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ELECTRONIC RECORDING

DECLARATION OF COVENANTS,
CONDITIONS AND RESTRICTIONS
FOR
FALCON ESTATES

DECLARATION OF COVENANTS, CONDITIONS, AND RESTRICTIONS

FOR

FALCON ESTATES

THIS DECLARATION OF COVENANTS, CONDITIONS, AND RESTRICTIONS ("**Declaration**") is made this 4- day of _____, 200; by Declarant (as defined below).

A. Declarant is the owner of the Property (as defined below). This Declaration imposes upon the Property mutually beneficial restrictions under a general plan of improvement for the benefit of the owners of each portion of the Property and establishes a flexible and reasonable procedure for the overall development, administration, maintenance and preservation of the Property. In furtherance of that plan, this Declaration provides for the formation of Falcon Estates Property Owners Association, Inc., an Arizona nonprofit corporation, to own, operate and/or maintain certain common areas and community improvements and to administer and enforce the provisions of this Declaration, the By-Laws, the Design Guidelines, and the Use Restrictions and Rules promulgated pursuant to this Declaration.

B. Declarant hereby declares that all of the Property shall be held, sold, used and conveyed subject to the following easements, restrictions, covenants, and conditions, which shall run with the title to the real property subjected to this Declaration. This Declaration shall be binding upon and shall inure to the benefit of all parties having any right, title, or interest in any portion of the Property, their heirs, successors, successors-in-title, and assigns.

ARTICLE I **DEFINITIONS**

The terms used in this Declaration and the exhibits to this Declaration shall generally be given their natural, commonly accepted definitions except as otherwise specified. Capitalized terms shall be defined as set forth below.

1.1 "Architectural Control Committee." The Architectural Control Committee established as provided in Section 9.2.

1.2 "Area of Common Responsibility." The Common Area, together with such other areas for which the Association is assigned or assumes responsibility pursuant to the terms of this Declaration or other applicable covenants, contracts, or agreements.

1.3 "Articles of Incorporation" or "Articles." The Articles of Incorporation of Falcon Estates Property Owners Association, Inc., as filed with the State of Arizona Corporation Commission, as they may be amended.

1.4 "Association." Falcon Estates Property Owners Association, Inc., an Arizona nonprofit corporation, its successors or assigns.

1.5 "Base Assessments." Assessments levied on all Units subject to assessment, to fund Common Expenses for the general benefit of all Units, as more particularly described in Article VIII,

1.6 "Board of Directors" or "Board." The body responsible for administration of the Association, selected as provided in the By-Laws and generally serving the same role as the board of directors under State of Arizona corporate law.

1.7 "Builder." Any Person that purchases one or more Units for the purpose of constructing improvements for later sale to consumers.

1.8 "By-Laws." The By-Laws of Falcon Estates Property Owners Association, Inc., as adopted by the Association, as they may be amended.

1.9 "Class 'A' Members." The members of the Association as described in Section 3.3.

1.10 "Common Area." All real and personal property, including easements, which the Association owns, leases or otherwise holds possessory or use rights in for the common use and enjoyment of the Owners.

1.11 "Common Expenses." The actual and estimated expenses incurred, or anticipated to be incurred, by the Association for the general benefit of all Owners, including any reasonable reserve, as the Board may find necessary and appropriate pursuant to this Declaration, the By-Laws, and the Articles of Incorporation, including, without limitation, the costs of performing the Association's responsibilities as provided in this Declaration. Common Expenses shall not include any expenses incurred with respect to the initial development, original construction, installation of infrastructure, original capital improvements or other original construction costs unless approved by a majority of the Class "A" Members.

1.12 "Community-Wide Standard." The standard of conduct, maintenance, or other activity generally prevailing throughout the Property. Such standard is expected to evolve over time as development progresses and may be more specifically determined by Declarant, the Board of Directors and the New Construction Committee.

1.13 "Declarant." First American Title Insurance Company, a California corporation, as the Trustee Under Trust No. 8540, or any successor, successor-in-title, or assign who takes title to any portion of the Property for the purpose of development and/or sale and who is designated as Declarant in a recorded instrument executed by the immediately preceding Declarant; provided, there shall be no more than one Declarant at any time.

1.14 "Design Guidelines." The design and construction guidelines and application and review procedures applicable to the Property promulgated and administered in accordance with Article IX.

1.15 "Member." A Person subject to membership in the Association as provided in Section 3.2.

1.16 "Mortgage." A mortgage, a deed of trust, a deed to secure debt, or any other form of security instrument affecting title to any Unit.

1.17 "Mortgagee." A beneficiary or holder of a Mortgage.

1.18 "Mortgagor." Any Person who gives a Mortgage.

1.19 "Owner." One or more Persons who hold the record title to any Unit, but excluding in all cases any party holding an interest merely as security for the performance of an obligation. If a Unit is sold under a recorded contract of sale, then upon recording of such contract, the purchaser (rather than the fee owner) will be considered the Owner, if the contract specifically so provides.

1.20 "Person." A natural person, a corporation, a partnership, a trustee, or any other legal entity.

1.21 "Property." The real property described on **Exhibit "A."**

1.22 "Public Records." The Official Records of Maricopa County, Arizona.

1.23 "Special Assessment." Assessments levied in accordance with Section 8.5.

1.24 "Unit." A portion of the Property, whether improved or unimproved, which may be independently owned and conveyed and which is intended for development, use, and occupancy as a detached residence for a single family. The term shall refer to the land which is part of the Unit as well as any improvements thereon. The term shall include, by way of illustration but not limitation, single-family detached houses on separately platted lots, as well as vacant land intended for development as such, but shall not include Common Area or property dedicated to the public.

1.25 "Use Restrictions and Rules." Those use restrictions and rules affecting the Property, which may be adopted, modified and repealed as set forth in Article X. The initial Use Restrictions and Rules are set forth on **Exhibit "B."**

ARTICLE H

PROPERTY RIGHTS

2.1 Common Area. Every Owner shall have a nonexclusive right and easement of use, access, and enjoyment in and to the Common Area, subject to:

- (a) this Declaration and any other applicable covenants;

(b) any restrictions or limitations contained in any deed conveying such property to the Association;

(c) the right of the Board and the membership to adopt, amend and repeal rules regulating the use and enjoyment of the Common Area pursuant to Article X, including rules limiting the number of guests who may use the Common Area;

(d) the right of the Board to suspend the right of an Owner to use recreational facilities, if any, within the Common Area (i) for any period during which any charge against such Owner's Unit remains delinquent, and (ii) for a period not to exceed 30 days for a single violation or for a longer period in the case of any continuing violation, of this Declaration, the By-Laws, or rules of the Association;

(e) the right of the Association, acting through the Board, to dedicate or transfer all or any part of the Common Area, subject to such approval requirements as may be set forth in this Declaration;

(f) the right of the Board to impose reasonable membership requirements and charge reasonable admission or other use fees for the use of any recreational facility situated upon the Common Area;

(g) the right of the Board to permit use of any recreational facilities situated on the Common Area by persons other than Owners, their families, lessees and guests upon payment of use fees established by the Board;

(h) the right of the Association, acting through the Board, to mortgage, pledge, or hypothecate any or all of its real or personal property as security for money borrowed or debts incurred, subject to the approval requirements set forth in this Declaration; and

(i) Any Owner may extend his or her right of use and enjoyment to the members of his or her family, lessees, and social invitees, as applicable, subject to reasonable regulation by the Board. An Owner who leases his or her Unit shall be deemed to have assigned all such rights to the lessee of such Unit.

2.2 **No Partition.** Except as permitted in this Declaration, there shall be no judicial partition of the Common Area. No Person shall seek any judicial partition unless the portion of the Common Area that is the subject of such partition action has been removed from the provisions of this Declaration. This Article shall not prohibit the Board from acquiring and disposing of tangible personal property nor from acquiring and disposing of real property which may or may not be subject to this Declaration.

2.3 **Condemnation.** If any part of the Common Area shall be taken (or conveyed in lieu of and under threat of condemnation by the Board acting on the written direction of at least 67% of the Class "A" Members and of Declarant, as long as Declarant has any right, title, or interest in any portion of the Property, by any authority having the power of condemnation or eminent domain, each Owner shall be entitled to written notice of such taking or conveyance prior to

disbursement of any condemnation award or proceeds from such conveyance. Such award or proceeds shall be payable to the Association to be disbursed as follows:

(a) If the taking or conveyance involves a portion of the Common Area on which improvements have been constructed, the Association shall restore or replace such improvements on any unimproved land remaining in the Common Area to the extent feasible, unless within 60 days after such taking, Declarant, as long as Declarant has any right, title, or interest in any portion of the Property and at least 75% of the Class "A" Members shall otherwise agree. Any such construction shall be in accordance with plans approved by the Board.

(b) If the taking or conveyance does not involve any improvements on the Common Area, or if a decision is made not to repair or restore, or if net funds remain after any such restoration or replacement is complete, then such award or net funds shall be disbursed to the Association and used for such purposes as the Board shall determine.

ARTICLE III

MEMBERSHIP AND VOTING RIGHTS

3.1 Function of Association. The Association shall be the entity responsible for management, maintenance, operation and control of the Common Area and other portions of the Area of Common Responsibility to the extent such responsibility is assigned to or assumed by the Association. The Association shall be the primary entity responsible for enforcement of this Declaration and such reasonable rules regulating use of the Property as the Board or the membership may adopt pursuant to Article X. The Association also shall be responsible for administering and enforcing the architectural standards and controls set forth in this Declaration and in the Design Guidelines. The Association shall perform its functions in accordance with this Declaration, the By-Laws, the Articles and the laws of the State of Arizona.

3.2 Membership. Every Owner shall be a Member of the Association. There shall be only one membership per Unit. If a Unit is owned by more than one Person, all co-Owners shall share the privileges of such membership, subject to reasonable Board regulation, and all such co-Owners shall be jointly and severally obligated to perform the responsibilities of Owners. The membership rights and privileges of an Owner which is not a natural person may be exercised by any officer, director, partner or trustee, or by any other individual designated from time to time by the Owner in a written instrument provided to the Secretary of the Association.

3.3 Voting. The Association shall have two classes of membership, Class "A" and Class

Class "A". Class "A" Members all shall be Owners except the Class "B" Member, if any. Class "A" Members shall have one equal vote for each Unit in which they hold the interest required for membership under Section 3.2; provided, there shall be only one vote per Unit and no vote shall be exercised for any property which is exempt from assessment under Section 8.9.

Class "B" - The sole Class "B" Member shall be Declarant. The rights of the Class "B" Member, including the right to approve, or withhold approval of, actions proposed under this Declaration, are specified in the relevant sections of this Declaration. The Class "B" Member may appoint a majority of the members of the Board of Directors as long as Declarant has any right, title, or interest in any portion of the Property.

The Class "B" membership shall terminate upon the earlier of:

- a. when Declarant no longer has any right, title, or interest in any portion of the Property; or
- b. when, in its discretion, Declarant so determines and declares in a recorded instrument.

Upon termination of the Class "B" membership, Declarant shall be a Class "A" Member entitled to Class "A" votes for each Unit which it owns.

In any situation where a Member is entitled personally to exercise the vote for his or her Unit and there is more than one Owner of such Unit, the vote for such Unit shall be exercised as the co-Owners determine among themselves and advise the Secretary of the Association in writing prior to the vote being taken. Absent such advice, the Unit's vote shall be suspended if more than one Person seeks to exercise it.

ARTICLE IV

RIGHTS AND OBLIGATIONS OF THE ASSOCIATION

4.1 Common Area. The Association, subject to the rights of the Owners set forth in this Declaration, shall manage and control the Common Area and all improvements thereon (including, without limitation, furnishings, equipment, and other personal property of the Association used in connection with the Common Areas), and shall keep it in good, clean, attractive, and sanitary condition, order, and repair, pursuant to this Declaration and consistent with the Community-Wide Standard. The Board is specifically authorized, but not obligated, to retain or employ professional management to assist in carrying out the Association's responsibilities under this Declaration, the cost of which shall be a Common Expense.

4.2 Personal Property and Real Property for Common Use; Conveyance of the Common Area. The Association, through action of its Board, may acquire, hold, and dispose of tangible and intangible personal property and real property. Declarant shall convey the Common Area to the Association upon the completion of the sale by Declarant of 75% of the Units.

4.3 Enforcement.

4.3.1 The Association may impose sanctions for violations of this Declaration, the By-Laws, or Association rules, including reasonable monetary fines and suspension of the right to vote and to use any recreational facilities within the Common Area. All remedies set forth in this Declaration shall be cumulative of any remedies available at law or in equity. In any action

to enforce the provisions of this Declaration or Association rules, the prevailing party shall be entitled to recover all costs, including, without limitation, attorneys fees and court costs, reasonably incurred in such action.

4.12 The Association shall not be obligated to take action to enforce any covenant, restriction or rule that the Board reasonably determines is, or is likely to be construed as, inconsistent with applicable law, or in any case in which the Board reasonably determines that the Association's position is not strong enough to justify taking enforcement action. Any such determination shall not be construed as a waiver of the right to enforce such provision under other circumstances or estop the Association from enforcing any other covenant, restriction or rule.

4.4 Implied Rights: Board Authority. The Association may exercise any right or privilege given to it expressly by this Declaration or the By-Laws, or reasonably implied from or reasonably necessary to effectuate any such right or privilege. Except as otherwise specifically provided in this Declaration, the By-Laws, the Articles, or by law, all rights and powers of the Association may be exercised by the Board without a vote of the membership.

4.5 Indemnification.

4.5.1 The Association shall indemnify every officer, director, and committee member, including the members of the committees established under Article IX, and any employees and managers or managing agent, against all damages and expenses, including attorneys' fees, reasonably incurred in connection with any action, suit, or other proceeding (including settlement of any suit or proceeding, if approved by the then Board of Directors) to which he or she may be a party by reason of being or having been an officer, director, or committee member, except that such obligation to indemnify shall be limited to those actions for which liability is limited under this Section or State of Arizona law.

4.5.2 The officers, directors, and committee members shall not be liable for any mistake of judgment, negligent or otherwise, except for their own individual willful misfeasance, malfeasance, misconduct, or bad faith. The officers and directors shall have no personal liability with respect to any contract or other commitment made or action taken in good faith on behalf of the Association (except to the extent that such officers or directors may also be Members of the Association). The Association shall indemnify and forever hold each such officer, director and committee member harmless from any and all liability to others on account of any such contract, commitment or action. This right to indemnification shall not be exclusive of any other rights to which any present or former officer, director, or committee member may be entitled. The Association shall, as a Common Expense, maintain adequate general liability and officers' and directors' liability insurance to fund this obligation, if such insurance is reasonably available.

ARTICLE V **MAINTENANCE**

5.1 Association's Responsibility. The Association shall maintain and keep in good repair the Area of Common Responsibility.

5.1.1 There are hereby reserved to the Association easements over the Property as necessary to enable the Association to fulfill such responsibilities. The Association shall maintain the facilities and equipment within the Area of Common Responsibility in continuous operation, except for any periods necessary, as determined in the sole discretion of the Board, to perform required maintenance or repairs, unless Members representing 67% of the Class "A" votes in the Association and the Class "B" Member, if any, agree in writing to discontinue such operation.

5.1.2 Except as otherwise specifically provided herein, all costs associated with maintenance, repair and replacement of the Area of Common Responsibility shall be a Common Expense to be allocated among all Units as part of the Base Assessment, without prejudice to the right of the Association to seek reimbursement from the owner(s) of, or other Persons responsible for, certain portions of the Area of Common Responsibility pursuant to this Declaration, other recorded covenants, or agreements with the owner(s) thereof.

5.2 Owner's Responsibility. Each Owner shall maintain his or her Unit, and all structures, parking areas, and other improvements comprising the Unit, in a manner consistent with the Community-Wide Standard and all applicable covenants. In addition to any other enforcement rights, if an Owner fails properly to perform his or her maintenance responsibility, the Association may perform such maintenance responsibilities and assess all costs incurred by the Association against the Unit and the Owner. The Association shall afford the Owner reasonable notice and an opportunity to cure the problem prior to entry, except when entry is required due to an emergency situation.

5.3 Standard of Performance. Unless otherwise specifically provided herein or in other instruments creating and assigning such maintenance responsibility, for maintenance shall include responsibility for repair and replacement, as necessary. All maintenance shall be performed in a manner consistent with the Community-Wide Standard and all applicable covenants. The Association, and/or an Owner shall not be liable for any damage or injury occurring on, or arising out of the condition of, property, which it does not own except to the extent that it has been negligent in the performance of its maintenance responsibilities.

5.4 Chandler City Code Provisions. In accordance with Chapter 40 of the City Code of Chandler, Arizona, as amended by Ordinance No. 3177 and Ordinance No. 3263, Declarant, the Owners and the Association acknowledge and agree as follows:

(a) The City of Chandler, Arizona (the "City") shall have the right to maintain the Area of Common Responsibility if the Association or its agents or representatives fail to do so timely in accordance with the provisions of this Declaration, and the City also shall have the right to levy assessments against each Unit for the amount of the costs or expenses incurred by the City in connection with performing such maintenance work in the manner provided for in Article VIII of this Declaration.

(b) The City shall have the right to enter the Property to perform any required maintenance of the Area of Common Responsibility if the Association fails to do so timely in accordance with the provisions of this Declaration.

(c) The Association shall not be dissolved unless the obligations of the Association to maintain the Area of Common Responsibility in accordance with the provisions of this Declaration have been assumed by another entity.

(d) The provisions in this Section 5.4 shall not be amended or modified without the prior written approval of the City.

ARTICLE 6

INSURANCE AND CASUALTY LOSSES

6.1 Association Insurance: Required Coverages. The Association, acting through its Board or its duly authorized agent, shall obtain and continue in effect the following types of insurance, if reasonably available, in such amounts as the Board deems appropriate in the exercise of its business judgment:

(a) Blanket property insurance covering all insurable improvements on the Common Area, if any, and on other portions of the Area of Common Responsibility to the extent that it has assumed responsibility for maintenance, repair and/or replacement in the event of a casualty. The Association shall have the authority to and interest in insuring any property for which it has maintenance or repair responsibility, regardless of ownership. All property insurance policies obtained by the Association shall have policy limits sufficient to cover the full replacement cost of the insured Improvements;

(b) Commercial general liability insurance on the Area of Common Responsibility, insuring the Association and its Members for damage or injury caused by the negligence of the Association or any of its Members, employees, agents, or contractors while acting on its behalf;

(c) Workers' compensation insurance and employers liability insurance, if and to the extent required by law;

(d) Directors and officers liability coverage;

(e) Fidelity insurance covering all Persons responsible for handling Association funds in an amount determined in the Board's best business judgment but not less than an amount equal to one-sixth of the annual Base Assessments on all Units plus reserves on hand. Fidelity insurance policies shall contain a waiver of all defenses based upon the exclusion of Persons serving without compensation; and

(f) Such additional insurance as the Board in the exercise of its business judgment determines advisable.

Premiums for all insurance on the Area of Common Responsibility shall be Common Expenses and shall be included in the Base Assessment.

6.2 Policy Requirements.

6.2.1 The Association shall arrange for an annual review of the sufficiency of insurance coverage by one or more qualified Persons, at least one of whom must be familiar with insurable replacement costs in the metropolitan Phoenix area.

6.2.2 All Association policies shall provide for a certificate of insurance to be furnished, upon request, to each Member insured and to the Association.

6.2.3 The policies may contain a reasonable deductible and the amount thereof shall not be subtracted from the face amount of the policy in determining whether the policy limits satisfy the requirements of this Section 6. In the event of an insured loss, the deductible shall be treated as a Common Expense in the same manner as the premiums for the applicable insurance coverage. However, if the Board reasonably determines that the loss is the result of the negligence or willful misconduct of one or more Owners, their guests, invitees, or lessees, then the Board may specifically assess the full amount of such deductible against such Owner(s) and their Units.

6.2.4 All insurance coverage obtained by the Board shall:

(a) be written with a company authorized to do business in the State of Arizona whose primary business is providing insurance coverage and which satisfies such minimum financial size and strength requirements as the Board deems appropriate in the exercise of its business judgment;

(b) be written in the name of the Association. Policies on the Common Areas shall be for the benefit of the Association and its Members;

(c) not be brought into contribution with insurance purchased by Owners, occupants, or their Mortgagees individually;

(d) contain an inflation guard endorsement; and

(e) include an agreed amount endorsement, if the policy contains a co-insurance clause.

In addition, the Board shall use reasonable efforts to secure insurance policies which provide:

(a) a waiver of subrogation as to any claims against the Association's Board, officers, employees, and its manager, the Owners and their tenants, servants, agents, and guests;

(b) waiver of the insurer's rights to repair and reconstruct instead of paying cash;

(c) an endorsement precluding cancellation, invalidation, suspension, or non-renewal by the insurer on account of any one or more individual Owners, or on account of any curable defect or violation without prior written demand to the Association to cure the defect or violation and allowance of a reasonable time to cure;

(d) an endorsement excluding Owners' individual policies from consideration under any "other insurance" clause;

(e) an endorsement requiring at least 30 days' prior written notice to the Association of any cancellation, substantial modification, or non-renewal;

(f) a cross liability provision; and

(g) a provision vesting in the Board exclusive authority to adjust losses; provided, however, no Mortgagee having an interest in such losses may be prohibited from participating in the settlement negotiations, if any, related to the loss.

6.3 Damage and Destruction. Immediately after damage or destruction to all or any part of the Property covered by insurance written in the name of the Association, the Board or its duly authorized agent shall file and adjust all insurance claims and obtain reliable and detailed estimates of the cost of repair or reconstruction. Repair or reconstruction, as used in this paragraph, means repairing or restoring the property to substantially the condition in which it existed prior to the damage, allowing for changes or improvements necessitated by changes in applicable building codes_

6.3.1 Any damage to or destruction of the Common Area shall be repaired or reconstructed unless at least 75% of the Class "A" Members and the Class "B" Member, if any, decide within 60 days after the loss not to repair or reconstruct.

6.3.2 If either the insurance proceeds or reliable and detailed estimates of the cost of repair or reconstruction, or both, are not available to the Association within such 60-day period, then the period shall be extended until such funds or information are available. However, such extension shall not exceed 60 additional days. No Mortgagee shall have the right to participate in the determination of whether the damage or destruction to the Common Area shall be repaired or reconstructed.

6.3.3 If determined in the manner described above that the damage or destruction to the Common Area shall not be repaired or reconstructed and no alternative improvements are authorized, the affected property shall be cleared of all debris and ruins and thereafter shall be maintained by the Association in a neat and attractive, landscaped condition consistent with the Community-Wide Standard.

6.3.4 Any insurance proceeds remaining after paying the costs of repair or reconstruction, or after such settlement as is necessary and appropriate, shall be retained by and for the benefit of the Association and placed in a capital improvements account. This is a

covenant for the benefit of Mortgagees and may be enforced by the Mortgagee of any affected Unit.

6.3.5 If insurance proceeds are insufficient to cover the costs of repair or reconstruction, the Board of Directors may levy Special Assessments to cover the shortfall against those Owners responsible for the premiums for the applicable insurance coverage under Section 6.

6.4 Owners' Insurance.

6.4.1 By virtue of taking title to a Unit, each Owner covenants and agrees with all other Owners and with the Association to carry property insurance for the full replacement cost of all insurable improvements on his or her Unit, less a reasonable deductible.

6.4.2 Each Owner further covenants and agrees that in the event of damage to or destruction of structures on or comprising his or her Unit, the Owner shall proceed promptly to repair or to reconstruct in a manner consistent with the original construction or such other plans and specifications as are approved in accordance with Article IX. Alternatively, the Owner shall clear the Unit of all debris and ruins and maintain the Unit in a neat and attractive, landscaped condition consistent with the Community-Wide Standard. The Owner shall pay any costs which are not covered by insurance proceeds.

ARTICLE VII ADDITIONAL COVENANTS AND AMENDMENT

7.1 Additional Covenants and Easements. Declarant may unilaterally subject any portion of the Property to additional covenants and easements, including covenants obligating the Association to maintain and insure such property on behalf of the Owners and obligating such Owners to pay the costs incurred by the Association through Assessments. Such additional covenants and easements shall be set forth in a supplemental declaration recorded in the Public Records, and shall require the written consent of the owner(s) of such property, if other than Declarant. Any such supplemental declaration may supplement, create exceptions to, or otherwise modify the terms of this Declaration as it applies to the subject property in order to reflect the different character and intended use of such property.

7.2 Amendment. This Article shall not be amended without the prior written consent of Declarant so long as Declarant owns any of the Property.

ARTICLE VIII ASSESSMENTS

8.1 Creation of Assessments. There are hereby created and the Association is hereby authorized to levy assessments against each Unit for Association expenses as the Board may specifically authorize from time to time. There shall be two types of assessments: (a) Base Assessments to fund Common Expenses for the general benefit of all Units; and (b) Special

Assessments. Each Owner, by accepting a deed or entering into a recorded contract of sale for any portion of the Property, is deemed to covenant and agree to pay these assessments.

8.1.1 All assessments, together with interest (computed from the due date of such assessment at a rate of 10% per annum or such higher rate as the Board may establish, subject to the limitations of State of Arizona law), reasonable late charges in such amount as the Board may establish by resolution, costs, and reasonable attorneys' fees, shall be a charge and continuing lien upon each Unit against which the assessment is levied until paid, as more particularly provided in this Declaration. Each such assessment, together with interest, late charges, costs, and reasonable attorneys' fees, also shall be the personal obligation of the Person who was the Owner of such Unit at the time the assessment arose. Upon a transfer of title to a Unit, the grantee shall be jointly and severally liable with the grantor for any assessments and other charges due at the time of conveyance. However, no first Mortgagee who obtains title to a Unit by exercising the remedies provided in its Mortgage shall be liable for unpaid assessments which accrued prior to such acquisition of title.

8.1.2 The Association shall, upon request, furnish to any Owner liable for any type of assessment an estoppel certificate in writing signed by an Association officer setting forth whether such assessment has been paid. Such certificate shall be conclusive evidence of payment. The Association may require the advance payment of a reasonable processing fee for the issuance of such certificate.

8.1.3 Assessments shall be paid in such manner and on such dates as the Board may establish. The Board may require advance payment of assessments at the closing of the transfer of title to a Unit and impose special requirements for Owners with a history of delinquent payment. If the Board so elects, assessments may be paid in two or more installments. Unless the Board otherwise provides, the Base Assessment shall be due and payable in advance on the first day of each fiscal year. If any Owner is delinquent in paying any assessments or other charges levied on *his* or her Unit, the Board may require any unpaid installments of all outstanding assessments to be paid in full immediately.

8.1.4 No Owner may exempt himself from liability for assessments by non-use of Common Area, abandonment of his or her Unit, or any other means. The obligation to pay assessments is a separate and independent covenant on the part of each Owner. No diminution or abatement of assessments or set-off shall be claimed or allowed for any alleged failure of the Association or Board to take some action or perform some function required of it, or for inconvenience or discomfort arising from the making of repairs or improvements, or from any other action it takes.

8.2 Declarant's Obligation for Assessments. During the time Declarant is a Class Member, Declarant may annually elect either to pay regular assessments on its unsold Units or to pay the difference between the amount of assessments levied on all other Units subject to assessment and the amount of actual expenditures by the Association during the fiscal year. Declarant may make such election at any time prior to the end of the fiscal year for such fiscal year; provided, if Declarant fails to notify the Board in writing of its election prior to the end of any fiscal year, Declarant shall be deemed to have elected to continue paying on the same basis

as elected for the immediately preceding fiscal year. Regardless of such election, the Association shall have a lien against all Units owned by Declarant to secure Declarant's obligations under this Section, which lien shall have the same attributes and shall be enforceable in the same manner as the Association's lien against each Unit under Section 8.6. Declarant's obligations hereunder may be satisfied in the form of cash or by "in kind" contributions of services or materials, or by a combination of these.

8.3 Computation of Base Assessments. At least 90 days before the beginning of each fiscal year, the Board shall prepare a budget covering the estimated Common Expenses for the coming year, including a capital contribution to establish a reserve fund in accordance with a budget separately prepared as provided in this Declaration.

8.3.1 Base Assessments shall be levied equally against all Units and shall be set at a level which is reasonably expected to produce total income for the Association equal to the total budgeted Common Expenses, including reserves. In determining the total funds to be generated through the levy of Base Assessments, the Board, in its discretion, may consider other sources of funds available to the Association, including any surplus from prior years and any assessment income expected to be generated from any additional Units reasonably anticipated to become subject to assessment during the fiscal year, as well as any income expected pursuant to covenants imposed on land that is not included in the Property but that benefits from the Association's maintenance or other activities.

8.3.2 The Board shall send a copy of the budget and notice of the amount of the Base Assessment for the following year to each Owner at least 60 days prior to the proposed effective date of such budget. The budget and assessment shall become effective unless disapproved at a meeting by at least 75% of the Class "A" Members and by the Class "B" Member, if such exists.

8.3.3 The Board may revise the budget and any assessment from time to time during the year, subject to the notice requirements and the right of the Members to disapprove the revised budget as set forth above.

8.3.4 If any proposed budget is disapproved or the Board fails for any reason to determine the budget for any year, then until such time as a budget is determined, the budget most recently in effect shall continue in effect until a new budget becomes effective hereunder.

8.4 Reserve Budget and Capital Contribution. The Board shall prepare annually reserve budgets for both general purposes which take into account the number and nature of those assets within the Area of Common Responsibility which have an expected life of more than one year, the expected life of each asset, and the expected repair or replacement cost. The Board shall set the required capital contribution in an amount sufficient to permit meeting the projected needs of the Association, as shown on the budget, with respect both to amount and timing by annual Base Assessments over the budget period.

8.5 Special Assessments. In addition to other authorized assessments, the Association may levy Special Assessments from time to time to cover unbudgeted, extraordinary or other

expenses which the Board determines to be more appropriately handled outside of the annual operating budget. Any such Special Assessment shall be levied against all Units. Special Assessments shall be payable in such manner and at such times as determined by the Board, and may be payable in installments extending beyond the fiscal year in which the Special Assessment is approved. Any Special Assessment adopted by the Board shall become effective 30 days after notice of such Special Assessment is sent to the Owners unless disapproved at a meeting by at least 75% of the Class "A" Members and by the Class "B" Member, if such exists.

8.6 Lien for Assessments. All assessments authorized in this Article shall constitute a lien in favor of the Association against the Unit upon which they are levied until paid. The lien shall also secure payment of interest, late charges, and costs of collection (including attorneys fees). Such lien shall be superior to all other liens, except (a) the liens of all taxes, bonds, assessments, and other levies which by law would be superior, and (b) the lien or charge of any first Mortgage of record (meaning any recorded Mortgage with first priority over other Mortgages) made in good faith and for value. Such lien, when delinquent, may be enforced by suit, judgment, and foreclosure in the same manner as Mortgages on real property are foreclosed under the laws of the State of Arizona, which shall include the right of nonjudicial foreclosure if permitted under the laws of the State of Arizona.

8.6.1 The Association may bid for the Unit at the foreclosure sale and acquire, hold, lease, mortgage, and convey the Unit. While a Unit is owned by the Association following foreclosure: (a) no right to vote shall be exercised on its behalf; (b) no assessment shall be levied on it; and (c) each other Unit shall be charged, in addition to its usual assessment, its pro rata share of the assessment that would have been charged such Unit had it not been acquired by the Association or Maintenance Corporation. The Association may sue for unpaid Common Expenses and costs without foreclosing or waiving the lien securing the same.

8.6.2 The sale or transfer of any Unit shall not affect the assessment lien or relieve such Unit from the lien for any subsequent assessments. However, the sale or transfer of any Unit pursuant to foreclosure of the first Mortgage shall extinguish the lien as to any installments of such assessments due prior to such sale or transfer. A Mortgagee or other purchaser of a Unit who obtains title pursuant to foreclosure of the Mortgage shall not be personally liable for assessments on such Unit due prior to such acquisition of title. Such unpaid assessments shall be deemed to be Common Expenses collectible from Owners of all Units subject to assessment under the provisions of this Declaration, including such acquirer, its successors and assigns.

The lien rights created in this Declaration shall be for the benefit of the Association.

8.7 Date of Commencement of Assessments. The obligation to pay assessments shall commence as to each Unit on the first day of the month following: (a) the month in which the Unit is made subject to this Declaration, or (b) the month in which the Board first determines a budget and levies assessments pursuant to this Article, whichever is later. The first annual Base Assessment levied on each Unit shall be adjusted according to the number of months remaining in the fiscal year at the time assessments commence on the Unit.

8.8 Failure to Assess. Failure of the Board to fix assessment amounts or rates or to deliver or mail each Owner an assessment notice shall not be deemed a waiver, modification, or a release of any Owner from the obligation to pay assessments. In such event, each Owner shall continue to pay Base Assessments on the same basis as during the last year for which an assessment was made, if any, until a new assessment is levied, at which time the Association may retroactively assess any shortfalls in collections.

8.9 Exempt Property. The following property shall be exempt from payment of Base Assessments and Special Assessments:

(a) all Common Area and such portions of the property owned by Declarant as are included in the Area of Common Responsibility pursuant to Section 5.1; and

(b) any property dedicated to and accepted by any governmental authority or public utility.

ARTICLE IX

ARCHITECTURAL STANDARDS

9.1 General.

9.1.1 No structure shall be placed, erected, or installed upon any Unit, and no improvements (including staking, clearing, excavation, grading and other site work, exterior alteration of existing improvements, and planting or removal of landscaping materials) (any such activities being referred to in this Article as "Work") shall take place except in compliance with this Article, and approval of the Architectural Control Committee.

9.1.2 Any Owner may remodel, paint or redecorate the interior of structures on his or her Unit without approval. However, modifications to the interior of screened porches, patios, and similar portions of a Unit visible from outside the structures on the Unit shall be subject to approval. No approval shall be required to repaint the exterior of a structure in accordance with the originally approved color scheme or to rebuild in accordance with originally approved plans and specifications.

9.1.3 All dwellings constructed on any portion of /the Property shall be designed by and built in accordance with the plans and specifications of a licensed architect unless otherwise approved by the Architectural Control Committee in its sole discretion.

9.1.4 This Article shall not apply to the activities of Declarant nor to improvements to the Common Area made by or on behalf of the Association during the time.

9.1.5 This Article may not be amended without Declarant's written consent as long as Declarant has any right, title, or interest in any portion of the Property.

9.2 Architectural Control Committee. Responsibility for administration of the Design Guidelines and review of all applications for construction and modifications under this Article

shall be handled by the Architectural Control Committee. The members of the Architectural Control Committee need not be Members or representatives of Members, and may, but need not, include architects, landscape architects, engineers or similar professionals, whose compensation, if any, shall be established from time to time by the Board. The Board may establish and charge reasonable fees for review of applications hereunder and may require such fees to be paid in full prior to review of any application. Such fees may include the reasonable costs incurred by the committees in having any application reviewed by architects, engineers or other professionals. The Architectural Control Committee shall consist of at least three, but not more than five, persons and shall have exclusive jurisdiction over all original construction on and modifications to any portion of the Property. Until 100% of the Property has been developed and conveyed to Owners other than Builders, Declarant retains the right to appoint all members of the Architectural Control Committee who shall serve at Declarant's discretion. There shall be no surrender of this right prior to that time except in a written instrument in recordable form executed by Declarant. Upon the expiration of such right, the Board may, at its option, either appoint the members of the Architectural Control Committee, who shall thereafter serve and may be removed in the Board's discretion.

9.3 Guidelines and Procedures.

9.3.1 Design Guidelines.

(a) The initial Design Guidelines are attached as **Exhibit "C"** to this Declaration. The Design Guidelines contain general provisions applicable to all of the Property, as well as specific provisions which vary according to land use and from one portion of the Property to another depending upon the location, unique characteristics, and intended use. The Design Guidelines are intended to provide guidance to Owners and Builders regarding matters of particular concern to the committees in considering applications hereunder. The Design Guidelines are not the exclusive basis for decisions of the committees and compliance with the Design Guidelines does not guarantee approval of any application.

(b) The Architectural Control Committee shall adopt such Design Guidelines at its initial organizational meeting and thereafter shall have sole and full authority to amend them. Any amendments to the Design Guidelines shall be prospective only and shall not apply to require modifications to or removal of structures previously approved once the approved construction or modification has commenced. There shall be no limitation on the scope of amendments to the Design Guidelines; the Architectural Control Committee is expressly authorized to amend the Design Guidelines to remove requirements previously imposed or otherwise to make the Design Guidelines less restrictive.

(c) The Architectural Control Committee shall make copies of the Design Guidelines available to Owners and Builders who seek to engage in development or construction within the Property and may charge a reasonable fee to cover its printing costs. In Declarant's discretion, such Design Guidelines may be recorded in the Public Records, in which event the recorded version, as it may unilaterally be amended from time to time, shall control in the event of any dispute as to which version of the Design Guidelines was in effect at any particular time.

9.3.2 Procedures.

(a) Prior to commencing any Work within the scope of Section 9.1, an application for approval of such Work shall be submitted to the Architectural Control Committee, in such form as may be required by the Architectural Control Committee or the Design Guidelines. The application shall include plans and specifications ("Plans") showing the site layout and placement of all proposed structures and improvements, the structural design, exterior elevations, and exterior materials and colors for all structures and improvements, landscaping, drainage, exterior lighting, and other features of the proposed construction, as required by the Design Guidelines and as applicable. In reviewing each submission, the committees 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, among other things. The Architectural Control Committee may require the submission of such additional information as it deems necessary to consider any application.

(b) The Architectural Control Committee may consider (but shall not be restricted to consideration of) visual and environmental impact, ecological compatibility, natural platforms and finish grade elevation, harmony of external design with surrounding structures and environment, location in relation to surrounding structures and plant life, compliance with the Design Guidelines, and architectural merit. Decisions may be based on purely aesthetic considerations. Each Owner acknowledges that determinations as to such matters are purely subjective and opinions may vary as to the desirability and/or attractiveness of particular improvements.

(c) The Architectural Control Committee, within 30 days after receipt of each submission of the Plans, shall advise the party submitting the same, in writing, at an address specified by such party at the time of submission, of (i) the approval of Plans, or (ii) the disapproval of such Plans, specifying the segments or features of the Plans which are objectionable. The Architectural Control Committee may make suggestions for curing such objections. In the event the Architectural Control Committee fails to advise the submitting party by written notice within the time set forth above of either the approval or disapproval of the Plans, the applicant may give the Architectural Control Committee written notice of such failure to respond and stating that unless the Architectural Control Committee responds within 10 days of receipt of such notice, approval shall be deemed granted and, upon such further failure, approval shall be deemed to have been given. However, no approval, whether expressly granted or deemed granted pursuant to the foregoing, shall be inconsistent with the Design Guidelines unless a variance has been granted in writing pursuant to Section 9.5. Notice shall be deemed to have been given at the time the envelope containing such notice, properly addressed, and postage prepaid, is deposited with the U.S. Postal Service, registered or certified mail, return receipt requested. Personal delivery of such written notice shall, however, be sufficient and shall be deemed to have been given at the time of delivery.

(d) Notwithstanding the above, the Architectural Control Committee by resolution may exempt certain activities from the application and approval requirements of this Article, provided such activities are undertaken in strict compliance with the requirements of such resolution.

(e) If construction does not commence on any Work for which approval has been granted within 12 months of such approval, such approval shall be deemed withdrawn, and it shall be necessary for the Owner to re-submit the Plans for reconsideration prior to commencing such Work. All Work shall be completed within one year of commencement or such other period as may be specified in the notice of approval, unless completion is delayed due to causes beyond the reasonable control of the Owner, as determined in the sole discretion of the Architectural Control Committee.

9.4 No Waiver of Future Approvals. Each Owner acknowledges that the persons reviewing applications under this Article will change from time to time and that opinions on aesthetic matters, as well as interpretation and application of the Design Guidelines, may vary accordingly. In addition, each Owner acknowledges that it may not always be possible to identify objectionable features of proposed Work until the Work is completed, but the Architectural Control Committee may refuse to approve similar proposals in the future. Approval of proposals, plans and specifications, or drawings for any Work done or proposed, or in connection with any matter requiring approval, shall not be deemed a waiver of the right to withhold approval as to any similar proposals, plans and specifications, drawings or other matters whatever subsequently or additionally submitted for approval.

9.5 Variance. The Architectural Control Committee may, but shall not be required to, authorize variances from compliance with any of the provisions of the Design Guidelines when circumstances such as topography, natural obstructions, hardship, or aesthetic or environmental considerations require, but only in accordance with duly adopted rules and regulations. Such variances may only be granted, however, when unique circumstances exist and no Owner shall have any right to demand or obtain a variance, regardless of the circumstances. No variance shall (a) be effective unless in writing; (b) be contrary to this Declaration; or (c) estop the Architectural Control Committee from denying a variance in other circumstances.

9.6 Limitation of Liability. The standards and procedures established by this Article are intended to provide a mechanism for maintaining and enhancing the overall aesthetics of the Property but shall not create any duty to any Person. NEITHER DECLARANT NOR THE ARCHITECTURAL CONTROL COMMITTEE SHALL BEAR ANY RESPONSIBILITY FOR ENSURING THE STRUCTURAL INTEGRITY OR SOUNDNESS OF APPROVED CONSTRUCTION OR MODIFICATIONS, NOR FOR ENSURING COMPLIANCE WITH BUILDING CODES AND OTHER GOVERNMENTAL REQUIREMENTS. NOR FOR ENSURING THAT ALL STRUCTURES AND IMPROVEMENTS CONSTRUCTED WITHIN THE PROPERTY ARE OF COMPARABLE QUALITY, VALUE, OR SIZE, OR OF SIMILAR DESIGN. NEITHER THE ASSOCIATION, THE BOARD, THE ARCHITECTURAL CONTROL COMMITTEE, NOR ANY MEMBER OF ANY OF THE FOREGOING SHALL BE HELD LIABLE FOR SOIL CONDITIONS, DRAINAGE PROBLEMS OR OTHER GENERAL SITE WORK, NOR FOR DEFECTS IN ANY PLANS OR SPECIFICATIONS SUBMITTED, REVISED OR APPROVED HEREUNDER, NOR FOR ANY STRUCTURAL OR OTHER DEFECTS IN WORK DONE ACCORDING TO APPROVED PLANS, NOR FOR ANY INJURY, DAMAGES, OR LOSS ARISING OUT OF THE MANNER, DESIGN OR QUALITY OF APPROVED CONSTRUCTION OR MODIFICATIONS TO ANY UNIT.

9.7 Enforcement.

9.7.1 Any Work performed in violation of this Article or in a manner inconsistent with the approved Plans shall be deemed to be nonconforming. Upon written request from the Board or Declarant, Owners shall, at their own cost and expense, correct any nonconforming condition or remove any nonconforming structure or improvement and restore the property to substantially the same condition as existed prior to the nonconforming work. Should an Owner fail to remove and restore as required, the Board, Declarant or their designees shall have the right to enter the property, remove the violation, and restore the property to substantially the same condition as previously existed and any such action shall not be deemed a trespass. Upon demand, the Owner shall reimburse all costs incurred by any of the foregoing in exercising its rights under this Section. The Association may assess any costs incurred in taking enforcement action under this Section, together with interest at the maximum rate then allowed by law, against the benefited Unit as a specific Assessment, which shall be in addition to the Base Assessment and Special Assessment with respect to the benefited Unit.

9.7.2 Unless otherwise specified in writing by the committee granting approval, all approvals granted hereunder shall be deemed conditioned upon completion of all elements of the approved work and all work previously approved with respect to the same Unit, unless approval to modify any application has been obtained.

9.7.3 Declarant and the Association, acting separately or jointly, may preclude any contractor, subcontractor, agent, employee, or other invitee of an Owner who fails to comply with the terms and provisions of this Article and the Design Guidelines from continuing or performing any further activities in the Property. In such event, neither Declarant, the Association, nor their officers, directors or agents shall be held liable to any Person for exercising the rights granted by this paragraph.

9.7.4 In addition to the foregoing, the Association shall have the authority and standing to pursue all legal and equitable remedies available to enforce the provisions of this Article and the decisions of the Architectural Control Committee.

ARTICLE X

USE RESTRICTIONS AND RULES

10.1 Plan of Development: Applicability: Effect. Declarant has established a general plan of development for the Property in order to enhance all Owners' quality of life and collective interests, the aesthetics and environment within the Property, and the vitality of and sense of community within the Property, all subject to the Board's and the Members' ability to respond to changes in circumstances, technology, conditions, needs, and desires within the master planned community and to regulate and control the Area of Common Responsibility. The Property is subject to the Design Guidelines, the land development, architectural, and design provisions described in Article IX, the other provisions of this Declaration governing individual conduct and uses of and actions upon the Property, and the Use Restrictions and Rules promulgated pursuant to this Declaration, all of which establish affirmative and negative

covenants, easements, and restrictions on the Property. All provisions of this Declaration and any Association rules shall apply to all Owners, occupants, tenants, guests and invitees of any Unit. Any lease on any Unit shall provide or shall be deemed to provide that the lessee and all occupants of the leased Unit shall be bound by the terms of this Declaration, the By-Laws, and the rules of the Association.

10.2 Authority to Promulgate Use Restrictions and Rules. The initial Use Restrictions and Rules applicable to all of the Property are attached as **Exhibit "B"** to this Declaration. Subject to the terms of this Article, such initial Use Restrictions and Rules may be modified in whole or in part, repealed or expanded as follows:

(a) Subject to its duty to exercise business judgment and reasonableness on behalf of the Association and its Members, the Board may adopt rules which modify, cancel, limit, create exceptions to, or expand the initial Use Restrictions and Rules set forth on Exhibit "B." The Board shall send notice by mail to all Owners concerning any such proposed action at least five business days prior to the Board meeting at which such action is to be considered.

(b) Such action shall become effective, after compliance with subsection (c) below, unless disapproved at a meeting by more than 50% of the Class "A" Members and by the Class "B" Member, if such exists.

(c) At least 30 days prior to the effective date of any action taken under subsections (a) or (b) of this Section, the Board shall send a copy of the rule to each Owner specifying the effective date. The Association shall provide, without cost, a copy of the Use Restrictions and Rules then in effect to any requesting Member or Mortgagee.

Nothing in this Article shall authorize the Board to modify, repeal or expand the Design Guidelines, which may be modified only as provided in Article IX. All matters of architectural control and aesthetics shall be governed by the Design Guidelines.

10.3 Owners' Acknowledgment and Notice to Purchasers. All Owners and occupants of Units are given notice that use of their Units is limited by the Use Restrictions and Rules as they may be amended, expanded and otherwise modified hereunder. Each Owner, by acceptance of a deed, acknowledges and agrees that the use and enjoyment and marketability of his or her Unit can be affected by this provision and that the Use Restrictions and Rules may change from time to time. ALL PURCHASERS OF UNITS ARE HEREBY PLACED ON NOTICE THAT THE ASSOCIATION MAY HAVE ADOPTED CHANGES TO THE INITIAL USE RESTRICTIONS AND RULES ON **EXHIBIT "B."** Copies of the current Use Restrictions and Rules may be obtained from the Association.

10.4 Rights of Owners. In recognition of the flexibility that this procedure for adopting and changing Use Restrictions and Rules provides to address changes in circumstances, conditions, needs and desires within the Property over time, it is appropriate for the protection of each Owner to establish certain parameters within which the Board and the Members may make modifications and additions to the Use Restrictions. Therefore, except as may be specifically set

forth in this Declaration (either initially or by amendment) or in **Exhibit "B,"** neither the Board nor the Members may adopt any rule in violation of the following provisions:

10.5 **Equal Treatment.** Similarly situated Owners and occupants shall be treated similarly.

10.6 **Political Signs.** No rules shall regulate the content of political signs; however, rules may regulate the time, place and manner of posting such signs (including design criteria).

10.7 **Religious and Holiday Displays.** No rules shall restrict the rights of Owners to display religious and holiday signs, symbols, and decorations inside structures on their Units of the kinds normally displayed in residences located in single-family residential neighborhoods, except that the Association may adopt time, place, and manner restrictions.

10.8 **Household Composition.** No rule shall interfere with the freedom of occupants of Units to determine the composition of their households, except that the Association shall have the power to require that all occupants be members of a single housekeeping unit and to limit the total number of occupants permitted in each Unit on the basis of the size and facilities of the Unit and its fair use of the Common Area.

10.9 **Activities Within Dwellings.** No rule shall interfere with the activities carried on within the confines of dwellings, except that the Association may prohibit activities not normally associated with property restricted to residential use, and it may restrict or prohibit any activities that create monetary costs for the Association or other Owners, that create a danger to the health or safety of occupants of other Units, that generate excessive noise or traffic, that create unsightly conditions visible outside the dwelling, or that create an unreasonable source of annoyance.

10.10 **Allocation of Burdens and Benefits.** No rule shall alter the allocation of financial burdens among the various Units or rights to use the Common Area to the detriment of any Owner over that Owner's objection expressed in writing to the Association. Nothing in this provision shall prevent the Association from changing the Common Areas available, from adopting generally applicable rules for use of Common Area, or from denying use privileges to those who abuse the Common Area, violate rules or this Declaration, or fail to pay assessments. This provision does not affect the right to increase the amount of assessments as provided in Article VIII.

10.11 **Alienation.** No rule shall prohibit leasing or transfer of any Unit, or require consent of the Association or Board for leasing or transfer of any Unit; provided, the Association or the Board may require a minimum lease term of up to 12 months. The Association may require that Owners use lease forms approved by the Association, but shall not impose any fee on the lease or transfer of any Unit greater than an amount reasonably based on the costs to the Association of administering that lease or transfer.

10.12 **Rights to Develop.** No rule or action by the Association or Board shall impede Declarants right to develop the Property.

10.13 Abridging Existing Rights. If any rule would otherwise require Owners or occupants of Units to dispose of personal property which they maintained in or on the Unit prior to the effective date of such rule, or to vacate a Unit in which they resided prior to the effective date of such rule, and such property was maintained or such occupancy was in compliance with this Declaration and all rules previously in force, such rule shall not apply to any such Owners without their written consent unless the rule was in effect at the time such Owners or occupants acquired their interest in the Unit. The limitations in this Section 10.13 shall apply to new rules only; they shall not invalidate any of the Use Restrictions and Rules initially set forth on **Exhibit "B"** nor shall they apply to amendments to this Declaration adopted in accordance with Section 13.2.

ARTICLE XI **EASEMENTS**

11.1 Easements of Encroachment. There shall be reciprocal appurtenant easements of encroachment, and for maintenance and use of any permitted encroachment, between each Unit and any adjacent Common Area and between adjacent Units due to the unintentional placement or settling or shifting of the improvements constructed, reconstructed, or altered on the Unit or the Common Area (in accordance with the terms of these restrictions) to a distance of not more than three feet, as measured from any point on the common boundary along a line perpendicular to such boundary. However, in no event shall an easement for encroachment exist if such encroachment occurred due to willful and knowing conduct on the part of or with the knowledge and consent of, the Person claiming the benefit of such easement.

11.2 Right of Entry. The Association shall have the right, but not the obligation, to enter upon any Unit for emergency, security, and safety reasons, to perform maintenance pursuant to Article V hereof, and to inspect for the purpose of ensuring compliance with this Declaration, the By-Laws, Design Guidelines and Use Restrictions and Rules. Such right may be exercised by any member of the Board, the Association's officers, agents, employees, and managers, the members of the New Construction Committee and the Modifications Committee pursuant to Article IX, and all policemen, firemen, ambulance personnel, and similar emergency personnel in the performance of their duties. Except in an emergency situation, entry shall only be during reasonable hours and after notice to the Owner. This right of entry shall include the right of the Association to enter upon any Unit to perform maintenance and to cure any condition which may increase the possibility of a fire or other hazard in the event an Owner fails or refuses to perform such maintenance or cure the condition within a reasonable time after requested by the Board, but shall not authorize entry into any dwelling without permission of the Owner, except by emergency personnel acting in their official capacities.

ARTICLE XII **DECLARANT'S RIGHTS**

12.1 Transfer of Declarant Rights. Any or all of the special rights and obligations of Declarant set forth in this Declaration may be transferred in whole or in part to other Persons, provided that the transfer shall not reduce an obligation nor enlarge a right beyond that which

Declarant has under this Declaration. No such transfer or assignment shall be effective unless it is in a written instrument signed by Declarant and duly recorded in the Public Records. The foregoing sentence shall not preclude Declarant from permitting other Persons to exercise, on a one time or limited basis, any right reserved to Declarant in this Declaration where Declarant does not intend to transfer such right in its entirety, and in such case it shall not be necessary to record any written assignment unless necessary to evidence Declarant's consent to such exercise.

12.2 Use of Common Area. Declarant and its designees may maintain and carry on upon portions of the Common Area such facilities and activities as, in the sole opinion of Declarant, may be required, convenient, or incidental to the construction or sale of Units, including, but not limited to, business offices, signs, model units, sales offices and storage facilities. Declarant and its designees shall have easements for access to and use of such facilities.

12.3 Easements in Favor of Declarant. Declarant and its employees, agents and designees shall also have a right and easement over and upon all of the Common Area for the purpose of making, constructing and installing such improvements to the Common Area as it deems appropriate in its sole discretion.

12.4 Amendment. This Article may not be amended without the written consent of Declarant so long as Declarant has any rights hereunder.

ARTICLE XIII GENERAL PROVISIONS

13.1 Duration.

13.1.1 Unless terminated as provided in this Declaration, this Declaration shall have perpetual duration. If State of Arizona law hereafter limits the period during which covenants may run with the land, then to the extent consistent with such law, this Declaration shall automatically be extended at the expiration of such period for successive periods of 20 years each, unless terminated as provided herein. Notwithstanding the above, if any of the covenants, conditions, restrictions, or other provisions of this Declaration shall be unlawful, void, or voidable for violation of the rule against perpetuities, then such provisions shall continue only until 21 years after the death of the last survivor of the now living descendants of Elizabeth II, Queen of England.

13.1.2 Unless otherwise required by State of Arizona law, in which case such law shall control, this Declaration may not be terminated within the first 30 years after the date of recording except by an instrument signed by Owners of at least 75% of the total Units within the Property and by Declarant, if Declarant has any right, title, or interest in any portion of the Property, which instrument is recorded in the Public Records. After the thirtieth anniversary of the date of recording, termination may be accomplished by an instrument signed by Owners of at least 51% of the total Units within the Property and signed by Declarant, if Declarant has any right, title, or interest in any portion of the Property. Any such instrument shall set forth the intent to terminate this Declaration and shall be recorded in the Public Records. Nothing in this

Section shall be construed to permit termination of any easement created in this Declaration without the consent of the holder of such easement.

13.2 Amendment.

13.2.1 By Declarant. In addition to specific amendment rights granted elsewhere in this Declaration, until conveyance of the first Unit to a Person other than a Builder, Declarant may unilaterally amend this Declaration for any purpose. Thereafter, Declarant may unilaterally amend this Declaration if such amendment is necessary (i) to bring any provision into compliance with any applicable governmental statute, rule, regulation, or judicial determination; (ii) to enable any reputable title insurance company to issue title insurance coverage on the Units; (iii) to enable any institutional or governmental lender, purchaser, insurer or guarantor of mortgage loans, including, for example, the Federal National Mortgage Association or Federal Home Loan Mortgage Corporation, to make, purchase, insure or guarantee mortgage loans on the Units; or (iv) to satisfy the requirements of any local, state or federal governmental agency. However, any such amendment shall not adversely affect the title to any Unit unless the Owner shall consent in writing.

13.2.2 By Members. Except as otherwise specifically provided above and elsewhere in this Declaration, this Declaration may be amended only by the affirmative vote of 75% of the Class "A" Members, and the consent of Declarant as long as Declarant has any right, title, or interest in any portion of the Property.

13.2.3 Validity and Effective Date. No amendment may directly or indirectly remove, revoke, or modify any right or privilege of, nor impose any obligation upon, Declarant or the Class "B" Member without the written consent of Declarant or the Class "B" Member, respectively (or the assignee of such right or privilege). If an Owner consents to any amendment to this Declaration or the By-Laws, it will be conclusively presumed that such Owner has the authority to consent, and no contrary provision in any Mortgage or contract between the Owner and a third party will affect the validity of such amendment. Any amendment shall become effective upon recording in the Public Records, unless a later effective date is specified in the amendment. Any procedural challenge to an amendment must be made within six months of its recordation or such amendment shall be presumed to have been validly adopted. In no event shall a change of conditions or circumstances operate to amend any provisions of this Declaration.

13.3 Severability. Invalidation of any provision of this Declaration, in whole or in part, or any application of a provision of this Declaration by judgment or court order shall in no way affect other provisions or applications.

13.4 Litigation. Except as provided below, after termination of the Class "B" membership, no judicial or administrative proceeding shall be commenced or prosecuted by the Association unless approved by a vote of 75% of the Class "A" Members. This Section shall not apply, however, to (a) actions brought by the Association to enforce the provisions of this Declaration (including without limitation, the foreclosure of liens); (b) the imposition and collection of assessments as provided in Article Viii; (c) proceedings involving challenges to ad

valorem taxation; or (d) counterclaims brought by the Association in proceedings instituted against it. This Section shall not be amended unless such amendment is approved by the percentage of votes, and pursuant to the same procedures, necessary to institute proceedings as provided above. This Section shall apply in addition to the provisions of Article XIV, if applicable. Each Owner shall indemnify and hold harmless the Association from any loss, damages, and expenses, including counsel fees, which it may incur as a result of the failure of such Owner, any occupant of such Owner's Unit, or any contractor, employee, or agent of such Owner acting within the scope of his or her contract, agency or employment, to comply with this Declaration, or other covenants applicable to such Owner's Unit, the Design Guidelines, By-Laws and rules of the Association, or the rules promulgated thereunder.

13.5 Notice of Sale or Transfer of Title. Any Owner desiring to sell or otherwise transfer title to his or her Unit shall give the Board at least seven days' prior written notice of the name and address of the purchaser or transferee, the date of such transfer of title, and such other information as the Board may reasonably require. The transferor shall continue to be jointly and severally responsible with the transferee for all obligations of the Owner of the Unit, including assessment obligations, until the date upon which such notice is received by the Board, notwithstanding the transfer of title.

13.6 Notice. Except as may otherwise be provided in this Declaration, all notices, demands, bills, statements, or other communications hereunder shall be in writing and shall be deemed to have been duly given if delivered personally or if sent by United States Mail, first class postage prepaid:

(a) if to a Member, at the address which the Member has designated in writing and filed with the Secretary or, if no such address has been designated, at the address of the Unit of such Member; or

(b) if to the Association, the Board, or the managing agent, at the principal office of the Association or the managing agent or at such other address as shall be designated by notice in writing to the Members pursuant to this Section; or

(c) if to Declarant, at the address of Declarant's principal place of business in the State of Arizona or at such other address as shall be designated by notice in writing to the Members pursuant to this Section.

(d) if to Declarant, at the address of Declarant's principal place of business in the State of Arizona or at such other address as shall be designated by notice in writing to the Members pursuant to this Section.

All notices sent in compliance with the above shall be deemed received on the third day after the date postmarked. Nothing in this Section shall invalidate notice given by personal delivery (which shall include overnight delivery service or courier service) or by any other means, if actually received by the addressee.

13.7 Captions. Titles or captions of Sections contained in this Declaration are inserted only as a matter of convenience and for reference and in no way define, limit, extend or describe the scope of this Declaration or the intent of any provision hereof.


13.8 Applicable Law. This Declaration shall be construed and interpreted under the laws of the State of Arizona.

13.9 Exhibits. Exhibits "A," "B" and "C" attached to this Declaration are incorporated by this reference and amendment of such exhibits shall be governed by the provisions of Section 13.2. All other exhibits are attached for informational purposes and may be amended as provided therein or in the provisions of this Declaration that refer to such exhibits.

IN WITNESS WHEREOF, the undersigned Declarant has executed this Declaration the date and year first written above.

DECLARANT:

First American Title Insurance Company,
a California corporation, as Trustee of
Trust No. 8540

By 
Its TRUST OFFICER

STATE OF ARIZONA

) ss.

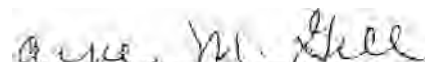
County of _____ at-)

On this 14th day of April, 2003, before me, the undersigned Notary Public, personally appeared Elaine N. Gill, the (9--144-0A) of First American Title Insurance Company, an California corporation, as Trustee of Trust No. 8540, personally known to me or by satisfactory evidence proven to be the person whose name is subscribed to the foregoing instrument and acknowledged that he/she executed the same on behalf of the corporation for the purposes therein contained.

IN WITNESS WHEREOF, I have hereunto set my hand and official seal.

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ELAINE N. GILL
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Notary Public

My Commission Expires:

EXHIBIT "A"

Lots 1 through 30 and Tracts 1, 2, 3, 4, 5, 6, 7, FALCON ESTATES, according to the plat of record in the office of the Maricopa County Recorder recoded in Book, 3a of Maps page 35

EXHIBIT B

INITIAL USE RESTRICTIONS AND RULES

1. **Residential Use.** The Units shall be single-family residential Units only. There may be erected on any one Unit not more than one single-family residence in accordance with applicable zoning and such accessory and auxiliary garages, guest houses, guest suites and accessory buildings as are incidental to single-family residential use and permitted as provided for in the Design Guidelines. No other buildings shall be erected on any of the Units.
2. **Subdividing.** No Unit shall be re-subdivided into smaller Units nor conveyed or encumbered in less than the full original dimensions of such Unit as shown by the recorded Plat. Nothing herein contained shall prevent the dedication or conveyance of portions of a Unit for public utilities purposes in which event the remaining portion of such Units, for the purpose of this provision, shall be treated as a whole Unit.
3. **Parking.** Automobiles of the private passenger class and pickup trucks not exceeding three-quarter ton may be parked on the side of any Unit; provided that such area shall comply with the same setback requirements as the residential dwellings and area subject to required approval by the Architectural Control Committee. Campers, trailers, motor homes and boats may be parked on the back of any Unit; provided that any such parking shall be attractively screened or concealed from neighboring Units, roads or streets, and then only with the prior approval of the Architectural Committee. All other trucks, vehicles and equipment shall not be kept on any Unit or street for a period of time longer than twenty-four (24) consecutive hours except in a private garage or a designated guest parking space approved pursuant to the Design Guidelines. No motor vehicle, which is under repair or not in operating condition, shall be placed ~~or~~ permitted to remain on any street or streets, or any portion of any Unit or Units unless it is within an enclosed garage or structure.
4. **General Upkeep.** All clotheslines, yard equipment, garbage cans and service yards shall be kept screened by adequate planting or fencing so as to conceal them from the view of neighboring parcels and streets. All rubbish, trash or garbage shall be removed from the premises of all Units and shall not be allowed to accumulate thereon. No antenna or broadcasting tower shall be erected on any of the Units, except that a television antenna may be constructed and maintained within the attic of any approved building and a satellite dish may be installed if (i) it is screened so as to not be visible from the street or any neighboring property, and (ii) such installation has been specifically approved by the Architectural Control Committee.
5. **Sewage.** All bathrooms, toilets or sanitary conveniences shall be connected to sewer lines. There shall not be allowed any outside portable lavatories, outside toilets or open plumbing.

6. Tanks. No elevated tanks of any kind shall be erected, placed or peintitted on any of the Units. No tank shall be installed without the prior approval of the Architectural Control Committee.
7. Animals. No animals, birds, fowl, poultry or livestock, other than a reasonable number of generally recognized house pets shall be maintained on any Unit. All determinations as to what constitutes a reasonable number of and what are generally recognized house pets shall be made by the Architectural Control Committee. No animals shall be allowed to make an unreasonable amount of noise or become a nuisance. Any structure for the care, housing or confinement of any animal shall be constructed or maintained only with the prior written approval of the Committee. Pets shall be leashed when not confined within a fenced area or residence. Persons walking any pets within the Property shall remove promptly from the Property the excrement of the pet. At no time shall swine, peacocks or geese be allowed.
8. Construction Permitted. All structures erected must be of new construction and no buildings or structures may be moved from any other location, other than a point of distribution or manufacture onto any of the Units.
9. Minimum Livable Area. All single-family residences constructed shall contain a minimum livable area of 3000 square feet on grade level with or without a basement. Two story homes shall not be allowed. All square footage requirements shall be exclusive of open porches, pergolas or attached garages.
10. Permanent Structure. No garage, trailer, mobile home, motor home, motor vehicle, or any temporary structure of any nature may be used temporarily or permanently as a residence of any Unit. Except as may be otherwise permitted by the Architectural Control Committee, all permanent structures on all Units shall comply with (i) all minimum yard setback requirements established by the zoning ordinances of the City of Chandler, as they may be amended from time to time.
11. Light Post/Mail Box. Each and every Unit must have at least one light post and mail box (if allowed by the Postal Service) located within the front yard of such Unit. The location, design and construction of the light post and mail box shall be approved by the Architectural Control Committee.
12. Commercial Activities. No hotels, store, multi-family dwelling, boarding house, guest ranch, children's day care, nursing type facilities or any other place of business of any kind, and no hospital, sanitarium or other place for the care or treatment of the physically or mentally sick or for the treatment of disabled animals shall be erected or permitted upon the premises of any Unit or any part thereof, and no business of any kind or character whatsoever shall be conducted in or from any residence or home office building on any of the Units; provided, however a home office is permitted if the use of the same does not present a nuisance or annoyance such as excessive traffic and noise.

13. Signs. No advertising signs, billboards or unsightly objects shall be erected, placed or permitted to remain on any of the Units, provided however, that a sign or signs as may be required by legal proceeds and a single "For Sale" or "For Rent" sign, not containing more than four square feet of surface area, may be placed on any Unit.
14. Trash Containers and Collection. No garbage or trash shall be placed or kept on any Unit, except in covered containers. In no event shall such containers be maintained so as to be visible from neighboring property except to make the same available for collection and then only for the shortest time reasonably necessary to effect such collection.
15. Diseases and Insects. No Owner shall permit any thing or condition to exist upon any Unit which may induce, breed or harbor infectious plant diseases or noxious insects.
16. Air-Conditioning Equipment. No heating, air conditioning or refrigeration equipment shall be placed, allowed or maintained anywhere other than on the ground unless screened or concealed (subject to required approvals by the Architectural Control Committee) in such manner that the screening or concealment thereof appears to be part of the integrated architectural design of the building and does not have the appearance of a separate piece or pieces of machinery fixtures or equipment.
17. Satellite Dishes. Satellite dishes for the reception of television signals shall be subject to the approval of the Architectural Control Committee.
18. Utility and Service Lines. No gas, electric, power, telephone, water, sewer, cable television or other utility or service lines of any nature or kind shall be placed, allowed or maintained upon or above the ground on any Unit, except to the extent, if any underground placement thereof may be prohibited by law or would prevent the subject line from being functional. The foregoing shall not prohibit service pedestals and above ground switch cabinets and transformers where required.
19. Burning and Incinerators. No open fires or burning shall be permitted on any Unit at any time and no incinerators or like equipment shall be placed, allowed or maintained on any Unit. The foregoing shall not be deemed to preclude the use, in customary fashion, of outdoor residential barbecues or grills.

EXHIBIT C

INITIAL DESIGN GUIDELINES

I. INITIAL SITE GUIDELINES

1. Plants. All plants shall conform to the approved plant palette that will be provided to each Owner.
2. Transitional Area. A lush landscape design for front, side, and rear yards will be encouraged. When completed, the landscape shall provide a landscape experience that both unifies the streetscape and acts as a foreground for each Unit. The following items shall be incorporated into the landscape and completed within 120 days of occupancy of the Unit by the Owner:
 - Three (3) 36" box trees in the front yard
 - Landscaping shall blend from one Unit to the next: Fences, planting, dividers, or hedges which delineate the property line are prohibited;
 - Provide an automatic landscape irrigation system;
 - Turf and/or ground covered areas in front yards to be a minimum 60 percent of the front yard (exclusive of paved areas such as sidewalks and driveways);
 - The use of landscape walls, granite boulders (buried a minimum 1/3) and mounding or berming where practical is encouraged. Site drainage shall be maintained;
 - Planting dividers, if incorporated, shall be of a durable material (i.e., cast concrete or brick set on a concrete footing);
 - Approved shrub and ground cover plantings providing a minimum 80 percent ground coverage.
3. Private Area. The private area(s) of any Unit shall be the least restrictive in terms of what plants, shrubs and trees can be planted therein.
4. Site Drainage and Grading. The grading of any Unit shall be completed so that no change in the existing drainage surface water occurs upon the Unit or any adjoining Unit nor the work results in a condition that could lead to soil erosion on any Unit. Existing drainage routes must convey storm water as designed. Culvert piping shall be below all obstructions such as driveways and walks of the properly engineered size, elevation, and slope to maintain flow and avoid ponding. Any other below grade storm drainage, including bubbler or catch basins shall be professionally designed and comply with the applicable governmental standards for drainage.
5. Paved Areas. The type and color of surfacing materials, including that for walks, driveways, and off street parking shall be approved by the Architectural Control Committee from the list below:

- Integral color concrete with tooled joints forming a pattern;
 - Integral color press-formed concrete;
 - Flagstone;
 - Brick, coloration to be red (not yellow, brown, green, etc.)
6. **Parking Spaces.** In addition to the required parking spaces within an enclosed garage, parking spaces, designed so that they do not look like parking spaces, are required to accommodate guest parking. Screening from the street (i.e., by a low fence, landscaped berm, or planting hedge) may be required by the Architectural Control Committee. Any such parking shall not be visible from any neighboring Unit from a location behind the front setback line. No personal property other than automobiles may be seen in any such permitted parking space. The spaces must be maintained in a neat and clean appearance. Exceptions to the on-site parking may be entertained if a hardship situation is demonstrated.
7. **Miscellaneous Equipment.** The following items, which require approval by the Committee prior to installation, shall be entirely shielded from view from the street or neighboring property.
- Antenna or satellite dishes of any sort;
 - Water tanks, or similar storage facilities, shall either be shielded from view or installed underground.
 - Recreational equipment, including basketball backboards, shall be reviewed on a case-by-case basis.
8. **Signage.** Entry pylons at each driveway shall be required of each Owner in conformance with the approved design to provide lighted identification of the address. The lights shall be switched automatically on and off by means of a photocell to operate from dawn to dusk. The Architectural Control Committees shall provide several approved entry pylon designs.
9. **Sport Courts.** Sport Courts, where approved by the Architectural Control Committee, shall be sited for minimal visual impact from the street and from neighboring properties. The construction of sport courts below grade is encouraged. Fencing for courts above the Unit's perimeter fencing is not allowed.
10. **Lighting.** All lighting shall create a unified, natural effect that shall not interfere or compete with the dramatic nighttime skies. The Architectural Control Committee must approve any additional individual lighting.
11. **Sport Court Lighting.** Sport Court lighting will be allowed, but must be approved by the Architectural Control Committee so that the light does not interfere with adjoining neighbors' property. Horizontal cut-off type fixtures may be mounted on poles at a height no greater than 10'-0" above grade and must be screened from public or adjacent property view.

IL INITIAL ARCHITECTURAL DESIGN GUIDELINES

The following architectural standards have evolved in response to climatic, environmental, visual and aesthetic considerations in the Property.

Design Character. These Design Guidelines are not intended to dictate architectural style for the design of a structure within the Property although all designs must be of a character to the environment, climatic conditions, and community flavor. The Architectural Control Committee encourages creative architecture but warns against architectural styles that are not consistent to the established flavor.

These Design Guidelines are intended to allow design flexibility for individual Owners yet ensure that the result of this design flexibility does not adversely impact the visual appearance of the Property.

While some designs may be "good" examples of architecture in themselves, if in the opinion of the Committee the design is not appropriate to the Community-Wide Standard and the overall visual context, it still may not be approved.

Although architectural "style" is not dictated, there are numerous principles of good architectural design that should be considered and included in the design of a structure in the Property. In order to facilitate in the explanation of these principles, the following guidelines are provided:

- The use of textural materials such as stone and masonry helps to reduce the visual impact and scale of a structure. As noted in this section, multiple exterior finish materials are required for structures. The use of textural materials can dramatically improve the quality of a design when appropriately used. Stone and masonry elements should be used as strong "masses" and not thin planes, veneers or floating elements.
- The use of broad overhangs can create dramatic voids, deep recesses and strong canopies, as well as provide protection from the weather and the sun.
- The use of proportions that emphasize the horizontal instead of the vertical are required. Horizontal proportions will help keep the structure from appearing too tall or vertical.
- The use of broad overhangs, recessed voids, sheltered windows and well-articulated massing will create strong shadow lines with deep recesses. These shadows and recesses improve visual appearances of a house significantly, particularly when viewed from a distance.

Pitched roofs will predominate with flat roofs incidental for proper roof drainage. Structures that consist of only bold mass or block forms are discouraged. The design

of a structure should integrate carefully mass forms with the overhangs, roof forms, site walls and landscape into a well-composed whole.

The intent of this section is to create structures that have greater visual texture and depth, strong shade and shadow lines and natural appearance.

Special attention should be given to the following areas in the design of a structure.

- Visibility from the community
- Street orientation
- Solar orientation
- Location of neighbors or potential neighbors

2. Building Size. All residential structures must contain at least three thousand square feet of enclosed air-conditioned living area. In no case shall a residential structure consist of less than 3,000 square feet in air conditioned, living area. The maximum area of residence including all areas under roof will be reviewed on a site-by-site basis. Verification of maximum building coverage should be determined as required by the City of Chandler prior to the commencement of design.

3. Building Height and Massing (Single Story Only). The maximum building height of a structure shall be twenty-four (24) feet. This height shall be measured from the lowest finished floor elevation to the highest ridge at a pitch roof. Maximum height of any parapet wall shall be eighteen (18) feet. Chimneys may exceed the maximum building height by two (2) feet. All structures may be single story only. No lofts, split or two story above grade structures will be allowed.

Proper massing of the structure will be considered a required element of the overall architecture. Distinctive massing on all elevations will create four-sided architecture.

4. Roofs. Pitched roofs shall have a maximum slope of five (5) to twelve (12), and a minimum slope of four (4) to twelve (12), unless otherwise approved by the Architectural Control Committee.

Flat roof finish materials must match the same color of the base building color. Parapets must return and end in an intersection with a building mass. Flat roofs should be surrounded by parapets a minimum of 12" above the adjacent roof surface, which includes drainage crickets, but in no case higher than 36" above the adjacent roof surface. Flat roofs must have parapets.

Roof-mounted mechanical equipment and antennas are prohibited.

The following pitched roof materials will be acceptable:

- Two-piece mission clay tile

- Two-piece Mexican sand cast tile (Pinto)
- Flat concrete tile
- Slate

Pitched roof tile may be chinked for a more authentic texture. Pitch roof fascias and overhangs shall be stucco or wood finish. Wood corbels are encouraged for authentic structure. Flat roof scuppers shall be of wood, clay or concrete. No stucco scuppers will be allowed.

5. Colors. Colors leaning toward the yellow, orange or blue hues are discouraged. Subdued accent colors may be used, subject to approval by the Architectural Control Committee. Colors for exterior artwork, sculpture or any other special features also should be muted tones chosen to blend rather than contrast with the structure and its surroundings.

6. Reflective Finishes. No highly reflective finishes, except glass, which may not be mirrored or opaque, and door hardware, shall be used on any exterior surfaces, including exterior artwork and sculpture.

7. Materials — Exterior Surfaces. Exterior surfaces generally must be of materials that harmonize with the overall architecture. Stucco, stone, brick and wood should be predominant exterior surfaces.

Exterior finish materials including stucco on all building walls, site walls and screen walls must be continued down to below the finish grade, thereby eliminating unfinished foundation walls.

Exterior finishes (i.e., stucco, stone, brick, etc.), shall extend below finish grade. No exposed foundation walls will be allowed. Stucco shall be limited to smooth and sand finish.

8. Building Projections. All projections from a structure including, but not limited to, chimney caps, vents, gutters, scuppers, downspouts, utility boxes, porches, fencing, railings and exterior stairways shall match the color of the surface from which they project or be an appropriate accent color, unless otherwise approved by the Architectural Control Committee.

9. Skylights. Skylights can add natural light to interior spaces of a home but they can also cause problematic light discharge and reflection from roofs. Therefore, a maximum of four (4) skylights and/or a maximum of twenty (20) square feet of total area skylights, whichever is more restrictive, may be permitted on any structure. Skylights must be surrounded by parapets, and the parapets must be at least 12" above the highest point of any skylight. Skylights must be either tinted bronze or gray. White or clear skylights will not be allowed. Skylights must be low-profile type and should be located as to minimize their visibility from other Lots, particularly those located at a higher elevation, and they should not cause any

objectionable glare or reflections. Skylights are not allowed on pitched roofs facing street frontage.

A note must be placed on the roof plan or other applicable plan in the final construction drawings indicating that parapets must be a minimum of 12" above the highest point of any skylight.

10. Windows. Windows should be located and sized so as to limit heat gain to the interior of the structure and not cause any objectionable glare at any time, day or night. The use of overhangs, deep window opening recesses and other shading devices are encouraged. In any case, the plane of the glass must be recessed a minimum of 3" from the exterior wall face. Typically, the larger the plane of glass, the greater the recess should be from the exterior wall face. "Pop outs" around windows will not be allowed unless, in the opinion of the Architectural Control Committee, the window surround is treated as a mass element.

Glass block has the same constraints as listed above for windows. Glass block shall be limited to no more than 32 surface square feet per location and no more than 72 surface square feet total per residential structure, unless otherwise approved by the Architectural Control Committee. Glass block is not allowed in decorative patterns or shapes. Colored glass block is not allowed.

The use or addition of fabric-type awnings, exterior sunshades, or other shading devices that do not appear integrated into the design of a structure is strongly discouraged and only can be allowed if, in the opinion of the Architectural Control Committee, the element is integrally designed into the character of the structure and any other Improvements and it does not have a negative impact on the overall visual harmony of the Property. Sun control and shading demands should be analyzed with the initial concepts and designed as an integral part of the structure through the use of correct solar orientation, broad roof overhangs, shading masses and deeply recessed windows. In general, the attachment of shading devices to the structure is not considered an integrated solution. If allowed by the Architectural Control Committee, these shading devices must meet the requirements of Section 5 – Colors.

11. Patios and Courtyards. Patios and courtyards should be designed as an integral part of the structure so they can be shaded and protected from the sun by roofs and building masses. Outdoor firepits and outdoor fireplaces must be gas burning only due to concerns about fire danger. Wood-burning outdoor firepits or outdoor fireplaces will not be allowed.
12. Solar Applications. Passive solar applications or the orientation and design of a structure for maximum winter sun gain will reduce the winter heating needs, and will be encouraged.
13. Screen Wall/Site Walls. Screen walls should be a visual extension of the architectural design of a structure. They may be used to separate the private areas

from the rest of the building envelope of a Lot and as screening for parking and service areas. They may not be used to delineate property lines or to arbitrarily delineate the building envelope of a Lot. The colors of walls must conform to the color standards as described in these Design Guidelines.

14. Service Yard. All above-ground garbage and trash containers, clotheslines, mechanical equipment, pool equipment, and other outdoor maintenance and service facilities must be completely screened by walls and gates, at least one (1) foot higher than the equipment, from adjacent Lots, street or Common Areas.
15. Guest Houses, Guest Suites and Accessory Buildings. All ancillary structures must be designed as a single visual element with the residential structure and should be visually related to it by walls, courtyards, or major landscape elements. A free-standing guest house may not exceed 1,000 square feet, unless otherwise approved by the Architectural Control Committee and it must comply with applicable City of Chandler regulations. A free-standing guest house or accessory building- can be constructed on any Lot, with approval from the Architectural Control Committee, provided all improvements fall within the building envelope and meet the requirements of these Design Guidelines. A guest suite may be incorporated into any residential structure. No guest house or guest suite may be leased or rented, separate and apart from the lease or rental of the main residential structure.
16. Storage Tanks. All fuel tanks, water tanks or similar storage facilities shall be shielded from view from adjacent Lots, streets or Common Areas by walls or structures, or shall be located underground with all visible projections screened from view from adjacent Lots, streets or Common Areas.
17. Signage. Signage can become a visual nuisance if not limited, therefore all security, pool, construction, financing, for sale and other similar signs utilized for advertising or otherwise or prohibited within the Property, except as follows:
 - Address Identification devices, which shall be limited to one sign per Lot, not to exceed four (4) square feet of total surface area for the purpose of address identification.
 - Temporary Construction Signs which shall be limited to one sign per Lot, not to exceed four (4) square feet of total surface area for the purpose of contractor and Lot identification.
 - Standardized "For Sale" Signs for all Lots that have not been built upon. These signs shall be limited to no greater than six (6) square feet above grade.
 - Standardized "For Sale" Signs for speculative homes that are for sale for the first time when granted specific approval by the Architectural Control Committee. These signs shall be limited to no greater than six (6) square feet in size and no higher than six (6) feet above grade.
 - Any signs allowed by the Declaration.

18. Flagpoles. Due to visual concerns from the overall community as well as the desire to blend with the natural desert, free-standing flagpoles are not allowed on any Lot. The display of the American flag is permitted and encouraged if it is hung from a pole-bracket mounted on the residential structure or if it is suspended from a roof overhang.
19. Radon Gas Protection. Although there has been no indication that significant amounts of radon gas are present in the soil of the Property, the Architectural Control Committee recommends that each individual Lot be tested by a competent professional for the presence of radon gas. If a determination is made that a radon gas protection system is needed, the design professional should be made aware of this and include it in the design of the structure.
20. Columns. In keeping with the intent of visual strength in the architectural design, column proportions are critical. Thin columns tend to visually appear weak. Columns must have a minimum dimension of 12" in diameter or width in both directions, and have a minimum slenderness ratio of 1 to 8 (i.e., an 8'0" tall column must be 12" wide and a 12'0" tall column must be 18" wide). The Architectural Control Committee may grant exceptions to this guideline if determined by the Architectural Control Committee to be appropriate to the specific design. The patterns and spacing of columns must also relate to the design character of the residential structure. Arbitrary and random column spacing will not be approved.
21. Garages. Every effort should be made to minimize the impact of the garage and garage door(s) and therefore it is required that garage doors do not face the street. Careful siting and driveway orientation can ensure that a garage is recessed from view from the street. In an effort to minimize garage impact, garage doors shall be offset a minimum of four (4) feet. Two (2) double garage doors may be placed adjacent to each other if they are offset by a minimum of four (4) feet horizontally and they do not face the street. In any case, no more than four (4) garage stalls will be allowed on any residential structure including guest houses and accessory buildings, unless otherwise approved by the Architectural Control Committee. The appearance of the garage door must blend with the home design. Ornate garage doors are strongly discouraged. Garage doors shall be recessed a minimum of 12" from face of framing.
22. Unique Exterior Features. Unique exterior features including, but not limited to, entry arches, decorative gates, glass patterns, railings, enclosures shade structures, armadas, fountains, gazebos, cabanas, exterior fireplaces, exterior artwork and sculpture, and the like must be designed as an integral part of the residential structure. Requests for approval of unique exterior features should include detailed design information including sketches, cut sheets, photographs, etc., as a part of the preliminary design submittal and the final design submittal for approval by the Architectural Control Committee.

Specific restrictions include:

- Fountains or water displays shall be limited in height to no higher than five (5) feet above the grade at which they are located, and must be screened so they are not visible from neighboring property.
- Exterior artwork and sculptures shall be limited in height to no higher than five (5) feet above adjacent finished grade or floor including any standards or pedestals. Exterior artwork must conform to the color standards of these guidelines.

The following are styles that will and will not be allowed:

Appropriate styles:

- Mediterranean (includes old world architecture)
- Santa Barbara
- California Mission
- Country Ranch
- Spanish Colonial

Not appropriate styles:

- Territorial
- Santa Fe
- Adobe
- Spanish Territorial
- Victorian

The design character of a residential structure should be considered from all sides (including roofs), not just the front or rear elevations, and all elevations should maintain the same visual integrity, cohesiveness and design detail. All designs should be textural with the use of multiple exterior materials, natural elements and complementing colors to avoid monotone or "vanilla" homes.

The design and construction of all residential structures and other Improvements must incorporate the use of at least two (2) different complementing materials on the exterior wall surfaces (in addition to roof and driveway materials), unless otherwise given specific approval by the Architectural Control Committee. The secondary or accent exterior wall material must cover at least twenty percent (20%) of the exterior building surface. These complementing materials must be carefully articulated into an integrated whole and should not result in a home that appears like two (2) different structures forced together. The use of natural materials such as stone and brick are strongly encouraged. Thin veneers of mass materials such as stone and brick should be avoided, but instead these materials should be placed in natural mass forms that are true to the natural formations or authentic use of these materials.

Monochromatic color schemes will not be allowed, unless otherwise given specific approval by the Architectural Control Committee. The suggestion for at least two different complementing exterior wall materials will create naturally complementing color variations. In addition, the color of fascias, roof materials, window frames, railing, etc., should be carefully selected to create a well-composed palette of color and textures that appear as in integrated visual composition.