expressly mentioned elsewhere in this Declaration, the Association (through its Board and Committees) shall have the right to adopt rules and regulations with respect to all other aspects of the Association's rights, activities and duties, provided said rules and regulations are not inconsistent with the provisions of this Declaration.

14.5 Declarant's Disclaimer of Representations: Anything to the contrary in this Declaration notwithstanding, and except as otherwise may be expressly set forth on a recorded plat or other instrument recorded in the office of the County Recorder of Apache County, Arizona, Declarant makes no warranties or representations whatsoever that the plans presently envisioned or the complete development of Noble Mountain Estates can or will be carried out, or that any land now owned or hereafter acquired by Declarant is or will be subjected to this Declaration or any other declaration, or that any such land (whether or not it has been subjected to this Declaration) is or will be committed to or developed for a particular (or any) use, or if that land is once used for a particular use, such use will continue in effect.

14.6 No Warranty of Enforceability: While Declarant has no reason to believe that any of the Covenants contained in this Declaration are or may be invalid or unenforceable for any reason or to any extent, Declarant makes no warranty or representation as to the present or future validity or enforceability of any such Covenants. Any Owner acquiring a Lot in Noble Mountain Estates in reliance on one or more of the Covenants shall assume all risks of the validity and enforceability thereof and by acquiring any Lot agrees that Declarant shall have no liability therefor.

14.7 References to the Covenants in Deeds: Deeds or any instruments affecting any part of Noble Mountain Estates may contain the Covenants herein set forth reference to this Declaration; but regardless of whether any such reference is made in any Deed of instrument, each and all of the Covenants shall be binding upon the grantee-Owner or other person claiming through any instrument and his heirs, executors, administrators, successors and assigns.

14.8 Gender and Number: Wherever the context of this Declaration so requires, words used in the masculine gender shall include the feminine and neuter genders; words used in the neuter gender shall include the masculine and feminine genders; words in the singular shall include the plural; and words in the plural shall include the singular.

14.9 Captions and Titles: All captions, titles or headings of the Articles and Sections in this Declaration are for the purpose of reference and convenience only and are not to be deemed to limit, modify or otherwise affect any of the provisions hereof or to be used in determining the intent or context thereof.

14.10 Notices: If notice of any action or proposed action by the Board or of any committee or of any meeting is required by applicable law, this Declaration or resolution of the Board to be given to any Owner or Resident then, unless otherwise specified herein or in the resolution of the Board, such notice requirement shall be deemed satisfied if notice of such action or meeting is published three times in any newspaper in general circulation within Apache County. This Section shall not be construed to require that any notice be given if not otherwise required, and shall not prohibit satisfaction of any notice requirement in any other manner. If notice is made by mail, it shall be deemed to have been received twenty-four (24) hours after a copy of the same has been deposited in the United States mail, postage prepaid, addressed to such person at the address given by that person to the Association for the purpose of service of such notice, or to the address of the Lot owned by such person if no address has been given. Notice to the Board shall be delivered or mailed to the office of the Association.

14.11 FHA and VA Approval: If this Declaration has been initially approved by FHA or VA in connection with any loan programs made available by FHA or VA and any loans have been made which are insured or guaranteed by FHA or VA, then as long as there is a Class B Membership, the dedication of Common Areas and the amendment or termination of this Declaration will require the prior approval of FHA or VA as applicable, unless the need for such approval has been waived by FHA or VA.

14.12 Litigation: No judicial or administrative proceeding shall be commenced or prosecuted by the Association unless approved by Members holding seventy-five (75%) percent of the outstanding votes. This Section shall not apply, however, to (a) actions brought by the Association to enforce the provisions of this Declaration (including, without limitation, the foreclosure of

liens), (b) the imposition and collection of Assessments as provided in Article VII hereof, (c) proceedings involving challenges to taxation, or (d) counterclaims brought by the Association in proceedings instituted against it. This Section shall not be amended unless such amendment is made by the Declarant or is approved by the percentage votes necessary to institute proceedings as provided above.

IN WITNESS WHEREOF, ESCUDILLA CATTLE COMPANY, an Arizona Limited Partnership, has hereunto caused its name to be signed by the signature of its duly authorized official as of the day and year first above written.

ESCUDILLA CATTLE COMPANY, an Arizona Limited Partnership, By Its General Partner, ESCUDILLA MANAGEMENT CORP., an Arizona corporation,

By: J. Harris Crosby
Its President

STATE OF ARIZONA)
County of ^{Apache} Maricopa) ss.

This instrument was acknowledged before me this 3rd day of June, 1997 by J. Harris Crosby President of ESCUDILLA MANAGEMENT CORP., an Arizona corporation.

Neta Moore
Notary Public

