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Nothing contained in this Declaration shall obligate Declarant to annex any additional phase, land or improvements. Effectuation of any such annexation shall take place when Declarant records a plat describing such Phase, together with a Declaration of Annexation describing the property to be annexed, referring to this Declaration by reference, setting forth the number and description of the Lots included within such phase. Thereafter, the property described in such Declaration of Annexation shall be deemed a part of this property. Upon completion of any such annexation, all Owners of Lots in any such annexed phase shall have those rights and obligations set forth in this Declaration, and shall be treated as if the entire project had been developed at the same time. Upon each such annexation, a new budget shall be prepared and the assessments shall be adjusted and levied as required, in accordance with this Declaration.

#### ARTICLE XIII

##### Use Restrictions

Section 1. The Properties are hereby restricted to residential dwellings for residential use, except for improvements within the Common Area. All buildings or structures erected upon said premises shall be of new construction and no building or structures shall be moved from other locations onto said premises, and no subsequent buildings or structures other than residence units, shall be built on any Lot where the builder theretofore programmed and constructed a Townhouse. No structures of a temporary character, trailer, basement, tent, shack, garage, barn or other out-building shall be used on any portion of the Properties at any time as a residence, either temporarily or permanently.

Section 2. Notwithstanding any provisions herein contained to the contrary, it shall be expressly permissible for the builder of a major portion of the development to maintain during the period of construction and sale of said Lots, upon such portion of the premises as such builder may choose, such facilities as in the sole opinion of said builder may be reasonably required, convenient or incidental to the construction and sale of said Lots, including but without limitation, a business office, storage area, construction yards, signs, model units and sales office.

Section 3. No animals of any kind shall be raised, bred, or kept in any townhouse or in or upon any Common Area, except that a combination of not more than two (2) dogs, cats or household pet may be kept in each townhouse, subject to uniform rules and regulations of the Association, and provided that no animal shall be kept, bred or maintained for any commercial purpose. All pets must be leashed or otherwise contained when outside the townhouse and shall not be allowed to run loose. Any Owner keeping an animal on the Property shall indemnify and hold harmless the Association for any loss, damage, cost or liability which the Association may sustain as a result of the presence of such animal, whether or not such animal's presence has been approved by the Association. Notwithstanding the generality of the foregoing, after (i) repeated violations

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of this subparagraph, (ii) ten (10) days' prior written notice to the Owner of such animal(s), and (iii) an opportunity for such Owner to have a hearing before the Board, such animal(s) may be taken from such Owner and given to any local organization whose function is to deal with stray or abandoned animals.

Section 4. No advertising signs (except one of not more than five (5) square feet "for rent" or "for sale" sign per Parcel), billboards, unsightly objects, or nuisances shall be erected, placed or permitted to remain on the premises, nor shall the premises be used in any way or for any purpose which may endanger the health or unreasonably disturb the Owner of any Townhouse or any resident thereof. Further, no business activities of any kind whatsoever shall be conducted in any building or on any portion of the premises; provided further, however, the foregoing covenants shall not apply to the business activities, signs and billboards, or the construction and maintenance of buildings, if any, of the builder, its agents and assigns during the construction and sale period, and of the Association, its successors and assigns, in the furtherance of its powers and purposes, as herein set forth.

Section 5. All clotheslines, equipment, garbage cans, service yards, woodpiles or storage piles shall be kept screened by adequate planting or fencing so as to conceal them from view of neighboring Lots and streets. All rubbish, trash or garbage shall be regularly removed from the premises, and shall not be allowed to accumulate thereon. All clotheslines shall be confined to patio or balcony areas.

Section 6. No vehicle of any type, boat, camper, motorcycle, bicycle, tricycle or other wheeled toy shall be parked or left unattended on any Common Area or Lot except for pick-up or delivery purposes or as permitted by the Board of Directors in uniform regulations.

The Board of Directors may from time to time permit or restrict vehicular parking on the Common Areas. Vehicles parked in restricted areas may be towed away at the vehicle Owner's expense, including the storage charges.

No vehicle of any type which is abandoned or inoperable shall be stored or kept on any Lot, parking area, street or drive within this subdivision in such a manner as to be seen from any other Lot or from any streets, drives or alleyways within this subdivision.

Section 7. Except in the individual patio areas, no planting or gardening shall be done, and no hedges shall be erected or maintained upon the Lots, except such as are installed in accordance with the initial construction of the buildings located thereon or as approved in accordance with Architectural Control provisions in Article V hereof. No fences or walls shall be erected or maintained on any of the Properties without approval of the Architectural Control Committee as provided in this Declaration.

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Section 8. The Common Area shall remain undivided, it being agreed that this restriction is necessary in order to preserve the rights of the Owners with respect to the operation and management of the Common Area. No Owner shall have the right to bring an action for partition, or to subdivide or partition his own Lot or the common area.

Section 9. Except as set forth in Article V hereof, no exterior television, radio, CB or other antennas of any sort shall be erected, placed, allowed or maintained upon any portion of the improvements to be located upon the Properties, nor upon any structure situated upon said real property.

Section 10. No noxious or offensive activity shall be carried on upon any Lot or any part of the Properties, nor shall anything be done thereupon which may be, or may become, an annoyance or nuisance to the neighborhood, or which shall in any way interfere with the quiet enjoyment of each of the Owners of his respective Townhouse, or which shall in any way increase the rate of insurance.

Section 11. The rights and duties with respect to sanitary sewer and water, cable television, electricity, gas and telephone lines and facilities shall be governed by the following:

(a) Whenever water, sanitary sewer, electricity, gas, cable television or telephone connections, lines, cables or any portion thereof, are or have been installed within the Properties, the Owner of any Lot or the Association in the case of the Common Area, served by said installation shall have the right, and are hereby granted an easement to the extent necessary therefor, to enter upon or have a utility company enter upon any portion of the Properties in which said installations lie, to repair, replace and generally maintain said installations.

(b) The right granted in subparagraph (a) above shall be only to the extent necessary to entitle the Owner or Association serviced by said installation to its full and reasonable use and enjoyment, and provided further that any one exercising said right shall be responsible for restoring the surface of the easement area so used to its condition prior to such use.

(c) In the event of a dispute between Owners with respect to the repair or rebuilding of said connections, or with respect to the sharing of the cost thereof, upon written request of one of such Owners addressed to the Association, the matter shall be submitted to its Board of Directors, who shall arbitrate and decide the dispute and the decision of the Board shall be final and conclusive on the parties.

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Section 12. All Owners and occupants shall abide by the Association's Articles of Incorporation and Bylaws and any rules and regulations adopted by the Association, as amended from time to time.

Section 13. No Lot shall be leased by an Owner, nor landlord-tenant relationship established unless such lease or landlord-tenant relationship is in writing and the lessee or tenant has agreed in writing that the lease is subject in all respects to the provisions of this Declaration, the Articles of Incorporation and the Bylaws of the Association, and all rules and regulations duly adopted by the Association, as amended from time to time. Said writing shall provide that any failure of the lessee or tenant to comply with the terms of such documents or rules and regulations shall be a default under the lease. No lease shall be permitted for transient or hotel purposes. Transient or hotel purpose shall be defined as a lease or rental of less than thirty (30) consecutive days.

#### ARTICLE XIV

##### Duties and Powers of the Association

In addition to the duties and powers enumerated in its Articles of Incorporation and Bylaws, or elsewhere provided for herein, and without limiting the generality thereof, the Association shall:

(a) Own, maintain and otherwise manage all of the Common Area and all facilities, improvements and landscaping thereon, and all other property acquired by the Association.

(b) Pay any real and personal property taxes and other charges assessed against the Common Area.

(c) Have the authority to obtain, for the benefit of all of the Lots and the Common Area, all water, gas, sewer and electric service and refuse collection and to pay for such services to the extent that said services are not individually metered or otherwise directly billed to the individual Lots.

(d) Grant easements where necessary for utilities and sewer facilities over the Common Area to serve said area and the Lots.

(e) Have the authority to employ a manager or other persons and to contract with independent contractors or managing agents to perform all or any part of the duties and responsibilities of the Association. The Association, through its Board of Directors, shall have the express authorization, right and power to enter into one or more management agreements with third parties in order to facilitate efficient operation of all buildings, improvements

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and Common Area. It shall be the primary purpose of such management agreements to provide for the administration, management, repair and maintenance of said real property, all improvements thereon designated as common elements, and the exterior walls of the Townhouses; and to assess, collect and apply the management and common expenses, and to enforce the Declaration of Covenants, Conditions and Restrictions. The terms of said management agreements shall be as determined by the Board of Directors to be in the best interests of the Association, and shall be subject to the Articles of Incorporation, the Bylaws and this Declaration of Covenants, Conditions and Restrictions affecting said property. Notwithstanding the above, any and all such management agreements shall be written for a term not to exceed one year, subject to renewal by agreement of the parties for successive one year periods, and shall further provide that said management agreement may be cancelled and terminated by the Board of Directors for any reason whatsoever upon giving thirty (30) days written notice of such cancellation and termination to the managing entity. The Board of Directors shall make all necessary arrangements for continuity of management and maintenance prior to the expiration of the term of any prior management agreements or the termination of the same. Any and all management agreements shall be entered into with a responsible party or parties having considerable experience with the management of a project of this type.

Each Owner shall be bound by the terms and conditions of all management agreements entered into by the Owner's Association. A copy of all management agreements shall be available to each Owner upon request.

(f) Contract for and pay fire, casualty, liability and other insurance insuring the Association, its property and its Board of Directors and Owners.

(g) Contract for and pay maintenance, gardening, utilities, materials and supplies, and services relating to the Common Area, and to employ personnel necessary for the operation of the project, including legal and accounting services provided, however, that any such service contract shall be limited to a duration of one (1) year unless a longer term is approved by a majority of the members of the Association.

(h) Delegate its powers to its committees, officers and employees.

(i) Provide for maintenance, repair and replacement of all items as provided for in Article VII hereof.

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(j) At the request of the public body authorized to accept such and with the approval of two-thirds (2/3) of each class of members, dedicate those portions of the Common Area which are used for vehicular ingress and egress as public streets.

(k) Be a member of the Roadway Association and pay a prorata share of all costs and expenses of the Roadway Association.

#### ARTICLE XV

##### Easements

Section 1. Blanket Easement for Utilities. There is hereby created a blanket easement upon, across, over and under the Common Area for ingress, egress, installation, replacing, repairing and maintaining all utilities, including but not limited to, water, sewers, gas, telephones and electricity, irrigation facilities and a cable television system. By virtue of this easement, it shall be expressly permissible for the providing electrical, utility, cable and/or telephone company to erect and maintain the necessary poles and other necessary equipment on said property and to affix and maintain cable, electrical and/or telephone wires, circuits and conduits on, above, across and under the roofs and exterior walls of Townhouses. Notwithstanding anything to the contrary contained in this paragraph, no sewers, electrical lines, water lines or other utilities may be installed or relocated on the Properties, except as initially programmed and approved by the Developer of said Properties or as approved by the Association's Board of Directors. These easements shall in no way affect any other recorded easements on the Properties.

Section 2. Easement for Encroachment Due to Construction. Each Townhouse and the Common Area shall be subject to an easement for encroachments created by construction, settling and overhangs and balconies, as designed or constructed and for the maintenance of same, so long as it stands, shall and does exist. In the event a Townhouse is partially or totally destroyed and then rebuilt, the Owners of all Lots agree that minor encroachments on parts of the adjacent Townhouse or Common Area due to construction shall be permitted and that a valid easement for said encroachment and the maintenance thereof shall exist.

Section 3. Reciprocal Easements. There shall be reciprocal beneficial easement over the Common Areas for the benefits of all Owners of Lots on the property, including additions and annexations thereto pursuant to Article XII.

#### ARTICLE XVI

##### Private Yards

Section 1. The Lots include Private Yards, which are defined as the enclosed portions of the Lot excluding the building thereon.

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Section 2. The rights of the respective parties with respect to the use of Private Yards, which may abut a wall of the dwelling unit on the adjoining Lot ("abutting dwelling unit" herein), shall be as follows:

(a) Nothing shall be erected, planted or maintained within such Private Yard area which might impede or interfere with any necessary and reasonable maintenance, repair or restoration of any structural wall located on or adjacent to the abutting dwelling unit.

(b) The Owner of the Private Yard shall not drive any nails, screws, bolts or other objects of any kind whatsoever into, nor attach any object to the wall of the abutting dwelling unit.

(c) The Owner of the abutting dwelling unit shall have the responsibility for painting and repairing any structural wall owned by him and facing onto the Private Yard (to the extent such repair and painting is not the obligation of the Association), provided, however, that in the case of damage to such a wall caused by the Owner of the Private Yard, his family, guests, servants, agents, or invitees, such repairs shall be made at the expense of the Owner of the Private Yard. If an action at law be required to enforce payment for such repairs, the prevailing party shall be entitled to recover the costs of suit, including reasonable attorneys' fees. No repairs, additions, alterations and/or restoration of any such structural wall shall be commenced, erected or maintained or the paint colors therefor selected until the plans and specifications, showing the nature, kind, shape, height, materials, location, color and approximate cost thereof shall have been approved by the Architectural Control Committee.

After completion of such repairs, additions, alterations or restoration, the Owner of the abutting dwelling unit shall restore the Private Yard to the condition in which it existed immediately prior to the commencement of such work.

(d) The Owner of the abutting Lot shall have the right and an easement of drainage over, across and upon the Private Yard for water resulting from the normal usage of the adjoining Lot and the Owner of the Private Yard shall maintain the easement area in such manner as will not interfere with such drainage.

Section 3. The Owner and occupants of a Townhouse may use the Private Yard in any reasonable manner not prohibited by this Declaration, the Articles of Incorporation and Bylaws of the Association, the rules and regulations adopted by the Board of Directors of the Association, all as amended from time to time, or by law.

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Section 4. All boundaries of Private Yards, save those which are structural walls of dwelling units, will be fenced by Developer. No fence shall be moved or removed at any time, and any changes in size or color, shall be subject to review by the Architectural Control Committee pursuant to Article V hereof.

Section 5. Each Owner shall keep his Private Yard and all improvements therein or thereon, in good order and repair and free of debris, including but not limited to the seeding, watering and mowing of all lawns, and the pruning and cutting of all trees and shrubbery, all in a manner and with such frequency as is consistent with good property management. In the event an Owner shall fail to maintain his Private Yard and the improvements located thereon, as provided herein, the Association, after notice to the Owner and approval by vote of the Board of Directors, shall have the right to enter upon said Private Yard to correct drainage and to repair, maintain and restore the Private Yard, fences and any other improvements erected thereon. All costs related to such correction, repair or restoration shall become a lien upon such Owner's Lot, and such lien may be enforced in the same manner as an assessment levied in accordance with Article IV hereof.

Section 6. The Association shall have the right at all reasonable times to enter into any Private yard for the purpose of carrying out its obligations of maintenance, repair and replacement.

#### ARTICLE XVII

##### General Provisions

Section 1. Attorneys' Fees. In the event the Association employs an attorney or attorneys to enforce the collection of any amounts due pursuant to this Declaration or in connection with any lien provided for herein, or the foreclosure thereof, or to enforce compliance with or specific performance of the terms and conditions of this Declaration, the Owner, Owners and parties against whom the action is brought shall pay all attorneys' fees, costs and expenses thereby incurred by the Association in the event the Association prevails in any such action.

Section 2. Enforcement. The covenants, restrictions, reservations and conditions contained herein shall run with the land and shall be binding upon all persons purchasing, leasing, subleasing, occupying, owning or otherwise having an interest in any Lot on said property, their heirs, executors, administrators, successors, grantees and assigns. After the date on which this instrument has been recorded, these covenants, restrictions, reservations and conditions may be enforced by the Association or its Board of Directors, which shall have the right and duty to enforce the same and expend Association monies in pursuance thereof, and also may be enforced by the Owner of any Lot. Any lien, liability or obligation arising as the result of a breach of said covenants, restrictions, reservations and conditions shall be binding upon and effective

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against any Owner of said premises, other than one whose title thereto is acquired by foreclosure of a mortgage or deed of trust, and sheriff's sale or equivalent proceedings, who shall take title to said premises free and clear of the lien hereof for all said charges pursuant to the provisions of this Declaration that have accrued up to the time of said foreclosure, and subject to the lien hereof for all said charges that shall accrue subsequent to the foreclosure, and provided also that the breach of any of said covenants, restrictions, reservations and conditions may be enjoined, abated or reviewed by appropriate proceedings, notwithstanding the lien or existence of any such mortgage or deed of trust. All instruments of conveyance of any interest of all or any part of said Lots shall contain reference to this instrument and shall be subject to the covenants, restrictions, reservations and conditions herein as fully as though the terms and conditions of this instrument were therein set forth in full. The terms and conditions of this instrument shall be binding upon all persons affected by its terms, whether or not express reference is made to this instrument in any such instrument of conveyance. Enforcements shall be by proceedings at law or in equity against any person or persons violating or attempting to violate any covenant either to restrain violation or to recover damages.

Section 3. Saving Clause. The invalidity of any one or more phrases, sentences, clauses, paragraphs or sections hereof shall not affect the remaining portions of this instrument or any part thereof, all of which are inserted conditionally on their being held valid in law and in the event that one or more of the phrases, sentences, clauses, paragraphs or sections contained herein should be invalid or should operate to render this agreement invalid, this agreement shall be construed as if such invalid phrase or phrases, sentence or sentences, clause or clauses, paragraph or paragraphs, section or sections had not been inserted. In the event that any provision or provisions of this instrument appear to be violative of the Rule against Perpetuities, such provision or provisions shall be construed as being void and of no effect as of twenty-one (21) years after the death of the last surviving incorporator of FOUNTAIN SHADOWS HOMEOWNERS ASSOCIATION or twenty-one (21) years after the death of the last survivor of all of said incorporators' children or grandchildren who shall be living at the time this instrument is executed, whichever is the later.

Section 4. Parking. Each Townhouse will contain a two-car garage and the Owner or occupants of the Townhouse shall park their vehicles in said garage and not in the driveway or on the Common Area, except as otherwise permitted by this Declaration or by Uniform rules and regulations promulgated from time to time by the Board of Directors of the Association.

Section 5. Gender. Wherever the context of this document requires, words used in the masculine gender include the feminine and neuter, the singular number the plural and the plural the singular.

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Section 6. Amendment. The covenants and restrictions of this Declaration shall run with and bind the land for a term of twenty (20) years from the date this Declaration is recorded, after which time they shall be automatically extended for successive periods of ten (10) years. This Declaration may be amended by an instrument signed by the Owners of not less than two-thirds (2/3) of the Townhouses. Any amendment must be recorded in the Maricopa County Recorder's Office.

As to the Federal National Mortgage Association (FNMA), the Government National Mortgage Association (GNMA), and the Federal Home Loan Mortgage Corporation (FHLMC), so long as may be required to fully amortize any mortgage owned by FNMA, GNMA and FHLMC on any of the Lots; and as to the Federal Housing Administration (FHA), Veterans Administration (VA) or the Federal Home Loan Mortgage Corporation (FHLMC), so long as there is a Class B membership outstanding, no amendment shall be made which would be deemed to be in conflict with, or contrary to, the terms of any promissory note, mortgage, regulatory agreements or document executed by the Association or any of the Owners of residence units for the purpose of obtaining insurance or financing involving FNMA, FHA, VA, GNMA or FHLMC without obtaining written approval and consent of FNMA, FHA, VA, GNMA or FHLMC.

Section 7. Annexation. Additional residential property and Common Area may be annexed to the Properties with the consent of two-thirds (2/3) of each class of members.

Section 8. FHA/VA Approval. As long as there is a Class B membership, the following actions will require the prior approval of the Federal Housing Administration or the Veterans Administration: Annexation of additional properties, dedication of Common Area, and amendment of this Declaration of Covenants, Conditions and Restrictions.

#### ARTICLE XVIII

##### Fountain Shadows Roadway Association

Section 1. Membership in the Roadway Association shall be limited to the Association and the Fountain Place Homeowners' Association.

Section 2. Membership in the Roadway Association cannot be abandoned or terminated for any reason whatsoever.

Section 3. The Roadway Association shall insure, maintain, repair and replace Diana Avenue, a private street, which runs east-west between 67th Avenue and 69th Avenue in the City of Glendale, State of Arizona, and 68th Avenue, a private street, which runs north-south between Diana Avenue and Butler Drive, in the City of Glendale, State of Arizona. The costs and expenses incurred and to be incurred by the Roadway Association shall be billed to the members in prorata shares and shall be paid promptly.

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Section 4. The costs and expenses of the Roadway Association billed to the Association and the Fountain Place Homeowners' Association shall be considered common expenses of said associations and be a part of the regular assessments levied against their respective members.

IN WITNESS WHEREOF, the undersigned, being the Declarant herein, has hereunto set its hand and seal this 15 day of April, 1983.

NBS DEVELOPMENT CORPORATION, an Arizona corporation

BY Mark Nelson  
its President

STATE OF ARIZONA )  
County of Maricopa ) ss.

On this, the \_\_\_\_\_ day of \_\_\_\_\_, 1983, before me, the undersigned Notary Public, personally appeared \_\_\_\_\_ who acknowledged himself to be the \_\_\_\_\_ of NBS DEVELOPMENT CORPORATION, an Arizona corporation, and that he, as such officer, being so authorized, executed the foregoing instrument for the purposes therein contained, by signing the name of the said corporation by himself as such officer.

WITNESS my hand and seal.

Chana Sue Bell  
Notary Public

My Commission Expires:  
\_\_\_\_\_

WHEN RECORDED MAIL TO:

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Lars O. Lagerman  
PAVILACK, SPACK & MULCHAY, P.C.  
6900 E. Camelback Rd.  
Suite 800  
Scottsdale, AZ  
85251

SECOND AMENDMENT TO DECLARATION OF  
COVENANTS, CONDITIONS AND RESTRICTIONS  
FOR MOD RSTR

FOUNTAIN SHADOWS

RECORDED IN OFFICIAL RECORDS OF MARICOPA COUNTY, ARIZONA		
JUL 31 '84 - 11 30		
BILL HENRY, COUNTY REC		
FEE	5.00	PGS 3 P.S.

The undersigned, owner of that certain real property situated in Maricopa County, State of Arizona, to-wit:

FOUNTAIN SHADOWS UNIT I, according to a plat thereof recorded in the Office of the Maricopa County Recorder in Book 250 of Maps, at page 48.

WHEREAS, a certain Declaration of Covenants, Conditions and Restrictions has been placed on said property and has been recorded on April 21, 1983, at No. 83-146154 and an Amendment to Declaration of Covenants, Conditions and Restrictions has been recorded on December 2, 1983, at No. 83-484281, with the Maricopa County Recorder;

WHEREAS, as part of said Declaration of Covenants, Conditions and Restrictions, as amended, the right to amend is granted to the Owners of not less than three-fourths (3/4) of the Townhouses;

WHEREAS, the undersigned represents the Owners of not less than three-fourths (3/4) of the Townhouses; and

WHEREAS, the undersigned is desirous of amending said Declaration of Covenants, Conditions and Restrictions, as amended.

NOW, THEREFORE, the Declaration of Covenants, Conditions and Restrictions for Fountain Shadows recorded on April 21, 1983, at No. 83-146154 and the Amendment to Declaration of Covenants, Conditions and Restrictions recorded on December 2, 1983, at No. 83-484281, with the Maricopa County Recorder, shall be amended as follows:

1. Delete Article XVIII and substitute therefor the following:

ARTICLE XVIII

Fountain Shadows Roadway Association

Section 1. Membership in the Roadway Association shall be limited to the Association and other homeowners or condominium associations formed within the legally described areas as shown in Exhibit "B" attached hereto and incorporated herein by this reference.

Section 2 Membership in the Roadway Association cannot be abandoned or terminated for any reason whatsoever.

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Section 3. The Roadway Association shall insure, maintain, repair and replace Diana Avenue, a private street, which runs east-west between 67th Avenue and 69th Avenue in the City of Glendale, State of Arizona, and 68th Avenue, a private street, which runs north-south between Diana Avenue and Butler Drive, in the City of Glendale, State of Arizona. The costs and expenses incurred and to be incurred by the Roadway Association shall be billed to the members in prorata shares and shall be paid promptly.

Section 4. The costs and expenses of the Roadway Association billed to the Association and its other homeowners or condominium association members shall be considered common expenses of said associations and be a part of the regular assessments levied against their respective members.

2. All articles, sections and subparagraphs not expressly amended by this Amendment shall continue in full force and effect with no changes therein.

IN WITNESS WHEREOF, the undersigned, being the Declarant herein, has hereunto set its hand and seal this 24<sup>th</sup> day of July, 1984.

NBS DEVELOPMENT CORPORATION, an Arizona corporation

By Mark Mickel  
Its President

STATE OF ARIZONA        )  
County of Maricopa    ) ss.

On this, the 24<sup>th</sup> day of July, 1984, before me, the undersigned Notary Public, personally appeared Mark Mickel, who acknowledged himself to be the President of NBS DEVELOPMENT CORPORATION, an Arizona corporation, and that he, as such officer, being so authorized, executed the foregoing instrument for the purposes therein contained, by signing the name of the said corporation by himself as such officer.

WITNESS my hand and seal.

Marjorie Smith  
Notary Public

My Commission Expires:

April 4, 1985

(e) Have the authority to employ a manager or other persons and to contract with independent contractors or managing agents to perform all or any part of the duties and responsibilities of the Association. The Association, through its Board of Directors, shall have the express authorization, right and power to enter into one or more management agreements with third parties in order to facilitate efficient operation of all buildings, improvements and Common Area. It shall be the primary purpose of such management agreements to provide for the administration, management, repair and maintenance of said real property, all improvements thereon designated as Common Areas, and the exterior walls of the Townhouses; and to assess, collect and apply the management and common expenses, and to enforce the Declaration of Covenants, Conditions and Restrictions. The terms of said management agreements shall be as determined by the Board of Directors to be in the best interests of the Association, and shall be subject to the Articles of Incorporation, the Bylaws and this Declaration of Covenants, Conditions and Restrictions affecting said property. Notwithstanding the above, any and all such management agreements shall be written for a term not to exceed one year, subject to renewal by agreement of the parties for successive one year periods, and shall further provide that said management agreement may be cancelled and terminated by the Board of Directors for any reason whatsoever upon giving thirty (30) days written notice of such cancellation and termination to the managing entity. The Board of Directors shall make all necessary arrangements for continuity of management and maintenance prior to the expiration of the term of any prior management agreements or the termination of the same. Any and all management agreements shall be entered into with a responsible party or parties having considerable experience with the management of a project of this type.

Each Owner shall be bound by the terms and conditions of all management agreements entered into by the Owner's Association. A copy of all management agreements shall be available to each Owner upon request.

6. Delete section 6 of Article XVII and substitute therefor the following:

Section 6. Amendment. The covenants and restrictions of this Declaration shall run with and bind the land for a term of twenty (20) years from the date this Declaration is recorded, after which time they shall be automatically extended for successive periods of ten (10) years. This Declaration may be amended by an instrument signed by the Owners of not less than three-fourths (3/4) of the Townhouses. Any amendment must be recorded in the Maricopa County Recorder's Office.

As to the Federal National Mortgage Association (FNMA), the Government National Mortgage Association (GNMA), and the Federal Home Loan Mortgage Corporation (FHLMC), so long as may be required to fully amortize any mortgage owned by FNMA, GNMA and FHLMC on any of the Lots; and as to the Federal Housing Administration (FHA), Veterans Administration (VA) or the Federal Home Loan Mortgage Corporation (FHLMC), so long as there is a Class B membership outstanding, no amendment shall be made which would be deemed to be in conflict with, or contrary to, the terms of any promissory note, mortgage, regulatory agreements or document executed by the Association or any of the Owners of residence units for the purpose of obtaining insurance or financing involving FNMA, FHA, VA, GNMA or FHLMC without obtaining written approval and consent of FNMA, FHA, VA, GNMA or FHLMC.

7. Delete section 1 of Article XVIII and substitute therefor the following:

Section 1. Membership in the Roadway Association shall be limited to the Association, Fountain Place One Condominium Association and Fountain Place Two Homeowners' Association, its successors and assigns.

8. Delete section 4 of Article XVIII and substitute therefor the following:

Section 4. The costs and expenses of the Roadway Association billed to the Association, the Fountain Place One Condominium Association and Fountain Place Two Homeowners' Association shall be considered common expenses of said associations and be a part of the regular assessments levied against their respective members.

9. All articles, sections and subparagraphs not expressly amended by this Amendment shall continue in full force and effect with no changes therein.

IN WITNESS WHEREOF, the undersigned, being the Declarant herein, has hereunto set its hand and seal this 18<sup>th</sup> day of November, 1983.

NBS DEVELOPMENT CORPORATION, an  
Arizona corporation

By Mark M. Anderson  
Its President

83 484281

STATE OF ARIZONA }  
County of Maricopa } ss.

On this, the 18<sup>th</sup> day of November 1983, before me, the undersigned Notary Public, personally appeared Mark Tucker, who acknowledged himself to be the President of NBS DEVELOPMENT CORPORATION, an Arizona corporation, and that he, as such officer, being so authorized, executed the foregoing instrument for the purposes therein contained, by signing the name of the said corporation by himself as such officer.

WITNESS my hand and seal.

Diana Sue Bell  
Notary Public

My Commission Expires:



83 484281

which right Declarant hereby reserves to Developer. This reservation of right shall end upon conveyance of the last Lot described herein (or as annexed in accordance with Article XII hereof), or April 15, 1990 whichever first occurs.

3. Delete Section 3 of Article IV and substitute therefor the following:

Section 3. Establishment of Assessment. Declarant and each Owner of a Townhouse covenants for themselves and their heirs, successors and assigns, that such successors and assigns, that such Townhouse shall be subject to an assessment, in an amount to be determined by the Association and as permitted by this Declaration. The amount to be paid by the members of the Association shall be established annually by the Board of Directors.

The annual assessments provided for herein shall commence as to each Lot on the first day of the month following occupancy or conveyance of the first Lot to an Owner other than the Declarant. Subsequent to occupancy or conveyance of the first Lot, the Declarant shall be assessed and pay for each Lot which it owns and which has been annexed an amount equal to twenty-five percent (25%) of the regular assessment. In the event funds received by the Association are inadequate to pay for current operating and maintenance expenses, Declarant shall be responsible on a current basis for any deficit, excluding delinquencies in payment of assessments by other Owners, in the budget of the Association, up to but not exceeding the amount of the regular assessment. Declarant's reduced assessment shall at least pay costs of insurance and the reserve for replacement attributable to unsold Lots as determined by cost accounting principles. The period of reduced assessments shall terminate as to each unsold Lot when it is rented, leased, occupied or conveyed, whichever first occurs. The period of reduced assessments shall terminate as to the entire Properties no later than January 1, 1988. No assessment shall be levied against Lots in phases not yet annexed.

4. Delete Section 1 of Article X and substitute therefor the following:

Section 1. Common Areas. If the damaged property is part of the Common Areas or any property in which the Association owns an interest, it shall be repaired or reconstructed.

5. Delete subparagraph (e) of Article XIV and substitute therefor the following:

TICOR TITLE INSURANCE COMPANY

AMENDMENT TO DECLARATION OF  
COVENANTS, CONDITIONS AND RESTRICTIONS  
FOR

83 484281

FOUNTAIN SHADOWS

MOD RSTR

The undersigned, owner of that certain real property situated in Maricopa County, State of Arizona, to-wit:

FOUNTAIN SHADOWS UNIT I, according to a plat thereof recorded in the Office of the Maricopa County Recorder in Book 250 of Maps, at page 48.

WHEREAS, a certain Declaration of Covenants, Conditions and Restrictions has been placed on said property and has been duly recorded on April 21, 1983, at No. 83-146154 with the Maricopa County Recorder's office;

WHEREAS, as part of said Declaration of Covenants, Conditions and Restrictions the right to amend is granted to the Owners of not less than two-thirds (2/3) of the Townhouses;

WHEREAS, the undersigned represents the owners of not less than two-thirds (2/3) of the Townhouses; and

WHEREAS, the undersigned is desirous of amending said Declaration of Covenants, Conditions and Restrictions.

NOW, THEREFORE, the Declaration of Covenants, Conditions and Restrictions for Fountain Shadows recorded on April 21, 1983, at No. 83-146154 with the Maricopa County Recorder's office shall be amended as follows:

1. Delete Section 2 of Article I and substitute therefor the following:

Section 2. "Common Area" within FOUNTAIN SHADOWS shall be those areas designated "Common Areas" or Tract A and B as shown on the Plat. Tract B has been or will be conveyed to the Association. Tract A has been or will be conveyed to the Roadway Association. All "Common Areas" shall be owned by the Association and the Roadway Association at the time of the conveyance of the first Townhouse.

2. Delete subparagraph (f) of Section 1 of Article II and substitute therefor the following:

(f) The right of Developer (and its sales agents and representatives) to the reasonable use of the Common Areas for display, sales, leasing and exhibit purposes,

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RECORDED IN OFFICIAL RECORDS OF MARICOPA COUNTY, ARIZONA
DEC 2- '83-200
BILL HENRY, COUNTY RECORDER
FEE 5 <sup>00</sup> PGS 5

FOUNTSHAD000067

1/2  
When Recorded Mail To:  
Fountain Shadows HOA  
16814 N. 33rd Drive  
Phoenix, AZ 85023



OFFICIAL RECORDS OF  
MARICOPA COUNTY RECORDER  
HELEN PURCELL

96-0699328 10/01/96 03:44

ABBEY 1 OF 2

THIRD AMENDMENT TO DECLARATION OF  
COVENANTS, CONDITIONS AND RESTRICTIONS  
FOR  
FOUNTAIN SHADOWS HOMEOWNERS ASSOCIATION

The undersigned is owner of that certain real property situated in Maricopa County, State of Arizona, to wit:

FOUNTAIN SHADOWS UNIT I AND FOUNTAIN SHADOWS UNIT II, according to a plat thereof recorded in the Office of the Maricopa County Recorder in Box 250 of Maps, at page 48.

WHEREAS, a certain Declaration of Covenants, Conditions and Restrictions has been placed on said property and has been recorded on April 21, 1983, at No. 83-146154 and an Amendment to Declaration of Covenants, Conditions and Restrictions has been recorded on December 2, 1983, at No. 83-484281, with the Maricopa County Recorder, and a Second Amendment to the Declaration of Covenants, Conditions and Restrictions has been recorded on July 31, 1984, at No. 84-332750, with the Maricopa County Recorder;

WHEREAS, as part of said Declaration of Covenants, Conditions and Restrictions, as amended, the right to amend is granted to the Owners of not less than three-fourths (3/4) of the Townhouses;

WHEREAS, the undersigned represents the Owners of not less than three-fourths (3/4) of the Townhouses; and

WHEREAS, the undersigned is desirous of amending said Declaration of Covenants, Conditions and Restrictions, as amended.

NOW, THEREFORE, the Declaration of Covenants, Conditions and Restrictions for Fountain Shadows recorded on April 21, 1983, at No. 83-146154 and the Amendment of the Declaration of Covenants, Conditions and Restrictions recorded on December 2, 1983, at No. 83-146154, with the Maricopa County Recorder, and the Second Amendment to Declaration of Covenants, Conditions and Restrictions recorded on July 31, 1984, at No. 84-332750, with the Maricopa County Recorder, shall be amended as follows:

1. In Article IV, Section 2, Paragraph 2, delete the words "the due dates shall be established by the Board of Directors.", and substitutes thereof the following: "The annual assessment shall be divided into twelve (12) equal monthly assessments which shall be due on the first day of each month.

2. Delete Article IV, Section 7, and substitute therefore the following:

Section 7. Effect of Nonpayment of Assessments; Remedies of the Association. Any assessment not paid within fifteenth (15) after the date due shall, at the election of the Association, pay a "late charge" in a sum to be determined by the Association, but not to exceed \$10.00 per each monthly delinquent assessment, or ten percent (10%) of the amount of such assessment, whichever is higher. Said assessments are due on the first day of each month and considered to be delinquent after the fifteenth day of each month. The Association may bring, without electing a remedy, any and all actions and seek any and all relief against the Owner personally obligated to pay the same, and/or to foreclose the lien against the Lot in a like manner as a mortgage of real property, and such Owner hereby expressly grants to the Association the power of sale in connection with said lien. No Owner may waive or otherwise escape liability for the assessments provided for hereby by non-use of the common area or abandonment of his townhouse. In any action taken against an Owner to collect delinquent assessments, whether through a lien foreclosure or otherwise, the Owner shall be obligated to pay, in addition to any and all other amounts required herein, all costs and all attorneys' fees incurred by the Association in such action.



When Recorded Mail To:  
Fountain Shadows HOA  
16814 N. 33rd Drive  
Phoenix, AZ 85023



OFFICIAL RECORDS OF  
MARICOPA COUNTY RECORDER  
HELEN PURCELL

96-0699329 10/01/96 03:44

ABBEY 2 OF 2

FOURTH AMENDMENT TO DECLARATION OF  
COVENANTS, CONDITIONS AND RESTRICTIONS  
FOR  
FOUNTAIN SHADOWS HOMEOWNERS ASSOCIATION

The undersigned is owner of that certain real property situated in Maricopa County, State of Arizona, to wit:

FOUNTAIN SHADOWS UNIT I AND FOUNTAIN SHADOWS UNIT II, according to a plat thereof recorded in the Office of the Maricopa County Recorder in Box 250 of Maps, at page 48.

WHEREAS, a certain Declaration of Covenants, Conditions and Restrictions has been placed on said property and has been recorded on April 21, 1983, at No. 83-146154 and an Amendment to Declaration of Covenants, Conditions and Restrictions has been recorded on December 2, 1983, at No. 83-484281, with the Maricopa County Recorder, and a Second Amendment to the Declaration of Covenants, Conditions and Restrictions has been recorded on July 31, 1984, at No. 84-332750, with the Maricopa County Recorder;

WHEREAS, as part of said Declaration of Covenants, Conditions and Restrictions, as amended, the right to amend is granted to the Owners of not less than three-fourths (3/4) of the Townhouses;

WHEREAS, the undersigned represents the Owners of not less than three-fourths (3/4) of the Townhouses; and

WHEREAS, the undersigned is desirous of amending said Declaration of Covenants, Conditions and Restrictions, as amended.

NOW, THEREFORE, the Declaration of Covenants, Conditions and Restrictions for Fountain Shadows recorded on April 21, 1983, at No. 83-146154 and the Amendment of the Declaration of Covenants, Conditions and Restrictions recorded on December 2, 1983, at No. 83-146154, with the Maricopa County Recorder, and the Second Amendment to Declaration of Covenants, Conditions and Restrictions recorded on July 31, 1984, at No. 84-332750, with the Maricopa County Recorder, shall be amended as follows:

1. In Article X, add Section 6, to add the words

Section 6. Insurance Deductible. The Owner of record of damaged property with respect to which one or more insurance claims are made shall be responsible party for the payment of any and all applicable insurance deductibles.

When damaged property with respect occurs within the property the owner of record will be responsible party for the applicable insurance deductibles.

When damaged property with respect occurs to any exterior portion of the property with respect to the current CC&R's and the current insurance policy holder that the Fountain Shadows Homeowners Association will be the responsible party for any and all insurance deductibles.

IN WITNESS WHEREOF, the undersigned, being the President and Secretary of the Board of Directors of Fountain Shadows Homeowners Association, has hereunto set its hand and seal this 5 day of September, 1996.

FOUNTAIN SHADOWS HOA

[Signature]  
President, Board of Directors  
[Signature]  
Secretary, Board of Directors

STATE OF ARIZONA )  
County of Maricopa ) ss.

On this, the 5 day of September, 1996, before me, the undersigned Notary Public, personally appeared [Signature], who acknowledged himself to be the President of Fountain Shadows HOA, and DENNELL H. SEUTRY, who acknowledged himself to be the Secretary of Fountain Shadows HOA, and that he, as such officer, being so authorized, executed the foregoing instrument for the purpose therein contained.

WITNESS my hand and seal.

[Signature]  
Notary Public

My commission expires:

