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DECLARATION OF COVENANTS, CONDITIONS AND RESTRICTIONS

COBBLESTONE AT THE GROVES

MARICOPA COUNTY, ARIZONA

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**DECLARATION OF COVENANTS, CONDITIONS AND RESTRICTIONS
COBBLESTONE AT THE GROVES
MARICOPA COUNTY, ARIZONA**

THIS DECLARATION is made and entered into on the date set forth at the end hereof by **CITY VIEW PROPERTIES, L.L.C.**, an Arizona limited liability company (the "**Declarant**"). Declarant is the owner of certain real property situated in Maricopa County, Arizona legally described as follows:

Lots 1 through 18, inclusive, and Tracts A through E, inclusive, **COBBLESTONE AT THE GROVES**, according to the Plat thereof recorded in Book 803, Page 33 of the Official Records of Maricopa County, Arizona Recorder (the "**Project**", as defined in Article 1 below).

Declarant hereby declares that the Project and all Lots and Common Area therein shall be held, conveyed, mortgaged, encumbered, leased, rented, used, occupied, sold and improved subject to the following declarations, limitations, easements, covenants, conditions and restrictions, all of which are and shall be interpreted to be for the purpose of enhancing and protecting the value and attractiveness of the Project and all Lots therein. All of the limitations, covenants, conditions and restrictions shall constitute covenants which shall run with the land and shall be binding upon Declarant, its successors and assigns and all parties having or acquiring any right, title or interest in or to any part of the Project.

ARTICLE 1

DEFINITIONS

"**Access Fee**" shall have the meaning set forth in Section 9.11.

"**Ann Lynn Estates Agreement**" shall have the meaning set forth in Section 9.10.

"**Areas of Association Responsibility**" shall mean the "Easement Property" subject to the Armistead Easement described in Section 9.9 below, the Easement Property side of the "temporary screen fence" on the west side of the Easement Property, and the "access gates" to the Easement Property.

"**Armistead**" shall have the meaning set forth in Section 9.9.

"**Armistead Easement**" shall have the meaning set forth in Section 9.9.

"**Assessment**" shall mean the Annual, Special and/or Lot Specific Assessments levied and assessed against each Lot and which is to be paid by each Lot Owner as determined by the Association and as provided herein. "**Annual Assessments**", "**Special Assessments**", "**Lot Specific Assessments**" and "**Assessment Lien**" are defined in Section 4.1.

"**Association**" shall mean the **COBBLESTONE AT THE GROVES COMMUNITY ASSOCIATION**, an Arizona nonprofit corporation. The Association shall be established by the

filing of its Articles of Incorporation (the "**Articles**") and governed by its Bylaws (the "**Bylaws**").

"Association Rules" shall mean the restrictions, limitations, rules and regulations adopted by the Association pursuant to Section 3.6 of this Declaration, as the same may be amended from time to time.

"Board" or **"Board of Directors"** shall mean the governing body of the Association.

"Boundary Fence" shall have the meaning set forth in Section 6.3.

"Burdened Lots" shall have the meaning set forth in Section 9.9.

"Committee" shall mean the Architectural Control Committee for the Project established pursuant to Article 7 of this Declaration.

"Common Area" shall mean Tracts A through E, inclusive, as shown on the Plat including all structures, facilities, improvements and landscaping thereon and all rights, easements and appurtenances relating thereto. Title to the Common Area shall be conveyed to the Association by Declarant free and clear of all monetary liens and encumbrances for the benefit of all of the Lot Owners upon the completion of all of the improvements designed therefor and approved by the City of Mesa. Every Owner shall have a right and easement of ingress and egress and enjoyment in, over and to the Common Area which shall be appurtenant to and shall pass with the title to every Lot subject to the right of the Association to suspend Common Area use rights (except for Tract D, the Roadways) as provided in the Bylaws and the right of the Association to grant easements over Common Area to any public agency, authority or utility company as provided in the Articles. Any Owner may delegate, in accordance with the Project Documents, his right of enjoyment to the Common Area and facilities thereon to members of his family, tenants and contract purchasers who reside on his Lot.

"Construction Guidelines" shall mean the guidelines, restrictions, limitations, rules and regulations adopted by the Committee for purposes of initial development and construction upon a Lot pursuant to Section 7.1 of this Declaration, if any.

"Design Guidelines" shall mean the guidelines, restrictions, limitations, rules and regulations adopted by the Committee pursuant to Section 7.1 of this Declaration, if any.

"Developer" shall mean Declarant, and its successors and assigns, if any such successor or assign should acquire ten (10) or more undeveloped Lots from the Declarant or a Developer for the purpose of development. Except for the original Declarant identified herein, no Developer shall be a Declarant or may exercise any of Declarant's rights until the provisions of Section 8.4 below are satisfied.

"Dwelling Completion" shall be the date the primary Dwelling Unit on any Lot receives approval for occupancy by passage of a final inspection from the City of Mesa.

"Dwelling Unit" shall mean any building or portion of a building situated on a Lot and designated for independent ownership and intended for Single Family Residential Use.

"Exception Parcel" shall have the meaning set forth in Section 9.11.

"Exception Parcel Easements" shall have the meaning set forth in Section 9.11.

"Exception Parcel Owners" shall have the meaning set forth in Section 9.11.

"Exterior Alteration" shall mean any construction, installation, addition, alteration, repair, change, change of color, change of landscaping, removal, demolition or other work that alters the exterior appearance of a Lot or the Improvements located thereon.

"First Mortgage" shall mean any mortgage (which includes a recorded deed of trust and a recorded contract of sale as well as a recorded mortgage) which is a first priority lien on any Lot.

"First Mortgagee" shall mean the holder of a First Mortgage.

"Improvement" shall mean any building, Dwelling Unit, fence, wall or other structure; or any solar collectors or equipment, antennas (including TV antennas), satellite dishes, above ground or underground TV, cell phone or communications apparatuses, broadcasting or receiving towers or equipment; or any swimming pool, tennis court, sport court, road, driveway or parking area; or any trees, plants, shrubs, grass or other landscaping improvements of every type and kind.

"Lessee" shall mean a third party lessee, sublessee, tenant or subtenant under a lease, oral or written, of any Lot. As used herein "a third party" is a Person who is not an Owner.

"Lot" shall mean one of the separately designated Lots in the Project as shown on the Plat, together with any improvements thereon. Each numbered and lettered parcel in the Project is a separate freehold estate.

"Lot Improvements" shall have the meaning set forth in Section 5.23.

"Maintenance Standard" shall mean the standard of maintenance of Improvements established from time to time by the Board or designated committee or, in the absence of any standard established by the Board or designated committee, the standard of maintenance of Improvements generally prevailing throughout the Project.

"Member" shall mean those persons entitled to Membership in the Association as provided herein.

"Owner" shall mean the record holder of title to a Lot in the Project. This shall include any person having fee simple title to any Lot in the Project, but shall exclude persons or entities having any interest merely as security for the performance of any obligation. Further, if a Lot or other property is sold under a recorded contract of sale or subdivision trust to a purchaser, the purchaser, rather than the fee owner, shall be considered the **"Owner"** as long as he or a successor in interest remains the contract purchaser or purchasing beneficiary under the recorded contract or subdivision trust.

"Party Walls" shall have the meaning set forth in Section 6.5A.

"Person" shall mean a natural person, corporation, limited liability company, business trust, estate trust, living trust, partnership, association, joint venture, government, governmental subdivision or agency or other legal or commercial entity.

"Plat" shall mean that certain plat of Cobblestone at the Groves recorded in Book 303 of Maps, page 33 of the Official Records of the Maricopa County, Arizona Recorder, together with any other plats of all or any portion of the Project, as the same are amended from time to time.

"Project" shall mean only that certain real property shown on the Plat.

"Project Documents" shall mean and include this Declaration, as it may be amended from time to time, the exhibits, if any, attached hereto, the Plat, the Articles and Bylaws and any Association Rules adopted from time to time by the Association as provided herein or in the Bylaws.

"Roadways" shall mean Tract D of the Common Area, and the road improvements constructed thereon.

"Single Family" shall mean a group of one or more persons each related to the other by blood, marriage (or other legal union) or legal adoption, or a group of not more than three (3) persons not all so related, together with their domestic servants, who maintain a common household in a Dwelling Unit.

"Single Family Residential Use" shall mean the occupation or use of a Dwelling Unit by a Single Family in conformity with this Declaration and the requirements imposed by applicable zoning laws or other state, county or municipal rules and regulations.

"[2005 dollars]" shall mean the amount as proportionately increased for each year as follows. The base for computing the adjustment is the Consumer Price Index-Urban Wage Earners and Clerical Workers, United States City Average for All Items (1982-1984 = 100), published by the United States Department of Labor, Bureau of Labor Statistics ("**Index**"). If the Index published for September in the year in question ("**Adjustment Index**") has increased from the Index for September of the prior year (the "**Beginning Index**"), the amount in question shall be set by multiplying the amount specified herein (as previously increased under this provision, for prior years) by a fraction, the numerator of which is the Adjustment Index and the denominator of which is the Beginning Index. If the Index is discontinued or revised, the Board shall adopt a substitute index or procedure which reasonably reflects the changes in consumer prices. [2005 dollars] will never decrease from the prior year.

"Visible From Neighboring Property" shall mean with respect to any given object, that such object is or would be visible to a person six feet tall, standing on any part of such neighboring property at an elevation no greater than the elevation of the base of the object being viewed.

ARTICLE 2

ADMINISTRATION, MEMBERSHIP AND VOTING RIGHTS OF THE ASSOCIATION

2.1 Basic Duties of the Association. The management of the Common Area shall be vested in the Association in accordance with this Declaration and the Articles and Bylaws. The Owners covenant and agree that the administration of the Project shall be in accordance with the provisions of the Project Documents, subject to the standards set forth in all applicable laws, regulations and ordinances of any governmental or quasi-governmental body or agency having jurisdiction over the Project. In addition to the duties and powers enumerated in the Bylaws and the Articles, and without limiting the generality thereof, the Association shall have the duties and powers as set forth in Article 3 below and elsewhere in this Declaration.

2.2 Membership. The Owner of a Lot shall automatically, upon becoming the owner of same, be a Member of the Association and shall remain a Member thereof until such time as his ownership ceases for any reason, at which time his Membership in the Association shall automatically cease. Lessees shall not have any voting or Membership rights in the Association by virtue of their occupancy of any Lot or Dwelling Unit thereon.

2.3 Transfer of Membership. Membership in the Association shall not be transferred, pledged or alienated in any way, except upon the transfer of ownership of the Lot to which it is appurtenant, and then automatically to the new Owner as provided in Section 2.2. Any attempt to make a prohibited transfer is void. Upon the transfer of an ownership interest in a Lot, the Association shall record the transfer upon its books, causing an automatic transfer of Membership as provided in Section 2.2.

2.4 Membership Classes. The Association shall have two (2) classes of voting Membership established according to the following provisions:

A. Class A Membership shall be that held by each Owner of a Lot other than Declarant (while two classes of Membership exist), and each Class A Member shall be entitled to one (1) vote for each Lot owned. If a Lot is owned by more than one (1) person, each such person shall be a Member of the Association but there shall be no more than one (1) vote for each Lot.

B. Class B Membership shall be that held by Declarant (including any successor or co-Declarant as provided in Section 8.4 below) which shall be entitled to five (5) votes for each Lot owned by Declarant, provided that Class B Membership shall be converted to Class A Membership and shall forever cease when Declarant has conveyed all of the Lots in the Project to Owners other than Declarant. In the event Declarant elects to partially assign or convey its Declarant rights reserved hereunder to a Developer as provided more fully in Section 8.4, the voting rights of all Lots owned by Declarant and said Developer as co-Declarant, and/or their successors and assigns, shall be added together solely for purposes of determining the conversion of Class B Membership to Class A Membership. Notwithstanding the foregoing, Declarant and any co-Declarant may voluntarily convert their respective Class B Membership to Class A Membership with the prior consent of the other Declarant(s) at any time by giving written notice to the Association.

2.5 Association Voting Requirements. Any action by the Association which must have the approval of the Association Membership before being undertaken shall require (i) the vote of fifty-one percent (51%) of the Membership present and voting (including absentee ballots) at a duly called and held meeting of the Membership or fifty-one percent (51%) of the Membership voting through a duly called and held mail vote; or (ii) the written assent of fifty-one percent (51%) of the Membership unless, in either case, another percentage is specifically prescribed by a provision within this Declaration, the Bylaws or the Articles. Unless the Project Documents specifically require otherwise, when directors are to be elected or any other matter is submitted to a vote of the members, such vote may be conducted by mail as provided in the Bylaws or as determined by the Board.

2.6 Vesting of Voting Rights. Voting rights attributable to all Lots owned by Declarant shall vest immediately by virtue of Declarant's ownership thereof. Except for Declarant, no Owner of any Lot shall have any voting rights attributable to that Lot until an Assessment has been levied against that Lot and Owner by the Association pursuant to Article 4 below.

2.7 Meetings of the Association. Regular and special meetings of Members of the Association shall be held with the frequency, at the time and place and in accordance with the provisions of the Bylaws.

2.8 Board of Directors. The affairs of the Association shall be managed by a Board of Directors which shall be established and which shall conduct regular and special meetings according to the provisions of the Bylaws. Until Declarant has conveyed all Lots to other Persons, Declarant shall have the right to appoint and remove all Directors.

ARTICLE 3

DUTIES AND POWERS OF THE ASSOCIATION

3.1 Maintenance. The Association shall maintain, paint, repair, replace, restore, operate and keep in good condition all of the Common Area and Areas of Association Responsibility and all facilities, improvements, furnishings, equipment and landscaping thereon. The responsibility of the Association for maintenance and repair shall not extend to repairs or replacements arising out of or caused by the willful or negligent act or neglect of an Owner or his guests, tenants or invitees. The repair or replacement of any portion of the Common Area or Areas of Association Responsibility or any Lot resulting from such excluded items shall be the responsibility of each Owner. At its option, the Association may exercise its rights under Section 3.8, and/or the Association shall be entitled to commence an action at law or in equity to enforce this responsibility and duty and/or recover damages for the breach thereof.

3.2 Insurance.

A. Public Liability Insurance. The Association shall obtain and continue in effect comprehensive public liability insurance insuring the Association, the Declarant, any other Developers, the agents and employees of each and the Owners and their respective family members, guests and invitees against any liability incident to the ownership or use of the

Common Area, including, if obtainable, a cross-liability endorsement insuring each insured against liability to each other insured and a "severability of interest" endorsement precluding the insurer from denying coverage to one Owner because of the negligence of other Owners, other insureds or the Association. Such insurance shall be in amounts deemed appropriate by the Board but in no event shall the limits of liability for such coverage be less than \$2,000,000 [in 2005 Dollars] for each occurrence with respect to bodily injury and property damage. In the event insurance proceeds are inadequate therefor, then the Association may levy a Special Assessment on Lot Owners therefor as provided in Article 4. The Association's use of funds from its general account or levy of a Special Assessment shall not constitute a waiver of the Association's or any Owner's right to institute any legal proceeding or suit against the person or persons responsible, purposely or negligently, for the damage.

B. Fidelity Bonds and Other Insurance. The Association shall obtain and maintain (and/or cause a professional manager employed by the Association to obtain and continually maintain) bonds covering all persons or entities which handle funds of the Association, including without limitation, any such professional manager employed by the Association and any of such professional manager's employees, in amounts not less than the maximum funds that will at any time be in the possession of the Association or any professional manager employed by the Association but in no event less than the total of Assessments for a three (3) month period on all Lots and all reserve funds maintained by the Association. With the exception of a fidelity bond obtained by a professional manager covering such professional manager's employees, all fidelity bonds shall name the Association as an obligee. In addition, all such bonds shall provide that the same shall not be terminated, cancelled or substantially modified without at least thirty (30) days' prior written notice to the Association. The Association shall also obtain and maintain any insurance which may be required by law, including, without limitation, workmen's compensation insurance and director's and officer's liability insurance. Further, unless at least two-thirds (2/3) of the First Mortgagees (based upon one vote for each First Mortgage owned) or Owners (other than the Declarant and Developers) of the individual Lots have given their prior written approval, the Association shall not be entitled to (i) use hazard insurance proceeds for losses to any Common Area other than for the repair, replacement or reconstruction of such Common Area; or (ii) fail to maintain hazard insurance on any insurable amenities, if any, on the Common Area. The Association shall have the power and authority to obtain and maintain other and additional insurance coverage, including multi-peril insurance providing at a minimum fire and extended coverage on a replacement cost basis for the Common Area improvements, if any, which additional insurance meet the insurance requirements established by the Federal National Mortgage Association ("FNMA") or the Federal Home Loan Mortgage Corporation ("FHLMC"), as applicable, so long as either FNMA or FHLMC is a Mortgagee or Owner of a Lot, except to the extent that such coverage is not available or has been waived in writing by FNMA or FHLMC. A First Mortgagee may pay overdue premiums on hazard insurance policies or secure new coverage for the Common Area in case of lapse of a policy, and the Association shall immediately reimburse the First Mortgagee therefor.

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

condemnation awards and reserves shall be paid by the Association and, as provided above, the Association may specially assess the Owners therefor. Any excess or remaining insurance or condemnation proceeds which are not needed to restore the Common Area as provided above shall be distributed to the Owners on the basis of an equal share for each Lot. No provisions of the Project Documents shall give a Lot Owner or any other person priority in the case of payment to the Lot Owner of insurance proceeds or condemnation awards for losses to Common Area over any rights of a First Mortgagee.

3.3 Enforcement, Penalties and Remedies. The Association shall enforce the provisions of this Declaration and the other Project Documents by appropriate means, including without limitation the expenditure of funds of the Association, the employment of legal counsel and the commencement of legal actions. The Association may adopt a schedule of reasonable monetary penalties for violation by Owners (and others for whom Owners are responsible as provided herein) of the provisions of the Project Documents and impose the same according to procedures in the Bylaws. Further, if an Owner is in default and the applicable cure period, if any, has expired, the Board may suspend the Common Area use rights and/or the Association voting rights of the Owner until the default is fully cured. The Association shall have the additional rights and remedies set forth in Section 8.1, and in Article 4 with respect to delinquent Assessments.

3.4 Easements. The Association may grant and reserve easements where necessary for utilities and sewer facilities over the Common Area to serve the Common Area and the Lots.

3.5 Management and Other Contracts. The Association shall have the authority to employ a manager or other persons and to contract with independent contractors or managing agents to perform all or any part of the duties and responsibilities of the Association, subject to the Bylaws and restrictions imposed by any governmental or quasi-governmental body or agency having jurisdiction over the Project. Any agreement for professional management of the Project or any agreement providing for services by Declarant (or any affiliate of Declarant) shall provide for termination by either party without cause or payment of a termination fee upon ninety (90) days' or less written notice or for cause upon thirty (30) days' or less written notice and without payment of a termination fee. Such agreement shall further provide for a reasonable contract term of from one (1) to three (3) years and be renewable only by consent of the Association and the other party. In addition to the foregoing provisions regarding Association management contracts and contracts with Declarant and its affiliates, Declarant shall not, and shall not have the authority or power to, bind the Association prior to termination of Class B Membership, either directly or indirectly, to contracts or leases unless the Association is provided with a right of termination of any such contract or lease, without cause, which is exercisable without penalty or the payment of a termination fee at any time after the first Board of Directors elected after Class B Membership expires takes office upon not more than ninety (90) days' notice. The foregoing shall not apply to or limit the Declarant's right to enter into (or the terms of) contracts or leases with providers of cable TV, satellite or other communications or utilities services for the benefit of the Project provided that such entities are not affiliates of the Declarant.

3.6 Association Rules. The Association may adopt reasonable Association Rules not inconsistent with this Declaration, the Articles or the Bylaws relating to the use of the Common Area and all facilities thereon and the conduct of Owners and their Lessees, and their respective

family members, guests and invitees with respect to the Project and other Owners. The Association Rules may include the establishment of a system of fines and penalties enforceable as Lot Specific Assessments. The Association Rules shall govern such matters in furtherance of the purposes of the Association, including, without limitation, the use of the Common Area; provided, however, that the Association Rules may not discriminate among Owners except as expressly provided or permitted herein, and shall not be inconsistent with this Declaration, the Articles or Bylaws. A copy of the Association Rules as they may from time to time be adopted, amended or repealed or a notice setting forth the adoption, amendment or repeal of specific portions of the Association Rules shall be available to each Owner. Upon completion of the notice requirements, said Association Rules shall have the same force and effect as if they were set forth in and were part of this Declaration and shall be binding on the Owners and all other Persons having any interest in, or making any use of, the Project, whether or not actually received thereby. The Association Rules, as adopted, amended or repealed, shall be available at the principal office of the Association for each Owner to review upon request, and copies will be provided upon payment of the reasonable copying charge therefor established by the Association. In the event of any conflict between any provision of the Association Rules and any provisions of this Declaration or the Articles or Bylaws the provisions of the Association Rules shall be deemed to be superseded by the provisions of this Declaration, the Articles or Bylaws to the extent of any such conflict.

3.7 Emergency Powers. The Association or any Person authorized by the Association may enter any Lot in the event of any emergency involving illness or potential danger to life or property. Such entry shall be made with as little inconvenience to the Owners as practicable, and the Association shall repair any damage caused thereby, unless covered by insurance carried by the Owner.

3.8 Improper Maintenance of any Lots. In the event any portion of any Lot is so maintained as to present a public or private nuisance, or as to substantially detract from the appearance or quality of the surrounding Lots or other areas of the Project which are substantially affected thereby or related thereto, or in the event any portion of a Lot is being used in a manner which violates this Declaration, or in the event the Owner of any Lot is failing to perform any of its obligations under the Project Documents, the Board may make a finding to such effect, specifying the particular condition or conditions which exist, and pursuant thereto give notice thereof to the offending Owner that unless corrective action is taken within the specified time period, the Board may cause such action to be taken at said Owner's cost. If at the expiration of the specified period of time the requisite corrective action has not been taken, the Board shall be authorized and empowered to cause such action to be taken and the cost thereof shall be added to and become a part of the Assessment to which the offending Owner and the Owner's Lot is subject as a Lot Specific Assessment.

ARTICLE 4

ASSESSMENTS

4.1 Assessment Obligations. Each Owner of any Lot, by acceptance of a deed or recorded contract of sale or beneficial interest in a subdivision trust therefor, whether or not it shall be so expressed in such document, is deemed to covenant and agree to pay to the

Association (a) regular "**Annual Assessments**", (b) "**Special Assessments**" for capital improvements and unexpected expenses and (c) other charges made or levied by the Association against the Lot and the Owner thereof including, without limitation, the charges described in Section 4.9, interest, late charges, collection costs, costs and reasonable attorneys' fees incurred by the Association in enforcing compliance with this Declaration or any other Project Documents (whether or not a lawsuit or other legal action is instituted or commenced) (collectively, the "**Lot Specific Assessments**"). Such Assessments shall be established and collected as provided herein and in the Bylaws. Any part of any Assessment not paid within twenty (20) days of the due date therefor as established in this Article 4 shall bear interest at the rate of twelve percent (12%) per annum from the due date until paid and shall be subject to a late charge of the greater of \$15.00 or ten percent (10%) of the unpaid Assessment. The Annual, Special and Lot Specific Assessments made against a Lot and the Owner thereof pursuant to this Declaration or the Bylaws shall be a charge and a continuing lien upon the Lot (hereinafter "**Assessment Lien**"). Each such Assessment shall also be the personal obligation of the person who was the Owner of such Lot at the time the Assessment fell due as provided in this Article 4 or elsewhere in this Declaration, but thus personal liability shall not pass to successor Owners unless specifically assumed by them. The Assessment Lien on each Lot shall be prior and superior to all other liens except (a) all taxes, bonds, assessments and other levies which, by law, would be superior thereto and (b) the lien or charge of any First Mortgage on that Lot. No Owner of a Lot may exempt himself from liability for Assessments by waiver of the use or enjoyment of any of the Common Area or by the abandonment of his Lot.

4.2 Purpose of Assessments. The Assessments by the Association shall be used exclusively to promote the recreation, health, safety and welfare of all the residents in the Project, for the improvement and maintenance of the Common Area as provided herein and for the common good of the Project. Annual Assessments shall include an adequate reserve fund for taxes, insurance, maintenance, repairs and replacement of the Common Area and other improvements which the Association is responsible for maintaining.

4.3 Annual Assessments. The Board shall annually determine and fix the amount of the Annual (calendar year) Assessment against each Lot, including those owned by Declarant and Developers; provided, however, that the Annual Assessment may not exceed the "**Maximum Annual Assessment Amount**" (as defined below) then in effect unless approved by the Owners as provided below. The Annual Assessment shall be prorated based on the number of months remaining before December 31 of such year as well as any partial months remaining.

The Maximum Annual Assessment Amount in the year that Declarant first closes escrow for the sale of any Lot in the Project to an Owner other than Declarant shall be \$3,600. Without the vote or approval of the Members of the Association, the Maximum Annual Assessment Amount for each succeeding year shall not exceed the prior year's Annual Assessment by more than twenty percent (20%). The Maximum Annual Assessment Amount may be increased by an amount in excess of twenty percent (20%) of the prior year's Annual Assessment only if such increase or decrease is approved by the affirmative vote of two-thirds (2/3) of the voting power of each class of Members voting in person or by proxy at a meeting duly called for this purpose, under Section 4.6 below.

Notwithstanding anything to the contrary stated in this Article, until Class B Membership is terminated pursuant to Section 2.4B above, Declarant (or any co-Declarant under Section 8.4) shall be obligated to pay only twenty-five percent (25%) of the Annual Assessment amount fixed for Lots pursuant to this section, and shall pay said percentage of the Annual Assessment amount in the same manner established for payment of the Annual Assessment amount by other Lot Owners, except that Declarant shall pay and be liable for the full Annual Assessment amount for any Lot owned by Declarant after said Lot and the house on the Lot are first rented or leased to or occupied by another person. In the event said reduced Annual Assessment amount for Lots owned by Declarant is insufficient to cover the reasonable share of those Lots' contribution toward insurance costs and depreciation reserves for the Project, as determined by generally accepted cost accounting methods, Declarant shall also pay such amount monthly or quarterly, as applicable, in addition to said reduced Annual Assessment amount for the Lots, as is necessary to cover those Lots' contribution toward the insurance cost and depreciation reserves. If Declarant (or any co-Declarant under Section 8.4) voluntarily relinquishes its Class B Membership right under Section 2.4B, that party shall pay full Annual Assessments thereafter for all Lots owned by such party.

Until Class B Membership is terminated pursuant to Section 2.4B above, Declarant and any co-Declarants shall be responsible for the prompt payment on a current basis of all costs and expenses related to maintenance and repair of the Common Area and other areas required to be maintained by the Association hereunder, if any, and all other costs incurred by the Association in the performance of its duties, in the event and to the extent that the funds available to the Association are inadequate for payment of such costs and expenses on a current basis, with such liability to be prorated among co-Declarants based on the respective numbers of Lots owned. Declarant's or any co-Declarant's failure to perform the requirements contained in this section shall constitute a default under this Declaration entitling any Lot Owner or First Mortgagee to record a notice of lien against the defaulting party's property interest in the Project to enforce the provisions of this section. If Declarant or any co-Declarant relinquishes its Class B Membership rights under Section 2.4B and is therefore paying full Annual Assessments, such party shall have no responsibility under this paragraph for shortfalls/deficits accruing thereafter.

4.4 Special Assessments. In addition to the Annual Assessments authorized above, the Board may levy in any Assessment year a Special Assessment applicable to that year only for the purpose of defraying, in whole or in part, the cost of (i) any construction, reconstruction, repair or replacement of a capital improvement upon the Common Area or other improvements the Association is responsible for maintaining (including fixtures and personal property related thereto); (ii) any unanticipated or underestimated expense normally covered by a regular Assessment; and (iii) where necessary, for taxes assessed against the Common Area, provided however, that in all events, no such Special Assessment shall be made without the affirmative vote of Declarant (while Class B Membership exists) and of two-thirds (2/3) of the voting power of Class A Members voting in person or by proxy at a meeting duly called for this purpose.

4.5 Reserves and Working Capital. Annual Assessments shall include an adequate reserve fund for taxes, insurance, maintenance, repairs and replacement of the Common Area and other improvements which the Association is responsible for maintaining. Each purchaser of a Lot from Declarant, including Developers, shall pay to the Association \$5,000 upon the closing of such purchase to establish a reserve and working capital fund for the Association. This

requirement shall not apply to subsequent resales. Payment under this section shall be non-refundable and shall not be considered as an advance payment of any Assessments levied by the Association pursuant to this Declaration. The Association may not use any of these funds to defray its expenses, reserve contributions, or construction costs, or make up any budget deficits while Class B Membership exists.

4.6 Procedures for Voting on Assessments. Written notice of any meeting called for the purpose of taking any action authorized under Sections 4.3 or 4.4 shall be sent to all Owners not less than thirty (30) days not more than sixty (60) days in advance of the meeting. At the first such meeting called, the presence of Members or proxies therefor entitled to cast sixty percent (60%) of all of the votes of the Membership shall constitute a quorum. If the required quorum is not present, another meeting may be called subject to the same notice requirement and the required quorum at the subsequent meeting shall be one-half (1/2) of the required quorum at the preceding meeting. No such subsequent meeting shall be held more than sixty (60) days following the preceding meeting. While Class B Membership exists, the quorum requirements described above shall apply to both classes and a quorum shall not exist for a meeting unless a quorum of each class is present.

4.7 Allocation of Assessments. The Owners of each Lot shall bear an equal share of each Annual and Special Assessment except as otherwise specified elsewhere in this Declaration.

4.8 Commencement of Assessments. The Annual Assessments provided for herein shall commence as to each Lot in the Project on the first day of the month following the close of escrow of the sale of the first Lot in the Project by Declarant to a Developer or another person. Due dates of Assessments shall be established by the Board and notice shall be given to each Lot Owner at least forty-five (45) days prior to any due date; provided, however that Owners shall continue to pay Annual Assessments at the last established rate until the Board gives notification of any change in accordance with this Section 4.8. At the option of the Board, all Annual Assessments shall be payable in twelve (12) equal monthly installments or four (4) equal quarterly installments and if Annual Assessments are to be due on a monthly basis, no notice of such Annual Assessments shall be required other than an annual notice setting forth the amount of the monthly Assessment and the day of each month on which each Annual Assessment is due. The Board shall have the right to adopt rules and regulations setting forth procedures for the purpose of making Assessments and for the billing and collection of the Assessments, provided that the procedures are not inconsistent with the provisions of this Declaration. The Association shall be under no duty to refund any payments received by it even though the ownership of a Lot changes during an Assessment period. Nevertheless, successor Owners of Lots shall be given credit for prepayments, on a prorated basis, made by prior Owners.

4.9 Lot Specific Assessments. Lot Specific Assessments shall be levied by the Board against Lots with respect to which particular costs have been incurred by the Association. In the event the Association undertakes to provide work, materials or services on or about a Lot which are necessary to cure or remedy a breach or violation of the Project Documents that the Owner has refused to cure or remedy, including the failure to keep a Lot clean and free of excessive weed growth and keeping the Improvements thereon in good repair, such Owner by refusing to undertake or complete the required cure or remedy shall be deemed to have agreed in writing that all of the costs and expenses incurred in connection therewith shall be Lot Specific Assessments.

A Lot Specific Assessment may also be levied by the Board in its sole discretion against those Lots benefiting from an Association expense where such expense benefits fewer than all of the Owners.

4.10 No Offsets. All Assessments shall be payable in the amount specified by the Assessment and no offsets against such amount shall be permitted for any reason including, without limitation, a claim that the Association is not properly exercising its duties of maintenance of all or any portion of the Common Area or that the Association is not enforcing the Project Documents.

4.11 Purposes for which Association's Funds may be Used. The Association shall apply all funds and property collected and received by it (including the Assessments, fees, loan proceeds, surplus funds and all funds and property received by it from any other source) for the common good and benefit of the Project and the Owners by devoting said funds and property, among other things, to the acquisition, construction, alteration, maintenance, provision and operation, by any manner or method whatsoever, of any and all land, properties, improvements, facilities, services, projects, programs, studies and systems, within or without the Project, which may be necessary, desirable or beneficial to the general common interests of the Project and the Owners. The following are some, but not all, of the areas in which the Association may seek to aid, promote and provide for such common benefit: social interaction among Members and residents, maintenance of landscaping on Common Areas and public right-of-ways and drainage areas within the Project, recreation, liability insurance, communications, ownership and operation of vehicle storage areas, education, transportation, health, utilities, public services, safety, indemnification of officers and directors of the Association and any other purposes permitted by applicable statutes or the Project Documents.

4.12 Surplus Funds. The Association shall not be obligated to spend in any year all the Assessments and other sums received by it in such year, and may carry forward as surplus any balances remaining. The Association shall not be obligated to reduce the amount of the Annual Assessment in the succeeding year if a surplus exists from a prior year, and the Association may carry forward from year to year such surplus as the Board in its discretion may determine to be desirable for the greater financial security of the Association and the accomplishment of its purposes.

4.13 Effect of Transfer of Lot by Sale or Foreclosure. The sale or transfer of any Lot shall not affect the Assessment Lien or liability of the former Owner for Assessments due and payable except as provided below. No sale or transfer of a Lot shall relieve the new Lot Owner from liability for any Assessments thereafter becoming due or release his Lot from the Lien therefor.

If the First Mortgagee or another person obtains title to a Lot as a result of the foreclosure, trustee's sale or deed in lieu thereof of any First Mortgage, such First Mortgagee or other person shall not be liable for the Assessments chargeable to such Lot which became due prior to the acquisition of title to such Lot by the First Mortgagee or other person, and the Assessment Lien therefor shall be extinguished. Such unpaid Assessments shall be deemed to be common expenses collectible from the Owners of all of the Lots through Annual or Special Assessments, subject to the continuing liability of the transferring or foreclosed Owner.

In a voluntary conveyance of a Lot, the grantee of the same shall not be personally liable for Assessments due to the Association in connection with that Lot which accrued prior to the conveyance unless liability therefor is specifically assumed by the grantee, but the Lot shall remain encumbered by the Assessment Lien therefor.

Any grantee, mortgagee or other lienholder shall be entitled to a statement from the Association setting forth the amount of the unpaid Assessments due the Association for a reasonable preparation charge under Section 4.20. The grantee or other person entitled to receive the statement shall not be liable for, nor shall the Lot conveyed be subject to, a Lien for any unpaid Assessments in excess of the amount set forth in the statement, provided however, the grantee shall be liable for any such Assessment becoming due after the date of any such statement.

4.14 Remedies for Nonpayment. When any Assessment due from an Owner to the Association on behalf of any Lot is not paid within thirty (30) days after the due date, the Assessment Lien therefor may be enforced by foreclosure of the Lien and/or sale of the Lot by the Association, its attorney or other person authorized by this Declaration or by law to make the sale. The Assessment Lien may be foreclosed and the Lot sold in the same manner as a realty mortgage and property mortgaged thereunder, or the Lien may be enforced or foreclosed in any other manner permitted by law for the enforcement or foreclosure of liens against real property or the sale of property subject to such a lien. Any such enforcement, foreclosure or sale action may be taken without regard to the value of such Lot, the solvency of the Owner thereof or the relative size of the Owner's default. Upon the sale of a Lot pursuant to this section, the purchaser thereof shall be entitled to a deed to the Lot and to immediate possession thereof, and said purchaser may apply to a court of competent jurisdiction for a writ of restitution or other relief for the purpose of acquiring such possession, subject to applicable laws. The proceeds of any such sale shall be applied as provided by applicable law but, in the absence of any such law, shall be applied first to discharge costs thereof, including but not limited to court costs, other litigation costs, costs and attorneys' fees incurred by the Association, all other expenses of the proceedings, interest, late charges, unpaid Assessments due to the Association, and the balance thereof shall be paid to the Owner. It shall be a condition of any such sale, and any judgments or orders shall so provide, that the purchaser shall take the interest in the Lot sold subject to this Declaration. The Association, acting on behalf of the Lot Owners, shall have the power to bid for the Lot at any sale and to acquire and hold, lease, mortgage or convey the same. In the event the Owner against whom the original Assessment was made is the purchaser or redemptioner, the Assessment Lien securing that portion of the Assessment remaining unpaid following the sale shall continue in effect and said Lien may be enforced by the Association or by the Board for the Association as provided herein. Further, notwithstanding any foreclosure of the Assessment Lien or sale of the Lot, any Assessments due after application of any sale proceeds as provided above shall continue to exist as personal obligations of the defaulting Owner of the Lot to the Association, and the Board may use reasonable efforts to collect the same from said Owner even after he is no longer a Member of the Association.

4.15 Suspension of Rights. In addition to all other remedies provided for in this Declaration or at law or in equity, the Board may temporarily suspend the Association voting rights and/or the right to use the Common Area of a Lot Owner who is in default in the payment

of any Assessment or any other amount due to the Association, as provided in the Bylaws, with such suspension to end upon the Owner's full cure of the default.

4.16 Other Remedies. The rights, remedies and powers created and described in Sections 4.14 and 4.15 and elsewhere in the Project Documents are cumulative and may be used or employed by the Association in any order or combination. Without limiting the foregoing sentence, suit to recover a money judgment for unpaid Assessments, to obtain specific performance of obligations imposed hereunder and/or to obtain injunctive relief may be maintained without foreclosing, waiving, releasing or satisfying the Liens created for Assessments due hereunder.

4.17 Fines and Penalties. In addition to any other rights or remedies which the Association may have under this Declaration or at law or in equity as a result of the violation of this Declaration or the Project Documents, the Association shall have the right, subject to applicable law, to levy reasonable fines or penalties against an Owner for any violation of this Declaration or the Project Documents by the Owner, any other residents of the Owner's Lot or any of the Owner's family, Lessees, guests, contractors or agents. The amount of the fine or penalty for each violation shall be established by the Board.

4.18 Notice of Violation, Appeal and Payment of Fines and Penalties.

(a) The Board, or any person designated by the Board, may serve a "Notice of Violation" against an Owner or Lessee for a violation of any provision of the Project Documents by the Owner or Lessee, their family, guests or invitees. A Notice of Violation shall contain (i) a description of the violation, (ii) the appropriate time and place at which the violation was observed, (iii) the amount of the fine to be paid by the Owner or Lessee for such violation, (iv) the name of the person issuing the Notice of Violation, and (v) a statement advising the Owner or Lessee of the Owner's or Lessee's right to appear before the Board on the date, time and place specified for a hearing at which the Owner or Lessee can offer any defenses or mitigating circumstances.

(b) A Notice of Violation shall be deemed to have been served if delivered personally to the Owner or Lessee named in the Notice of Violation or sent to the Owner or Lessee by registered or certified United States mail, return receipt requested, postage prepaid. A Notice of Violation served by mail shall be deemed to have been received by the Owner or Lessee to whom the Notice was addressed on the earlier of the date the Notice is actually received or three (3) days after the Notice is deposited in the United States mail. A Notice of Violation given to the Owner by mail shall be addressed to the Owner at the address of the Owner as shown on the records of the Association. A Notice of Violation given to the Lessee by mail shall be addressed to the Dwelling Unit occupied by the Lessee. If a Lot is owned by more than one person or entity, a Notice of Violation to one of the joint Owners shall constitute Notice to all of the joint Owners.

(c) The Owner or Lessee shall pay the fine set forth in the Notice of Violation to the Association within ten (10) days after the Notice of Violation is served on the Owner or Lessee or, if the Owner or Lessee appears at the hearing specified in the Notice of Violation, within ten (10) days after a hearing before the Board in which the Board upholds the fine.

(d) Any fines or penalty levied pursuant hereto shall be handled as a Lot Specific Assessment pursuant to this Section.

4.19 Unallocated Taxes/Payment By First Mortgagees. In the event that any taxes are assessed against the Common Area or the personal property of the Association, rather than against the Lots, said taxes shall be included in the Annual Assessments made under the provisions of this Article, and, if necessary, a Special Assessment may be levied equally against all of the Lots in an amount equal to said taxes, as provided in Section 4.4. First Mortgagees may pay taxes or other charges that are in default and that may or have become charges against the Common Area and shall be entitled to immediate reimbursement therefor from the Association.

4.20 Transfer, Refinance and Status Fees. Each Owner of a Lot shall pay to the Association immediately upon becoming the Owner of the Lot a transfer fee in such amount as is established from time to time by the Board. Any Owner of a Lot who sells or refinances his Lot and requires a status statement from the Association in connection therewith shall pay to the Association a fee in such amount as is established from time to time by the Board. Fees charged pursuant hereto shall be secured by the Assessment Lien established pursuant to this Section.

ARTICLE 5

USE RESTRICTIONS

5.1 Use of Lots as a Single Family Subdivision; Leases; No Partition.

(a) Single Family Subdivision. All Lots within the Project shall be known and described as residential Lots and shall be occupied and used for Single Family Residential Use only. Business and/or trade uses in the Project shall be restricted as provided in Section 5.4.

(b) Leases. No Owner may rent his/her Lot and the single family house and related improvements thereon for transient or hotel purposes or shall enter into any lease for less than the entire Lot. No lease shall be for a rental period of less than thirty (30) days. Subject to the foregoing restrictions, the Owners of Lots shall have the absolute right to lease their respective Lots provided that the lease is in writing and is specifically made subject to the covenants, conditions, restrictions, limitations, and uses contained in this Declaration and the Bylaws and any reasonable Rules and Regulations adopted by the Association. A copy of any such lease shall be delivered to the Association prior to the commencement of the term of the lease. The Owner is fully responsible for the conduct and actions of his Lessees, and his Lessees' family members, guests and other invitees.

(c) No Partition, Condominium or Timeshare. No Owner shall bring any action for or cause partition of any Lot, it being agreed that this restriction is necessary in order to preserve the rights of the Owners. Judicial partition by sale of a single Lot owned by two or more persons or entities and the division of the sale proceeds is not prohibited (but partition of title to a single Lot is prohibited). Notwithstanding the foregoing, a vacant Lot may be split between the Owners of the Lots adjacent to such Lot so that each portion of such Lot would be held in common ownership with another Lot adjacent to that portion, subject to any further

requirements or restrictions imposed by the City of Mesa. No condominium use shall be created or permitted within the Project.

No Lot shall be subjected to or included in any timeshare plan, however named, described or denominated. For purposes of this provision, a "timeshare plan" is any arrangement, plan or similar device, whether by membership agreement, sale, lease, deed, license or right-to-use agreement or by any other means, in which a purchaser receives ownership rights in or the right to use accommodations for a period of time less than a full year during any given year. "Timeshare plan" includes fractional ownership programs, private residence clubs and similar offerings, but does not include bona fide leases or rentals of the Lot in accordance with the terms of this Declaration and applicable laws.

5.2 Nature of Buildings/Structures. No buildings or structures shall be moved from other locations onto any Lot, and all improvements erected on a Lot shall be of new construction. No structure of a temporary character and no trailer, shack, garage, barn or other out-building shall be used on any Lot at any time as a residence, either temporarily or permanently. No unsightly structure, object or nuisance shall be erected, placed or permitted on any Lot.

5.3 Animals. No livestock, poultry or other animals shall be raised, bred or kept on any Lot except that customary household pets such as dogs, cats and household birds may be kept, but only such number and types shall be allowed which will not create a nuisance or disturb the health, safety, welfare or quiet enjoyment of other Lot Owners. All animals shall be kept under reasonable control at all times and in accordance with applicable laws and any Rules and Regulations adopted by the Association, and shall be restrained by fence or leash from roaming in or through the Common Area or other Owners' Lots. All animal wastes must be promptly disposed of in accordance with applicable city or county regulations, and must be immediately removed by the animal's owner from Common Areas or any other Owner's Lot. Upon the written request of any Owner, the Board shall conclusively determine, in its sole and absolute discretion, whether a particular animal constitutes a customary household pet or is a nuisance (because of noise or otherwise), or whether the number and/or type of animals maintained on any portion of the Project is reasonable, and may require the immediate permanent removal of any animal which it determines is violating these provisions. Any decision rendered by the Board shall be final. Owners shall be liable for any and all damage to property and injury to persons and other animals caused by their animals and the animals of their tenants and other occupants.

5.4 Signs; Restrictions on Commercial Uses. No sign of a commercial nature shall be allowed on the Project, except for one "For Rent" or one "For Sale" sign per Lot of no more than five (5) square feet. No institution or other place for the care or treatment of the sick or disabled, physically or mentally (except as provided by the Arizona Developmental Disabilities Act of 1978 § 36-581 *et seq.*, or other applicable federal or state law) shall be placed or permitted to remain on any of the Lots and no theater, bar, restaurant, saloon, or other place of entertainment may ever be erected or permitted on any Lot.

Further, no trade or business of any kind may be conducted in or from any Lot except that an Owner may conduct a business activity within a single-family house located on a Lot so long as the existence or operation of the business activity (a) is not apparent or detectable by sight, sound, or smell from the exterior of the single-family house; (b) conforms to all zoning

requirements for the Project; (c) does not increase the liability or casualty insurance obligation or premium of the Association; and (d) is consistent with the residential character of the Project and does not constitute a nuisance or a hazardous or offensive use including, without limitation, excessive or unusual traffic or parking of vehicles in the vicinity of any Lot or the Common Area as may be determined in the sole discretion of the Board. The terms "business" and "trade," as used in the previous sentence, shall be construed to have their ordinary and generally accepted meanings and shall include, without limitation, any occupation, work or activity undertaken on an ongoing basis which involves providing goods or services to persons other than the provider's family and for which the provider receives a fee, compensation or other form of consideration regardless of whether (a) such activity is engaged in full or part-time; (b) such activity is intended to or does generate a profit; (c) a license is required therefor.

Notwithstanding any provision contained herein to the contrary, it shall be expressly permissible for Declarant and any other Developers to move, locate and maintain, during the period of construction and sale of Lots, on such portions of the Project owned by that party as that party may from time to time select, such facilities as in the sole opinion of that party shall be reasonably required, convenient or incidental to the construction of houses and sale of Lots, including but not limited to business offices, storage areas, trailers, temporary buildings, construction yards, construction materials and equipment of every kind, signs, models, and sales offices, except that in the case of Developers, the foregoing shall be subject to the prior approval of the Declarant from whom any such Developer took title to its Lots.

5.5 Use of Garages. No garage may be converted to living space without the prior written consent of the Committee except that Declarant and/or Developers may use a garage area in a model home or models for a sales office. Owners shall keep their garages neat, clean and free from clutter, debris or unsightly objects and shall at all times keep garage doors closed except as reasonably necessary for ingress and egress. Owners and residents shall first park vehicles inside and fully utilize the garage before utilizing the driveway, and shall first park vehicles on and fully utilize the driveway before using Tract D.

5.6 Solar Collectors/Antennas/Satellite Dishes. Solar collectors and related equipment may not be installed on roofs of houses but may be located elsewhere on the Lots not Visible From Neighboring Property with the prior written approval from the Committee pursuant to Article 7 prior to installing the same. The Association, through the Committee, may from time to time adopt guidelines concerning the types of solar collectors and related equipment which may be installed in the Project and acceptable means of installation therefor.

No antenna may be installed on any roof or exceed eight (8) feet in height, and the installation of any antenna shall be subject to Committee approval, which may include screening requirements so that no antenna is visible from other Lots, the Common Area or adjacent streets. Satellite dishes for the reception of television signals are permitted on individual Lots if the same are not Visible From Neighboring Property, or if partially visible, if the plans for the same are reviewed in advance by the Committee and such proposed installation is determined to be predominantly unobtrusive by the Committee. The Committee shall have the right to require the installation of landscaping or other screening around the satellite dish.

5.7 Storage Sheds, Swings, Slides, Basketball Hoops, Tennis Courts, Sports Courts, Recreational and Other Equipment and Toys. No storage sheds, recreational, maintenance and other equipment, toys or other objects shall be located on any Lot if the height of such object is greater than the height of the fence on or adjoining said Lot or if such object is Visible From Neighboring Property, unless approved by the Committee.

All swings and slides (including those used in connection with a swimming pool) shall be at least seven (7) feet from all fences located on or near perimeter Lot lines, subject to any further requirements or restrictions of the City of Mesa. The foregoing improvements shall also be subject to the prior approval of the Committee. Basketball backboards and poles are allowed adjacent to driveways, provided such backboards are not house mounted and are made of a clear material.

All portable basketball backboards, hoops and stands; other recreational equipment; barbecues; tools; equipment; bicycles and skateboards; and all other items of personal property, when not in actual use, shall be fully removed from the front yard area of the Lot and, if placed in the rear yard of the Lot, shall not be visible above the rear yard fence line.

Tennis courts and sport courts may be permitted if such approval is granted by the Committee, including related lighting. Lighting of tennis or sport courts is permitted provided said lighting is properly screened or shielded from all adjoining Lots and any Common Area.

5.8 Screening Materials. All screening areas, whether fences, hedges or walls, shall be maintained and replaced from time to time on the Lots by the Owners thereof in accordance with the original construction of the improvements by the Declarant, or as approved by the Committee pursuant to Article 7.

5.9 Lot Maintenance Requirement; Nuisances; Garbage and Rubbish; Storage Areas. Each Owner shall maintain, repair, replace, restore and reconstruct his Lot and the improvements constructed thereon (including the house) so as to keep the same in a good, neat and safe order, condition and repair, in full compliance with all applicable laws and legal requirements and in full compliance with this Declaration and the original plans therefor prepared by Declarant and/or Developer and/or approved by the Committee under Article 7 below. Without limiting the generality of the foregoing, the Owner shall keep the roof, exterior walls, doors and windows and other improvements visible from other Lots and/or the Common Area in good condition by promptly replacing broken roof tiles or windows, periodically repairing stucco cracks and painting, and similar matters. In the event a house is totally or substantially destroyed, the house need not be rebuilt but the Owner shall, within three (3) months, remove all destroyed or damaged improvements and restore the Lot to its condition prior to construction of the house.

No unsightly objects or nuisance shall be erected, placed or permitted on any Lot, nor shall any use, activity or thing be permitted which may endanger the health or unreasonably disturb the Owner or occupant of any Lot. No noxious, illegal or offensive activities shall be conducted on any Lot. Each Lot shall be maintained free of rubbish, trash, garbage or other unsightly items and the same shall be promptly removed from each Lot and not allowed to accumulate thereon and further, no garbage, trash or other waste materials shall be burned on any Lot. Garbage cans, clotheslines, woodpiles and areas for the storage of equipment and unsightly

items shall be kept screened by adequate fencing or other aesthetically pleasing materials acceptable to the Committee so as to conceal same from the view of adjacent Lots and streets. Garbage cans may be in view only on collection days and thereafter they must be promptly stored out of sight as provided herein.

5.10 Vehicles. No commercial vehicles or "**Recreational Vehicles**" (including, without limitation, campers, boats, trailers, mobile homes or similar type vehicles) shall be parked in front of a Lot or in a front driveway or otherwise on a Lot where it can be seen from any street, except for temporary parking only not exceeding four (4) consecutive hours. Commercial vehicles shall not include sedans or standard size pickup trucks which are used both for business and personal use, provided that any signs or markings of a commercial nature on such vehicles shall be unobtrusive and inoffensive as determined by the Committee. No vehicles (including commercial vehicles and Recreational Vehicles) or other mechanical equipment may be dismantled or repaired (except for ordinary maintenance and repair of such vehicles and equipment inside an enclosed garage, and emergency repairs elsewhere for a time period not exceeding forty-eight (48) hours) or allowed to accumulate on any Lot or in front of any Lot, or ever parked or used on any Common Area, except as required by the Association for it to perform its duties hereunder. No vehicle which is abandoned or inoperative shall be stored or kept on any Lot or in front of any Lot in such manner as to be visible from any other Lot or any street or alleyway within or adjacent to the Project.

5.11 Lights and Street Lights. No spotlights, flood lights or other high intensity lighting shall be placed or utilized upon any Lot or any structure erected thereon which in any manner will allow light to be directed or reflected on any other Lot or adjacent street, or any part thereof except as approved by the Committee. Exterior low voltages landscape lighting is encouraged, but as with any such Improvement prior written approval for exterior lighting must be secured from the Committee. Subdivision street lighting shall not be permitted, except as may be required by the City of Mesa.

5.12 Outside Speakers and Amplifiers. No radio, stereo, television or other speakers or amplifiers shall be installed or operated on any Lot or anywhere in the Project so as to be audible from other Lots or the Common Area.

5.13 Sanitary Facilities. None of the Lots shall be used for residential purposes prior to the installation thereon of water-flushed toilets and all bathrooms, toilets and sanitary conveniences shall be inside the house permitted hereunder on each Lot.

5.14 Window Cover Materials. Interior curtains, drapes, shutters or blinds may be installed as window covers. No aluminum foil, reflective material, newspaper or other materials not customarily made for use as window covers may be installed or placed upon the inside or outside of any Dwelling Unit or other structure. Exterior awnings, canopies, shutters and similar items may not be installed without prior written approval of the Committee as to color, style, design and materials.

5.15 Nuisances. No rubbish, debris or hazardous materials of any kind shall be placed or permitted to accumulate upon or adjacent to any Lot or other property, and no odors or loud noises shall be permitted to arise or emit therefrom, so as to render any such property or any

portion thereof, or any activity thereon, unsanitary, unsightly, offensive or detrimental to any other property in the vicinity thereof or to the occupants of such other property. No other nuisance shall be permitted to exist or operate upon any Lot or other property so as to be offensive or detrimental to any other property in the vicinity thereof or to its occupants. The Board shall have sole discretion to determine whether a nuisance exists.

5.16 Garbage and Trash. No garbage or trash shall be placed or kept on any Lot, except in covered containers of a type, size and style which are approved by the Committee. 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 time reasonably necessary to effect such collection. All rubbish, trash and garbage shall be removed from the Lots and Common Area and shall not be allowed to accumulate thereon. No incinerators shall be kept or maintained on any Lot. No garbage or trash containers shall be kept or placed on any grass or other landscaped area. During construction of a residence on a Lot, the Owner of such Lot shall provide an enclosed rubbish container for each Lot and shall keep its Lot clean of construction trash at all times. In addition, each Owner shall during such construction be responsible to immediately clean up any trash, rubbish, debris, mud and dirt brought or tracked onto the Project in connection with such construction. Additionally, during construction of a residence on the Lot, the Owner of such Lot shall provide a portable J-Jon or similar portable restroom facility on the Lot and maintain it as set forth herein.

5.17 Disease and Insects. No Owner shall permit any thing or condition to exist upon any property within the Project which shall induce, breed or harbor infectious plant diseases or noxious insects.

5.18 Fires. Other than barbecues in properly constructed barbecue pits or grills, and fire pits or outside fireplaces in compliance with the Association Rules, Construction Guidelines and Design Guidelines, no open fire shall be permitted on the Project nor shall any other similar activity or condition be permitted.

5.19 Safe Condition. Without limiting any other provision in this Article, each Owner shall maintain and keep his Lot at all times in a safe, sound and sanitary condition and repair and shall correct any condition or refrain from any activity which might interfere with the reasonable enjoyment by other Owners of their respective Lots or the Common Area.

5.20 Encroachments. No tree, shrub or planting of any kind on any Lot shall be allowed to overhang or otherwise to encroach upon any sidewalk, street, pedestrian way or other area from ground level to a height of eight (8) feet, without the prior written approval of the Committee.

5.21 Model Homes. The provisions of this Declaration which may prohibit nonresidential use of Lots and which regulate parking of vehicles shall not prohibit the construction and maintenance of model homes by Declarant or Developers engaged in the construction or marketing of Dwelling Units within the Property or parking incidental to the visiting of such model homes, so long as the location of such model homes and parking areas, and hours of operation, are approved in advance by the Committee, and the construction, operation and maintenance of such model homes otherwise comply with all of the provision of

this Declaration. Any Dwelling Units constructed as model home shall cease to be used as model homes at any time when the Owner thereof is not actively engaged in the construction and sale of residential dwellings within the Property, and no Dwelling Unit shall be used as a model home for the sale of homes not located within the Property.

5.22 Drilling and Mining. No oil drilling, oil development operations, oil refining, quarrying, or mining operations of any kind shall be permitted upon or in any Lot, nor shall oil or water wells, tanks, tunnels, mineral extractions, or shafts be permitted upon or in any Lot. No derrick or other structure designed for use in boring for oil or natural gas shall be erected, maintained or permitted upon any Lot.

5.23 Landscaping. Subject to the variance provisions of Section 7.3 below, unless installed by the Developer of a Lot, the landscaping on each Lot must be installed and substantially completed in an attractive manner by the Owner within three (3) months from the date of close of escrow based upon plans therefor approved in advance by the Committee pursuant to Article 7 below. The landscape plans submitted to the Committee must include proposed changes in grade to be accomplished as part of the landscaping development.

All landscaping, at all times, must be maintained by each Owner in a neat and attractive manner and any alterations or modifications made to the original landscaping of a Lot as originally installed shall be approved in advance by the Committee. Further, each Owner must maintain, repair and restore any and all grades, slopes, retaining walls and drainage structures (collectively "**Lot Improvements**") as installed by Declarant or a Developer on a Lot or which has been approved by the Committee. If any Owner does not (i) install and complete approved landscaping within the three (3) month period described above, (ii) maintain his landscaping in a neat and attractive manner, or (iii) maintain all Lot Improvements on a Lot, the Declarant, the Developer of the Lot or the Association (by action of the Board), after giving the Owner fifteen (15) days' written notice to cure any such default, shall have the right to cause the necessary landscaping work or Lot Improvement to be done and the Owner in default shall be responsible for the cost thereof, together with interest thereon at the rate of twelve percent (12%) per annum until paid. If the Association does the work, the costs and interest shall be a Lot Specific Assessment. If Declarant or Developer does the work, that party shall have a lien on the defaulting Owner's Lot for the costs and interest. In addition to the foregoing, any party may utilize remedies available under Section 8.1 for such Owner's default.

5.24 No Warranty of Enforceability; Declarant's Exemption. While Declarant has no reason to believe that any of the restrictive covenants contained in this Article 5 or elsewhere in this Declaration are or may be invalid or unenforceable for any reason or to any extent, Declarant makes no warranty or representation as to the present or future validity or enforceability of any of the restrictive covenants. Any Owner acquiring a Lot in the Project in reliance on one or more of such restrictive covenants shall assume all risks of the validity and enforceability thereof and by acquiring the Lot agrees to hold Declarant harmless therefrom.

Declarant shall be exempt from the effect of the restrictions in this Article 5 except as otherwise provided by applicable law.

5.25 Disclaimer of Representations. Declarant makes no representations or warranties whatsoever that (i) the Project will be completed in accordance with the plans of the Project as they exist on the day this Declaration is recorded; (ii) any property subject to this Declaration will be committed to or developed for any use; or (iii) the use of any property subject to this Declaration will not be changed in the future.

ARTICLE 6

FENCES, PARTY WALLS AND EASEMENTS

6.1 Fence Height. All walls, including fences separating front and back yards, shall be at least the minimum required by the City of Mesa for pool safety, and no more than a maximum of seven (7) feet, and shall be constructed across the rear and sides of the Lot. All block fences shall be of 6" or 8" CMU; no 4" block fencing will be allowed.

6.2 Walls and Fences. The fence for any Dwelling Unit shall be of the same architectural style as the Dwelling Unit and shall be approved by the Committee. All fences shall be erected prior to the Owner of any Lot taking possession of a Dwelling Unit on the Lot. All perimeter fences, boundary fences, or garden walls shall be constructed within the Lot and shall be of concrete block construction with a stucco mortar wash finish, constructed and painted according to the standard detail provided by the Committee. Accent stone may be used if approved by the Committee. Gates may be of wood or wrought iron construction, but are still subject to the written approval requirements. Accent panels or decorative trim may be used with prior written approval and authorization of the Committee. The maximum elevation difference between adjacent property grades shall not exceed two (2) feet. A solid grouted 8"x8"x16" CMU wall or equivalent in good condition is required for 8-inch to 24-inch grade differences. Walls and fences pursuant to this section are to be constructed at the Lot Owner's expense, subject to Section 6.3.

6.3 Shared Cost of Boundary Fences and Retaining Walls. The cost of fences and retaining walls constructed upon the dividing property line or boundary between Lots (the "Boundary Fence") shall be shared on an equal basis between the adjacent Lot Owners, regardless of whether an Owner is a contractor. If one Lot Owner had already constructed said Boundary Fence, the adjacent Owner agrees to reimburse said adjoining Lot Owner for one-half (1/2) of the actual cost of said Boundary Fence, as evidenced by actual receipts, invoices and/or lien waivers. Said amounts shall be paid within sixty (60) days from presentation of proof of construction costs. If the Boundary Fence has not yet been constructed, then the Owners agree to share the cost, on an equal basis, with the adjacent Owner or Owners. Said Boundary Fence cost sharing shall not apply to Declarant unless Declarant constructs a Dwelling Unit on an adjacent Lot.

6.4 Fence Construction and Repair Requirements. All fences shall be maintained in good condition and repair, and fences, upon being started, must be completed within a reasonable time not exceeding three (3) months from commencement of construction. If any fence originally installed by an Owner is wholly or partially damaged by any cause, it shall be removed, in its entirety or returned to its original condition within three (3) months from the date of damage; any fences originally installed by any Developer, or in a location in which a

Developer-installed fence was originally erected, must be promptly restored to their original condition by such Owner, or the Owner(s) of the adjacent Lots if the same is a Party Wall under Section 6.5.

Wherever the words "Party Wall," "fence," "fences" or "fencing" appears in this Declaration, they include block walls, wrought iron fences, wood (or partially wood) fences and other materials used as a fence, fences, wall or walls (except a wall which is part of a house), consistent with the Design Guidelines and Committee approval.

6.5 Fences as Party Walls.

A. Fences which may be constructed by a Developer upon the dividing line between Lots or between a Lot and Common Area, or near or adjacent to said dividing line because of minor encroachments due to engineering errors (which are hereby accepted by all Owners and the Association in perpetuity) or because existing easements prevent a fence from being located on the dividing line, are "**Party Walls**" and shall be maintained and repaired at the joint cost and expense of the adjoining Lot Owners, or of the adjoining Lot Owner and the Association if the Party Wall divides a Lot and Common Area. Paint and/or stucco surfaces shall be maintained and repainted as necessary by the party whose property is enclosed by the painted and/or stuccoed surface. Fences constructed upon the back of any Lot (which do not adjoin any other Lot or Common Area) by the Developer shall be maintained and repaired at the cost and expense of the Lot Owner on whose Lot (or immediately adjacent to whose Lot) the fence is installed. Such Party Walls and fences shall not be altered, or changed in design, color, material or construction from the original installation made by the Developer without the approval of the adjoining Owner(s), if any, and the Committee. In the event any Party Wall is damaged or destroyed by the act or acts of one of the adjoining Lot Owners, his family, agents, guests or tenants (or by any employee, agent or contractor of the Association), that Owner or the Association shall be responsible for said damage and shall promptly rebuild and repair the Party Wall(s) to its/their prior condition, at his or its sole cost and expense. In all other events when any Party Wall is wholly or partially damaged or in need of maintenance or repair, each of the adjoining Owners (or the adjoining Owner and the Association, if applicable) shall share equally in the cost of replacing the Party Wall or restoring the same to its original condition. For this purpose, said adjoining Owners (or the adjoining Owner and the Association, if applicable) shall have an easement as more fully described in Section 6.6(A) (ii). All gates shall be no higher than the adjacent Party Wall or fence.

B. In the event of a dispute between Owners with respect to the binding repair or rebuilding of a Party Wall, then, upon written request of one of such Owners addressed to the Committee, the matter shall be submitted to the Committee for arbitration under such rules as may from time to time be adopted by the Committee. If no such rules have been adopted, the matter shall be submitted to three arbitrators, one chosen by each of the Owners and the third arbitrator to be chosen within five (5) days by any judge of the Superior Court of Maricopa County. A determination of the matter signed by any two of the three arbitrators shall be binding upon the Owners who shall share the cost of arbitration equally. In the event one Owner fails to choose an arbitrator within ten (10) days after personal receipt of a request in writing for arbitration from the other Owner, then said requesting Owner shall have the right and power to choose both arbitrators.

6.6 Easements.

A. General Easements.

(i) Easements for installation and maintenance of utilities and drainage facilities have been created as shown on the Plat, and additional easements may be created by grant or reservation by the Developer of a portion of the Project for the foregoing purposes. Except as may be installed by any Developer, no structure, planting or other materials shall be placed or permitted to remain within these easements which may interfere with the installation and maintenance of utilities, or which may change the direction or flow of drainage channels in the easements, if any, or which may obstruct or retard the flow of water through the channels in the drainage easements, if any. The easement area of each Lot and all improvements located thereon shall be maintained continuously by the Owner of the Lot, except for those improvements for which a public authority or utility company is responsible, and except for any easement area referred to in Section 6.6(A) (iii) below, which will be maintained by the Owner of the Lot who has use of the easement.

(ii) For the purpose of repairing and maintaining any Party Wall, an easement not to exceed five (5) feet in width is hereby created over the portion of every Lot immediately adjacent to any Party Wall to allow the adjoining Owner access for maintenance purposes as set forth herein and no other purpose.

(iii) In addition to the foregoing, if a Party Wall is not located between Lots, an easement is hereby created for six (6) months after a house is constructed on any Lot for the purpose of constructing and maintaining said Party Wall. With respect to any Party Wall not located on a dividing line between Lots but located near or adjacent to such dividing line, an Owner of a Lot shall have and is hereby granted a permanent easement over any property immediately adjoining said Owner's Lot up to the middle line of said Party Wall for the use and enjoyment of the same.

(iv) Each Lot and Common Area tract within the Project is hereby declared to have an easement over all adjoining Lots and the Common Area for the purpose of accommodating any encroachment due to minor engineering errors, errors in either the original construction or reconstruction of the buildings on the Lots, or the settlement or shifting of buildings or any other similar cause. There shall be valid easements for the maintenance or said encroachments as long as they shall exist, and the rights and obligations of Owners shall not be altered in any way by said encroachment, settlement or shifting, provided however, that in no event shall a valid easement for encroachment be created in favor of an Owner or Owners if said encroachment occurred due to the willful misconduct of said Owner or Owners.

B. Declarant Easements.

(i) Declarant shall have the right and an easement to maintain sales or leasing offices, management offices and models throughout the Project on Lots owned by such party and to maintain one or more advertising signs on the Common Area while the Declarant sells Lots in the Project.

(ii) Declarant shall have the right and an easement on and over the Common Area to construct thereon all buildings and improvements consistent with the approved plans therefor and to use the Common Area (until Class B Membership terminates) and any Lots owned by Declarant for construction and renovation related purposes, including the storage of tools, machinery, equipment, building materials, appliances, supplies and fixtures, and the performance of work respecting the Project.

(iii) The Declarant shall have an easement on, over and through the Lots (but not through any houses thereon) for any access necessary to complete any renovations, warranty work or modifications to be performed by Declarant.

C. Association Easements. Declarant hereby creates the following easements in favor of the Association and its directors, officers, agents, employees and independent contractors over the Lots (but not the houses thereon):

(i) For inspection of the Lots in order to verify the performance of all Owners of all items of maintenance and repair for which they are responsible;

(ii) For inspection, maintenance, repair and replacement of the Common Area accessible from the Lots; and

(iii) For the purpose of enabling the Association, the Board, the Committee or any other committee appointed by the Board, to exercise and discharge their respective rights, powers and duties under the Project Documents. No Owner shall do any act or create any obstruction which would unreasonably interfere with the right or ability of the Association to perform any of its obligations or exercise any of its rights under the powers or easements reserved under this Declaration.

ARTICLE 7

ARCHITECTURAL CONTROL

7.1 Creation of Committee; Design Guidelines and Construction Guidelines. For the purpose of maintaining the architectural and aesthetic integrity and consistency within the Project, protecting the health and welfare of residents, protecting the natural environment and preventing nuisances detrimental to other properties within the Project, an Architectural Control Committee (the "**Committee**") consisting of three (3) members is hereby established, except that the Committee need have only one member while Declarant has the right to appoint the Committee as provided below. The first members of said Committee are Gary Underwood, Paul Dugas and Lori Anderson, who shall serve until their resignation or removal by Declarant, whereupon Declarant, and its successors and assigns to whom rights are specifically assigned in writing under Section 8.4, may appoint replacement(s) who need not be Lot Owners. Declarant may waive its right to appoint some or all Committee members by recording an instrument in the office of the Maricopa County Recorder giving notice of the same.

After Declarant owns no Lots, a new Committee may be appointed by the Board of the Association. If no such Committee is appointed, then and in such event, the members of the Committee appointed by the Declarant, and/or its successors and assigns, may, but are not

obligated to, continue to act until such time as the Board appoints a new Committee. Members of the Committee appointed by the Board shall serve for a period of one (1) year or until their successors are duly appointed, whichever is later or until they are removed by action of the Board.

A majority of the Committee shall be entitled to take action and make decisions for the Committee. Except for Committee members appointed by the Declarant, all Committee members shall be Owners or representatives of Developers.

The Committee may adopt and amend Design Guidelines and Construction Guidelines from time to time to guide the design and construction of Improvements and Exterior Alterations. The Committee shall promptly notify all Owners of the adoption or amendment of Design Guidelines and/or Construction Guidelines and provide copies thereof upon request, for which reasonable copying fees may be charged.

The Design Guidelines and Construction Guidelines, if any, are in addition to and not in lieu of the land use and zoning ordinances of the City of Mesa, provided, however, that if any of the provisions of this Declaration, the Design Guidelines or the Construction Guidelines conflict with any land use or zoning ordinances of the City of Mesa as applicable to the Project, the more restrictive provisions shall control.

In addition to all other requirements of this Declaration, the Design Guidelines and the Construction Guidelines:

(a) No Dwelling Unit shall have a livable area of less than four thousand (4,000) square feet on the ground floor (i.e., not including basement or second story areas), exclusive of accessory buildings, breezeways, screened porches, terraces, patios and garages. The maximum dwelling height shall be 30 feet measured from the finished floor height to the top of the roof ridgelines, with no more than two (2) stories. Two story elements must be completely surrounded by lower roof and building masses approved by the Committee.

(b) The architectural design of all Dwelling Units constructed within the Project shall be Old World, Tuscany (old or new), Spanish Colonial, Mediterranean or Santa Barbara or as outlined in the subdivision Construction Guidelines or Design Guidelines, and shall not be of such a sharply contrasting nature so as to make the Dwelling Unit look unusual or incompatible with other existing or contemplated Dwelling Units.

(c) All Dwelling Units shall have a minimum of an enclosed four-car garage equipped with automatic garage door openers.

(d) Accessory living quarters must meet City of Mesa guidelines, as well as being approved in writing by the Committee.

(e) Unless concealed so as not to be Visible From Neighboring Property, no Dwelling Unit shall have its garage doors facing the street, unless a variance is obtained from the Committee. The garage entrance may be facing the entry side of a Dwelling Unit or the side Lot line.

(f) All Dwelling Units shall have at least three and one-half (3 ½) inside baths.

(g) No Dwelling Unit or accessory building constructed on any lot shall be constructed with plastic, aluminum or composition siding.

(h) There shall be no roof-mounted antennas or satellite dishes, unless otherwise permitted by law, in which event any such roof-mounted antenna or satellite dish must be located in the least visible location from the front of the Dwelling Unit while still permitting maximum reception, and the Committee can require the antenna or satellite dish to be painted/camouflaged to reduce the visual impact.

(i) All air conditioning, heating or environmental enhancement devices shall be mounted at ground level and specifically no units or mechanical devices of any kind shall be located on the roof of a home. All ground mounted air conditioning, heating or environmental enhancement devices must be screened from the street view by a block fence or wall and must not be Visible From Neighboring Property.

(j) Prior to any construction, a scaled landscape plan for the front and back yards shall be submitted to the Committee for approval.

(k) Finish floor elevations and onsite drainage must be addressed in Grading Plans prior to development of each Lot. The maximum elevation difference between adjacent property grades shall not exceed two (2) feet.

(l) All roofing material used on pitched or sloping roofs shall be clay or sand-cast tile. Concrete color-through tile may only be used on pitched or sloping roofs if it is a "flat" tile. All barrel or S-tiles must be clay or sand cast. The Committee will allow no wood or composite shingle roof, unless otherwise authorized and approved in writing. Dwelling Units constructed with flat or substantially flat roofs shall have a parapet wall, screening the flat roof portions from view, on the front, side and rear elevations of the Dwelling Unit. Parapet walls may be interrupted by design accents of projecting flat sections of the roof with the prior written authorization and approval of the Committee.

7.2 Review by Committee. No Improvements or Exterior Alterations shall be commenced, erected, made, structurally repaired, replaced or altered (except as set forth below) until the plans and specifications showing the nature, kind, shape, size, height, color, material, floor plan, location and approximate cost of same shall have been submitted to and approved by the Committee. The Committee shall have the right to refuse to approve any Improvement or Exterior Alteration which is not suitable or desirable in their opinion for aesthetic or other reasons, including noncompliance with the Design Guidelines, and they shall have the right to take into consideration (i) the suitability of the proposed Improvement or Exterior Alteration; (ii) the material (including type and color) of which it is to be built; (iii) the site (including location, topography, finished grade elevation) upon which it is proposed to be erected; (iv) the harmony thereof with the surroundings (including color and quality of materials and workmanship); and (v) the effect of the Improvement or Exterior Alteration as planned on the adjacent or neighboring property (including visibility and view). Any Owner requesting approval of the

Committee shall also submit to the Committee any additional information, plans and specifications which the Committee may reasonably request. In the event that the Committee fails to approve or disapprove an application for approval within sixty (60) days after its receipt of a fully compliant application, together with all supporting information, fees (as provided below), plans and specifications requested by the Committee, approval will not be required and this section will be deemed to have been complied with by the Owner who has requested approval of such plans, provided the design, location, color and kind of materials in the Improvement or Exterior Alterations shall be governed by all of the restrictions herein set forth.

With respect to reviewing an Owner's plans and specifications, the Committee shall have the right to charge a fee for reviewing requests for approval of any plans for any Exterior Alteration pursuant to this section, which fee shall be payable at the time the application for approval is submitted to the Committee. In addition, the Committee shall engage a licensed architect to assist it with reviewing submittals for the initial construction of a Dwelling Unit on each Lot, for which the anticipated fee to be paid by the Owner upon submission shall be \$1,500 [in 2005 Dollars]. Additional fees may be required for unusually complicated submissions or repetitive resubmittals. Further, the Committee shall have the right to employ professional consultants to review submittals for subsequent Exterior Alterations or Improvements after a Dwelling Unit exists on the Lot, to assist it in discharging its duties. In the event the Committee elects to employ such consultant, the Committee shall first give notice to the Owner of the fee required for purposes of hiring any such consultant and the Owner shall promptly pay said consultant's fee to the Committee prior to the Committee being obligated to proceed further with its review of said Owner's submission.

The Committee's or any professional consultant's review and/or approval of Improvement or Exterior Alterations shall not be interpreted or deemed to be an endorsement or verification of the safety, structural integrity or compliance with applicable laws or building ordinances of the Improvement or Exterior Alterations and the Owner and/or its agents shall be solely responsible therefor. Neither the Association, Committee, officers, directors, employees, agents, architects or design professionals shall have any liability whatsoever with respect to any defects or deficiencies associated with any plans submitted for approval. The Association, Board, Committee and its members, and Owners shall have no personal liability for judicial challenges to its decisions and the sole remedy for a successful challenge to a decision of the Committee shall be an order overturning the same without creating a right, claim or remedy for damages.

The approval by the Committee of any Improvement, Exterior Alteration, repair, change or other work pursuant to this section shall not be deemed a waiver from the Committee's right to withhold approval of any Improvement, Exterior Alteration, repair, change or other work subsequently submitted for approval.

Upon receipt of approval from the Committee for any Improvement, Exterior Alteration, repair, change or other work, the Owner who has requested such approval shall proceed to perform, construct or make the Improvement, Exterior Alteration, repair, change or other work approved by the Committee as soon as practical, and shall diligently pursue such work so that it is completed as soon as reasonably practical and within such time as may be prescribed the Committee.

The approval required of the Committee pursuant to this section shall be in addition to, and not in lieu of, any approvals or permits which may be required under any federal, state or local law, statute, ordinance, rule or regulation.

Unless at least two-thirds (2/3) of the First Mortgagees (based upon one (1) vote for each First Mortgage owned) or Owners (other than Declarant) of the individual Lots have given their prior written approval, the Association shall not by act or omission, change, waive or abandon any scheme or regulations, or enforcement thereof, pertaining to the architectural design or the exterior appearance of Lots, the maintenance of the Common Area, Party Walls, fences and driveways, or the upkeep of landscaping in the Project.

The restrictions and conditions set forth in this Section 7.2 and in Section 7.3 below shall not be applicable to any original construction whatsoever undertaken by Declarant.

7.3 Variances. The Committee may (with Board approval in its sole discretion and in extenuating circumstances) grant minor variances from the restrictions set forth in Article 5 and Article 6 of this Declaration and any of the requirements set forth in this Article 7 if the Committee determines that (a) either (i) a restriction would create an unreasonable and substantial hardship or burden on an Owner or (ii) a change of circumstances has rendered a restriction obsolete and (b) the activity permitted under the variance will not have a substantially adverse effect on other Owners and is consistent with the high quality of life intended for the Project.

7.4 Declarant's Exemption; Right to Replat. The restrictions and conditions set forth in this Article 7 shall not be applicable to any original construction whatsoever undertaken by the Declarant. In addition to the foregoing, Declarant hereby reserves the right, in its sole discretion, and without the consent of the Committee or any other Owner or lienholder (except as provided herein), to amend the Plat with regard to any Lots which Declarant owns from time to time. Notwithstanding the foregoing, such replatting shall not affect the boundaries of any other Owner's Lot or the Common Area and shall always comply with all zoning and other applicable statutes, rules, ordinances and regulations or any governmental or quasi-governmental agency having jurisdiction over the Project. Subject to satisfaction of the foregoing conditions, any amendment to the Plat prepared and recorded by Declarant may reconfigure Declarant's Lots and/or create additional Lots.

7.5 Zoning Compliance. All structures as defined in the City of Mesa Zoning Regulations in effect as of the date of recording this Declaration ("**Structures**") including, without limitation, tennis courts and swimming pools, must be constructed on the Lots in compliance with these restrictions.

(a) All permanent Structures on all Lots shall comply with all minimum yard setback requirements established by the applicable City zoning ordinance as it may be amended from time to time.

(b) Notwithstanding a more lenient City zoning ordinance, the minimum setback requirements shall be as follows:

Front	30 feet
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Back	30 feet
Side	10 feet

7.6 Construction Guidelines. In addition to all other restrictions contained herein, the Board or Committee may adopt such other and further Construction Guidelines as are consistent with this Declaration, which additional Construction Guidelines shall be published and made available to each Owner and which shall be enforced by the Committee. Notwithstanding anything herein to the contrary, and in addition to the provisions of Section 7.2 set forth above, the Construction Guidelines can require such other and further deposits or bonds as deemed necessary in its sole and absolute discretion to ensure prompt development and compliance with the Declaration, Design Guidelines and Construction Guidelines, including removal of construction debris that is allowed to accumulate in violation of this Declaration, the Design Guidelines or Construction Guidelines and/or repair of the Common Area. The minimum deposit or bond for any initial development of a Lot may be set forth in the Construction Guidelines, but will be in an amount not less than Two Thousand Five Hundred Dollars (\$2,500.00). The Committee shall also have the right to determine which portion, if any, of the deposit will be non-refundable. Any portion of the deposit that is refundable shall be refunded to the Owner by the Association upon the completion of the construction of the Improvements, the removal of all construction debris from the Lot and the repair of any damage to the Common Area occasioned by such construction.

All Dwelling Units, Improvements or other Structures of any type and all Lots shall be subject to the following restrictions, in addition to all other requirements:

(a) During construction all trash and construction debris shall be placed in a container and shall be removed as required and all J-Jons or similar portable restroom facilities must be placed in a location designated by the Committee and be properly maintained.

(b) On all Dwelling Units under construction, the front street area shall be kept clean and free of debris by the Owner or contractor and all mud or construction debris left upon the street by the contractor, the Owner, or their agents or employees, shall be removed.

(c) Owners of unoccupied Lots shall keep the Lots free from any and all debris and weeds at all times.

ARTICLE 8

GENERAL

8.1 Effect of Declaration and Remedies. The declarations, limitations, easements, covenants, conditions and restrictions contained herein shall run with the land and shall be binding on all persons purchasing (or whose title is acquired by foreclosure, deed in lieu thereof, trustee's sale or otherwise) or occupying any Lot in the Project after the date on which this Declaration is recorded. In the event of any violation or attempted violation of these covenants, conditions and restrictions, they may be enforced by an action brought by the Association, the Committee or by the Owner or Owners (not in default) of any Lot or Lots in the Project, at law or in equity, in addition to the Association's remedies in Sections 3.3, 3.7, 3.8, 4.14, 4.15, 4.16,

4.17 and 4.18. Declarant has no duty to take action to remedy any such default. Remedies shall include but not be limited to damages, injunctive relief and/or any and all other rights or remedies pursuant to law or equity and the prevailing party shall be entitled to collect all costs incurred and reasonable attorneys' fees sustained in commencing and/or defending and maintaining such lawsuit. Notwithstanding the foregoing, an Owner's liability for damage to Common Area or Lots (including improvement thereon) of other Owners by reason of the acts of the Owner, the Owner's tenants, and their respective family members, guests, invitees or licensees shall be limited to that imposed under applicable Arizona statutory, case and other law. Any breach of these covenants, conditions and restrictions, or any remedy by reason thereof, shall not defeat nor affect the lien of any mortgage or deed of trust made in good faith and for value upon the Lot in question and the breach of any of these covenants, conditions and restrictions may be enjoined, abated or remedied by appropriate proceedings, notwithstanding the lien or existence of any such mortgage or deed of trust.

All instruments of conveyance of any interest in any Lot shall contain (and if not, shall be deemed to contain) a reference to this Declaration and shall be subject to the declarations, limitations, easements, covenants, conditions and restrictions herein as fully as though the terms and conditions of this Declaration were therein set forth in full; provided, however, that the terms and conditions of this Declaration shall be binding upon all persons affected by its terms, whether express reference is made to this Declaration or not in any instrument of conveyance. No private agreement of any adjoining property owners shall modify or abrogate any of these restrictive covenants, conditions and restrictions.

8.2 Plurals; Gender. Whenever the context so requires, the use of the singular shall include and be construed as including the plural and the masculine shall include the feminine and neuter.

8.3 Severability. Invalidity of any one or more of these covenants, conditions and restrictions or any portion thereof by judgment or court order shall in no way affect the validity of any of the other provisions and the same shall remain in full force and effect.

8.4 Transfer by Declarant. Wherever Declarant is granted certain rights and privileges hereunder, Declarant shall have the right to fully or partially assign and transfer any of such rights and privileges as to the Lots which it owns to any other Developer as evidenced by a written instrument recorded in the office of the Maricopa County Recorder which describes in detail the particular Declarant's right or rights being assigned (if less than all such Declarant rights) and said instrument shall state that, in such case, the assignee is a co-Declarant or if Declarant has assigned all its rights in said instrument, it shall state that the assignee is a successor Declarant. If the operation of this Section 8.4 results in there being more than one Declarant at any one time, all such Declarants shall be co-Declarants holding the rights assigned to them by their original assignor. Upon an assignment by Declarant of its rights hereunder, Declarant shall thereafter have no further liability, responsibility or obligations for future acts or responsibilities of the successor or co-Declarant hereunder and the successor or co-Declarant shall be solely responsible therefor (to the extent of the assignment) and all parties shall look to the successor or co-Declarant therefor. At any time, Declarant or a co-Declarant may, by a written, recorded notice, relinquish all or any portion of its rights hereunder and all parties shall be bound thereby, except that no Declarant or co-Declarant, nor its successors or assigns, may

relinquish the rights of any other Declarant terminated thereby. Declarant (or a successor) may collaterally assign all of its rights and privileges to act as Declarant for the Project to a lender as additional security for any loan from the lender encumbering all or substantially all of the Lots in the Project owned by such Declarant, with such assignment to become absolute and final in favor of such lender or a purchaser at a foreclosure or trustee's sale upon that party's acquisition of fee title to the encumbered Lots, unless such party otherwise specifies in a recorded instrument.

8.5 Rights of First Mortgagees and Insurers or Guarantors of First Mortgages. Upon written request to the Association identifying the name and address of the First Mortgagee for any Lot or the insurer or guarantor of any such First Mortgage and the Lot number or address, any such First Mortgagee or insurer or guarantor of such First Mortgage will be entitled to timely written notice of:

(a) Any condemnation loss or any casualty loss which affects a material portion of the Project or any Lot on which there is a First Mortgage held, insured or guaranteed by such First Mortgagee or insurer or guarantor, as applicable;

(b) Any delinquency in the payment of Assessments owed or other default in the performance of obligations under the Project Documents by an Owner of a Lot subject to a First Mortgage held, insured or guaranteed by such First Mortgagee or insurer or guarantor which remains uncured for a period of sixty (60) days;

(c) Any lapse, cancellation or material modification of any insurance policy or fidelity bond maintained by the Association; and

(d) Any proposed action which would require the consent of a specified percentage of Eligible First Mortgagees as described in this Declaration.

8.6 Miscellaneous. This Declaration shall remain and be in full force and effect for an initial term of thirty-five (35) year from the date this Declaration is recorded. Thereafter, this Declaration shall be deemed to have been renewed for successive terms of ten (10) years, unless revoked by an instrument in writing, executed and acknowledged by the then Owners of not less than seventy-five percent (75%) of the Lots in the Project, and by "**Eligible First Mortgagees**" (those First Mortgagees who have filed a written request with the Association requesting notice of certain matters set forth in Section 8.5 of this Declaration) holding First Mortgages on Lots which have at least sixty-seven percent (67%) of the votes of Lots subject to First Mortgages held by Eligible First Mortgagees, which said instrument shall be recorded in the office of the Maricopa County Recorder's Office, Arizona, not earlier than ninety (90) days prior to the expiration of the initial effective period hereof, or any ten (10) year extension. If there is any conflict between any of the Project Documents, the provisions of this Declaration shall prevail. Thereafter, priority shall be given to the Project Documents in the following order: the Plat, Articles, Bylaws and Association Rules.

8.7 Amendments. At any time, this Declaration may be amended by an instrument in writing, executed and acknowledged by the then Owners of not less than sixty-seven percent (67%) of the Lots in the Project; provided however, that the Declarant, while Class B Membership exists, may amend this Declaration to comply with the guidelines or regulations of

any governmental or quasi-governmental agency insuring, guaranteeing or purchasing loans in the Project, without the consent of any other Owner or lienholder including First Mortgagees. The approval of Eligible First Mortgagees holding First Mortgages on Lots which have at least fifty-one percent (51%) of the votes of Lots subject to First Mortgages held by Eligible First Mortgagees shall be required to add to or amend any "**material**" provisions of the Project Documents which establish, provide for, govern and regulate any of the following:

- (a) voting;
- (b) Assessments, Assessment Liens or subordination of such Liens;
- (c) reserves for maintenance, repair and replacement of the Common Area;
- (d) insurance or fidelity bonds;
- (e) rights to use of or reallocation of interests in or sale or conveyance of fee title in the Common Area;
- (f) responsibility for maintenance and repair of the various portions of the Project;
- (g) expansion or contraction of the Project or the addition, annexation or withdrawal of property to or from the Project;
- (h) convertibility of Lots into Common Area or Common Area into Lots;
- (i) leasing of Lots;
- (j) imposition of any right of first refusal or similar restriction on the right of a Lot Owner to sell, transfer or otherwise convey his Lot;
- (k) any provisions which are for the express benefit of First Mortgagees, Eligible First Mortgagees or Insurers or Guarantors of First Mortgages on Lots held by Eligible First Mortgagees;
- (l) boundaries of any Lot except as expressly provided in Section 7.4 above;
- (m) restoration or repair of the Project (after hazard damage or partial condemnation) in a manner other than as specified in the Project Documents; and
- (n) any action to terminate the legal status of the Project after substantial destruction or condemnation occurs.

An addition or amendment to the Project Documents shall not be considered "**material**" if it is for the purpose of correcting technical errors or for clarification only. An Eligible First Mortgagee which receives a written request to approve additions or amendments pursuant to this paragraph and which does not deliver or post to the requesting party a negative response within thirty (30) days after such notice was delivered thereto by certified or registered mail, return

receipt requested, shall be deemed to have approved such request. The consents required under this Section 8.7 shall not apply to amendments recorded by Declarant to comply with governmental or quasi-governmental agency regulations as described above.

8.8 Waiver of Trial by Jury. On behalf of itself and all of its successors in interest and successors in title, including all future Owners and the Association, Declarant hereby waives any right to a trial by jury in any action or proceeding to enforce or defend or obtain remedies for the violation of any rights, restrictions, assessments or other provisions of this Declaration or under any amendment, instrument, document or agreement delivered or which may in the future be delivered in connection with this Declaration or arising from any relationship between any Owners and/or the Association under this Declaration and any such action or proceeding shall be tried before a court sitting without a jury.

8.9 Declarant Parties Dispute Notification and Resolution Procedure. All actions or claims by any Owner(s) or the Association against Declarant, or any of its agents, representatives or contractors ("**Declarant Parties**"), relating to or arising out of the Lots or the improvements thereon or any Common Area, including but not limited to, (a) this Declaration or any of the Project Documents, (b) the use or condition of property, (c) the design or construction of or any condition on or affecting property, including, but not limited to, construction defects, surveys, soils conditions, grading, specifications, installation of improvements (including, but not limited to, Lots or the improvements thereon or any Common Area), or (d) disputes which allege negligence or other tortious conduct, breach of contract or breach of implied or express warranties as to the condition of the property or any improvements or other matters (collectively, "**Dispute(s)**"), shall be subject to the provisions of this Section 8.9. Declarant and each Owner acknowledge that the provisions set forth in this Section 8.9 shall be binding upon current and future Owners and the Association for the benefit of Declarant and its successors in interest or title.

8.9.1 Notice. Any Person (including the Association) with a Dispute claim shall notify the Declarant in writing of the claim, which writing shall describe the nature of the claim and any proposed remedy (the "**Dispute Notice**").

8.9.2 Right to Inspect and Right to Corrective Action. Within a reasonable period after receipt of the Dispute Notice, which period shall not exceed sixty (60) days, Declarant and the claimant shall meet at a mutually acceptable place within the Resort, to discuss the claim. At such meeting or at such other mutually agreeable time, the Declarant and the Declarant's representatives shall have full access to the property that is the subject of the claim and shall have the right to conduct inspections, testing and/or destructive or invasive testing of the same in a manner deemed appropriate by Declarant (provided Declarant shall repair or replace any property damaged or destroyed during such inspection or testing), which rights shall continue until such time as the Dispute is resolved as provided in this Section 8.9. The parties shall negotiate in good faith in an attempt to resolve the claim. If the Declarant elects to take any corrective action, Declarant and Declarant's representatives and agents shall be provided full access to the Cabana Casitas and the property which is the subject of the claim to take and complete corrective action.

8.9.3 No Additional Obligations; Irrevocability and Waiver of Right. Nothing set forth in Section 8.9.2 shall be construed to impose any obligation on Declarant to inspect, test, repair or replace any item of the Lots or improvements for which Declarant is not otherwise obligated under applicable law or any limited warranty provided by Declarant in connection with the sale of the Lots and/or the improvements constructed thereon. The right of Declarant to enter, inspect, test, repair and/or replace reserved hereby shall be irrevocable and may not be waived or otherwise terminated except by a writing, in recordable form executed and recorded by Declarant in the Official Records of Maricopa County, Arizona.

8.9.4 Litigation. If the parties to the Dispute cannot resolve the claim pursuant to the procedures described in Section 8.9.2 above, the parties shall be free to commence an action under Section 8.9, subject to Section 8.9.5.

8.9.5 WAIVERS.

NOTICE: BY ACCEPTANCE OF A DEED OR BY ACQUIRING ANY OWNERSHIP INTEREST IN ANY LOT, EACH PERSON, FOR HIMSELF, HIS HEIRS, PERSONAL REPRESENTATIVES, SUCCESSORS, TRANSFEREES AND ASSIGNS, AGREES TO HAVE ANY DISPUTE RESOLVED ACCORDING TO THE PROVISIONS OF THIS SECTION 8.9 AND WAIVES THE RIGHT TO PURSUE ANY DISPUTE IN ANY MANNER OTHER THAN AS PROVIDED IN THIS SECTION 8.9. EACH OWNER, ASSOCIATION AND DECLARANT AGREE AND ACKNOWLEDGE THAT THEY ARE GIVING UP THEIR RESPECTIVE RIGHTS TO HAVE SUCH DISPUTES TRIED BEFORE A JURY AS PROVIDED IN SECTION 8.8. EACH OWNER, ASSOCIATION AND DECLARANT FURTHER WAIVE THEIR RESPECTIVE RIGHTS TO AN AWARD OF PUNITIVE AND CONSEQUENTIAL DAMAGES RELATING TO A DISPUTE. BY ACCEPTANCE OF A DEED OR BY ACQUIRING ANY OWNERSHIP INTEREST IN ANY LOT, EACH OWNER HAS VOLUNTARILY ACKNOWLEDGED THAT HE IS GIVING UP ANY RIGHTS HE MAY POSSESS TO PUNITIVE AND CONSEQUENTIAL DAMAGES OR THE RIGHT TO A TRIAL BEFORE A JURY RELATING TO A DISPUTE.

8.9.6 Statutes of Limitation. Nothing in this Section 8.9 shall be considered to toll, stay, reduce or extend any applicable statute of limitations.

ARTICLE 9

ADDITIONAL PROVISIONS

9.1 Drainage and Onsite Retention. The Project has been approved by the City Council of Mesa subject to certain requirements and restrictions with respect to drainage. Certain parcels within the Project will be required to receive rain water from private streets, and rain water from the Project must drain onto the Common Area. All areas defined as retention

basins on the approved grading plan for the Project shall remain at the grades indicated on the approved grading plan on file with the City of Mesa and nothing will be constructed to hinder the flow of storm water from public streets to these retention basins. The Improvements within the retention areas, including but not limited to landscaping, irrigation systems, storm drains and bleed off, will be maintained by the Association.

The provisions of this section constitute a covenant running with the land of the Project and each Lot within the Project, and upon recording, shall be binding upon any subsequent purchaser or occupier of any part of the Project.

This section and the covenants herein may be enforced by the City of Mesa by any proceeding at law or in equity against any person or persons violating or attempting or threatening to violate any of these covenants to prevent him or them from doing so and recover damages for such violations. In such proceedings, the City of Mesa shall have the right to recover, in addition to any other damages, a reasonable sum as for attorneys' fees and costs.

9.2 Avigation Easement. An Avigation Easement is recorded in Document No. 01-0285395 of the Official Records of Maricopa County, Arizona Recorder. Each Owner must sign an acknowledgement that represents to the Declarant, the Association, the City of Mesa and all other Owners that they are aware that the Property lies under flight path of aircraft utilizing Falcon Field Airport and each and every Owner does hereby give and grant to the City of Mesa an easement for Avigation purposes over and across the Project in connection with flights above the surface of an infinite height above the same, which easement shall include, but not be limited to, the right of flight of aircraft over the land, together with its attendant noise, vibrations, fumes, dust, fuel and lubricant particles, and all other affects that may be caused by the operation of aircraft landing at, or taking off from, or operating at or on the Mesa Municipal Airport currently known as Falcon Field. Each Owner does further release and discharge Declarant and the City of Mesa for the use and benefit of the public and agencies of the City of Mesa, of and from liability for any and all claims for damages of any kind to persons or property that may arise at any time in the future over or in connection with the Owner's Lot above to an infinite height above same, whether such damage shall originate from noise, vibration, fumes, dust, fuel, and/or lubricant particles, and all other effects that may be caused by the operation of aircraft landing at, or taking off from, or operating at or on the Mesa Municipal Airport currently known as Falcon Field. This Avigation Easement shall be binding upon each Owner and his heirs, assigns and successors in interest to the Property and it is further agreed that this Avigation Easement is a covenant running with the Property.

9.3 Declarant's Right to Use Similar Name. The Lot Owners and Association hereby irrevocably consent to the use by any other corporation which may be formed or incorporated by Declarant of a corporate name which is the same or deceptively similar to the name of the Association, provided one or more words are added to the name of such other corporation to make the name of the Association distinguishable from the name of such other corporation. Within five (5) days after being requested to do so by the Declarant, the Association shall sign such letters, documents or other writings as may be required by the Arizona Corporation Commission in order for any other corporation formed or incorporated by the Declarant to use a corporate name which is the same or deceptively similar to the name of the Association.

9.4 Disclaimer. The City of Mesa is not responsible for and will not accept maintenance of any private facilities, streets, landscaped areas, etc., within this Project. The maintenance of the landscaping, drainage and associated improvements within Tracts A, B, C, D and E shall be the responsibility of the Association. The maintenance of all landscaping within the public right-of-way adjoining the Project shall also be the responsibility of the Association.

9.5 Noise Attenuation. Design for each Dwelling Unit in the Project will incorporate noise attenuation measures into their construction in order to achieve a noise level reduction of 25 DB.

9.6 Citrus. The Project is developed in an existing citrus grove and it is the intent of this Declaration to preserve as many citrus trees as possible, while still allowing development of each individual Lot. Upon completion of the initial Dwelling Unit on each Lot, the Lot Owner shall have maintained all existing citrus trees or replanted (if not existing) a minimum of one (1) row of citrus at the rear of the Lot as approved by the Committee. In addition to the required rear Lot rows of trees, upon completion of the initial development of a Dwelling Unit on a Lot, as approved by the Committee:

(a) The Owner of Lot 4 must have maintained the existing row of citrus trees on the south side of the Lot.

(b) The Owners of Lots 10 and 18 each shall have either maintained the existing row of citrus trees on the west side of the Lot or added a new row of citrus trees closer to the west side fence.

(c) The Owners of Lots 13 and 14 each shall have added a new row of citrus trees (minimum 30-inch ball size) on the east side of the Lot up against the "temporary screen fence" described in Section 9.9 below.

(d) All other Lot Owners are strongly encouraged, where feasible, to have maintained the existing rows of citrus trees along the sides of the Lot. If that is not feasible, each such Lot Owner shall have maintained or replanted a minimum of six (6) citrus trees on the Lot, in addition to the rear row of citrus trees required above.

Irrigation to front yards will be allowed in tree wells only – all other plants and sod must receive drip or sprinkler.

Until construction of the initial Dwelling Unit commences, each Lot Owner will maintain and operate the existing irrigation system on the Lot to keep all existing citrus trees healthy; will not remove any citrus trees (except trees that die despite the Owner's compliance with this section); and will keep the Lot neat and weed free. The Association may act under Section 3.8 if an Owner fails to comply with this section.

9.7 Irrigation.

(a) Irrigation easements are provided on the Plat of the Project for all Lots and Common Area tracts, and all Owners and the Association are bound thereby.

(b) All Lots and Common Area tracts with irrigation may be irrigated by an independent contractor appointed by the Association. If the Association does not engage an independent contractor to conduct the irrigation, each Lot Owner will be solely responsible therefor, including timely opening and closing of valves when scheduled to prevent flooding and interruption of irrigation flow. Each Lot Owner shall be responsible for all liability, claims, damages, losses, attorneys' fees or costs incurred or sustained by the Association or any other Lot Owner as a result of that Lot Owner's breach of this provision.

(c) It is the responsibility of each Lot Owner to protect and maintain the integrity of the irrigation line located within their Lot boundaries. Any repairs or required maintenance of the irrigation line located within a particular Lot boundary will be performed at the expense of the Lot Owner. All such repairs and maintenance shall be performed by a licensed irrigation contractor in a professional and timely manner. If the Owner is unable or unwilling to do so, the Association will have said repairs completed and the Lot Owner will be assessed the cost of the repair plus a \$150 [in 2005 Dollars] service charge. The failure to pay such amounts to the Association following ten (10) days from the presentation of a bill therefor will result in such amounts being assessed against the Lot as a Lot Specific Assessment.

(d) Any modification of the existing irrigation lines/valves must be approved by the Committee or Board.

(e) Irrigation valves located within each Lot boundary are to remain closed at all times, except during the allotted irrigation time as scheduled by Roosevelt Water Conservation District.

(f) Because the City of Mesa is requiring protection and maintenance of existing citrus trees, flood irrigation is strongly recommended as an effective and economical means of providing water for healthy citrus. Lot Owners electing not to flood irrigate must provide other means of irrigation in order to properly maintain healthy citrus on each Lot.

9.8 On-Lot Storm Water Retention. Each Lot is required to file a Grading and Drainage Plan at the time of building permit submittal. Any application for development submitted to the Committee must also reflect the required Lot retention and the failure to so include such information will result in the application being deemed incomplete and rejected. Each Lot shall be responsible for retaining storm water runoff from the one hundred (100) year, two (2) hour duration storm falling on said Lot and the adjacent street frontage(s) (one half of street frontage) as outlined in the final drainage report on file at the City of Mesa.

9.9 Armistead Easement. Lots 4, 5, 6, 7, 8, 13 and 14 of the Project (the "**Burdened Lots**") are subject to and burdened by that certain Temporary, Non-Exclusive Access Easement dated June 16, 2003 and recorded June 17, 2003 as Document No. 2003 0783685 as amended by the First Amendment to Temporary, Non-Exclusive Access Easement dated August 25, 2004 and recorded September 14, 2004 as Document No. 2004 1068872 of the records of the Maricopa County, Arizona Recorder (the "**Armistead Easement**") from Declarant, as Grantor, in favor of Robert K. Armistead (also known as Robert Kenneth Armistead) and Bettye Ann Armistead, husband and wife ("**Armistead**"), as Grantee. The Armistead Easement allows Armistead to use the "**Easement Property**" described in the Armistead Easement "solely for the transit of

equipment, supplies, personnel and harvested fruit in conjunction with use of the Benefited Property as a commercial citrus orchard."

The Owners of the Burdened Lots or any interest therein shall receive and hold title to or interests in the Burdened Lots subject to the Armistead Easement and the rights of Armistead thereunder. Declarant has no responsibility or liability for the performance or non-performance by Armistead of the obligations of Armistead under the Armistead Easement, or the actions, misconduct or negligence of Armistead or any other Persons pursuant to or in connection with the Armistead Easement.

Upon expiration of the Armistead Easement under Paragraph 2 thereof, the Owners of each Burdened Lot shall have the sole right and responsibility to remove the portions of the "temporary screen fence" and any "access gate" relating to the Armistead Easement that is located on that Burdened Lot, at the sole cost and expense of such Owner.

9.10 Use of Tract E. The City of Mesa has required that Declarant create Tract E as shown on the Plat to provide access to an irrigation valve located behind Lot 2 of the Project, which irrigation valve serves only the adjacent Ann Lynn Estates subdivision. The Association will own and maintain Tract E but the only authorized purpose of Tract E is for access to the irrigation valve for persons designated by the Ann Lynn Estates Board of Directors pursuant to that certain agreement dated _____, 2005 between the Association and the Ann Lynn Estates Association (the "**Ann Lynn Estates Agreement**"). Pursuant to the provisions of the Ann Lynn Estates Agreement, persons authorized by the Ann Lynn Estates Board of Directors may enter the Project off of McLellan Road over Tract D, to obtain access to Tract E, and no Owner or other person shall interfere for such access in accordance with the Agreement. The Association shall have the right to enforce, modify and otherwise deal with the Ann Lynn Estates Agreement as it deems in the best interests of the Project.

9.11 Exception Parcel. The Plat for the Project shows an "Exception Parcel" due south of Lot 1 of the Project (the "**Exception Parcel**"). The Exception Parcel is not part of the Project for any purpose. Notwithstanding the foregoing, Declarant hereby grants perpetual, irrevocable and non-exclusive easements to the owners of the Exception Parcel from time to time ("**Exception Parcel Owners**") for (a) access, ingress and egress over and across Tract D for use by the Exception Parcel Owners and such Owners' tenants, and their respective family members, guests and invitees for access, ingress and egress to and from McLellan Road, and (b) use of Tract C for its intended purpose, by the Exception Parcel Owners and such Owners' tenants, and their respective family members and guests (collectively, the "**Exception Parcel Easements**"), but only in accordance with this Declaration and the Association Rules, provided that the Exception Parcel Owners provide notice to the Association that such Owners intend to utilize, or authorize their tenants to utilize, the Exception Parcel Easements and for so long as such notice is in effect, the Exception Parcel Owners pay the "**Access Fee**" described below. The Exception Parcel Owners may notify the Association of the discontinuance of the use of the Exception Parcel Easements, provided that the Exception Parcel Owners establish to the reasonable satisfaction of the Association that all access from the Exception Parcel to Tract D has been physically blocked. For so long as the Exception Parcel Owners have complied with the foregoing sentence, the Access Fee will not be due and payable.

For purposes of this section, the Access Fee shall be an amount equal to the Annual Assessment payable by a Lot Owner, prorated for partial periods, and payable on a monthly or quarterly basis in the same manner as Annual Assessments as determined by the Association.

DATED this 18th day of November, 2005.

CITY VIEW PROPERTIES, L.L.C., an Arizona
limited liability company

By [Signature]

its Manager/member

STATE OF ARIZONA)
) ss.
County of Maricopa)

The foregoing instrument was acknowledged before me this 18 day of November, 2005, by Jeff Anderson, the Manager/member of CITY VIEW PROPERTIES, L.L.C., a limited liability company, on behalf of said company.



[Signature]
Notary Public

My Commission Expires 06-05-06

WHEN RECORDED, MAIL TO:

1506991-3-1-1--
Sotor

David W. Kreutzberg, Esq.
Squire, Sanders & Dempsey L.L.P.
40 North Central Avenue, Suite 2700
Phoenix, Arizona 85004

Escrow No. 01506991-243

**FIRST AMENDMENT TO DECLARATION OF COVENANTS,
CONDITIONS AND RESTRICTIONS**

COBBLESTONE AT THE GROVES

**THIS FIRST AMENDMENT TO DECLARATION OF COVENANTS,
CONDITIONS AND RESTRICTIONS** (the "First Amendment") is made and entered into to
be effective this 19th day of April, 2006 by **CITY VIEW PROPERTIES, L.L.C.**, an Arizona
limited liability company (the "Declarant") as follows:

WITNESSETH:

WHEREAS, Declarant executed that Declaration of Covenants, Conditions and
Restrictions for Cobblestone at the Groves recorded on January 31, 2006 as Document No. 2006
139810 of the records of the Maricopa County, Arizona Recorder (the "Declaration") with
respect to the Project described therein; and

WHEREAS, Declarant owns all of the Lots in the Project and, therefore, has the right
without the joinder of any other party to amend the Declaration as set forth in Section 8.7 of the
Declaration; and

WHEREAS, Declarant desires to amend the Declaration as set forth below.

NOW, THEREFORE, Declarant hereby amends the Declaration as follows:

1. The words "and their respective family members, guests and invitees" are deleted
from the third and fourth lines of Section 3.2A of the Declaration. The words "and Areas of
Association Responsibility" are added after "Common Area" in the first line on Page 7 of the
Declaration.

2. The words "and Areas of Association Responsibility" are added after "Common
Area" in the third and fifth lines of Section 4.2 of the Declaration. The words "and to enable the
Association to discharge and perform its responsibilities" are hereby added to the end of the first
sentence of Section 4.2 of the Declaration.

3. The last sentence of Section 6.1 of the Declaration is deleted and replaced by the following:

"Except as provided below, all block fences shall be of 6" or 8" CMU; no 4" block fencing will be allowed. Notwithstanding the foregoing, where a 4" block fence is already in existence and is in good condition as determined by the Committee and is located on the property line of a Lot that is also the outside perimeter of the Project, the Owner of that Lot will not be required to remove the existing 4" block fence, or to build a second block fence separate from the existing 4" block fence, but may elect to use that existing 4" block fence as the boundary fence for that Lot. Any such existing 4" block fence allowed to remain shall be finished with a stucco mortar wash finish and painted as provided in Section 6.2 below with respect to the side of that fence that faces into the Project or any portion thereof."

4. The words "and the Areas of Association Responsibility on any Lots" are added after "Common Area" in the second line of Section 6.6C(ii) of the Declaration.

5. The words "and by Declarant if Declarant owns any Lots" are added after the word "Project" in the third line of Section 8.7 of the Declaration.

6. The words "the Cabana Casitas and" are deleted in the second to last line of Section 8.9.2 of the Declaration.

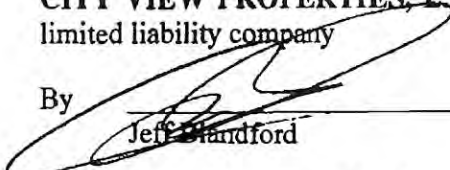
7. The following is added to the end of Section 9.6(d) of the Declaration: "Notwithstanding the foregoing, where the useable width of an individual Lot is restricted by structures and amenities to be constructed thereon, screening trees that have a 'grove' appearance, but which are more narrow in their growth, may be substituted for citrus trees. Acceptable trees in these areas include ficus trees, ornamental citrus trees or other trees approved by the Committee."

Except as provided herein to the contrary, all terms and provisions of the Declaration as originally set forth shall remain in full force and effect.

IN WITNESS WHEREOF, Declarant has executed this First Amendment to be effective on the date set forth above.

CITY VIEW PROPERTIES, L.L.C., an Arizona
limited liability company

By

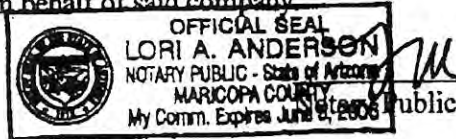

Jeff Blanford

Its Manager/Member

STATE OF ARIZONA)

County of Maricopa)

The foregoing instrument was acknowledged before me this 19 day of April, 2006 by Jeff Blandford, the Manager/Member of CITY VIEW PROPERTIES, L.L.C., an Arizona limited liability company, on behalf of said company.



My Commission Expires:

06-05-06