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When filed, return to:

BURCH & CRACCHIOLO, P.A.  
Clare H. Abel  
P. O. Box 16882  
Phoenix, Arizona 85011

## ARTICLES OF INCORPORATION

OF

### FOOTHILLS RESERVE MASTER OWNERS' ASSOCIATION, INC.

In compliance with the requirements of the statutes of the State of Arizona pertaining to nonprofit corporations, A.R.S. § 10-2301, et seq., the undersigned, all of whom are of legal age, have this day voluntarily associated themselves together for the purpose of forming a nonprofit corporation and do hereby certify:

#### ARTICLE I.

NAME: The name of the corporation is FOOTHILLS RESERVE MASTER OWNERS' ASSOCIATION, INC., hereafter called the "Association."

#### ARTICLE II.

DURATION: The time of commencement of this corporation shall be the date upon which these Articles are filed with the Arizona Corporation Commission and the duration shall be perpetual unless FOOTHILLS RESERVE MASTER OWNERS' ASSOCIATION, INC. is dissolved.

### ARTICLE III.

PURPOSE: This corporation does not contemplate pecuniary gain or profit to the members thereof and the specific primary purposes for which it is formed are to provide for the maintenance and improvement of the Common Area and the preservation, architectural control and enforcement of covenants, conditions and restrictions on the real property described in the preamble of the Declaration of Covenants, Conditions, Restrictions and Easements for Foothills Reserve, recorded in the Records of the Maricopa County Recorder, to promote the health, safety and welfare of the Owners within the above-described property and to have and exercise any and all powers, rights and privileges which a corporation organized under the nonprofit corporation statutes of the State of Arizona may now or hereafter have or exercise. Unless otherwise expressly provided herein, all capitalized terms used herein shall have the meanings set forth in the Declaration. Notwithstanding any other provisions of these Articles, if the corporation elects to qualify under Section 501(c)(4) of the Internal Revenue Code of 1986, as amended (the "Code"), the corporation shall not conduct or engage in any activity which would or could result in the revocation of its status as a corporation qualified under Section 501(c)(4) of the Code. The corporation does not contemplate securing any gain or profit to the Members of the corporation; the Members shall have no individual interest in the profits of the corporation, if any; and no part of the net earnings of the corporation, if any, shall inure (other than by acquiring, constructing or providing management, maintenance and care of association property, and other than by a rebate of excess Special Use Fees or Assessments) to the benefit of any Member of the corporation or other individual.

### ARTICLE IV.

INITIAL BUSINESS: In furtherance of the general purposes, the Association shall have power to:

(a) perform all of the duties and obligations of the Association as set forth in the above-described Declaration of Covenants, Conditions, Restrictions and Easements, hereinafter called the "Declaration;"

(b) fix, levy, collect and enforce payment by any lawful means, all charges or assessments pursuant to the terms of the Declaration; to pay all expenses in connection therewith and all office and other expenses incidental to the conduct of the business of the Association, including all licenses, taxes or governmental charges levied or imposed against the Common Area;

(c) acquire (by gift, purchase or otherwise), own, hold, improve, build upon, operate, maintain, convey, sell, lease, transfer, dedicate for public use, or otherwise dispose



of real or personal property in connection with the affairs of the Association, subject to the limitations of the Declaration;

(d) dedicate, sell or transfer all or any part of the Common Area to any public agency, authority or utility for such purposes and subject to such conditions as may be agreed to by the Association and subject to the limitations contained in the Declaration; and

(e) participate in mergers and consolidations with other nonprofit corporations organized for the same purposes, subject to the limitations provided in the Declaration.

#### ARTICLE V.

STATUTORY AGENT: The initial statutory agent is Karen Homas, c/o 3104 East Camelback Road, Suite 612, Phoenix, Arizona 85016 who has been a bona fide resident of the State of Arizona for at least three (3) years and upon whom all notices and processes, including service of summons, may be served, and which, when so served, shall be lawful personal service upon this corporation. The Board may revoke the appointment of such agent at any time, and shall have the power to fill any vacancy.

#### ARTICLE VI.

PLACE OF BUSINESS: The known place of business of the Association is c/o Phoenix Holdings II, L.L.C., 2901 North Central Avenue, Suite 1644, Phoenix, Arizona 85012.

#### ARTICLE VII.

MEMBERSHIP: The corporation shall be a non-stock corporation and shall be owned by all of its Members. Membership shall be limited to person or entity who is a record owner of a fee or undivided fee interest in any Lot which is subject by covenants of record to assessment by the Association, (including, but not limited to, an Owner who acquires title by means of a sheriff's deed as a result of a mortgage foreclosure, a trustee's deed as a result of a non-judicial foreclosure of a deed of trust, or a deed in lieu of foreclosure of any mortgage or deed of trust and including contract purchasers), including Declarant for so long as Declarant is a Class A or Class B Member, with right of possession of a Lot, shall be a member of the Association. A member shall also be referred to herein as an "Owner." The foregoing is not intended to include persons or entities who hold an interest merely as security for the performance of an obligation. Membership shall be appurtenant to and may not be separated from ownership of any Lot which is subject to

assessment by the Association. An Owner's Membership in the corporation shall cease and terminate immediately upon the Owner's ceasing to be an Owner. Membership may be evidenced by an official list of Owners, which list shall be kept by the secretary of the corporation. Termination of Membership in the corporation shall be in accordance with the Declaration and Bylaws of the corporation.

#### ARTICLE VIII.

VOTING RIGHTS: The Association shall have two (2) classes of voting membership. The Class A Members shall consist of all Owners except Declarant until the conversion of Declarant's Class B Membership to Class A Membership pursuant to the Declaration. The Class B Member shall be the Declarant. The Class B Members shall have the number of votes provided in the Declaration. The Class B Membership shall automatically cease and be converted to Class A Membership as provided in the Declaration. Other limitations, privileges, obligations and rights of Membership in the corporation are set forth in the Declaration.

#### ARTICLE IX.

INCORPORATORS: The name and address of the incorporators are:

NAME

ADDRESS

Brent Hickey

c/o Phoenix Holdings, L.L.C.  
2901 North Central Avenue, Suite 1644  
Phoenix, Arizona 85012

Craig Hunter

c/o Phoenix Holdings, L.L.C.  
2901 North Central Avenue, Suite 1644  
Phoenix, Arizona 85012

#### ARTICLE X.

BOARD OF DIRECTORS; OFFICERS: The affairs of the corporation shall be conducted by a Board of Directors. The initial Board and each Board thereafter, for so long as there is a Class B Member, shall consist of three (3) Members or other persons. Commencing with the first annual meeting of the Members when there is no longer a Class B Member, the Board shall consist of, and the voting Members shall elect, a Board of not less than three (3) directors, all of whom must be Members (or individuals designated by



corporate, partnership or other non-individual Members). The number of directors shall be subject to increase as provided in the Bylaws. The term of each director shall be for one (1) year until there is no longer a Class B Member. Thereafter, the initial terms of the directors shall be set so as to establish a staggered Board. In succeeding years, each director shall be elected for a three year term.

The Board of Directors may select officers from their membership from time to time, including a President, a Vice President, a Secretary and a Treasurer. The same person may hold any two offices, except the President may not at the same time hold the office of Secretary.

#### ARTICLE XI.

INITIAL DIRECTORS: The following three (3) persons shall constitute the initial Board of Directors of the corporation:

<u>NAME</u>	<u>ADDRESS</u>
Brent Hickey	c/o Phoenix Holdings, L.L.C. 2901 North Central Avenue, Suite 1644 Phoenix, Arizona 85012
Craig Hunter	c/o Phoenix Holdings, L.L.C. 2901 North Central Avenue, Suite 1644 Phoenix, Arizona 85012
John Fuller	c/o Phoenix Holdings, L.L.C. 2901 North Central Avenue, Suite 1644 Phoenix, Arizona 85012

#### ARTICLE XII.

DIRECTOR LIABILITY: A director of this corporation shall not be personally liable to the corporation or its members for monetary damages for breach of fiduciary duty as a director. This Article shall not eliminate or limit the liability of a director for any conduct described in clauses (a) through (e) of Section 10-2342(A)(8), Arizona Revised Statutes as amended. If the Arizona Revised Statutes are amended to authorize further elimination or limitation of the liability of directors of non-profit corporations, then the liability of a director of the corporation shall be eliminated or limited to the fullest extent permitted by the Arizona Revised Statutes as so amended. Any repeal or modification of this Article shall

not increase the liability of a director of the corporation arising out of acts or omissions occurring before the repeal or modification becomes effective.

#### ARTICLE XIII.

**SEVERABILITY:** If any provision of these Articles or the Bylaws should be invalid for any reason, such invalidity shall in no way affect any other provisions, which shall remain in full force and effect.

#### ARTICLE XIV.

**LIMIT OF LIABILITY:** The private property of each and every officer, director and member of the Association shall at all times be exempt from all debts and liabilities of the corporation.

#### ARTICLE XV.

**INDEMNIFICATION OF BOARD OF DIRECTORS AND OFFICERS:** Subject to the limitations of Section 10-2305(C), Arizona Revised Statutes, the Association shall indemnify all of the existing and former directors, officers and committee members (including, but not limited to, members of the Architectural Review Committees) against all expenses incurred by them and each of them, including, but not limited to, legal fees, judgments, penalties, and amounts paid in settlement or compromise, which may arise or be incurred, rendered or levied in any legal action brought or threatened against any one of them for or on account of any act or omission alleged to have been committed by such person while acting within the scope of his or her employment as a director, officer or committee member of the corporation, whether or not any action is or has been filed against the person and whether or not any settlement or compromise is approved by a court. Except as otherwise required by Section 10-2305(C)(4), Arizona Revised Statutes, whenever such a director, officer or committee member shall report to the President of the corporation or to the Board that he or she has incurred or may incur such expenses, the Board shall, at its next regular meeting or at a special meeting held within a reasonable time thereafter, determine in good faith whether, in regard to the matter involved in the action or contemplated action, such person: (i) acted, failed to act or refused to act in good faith, or in a manner he or she reasonably believed to be in, or not opposed to, the best interest of the corporation; or (ii) with respect to any criminal action or proceeding, had no reasonable cause to believe his or her conduct was unlawful. Upon an affirmative determination by the Board with respect to the foregoing, indemnification shall be mandatory and automatically shall be extended as specified herein to the extent permitted by Section 10-2305(C), Arizona



Revised Statutes; provided, however, that the corporation shall have the right to refuse indemnification in any instance in which the person to whom indemnification would otherwise have been applicable shall have unreasonably refused to permit the corporation, at its own expense and through counsel of its choosing, to defend him or her in the action.

#### ARTICLE XVI.

DISSOLUTION: Subject to and in accordance with the restrictions imposed by the Declaration and by the FHLMC, FNMA, VA or the FHA (to the extent such organizations are involved in making, guaranteeing or insuring loans secured by Lots in FOOT HILLS RESERVE), the Association may be dissolved with the assent given in writing and signed by not less than two-thirds (2/3) of each class of members. Upon dissolution of the Association, other than incidental to a merger or consolidation, the assets of the corporation shall be distributed exclusively to one or more other corporations or organizations having purposes substantially similar to those of the corporation and, if the corporation shall have elected to qualify under Section 501(c)(4) of the Code, to charitable, religious, scientific, literary or educational organizations which would then qualify under the provisions of Section 501(c)(4) of the Code, as the Board shall then elect.

#### ARTICLE XVII.

CONFLICT WITH DECLARATION AND OTHER LIMITATIONS: To the extent that any part or provision of these Articles is contrary to or inconsistent with provisions of the Declaration, the terms and provisions of the Declaration shall prevail. As set forth in the Declaration, the corporation is subject to certain limitations. No amendment hereof, nor any action taken by the corporation pursuant hereto, shall be contrary to, or in conflict with, the limitations set forth in the Declaration, and any such amendment or action shall be void to the extent of such inconsistency.

#### ARTICLE XVIII.

AMENDMENT: Subject to the provisions of Article XVII hereof, the Members may, at a duly noticed and convened regular or special meeting called for such purpose, amend, alter or repeal any provision of these Articles by the affirmative vote of seventy-five percent (75%) of the votes then entitled to be cast. Notwithstanding anything in this Article to the contrary, Declarant reserves the right to amend these Articles as may be requested or required by FHLMC, FNMA, FHA, VA or any other agency with whom Declarant elects to do business as a condition precedent to such agency's approval of these Articles, or by any federally chartered lending institution as a condition precedent to lending funds upon the

security of any Lot or purchasing loans secured thereby. Any such amendment shall be effected by Declarant filing with the Arizona Corporation Commission, in accordance with applicable law, a Certificate of Amendment duly executed by Declarant specifying the agency or lending institution requesting the amendment and setting forth the requested or required amendment(s). Filing such Certificate shall be deemed conclusive proof of the agency's or institution's request or requirement and such Certificate, when filed, shall be binding upon all of the Property and all persons having an interest therein. It is the desire of the Declarant to retain control of the Association and the Association's activities during the period of planning and development of the Property. If any amendment requested or required pursuant to the provisions of this Article deletes, diminishes or alters such control, Declarant shall have the right to prepare, provide for and adopt as an amendment hereto, other and different control provisions which shall be binding upon the Property and the Owners without a vote of the Owners.

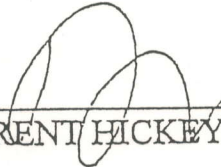
Notwithstanding anything contained herein to the contrary, the number of directors, the known place of business and the statutory agent may be changed by amendment of the Bylaws of the Association.

#### ARTICLE XIX.


FHA/VA APPROVAL: As long as there is a Class B membership, and provided such agencies are involved in making, insuring or guaranteeing any mortgage loans within the Property, the following actions will require the prior approval of the Federal Housing Administration or the Veterans Administration: annexation of additional properties, mergers and consolidations, mortgaging of Common Area, dedication of Common Area, dissolution and amendment of these Articles.



IN WITNESS WHEREOF, for the purpose of forming this corporation under the laws of the State of Arizona, we, the undersigned, constituting the incorporators of this corporation, have executed these Articles of Incorporation this 25<sup>th</sup> day of August, 2000.


  
\_\_\_\_\_  
BRENT HICKEY

  
\_\_\_\_\_  
CRAIG HUNTER

  
\_\_\_\_\_  
JOHN FULLER

STATE OF ARIZONA     )  
                                  ) s s.  
County of Maricopa    )

SUBSCRIBED AND SWORN TO before me by BRENT HICKEY this  
25<sup>th</sup> day of August, 2000.

  
\_\_\_\_\_  
NOTARY PUBLIC Karen Denise Bestone

My Commission Expires:



STATE OF ARIZONA     )  
  ) s s.  
County of Maricopa     )

SUBSCRIBED AND SWORN TO before me by CRAIG HUNTER, this 25<sup>th</sup> day  
of August, 2000.

Karen Denise Bestone  
NOTARY PUBLIC     Karen Thomas

My Commission Expires:



STATE OF ARIZONA     )  
  ) s s.  
County of Maricopa     )

SUBSCRIBED AND SWORN TO before me by JOHN FULLER, this 25<sup>th</sup> day of  
August, 2000.

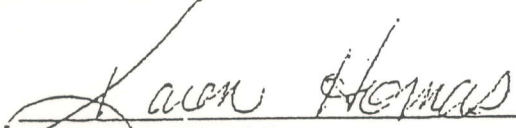
Karen Denise Bestone  
NOTARY PUBLIC     Karen Thomas

My Commission Expires:





THE UNDERSIGNED, having been designated to act as Statutory Agent for the above-referenced corporation, hereby consents to act in that capacity until removal or resignation is submitted in accordance with the Arizona Revised Statutes.

  
KAREN HOMAS