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Mora Williams
When recorded return to:

Mr. Joe Hogan
H & O Investments, LLC
699 S. Mill Avenue, Suite 320
Tempe, AZ 85281

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2002-0866265 08/26/02 12:55

PALUMBOA

DECLARATION OF COVENANTS, CONDITIONS, RESTRICTIONS AND EASEMENTS

FOR

ESTATES AT McQUEEN

THIS DECLARATION PROVIDES, AMONG OTHER THINGS: A) FOR CERTAIN LIMITATIONS UPON, AND THAT CERTAIN STEPS MUST BE TAKEN PRIOR TO AND IN CONJUNCTION WITH, THE DISPOSITION OF CERTAIN DISPUTES INVOLVING DECLARANT, THE ASSOCIATION, OWNERS AND/OR OTHERS (SEE, AMONG OTHERS, SECTION 3.13 AND ARTICLE XII HEREINBELOW), INCLUDING, WITHOUT LIMITATION, MANDATORY ARBITRATION AND A WAIVER OF THE RIGHT TO TRIAL BY JURY IN MANY CASES (SEE, AMONG OTHERS, SECTION 12.5 HEREINBELOW); B) THAT THE ASSOCIATION MAY IMPOSE CERTAIN FINES AND OTHER REMEDIES HEREUNDER FOR VIOLATIONS OF THE PROJECT DOCUMENTS; AND C) THAT THE LIABILITY AND RESPONSIBILITY OF DECLARANT AND OF THE ASSOCIATION RELATING TO A CERTAIN SECURITY GATE AND FACILITY WHICH IS CONTEMPLATED TO BE INSTALLED BY DECLARANT IS SUBSTANTIALLY LIMITED (SEE, AMONG OTHERS, SECTION 2.2 HEREINBELOW).

TABLE OF CONTENTS

DECLARATION OF COVENANTS, CONDITIONS, RESTRICTIONS AND EASEMENTS FOR ESTATES AT McQUEEN

THIS DECLARATION OF COVENANTS, CONDITIONS, RESTRICTIONS AND EASEMENTS FOR ESTATES AT McQUEEN is made on the date hereinafter set forth by H & O INVESTMENTS, LLC, an Arizona limited liability company ("Declarant").

WITNESSETH:

WHEREAS, Declarant is the owner and developer of certain real property ("Property") located in the City of Chandler, County of Maricopa, and State of Arizona, which is more particularly described as follows:

Lots 1 through 40, inclusive, and Tracts A through F, inclusive, of Estates at McQueen, together with the private Streets and Roadways to be known and depicted as "East Kaibab Place" and "East Coconino Place", all as more particularly described in the Final Plat (the "Plat") for the Development, which Plat was recorded 8-23-02, 2002, in Book 604, Page 45, records of Maricopa County, Arizona, also known as Recorder's Instrument No. 2002-0866234;

WHEREAS, Declarant desires to provide for the development on the Property of detached single family residences and associated amenities;

WHEREAS, Declarant intends to sell and convey the Property, or portions thereof, and, in doing so, desire to subject and place thereupon mutual and beneficial assurances, restrictions, covenants, conditions, reservations, easements, liens, charges and development standards under a general plan of improvement for the benefit of the Property, its owners and their successors and assigns; and

WHEREAS, Declarant shall incorporate, as a nonprofit corporation, Estates at McQueen Homeowners Association for the purpose of the efficient preservation of the values and amenities of the Property and to administer the Common Area for which the Homeowners Association is responsible, and to exercise all rights and authority permitted to be exercised by a Homeowners Association. Except where the context otherwise requires, the term "Homeowners Association" as used herein shall refer to the Estates at McQueen Homeowners Association.

DECLARATION:

NOW, THEREFORE, Declarant hereby declares that the Property shall be subject to the Declaration and the following reservations, easements, limitations, restrictions, servitudes, covenants, conditions, charges and liens (hereinafter sometimes collectively termed "Covenants and Restrictions") which are for the purpose of protecting the value and desirability of, and which shall run with, the Property and be binding on all parties having any right, title or interest

in Property or any part thereof, their heirs, successors and assigns, and shall inure to the benefit of each Owner thereafter.

ARTICLE I
DEFINITIONS

Section 1.1. Definitions. The following definitions shall apply to this Declaration:

Section 1.1.1. "Alleged Defect" means alleged defect(s) caused by the negligence of Declarant, or its agents, consultants, contractors or subcontractors, in the planning, design, engineering, grading, construction, or other development of any portion of the Common Area, any Lot or Single Family Residence, and/or any Improvements constructed on the Property. Alleged Defects shall not include any defects which were known to the Association, to any Owner or to any representative of any Owner at the time of Turnover or which could have been discovered by the exercise of reasonable care on behalf of the owners at the time of turnover pursuant to the Walkthrough. For purposes of Turnover only (and not for Alleged Defects allegedly discovered after Turnover), the term "Alleged Defect" shall not include "construction defects" caused by, or which are the responsibility of, Declarant (and/or its contractors or subcontractors), as the term "construction defect" (or reasonable variants thereof) are interpreted, defined or to which reference is made in the statutes/regulations of or related to the Registrar of Contractors of the State of Arizona. Alleged Defects at the time of Turnover which are "construction defects" shall be Declarant's sole responsibility to remedy from its own funds.

Section 1.1.2. "Alleged Defect Costs" means the costs of repairing or replacing any defective portion of the Common Area, any Lot or Single Family Residence, and/or any Improvements constructed on the Property.

Section 1.1.3. "Architectural Committee" means the committee established by the Board pursuant to Section 3.4 of this Declaration.

Section 1.1.4. "Architectural Committee Rules" means the rules adopted by the Architectural Committee.

Section 1.1.5. "Articles" means the Articles of Incorporation of the Association which have been in the Office of the Corporation Commission of the State of Arizona, as said Articles may be amended and/or restated from time to time.

Section 1.1.6. "Assessment Lien" means the lien granted to the Association by this Declaration to secure the payment of Assessments and all other amounts payable to the Association under the Project Documents.

Section 1.1.7. "Assessment(s)" or "assessment(s)" means the annual and special assessments levied and assessed against each Lot pursuant to Article IV of the Declaration.

Section 1.1.8. "Association" or "Homeowners Association" means the Arizona nonprofit corporation organized by the Declarant to administer and enforce the Project

Documents and to exercise the rights, powers and duties set forth therein, and its successors and assigns. Declarant intends to organize the Association under the name of "Estates at McQueen Homeowners Association", but if such name is not available, Declarant may organize the Association under such other name as the Declarant deems appropriate.

Section 1.1.9. "Association Rules" means the rules and regulations adopted by the Association in accordance with Section 3.3 below, as the same may be amended from time to time.

Section 1.1.10. "Board" means the Board of Directors of the Association.

Section 1.1.11. "Bylaws" means the bylaws of the Association, as such bylaws may be amended and/or restated from time to time.

Section 1.1.12. "Claimant" means any Owner, the Association or any agent or lienor of either or both, which brings a claim regarding, or alleges, that an Alleged Defect exists with respect to any of the Common Area, any Improvement, any Single Family Residence, or any other issue arising out of or relating to the Project, and/or brings, alleges or prosecutes any claim for damages or any other relief relating to any Alleged Defects.

Section 1.1.13. "Common Area(s)" consists of: Tracts A through F, inclusive, of "Estates at McQueen", according to the Plat of record in the office of the County Recorder of Maricopa County, Arizona, recorded on 8-23-02, 2002, as Instrument No. 2002-0866234; Book 602, Page 45. The private Streets and Roadways are part of the Common Areas and are specifically denominated as Tract A on the Plat. The private Streets and Roadways shall be the roadways depicted and named as "East Kaibab Place" and "East Coconino Place" as shown in the Plat.

Section 1.1.14. "Common Expenses" means expenditures made by, or financial liabilities of, the Association, together with any allocations to reserves.

Section 1.1.15. "Community Systems" means any and all cable television, communications, alarm/monitoring, internet, telephone or other lines, conduits, wires, amplifiers, towers, antennae, satellite dishes, equipment, materials, installations and fixtures (including those based on, containing and serving future technological advances not now known) installed by Declarant or pursuant to any grant of easement or authority by Declarant within the Project.

Section 1.1.16. "Declarant" means H & O Investments, LLC, an Arizona limited liability company, and its successors and assigns, if such successors or assigns should acquire two or more undeveloped lots from said party for the purpose of development and resale and such acquisition includes a specific written transfer of the Declarant's rights herein. No successor Declarant shall have any liability resulting from any actions or inactions of any preceding Declarant unless expressly assumed by the successor Declarant, in which event the preceding Declarant shall be released from liability.

Section 1.1.17. "Declaration" or "Covenants and Restrictions" means the provisions of this document and any amendments hereto.

Section 1.1.18. "Design Guidelines" means the guidelines, if any, relating to construction of Improvement and the overall aesthetics of the Development adopted by the Architectural Committee pursuant to Section 3.4 of this Declaration, as amended or supplemented from time to time. If so decided by the Architectural Committee, the Design Guidelines may be a portion of the Architectural Committee Rules, but if adopted as a separate document, references herein to "Architectural Committee Rules" shall also mean and infer to the Design Guidelines, unless the context clearly indicates to the contrary.

Section 1.1.19. "Dispute" means a dispute or claim described in Section 12.4 of this Declaration.

Section 1.1.20. "Disputing Party" means the party instituting a Dispute pursuant to Section 12.4.2 of this Declaration.

Section 1.1.21. "First Mortgage" means any mortgage or deed of trust encumbering a Lot which has priority over all other mortgages or deeds of trust encumbering the same Lot.

Section 1.1.22. "First Mortgagee" means the holder of any First Mortgage.

Section 1.1.23. "Governmental Regulations" means any rules, regulations, statutes or edicts of the Veterans Administration and/or the Federal Housing Administration, or their respective successors and assigns.

Section 1.1.24. "Improvement" means buildings, roads, driveways, parking areas, fences, walls, rocks, hedges, plantings, planted trees and shrubs, and all other structures or landscaping improvements of every type and kind.

Section 1.1.25. "Lot" or "lot" means any lot within the Property that is reflected on any recorded subdivision plat.

Section 1.1.26. "Member" means any person, corporation, partnership, joint venture or other legal entity who or which is a member of the Association.

Section 1.1.27. "Municipality" (and the correlative adjective, "Municipal") means the City of Chandler, Arizona.

Section 1.1.28. "Notice of Alleged Defect" means a notice from a Claimant to Declarant describing the specific nature of an Alleged Defect.

Section 1.1.29. "Owner" or "owner" means the record owner, except as provided below, whether one or more persons or entities, of fee simple title of any lot, including without limitation, one who is buying a lot under a recorded contract or deed, but excluding others

having an interest merely as security for the performance of an obligation. In the case of a lot wherein the fee simple title is vested of record in a trustee pursuant to Arizona Revised Statutes, Section 33-801, et seq., legal title shall be deemed to be in the Trustor. In the case of a lot, the fee simple title to which is vested in a trustee pursuant to a trust agreement the beneficiary entitled to possession shall be deemed to be the Owner.

Section 1.1.30. "Person" or "person" means any natural person, corporation, partnership, joint venture or other legal entity capable of holding a real property in the State of Arizona.

Section 1.1.31. "Plat" or "plat" means any recorded subdivision plat affecting any portion of the Property, including, without limitation, that certain Final Plat for Estates at McQueen, according to the Plat of record in the office of the County Recorder of Maricopa County, Arizona, recorded on 8-23, 2002, as Instrument No. 200 2-0866234; Book 602, Page 45.

Section 1.1.32. "Project", "Property" or "Development" means the real property described and/or depicted on the Plat, together with all buildings and other Improvements located thereon and all easements, rights and privileges appurtenant thereto.

Section 1.1.33. "Project Documents" means this Declaration and the Articles, Bylaws, Association Rules, and Architectural Committee Rules (together with the Design Guidelines, if separately adopted).

Section 1.1.34 "Purchaser" means any person other than the Declarant, who is or becomes the Owner of a Lot except: (i) an Owner who purchases a Lot and then leases it to the Declarant for use as a model in connection with the sale of other Lots, or (ii) an Owner who, in addition to purchasing a Lot, is assigned any or all of the Declarant's rights under this Declaration.

Section 1.1.35. "Residential Unit" means any building situated upon a Lot and designed and intended for independent ownership and for use and occupancy as a residence by a Single Family and shall, unless otherwise specified, include within its meaning (by way of illustration, but not limitation) townhouses or patio or zero lot line homes, if any, located within the Development.

Section 1.1.36. "Security Gate and Facility" means the gate/security facility/automated entrance feature respecting the only general entrance to the Project on a public street along its easterly boundary with the McQueen Road right-of-way.

Section 1.1.37. "Single Family" means an individual living alone, a group of two or more persons each related to the other by blood, marriage or legal adoption, or a group of not more than three persons not all so related, together with their domestic servants, who maintain a common household in a dwelling.

Section 1.1.38. "Single Family Residence" means a building, house or dwelling unit used as a residence for a Single Family, including any appurtenant garage or storage area.

Section 1.1.39. "Single Family Residential Use" means the occupation or use of a Single Family Residence in conformity with this Declaration and the requirements imposed by applicable zoning laws or other state, county or municipal rules and regulations.

Section 1.1.40. "Streets and Roadways" means the private Streets and Roadways within the Project. Declarant intends that all Streets and Roadways within the Project shall be private Streets and Roadways designated as such on the Plat, to which access shall be restricted by virtue of the Security Gate and Facility, and which shall be maintained by the Association as more fully set forth herein. Title to said Streets and Roadways shall lie in the Association by virtue of the dedication thereof on the Plat, and Streets and Roadways shall be deemed a portion of the Common Areas hereunder.

Section 1.1.41. "Turnover" means the process pursuant to which control of the Association is transferred from Declarant to the Class A membership when the Conversion Date occurs, and also includes the various procedures to be undertaken at or about that time in accordance with the terms hereof including, without limitation, the provisions of Section 3.14 below.

Section 1.1.42. "Turnover Reserve" means a reserve established by Declarant prior to the Conversion Date by utilizing the proceeds of the Transfer Fee described in Section 4.12 below. Said Turnover Reserve shall be utilized at Turnover to correct Alleged Defects indicated by the Walkthrough, which Alleged Defects shall not be deemed to include, for purposes of Turnover only, "construction defects" to which reference is made in Section 1.1.1 above and, if any monies remain in the Turnover Reserve after such Alleged Defects are corrected, such monies shall then become a portion of the general reserves of the Association.

Section 1.1.43. "Visible from Neighboring Property" or "visible from neighboring property" means that an object is or would be visible to a person six feet (6') tall standing on a neighboring lot or street at an elevation not greater than the elevation of the base of the object being viewed.

Section 1.1.44 "Walkthrough" means the walkthrough of the Project to be conducted by representatives of the Association (unaffiliated with Declarant) and Declarant (and/or its designees) at or around Turnover. If the Association does not avail itself of its Walkthrough rights, the Association shall be deemed to have irrevocably waived the same and to have waived any rights it may have against Declarant or any affiliate or agent of Declarant to claim any Alleged Defect in the Project which could have been discovered by a Walkthrough or which should have been known to a reasonable observer/investigator who utilized/conducted a Walkthrough.

Capitalized terms which are not specifically defined above shall have the meanings ascribed to them in definitional parentheticals located throughout this Declaration (inclusive of the Recitals).

ARTICLE II
PLAN OF DEVELOPMENT; RESTRICTION ON LIABILITY

Section 2.1. Property Initially Subject to the Declaration. This Declaration is being recorded to establish a general plan for the development and use of the Project in order to protect and enhance the value and desirability of the Project. All of the Property within the Project including, without limitation, all Lots, shall be held, sold and conveyed subject to this Declaration. By acceptance of a deed or by acquiring any interest in any of the Property subject to this Declaration, each person or entity, for him/herself or itself, his/her heirs, personal representatives, successors, transferees and assigns, binds him/herself, his/her heirs, personal representatives, successors, transferees and assigns, to all of the provisions, restrictions, covenants, conditions, rules, and regulations now or hereafter imposed by this Declaration and any amendments thereof. In addition, each such person by so doing thereby acknowledges that this Declaration sets forth a general scheme for the development and use of the Property and hereby evidences his/her intent that all the restrictions, conditions, covenants, rules and regulations contained in this Declaration shall run with the land and be binding on all subsequent and future Owners, grantees, Purchasers, assignees, lessees and transferees thereof. Furthermore, each such person fully understands and acknowledges that this Declaration shall be mutually beneficial, prohibitive and enforceable by the Association and all Owners.

Section 2.2. Restriction on Liability of the Association and Declarant.

Declarant intends to construct the Security Gate and Facility at the primary entrance to the Project where East Kaibab Place intersects McQueen Road leading into the Project to endeavor to limit access and to provide more privacy for Owners; however, there are no guarantees that such Security Gate and Facility will provide complete security and safety to all Owners and their families, guests and invitees. Each Owner, for themselves and on behalf of their families, guests and invitees, acknowledge and assume the risks that a gated entry may restrict or delay entry into the Project by police, fire department, ambulances and/or other emergency vehicles or personnel. Neither Declarant, the Association, nor any member, manager, director, officer, agent or employee of Declarant or the Association shall be liable to any Owner, or their families, guests or invitees, or to any other party, for any claims or damages resulting, directly or indirectly, from the construction, existence, operation, failure of operation or maintenance of the Security Gate and Facility and/or delays caused by reason of restricted access to the Project and the Lots therein.

Each Owner hereby releases Declarant and the Association, and their respective members, managers, directors, officers and agents, from any and all claims, actions, suits, demands, causes of action, losses, damages or liabilities related to or arising in connection with any nuisance, inconvenience, disturbance, injury or damage resulting from activities or occurrences described in this Section 2.2.

Notwithstanding anything contained in this Declaration to the contrary, so long as Declarant is constructing or marketing Residential Units or other Improvements within the Project, no restrictions shall be approved by the Board or otherwise imposed upon Declarant

which restrict construction and/or marketing traffic or other access to the Project though the Security Gate and Facility, restricts the hours when marketing or construction work may be performed or eliminates or restricts any easements for marketing or construction purposes reserved to Declarant in this Declaration. The foregoing shall survive the termination of Declarant's Class B membership and may not be amended without approval of Declarant.

Section 2.3. Conveyance of Common Area. Declarant, for as long as Declarant owns a Lot within the Project, and thereafter the Board, shall have the right to convey by fee transfer portions of the Common Area to Owners of adjoining Lots in connection with the correction or adjustment of any boundary between Common Area and any one or more Lots, or in such other circumstances as the Declarant or the Board (as applicable) may deem appropriate, in its respective sole, but good faith, discretion; provided, however, that neither Declarant nor the Board shall have the right to convey fee title to any portion of the Common Area upon which is directly physically situated any recreational facility without a vote of the Members as more fully provided in this Declaration.

ARTICLE III
THE ASSOCIATION; RIGHTS AND DUTIES MEMBERSHIP AND VOTING RIGHTS; TURNOVER

Section 3.1. Rights, Powers and Duties. The Association shall be a non-profit Arizona corporation charged with the duties and invested with the powers prescribed by law and set forth in the Project Documents, together with such rights, powers and duties as may be reasonably necessary to effectuate the objectives and purposes of the Association as set forth in the Project Documents, and every other right or privilege reasonably to be implied from the existence of any right or privilege given to it herein or reasonably necessary to effectuate any such right or privilege. Unless the Project Documents specifically require a vote of the Members, approvals or actions to be given or taken by the Association shall be valid if given or taken by the Board. Notwithstanding anything to the contrary herein contained regarding the powers of the Association and/or the Architectural Committee, neither shall have, either before or after the Conversion Date, any control or jurisdiction over any Declarant Improvements designed and or constructed by Declarant on any Lot and, at all times, as to any Lots owned by Declarant from time to time, the provisions of Section 5.23(H) hereof dealing with Declarant's exemption from control respecting any Declarant Improvements shall be paramount and shall control.

Section 3.2. Board of Directors and Officers. The affairs of the Association shall be conducted by a Board of Directors and such officers and committees as the Board may elect or appoint in accordance with the Articles and the Bylaws.

Section 3.3. Association Rules. The Board may, from time to time and subject to the provisions of this Declaration, adopt, amend and repeal rules and regulations. The Association Rules may restrict and govern the use of any area by any Owner, by the family of such Owner, or by any invitee, licensee or lessee of such Owner, except that the Association Rules may not discriminate among Owners and shall not be inconsistent with this Declaration, the Articles or

Bylaws or law. Upon adoption, the Association Rules shall have the same force and effect as if they were set forth in and were a part of this Declaration.

Section 3.4. Architectural Committee. The Association shall have an Architectural Committee to perform the functions of the Architectural Committee set forth in this Declaration. The Architectural Committee shall consist of such number of regular members and alternate members as may be provided for in the Bylaws, but if not otherwise provided, the Architectural Committee shall consist of three members. So long as Declarant is a Member of the Association, Declarant shall have the sole right to appoint and remove the members of the Architectural Committee. At such time as Declarant is no longer a Member of the Association, the members of the Architectural Committee shall be appointed by the Board. Declarant may at any time voluntarily surrender its right to appoint and remove the members of the Architectural Committee, and in that event Declarant may require, so long as Declarant is a Member of the Association, that specified actions of the Architectural Committee, as described in a recorded instrument executed by Declarant, be approved by Declarant before they become effective. The Architectural Committee may adopt, amend and repeal Design Guidelines and/or standards and procedures (i.e., Architectural Committee Rules) to be used in rendering its decisions. Such Guidelines and Rules may include, without limitation, provisions regarding: (i) architectural design, with particular regard to the harmony of the design with the surrounding structures and topography; (ii) placement of Improvements; (iii) landscaping design, content and conformance with the character of the Property and permitted and prohibited plants; (iv) requirements concerning exterior color schemes, exterior finishes and materials; (v) signage (to the extent not directly addressed in this Declaration); and (vi) perimeter and screen wall design and appearance. The decision of the Architectural Committee shall be final on all matters submitted to it pursuant to this Declaration.

Section 3.5. Identity of Members. Membership in the Association shall be limited to Owners of Lots. An Owner of a Lot shall automatically, upon becoming the Owner thereof, be a member of the Association and shall remain a member of the Association until such time as said Owner's ownership ceases for any reason, at which time said Owner's membership in the Association shall automatically cease.

Section 3.6. Transfer of Membership. Membership in the Association shall be appurtenant to each Lot and a membership in the Association shall not be transferred, pledged or alienated in any way, except upon the sale of a Lot and then only to the Purchaser of the Lot in question, or by interstate succession, testamentary disposition, foreclosure of encumbrance of record or other legal process. Any attempt to make a prohibited transfer shall be void and shall not be reflected upon the books and records of the Association. The Association shall have the right to charge a reasonable transfer fee to the new owner in connection with any transfer of a Lot.

Section 3.7. Classes of Members. The Association shall have two classes of voting membership:

Class A. Class A members shall be all Owners, with the exception of the Declarant until the termination of the Class B membership. Each Class A member shall be entitled to one (1) vote for each Lot owned.

Class B. The Class B member shall be the Declarant. The Class B member shall be entitled to three (3) votes for each Lot owned. The Class B membership shall cease and be converted to Class A membership on the happening of any of the following events (the "Conversion Date"), whichever occurs earlier:

(i) When seventy-five percent (75%) of the Lots have been conveyed to Purchasers; or

(ii) The 1st Day of June, 2008; or

(iii) When the Declarant notifies the Association in writing that it relinquishes its Class B membership.

Section 3.8. Joint Ownership. When more than one person is the Owner of any Lot, all such persons shall be Members. The vote for such Lot shall be exercised as they among themselves determine, but in no event shall more than one ballot be cast with respect to any Lot. The vote or votes for each such Lot must be cast as a unit, and fractional votes shall not be allowed. In the event that joint Owners are unable to agree among themselves as to how their vote or votes shall be cast, they shall lose their right to vote on the matter in question. If any Owner casts a ballot representing a certain Lot, it will thereafter be conclusively presumed for all purposes that the Owner so casting was acting with the authority and consent of all other Owners of the same Lot. In the event more than one ballot is cast for a particular Lot, none of said votes shall be counted and said votes shall be deemed void.

Section 3.9. Corporate Ownership. In the event any Lot is owned by a corporation, partnership or other association, the corporation, partnership or association shall be a Member and shall designate in writing at the time of acquisition of the Lot an individual who shall have the power to vote said membership, and in the absence of such designation and until such designation is made, the president, general partner or chief executive officer of such corporation, partnership or association shall have the power to vote the membership.

Section 3.10. Suspension of Voting Rights. In the event any Owner is in arrears in the payment of any Assessments under this Declaration or other amounts due under any of the provisions of the Project Documents for a period of fifteen (15) days, said Owner's right to vote as a Member of the Association shall be suspended for a period not to exceed sixty (60) days for each infraction of the Project Documents, and shall remain suspended until all payments, including accrued interest and attorneys' fees, are brought current.

Section 3.11. Termination of Contracts and Leases. A contract for any of the following, if entered into prior to the expiration of the Class B membership in the Association, may be terminated by the Association at any time after the expiration of the Class B membership on thirty (30) days written notice to the other party:

(i) Any management contract, employment contract or lease of recreational or parking areas or facilities; or

(ii) Any contract or lease, including franchises and licenses, to which the Declarant or any affiliate of the Declarant is a party.

Section 3.12. Fines. To the fullest extent permitted by law, the Association, acting through its Board of Directors, shall have the right to adopt a schedule of fines for violation of any provision of the Project Documents by any Owner or such Owner's licensees and invitees. No fine shall be imposed without first providing a written warning to the Owner describing the violation and stating that failure to terminate and correct the violation within no less than ten (10) days, or another recurrence of the same violation within six (6) months of the original violation, shall make the Owner subject to imposition of a fine. All fines shall constitute a lien on all lots owned by the Owner and shall be paid within thirty (30) days following imposition. Failure to pay any fine shall subject the Owner to the same potential penalties and enforcement as failure to pay any assessments under Article IV.

Section 3.13. Approval of Litigation. Except for any legal proceedings initiated by the Association to: (i) enforce the use restrictions contained in this Declaration; (ii) enforce the Association Rules; (iii) enforce the Architectural Committee Rules and/or Design Guidelines; (iv) collect any unpaid Assessments levied pursuant to this Declaration; or (v) collect any "small claims" (i.e., matters in which the amount in controversy related to said claim and all their similar or related claims could not be reasonably expected to exceed $10,000) (items described in clauses (i) through (v) immediately above are herein collectively called "Routine Disputes"), the Association shall not incur litigation expenses, including without limitation, attorneys' fees and costs, where the Association initiates legal proceedings or is joined as a plaintiff in legal proceedings, without the prior approval of at least two-thirds (2/3) of the Members of the Association entitled to vote, excluding the vote of any Owner who would be a defendant in such proceedings. The costs of any legal proceedings initiated by the Association which are not included in the above exceptions shall be financed by the Association with monies that are specifically collected for that purpose and the Association shall not borrow money, use reserve funds or use monies collected for other specific Association obligations. Each Owner shall notify prospective purchasers of such legal proceedings initiated by the Board and not included in the above exceptions and must provide such prospective purchasers with a copy of the notice received from the Association in accordance with Section 12.3 of this Declaration. Nothing in this Section shall preclude the Board from incurring expenses for legal advice in the normal course of operating the Association to: (i) enforce the Project Documents; (ii) comply with the statutes or regulations related to the operation of the Association or the Common Areas; (iii) amend the Project Documents as provided in this Declaration and/or therein; (iv) grant easements or convey Common Area as provided in this Declaration; (v) perform the obligations of the Association as provided in this Declaration; or (vi) prosecute or defend Routine Disputes.

Notwithstanding anything herein to the contrary, this Section may not be modified or amended without the prior vote and approval of two-thirds of the members of the Association entitled to vote.

Section 3.14. Turnover. A reasonable time prior to the Conversion Date, Declarant shall use commercially reasonable efforts to give notice to the Association (through a reasonable number of persons (not to exceed three (3)) familiar with Association affairs who may be (but who are not obliged to be) residents of the Project, although it is acknowledged that it is desirable that one or more of such persons should be a resident of the Project (collectively, "Association Representatives") who are reasonably deemed by Declarant not to be affiliated with Declarant) that Declarant believes that the Turnover is reasonably imminent. All Owners shall reasonably cooperate with Declarant in endeavoring to designate Association Representatives and shall, in general, interface with Declarant in effecting a smooth Turnover process. The Association Representatives, acting on behalf of the Association, shall meet with representatives of Declarant and organize, and schedule, the Walkthrough. The Association Representatives shall have the right, but not the obligation, to be accompanied by a reasonable number (not to exceed three (3)) experts or other persons of their own choosing, so long as such persons are paid by the Association not from the Turnover Reserve or from other monies provided/paid by Declarant hereunder and such persons agree to reasonable confidentiality arrangements requested by Declarant. At the Walkthrough, the Association Representatives shall point out to Declarant items which they believe to be Alleged Defects in the Project, including so called "punch-list" list items relating to the improvement of the Common Areas. To the extent Declarant agrees with such designations as Alleged Defects and the same are, in fact, Alleged Defects hereunder, Declarant shall thereafter be afforded a reasonable time to correct such Alleged Defects utilizing, for funding purposes to correct such Alleged Defects, first, Turnover Reserves, and then, as a portion of Declarant's Association Shortage obligations hereunder, Declarant's own funds; provided, however, that if the Alleged Defects so noted at the Walkthrough are "construction defects" to which reference is made in Section 1.1.1 above, Declarant shall correct the same utilizing its own funds. However, if Declarant does not utilize all of the Turnover Reserves to complete Alleged Defects detected in the Walkthrough, then any remaining funds therein shall be added to the general reserves of the Association upon Turnover.

At Turnover, the Association shall accept any Common Areas which have not been theretofore deeded to the Association prior to the time of Turnover, shall accept from Declarant all records and books of the Association then in Declarant's possession or control, as well as any Certificates of Occupancy (herein so called) relating to Common Area Improvements, any warranties (without representation of transferability) which Developer may have received in connection with the construction of such Improvements, together with any existing insurance coverages relating to the Development. The Association shall finally accept all of the other obligations and responsibilities of the Association hereunder and under the other Project Documents at that time. If any of the insurance coverages transferred above are effective both pre- and post-Turnover, an equitable pro ration shall be made (and appropriate reimbursement made to Developer from Association funds) for any paid-up coverages transferred to the Association. No alleged breach of this Declaration by Declarant shall excuse the foregoing required acceptances, and the Association's recourse in the event of such a breach shall be to cause any Alleged Defects claimed by virtue of such breach to be corrected by virtue of the Walkthrough and subsequent correction process described above. To the extent that a Certificate of Occupancy has been issued for any Common Area Improvements relating to the Development, the same shall be prima facie evidence of the acceptability of such Improvements

to the Association. If the Association claims, at Walkthrough, Alleged Defects relating to any Improvement covered by any Certificate of Occupancy, the burden of proof will be on the Association to show the extent and nature of such Alleged Defect.

The Association shall, after Turnover, continue the maintenance level of the Common Area Improvements at substantially the level which had been established by Declarant theretofore (giving appropriate regard to the fact that maintenance levels theretofore established by Declarant may have based upon the relative recent installation of all or any portion of the Common Area Improvements, and therefore the Association understands that maintenance efforts may have to be stepped-up/increased after said items have been and remained in place for a period of time) and shall not allow any of the same to deteriorate for lack of attention/maintenance. The Association shall also cause its management company and/or any contractors of the Association to meet with Declarant's representatives to cause the Turnover to be a smooth one and shall cause such management company/contractor personnel to cooperate and to carry out the obligations of the Association hereunder. The Association shall not correct any Alleged Defects identified in the Walkthrough by itself. Any contractors' warranties impliedly given by Declarant shall be deemed given from the respective dates that any such Improvement was completed and no warranty shall be deemed extended by virtue of any remedial work undertaken by Declarant at Turnover. The Association shall, in the ordinary course of business, utilize reserves to correct/upgrade/maintain Common Area Improvements (including landscaping and the like) and shall not claim an Alleged Defect by virtue of the Association's failure to so utilize. The Association shall continue a maintenance schedule of all Common Area Improvements (including, without limitation, landscaping) provided by Declarant at the time of Turnover, if any, it being understood that it is not the obligation, but a right, of Declarant to provide such a maintenance schedule. The Association shall not reduce reserves or assessments after Turnover in a manner which would impair the Association's continuing maintenance obligations hereunder.

The Association acknowledges that, at the time of Turnover, Association Improvements, including, without limitation, landscaping; permanent sidewalk, street, curb, lighting, recreational and other similar facilities; irrigation/watering facilities; drainage; type and nature of ground cover; etc., shall have been installed and completed in substantial accordance with as-built plans and not necessarily in accordance with plans as initially provided to the Municipality. The Association recognizes that in-field changes are often made to plans previously provided to the Municipality and, so long as in-field changes do not materially and adversely affect the Common Areas, the value thereof and/or the obligations of the Association relating thereto, the same shall not be deemed an Alleged Defect hereunder or give rise to any other action against Declarant or its agents/contractors. The Association shall, post-Turnover, keep open and working all easements, storm drains, irrigation and watering facilities and any other Common Area Improvements as installed by Declarant, so as not to allow the Common Area Improvements to deteriorate.

ARTICLE IV
COVENANT FOR MAINTENANCE ASSESSMENTS

Section 4.1. Creation of the Lien and Personal Obligation of Assessments. The Declarant, for each Lot owned by it, hereby covenants, and each Owner of a Lot, by becoming the Owner thereof, whether or not it is expressed in the deed or other instrument by which the Owner acquired ownership of the Lot, is deemed to covenant and agree, to pay to the Association annual assessments and special assessments. The annual and special assessments, together with interest, costs and reasonable attorneys' fees, shall be a charge on the land and shall be a continuing lien upon the Lot against which each such Assessment is made. Each such Assessment, together with interest, costs, and reasonable attorneys' fees, shall also be the personal obligation of the Owner of such Lot at the time when the Assessment became due. The personal obligation for delinquent Assessments shall not pass to the Owner's successors in title unless expressly assumed by them.

Section 4.2. Purpose of the Assessments. The Assessments levied by the Association shall be used exclusively for: (i) the upkeep, maintenance and improvement of the Common Area; (ii) maintenance, repair, replacement, and operation of rights-of-way and easements within or immediately adjacent to the Project (e.g., landscaping and sidewalks within the right-of-way of adjoining streets) to the extent that such actions are required by government entities or deemed appropriate by the Association's Board of Directors; (iii) promoting the recreation, health, safety and welfare of the Owners and residents of Lots within the Property; (iv) the performance and exercise by the Association of its rights, duties and obligations under the Project Documents; (v) upkeep, maintenance and improvement of Streets and Roadways; and (vi) maintenance, repair, replacement and operation of the Security Gate and Facility, including, without limitation, provision for such security services by employees/contractors as the Board may determine from time to time, as well as upkeep/operation of any electronic access facilities related thereto; nevertheless, it is understood that there is no responsibility of the Board to specifically maintain a person's or persons' physical presence within said Facility, it being acknowledged that the Board shall not have liability or responsibility for failing to maintain such a person, nor for failure of any electronic systems which may constitute a portion of said Facility.

Section 4.3. Annual Assessments.

(A) For each fiscal year of the Association, the Board shall adopt a budget for the Association containing an estimate of the total amount of funds which the Board believes to be required during the ensuing fiscal year to pay all Common Expenses including, but not limited to: (i) the amount required to pay the cost of maintenance, management, operation, repair and replacement of Streets and Roadways; Security Gate and Facility; and the Common Area, and those parts of the Lots, if any, which the Association has the responsibility of maintaining, repairing or replacing under the Project Documents, (ii) the cost of wages, materials, insurance premiums, services, supplies and maintenance or repair of the Common Area and for the general operation and administration of the Association, and (iii) the amount required to render to Owners all services required to be rendered by the Association under the Project Documents.

(B) For each fiscal year of the Association commencing with the year in which the first Lot is conveyed to a Purchaser, the total amount of the estimated Common Expenses shall be assessed equally against each Lot by the Board; provided, however, that in no event will any such Assessment violate the provisions of this Declaration or otherwise be enacted or enforced in a manner contrary to law.

(C) An Owner other than the Declarant shall be obligated to pay only twenty-five percent (25%) of the annual assessment attributable to said Owner's Lot until the earlier of (i) the date on which a certificate of occupancy or similar permit is issued by the appropriate governmental authority, (ii) six (6) months from the date on which a building permit is issued by the appropriate governmental authority for construction of a residential unit on the Lot, or (iii) two (2) years after the Lot was conveyed to the Owner by the Declarant. If a Lot ceases to qualify for the reduced twenty-five percent (25%) rate of assessment during the period to which an annual assessment is attributable, the annual assessment shall be prorated between the applicable rates on the basis of the number of days in the assessment period that the Lot qualified for such rate.

(D) The Declarant shall be obligated to pay only twenty-five percent (25%) of: the annual assessment attributable to Lots owned by the Declarant until seventy-five percent (75%) of the Lots have been conveyed to Purchasers. If a Lot ceases to qualify for the reduced twenty-five percent (25%) rate of assessment during the period to which an annual assessment is attributable, the assessment shall be prorated between the applicable rates on the basis of the number of days in the assessment period that the Lot qualified for such rate.

(E) Until seventy-five percent (75%) of the Lots have been conveyed to Purchasers, Declarant shall pay to the Association any amounts which, in addition to the annual Assessments levied by the Association, may be required by the Association in order for the Association to fully perform its duties and obligations under the Project Documents (herein, "Association Shortage"). Notwithstanding the foregoing, Declarant shall have no obligation to pay any amounts during any calendar year in excess of the amount that Declarant would have paid if its payments were made on the same basis as Purchasers of Lots.

To the extent that any payments are made from the Turnover Reserve pursuant to the provisions hereof, they shall be deemed made and paid on behalf of Declarant to fund its portion of any Association Shortage, if the same relate to Alleged Defects in the Project which either became known during the Walkthrough or which should have been known to any reasonable observer/inspector by virtue of conducting a Walkthrough (whether or not one is so conducted).

Amounts paid direct by Declarant to the Association's creditors or assets purchased by Declarant for the Association shall apply against the obligations of Declarant to pay all or a portion of Association Shortage. If the amounts paid direct or by in-kind contributions made by Declarant exceeds Declarant's obligations to pay the Association Shortage within the then-current annual assessment period, then the Association shall pay to Declarant (or credit against Declarant's obligation for the immediately following fiscal year, as Declarant may elect) the amount, if any, by which the total of all payments or in-kind contributions paid by or made by

Declarant during such fiscal year exceeded the total obligation of Declarant for such fiscal year under this Subsection (E).

Any subsidy required by Declarant under this Subsection (E) may be in the form of "in-kind" contributions of goods or services, or in any combination of the foregoing, and any subsidies made by Declarant in the form of "in-kind" contributions of goods or services shall be valued at the fair market value of the goods or services contributed. Declarant shall make payments or in-kind contributions in respect of its subsidy obligations under this Subsection (E); however, Declarant shall not be required to make such payments or in-kind contributions more often than monthly.

(F) The Board shall give notice of the annual assessment to each Owner at least thirty (30) days prior to the beginning of each fiscal year of the Association, but the failure to give such notice shall not affect the validity of the annual assessment established by the Board nor relieve any Owner from said Owner's obligation to pay the annual assessment.

(G) If the Board determines during any fiscal year that its funds budgeted or available for that fiscal year are, or will, become inadequate to meet all expenses of the Association for any reason, including, without limitation, nonpayment of Assessments by Members, to the fullest extent permitted by law from time to time, it may increase the annual assessment for that fiscal year and the revised annual assessment shall commence on the date designated by the Board, except that no increase in the annual assessment for any fiscal year which would result in the annual assessment exceeding the maximum annual assessment for such fiscal year shall become effective until approved by Members entitled to cast at least two-thirds (2/3) of the votes entitled to be cast by Members who are voting in person or by proxy at a meeting duly called for such purpose.

(H) The maximum annual assessment for each fiscal year of the Association shall be as follows:

(i) Until January 1 of the year immediately following the conveyance of the first Lot to a Purchaser, the maximum annual assessment for each Lot shall be as initially established by the Board of Directors of the Association and as reported in Arizona Department of Real Estate Public Reports relating to the Lots; and

(ii) From and after January 1 of the year immediately following the conveyance of the first Lot to a Purchaser, the maximum annual assessment will automatically increase during each fiscal year of the Association by the greater of (a) 5% of the maximum annual assessment for the immediately preceding fiscal year, or (b) an amount based upon the percentage increase in the Consumer Price Index for All Urban Consumers (All Items) U.S. Town Average, published by the United States Department of Labor, Bureau of Labor Statistics (1982 - 84 = 100) (the "Consumer Price Index"), which amount shall be computed in the last month of each fiscal year in accordance with following formula:

X = Consumer Price Index for September of the calendar year two years prior to the year for which the maximum annual assessment is to be determined.

Y = Consumer Price Index for September of the year immediately prior to the calendar year for which the maximum annual assessment is to be determined.

$\frac{Y-X}{X}$ multiplied by the maximum annual assessment for the then current fiscal year equals the amount by which the maximum annual assessment may be increased.

In the event the Consumer Price Index ceases to be published, then the index which shall be used for computing the increase in the maximum annual assessment permitted under this Subsection (H) shall be the substitute recommended by the United States government for the Consumer Price Index or, in the event no such successor index is recommended by the United States government, the index reasonably selected by the Board.

(iii) To the fullest extent permitted by law from time to time, the increase in the maximum annual assessment pursuant to this Subsection (H) shall be calculated without considering the portion of the immediately preceding annual assessment attributable to the payment of utility charges or insurance premiums by the Association. In addition to the increase in the maximum annual assessment pursuant to Subsection (H) (ii) above, the maximum annual assessment shall include an increase for each fiscal year from and after January 1 of the year immediately following the conveyance of the first Lot to a Purchaser in an amount equal to the amount in the Association budget for the prior fiscal year applicable to utility charges and insurance premiums, multiplied by the percentage increase in utility charges or the percentage increase in insurance premiums during the prior fiscal year, whichever is greater.

(iv) Notwithstanding the foregoing, the annual assessments shall not be increased more than twenty percent (20%) for one fiscal year to the next fiscal year without the approval of Owners owning a majority of the Lots.

Section 4.4. Special Assessments. In addition to the annual assessments authorized above, the Association may levy, in any fiscal year, a special assessment applicable to that fiscal year only for the purpose of defraying, in whole or in part, the cost of any construction, reconstruction, repair or replacement of a capital improvement of the Common Area, including fixtures and personal Property related thereto, or for any other lawful Association purpose; provided that any such special assessment shall have the assent of Members having at least two-thirds (2/3) of the votes entitled to be cast by Members who are voting in person or by proxy at a meeting duly called for such purpose. Special assessments shall be levied at a uniform rate for all Lots.

Section 4.5. Notice and Quorum for Any Action Authorized Under Sections 4.3 or 4.4. Written notice of any meeting called for the purpose of obtaining the consent of the Members for any action for which the consent of the Members is required under Sections 4.3 and 4.4 shall be sent to all Members no less than thirty (30) days nor more than sixty (60) days in advance of the meeting. At the first such meeting called, the presence of Members or of proxies entitled to cast twenty-five percent (25%) of all the votes of each class of Members shall constitute a quorum. If the required quorum is not present, another meeting may be called subject to the same notice requirement, and the required quorum at the subsequent meeting shall be one-half (1/2) of the required quorum at the preceding meeting. No such subsequent meeting shall be held more than sixty (60) days following the preceding meeting.

Section 4.6. Date of Commencement of Annual Assessments; Due Dates. The annual assessments shall commence as to all Lots on the first day of the month following the conveyance of the first Lot to a Purchaser. The first annual assessment shall be adjusted according to the number of months remaining in the fiscal year of the Association. The Board may require that the annual assessment be paid in installments and in such event the Board shall establish the due dates for each installment. The Association shall, upon demand, and for a reasonable charge, furnish a certificate signed by an officer of the Association or the Association's designated agent setting forth whether the Assessments relating to a specified Lot have been paid and other items as are required by law from time to time.

Section 4.7. Effect of Non-payment of Assessments; Remedies of the Association.

(A) Any Assessment, or any installment of an Assessment, not paid within thirty (30) days after the Assessment, or the installment of the Assessment, first became due shall have added to such Assessment or installment the greater of: (i) interest from the due date at the rate of ten percent (10%) per annum, or (ii) a late charge of fifteen dollars ($15.00). Any amounts paid by a Member shall be applied first to unpaid principal and then to late charges and/or interest. Any Assessment, or any installment of an Assessment, which is delinquent shall become a continuing lien on the Lot against which such Assessment was made. The Assessment Lien shall be perfected by the recordation of a "Notice of Claim of Lien" which shall set forth: (i) the name of the delinquent Owner as shown on the records of the Association, (ii) the legal description or street address of the Lot against which the claim of lien is made, (iii) the amount claimed as of the date of the recording of the notice including late charges, interest, lien recording fees, reasonable collection costs and reasonable attorneys' fees, and (iv) the name and address of the Association.

(B) The Assessment Lien shall have priority over all liens or claims created subsequent to the recordation of the Notice of Claim of Lien except for: (i) tax liens for real Property taxes affecting the Lot, (ii) assessments affecting any Lot in favor of any municipal or other governmental body and (iii) the lien of any First Mortgage.

(C) Before recording a Notice of Claim of Lien against any Lot the Association shall make a written demand to the defaulting Owner for payment of the delinquent Assessments, together with late charges, interest, reasonable collection costs and reasonable

attorneys' fees, if any. The demand shall state the date and amount of the delinquency. Each default shall constitute a separate basis for a demand or claim of lien but any number of defaults may be included within a single demand or claim of lien. If the delinquency is not paid within ten (10) days after delivery of the demand, the Association may proceed with recording a Notice of Claim of Lien against the Lot of the defaulting Owner. The Association shall not be obligated to release the Assessment Lien until all delinquent Assessments, late charges, interest, lien recording fees, reasonable collection costs and reasonable attorneys' fees have been paid in full, whether or not all of such amounts are set forth in the Notice of Claim of Lien.

(D) The Association shall have the right, at its option, to enforce collection of any delinquent Assessments, together with late charges, interest, lien recording fees, reasonable collection costs, reasonable attorneys' fees and any other sums due to the Association in any manner allowed by law including, but not limited to (i) bringing an action at law against the Owner personally obligated to pay the delinquent Assessment Lien securing the delinquent Assessments or (ii) bringing an action to foreclose the Assessment Lien against the Lot in the manner provided by law for the foreclosure of a realty mortgage. The Association shall have the power to bid in at any foreclosure sale and to purchase, acquire, hold, lease, mortgage and convey any and all Lots purchased at such sale.

Section 4.8. Subordination of the Lien to Mortgages; Other Mortgagee Issues. The Assessment Lien shall be subordinate to the lien of any First Mortgage. The sale or transfer of any Lot shall not affect the Assessment Lien, except that the sale or transfer of a Lot pursuant to judicial or nonjudicial foreclosure of a First Mortgage or any proceeding in lieu thereof shall extinguish the Assessment Lien as to payments which became due prior to the sale or transfer. No sale or transfer shall relieve the Lot itself from liability for any Assessments thereafter becoming due or from the lien thereof. No First Mortgagee shall be required to collect Assessments under this Declaration. Failure to pay to Assessments does not constitute a default under a First Mortgage, unless otherwise stated in said First Mortgage.

Section 4.9. Exemption of Owner. No Owner of a Lot may be exempted from liability for Assessments levied against said Owner's Lot or for other amounts which said Owner may owe to the Association under the Project Documents by waiver and non-use of any of the Common Area and facilities or by the abandonment of the Lot.

Section 4.10. Maintenance of Reserve Fund. Out of the annual assessments, the Association shall establish and maintain an adequate reserve fund for the periodic maintenance, repair and replacement of improvements to the Common Area, the Streets and Roadways and the Security Gate and Facility. In addition, there is deemed established at the inception of this Declaration the Turnover Reserve and an initial working capital reserve for the Association, each of which shall be funded from the Transfer Fees as more fully set forth in Section 4.12. If any monies remain in the Turnover Reserve after all of the transactions contemplated by Turnover are completed (including, without limitation, utilization thereof as a first priority for correcting all Alleged Defects in the Project), the same shall be deposited in the general reserves of the Association. The Board shall periodically obtain reserve studies and updates to assist the Board in determining an appropriate amount for repair and replacement reserves for the Association; provided, however, (i) no such report or study shall be required until at least three (3) years have

elapsed following the date Assessments begin to accrue; (ii) the results of any such studies and reports shall be advisory only and the Board shall have the right to provide for reserves which are greater or less than those shown in the study; and (iii) in establishing replacement and repair reserves for the Association, in addition to the recommendations of any such studies or reports and other relevant factors, the Board may take into account: (a) the amount of Assessments for the Project as compared to other comparable developments; (b) the past incidences of required repairs at the Project; and (c) projected funds available to the Association pursuant to Assessments and be collected by the Association.

Section 4.11. No Offsets. All Assessments and other amounts payable to the Association shall be payable in accordance with the provisions of the Project Documents, and no offsets against such Assessments or other amounts shall be permitted for any reason, including, without limitation, a claim that the Association is not properly exercising its duties and powers as provided in the Project Documents.

Section 4.12. Transfer Fee; Application to Reserves. Each Purchaser of a Lot shall pay to the Association immediately upon becoming the Owner of the Lot a Transfer Fee (herein so called) in such amount as established from time to time by the Board. Such Transfer Fees shall be added to the Turnover Reserve if, as and when collected and shall be administered by the Board without limitation. The uses of the Transfer Fee shall include, without limitation, working capital for the Association, Turnover Reserve purposes to which reference is made in Section 3.14 and so-called "setup fees" charged to Owners and/or the Association by any third party management company engaged by the Association from time to time. It is presently contemplated that the initial Transfer Fee shall be three (3) month's worth of assessments, two (2) month's worth of which shall be placed in a working capital reserve for the Association and one (1) month's worth of which shall be applied to the Turnover Reserve. It is further contemplated that, after Turnover, the Transfer Fee shall be reduced to two (2) months' worth of assessments, to be utilized for working capital purposes by the Association. The Transfer Fee is not intended to compensate the Association for the costs incurred in the preparation of the statement which the Association is required to mail or deliver to a purchaser under A.R.S. § 33-1806A and, therefore, the Transfer Fee shall be in addition to the fee which the Association is entitled to charge pursuant to A.R.S. § 33-1806C.

ARTICLE V
USE RESTRICTIONS

Section 5.1. Residential Use. Except as otherwise provided herein, all lots shall be improved and used only for Single Family Residential Use. No gainful occupation, profession, trade or other commercial activity shall be conducted on any lot; provided, however, the Declarant may use the lots for such facilities as in its sole opinion may be reasonably required, convenient or incidental to the construction and sale of residential units, including, without limitation, a business office, storage areas, construction yards, signs, a model site or sites, and a display and sales office. Notwithstanding the foregoing, an Owner of a Single Family Residence may conduct a business activity within a Single Family Residence so long as: (i) the existence or operation of the business activity is not apparent or detectable by sight, sound or smell from

outside the Single Family Residence; (ii) the business activity conforms to all applicable zoning ordinances or requirements for the Project; (iii) the business activity does not involve persons coming on to the Lot or the door-to-door solicitation of Owners in the Project; and (iv) the business activity is consistent with the residential character of the Project and does not constitute a nuisance or a hazardous or offensive use or threaten security or safety of other residents in the Project, as may be determined from time to time in the sole discretion of the Board. The terms "business" and "trade" as used in this Section shall be construed to have ordinary, generally accepted meanings, and shall include, without limitation, any occupation, work or activity undertaken on an ongoing basis which involves the provision of goods or services to persons other than the residents of a provider's Single Family Residence and for which the provider receives a fee, compensation or other form of consideration, regardless of whether: (i) such activity is engaged in full or part time; (ii) such activity is intended or does generate a profit; or (iii) a license is required for such activity. The leasing of a Single Family Residence by the Owner thereof shall not be considered a trade or business within the meaning of this Section.

Section 5.2. Building Type and Size; Setbacks. Except as provided immediately below, no building shall be constructed or permitted to remain on any lot other than one detached Single Family Residence not to exceed: (a) one story in height for lots 1 and 40 and 13 through 28; or (b) two stories in height for lots 2 through 12 and 29 through 39, in either case with a private two-car garage. Unless otherwise approved in writing by the Architectural Committee, all buildings shall be of new construction and no prefabricated structure shall be placed upon any lot if Visible from Neighboring Property; storage structures and/or a sales office may be maintained upon any lot or lots by any building contractor for the purpose of erecting and selling dwellings on the Property, but such temporary structures shall be removed upon completion of construction or selling of a dwelling, whichever is later. No structure of a temporary character, trailer, basement, tent, shack, garage, barn or other out buildings shall be used on any lot at any time as a residence, either temporarily or permanently. The minimum liveable square footage for a single story residence shall be two thousand, five hundred (2,500) square feet, exclusive of accessory buildings, breezeways, screened porches, terraces, patios and garages. The minimum liveable square footage for a two-story residence shall be two thousand, three hundred (2,300) square feet, exclusive of accessory buildings, breezeways, screened porches, terraces, patios and garages, for the first floor level, and eight hundred (800) square feet for the second floor level.

Side yard setbacks shall be a minimum of ten (10) feet from the side yard Lot line, for a total twenty (20) foot side yard. Front yard setbacks shall be a minimum twenty (20) feet from the front curb and rear yard setbacks shall be a minimum twenty-five (25) feet from the rear Lot line, except for Lots 1 and 40, which shall maintain a minimum thirty (30) foot rear yard setback. Without the prior consent of the Municipality and the Architectural Committee, no significant above-ground Improvement shall be constructed with any of the aforesaid setback areas.

Section 5.3. Signs. No signs shall be displayed on any lot except the following:

(A) signs used by Declarant to advertise the lots and residences thereon for sale or lease;

(B) one temporary for sale or for rent sign with a total face area of five square feet or less one (1) "For Sale" sign placed by a professional residential real estate brokerage company or placed by the Owner of the Lot; provided that the sign shall comply with applicable Design Guidelines and the Architectural Review Committee shall reserve the right to request reasonable modifications to such signs if deemed appropriate.

(C) such signs as may be required by law;

(D) one residential identification sign with a total face area of eighty square inches or less; provided, the size, color, content and location of such signs have been approved in writing by the Architectural Review Committee; and

(E) other signs approved by the Architectural Committee.

All signs must conform to applicable Municipal ordinances, rules and regulations.

Section 5.4. Noxious and Offensive Activity. No noxious or offensive activity shall be allowed on the lots, nor shall anything be done thereon 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 and tenants of their respective lots and residences. Without limiting the generality of the foregoing, no speakers, horns, sirens or other sound devices, except security devices used exclusively for security purposes, shall be located or used on a lot.

Section 5.5. Motor Vehicles.

(A) No automobile, truck, mobile home, travel trailer, tent trailer, trailer, camper shell, detached camper, recreational vehicle, boat trailer or other similar equipment or other motor vehicle of any kind shall be parked, kept or maintained on any Lot or on the Common Area except for: (i) motor vehicles which do not exceed two hundred twenty-eight (228) inches in length, eighty-four (84) inches in height and eighty-four (84) inches in width; (ii) boats and motor vehicles parked in garages on Lots, so long as such vehicles are in good operation and appearance and are not under repair; and (iii) motor vehicles which are owned by any guest or invitee of any Owner or tenant and which are parked on a Lot only during such time as the guest or invitee is visiting the Owner or tenant, but in no event shall such a motor vehicle be parked on a Lot for more than seven (7) days during any six (6) month period of time. No vehicle described in this Subsection shall be permitted to park in the rear or side yard of any Lot so as to be Visible from Neighboring Property or Common Area.

(B) Except for emergency vehicle repairs, no automobile, motorcycle, motorbike or other motor vehicle of any kind shall be constructed, reconstructed or repaired on any Lot or the Common Area. No inoperable vehicle or vehicle which, because of missing fenders, bumpers, hoods or other parts or because of lack of proper maintenance, is, in the sole opinion of the Architectural Committee, unsightly or detracts from the appearance of the Project shall be stored, parked or kept on any Lot or the Common Area.

(C) No motor vehicle classed by manufacturer rating as exceeding one ton, mobile home, motor home, trailer, camper shell, detached camper, boat, boat trailer, commercial vehicle or other similar equipment or vehicle may be parked or stored on any area in the Project so as to be Visible From Neighboring Property or from Common Area; provided, however, this provision shall not apply to: (i) the temporary parking of a motor home, camper, recreational vehicle or boat and boat trailer on the concrete driveway situated on a Lot for a period of not more than twenty-four (24) consecutive hours within any consecutive seven (7) day period for the purpose of loading or unloading such vehicle; or (ii) equipment or equipment and non-commercial vehicles that are: (a) pickup trucks of less than one ton capacity with camper shells not exceeding seven (7) feet in height (from ground level) and nineteen (19) feet in length which are parked as provided in Section 5.6 below and are used on a regular and recurring basis for transportation; or (b) used in connection with or housed in temporary construction shelters or facilities maintained during, and used exclusively in connection with, the construction of any improvement approved by the Architectural Committee. For purposes of this Subsection, commercial vehicles shall mean any vehicle that:

(i) Displays the name, trade name, telephone number or other identifying information of any business (Commercial signage or insignia limited to front door panels will be allowed. Commercial signage or insignia such as "ears and tails," vehicles with full-body advertising, etc., will not be allowed.), and/or

(ii) Otherwise bears the appearance of a commercial vehicle by reason of its normal contents (e.g., trade goods, extensive tools, ladders, tool racks, etc.).

Section 5.6. Parking. All vehicles of Owners and of their lessees, employees, guests and invitees shall be kept in garages or residential driveways of the Owners wherever and whenever such facilities are sufficient to accommodate the number of vehicles on a lot; provided, however, this Section shall not be construed to permit the parking in the above-described areas of any vehicle whose parking is otherwise prohibited by this Declaration or the parking of any inoperable vehicle. In the event the garage and driveway is insufficient for parking, temporary parking shall be allowed on the street; in no event shall overnight on-street parking be allowed. Parking in the front or side yard of any Lot is prohibited.

Section 5.7. Towing of Vehicles. The Association shall have the right to have any truck, mobile home, travel trailer, tent trailer, trailer, camper shell, detached camper, recreational vehicle, boat, boat trailer or similar equipment or vehicle or any automobile, motorcycle, motorbike, or other motor vehicle parked, kept, maintained, constructed, reconstructed or repaired in violation of the Project Documents towed away at the sole cost and expense of the owner of the vehicle or equipment. Any expense incurred by the Association in connection with the towing of any vehicle or equipment shall be paid to the Association upon demand by the owner of the vehicle or equipment. If the vehicle or equipment towed is owned by an Owner, then the cost incurred by the Association in towing the vehicle or equipment shall be assessed against the Owner and said Owner's Lot, and such cost shall be secured by the Assessment Lien, and the Association may enforce collection of said amounts in the same manner provided for in this Declaration for the collection of Assessments.

Section 5.8. Machinery and Equipment. No machinery or equipment of any kind shall be placed, operated or maintained upon or adjacent to any lot, except such machinery or equipment as is usual and customary in connection with the use, maintenance or improvements constructed by the Declarant or approved by the Architectural Committee. Lawn and garden equipment may be kept on a Lot provided such equipment is housed and stored in a building approved by the Architectural Committee or not Visible From Neighboring Property.

Section 5.9. Restrictions on Further Subdivision; Other Similar Actions Affecting Lots. No lot shall be further subdivided or separated into smaller lots or parcels by any Owner other than the Declarant, and no portion less than all or an undivided interest in all of any lot shall be conveyed or transferred by any Owner other than the Declarant. Notwithstanding the foregoing and subject to compliance with any applicable Municipal ordinances, rules and regulations, a vacant lot may be divided between the Owners of the lots adjacent to such vacant lot so that each portion of such vacant lot shall be held in common ownership with another lot which is adjacent to the relevant portion. No further covenants, conditions, restrictions or easements shall be recorded by any Owner or other person other than Declarant against any part of the Property without the provisions thereof having been first approved in writing by the Architectural Committee. No application for rezoning, variances or use permits pertaining to any Lot shall be filed with any governmental authority by any person other than Declarant unless the application has been approved by the Architectural Committee and the proposed use otherwise complies with this Declaration.

Section 5.10. Windows. Within thirty (30) days of occupancy, each Owner shall install permanent draperies or suitable window treatments on all windows facing streets. No reflective materials, including, but without limitation, aluminum foil, reflective screens or glass, mirrors or similar type items, shall be installed or placed upon the outside or inside of any windows. No window which would be Visible From Neighboring Property shall at any time be covered with aluminum foil, bed sheets, newspapers or any other like materials.

Section 5.11. HVAC and Solar Panels. Except as initially installed by the Declarant, no heating, air conditioning, evaporative cooling or, to the fullest extent permitted by law from time to time, solar energy collecting unit or panels shall be placed, constructed or maintained upon any lot without the prior written approval of the Architectural Committee.

Section 5.12. Garages and Driveways. The interior of all garages situated on any lot shall be maintained in a neat and clean condition. Garages shall be used only for the parking of vehicles and the storage of normal household supplies and materials and shall not be used for or converted to living quarters or recreational activities without the prior written approval of the Architectural Committee. Garage doors shall be left open only as needed for ingress and egress.

Section 5.13. Installation of Landscaping.

(A) Within six (6) months after becoming the Owner of a Lot, the Owner shall install landscaping and irrigation improvements in compliance with the xeriscape principles and other applicable requirements set forth in the Municipal Zoning Code in that portion of said

Owner's Lot which is between the street(s) adjacent to said Owner's Lot and the exterior wall of the Residential Unit located on said Lot or any wall separating the side or back yard of the Lot from the front yard of such Lot. The landscaping and irrigation improvements shall be installed in accordance with plans approved in writing by the Architectural Committee. Prior to installation of such landscaping, the Owner shall maintain the front yard of said Owner's Lot in a weed-free condition.

(B) If any Owner fails to landscape the front yard of said Owner's Lot within the time provided for in this Section, the Association shall have the right, but not the obligation, to enter upon such Owner's Lot to install such landscaping improvements as the Association deems appropriate, and the cost of any such installation shall be paid to the Association by the Owner of such Lot, upon demand from the Association. Any amounts payable by an Owner to the Association pursuant to this Section shall be secured by the Assessment Lien, and the Association may enforce collection of such amounts in the same manner and to the same extent as provided elsewhere in this Declaration for the collection and enforcement of Assessments.

(C) Notwithstanding the foregoing, Declarant shall not be subject to any of the foregoing installation obligations and landscaping regarding Declarant Improvements (as herein defined) shall be governed by the provisions of Subsection 5.23 (H) below.

Section 5.14. Declarant's Exemption. Nothing contained in this Declaration shall be construed to prevent the erection or maintenance by Declarant, or its duly authorized agents, of model homes, structures, improvements or signs necessary or convenient to the construction, development, identification, or sale or lease of Lots or other Property within the Project.

Section 5.15. Fences, Interferences and Obstructions. All fences shall be of block construction (except as may be otherwise permitted with the prior written consent of the Architectural Committee) and shall be painted or colored to match the exterior of the structures enclosed by or upon the same Lot as such fence. No fence shall exceed six (6) feet in height; provided, that no fence within fifteen (15) feet of the front property line of a Lot shall exceed three (3) feet in height. The foregoing shall not apply to boundary walls or fences constructed by Declarant along property lines bounding public rights-of-way. No fence shall be permitted to interfere with existing recorded restrictions, drainage ways or easements. Fences may be constructed in or over a recorded utility easement; provided, however, that should the utility company ever require access to such easement, it shall be the responsibility of the Owner of the applicable Single Family Residence, at his, her or its sole expense, to remove and replace the fence.

No structures, shrubbery or other vegetation shall be permitted to exist on any Lot the height or location of which shall be deemed by the Declarant or the Association to constitute either a traffic hazard, to be unattractive in appearance or unreasonably detrimental to adjoining property. No tree, shrub, or planting of any kind on any Lot or other property shall be allowed to overhang or otherwise to encroach upon any sidewalk, Street and Roadway, pedestrian way or other area from ground level to a height of eight (8) feet, other than existing native vegetation, if any. As an aid to freer movement of vehicles at and near street intersections and in order to protect the safety of pedestrians and the operators of vehicles and/or property, Declarant or the

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Association may impose further limitation on the height of fences, walls, gateways, ornamental structures, hedges, shrubbery and other fixtures, and construction and planting on corner Lots or other parcels at the intersection of two or more Streets and Roadways.

Section 5.16. Animals. No animals, insects, livestock, or poultry of any kind shall be raised, bred, or kept on or within any lot or structure thereon, except that a reasonable number of dogs, cats or other common household pets ("Permitted Pets") may be kept on or within the lots; provided they are not kept, bred or maintained for any commercial purpose, or in unreasonable numbers, all as determined by the Architectural Committee. Notwithstanding the foregoing, no animals or fowl may be kept on any lot which results in an annoyance, or are obnoxious, to other Owners or tenants in the vicinity. All pets, except as permitted by specific law, must be kept within a fenced yard or on a leash under the control of the Owner at all times are not permitted to enter upon any other Lot. No structure for the care, housing or confinement of any animal or fowl shall be maintained so as to be Visible From Neighboring Property. No Permitted Pet shall be allowed to make an unreasonable amount of noise. Any Owner or other person who brings or permits a pet to be on the Common Area or any Lot or Street and Roadway shall be responsible for immediately removing any feces deposited by said pet. Upon the written request of any Owner, the Architectural Committee shall determine, in its sole and absolute discretion, whether, for the purposes of this Section: (i) a particular Permitted Pet is a nuisance or making an unreasonable amount of noise; (ii) a particular pet is a Permitted Pet; and (iii) whether the number of Permitted Pets on a Lot is reasonable. Any decision rendered by the Architectural Committee shall be enforceable in the same manner as other restrictions set forth in this Declaration.

Section 5.17. Drilling and Mining; Tanks. No oil drilling, oil development operations, oil refining, quarrying, or mining operations of any kind, shall be permitted upon or in any lot, nor shall oil wells, tanks, tunnels or mineral excavations or shafts be permitted on any lot. No derrick or other structure designed for use in boring for or removing water, oil, natural gas or other minerals shall be erected, maintained or permitted upon any lot.

No tanks of any kind (including tanks for the storage of propane) shall be erected, placed or maintained on the Property, unless such tanks are buried underground or attractively screened to conceal such tanks so that they are not visible from neighboring Property. Nothing herein shall be deemed to prohibit use or storage upon the Property of propane or similar fuel tanks with a capacity of ten (10) gallons or less used in connection with a normal residential, gas barbeque or grill.

Section 5.18. Refuse. All refuse shall be regularly removed from the lots and shall not be allowed to accumulate thereon. Refuse containers shall be kept clean, sanitary and free of noxious odors. Refuse containers shall be maintained so as to not be Visible from Neighboring Property, except to make the same available for collection, and then only for the shortest time reasonably necessary to effect such collection.

Section 5.19. Antennas and Satellite Dishes.

(A) This Section applies to antennas, satellite television dishes, and other devices ("Receivers"), including any poles or masts ("Masts") for such Receivers, for the transmission or reception of television or radio signals or any other form of electromagnetic radiation.

(B) As of the date of recordation of this instrument, Receivers one meter or less in diameter are subject to the provisions of Title 47, Section 1.4000 of the Code of Federal Regulations ("Federal Regulations"). "Regulated Receivers" shall mean Receivers subject to Federal Regulations, as such regulations may be amended or modified in the future or subject to any other applicable federal, state or local law, ordinance or regulation ("Other Laws") that would render the restrictions in this section on Unregulated Receivers (hereinafter defined) invalid or unenforceable as to a particular Receiver. "Unregulated Receivers" shall mean all Receivers that are not Regulated Receivers. Notwithstanding the foregoing, a Regulated Receiver having a Mast in excess of the size permitted under Federal Regulations or Other Laws for Regulated Receivers shall be treated as an Unregulated Receiver under this Section.

(C) No Unregulated Receivers shall be permitted outdoors on any Lot, whether attached to a building or structure or on any Lot, unless approved in writing by the Architectural Committee, with such screening and fencing as such Committee may require. Unregulated Receivers must be ground-mounted and not Visible from Neighboring Property.

(D) Regulated Receivers shall be subject to the following requirements:

(i) A Regulated Receiver and any required Mast shall be placed so as not to be Visible from Neighboring Property if such placement will not: (A) unreasonably delay or prevent installation, maintenance or use of the Regulated Receiver, (B) unreasonably increase the cost of installation, maintenance or use of the Regulated Receiver, or (C) preclude the reception of an acceptable quality signal.

(ii) Regulated Receivers and any required Masts shall be placed on Lots only in accordance with, and in, the following descending order of locations, with Owners required to use the first available location that does not violate the requirement of parts (A) through (C) in Subsection (i) above:

1. A location in the back yard of the Lot where the Receiver will be screened from view by landscaping or other improvements;

2. An unscreened location in the backyard of the Lot;

3. On the roof, but below the roof line;

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4. A location in the side yard of the Lot where the Receiver and any Mast will be screened from view by landscaping or other improvements;

5. On the roof above the roofline;

6. An unscreened location in the side yard; and

7. A location in the front yard of the Lot where the Receiver will be screened from view by landscaping or other improvements.

Notwithstanding the foregoing order of locations, if a location stated in the above list allows a Receiver to be placed so as not to be Visible from Neighboring Property, such location shall be used for the Receiver rather than any higher-listed location from which a Receiver will be Visible from Neighboring Property; provided that placement in such non-visible location will not violate the requirements of parts (A) through (C) in Subsection (i) above.

(iii) Owners shall install and maintain landscaping or other improvements ("Screening") around Receivers and Masts to screen items that would otherwise be Visible from Neighboring Property unless such requirement would violate the requirements of parts (A) through (C) in Subsection (i) above. If an Owner is not required to install and maintain Screening due to an unreasonable delay in installation of the Receiver that such Screening would cause, the Owner shall install such screening within thirty (30) days following installation of the Receiver and shall thereafter maintain such Screening, unless such Screening installation or maintenance will violate the provisions of parts (A) through (C) in Subsection (i) above. If an Owner is not required to install Screening due to an unreasonable increase in the cost of installing the Receiver caused by the cost of such Screening, the Association shall have the right, at the option of the Association, to enter onto the Lot and install such Screening and, in such event, the Owner shall maintain the Screening following installation, unless such Screening installation or maintenance will violate the provisions of parts (A) through (C) in Subsection (i) above.

The provision of this Section are severable from each other; the invalidity or unenforceability of any provision or portion of this Section shall not invalidate or render unenforceable any other provisions or portion of this Section; and all such other provision or portions shall remain valid and enforceable. The invalidity or unenforceability of any provisions or portion of this Section to a particular type of Receiver or Mast or to a particular Receiver or Mast on a particular Lot, shall not invalidate or render unenforceable such provisions or portion regarding other Receivers or Masts on other Lots.

Section 5.20. Utility Services; Provider Negotiations; Community Services. All lines, wires, or other devices for the communication or transmission of electric current or power, including telephone, television, and radio signals, shall be contained in conduits or cables installed and maintained underground or concealed in, under, or on buildings or other structures approved by the Architectural Committee. Temporary power or telephone structures incident to construction activities approved by the Architectural Committee are permitted.

To the extent permitted by law and as determined by the Board from time to time, the Board may, acting as agent for the Owners, endeavor to arrange and enter into contracts, agreements or other acceptable arrangements dealing with provision of electrical, telephone, television, water, sewer or any other utility services to all Lots within the Development with a single utility provider or a series of utility providers in the discretion of the Board. It is the intention of the foregoing that, to the fullest extent permitted by law from time to time, but also as may be determined by the Board from time to time, the Board may act as agent for all of the Owners and speak for the Owners in bidding or procuring utilities services as the Board may see fit from service providers under the so-called "deregulated utility regime" in effect in Arizona from time-to-time. The Board shall be justified and protected in relying upon the reasonable advice of third party experts and consultants in assessing and/or accomplishing the foregoing and it is understood that the Board is under no obligation to investigate or procure any such services. Each Owner, by acceptance of a Deed to a Lot, agrees that the Board may so act, but further agrees and shall be deemed to agree, by such acceptance, to execute such documents as may be requested by the Board to implement any of the foregoing.

Declarant, or after Declarant no longer owns Lots in the Development, the Association, shall have the right, but not the obligation, to arrange for Community Systems within the Project. Community Systems services, if any, may be provided either indirectly, through the Association and paid for as a Common Expense or directly to Owners and paid for by the recipient of the services.

ALL PERSONS ARE HEREBY NOTIFIED THAT TO THE EXTENT PERMITTED BY LAW, THE ASSOCIATION MAY BE A PARTY TO A CONTRACT FOR SERVICES PROVIDED THROUGH THE COMMUNITY SYSTEMS SERVING THE PROJECT FOR A TERM WHICH EXTENDS BEYOND THE PERIOD IN WHICH THERE IS A CLASS B MEMBERSHIP AND THAT, IF SO PROVIDED IN SUCH CONTRACT, THE ASSESSMENTS PAYABLE AS TO EACH RESIDENCE WILL INCLUDE CHARGES PAYABLE BY THE ASSOCIATION UNDER SUCH CONTRACT, REGARDLESS OF WHETHER OR NOT THE OWNER OF SUCH RESIDENCE ELECT TO RECEIVE SUCH SERVICES THROUGH THE COMMUNITY SYSTEMS.

In recognition of the fact that interruptions in cable television, Internet and other Community Systems services will occur from time to time neither Declarant, Developer or the Association (or any of their respective affiliates, employees, members, managers, officers, directors, members, agents, successors or assigns shall in any manner be liable for, and no user of any Community Systems shall be entitled to, any refund, rebate, discount or offset in applicable fees payable to the Association, if any, for any interruption in Community Systems

services, regardless of whether or not same is caused by reasons within the control of the then-provider of such services.

The Owner of an Adjacent Lot shall not be liable for any loss, cost, damage or expense arising out of any accident or other occurrence causing death of or injury to any person and/or damage to any property by reason of the use by the Benefited Owner of any Driveway Area located upon the Adjacent Lot, and the Benefited Owner agrees to indemnify and hold harmless the Adjacent Owner, its heirs, successors, and assigns, for, from and against each and every such loss, cost, damage, and expense, including attorneys' fees, arising from any such accident or occurrence.

Section 5.21. Diseases and Insects. No Owner or resident shall permit any thing or condition to exist upon a lot which shall induce, breed or harbor infectious plant diseases or noxious insects.

Section 5.22. Retention and Water Usages/Discharges On and From Lot; Subsidence and Expansive Soils. To the extent noted on the Plat, certain Lots shall be designed to, and shall maintain, self-retention of storm water and other water run-off on the surface of such Lots. No Owner shall modify, impair, change or affect retention features on any Lot as initially designed and installed without the prior written consent of the Association. In addition, each Owner shall use best efforts to endeavor to restrict and curtail the flow of so-called "nuisance water" from such Owner's Lot into streets, sidewalks, rights-of-way and other retention facilities associated with the Development. By way of example of the foregoing, and not in limitation thereof, Owners shall periodically check and adjust sprinkler mechanisms and monitor and adjust sprinkler times, etc., so as to endeavor to minimize run-off caused by misdirected excess/watering and irrigation, over-watering and over-irrigation and the like. The Board shall have the power to establish rules and regulations dealing with the foregoing and each Owner shall comply with same. In addition, and without limiting the foregoing, no Owner shall alter existing sprinkler pattern and/or over-water or over-irrigate portions of Lots in a manner in which they were not originally designed, nor shall any Owner replace xeriscaping, desert landscaping, unlandscaped areas or the like without the consent of the Architectural Committee. The Owners acknowledge that such replacement/alteration may cause over-watering, subsidence, soil failure and the like and will take all actions necessary to avoid the foregoing.

All soils within the Project may subject to certain subsidence/expansion in the presence of certain conditions. In the construction Single Family Residences, Declarant will use commercially reasonable efforts to comply with recommendations from third party consultants in designing and constructing the "building pads" and foundation systems for Single Family Residences as respects underlying soils conditions. Said third party shall also deliver a certificate or certificates indicating compliance of certain construction issues respecting the Project and/or Single Family residences as respects such recommendations. However, no Owner will subject or expose structural foundations and floor slab bearing soils to moisture infiltration or moisture content fluctuation. Each Owner will maintain proper drainage of surface water and roof runoff away from all structures located on a Lot and will, in all events, avoid (and promptly remedy) any long-term ponding near structures. Any future (i.e., any variation from Declarant's initial installations, if any) design and/or placement of yard vegetation and irrigation systems

must be accomplished by Owners in compliance with all of the foregoing so that structures, foundations and floor slab bearing soils are never exposed to the aforesaid moisture infiltration and/or content fluctuations. Each Owner, by acceptance of a deed to a Lot, acknowledges that failure to strictly adhere to the foregoing may result in soil subsidence/expansion which could have a material adverse effect on structures, foundations, floor slabs, etc., constituting a portion of any Single Family Residence (or any other structure) located on any Lot.

Section 5.23. Architectural Control.

(A) Except as provided below, no Improvement which would be Visible From Neighboring Property shall be constructed or installed on any Lot without the prior written approval of the Architectural Review Committee. No excavation or grading work shall be performed on any Lot without the prior written approval of the Architectural Committee. No addition, alteration, repair, change or other work which in any way alters the exterior appearance of any part of a Lot, or any Improvements located thereon, from the appearance on the date this Declaration is recorded, including, but without limitation, the exterior color scheme, shall be made or done without the prior written approval of the Architectural Committee. Accordingly, approval by the Architectural Committee is not required for the construction, installation, addition, alteration or repair of any Improvement situated in the back yard of a Lot, unless such Improvement is or would be Visible From Neighboring Property. Notwithstanding the foregoing sentence, the approval of the Architectural Committee shall not be required for landscaping in the back yard of a Lot even though such landscaping may be or become Visible From Neighboring Property. As further clarification, the prior written approval of the Architectural Committee for the construction, installation addition, alteration, repair, change or replacement of any Improvement requiring approval pursuant to this Section 5.23 shall be required for: (i) all Improvements situated in the front yard of any Lot, including, without limitation, landscaping; and (ii) any other change to the Lot or Improvements thereon which would be Visible From Neighboring Property, including the exterior color scheme of the Single Family Residence or any other structures built upon the Lot. Any Owner desiring approval of the Architectural Committee for the construction, installation, addition, alteration, repair, change or replacement of any Improvement which would alter the exterior appearance of the Improvement shall submit to the Architectural Committee a written request for approval specifying in detail the nature and extent of the construction, installation, addition, alteration, repair, change or replacement of any Improvement which the Owner desires to perform. Any Owner requesting the approval of the Architectural Committee shall also submit to the Architectural Committee any additional information, plans and specifications which the Architectural Committee may request, including, without limitation, the distance of such work from neighboring properties, if applicable. In the event that the Architectural Committee fails to approve or disapprove an application for approval within sixty (60) days after the application is made in either such case, together with all supporting information, plans and specifications requested by the Architectural Committee have been submitted to it, approval will not be required and this Section will be deemed to have been complied with by the Owner who had requested approval of such plans. Any change, deletion or addition to the plans and specifications approved by the Architectural Review Committee must be approved in writing by the Architectural Review Committee. The fee for review of improvement plans by the Architectural Committee shall initially be One Hundred Fifty dollars ($150.00). The fee for

review of landscape plans shall initially be One Hundred Dollars ($100.00). The fee for the Architectural Committee to review a submittal of both improvement and landscape plans shall initially be Two Hundred Dollars ($200.00). The foregoing fees are subject to change from time to time by act of a majority of the Architectural Committee, and no change need be made to this Declaration to render any such change in fees enforceable.

(B) In reviewing plans and specifications for any construction, installation, addition, alteration, repair, change or other work which must be approved by the Architectural Committee, the Architectural Committee, among other things, may consider the quality of workmanship and design, harmony of external design with existing structures and location in relation to surrounding structures, topography and finish grade elevation. The Architectural Committee may disapprove plans and specifications for any construction, installation, addition, alteration, repair, change or other work which must be approved by the Architectural Committee pursuant to this Section 5.23 if the Architectural Committee determines, in its sole and absolute discretion, that: (i) the proposed construction, installation, addition, alteration, repair, change or other work would violate any provision of this Declaration; (ii) the proposed construction, installation, addition, alteration, repair, change or other work does not comply with any Design Guideline and/or Architectural Committee Rule; (iii) the proposed construction, installation, addition, alteration, repair, change or other work is not in harmony with existing Improvements in the Project or with Improvements previously approved by the Architectural Committee but not yet constructed; (iv) the proposed construction, installation, addition, alteration, repair, change or other work is not aesthetically acceptable; (v) the proposed construction, installation, addition, alteration repair, change or other work would be detrimental to or adversely affect another Owner or the appearance of the Project; or (vi) the proposed construction, installation, addition, alteration, repair, change or other work is otherwise not in accord with the general plan of development for the Project.

(C) Upon receipt of approval from the Architectural Committee for any construction, installation, addition, alteration, repair, change or other work, the Owner who had requested such approval shall proceed to perform, construct or make the construction, installation, addition, alteration, repair, change or other work approved by the Architectural Committee as soon as practicable and shall diligently pursue such work so that it is completed as soon as reasonably practicable and within such time as may be prescribed by the Architectural Committee.

(D) The approval by the Architectural Committee of any construction, installation, addition, alteration, repair, change or other work pursuant to this Section 5.23 shall: (i) not be deemed a warranty or representation by the Architectural Committee as to the quality of such construction, installation, addition, alteration, repair, change or other work or that such construction, installation addition, alteration, repair, change or other work conforms to any applicable building codes or other federal, state or local law, statute, ordinance, rule or regulation; (ii) be in addition to, and not in lieu of, any approvals, consents or permits required under the ordinances or rules and regulations of any county or municipality having jurisdiction over the Project; (iii) not be construed as, nor be deemed to be, any representation by the Architectural Committee that the Architectural Committee has reviewed soundness or fitness of the plans nor has reviewed the compliance of said plans, if any, with the aforesaid ordinances or

rules and regulations; or (iv) not be deemed a waiver of the Architectural Committee's right to withhold approval of any similar construction, installation, addition, alteration, repair, change or other work subsequently submitted for approval..

(E) The provisions of this Section shall not apply to, and approval of the Architectural Committee shall not be required for, the construction, erection, installation, addition, alteration, repair, change or replacement of any Improvements made by, or on behalf of, Declarant (each, a "Declarant Improvement"). The foregoing shall apply and be effective whether or not a Class B membership still exists in the Association, it being the intent of the foregoing that so long as Declarant owns any Lots within the Property, Architectural Committee approval shall not apply to any Declarant Improvement made to any Lots owned by Declarant. Declarant may, in Declarant's sole discretion, assign that right and privilege to any successor in interest to Declarant in or to any of the Lots in the Property. Any such assignment as to less than all of the Lots owned by Declarant shall not, as to remaining Lots owned by Declarant (or its successors and assigns), avoid the foregoing privilege as to those remaining Lots which continue to be owned by Declarant unless specifically stated in writing by Declarant.

Section 5.24. Variances; Diminution of Restrictions. The Board may, at its option and in extenuating circumstances, grant variances from the restrictions set forth in this Article V if the Board determines in its discretion that: (i) a restriction would create an unreasonable hardship or burden on an Owner or a change of circumstances since the recordation of this Declaration has rendered such restriction obsolete; and (ii) the activity permitted under the variance will not have any substantial adverse effect on the Owners of the Project and is consistent with the high quality of life intended for residents of the Project. If any restriction set forth in this Article V is adjudged or deemed to be invalid or unenforceable as written by reason of any federal, state or local law, ordinance, rule or regulation, then a court or the Board, as applicable, may interpret, construe, rewrite or revise such restriction to the fullest extent allowed by law, so as to make such restriction valid and enforceable. Such modification shall not serve to extinguish any restriction not adjudged or deemed to be unenforceable.

Section 5.25. Basketball Goals and Backboards. No basketball goal or backboard shall be constructed or installed on any Lot so as to be Visible from Neighboring Property without the prior written approval of the Architectural Committee.

Section 5.26. Leases. Any agreement for the lease of all or a portion of a Single Family Residence shall provide that the terms of such lease shall be subject in all respects to the provisions of the Project Documents, and shall provide that any failure by the lessee to comply with the terms of the Project Documents shall be a default under the lease. Any Owner who leases a Single Family Residence shall be responsible for assuring compliance with the Project Documents by such Owner's lessee. No Lot shall be leased for transient or hotel purposes, which shall be defined as a rental for any period less than thirty (30) days.

In the event that a tenant, occupant or person living with the tenant violates a provision of this Declaration, the Articles, the Bylaws or Association Rules, the Association shall have the power to bring an action or suit against the tenant to recover sums due for damages or injunctive relief, or for any other remedy available at law or equity, including, but not limited to, all

remedies available to a landlord upon the breach of default of the lease agreement by the tenant. The Association's costs in doing so including, but not limited to, reasonable attorneys' fees, together with interest as provided in Section 4.7(A)(i) hereof, shall be reimbursed by the tenant to the Association and constitute a lien on the applicable Residential Unit which shall have the priority and may be enforced in the manner described in Article IV hereof.

The Board shall also have the power to impose reasonable fines upon the tenant and responsible Owner for any violation by the tenant, occupant or person living with the tenant of any duty imposed under this Declaration, the Articles, the Bylaws or the Association Rules, and to suspend the right of the tenant, occupant or person living with the tenant to use the Common Area.

Section 5.27. Temporary Occupancy and Temporary Buildings. No trailer, basement of any incomplete building, tent, shack, garage or barn, and no temporary buildings or structures of any kind, shall be used at any time for a residence, either temporary or permanent. No temporary construction buildings or trailers may be installed or kept on any Lot without the prior written approval of the Architectural Committee. Any such temporary buildings or trailers approved by the Architectural Committee shall be removed immediately after the completion of construction, and in no event shall any such buildings, trailer or other structures be maintained or kept on any property for a period in excess of twelve (12) months without the prior written approval of the Architectural Committee.

Section 5.28. Nuisances; Construction Activities. No animal waste, rubbish or debris of any kind shall be placed or permitted to accumulate upon or adjacent to any Lot or Common Area, and no odors or loud noises shall be permitted to arise or emit therefore, so as to render any such property or any portion thereof, or activity thereon, unsanitary, unsightly, offensive or detrimental to any other property in the vicinity thereof or to the occupants of such other property. No other nuisance shall be permitted to exist or operate upon any Lot so as to be offensive or detrimental to any other property in the vicinity thereof or to its occupants. Normal construction activities and parking in connection with the building of Improvements on a Lot shall not be considered a nuisance or otherwise prohibited by this Declaration, but Lots shall be kept in a neat and tidy condition during construction periods, trash and debris shall not be permitted to accumulate, and supplies of brick, block, lumber and other building materials will be piled only in such areas as may be approved in writing by the Architectural Review Committee. In addition, any construction equipment and building materials stored or kept on any lot during the construction of Improvements may be kept only in areas approved in writing by the Architectural Committee, which may also require screening of the storage areas. The Architectural Committee in its sole discretion shall have the right to determine the existence of any such nuisance. The provisions of this Section shall not apply to construction activities of Declarant.

Section 5.29. Clothes Drying Facilities. No outside clotheslines or other outside facilities for drying or airing clothes shall be erected, placed or maintained on any Lot so as to be Visible From Neighboring Property.

Section 5.30 Lights. No spotlights, flood lights or other high intensity lighting shall be placed or utilized upon any Lot which in any manner will allow light to be directed or reflected unreasonably upon any other Lot.

Section 5.31. Fire/Building Repair. In the event that any Improvement is destroyed or partially destroyed by fire, act of God or as the result of any other act or thing, the damage must be repaired and the Improvement reconstructed or razed within twelve (12) months after such damage. Notwithstanding the foregoing, if a dangerous condition shall exist because of such damage, it shall immediately be corrected so as to not cause harm to another person .or a Lot, an easement for such encroachment shall exist in favor of the Association or the Owner of the Lot, as the case may be.

ARTICLE VI
RESERVATION OF RIGHT TO RESUBDIVIDE AND REPLAT

Subject to the approval of any and all appropriate governmental agencies having jurisdiction, Declarant hereby reserves the right at any time, without the consent of other Owners, to resubdivide and replat any lot or lots which the Declarant then owns and has not sold.

ARTICLE VII
PARTY AND OTHER WALLS

Section 7.1. General Rules of Law to Apply. Each wall or fence, any part of which is placed on a dividing line between separate lots shall constitute a "party wall". Each adjoining Owner's obligation with respect to party walls shall be determined by this Declaration and, if not inconsistent, by Arizona law.

Section 7.2. Sharing Repair and Maintenance. Each Owner shall maintain the exterior surface of a party wall facing said Owner's lot. Except as provided in this Article, the cost of reasonable repair shall be shared equally by adjoining lot Owners.

Section 7.3. Damage by One Owner. If a party wall is damaged or destroyed by the act of one adjoining Owner, or said Owner's guests, tenants, licensees, agents or family members (whether or not such act is negligent or otherwise culpable), then that Owner shall immediately rebuild or repair the party wall to its prior condition without cost to the adjoining Owner(s) and shall indemnify the adjoining Owner(s) from any consequential damages, loss or liabilities.

Section 7.4. Other Damage. If a party wall is damaged or destroyed by any cause other than the act of one of the adjoining Owners, or of said Owner's agents, tenants, licensees, guests or family members (including ordinary wear and tear and deterioration from lapse of time), then the adjoining Owners shall rebuild or repair the party wall to its prior condition, equally sharing the expense; provided, however, that if a party wall is damaged or destroyed as a result of an

accident or circumstances that originate or occur on a particular lot (whether or not such accident or circumstance is caused by the action or inaction of the Owner of that lot, or said Owner's agents, tenants, licensees, guests or family members), then in such event, the Owner of that particular lot shall be solely responsible for the cost of rebuilding or repairing the party wall and shall immediately repair to the same condition as such party wall formerly existed.

Section 7.5. Right of Entry. Each Owner shall permit the Owners of adjoining lots, or their representatives, to enter said Owner's lot for the purpose of installations, alteration, or repairs to a party wall on the Property of such adjoining Owners; provided that other than for emergencies, requests for entry are made in advance and that such entry is at a time reasonably convenient to the Owner of the adjoining lot. An adjoining Owner making entry pursuant to this Section shall not be deemed guilty of trespassing by reason of such entry. Such entering Owner shall indemnify the adjoining Owner from any damages sustained by reason of such entry. The foregoing shall not be construed to give Owners the right to enter upon the Common Area for any purposes otherwise inconsistent with this Declaration except a reasonable distance from walls bounding Common Areas for replacement or repair of such wall and/or from any other Common Area boundary for work to be undertaken along said boundary. All other access to general Common Areas by Owners shall only be as otherwise permitted in this Declaration or in an emergency. No access shall be given through any walls built on or bounding Common Area under any circumstances, except for maintenance of said wall(s) by the adjoining Owner and/or the Association.

Section 7.6. Right of Contribution. The right of any Owner to contribution from any other Owner under this Article shall be appurtenant to the land and shall pass to such Owner's successors in title.

Section 7.7. Consent of Adjoining Owner. In addition to meeting the requirements of this Declaration and of any applicable building code and similar regulations or ordinances, any Owner proposing to modify, alter, make additions to or rebuild the party wall, shall first obtain the written consent of the adjoining Owner.

Section 7.8 Walls Adjacent to Streets and Roadways or Common Area. A wall ("Common Area Wall") that is adjacent to Streets and Roadways or Common Area shall be treated as though such Common Area Wall is a party wall with the street or Common Area constituting a Lot owned by the Association, except that any portion of such Wall consisting of decorative work that was originally located on such Wall (or any replacement thereof) shall be the sole responsibility of the Association (subject to an Owner's liability for repairs that would be such Owner's sole responsibility under Sections 7.3 or 7.4). Notwithstanding the foregoing: (a) the provisions in Sections 7.3 and 7.4 regarding an Owner's sole liability for repair of damage caused by such Owner's guests or licensees shall not apply to damage resulting from guests or licensees of the Association and such damage shall be considered caused by unrelated third parties, and (b) the rule in Section 7.4 regarding damage arising from events occurring on a particular Owner's Lot shall not apply to damage arising from events occurring on Streets and Roadways or Common Areas. Notwithstanding the foregoing, any damage to a Common Area Wall that is covered by the Association's casualty insurance shall, to the extent of proceeds actually received from such insurance, be paid for by the Association.

Section 7.9 Concerning Certain Walls Separating Adjoining Lots. Along Lot lines separating adjoining Lots, including rear Lot lines, the adjoining Owners shall equally the expense of fences/walls located on the Lot lines between such Owners' respective Lots (any such fence/wall being herein called a "Separation Wall"). An Owner ("New Owner") building a residence adjacent to a Lot upon which a Separation Wall has already been constructed shall reimburse the relevant adjoining Lot Owner ("Construction Owner") an amount equal to one-half (1/2) of the actual construction costs to the Construction Owner of the Separation Wall, except that the reimbursable cost for said Separation Wall shall not exceed the normal construction costs for a "Dooley" or "Superlite" type concrete fence/wall (4" masonry), regardless of the actual type or cost of the Separation Wall already built by the Construction Owner. Such reimbursement shall be made within thirty (30) days of submittal to the New Owner of invoices for payment.

No house plan for a Lot where adjacent Lots are developed with Separation Wall(s) shall be approved by the Committee until the Lot Owner applying for approval has submitted reasonable evidence of the proper pro rata payment for such Wall(s).

Section 7.10. Visible Fences and Gates. All fences and walls that can be seen from any Street and Roadway shall be constructed of such materials to match the texture of the exterior of the Single Family Residence located on the Lot upon which wall and/or fence is located, unless such wall and/or fence is a Separation Wall, in which case the texturization will be reasonably consistent with that of the Single Family Residences on both of the adjoining Lots.

Gates shall be constructed with heavy-duty steel jambs and gate frames and painted to match the adjacent fence/wall. Cedar or redwood slats in gates must be sealed to prevent deterioration.

ARTICLE VIII
MAINTENANCE BY OWNERS

Each Owner shall maintain said Owner's Residential Unit and lot in good repair. The yards and landscaping on all improved lots shall be neatly and attractively maintained, and shall be cultivated and planted to the extent required to maintain an appearance in harmony with other improved lots in the Property. During prolonged absence, an Owner shall arrange for the continued care and upkeep of said Owner's lot. In the event a lot Owner fails to maintain said Owner's lot and residence in good condition and repair or in the event an Owner fails to landscape said Owner's lot as required by Section 5.13 of Article V, the Architectural Committee may, but shall not be required to, have said lot and residence landscaped, cleaned and repaired and may charge the responsible lot Owner for said work in accordance with the provisions of said Section. An Owner shall not allow a condition to exist on said Owner's lot which will adversely affect any other lots and residences or other Owners. Any repainting or redecorating of the exterior surfaces of a residence which alters the original appearance of the Residential Unit will require the prior approval of the Architectural Committee.

ARTICLE IX
EASEMENTS

Section 9.1. Owners' Easements of Enjoyment.

(A) Every Member, and any person residing with such Member, shall have a right and easement of enjoyment in and to the Common Area, which shall by appurtenant to and shall pass with the title to every Lot, subject to the following provisions:

(i) The right of the Association to charge reasonable admission and other fees for the use of any recreational or other facility situated upon the Common Area, including, but not limited to, any recreational vehicle storage area located upon the Common Area. The Association shall also have the right to restrict the use of such recreational vehicle storage area to only those Owners, lessees or residents who do not have such a recreational vehicle storage area available to them through a Homeowners Association.

(ii) The right of the Association to suspend the voting rights and right to the use of the recreational facilities, if any, located upon Common Area by any Member: (a) for any period during which any Assessment against said Owner's Lot or Parcel remains delinquent; (b) for a period not to exceed sixty (60) days for any other infraction of the Project Documents; and (c) for successive sixty-day (60) periods if any such infraction is not corrected during any prior sixty-day (60) suspension period.

(iii) The right of the Association to dedicate 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 Board. Unless otherwise required by zoning stipulations or agreements with Maricopa County or any municipality having jurisdiction over the Project, or any part thereof, effective prior to the date hereof or specified on a recorded subdivision Plat, no such dedication or transfer shall be effective unless an instrument signed by the Owners representing two-thirds (2/3) of the votes in each class or membership in the Association agreeing to such dedication or transfer has been recorded.

(iv) The right of the Association to regulate the use of the Common Area through the Association Rules and to prohibit or limit access to such portions of the Common Area, such as landscaped right-of-ways, not intended for use by the Owners, lessees or residents.

(B) If a Lot or Parcel is leased or rented by the Owner thereof, the lessees and the members of said lessee's family residing with such lessee pursuant to the lease shall have the right to use the Common Area during the term of the lease, and the Owner of such Lot or Parcel shall have no right to use the Common Area until the termination or expiration of such lease.

(C) The guest and invitees of any Member or other person entitled to use the Common Area pursuant to this Declaration may use any recreational facility located on the Common Area, provided they are accompanied by a Member or other person entitled to use the recreational facilities pursuant to this Declaration. The Board shall have the right to limit the number of guests and invitees who may use the recreational facilities located on the Common Area at any one time and may restrict the use of the recreational facilities by guests and invitees to certain specified times.

(D) If ingress or regress to any Residential Unit or Lot is over or through the Common Area, any conveyance of encumbrance of such portion of the Common Area is subject to the easement of ingress and egress then held by such lot owner or owners.

(E) The Common Area may not be mortgaged or conveyed without the consent of at least two thirds (2/3) of the Lot Owners (excluding Declarant).

(F) The Common Areas shall be conveyed to the Association free and clear of all monetary encumbrances (except for current taxes and assessments) before any governmental authority insures a First Mortgage in the Project.

Section 9.2. Drainage Easements. There is hereby created a blanket easement for drainage of ground water on, over and across each lot in such locations as drainage channels or structures are located. An Owner shall not at any time hereafter fill, block or obstruct any drainage easements, channels or structures on said Owner's lot and each Owner shall repair and maintain all drainage channels and drainage structures located on said Owner's lot. No structure of any kind shall be constructed and no vegetation shall be planted or allowed to grow within the drainage easements which may impede the flow of water under, over or through the easements. All drainage areas shall be maintained by the Owner(s) of the lot(s) on which the easement area is located.

Section 9.3. Utility Easements. Except as installed by the Declarant or approved by the Architectural Committee, no lines, wires, or other devices for the communication or transmission of electric current or power, including telephone, television, cable, radio, internet, fiber optic and/or any other type of television or telecommunication signals which are not received "through or over the air", shall be erected, placed or maintained anywhere in or upon any lot unless the same shall be contained in conduits or cables installed and maintained underground or concealed in, under or on buildings or other structures. No structure, landscaping or other improvements shall be placed, erected or maintained upon any area designated on the Plat as a public utility easement which may damage or interfere with the installation and maintenance of utilities. Such public utility easement areas, and all improvements thereon, shall be maintained by the Owner of the lot on which the easement area is located, unless the utility company or a county, municipality or other public authority maintains said easement area.

Section 9.4. Declarant's Easement. Easements over the lots for the installation and maintenance of electric, telephone cable, communications, water, gas, drainage and sanitary sewer or similar or other lines, pipes or facilities:

(A) as shown on the recorded Plat; or

(B) as may be hereafter required or needed to service any lot (provided, however, no utility other than a connection line to a dwelling unit served by the utility shall be installed in any area upon which a Residential Unit has been or may legally be constructed on the lot)

are hereby reserved by the Declarant, together with the right to grant and transfer the same.

Section 9.5. Encroachments. The lots shall be subject to an easement for overhangs and encroachments by walls, fences or other structures upon adjacent lots as constructed by the original builder or by Declarant or as reconstructed or repaired in accordance with the original plans and specifications or as a result of the reasonable repair, shifting, settlement or movement of any such structure.

Section 9.6. Streets and Roadways. Declarant intends that all Streets and Roadways within the Project shall constitute private roadways. Each Owner shall have a non-exclusive right and easement of enjoyment in and to the Streets and Roadways, which shall be appurtenant, and shall pass with title, to every Lot, subject to the other limitations on the use of such easement set forth herein, and further subject to the obligation of each Owner to utilize Streets and Roadways for the purposes for which they were intended, i.e., vehicular access and maneuvering. Declarant and Declarant's agents and designees in constructing the Project shall be beneficiaries of such access easement, but unless otherwise agreed by Declarant, all such parties shall be exempt from any rules adopted by the Board in their use of the easement described in this Section 9.6 until the initial construction and improvement of all of the Development (inclusive of initial construction of Residential Units on every Lot) is complete to Declarant's satisfaction. Owners shall, at all times, also comply with all responsibilities which would otherwise be required had such Streets and Roadways been dedicated for public use to the Municipality. The Board may, from time to time, adopt rules respecting the use of Streets and Roadways. By accepting a deed to a Lot, an Owner acknowledges and agrees that such Streets and Roadways shall be subject to the terms and conditions hereof, and of such rules, if so adopted. There is hereby reserved and created an easement over the Streets and Roadways for vehicular access for third party vehicles such as fire, medical, construction, residential service and/or deliveries. It is provided, however, that no service trucks, equipment or other vehicles making use of the easement so reserved and created shall be allowed to be parked overnight or for an unreasonable length of time on or about the Project, and the parking of all vehicles shall be subject to the provisions of this Declaration and the rules adopted by the Board from time to time. Streets and Roadways are, and shall always be, subject to easements for minor encroachments thereon of a Lot, improvement on any Lot, or Common Area, and to a non-exclusive easement for support of adjoining or abutting Lots, related improvements and/or Common Area.

Section 9.7. Easement for Support. To the extent necessary, each Lot shall have an easement for structural support over every other Lot and the Common Area and each Lot and the Common Area shall be subject to an easement for structural support in favor of every Lot.

ARTICLE X
MAINTENANCE

Section 10.1. Maintenance by the Association. The Association shall be responsible for the maintenance, repair and replacement of the Common Area and may, without any approval of the Owners being required, do any of the following:

(A) Reconstruct, repair, replace or refinish any Improvement or portion thereof upon any such area (to the extent that such work is not done by a governmental entity, if any, responsible for the maintenance and upkeep of such area);

(B) Construct, reconstruct, repair, replace or refinish any portion of the Common Area used as a road, street, walk, driveway and parking area;

(C) Replace injured and diseased trees or other vegetation in any such area, and plant trees, shrubs and ground cover to the extend that the Board deems necessary for the conservation of water and soil and for aesthetic purposes;

(D) Place and maintain upon any such area such signs as the Board may deem appropriate for the proper identification, use and regulation thereof;

(E) Construct, maintain, repair and replace landscaped areas on any portion of the Common Area;

(F) Maintain any portion of the Common Area used for drainage and retention;

(G) Maintain, repair, replace and/or improve the Streets and Roadways;

(H) Maintain, repair, replace and/or improve any facilities constituting the Security Gate and Facility and/or employ personnel to be physically present at said Facility; it being understood, however, that the Board is not responsible nor liable if there is not a personal physical presence at any time in that Facility and the Board will not be responsible for breakdowns nor interruptions in service of any electronic facilities in connection therewith; and

(I) Do all such other and further acts which the Board deems necessary to preserve and protect the Common Area and the appearance thereof, in accordance with the general purposes specified in this Declaration.

Section 10.2. Damage or Destruction of Common Area by Owners. No Owner shall in any way damage or destroy any Common Area or interfere with the activities of the Association in connection therewith. Any expenses incurred by the Association by reason of any such act of an Owner shall be paid by said Owner, upon demand, to the Association to the extent that the Owner is liable therefore under Arizona law, and such amounts shall be a lien on any Lots owned by said Owner and the Association may enforce collection of any such amounts in the same

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manner as provided elsewhere in this Declaration for the collection and enforcement of Assessments.

Absolute liability is not imposed on Lot Owners for damage to the Common Area or Lots, but any such Owner's liability shall be limited, but shall also extend, to the extent provided under Arizona law and this Declaration from time to time.

Section 10.3. Payment of Utility Charges. Each Lot shall be separately metered for water, sewer and electrical service and all charges for such services shall be the sole obligation and responsibility of the Owner of each Lot. The cost of water, sewer and electrical service to the Common Area shall be a Common Expense of the Association and shall be included in the budget of the Association.

Section 10.4. Ability of City of Chandler to Maintain and Access Common Area. If the Association fails to maintain any of the Common Areas in a manner reasonably satisfactory to the Municipality, the Municipality may advise the Association in writing (by delivery of such notice to the principal place of business of the Association and to the Association's statutory agent) of such failure. If the Association fails, within thirty (30) days (or such longer period as may be reasonably necessary to cure such failure) after its receipt of such notice from the Municipality, the Municipality may perform the required maintenance, and the Municipality is hereby granted the right to enter upon the Common Area to perform such maintenance.

The Association shall be liable to the Municipality for the reasonable maintenance costs incurred by the Municipality pursuant to this Section 10.4 (the "Municipality Expenses"), together with interest at the legal rate and reasonable attorneys' fees. Each Owner of a Lot shall be severally and not jointly liable to the Municipality for the amount obtained by dividing the Municipality Expenses by the total number of Lots. If the Association does not pay the Municipality Expenses within thirty (30) days after written demand to the Association and to each Owner, the Municipality may record a Notice of Claim of Lien against each of the Lots for which the pro rata share of Municipality Expenses remains unpaid to secure the payment of each unpaid Lot Owner's share of Municipality Expenses remaining unpaid. A copy of any Notice of Claim of Lien recorded by the Municipality must be mailed to the Owner of each Lot affected thereby. The priority of the Notice of Claim of Lien recorded by the Municipality shall be of equal priority with Assessments hereunder and shall be treated for priority purposes in a similar manner.

The Municipality shall have the right, at its option, to enforce collection of any amounts owed to the Municipality under this Section 10.4 in any manner permitted by law, including, without limitation, bringing an action against one or more of the Owners to pay each such Owner's share of the Municipality Expenses or bringing an action to foreclose its lien against any or all of the Lots in default in the manner provided by law for the foreclosure of a realty mortgage. The Municipality shall have the power to bid in at any such foreclosure sale and to purchase the Lot or Lots so sold.

If the Association (or the successor maintenance entity to which reference is made in the final sentence of this grammatical paragraph) is then no longer in existence, this Section shall be

read as if references to the Association instead referred to the Owners, it being understood, however, that the responsibility of the Owners for Municipality Expenses shall be several and not joint, and each Owner shall only be liable for each such Owner's pro rata share of Municipality Expenses. Notwithstanding any provision of this Declaration to the contrary, this Section may not be amended in a manner which will materially reduce the Municipality's rights or increase its obligations, without first obtaining the Municipality's consent in recordable written form. The Association may not be dissolved unless another entity has agreed to assume maintenance responsibilities over the Common Area.

ARTICLE XI
INSURANCE

Section 11.1. Scope of Coverage. Commencing not later than the time of the first conveyance of a Lot to a person other than a signatory to this Declaration, the Association shall maintain, to the extent reasonably available, the following insurance coverage:

(A) Property insurance on the Common Area insuring against all risk of direct physical loss, insured against in an amount equal to the maximum insurable replacement value of the Common Area, as determined by the Board; provided, however, that the total amount of insurance after application of any deductibles shall not be less than one hundred percent (100%) of the current replacement cost of the insured property, exclusive of land, excavations, foundations and other items normally excluded from an improved real property insurance policy;

(B) Comprehensive general liability insurance, including medical payments insurance, in an amount determined by the Board, but not less than $1,000,000.00. Such insurance shall cover all occurrences commonly insured against for death, bodily injury and property damage arising out of or in connection with the use, ownership or maintenance of the Common Area, and shall also include hired automobile and non-owned automobile coverages with cost liability endorsements to cover liabilities of the Owners as a group to an Owner and provide coverage for any legal liability that results from lawsuits related to employment contracts in which the Association is a party;

(C) Workmen's compensation insurance to the extent necessary to meet the requirements of the laws of Arizona; and

(D) Such other insurance as the Association shall determine from time to time to be appropriate to protect the Association or the Owners;

(E) The insurance policies purchased by the Association shall, to the extent reasonably available, contain the following provisions:

(i) That there shall be no subrogation with respect to the Association, its agents, servants, and employees, with respect to Owners and members of their households;

(ii) No act or omission by any Owner, unless acting within the scope of said Owner's authority on behalf of the Association, will void the policy or be a condition to recovery on the policy;

(iii) That the coverage afforded by such policy shall not be brought into contribution or proration with any insurance which may be purchased by Owners or their mortgagees or beneficiaries under deeds of trust;

(iv) A "severability of interest" endorsement which shall preclude the insurer from denying the claim of an Owner because of the negligent acts of the Association or other Owners;

(v) The Association shall be named as the Insured; and

(vi) For policies of hazard insurance, a standard mortgagee clause providing that the insurance carrier shall notify the first mortgagee named in the policy at least thirty (30) days in advance of the effective date of any substantial modification, reduction or cancellation of the policy;

(F) If the Property is located in an area identified by the Secretary of Housing and Urban Development as an area having special flood hazards, a policy of flood insurance on the Common Area must be maintained in the lesser of one hundred percent (100%) of the current replacement cost of the buildings and any other Property covered by the required form of policy or the maximum limit of coverage available under the National Insurance Act of 1968, as amended; and

(G) "Agreed Amount" and "Inflation Guard" endorsements.

Section 11.2. Certificates of Insurance. An insurer that has issued an insurance policy under this Article shall issue certificates or a memorandum of insurance to the Association and, upon request, to any Owner, mortgagee or beneficiary under a deed of trust. Any insurance obtained pursuant to this Article may not be cancelled until thirty (30) days after notice of the proposed cancellation has been mailed to the Association, each Owner and each mortgagee or beneficiary under deed of trust to whom or which certificates of insurance have been issued.

Section 11.3. Fidelity Bonds.

(A) The Association shall maintain blanket fidelity bonds for all officers, directors, trustees and employees of the Association and all other persons handling or responsible for funds of, or administered by, the Association, including, but without limitation, officers, directors and employees of any management agent of the Association, whether or not they receive compensation for their services. The total amount of fidelity bond maintained by the Association shall be based upon the reasonable business judgment of the Board, and shall not be less than the greater of (i) the amount equal to one hundred fifty percent (150%) of the estimated annual operating expenses of the Association, (ii) the estimated maximum amount of funds,

including reserve funds, in the custody of the Association or the management agent, as the case may be, at any given time during the term of each bond, or (iii) the sum equal to three (3) months assessments on all Lots, plus adequate reserve funds. Fidelity bonds obtained by the Association must also meet the following requirements:

(i) The fidelity bonds shall name the Association as an obligee;

(ii) The bonds shall contain waivers by the issuers of the bonds of all defenses based upon the exclusion of persons serving without compensation from the definition of "employees" or similar terms or expressions; and

(iii) The bonds shall provide that they may not be canceled or substantially modified (including cancellation from non-payment of premium) without at least ten (10) days prior written notice to the Association.

(B) The Association shall require any management agent of the Association to maintain its own fidelity bond in an amount equal to or greater than the amount of the fidelity bond to be maintained by the Association pursuant to Subsection (A) of this Section. The fidelity bond maintained by the management agent shall cover funds maintained in bank accounts of the management agent and need not name the Association as an obligee.

Section 11.4. Payment of Premiums. The premiums for any insurance obtained by the Association pursuant to this Article shall be included in the budget of the Association and shall be paid by the Association.

Section 11.5. Insurance Obtained by Owners. Each Owner shall be responsible for obtaining Property insurance for said Owner's own benefit and at said Owner's own expense covering said Owner's Lot, and all Improvements and personal Property located thereon. Each Owner shall also be responsible for obtaining at said Owner's expense personal liability coverage for death, bodily injury or Property damage arising out of the use, ownership or maintenance of said Owner's Lot.

Section 11.6. Payment of Insurance Proceeds. With respect to any loss to the Common Area covered by Property insurance obtained by the Association in accordance with this Article, the loss shall be adjusted with the Association and the insurance proceeds shall be payable to the Association and not to any mortgagee or beneficiary under a deed of trust. Subject to the provisions of Section 11.7 of this Article, the proceeds shall be disbursed for the repair or restoration of the damage to Common Area.

Section 11.7. Repair and Replacement of Damaged or Destroyed Property. Any portion of the Common Area damaged or destroyed shall be repaired or replaced promptly by the Association unless (i) repair or replacement would be illegal under any state or local health or safety statue or ordinance, or (ii) Owners owning at least eighty percent (80%) of the Lots vote not to rebuild. The cost of repair or replacement in excess of insurance proceeds and reserves

shall be paid by the Association. If the entire Common Area is not repaired or replaced, insurance proceeds attributable to the damaged Common Area shall be used to restore the damaged area to a condition which is not in violation of any state or local health or safety statute or ordinance and the remainder of the proceeds shall be distributed to the Owners on the basis of an equal share for each Lot.

ARTICLE XII
CLAIM AND DISPUTE RESOLUTION/LEGAL ACTIONS

It is intended that the Common Areas, each Lot and all Improvements constructed on the Property will be constructed in substantial compliance with all applicable building codes and ordinances and/or in a manner reasonably believed by Declarant not to be objectionable to local building authorities and that all Improvements will be of a quality that is consistent with reasonably good construction and development practices in the area where the Project is located for production housing similar to that constructed within the Project. It is acknowledged that the Development will be built in accordance with its "as-built" plans and specifications and not necessarily in accordance with plans and specifications initially provided to any Municipal unit, each owner by accepting a deed to any portion of the Project acknowledging that certain decisions are made "in the field" or other items are made and choices are undertaken in good faith by Declarant and its contractors and variation between the "as-built" plans and Municipal-approved plans will not be or give rise to a cause of an Alleged Defect unless said Defect is not otherwise either reasonable construction practice or is not in violation of Municipal code. Nevertheless, due to the complex nature of construction and the subjectivity involved in evaluating such quality, disputes may arise as to whether a defect exists and the responsibility therefor. It is intended that all disputes and claims regarding Alleged Defects will be resolved amicably, without the necessity of time-consuming and costly litigation. Accordingly, Declarant, the Association, the Board and all Owners shall be bound by the following claim resolution procedures.

Section 12.1. Right to Cure Alleged Defect. If a Claimant claims, contends or alleges an Alleged Defect, Declarant shall have the right to inspect, repair and/or replace such Alleged Defect as set forth herein.

Section 12.1.1. Notice of Alleged Defect. If a Claimant discovers an Alleged Defect, within fifteen (15) days after discovery thereof, the Claimant shall give a Notice of Alleged Defect to Declarant with respect to which the Alleged Defect relates.

Section 12.1.2. Right to Enter, Inspect, Repair and/or Replace. Within a reasonable time after the receipt by Declarant of a Notice of Alleged Defect, or the independent discovery of any Alleged Defect by Declarant, Declarant shall have the right, upon reasonable notice to the relevant Claimant and during normal business hours, to enter onto or into the Common Areas, any Lot or Single Family Residence and/or any Improvements for the purposes of inspecting and/or conducting testing and, if deemed necessary by Declarant in its sole discretion, repairing and/or replacing such Alleged Defect. In conducting such inspection,

testing, repairs and/or replacement, Declarant shall be entitled to take any actions as it shall deem reasonable and necessary or prudent under the circumstances.

Section 12.2. No Additional Obligations; Irrevocability and Waiver of Right. Nothing set forth in this Article XII shall be construed to impose any obligation on Declarant to inspect, test, repair or replace any item or Alleged Defect for which Declarant is not otherwise obligated under applicable law, this Declaration or any warranty provided by Declarant in connection with the sale of the Lots and Single Family Residences and/or the Improvements constructed thereon. The right reserved to Declarant to enter, inspect, test, repair and/or replace an Alleged Defect shall be irrevocable and may not be waived or otherwise terminated with regard to Declarant except by a written document executed by Declarant and recorded.

Section 12.3. Legal Actions. All legal actions initiated by a Claimant shall be brought in strict accordance with, and expressly subject to this Section 12.3 and to Sections 12.4 and 3.13 of this Declaration. If a Claimant initiates any legal action, cause of action, regulatory action, proceeding, reference, mediation or arbitration against Declarant alleging: (1) damages for Alleged Defect Costs; (2) the diminution in value of any real or personal property resulting from such Alleged Defect; or (3) any consequential damages resulting from such Alleged Defect, any judgment or award in connection therewith shall first be used to correct and or repair such Alleged Defect or to reimburse the Claimant for any costs actually incurred by such Claimant in correcting and/or repairing the Alleged Defect. If the Association as a Claimant recovers any funds from Declarant (or any other Person) to repair an Alleged Defect, any excess funds remaining after repair of such Alleged Defect shall be paid into the Association's reserve fund. If the Association is a Claimant, the Association must provide a written notice to all Members prior to initiation of any legal action, regulatory action, cause of action, proceeding, reference, mediation or arbitration against Declarant, which notice shall include at a minimum: (1) a description of the Alleged Defect; (2) a description of the attempts of Declarant to correct such Alleged Defect and the opportunities provided to Declarant to correct such Alleged Defect; (3) a certification from an architect or engineer licensed in the State of Arizona that such Alleged Defect exists, along with a description of the scope of work necessary to cure such Alleged Defect and a resume of such architect or engineer; (4) the estimated Alleged Defect Costs; (5) the name and professional background of the attorney retained by the Association to pursue the claim against Declarant and a description of the relationship between such attorney and member(s) of the Board or the Association's management company (if any); (6) a description of the fee arrangement between such attorney and the Association; (7) the estimated attorneys' fees and expert fees and costs necessary to pursue the claim against Declarant and the source of the funds which will be used to pay such fees and expenses; (8) the estimated time necessary to conclude the action against Declarant; and (9) an affirmative statement from a majority of the members of the Board that the action is in the best interests of the Association and its Members.

Section 12.4. Alternative Dispute Resolution. Except for Routine Disputes, any dispute or claim between or among: (a) Declarant (or its brokers, agents, consultants, contractors, subcontractors or employees), on the one hand, and any Owner(s) or the Association, on the other hand; or (b) any Owner(s) and another Owner(s); or (c) the Association and any Owner, regarding any controversy or claim between the parties, including any claim based on contract, tort, or statute, arising out of or relating to: (i) the rights or duties of the parties under this

Declaration; (ii) the design or construction of the Project; or (iii) an Alleged Defect, but excluding, in all cases, Routine Disputes (collectively, a "Dispute"), shall be subject to negotiation, mediation and arbitration as set forth in this Section prior to any party to the Dispute instituting litigation with regard to the Dispute.

Section 12.4.1. Negotiation. Each party to a Dispute shall make every reasonable effort to meet in person and confer for the purpose of resolving a Dispute by good faith negotiation. Upon receipt of a written request from any party to the Dispute, the Board may appoint a representative to assist the parties in resolving the dispute by negotiation, if in its discretion the Board believes its efforts will be beneficial to the parties and to the welfare of the community. Each party to the Dispute shall bear its own attorneys' fees and costs in connection with such negotiation.

Section 12.4.2. Mediation. If the parties cannot resolve their Dispute pursuant to the procedures described in Section 12.4.1 above within such time period as may be agreed upon or if the parties cannot agree, sixty (60) days from the time the closing party gives specific written notice to the other party(ies) of the existence and nature of the Dispute) by such parties (the "Termination of Negotiations"), the party instituting the Dispute (the "Disputing Party") shall have thirty (30) days after the Termination of Negotiations within which to submit the Dispute to mediation pursuant to the mediation procedures adopted by the American Arbitration Association or any successor thereto or to any other independent entity providing similar services upon which the parties to the Dispute may mutually agree. No person shall serve as a mediator in any Dispute in which such person has a financial or personal interest in the result of the mediation, except by the written consent of all parties to the Dispute. Prior to accepting any appointment, the prospective mediator shall disclose any circumstances likely to create a presumption of bias or to prevent a prompt commencement of the mediation process. If the Disputing Party does not submit the Dispute to mediation within thirty days after Termination of Negotiations, the Disputing Party shall be deemed to have waived any claims related to the Dispute and all other parties to the Dispute shall be released and discharged from any and all liability to the Disputing Party on account of such Dispute; provided, nothing herein shall release or discharge such party or parties from any liability to Persons not a party to the foregoing proceedings.

Section 12.4.2.1. Position Memoranda; Pre-Mediation Conference. Within ten (10) days of the selection of the mediator, each party to the Dispute shall submit a brief memorandum setting forth its position with regard to the issues to be resolved. The mediator shall have the right to schedule a pre-mediation conference and all parties to the Dispute shall attend unless otherwise agreed. The mediation shall commence within ten (10) days following submittal of the memoranda to the mediator and shall conclude within fifteen (15) days from the commencement of the mediation unless the parties to the Dispute mutually agree to extend the mediation period. The mediation shall be held in Maricopa County or such other place as is mutually acceptable to the parties to the Dispute.

Section 12.4.2.2. Conduct of Mediation. The mediator has discretion to conduct the mediation in the manner in which the mediator believes is most appropriate

for reaching a settlement of the Dispute. The mediator is authorized to conduct joint and separate meetings with the parties to the Dispute and to make oral and written recommendations for settlement. Whenever necessary, the mediator may also obtain expert advice concerning technical aspects of the dispute, provided the parties to the Dispute agree to obtain and assume the expenses of obtaining such advice as provided in Section 12.4.2.5 below. The mediator shall not have the authority to impose a settlement on any party to the Dispute.

Section 12.4.2.3. Exclusion Agreement. Any admissions, offers of compromise or settlement negotiations or communications at the mediation shall be excluded in any subsequent dispute resolution forum.

Section 12.4.2.4. Parties Permitted at Sessions. Persons other than the parties to the Dispute may attend mediation sessions only with the permission of all parties to the Dispute and the consent of the mediator. Confidential information disclosed to a mediator by the parties to the Dispute or by witnesses in the course of the mediation shall be confidential. There shall be no stenographic or other record of the mediation process.

Section 12.4.2.5. Expenses of Mediation. The expenses of witnesses for either side shall be paid by the party producing such witnesses. All other expenses of the mediation, including, but not limited to, the fees and costs charged by the mediator and the expenses of any witnesses or the cost of any proof or expert advice produced at the direct request of the mediator, shall be borne equally by the parties to the Dispute unless agreed otherwise. Each party to the Dispute shall bear its own attorneys' fees and costs in connection with such mediation.

Section 12.4.3. Final and Binding Arbitration. If the parties cannot resolve their Dispute pursuant to the procedures described in Section 12.4.2 above, the Disputing Party shall have thirty (30) days following termination of mediation proceedings (as determined by the mediator) to submit the Dispute to arbitration in accordance with the Commercial Arbitration Rules of the American Arbitration Association, as modified or as otherwise provided in this Section. If the Disputing Party does not submit the Dispute to arbitration within thirty days after termination of mediation proceedings, the Disputing Party shall be deemed to have waived any claims related to the Dispute and all other parties to the Dispute shall be released and discharged from any and all liability to the Disputing Party on account of such Dispute; provided, nothing herein shall release or discharge such party or parties from any liability to Persons not a party to the foregoing proceedings.

The existing parties to the Dispute shall cooperate in good faith to ensure that all necessary and appropriate parties are included in the arbitration proceeding. Declarant shall not be required to participate in the arbitration proceeding if all parties against whom Declarant would have necessary or permissive cross-claims or counterclaims are not or cannot be joined in the arbitration proceedings. Subject to the limitations imposed in this Section, the arbitrator shall have the authority to try all issues, whether of fact or law.

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Section 12.4.3.1. Place. The arbitration proceedings shall be heard in Maricopa County.

Section 12.4.3.2. Arbitration. A single arbitrator shall be selected in accordance with the rules of the American Arbitration Association from panels maintained by the Association with experience in relevant matters which are the subject of the Dispute. The arbitrator shall not have any relationship to the parties or interest in the Project. The parties to the Dispute shall meet to select the arbitrator within ten (10) days after service of the initial complaint on all defendants named therein.

Section 12.4.3.3. Commencement and Timing of Proceeding. The arbitrator shall promptly commence the arbitration proceeding at the earliest convenient date in light of all of the facts and circumstances and shall conduct the proceeding without undue delay.

Section 12.4.3.4. Pre-hearing Conferences. The arbitrator may require one or more pre-hearing conferences.

Section 12.4.3.5. Discovery. The parties to the Dispute shall be entitled to limited discovery only, consisting of the exchange between the parties of the following matters: (i) witness lists; (ii) expert witness designations; (iii) expert witness reports; (iv) exhibits; (v) reports of testing or inspections of the property subject to the Dispute, including but not limited to, destructive or invasive testing; and (vi) trial briefs. Declarant shall also be entitled to conduct further tests and inspections as provided in Section 12.1 above. Any other discovery shall be permitted by the arbitrator upon a showing of good cause or based on the mutual agreement of the parties to the Dispute. The arbitrator shall oversee discovery and may enforce all discovery orders in the same manner as any trial court judge.

Section 12.4.3.6. Limitation on Remedies/Prohibition on the Award of Punitive Damages. Notwithstanding contrary provisions of the Commercial Arbitration Rules, the arbitrator in any proceeding shall not have the power to award punitive or consequential damages; however, the arbitrator shall have the power to grant all other legal and equitable remedies and award compensatory damages. The arbitrator's award may be enforced as provided for in the Uniform Arbitration Act, A.R.S. § 12-1501, et seq., or such similar law governing enforcement of awards in a trial court as is applicable in the jurisdiction in which the arbitration is held.

Section 12.4.3.7. Motions. The arbitrator shall have the power to hear and dispose of motions, including motions to dismiss, motions for judgment on the pleadings and summary judgment motions, in the same manner as a trial court judge, except the arbitrator shall also have the power to adjudicate summarily issues of fact or law including the availability of remedies, whether or not the issue adjudicated could dispose of an entire cause of action or defense.

Section 12.4.3.8. Expenses of Arbitration. Each party to the Dispute shall bear all of its own costs incurred prior to and during the arbitration proceedings, including the fees and costs of its attorneys or other representatives, discovery costs and expenses of witnesses produced by such party. Each party to the Dispute shall share equally all charges rendered by the arbitrator unless otherwise agreed to by the parties.

SECTION 12.5. Waiver. DECLARANT, ON ONE HAND, AND, BY ACCEPTING A DEED FOR OR TO THE COMMON AREA OR A LOT, AS THE CASE MAY BE, THE ASSOCIATION, AND EACH OWNER, ON THE OTHER HAND, AGREE TO HAVE ANY DISPUTE TO WHICH THIS ARTICLE XII IS APPLICABLE RESOLVED ACCORDING TO THE PROVISIONS OF THIS ARTICLE XII AND WAIVE THEIR RESPECTIVE RIGHTS TO PURSUE AND SUCH DISPUTE IN ANY MANNER OTHER THAN AS PROVIDED IN THIS ARTICLE XII. SUCH PARTIES ACKNOWLEDGE THAT BY AGREEING TO RESOLVE SUCH DISPUTES AS PROVIDED IN THIS ARTICLE XII, THEY ARE GIVING UP THEIR RESPECTIVE RIGHTS TO HAVE SUCH DISPUTES TRIED BEFORE A COURT OR JURY.

Section 12.6. Statutes of Limitations. Nothing in this Article shall be considered to toll, stay, reduce or extend any applicable statute of limitations.

Section 12.7. Enforcement of Resolution. If the parties to a Dispute resolve such Dispute through negotiation or mediation in accordance with Subsection 12.4.1 or Subsection 12.4.2 above, and any party thereafter fails to abide by the terms of such negotiation or mediation, or if an award of arbitration is made in accordance with Subsection 12.4.3 and any party to the Dispute thereafter fails to comply with such award, then the other party to the Dispute may file suit or initiate administrative proceedings to enforce the terms of such negotiation, mediation, or the award without the need to again comply with the procedures set forth in this Article. In such event, the party taking action to enforce the terms of the negotiation, mediation or the award shall be entitled to recover from the non-complying party (or if more than one non-complying party, from all such parties pro rata), all costs incurred to enforce the terms of the negotiation or mediation or the award including, without limitation, attorneys' fees and court costs.

Section 12.8. Conflicts. Notwithstanding anything to the contrary in this Declaration, if there is a conflict between this Article and any other provisions of the Project Documents, this Article shall control.

ARTICLE XIII
TERM AND ENFORCEMENT

Section 13.1. Enforcement. The Association, the Architectural Committee or any Owner shall have the right (but not the obligation) to enforce, by any proceeding at law or in equity, these Covenants and Restrictions and any amendment thereto, subject at all times to the other terms and conditions hereof. Failure by the Association, the Committee or any Owner to enforce these Covenants and Restrictions shall in no event be deemed a waiver of the right to do so thereafter. Deeds of conveyance of the Property may incorporate these Covenants and

Restrictions by reference to this Declaration, but whether or not such reference is made in such deeds, each and all such Covenants and Restrictions shall be valued and binding upon the respective grantees. Violators of any one or more of the Covenants and Restrictions may be restrained and damages awarded against such violators in accordance with the terms hereof; provided, however, that a violation of these Covenants and Restrictions or any one or more of them shall not affect the lien of any First Mortgage. If the Architectural Committee enforces any provision of the Project Documents, the cost of the enforcement shall be paid by the Association.

Section 13.2. Term. This Declaration shall run with and bind the land for a term of thirty (30) years from the date this Declaration is recorded, after which time this Declaration shall be automatically extended for successive periods of ten (10) years for so long as the lots shall continue to be used for residential purposes.

Section 13.3. Amendment. The Declaration may be amended at any time and from time-to-time by an instrument signed by the Owner(s) of at least two-thirds (2/3) of the votes of each class of membership then existing and recorded with the Maricopa County Recorder. A properly executed and recorded amendment may alter the restrictions applicable to all or any portion of the Property. Any amendment which diminishes the Declarant's right hereunder shall require the approval of the Declarant. Notwithstanding the foregoing, so long as the Class B membership exists, Declarant may amend this declaration to correct typographical or scrivener's errors or to make other non-material changes to the Declaration in order to effect the original intent and purpose of this Declaration.

ARTICLE XIV
GENERAL PROVISIONS

Section 14.1. Severability. Invalidation of any part of these Covenants and Restrictions shall not affect the validity of any other provisions.

Section 14.2. Construction. The Article and Section headings have been inserted for convenience only and shall not be considered in resolving questions of interpretation or construction. All terms and words used in this Declaration regardless of the number and gender in which they are used shall be deemed and construed to include any other number, and any other gender, as the context or sense requires. It is the intention of this Declaration and of the Project Documents to comply and be in accordance, at all times, with the law and regulation of the State of Arizona. Therefore, to the extent that the law and regulation of the State of Arizona is contrary to this Declaration and/or the Project Documents, the law of the State of Arizona in effect from time to time shall control in the interpretation hereof and thereof and shall prevail over any contrary provision herein or in the Project Documents. It is further intended that this Declaration and the Project Documents shall be construed in a consistent matter and are internally consistent. Nevertheless, in the event any internal inconsistencies appear, this Declaration and the Project Documents shall be construed according to the following hierarchy, with the first listed document(s) being construed to control all the documents listed thereafter:

1. This Declaration;

2. The Article of Incorporation of the Association;

3. The Bylaws of the Association;

4. The Architectural Committee Rules and the Design Guidelines, if the same have been adopted; and

5. The Rules and Regulations of the Association.

Section 14.3. Notices. Any notice permitted or required to be delivered as provided herein may be delivered either personally or by mail, postage prepaid: if to an Owner, addressed to that Owner at the address of the Owner's lot or if to the Architectural Committee, addressed to that Committee at the normal business address. If notice is sent by mail, it shall be deemed to have been delivered twenty-four (24) hours after a copy of the same has been deposited in the United States mail, postage pre-paid. If personally delivered, notice shall be effective on receipt. Notwithstanding the foregoing, any application for approval, plans, specifications and any other communication or documents shall not be deemed to have been submitted to the Architectural Committee, unless actually received by said Committee.

Section 14.4. VA/FHA Approvals. If, and only if, the Project and/or this Declaration have been initially approved by the Veterans Administration or the Federal Housing Administration, then so long as there is a Class B membership in the Association, the following actions will, to the extent then required by applicable regulations of the Veterans Administration or the Federal Housing Administration, require the prior approval of the Veterans Administration or the Federal Housing Administration: dedications of Common Areas; any annexation of additional property to this Declaration; any amendment to the Declaration that conflicts with then-applicable requirements of the Veterans Administration or the Federal Housing Administration or any amendment which would otherwise be required to be approved by the Veterans Administration or the Federal Housing Administration under their respective Governmental Regulations existing at the time of the proposed amendment of this Declaration.

Section 14.5 Declarant's Disclaimer. Notwithstanding anything herein to the contrary, and to the fullest extent permitted by law from time to time, Declarant makes no representation or warranty whatsoever that: (i) the Project (including Common Areas) will be completed or maintained in accordance with any particular plans, including plans for the Project as they exist as of the date hereof; (ii) any portion of the Property will be developed or used for a particular use or for any use; (iii) the use of any portion of the Property will not be changed in the future; (iv) any real property now owned or hereafter acquired by Declarant is or will be subjected to this Declaration; or (v) any or all of the restrictive covenants contained herein are or in the future will be deemed to be valid or enforceable.

IN WITNESS WHEREOF, H & O Investments, LLC, an Arizona limited liability company, as Declarant, has caused its entity name to be signed by the undersigned person thereunto duly authorized as of the 31st day of July, 2002.

DECLARANT:

H & O INVESTMENTS, LLC,
an Arizona limited liability company

BY: LAREDO PROPERTIES II, LLC,
an Arizona limited liability company, its
Managing Member

BY: HOGAN & ASSOCIATES, INC.,
an Arizona corporation, its
Managing Member

BY: _____
Joseph Hogan, President

STATE OF ARIZONA)
) ss.
County of Maricopa)

On this, the 1 day of Aug., 2002 before me, the undersigned Notary Public, personally appeared Joseph Hogan, who acknowledged that he is the President of Hogan & Associates, Inc., an Arizona corporation, in turn the Managing Member of Laredo Properties II, LLC, an Arizona limited liability company, in turn the Managing Member of H & O Investments, LLC, an Arizona limited liability company, and that he, having authority so to do, executed the foregoing instrument for the purposes herein contained, by signing the name of the latter company hereto as Declarant. In witness whereof, I hereunto set my hand and official seal.

Jessica Shannon
Notary Public

My commission expires:
July 25, 2004

JESSICA SHANNON
Notary Public - Arizona
Maricopa County
My Commission Expires
July 25, 2004

AGREED TO AND ACCEPTED, and the undersigned Lender to H & O Investments, LLC, an Arizona limited liability company, ratifies the foregoing instrument.

OHIO SAVINGS BANK,
a federal savings bank

By: Stephen Lorman
Its: Vice President

STATE OF OHIO)
) ss.
County of Cuyahoga)

On this, the 31 day of July, 2002 before me, the undersigned Notary Public, personally appeared Steve Lorman, who acknowledged that he/she is the _____ of Ohio Savings Bank, a federal savings bank, and that he/she, having authority so to do, executed the foregoing instrument for the purposes herein contained, by signing the name of the corporation. In witness whereof, I hereunto set my hand and official seal.

Notary Public State of Arizona
Maricopa County
Randy Lin Mollkoy
Expires March 18, 2006

Randy Lin Mollkoy
Notary Public

My commission expires:
March 18, 2006