

**C C & R's**

**For**

**VASARO  
HOMEOWNERS  
ASSOCIATION**

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OFFICIAL RECORDS OF  
MARICOPA COUNTY RECORDER  
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WHEN RECORDED RETURN TO:

Matthew R. Berens, Esq.  
7047 East Greenway Parkway, Suite 140  
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Scottsdale, Arizona 85254

**DECLARATION OF COVENANTS, CONDITIONS AND RESTRICTIONS**

**FOR CITRUS PRESERVE (DBA VASARO)**

**CHANDLER, MARICOPA COUNTY, ARIZONA**

THIS DECLARATION made this 10<sup>th</sup> day of March, 2003, by VASARO, LLC, an Arizona limited liability company (the "Declarant").

**WITNESSETH:**

WHEREAS, Declarant is the beneficial owner of certain property (the "Property") in the County of Maricopa, State of Arizona, which is more particularly described as follows, to-wit:

Lots 1 through 116, inclusive and Tracts A through W, inclusive, BA, BC, OA, OB and PS, of Citrus Preserve recorded in Book 628 of Maps, page 24 Official Records of Maricopa County.

WHEREAS, Declarant will convey the properties described above, subject to certain protective covenants, conditions, reservations, liens and charges as hereinafter set forth; and

WHEREAS, Declarant has incorporated under the laws of the State of Arizona, a nonprofit corporation named, "Vasaro Homeowners Association, Inc.," for the purpose of exercising the functions hereinafter set forth.

NOW, THEREFORE, Declarant hereby declares that all of the properties described above shall be held, sold and conveyed subject to the following easements, restrictions, covenants and conditions, all of which are for the purpose of enhancing and protecting the value, desirability and attractiveness of the properties described above. These easements, covenants, restrictions and conditions shall be deemed easements, covenants, restrictions and conditions running with the land and shall be binding on all parties having or acquiring any right, title or interest in the properties described above, or any part thereof, and shall inure to the benefit of each Owner thereof.

WHEN RECORDED RETURN TO:

Matthew R. Berens, Esq.  
7047 East Greenway Parkway, Suite 140  
**BERENS, KOZUB, LORD & KLOBERDANZ, PLC**  
Scottsdale, Arizona 85254

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**THIS DECLARATION** is designed for the mutual benefit of the Property subject to this Declaration. Declarant hereby fixes the protective conditions upon and subject to which all lots, parcels, and portions of the Property shall be held, leased, sold, used and conveyed. Each such condition is for the mutual benefit of the Property and each owner thereof, shall run with the land, shall inure to and pass with each lot, parcel of land, or portion thereof in the Property, and shall apply to and bind the owners thereof and their respective successors in interest. Each and every such condition is imposed upon the Property as a mutual, equitable servitude in favor of each and every lot, parcel of land or portion thereof and therein as the dominant tenements, in favor of the Declarant.

## **SECTION 1 DEFINITIONS**

The following defined terms have the meanings set forth hereafter whenever used herein:

- 1.1 *Articles.* The Articles of Incorporation of the Association which have been or will be filed in the Arizona Corporation Commission, as said Articles may be amended from time to time.
- 1.2 *Assessments.* The annual, special and/or supplemental assessments levied and assessed against each Lot pursuant to Section 5 of this Declaration.
- 1.3 *Assessment Exempt Lots.* Any lot owned by a governmental agency or entity and used for official purposes.
- 1.4 *Assessment Lien.* Means the lien created and imposed by Article 5.
- 1.5 *Assessment Period.* Means the time period set forth in Section 5.4.
- 1.6 *Association.* The Arizona nonprofit corporation to be organized by the Declarant to administer and enforce the Project Documents and to exercise the rights, powers and duties set forth therein, and its successors and assigns. Declarant intends to organize the Association under the name of Vasaro Homeowners Association, Inc.
- 1.7 *Association Rules.* The rules and regulations adopted by the Association, as the same may be amended from time to time.
- 1.8 *Board.* The Board of Directors of the Association.
- 1.9 *Bylaws.* The bylaws of the Association, as such bylaws may be amended from time to time.
- 1.10 *Common Area.* All real property, and all improvements located thereon, owned by the Association for the common use and enjoyment of the Owners. The Common Area to be owned by the Association at the time of the conveyance of the first Lot to a Purchaser is described as follows:

Tracts A through W, inclusive, BA, BC, OA, OB and PS of Citrus Preserve, a subdivision according to the plat recorded with the County Recorder of Maricopa County, Arizona, in Book \_\_\_\_ of Maps, Page \_\_\_\_.

- 1.11 *Common Expense.* Means the actual and estimated expenses incurred or anticipated to be incurred by or on behalf of the Association, including any allocations to reserves determined by the Board to be necessary and appropriate, and all other financial liabilities of the Association.
- 1.12 *Declarant.* Vasaro, LLC, an Arizona limited liability company, its assigns or successors and any person or entity to whom it may expressly assign any or all of its rights under this Declaration.
- 1.13 *Declaration.* The covenants, conditions and restrictions herein set forth in this entire document, as the same may from time to time be amended.
- 1.14 *Declarant Control Period.* Means the period commencing upon the recording of this Declaration and ending on the date that the Class B membership in the Association terminates pursuant to Section 5.5.
- 1.15 *Design Guidelines.* The construction and design related guidelines as set forth in Section 2.4 or as otherwise adopted by the Board or the Design Review Committee.
- 1.16 *Design Review Committee.* The committee established pursuant to Section 2.2 of this Declaration.
- 1.17 *Design Review Committee Rules.* The rules adopted by the Design Review Committee.
- 1.18 *Dwelling Completion.* The date the primary dwelling on any Lot receives approval for occupancy by passage of a final inspection from the City of Chandler.
- 1.19 *Lot.* Any parcel of real property designated as a Lot on the Plat.
- 1.20 *Member(s).* Any person, corporation, partnership, joint venture or other legal entity who is a member.
- 1.21 *Owner(s).* The record owner, whether one or more persons or entities, of beneficial or equitable title (and legal title if the same has merged with the beneficial or equitable title) to the fee simple interest of a Lot. Owner shall not include (i) persons or entities having an interest in a Lot merely as security for the performance of an obligation, or (ii) a lessee or tenant of a Lot. Owner shall include a purchaser under a contract for the conveyance of real property, a contract for deed, a contract to convey, an agreement for sale or any similar contract through which a seller has conveyed to a purchaser equitable title in a Lot under which the seller is obligated to convey to the purchaser the remainder of seller's title in the Lot, whether legal or equitable, on payment in full of all monies due under the contract.

Owner shall not include a purchaser under a purchase contract and receipt, escrow instructions or similar executory contracts which are intended to control the rights and obligations of the parties to the executory contracts pending the closing of a sale or purchase transaction. In the case of Lots, the fee simple title to which is vested in a trustee pursuant to a subdivision trust agreement or similar agreement, the beneficiary of such trust who is entitled to possession of the trust property shall be deemed to be the Owner.

- 1.22 *Plat.* The Final Plat for Citrus Preserve, which plat has been recorded with the County Recorder of Maricopa County, Arizona, in Book \_\_\_\_ of Maps, Page \_\_\_, and all amendments thereof.
- 1.23 *Project Documents.* This Declaration and the Articles, Bylaws and Design Guidelines of the Association.
- 1.24 *Property (ies) or Project.* The real property or portion thereof described on Exhibit "A" attached to this Declaration together with all buildings and other improvements located thereon, and all easements, rights and appurtenances belonging thereto.
- 1.25 *Purchaser.* Any person other than the Declarant, who by means of a voluntary transfer becomes the Owner of a Lot except for (i) an Owner who purchases a Lot and then leases it to the Declarant for use as a model in connection with the sale of other Lots or (ii) an Owner who, in addition to purchasing a Lot, is assigned any or all of the Declarant's rights under this Declaration.
- 1.26 *Regular Assessment.* Means the Assessments levied pursuant to Section 5.2.
- 1.27 *Single Family.* A group of one or more persons each related to the other by blood, marriage or legal adoption, together with their domestic servants who maintain a common household in a dwelling.
- 1.28 *Single Family Residential Use.* The occupation or use of a residence 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.
- 1.29 *Special Assessment.* Means any assessment levied pursuant to Section 5.3.
- 1.30 *Tracts.* The tracts set forth in the Plat.
- 1.31 *Visible From Neighboring Property.* 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.

## SECTION 2 ARCHITECTURAL CONTROL

2.1 Purpose: All Property Subjected. The purpose of imposing architectural control on the Property is to assure aesthetic integrity, to protect the health and welfare of residents, to protect the natural environment and to prevent nuisances detrimental to other properties within the Property. In connection with such purposes the Property is hereby made subject to the jurisdiction of the Design Review Committee, and all owners and users of the Property shall comply with the requirements of the Design Review Committee. All improvements, standards, definitions and general land use regulations refer to those contained in the Design Guidelines of this Declaration or the Project Documents. Any such improvement standards, definitions and land use regulations are not to be confused with any land use regulations or definitions contained in the zoning ordinance of the City of Chandler, provided, however, in the event that any of the provisions of this Declaration conflict with any of the provisions of the zoning ordinance of the City of Chandler, as applicable to the Property, the more restrictive of the two shall govern.

2.2 Design Review Committee. There is hereby established the Design Review Committee of the Association which committee shall be composed of three or more members appointed by the Board of Directors of the Association.

(a) It shall be the purpose of this committee to review all plans for all improvements, structures and/or dwellings to insure that they comply with the restrictions, covenants and conditions and to review the landscaping plan for all Lots. No construction may begin on any improvements, structures and/or dwellings until the written approval of the Design Review Committee has been obtained;

(b) Nothing contained herein shall in any way make the City of Chandler liable for any violation of any of the restrictions, covenants and conditions contained herein;

(c) In the event that front yard landscaping has not been completed at the time of Dwelling Completion, then said Owner must complete such landscaping within ninety (90) days after such date. In the event the Owner of a Lot fails to complete the landscaping thereof within such ninety (90) day period, the Association shall have the right to complete such landscaping and receive reimbursement of all expenses incurred therein. In the event the Owner fails to repay such expenses within ten (10) days of receipt of a billing therefor, the Association shall be entitled to record, enforce and foreclose a lien against the respective Lot in the manner established for delinquent assessments as set forth in Section 5 hereof;

(d) Excluding accessory buildings (which may include guest houses, cabanas and garages) no more than one detached, single family dwelling may be constructed on any Lot as shown in the Properties, except that more than one Lot may be used for one dwelling, in which event, all restrictions contained herein shall apply to such Lots as if they were a single Lot; and

(e) It shall be an additional purpose of this Committee to prepare additional Design Guidelines to provide further clarification of the restrictions, rules and regulations related to construction and design of residences and related matters set forth in this Declaration. The authority

of the Committee shall allow the adoption and printing of additional Design Guidelines provided they are consistent with the Declaration.

(f) No waivers of the restrictions of this Section 2.2 may be made by the Design Review Committee.

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

2.4 Construction and Design Guidelines (the "Design Guidelines"). All residences and Lots shall be governed by the following guidelines and restrictions:

(a) No dwelling shall have a ground floor livable area of less than three thousand (3,000) square feet, exclusive of accessory buildings, breezeways, screened porches, terraces, patios and garages.

(b) No dwelling unit shall be allowed which has more than one story above ground. Basements are allowed.

(c) All buildings shall have at least one enclosed two-car garage equipped with an automatic garage door opener.

(d) No dwelling shall have its garage doors facing the street on which the residence fronts unless a variance is obtained from the Design Review Committee. The garage entrance may be facing the entry side of the dwelling or the side lot line.

(e) All dwellings shall have at least two full inside baths.

(f) No dwelling or accessory building constructed on any Lot shall be constructed with plastic, aluminum, or composition siding and each dwelling's roof shall be constructed with either a flat colored concrete tile, flat terra cotta tile or mission tile. Asphalt shingle roofs are prohibited.

(g) There shall be no roof mounted antennas. The location of any satellite dish must be approved by the Design Review Committee.

(h) All dwellings shall have the landscaping from the fence separating the back yard to the front lot line of the Lot completed within ninety (90) days of Dwelling Completion.

(i) All air conditioning, heating, or environmental enhancement devices shall be mounted at ground level and specifically no units of 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 street view by a block fence or wall and must not be Visible From Neighboring Property.

(j) All dwellings shall have installed in the front and rear yard of each home an automatic sprinkler system for the watering of the trees, lawn areas, entries, and the landscaping shall be regularly maintained, including winter overseeding of lawns, to preserve the green nature of the front lawn in the cooler winter months.

(k) *Included with each landscaping plan and required to be installed as part of the landscaping of each lot, and in addition to the trees planted by the developer, each Lot Owner shall be required to plant a minimum of two (2) twenty-four (24) inch boxed trees in the front yard to be located as set forth in the Design Guidelines and the applicable landscape plan.*

(l) Prior to installation of landscaping, but no more than 90 days after the Design Review Committee's approval of home plans, a scaled landscape plan prepared by a professional landscape designer, or licensed landscape contractor shall be submitted to the Design Review Committee for approval.

(m) During construction, the entire Lot shall be enclosed by a construction fence and all trash and construction debris shall be placed in a container and shall be removed as required.

(n) On all residences 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.

(o) On adjoining Lot lines, the adjoining Owners shall share equally the expense of their side fences. Except as limited in this Section 2.4(o), reimbursement for construction, repair and maintenance requirements shall be set forth in Section 2.22 hereof. An Owner building a residence adjacent to a Lot upon which the fence has already been constructed, shall reimburse the adjoining Lot Owner or Owners an amount equal to one-half (1/2) of the actual construction cost to said Owner of the fence, except that the cost for said fence shall not exceed the normal construction cost for a "dooley" or "superlite" type concrete fence regardless of the actual type or cost of fence built by the adjoining landowner. Reimbursement for walls from Lot Owner shall be due and paid at time of plan submittal pursuant to Section 2.2.

(p) No carports shall be built within the Project.

2.5 Setbacks. The side yard building setbacks shall be a minimum of ten (10) feet on both sides. The front yard building setbacks shall be a minimum of twenty five (25) feet, and the rear yard setbacks shall be a minimum of twenty five (25) feet for single story residences and thirty five (35) feet for two story residences. In addition, the rear yard building setbacks along the north and west boundaries of the Property adjacent to the existing rural development area shall be a minimum of thirty (30) feet for single story residences and forty (40) feet for two story residences. There shall be at least a five (5) foot differential at the rear yard setback between all adjacent Lots along the north boundary of the Property. No building shall be located on any Lot nearer any lot line than allowed by the Plat or the requirements of the City of Chandler, whichever is more restrictive. For the purpose of this covenant, eaves, steps, and open porches shall not be considered as a part of a building, provided, however, that this shall not be construed to permit any portion of a building on a Lot to encroach upon any other Lot.

2.6 Access. No vehicular access shall be permitted onto any Lot from the rear of such Lot which is adjacent to a street. All garages and driveways shall provide access to the street from the front of the Lot.

2.7 Fence Height. All walls, including fences separating front and back yards, shall be a minimum of six (6) feet and a maximum of seven (7) feet, shall be constructed across the rear and sides of each Lot and shall be constructed of masonry block or brick. In addition, the fence from the dwelling to the side lot line or in the case of a corner lot from the dwelling to the side lot line and back to the rear lot line shall be of the same architectural style as the house and shall be approved by the Design Review Committee of this Association. All fences shall be erected prior to the Owner of any Lot taking possession of a residence on the Lot. Fences or walls constructed within the area of the minimum front or side setback line shall not exceed four (4) feet in height and fences or walls constructed on any side lot line shall not exceed seven (7) feet in height, subject to the governing zoning ordinances. Notwithstanding the foregoing, the perimeter walls constructed along the west boundary of the Property adjacent to the existing rural development area shall be a minimum of six (6) feet and a maximum of eight (8) feet.

2.8 Easement Construction. Easements, as indicated upon the recorded map of this subdivision, are reserved for the installation and maintenance of public service utilities and other uses for public or quasi-public good. No buildings shall be placed upon such easements or interference be made with the free use of the same for the purposes intended.

2.9 Temporary Buildings. No tent, shack, garage, barn or other outbuildings which is Visible From Neighboring Property shall, at any time, be erected and used temporarily or permanently as a residence or for any other purpose, nor shall any recreational vehicle be used as a residence or for any other purpose on any of the Lots or streets in the Property. No structure of any kind shall be moved into any part of the Properties except temporary buildings used by contractors in connection with construction work, it being the intent of this Declaration that all structures on any Lot shall be constructed thereon.

2.10 No Business, No Group Homes. Except as provided elsewhere herein, no trade, business, profession or other type of commercial activity shall be carried on upon any Lot, except that real estate brokers, owners and their agents may show dwellings in the Properties for sale, or lease, nor shall any Lot be used as a hospital or sanitarium or other place for hire for the care or entertainment of persons suffering from any disease or disability whatsoever; nor shall anything be done on any Lot which may become an annoyance or nuisance to the neighborhood. 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 (i) is not apparent or detectable by sight, sound, or smell from the exterior of the single-family house; (ii) conforms to all zoning requirements for the Project; (iii) does not increase the liability or casualty insurance obligation or premium of the Association; and (iv) is consistent with the residential character of the Project and (v) does not constitute a nuisance or a hazardous or offensive use or generate excessive or unusual traffic or parking of vehicles in the vicinity of any Lot or the Common Areas, as may be determined in the sole discretion of the Association. 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 or work 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: (i) such activity is engaged in full or part-time; (ii) such activity as intended to or does generate a profit; (iii) a license is required therefor.

2.11 Pets. No animals, livestock, or poultry of any kind shall be raised, bred, or kept on any Lot, except that cats, dogs and other household pets may be kept, provided they are not kept, bred, or maintained for any commercial purpose and provided further that no person owning or in custody of a dog shall allow the dog to stray or go upon another Lot without the consent of the owner of such Lot.

2.12 Vehicle Parking. No vehicle owned by Owner or Owner's immediate family, or tenant in the case of rental shall be parked on any part of the Project except on paved concrete or brick driveways. Parking on street for guests shall be only allowed in accordance with posted signs. No trailers, trucks or commercial vehicles, other than those present on business may be parked in the Properties and no overnight parking of such vehicles shall be permitted. Boats, boat trailers and other recreational vehicles shall be parked inside of garages or concealed from public view behind the side lot fence provided that a paved brick or concrete pad is provided for the storage of said vehicle. No vehicle of any type which is abandoned or inoperable shall be stored or kept on any Lot within this subdivision in such a manner as to be seen from any other Lot or from any streets or alleyways within this subdivision.

2.13 Trash Receptacles. Trash, garbage or other waste shall not be kept except in sanitary containers, as approved by the City of Chandler. Such refuse containers shall not be permitted in the front yard and shall be screened from street view. Each dwelling shall provide an area for the storage of said trash containers which area shall not be Visible From Neighboring Property and shall be used to house the container when it is not placed on the street for pickup. Trash and garbage containers may be placed on the street on normal pickup days but shall be removed to their proper storage area as soon as reasonably possible after they have been emptied by sanitation workers. All incinerators or other equipment for the storage or disposal of such material shall be kept in a clean and sanitary condition subject to the governing zoning ordinances of the City of Chandler.

2.14 No Clothes Lines. No clothing or household fabrics shall be hung in the open on any Lot.

2.15 No Signage. Except for signs by homebuilders of reasonable size, no advertising signs shall be displayed on any Lot with the exception of "For Sale" signs not exceeding 24" by 36".

2.16 Solar Devices No dwelling shall be constructed with any air conditioning, heating or environmental enhancement device on the roof of any home except that solar energy units may be mounted on the roof of the dwelling provided that the solar unit is screened from view to the front, side and rear sight lines of the Lot.

2.17 Vehicles Being Repaired. All abandoned or junked vehicles while being repaired or restored, shall be stored in an enclosed garage or in such a manner as to not be visible from any point lying outside the Lot which the abandoned or junked vehicle is stored or parked. For the purposes of this Section, (i) "Abandoned or junked Vehicle" means a vehicle or any major portion thereof which is incapable of movement under its own power and will remain so without major repair or reconstruction; (ii) "Major repair" means the removal from any vehicle of a major portion thereof including but not limited to the differential, transmission, head, engine block or oil pan; (iii) "Vehicle" means any self-propelled device in, upon, or by which any person or property is or may be transported upon a public highway.

2.18 No 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 wells, tanks, tunnels, mineral excavations 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.

2.19 Building Completion. Any building in this subdivision, the construction of which has been started, shall be completed (and Dwelling Completion achieved) within twelve (12) months except when such delay is caused by acts of God, strikes, actual inability of the Owner to procure delivery of necessary materials, or by interference by other persons or forces beyond the control of the Owner to prevent.

2.20 Maintenance. All vacant Lots shall be at all times kept free of rubbish and litter subject to the normal requirements of construction activities upon each Lot; weeds and grass shall be disked out or kept well mown so as to present a tidy appearance at all times. The yards and grounds in connection with all improved properties shall be at all times kept in a neat and slightly condition and shall be cultivated and planted to any extent sufficient to maintain an appearance not out of keeping with that of typical improved properties in this subdivision. During prolonged absence, Lot Owners agree they will arrange for the care of their Lots during such absence. Owners shall also keep all dwellings, accessory buildings and other structures of all types, including walls, mailboxes, etc. in good repair and in a slightly, clean manner, including maintenance of painted areas and surfaces. In the event a Lot Owner does not maintain his Lot or dwelling in a neat, proper manner as required, the Association may have said Lot cleaned up and upon the Lot Owner's refusal to pay the cost of such cleanup and within ten (10) days after receipt of a billing therefor, such amount shall constitute a lien against said Lot subject to the provisions of Section 5 hereof.

2.21 Drainage Easements. An Owner of a Lot shall not at any time hereafter fill, block or obstruct any drainage easements and drainage structures on the Properties, nor shall any Owner cause or suffer to be erected on any Lot, any building or obstruction for the purpose, directly or indirectly, of obstructing, blocking or filling any such drainage easement or drainage structure, and each Owner agrees to repair and maintain all such drainage easements and drainage structures on a Lot, making good nevertheless, at his own expense, all damage which may be caused to the said drainage easements and structures on the Property, and each Owner agrees to repair at his own expense, all damage to any structure or any Lot which may be caused, directly or indirectly, by his obstructing, blocking or filling any such drainage easement.

2.22 Construction, Maintenance and Repair of Joint Fences/Walls. To the extent not expressly modified by other Sections hereof, Owners fences/walls on adjoining Lot lines shall comply with the following:

(a) Comply with all provisions regarding architectural control of fences/walls pursuant to Section 2 of the Declaration.

(b) The cost of reasonable repair and maintenance of a joint mailbox or joint fence/wall shall be equally shared by the adjoining Owners. In the event any such joint fence/wall is damaged or destroyed by some cause other than the act of one of the adjoining Owners, his agents, tenants, licensees, guests or family (including ordinary wear and tear and deterioration from lapse of time) then in such event, both such adjoining Owners shall proceed forthwith to rebuild or repair the same to as good condition as formerly at their joint and equal expense.

(c) The first Owner to commence construction of a Dwelling Unit on its Lot shall construct the joint fence. The Owner of the Lot sharing such preconstructed fence shall pay to the Owner of the Lot who originally constructed the fence, an amount representing one-half (½) of the fence cost within thirty (30) days after start of construction of the Dwelling Unit on the Lot adjacent to that owned by the builder of the fence.

(d) Any damage done to an existing fence during construction shall be repaired by the Owner of the Lot on which the construction is taking place.

(e) Any Owner of a Lot on which initial construction of a Dwelling Unit has not occurred, but for which the benefit of a fence has been constructed by the adjacent Lot Owner, shall be responsible to notify any potential purchaser of said unimproved Lot of the liability for payment for such Owner's portion. Such liability shall run with the land until construction of a Dwelling Unit commences.

(f) Any Owner selling Lot after having constructed a fence, but prior to collection of the prorata share from the adjacent Owner, shall be deemed to have assigned said right to collection to the new purchaser.

(g) In addition to meeting the other requirements of the Declaration and of any other City of Chandler code or similar regulations or ordinances, any Owner proposing to modify, make additions to build or rebuild a fence in any manner which requires construction, extension or other alteration, shall first obtain the written consent of the adjoining Owner and the Design Review Committee.

(h) In the event of a dispute between Owners with respect to the repair or the rebuilding of a fence or with respect to sharing the cost thereof, then, upon, written request of one of such Owners addressed to the Association, the matter shall be submitted to the Design Review Committee, whose decision shall be final.

(i) The provisions of this Section shall be binding upon the heirs and assigns of any Owners, but no person shall be liable for any act or omission respecting the fence except such as took place while he was an Owner.

2.23 Variances. Notwithstanding any other provisions of this Declaration, the Design Review Committee may review applications, and grant approvals, for exceptions to this Declaration, or the Board may review applications and grant approvals, for exceptions to this Declaration or the Design Guidelines. Notwithstanding any other provisions of this Declaration, at all times the Board may review applications, and grant approvals, for exceptions to the rules and regulations of the Association. Subject to the foregoing restrictions, variances or exceptions from these requirements, and in general, other forms of deviations from restrictions imposed by this Declaration, the Design Guidelines or by the rules and regulations of the Association may be made if, in the sole opinion of the Design Review Committee or Board as applicable and in compliance with all deed restrictions and all applicable laws and governmental regulations, such exceptions, variances and deviations do not in any way detract from the appearance of the Property and are not detrimental to the public welfare or to the property of other persons located in the vicinity thereof.

**SECTION 3**  
**LAND USE AND DISCLOSURE**

All Lots in Property are designated for Single Family Residential Use lots and shall be improved, used, and occupied in accordance with the provisions and conditions set forth under this Declaration, the Single Family Residential Land Use Regulations of the Declaration and the City of Chandler Zoning Ordinance, provided, however, such zoning use may be changed where such changes are not detrimental to the overall intent of this Declaration and where prior approval for such changes is obtained from the Design Review Committee, the Board, and any governmental agency having jurisdiction. In addition, Declarant hereby discloses that the Property is adjacent to agricultural properties which have horse and animal privileges which may cause adverse noise, odors and other externalities. Such land uses are legal and should be expected to continue indefinitely.

**SECTION 4**  
**HOMEOWNERS ASSOCIATION**

4.1 Organization. Declarant shall, on or before the date of the first conveyance of a Lot to a Lot owner other than Declarant, organize a corporation to be called the Vasaro Homeowners Association, Inc. (the "*Association*"). The Association shall be a non-profit Arizona corporation, having the duties and powers prescribed by law and set forth in the Association's Articles and Bylaws and in this Declaration. In any conflict between provisions of the Articles or the Bylaws and this Declaration, the provisions of this Declaration shall control.

4.2 Board of Directors and Officers. The affairs of the Association shall be conducted by the Board and such officers as the Board may elect or appoint in accordance with the Articles and the Bylaws. The initial officers and directors of the Association shall be designated in the Articles. Until the termination of the Class B Votes, the Declarant shall have the right to appoint and remove the members of the Board. After the termination of the Class B Votes, the Board shall be elected by the members as provided in the Bylaws. Unless the Project Documents specifically require the vote or consent of the members, the Board may do or cause to be done any act on behalf of the Association.

4.3 Board Duties. The Board shall be responsible for all of the affairs of the Association and shall undertake business activities including, but not limited to, the following:

- (a) Enforcing the provisions of this Declaration, the Design Guidelines (following the date set forth above), the Articles, and the Bylaws, seeking enforcement and/or remedy at any court of law as reasonably necessary;
- (b) Establishing rules and regulations in furtherance of the objectives of this Declaration, which will be enforceable as if set forth herein in full;
- (c) Entering into contracts on behalf of the Association, paying taxes, and assuring that business obligations are met;
- (d) Maintaining corporate records;

(e) Preparing periodic financial statements, at least annually, and making copies of such statement available to any Board member or Lot owner who requests a copy;

(f) Hiring employees or contracting with management firms as necessary;

(g) Arbitrating disputes between Lot owners, when requested by all parties to the dispute, and when such dispute is within the context of this Declaration as interpreted by the Board. The results of such arbitration shall be binding on all parties;

(h) Establishing an annual budget for maintenance of any improvements on areas designated by the Board or on Common Areas, any landscaping to be maintained by the Association, and administrative or other costs, and determining the regular assessment to be charged to each Lot owner, recording a lien upon the property of any Lot owner when such owner becomes more than ninety (90) days delinquent according to the payment schedule established for the regular assessment, any special assessment, or any maintenance assessment levied according to procedures contained herein. When an owner becomes thirty (30) days or more delinquent on any regular, special, or maintenance assessment payment schedule, then the remaining amount of such assessment (i.e., the amount allocable to subsequent periods which would not otherwise be immediately due and payable) shall, at the option of the Board, become immediately due and payable; and

(i) Assuring that liability insurance for the Association, Lot owners, Board, and employees is maintained as provided in Section 7 hereof. Such insurance shall in no event provide protection for the individually owned Lots or activities of individual Lot Owners.

4.4 Board Powers. The Association may: buy, sell, rent, or lease property, real or personal, and accept gifts and dedications thereof; borrow and lend money; and pledge and encumber its assets.

4.5 Declaration Controls. The Board shall be guided by, and except when in its sole discretion good planning would dictate to the contrary, controlled by the provisions of this Declaration, and shall determine whether the conditions hereof are being complied with.

4.6 Non-liability. Declarant, the Board, and officers of the Association shall not be liable in damages to any owner of property affected by this Declaration by reason of mistake in judgment, negligence, or nonfeasance arising out of exercise of their rights, or performance of their duties called for hereunder, and every owner of such property agrees that he will not bring any action or suit against Declarant, the Board, or officers of the Association to recover any such damages.

4.7 Association Membership. Each owner of a Lot shall be a member ("Member") of the Association. Such membership ("Membership") may not be separated from such ownership or conveyed independently of the Lot to which it is appurtenant. Owners of more than one Lot shall have a separate membership for each Lot owned.

4.8 Voting. Each owner of a Lot is entitled to one vote for each Lot. If there is more than one owner for an individual Lot, only one membership exists, with only one vote for each Lot. In the event of a dispute among owners of a Lot as to how the votes for that Lot are to be cast, the Board at its discretion may

cause the vote to be canceled until the owners resolve their dispute. If one owner purchases more than one Lot and combines them into a single parcel for a particular purpose, one membership for each Lot purchased or owned shall be allowed. If any Lot is legally subdivided, each newly created parcel shall be considered a fractional portion of the original Lot, subject to this Declaration and subject to assessments as provided below. Assessment Exempt Lots shall not be entitled to vote.

4.9 Classes. There shall be two classes of votes:

(a) *Class "A" Votes.* Owners of one or more Lots shall have the right to one vote for each Lot owned.

(b) *Class "B" Votes.* Declarant shall have five votes for each Lot it owns in the Property. The Class "B" votes shall terminate and convert to Class "A" votes, (a) when all Lots have been sold by Declarant, or (b) when Declarant relinquishes its Class "B" votes, whichever first occurs. On the date the Class "B" votes terminate, if full-time employees of Declarant constitute a majority of members of the Board, Declarant shall cause one or more of such members to resign so that the remaining percentage of members who are employees of the Declarant do not constitute a majority.

4.10 Restrictions on Dissolution. The Association shall not be dissolved unless another entity has agreed to assume all operation and maintenance responsibilities of the Association as provided in this Declaration. Furthermore, neither Declarant nor its successors- in- interest shall have the right to amend this Declaration to conflict with the conditions contained in this Section 4.10 unless the Property is reverted to acreage and the Plat abandoned.

## SECTION 5 COVENANT FOR ASSESSMENTS AND CREATION OF LIEN

5.1 Creation of Lien and Personal Obligation of Assessments. Each Owner, other than the Declarant, by becoming the Owner of a Lot, is deemed to covenant and agree, to pay Assessments to the Association in accordance with this Declaration. All Assessments shall be established and collected as provided in this Declaration. The Assessments, together with interest, late charges, and all costs (including but not limited to reasonable attorneys' fees) incurred by the Association in collecting or attempting to collect delinquent Assessments, whether or not suit is filed, shall be a charge on the Lot and shall be continuing lien upon the Lot against which each such Assessment is made. A Regular Assessment or Special Assessment shall be levied against any Lot owned by the Declarant.

(a) Each Assessment, together with interest and all costs, including but not limited to reasonable attorneys' fees, incurred by the Association in collecting or attempting to collect delinquent Assessments, whether or not suit is filed, shall also be the personal obligation of the Person who was the Owner of the Lot at the time when the Assessment became due. The personal obligation for delinquent Assessments shall not pass to the successors in title of the Owner unless expressly assumed by them.

(b) No Owner shall be exempt from liability for Assessments because of such Owner's non-use of the Common Area, abandonment of such Owner's Lot or other circumstance. The

obligation to pay Assessments is a separate and independent obligation on the part of each Owner. No diminution or abatement of Assessments or set-off shall be claimed or allowed for any alleged failure of the Association, the Board or the Design Review Committee to take some action or perform some function required of it.

5.2 Regular Assessments. At least thirty (30) days prior to the commencement of each Assessment period, the Board shall prepare and adopt a budget of the estimated Common Expenses for the next Assessment Period, including any contribution to be made to a reserve fund. The budget shall also reflect the sources and estimated amounts of funds to cover such Common Expenses, which may include any surplus to be applied from prior years, any income expected from sources other than Assessments, and the amount to be generated through Assessments against the Lots. Based on the budget adopted by the Board, the Board shall assess against each assessable lot a Regular Assessment. The Regular Assessment shall be the same for each assessable lot. The amount of increase, if any, in the Regular Assessment from one Assessment Period to the next Assessment Period shall be subject to such limitations as may be imposed by Arizona law.

(a) The Board shall give notice of the Regular Assessment to each Owner at least thirty (30) days prior to the beginning of each Assessment Period, but the failure to give such notice shall not affect the validity of the Regular Assessment established by the Board nor relieve any Owner from its obligation to pay the Regular Assessment. If the Board fails to adopt a budget for any Assessment Period, then until and unless such budget is adopted and a Regular Assessment is levied by the Board for such Assessment Period, the amount of the Regular Assessment for the immediately preceding Assessment Period shall remain in effect. Unless approval or ratification of the budget or the Regular Assessment for any Assessment Period is required by law, neither the budget nor the Regular Assessment; shall be required to be ratified or approved by the Members.

(b) If the Board determines during any Assessment Period that the funds budgeted for that Assessment Period are, or will, become inadequate to meet all Common Expenses for any reason, including, without limitation, nonpayment of Assessment by Members, the Board may amend the budget and increase the Regular Assessment for that Assessment Period and the revised Regular Assessment shall commence on the date designated by the Board.

5.3 Special Assessments. The Association may levy against each Assessable Lot a Special Assessment for the purpose of obtaining funds to pay the cost of any construction, reconstruction, repair or replacement of an improvement upon any area of Association responsibility, or to pay unbudgeted expenses or expenses in excess of the amount budgeted. Any Special Assessment must be approved by two-thirds (2/3) of the votes entitled to be cast by Members who are voting in person or by proxy at a meeting duly called for such purpose. So long as the Declarant owns any Lot, and Special Assessment must be approved in writing by the Declarant. Any Special Assessment shall be levied in an equal amount for each Assessable Lot.

5.4 Assessment Period. The period for which the Regular Assessment is to be levied shall be the calendar year, except that the first Assessment Period shall commence on the first day of the first month following issuance of a certificate of completion for improvements to the Lots by the City of Chandler and terminate on December 31 of such year. The Board in its sole discretion from time to time may change the Assessment Period.

5.5 Obligation of Declarant for Deficiencies. During the Declarant Control Period, the Declarant shall pay and contribute to the Association such funds as may be necessary, when added to the Regular Assessment levied by the Association, to pay all Common Expenses of the Association as they become due. The Board may require the payment of such funds by the Declarant from time to time as the Board deems necessary by giving written notice thereof to the Declarant. Each such notice shall state the total amount of funds required and the calculation of the pro rata share of such funds to be paid by the Declarant. In no event shall the Declarant be obligated to pay or contribute money to the Association in excess of the amount of Regular Assessments that would have been payable by the Declarant if the Lots owned by the Declarant had been assessed as Assessable Lots.

5.6 Rules Regarding Billing and Collections Procedures. Regular Assessments shall be collected on a quarterly basis or such other basis as may be selected by the Board. Special Assessments may be collected as specified by the Board. 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 failure of the Association to send a bill to a Member shall not relieve any Member of such Member's liability for any Assessment or charge under this Declaration, but the Assessment Lien therefor shall not be foreclosed until the Member has been given not less than thirty (30) days written notice prior to such foreclosure that the Assessment or any installment thereof is or will be due and of the amount owing. Such notice may be given at any time prior to or after delinquency of such payment. 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 but successor Owners of Lots shall be given credit for prepayments, on a prorated basis, made by prior Owners.

5.7 Effect of Nonpayment of Assessments; Remedies of the Association.

(a) Any Assessment, or any installment of an Assessment, not paid within fifteen (15) days after the Assessment, or the installment of the Assessment, first became due shall bear interest from the due date at the rate of interest set from time to time by the Board. In addition, the Board may establish a late fee to be charged to any Owner who has not paid any Assessment, or any installment of an Assessment, within fifteen (15) days after such payment was due.

(b) The Association shall have a lien on each Lot for: (a) all Assessment levied against the Lot; (b) all interest, lien fees, demand fees, late charges and other fees and charges assessed against the Lot or payable by the Owner of the Lot; (c) all fines levied against the Owner of the Lot; (d) all attorney fees, court costs, title report fees, costs and fees charged by any collection agency either to the Association or to an Owner and any other fees or costs incurred by the Association in attempting to collect Assessments or other amounts due to the Association by the Owner of a Lot whether or not suit is filed by the Association; (e) any amounts payable to the Association pursuant to Section 8.3 or 8.4; and (f) any other amounts payable to the Association pursuant to the Project Documents.

(c) The Recording of this Declaration constitutes record notice and perfection of the Assessment Lien. The Association may, at its option, record a Notice of Lien setting forth the name of the delinquent Owner as shown in the records of Association, the legal description or street address of the Lot against which the Notice of Lien is recorded and the amount claimed to be past due as of the date of the Recording of the Notice, including interest, lien recording fees and reasonable attorney's

fees. Before recording any Notice of Lien against a Lot, the Association shall make a written demand to the defaulting Owner for payment of the delinquent Assessments, together with interest, late charges and reasonable attorney's fees, if any, and all other amounts secured by the Assessment of Lien. Each default shall constitute a separate basis for a demand, but any number of defaults may be included within the single demand. If the amounts specified in the demand are not paid within ten (10) days after delivery of the demand, the Association may proceed with recording a Notice of Lien against the Lot. If the Association records a Notice of Lien, the Association may charge the Owner of the Lot against which the notice of lien is recorded a lien fee in an amount established from time to time by the Board.

(d) The Assessment Lien shall have priority over all liens or claims except for: (a) tax liens for real property taxes; (b) assessments in favor of any municipal or other governmental body; and (c) the lien of any first mortgage. Any first mortgagee or any other person acquiring title or coming into possession of a Lot through foreclosure of a first mortgage, purchase at a foreclosure sale or trustee sale, or through any equivalent proceedings, such as, but not limited to, the taking of a deed in lieu of foreclosure shall acquire title free and clear of any claims for unpaid assessments and charges against the Lot which became payable prior to the acquisition of such Lot by the first mortgagee or other person. Any Assessments and charges against the Lot which accrue prior to such sale or transfer shall remain the obligation of the defaulting Owner of the Lot.

(e) The Association shall not be obligated to release the Assessment Lien until all delinquent Assessments, interest, lien fees, fines, reasonable attorney's fees, court costs, collection costs and all other sums payable to the Association by the Owner of the Lot have been paid in full.

(f) The Association shall have the right, at its option, to enforce collection of any delinquent Assessments together with interest, lien fees, reasonable attorney's fees and any other sums due to the Association in any manner allowed by law including, but not limited to, (a) bringing an action at law against the Owner personally obligated to pay the delinquent Assessments and such action may be brought without waiving the Assessment Lien or (b) bringing an action to foreclose the Assessment Lien against the Lot in the manner provided by law for the foreclosure of a realty mortgage. The Association shall have the power to bid in at any foreclosure sale and to purchase, acquire, hold, lease, mortgage and convey any and all Lots purchased at such sale.

5.8 Purposes for which Association's Funds May be Used. The Association may use the 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 purpose of: (a) discharging and performing the Association's duties and obligations under the Project Documents or applicable law; (b) exercising the rights and powers granted to the Association by the Project Documents or applicable law; (c) providing or promoting activities and services the Board deems appropriate, necessary or desirable to foster or promote the common good and general welfare of the Project and the Owners, lessees and residents; (d) contracting for services (including, without limitation, trash collection or cable television) to be provided to Owner, lessees and residents; and (e) taking such other action as the Board deems necessary, appropriate or desirable for the management and administration of the Association or the benefit of the Association or the Project.

5.9 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 Regular 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.

5.10 Initial Capital Contribution. Each Purchaser of a Lot from the Declarant shall pay to the Association immediately upon becoming the Owner of the Lot a sum equal to one-sixth (1/6th) of the then current Regular Assessment for an Assessable Lot. Funds paid to the Association pursuant to this Section may be used by the Association for payment of operating expenses or any other purpose permitted under the Project Documents. Payments made pursuant to this Section shall be nonrefundable and shall not be considered as an advance payment of any Assessments levied by the Association pursuant to this Declaration. Payments made pursuant to this Section shall be deemed a contribution to the capital of the Association.

5.11 Transfer Fee. Each Person who purchases a Lot from a person other than the Declarant shall pay to the Association or the Association's managing agent immediately upon becoming the Owner of the Lot a transfer fee in such amount as is established from time to time by the Board to compensate the Association for the administrative cost resulting from the transfer of a Lot.

## SECTION 6 COMMON AREAS AND IMPROVEMENTS

6.1 Establishment. On or before the date of the first conveyance of a Lot to an Owner other than the Declarant, Declarant shall convey to the Association the Common Area described on Exhibit "B", attached hereto and made a part hereof by this reference. Declarant shall convey the Common Area to the Association free of all liens and encumbrances except current real property taxes (which taxes shall be prorated as of the date of conveyance), title exceptions of record and the covenants, conditions, reservations and restrictions contained in this Declaration and the instrument which conveys the Common Area to the Association. Every Owner shall assume a right and easement of enjoyment in and to the Common Area and such easement shall pass with the title to every assessed Lot.

6.2 Improvements. The Association may install improvements, including landscaping in the Common Area or easements on Lots. The Association shall prevent any Lot Owner from removing or altering any such improvements where such items have been installed on easements reserved for that purpose. Costs to the Association of such installation and/or prevention shall be included as part of the Assessments set forth above, with the Board determining whether the costs is a Regular Assessment or a Special Assessment.

6.3 Maintenance. The Association shall be responsible for the maintenance, repair and replacement of the Common Area and the improvements described above, and may, without any approval by the Lot owners, do any of the following:

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

(b) Construct, reconstruct, repair, maintain, replace or refinish any portion of the Common Area used as a road, street, walk, driveway or flood control area;

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

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

(e) Place and maintain signs as the Association may deem appropriate in connection with the Property at locations outside of the Common Area and the Property, and obtain permission from the Owners of land upon which such signs are located in connection with landscaping, maintenance, and utilities for such signs;

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

(g) Maintain the exterior side of perimeter walls, with all Owners subject hereto specifically agreeing to maintain (at such Owner's sole cost) the interior portion of such perimeter walls. Owners also shall be responsible for the cost to construct and maintain all perimeter wall modifications approved by the Design Review Committee.

The Board shall be the sole judge as to the appropriate maintenance of the Common Area. The costs of the maintenance activity required by this Section, together with all other related expenses shall be included as part of the regular assessment set forth above.

6.4 Failure of Association to Maintain Common Area. If the Association fails to maintain the Common Area as provided in Section 6.3, then the City of Chandler shall have the right, but not the obligation, after reasonable notice to the Association, to enter the Property and perform such maintenance on the Common Area. In the event the City of Chandler elects to perform such maintenance, the City of Chandler shall be entitled to recover all costs, both direct and indirect, for the performance of such maintenance from the Owners. In connection therewith, if the Owners fail to reimburse the City of Chandler for such maintenance costs, the City of Chandler shall be entitled to place a pro rata lien on the Lots. Under no circumstances shall this Declaration be amended to in any way diminish the rights of the City of Chandler to perform maintenance obligations as provided in this Section 6.4.

## SECTION 7 INSURANCE

7.1 Scope of Coverage. Commencing not later than the time of the first conveyance of a Lot to a Purchaser, the Association shall maintain, to the extent reasonably available, the following insurance coverage:

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

(b) Comprehensive general liability insurance, including medical payments, insurance, in an amount determined by the Board, but not less than \$1,000,000. Such insurance shall cover all occurrences commonly insured against for death, bodily injury and property damage arising out of or in connection with the use, ownership or maintenance of the Common Area and all other portions of property which the Association is obligated to maintain under this Declaration;

(c) Workmens' compensation insurance to the extent necessary to meet the requirements of the laws of Arizona;

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

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

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

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

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

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

(v) Statement of the name of the insured as the Association;

(vi) For policies of hazard insurance, a standard mortgagee clause providing that the insurance carrier shall notify the first mortgagee named in the policy at least ten (10) days in advance of the effective date of any substantial modification, reduction or cancellation of the policy;

(f) “*Agreed Amount*” and “*Inflation Guard*” endorsements.

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

7.3 Fidelity Bonds. The Association shall maintain blanket fidelity bonds for all officers, directors, trustees and employees of the Association and all other persons handling or responsible for funds of or administered by the Association, including, without limitation, any management agent to whom the Association has delegated some or all of the responsibility for the handling of such funds. The total amount of fidelity bond coverage shall be based upon the best business judgment of the Board, and shall not be less than the greater of (i) the estimated maximum amount of funds, including reserve funds, in the custody of the Association or the management agent, as the case may be, at any given time during the term of each bond, or (ii) the sum equal to three months Annual Assessments on all Lots and parcels plus adequate reserve funds. Fidelity bonds obtained by the Association must also meet the following requirements:

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

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

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

7.4 Payment of Premiums. The premiums for any insurance obtained by the Association pursuant to Section 4.1 of this Declaration shall be included in the budget of the Association and shall be paid by the Association.

7.5 Insurance Obtained by Owners. Each Owner shall be responsible for obtaining insurance for his own benefit and at his own expense covering his Lot or parcel, and the improvements located thereon, and his personal property and fixtures located on his Lot or parcel and providing personal liability coverage to the extent such insurance is not obtained by the Association.

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

7.7 Repair and Replacement of Damaged or Destroyed Property. Any portion of the Common Area which is 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 representing at least eighty percent (80%) of the total authorized votes in the Association vote not to rebuild. The cost of repair or replacement in excess of insurance proceeds and reserves shall be paid by the Association. If the entire Common Area is not repaired or replaced, insurance proceeds attributable to the damaged Common Area shall be used to restore the damaged area to a condition which is not in violation of any state or local health or safety statute or ordinance and the remainder of the proceeds shall be distributed to the Owners on the basis of an equal share for each Lot.

## SECTION 8 MISCELLANEOUS

8.1 Dedication. Declarant reserves the right to convey and dedicate rights of way and easements for drainage purposes, public utilities, and television and other communication cables, over a five foot strip of land within and along all side and rear lot lines of each and every Lot.

8.2 Run with the Land; Miscellaneous. The provisions hereof shall run with the land and shall be binding upon all parties and all persons claiming under them. This Declaration shall remain and be in full force and effect for an initial term of thirty-five (35) years 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 Lot owners of not less than seventy-five percent (75%) of the Lots subject hereto, and by "Eligible First Mortgagees" (which is defined to mean those First Mortgagees who have filed a written request with the Association requesting notice of certain matters as set forth above 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. As long as there is Class B Membership, the following actions require the prior approval of the Federal Housing Administration or the Veterans Administration if either of those agencies has approved the development plan of the Project: (i) annexation of additional properties, (ii) dedication of the Common Area, (iii) amendment of this Declaration (other than to correct technical errors or for clarification only), and (iv) withdrawal or de-annexation of any property from this Declaration.

8.3 Amendments. At any time, this Declaration may be amended by an instrument in writing, executed and acknowledged by the then Lot owners of not less than sixty-seven percent (67%) of the Lots in the Project and must be approved in writing by the board of directors; 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 on the Property,

without the consent of any Lot owner or lienholder. An addition or amendment to this Declaration shall not be considered "material" if it is for the purpose of correcting technical errors or for clarification only. The consents required under this Section 8.3 shall not apply to amendments recorded by Declarant to comply with governmental or quasi-governmental agency regulations as described above.

8.4 Conflicts. If any of the provisions of this Declaration conflict with any other provisions herein or incorporated herein, the more restrictive of the two shall govern. If any Section, section, sentence, clause or phrase of the provisions hereof shall be or become illegal, null or void for any reason, or shall be held by any court of competent jurisdiction to be illegal, null or void, the remaining sections, sentences, clauses or phrases herein contained shall not be affected thereby.

8.5 Enforcement.

(a) If an Owner of any Lot in the Property or his heirs, successors, or assigns, shall violate or attempt to violate any of the conditions or covenants herein, it shall be lawful for any other person or persons owning any other Lots subject to this Declaration to prosecute any proceeding at law or in equity against the person or persons violating or attempting to violate any such conditions or covenants and either to prevent him or them from doing so or to recover damages or other dues for each violation.

(b) In order to enhance and protect the value of the Lots described herein, the right to prosecute any proceeding at law or in equity against any person or persons violating or attempting to violate any conditions, either to prevent such violations or to recover damages or other dues for each violation is also expressly reserved to the Declarant, its successors or assigns whether or not Declarant is a Lot owner and the Design Review Committee, the right of Declarant and the Design Review Committee to prosecute proceedings shall terminate when improvements have been erected in conformance with these conditions on seventy-five percent (75%) of the Lots within the Property.

**PROVIDED, HOWEVER,** that a breach of any of the foregoing conditions or covenants shall not in any way affect any valid mortgage or lien made in good faith and for value and not made for the purpose of defeating the purposes of such reservations and restrictions.

8.6 Violations and Nuisance. Every act or omission whereby any provision of this Declaration is violated in whole or in part is hereby declared to be a nuisance and may be enjoined or abated, whether or not the relief sought is for negative or affirmative action, by the Declarant, the Association or any owner.

8.7 Violation of Law. Any violation of any state, municipal, or local law, ordinance or regulation, pertaining to the ownership, occupation or use of any property within the Property is hereby declared to be a violation of this Declaration and subject to any or all of the enforcement procedures set forth herein.

8.8 Remedies Cumulative. Each remedy provided herein is cumulative and not exclusive.

8.9 Management Agreements. Any agreement for professional management of the Association or the Project or any other contract providing for services of the Declarant, or other developer, sponsor or builder

of the Project shall not exceed one year. Any such agreement must provide for termination by either party without cause and without payment of a termination fee on thirty (30) days or less written notice.

8.10 Gender. The singular, wherever used in this Declaration, shall be construed to mean the plural when applicable, and the necessary grammatical changes required to make the provisions of this Declaration apply either to corporations or individuals, men or women, shall in all cases be assumed as though in each case fully expressed.

8.11 Topic Headings. The marginal or topical headings of the sections contained in this Declaration are for convenience only and do not define, limit or construe the contents of the sections or this Declaration.

8.12 Survival of Liability. The termination of membership in the Association shall not relieve or release any such former Member from any liability or obligation incurred under or in any way connected with the Association during the period of such membership, or impair any rights or remedies which the Association may have against such former Member arising out of, or in any way connected with such membership and the covenants and obligations incident thereto.

8.13 Construction. In the event of any discrepancies, inconsistencies or conflicts between the provisions of this Declaration and the Articles, Bylaws, Association Rules or Design Review Committee Rules, the provisions of this Declaration shall prevail.

8.14 Joint and Several Liability. In the case of joint ownership of a Lot, the liabilities and obligations of each of the joint Owners set forth in or imposed by this Declaration, shall be joint and several.

8.15 Attorneys' Fees. In the event the Association employs an attorney to enforce any lien granted to it under the terms of this Declaration or to collect any Assessments or other amounts due from an Owner or to enforce compliance with or recover damages for any violation or noncompliance with the Project Documents, the prevailing party in any such action shall be entitled to recover from the other party its reasonable attorneys' fees incurred in any such action.

8.16 Declarant's Right To Use Similar Name. The Association hereby irrevocably consents to the use by any other nonprofit 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.

[Signature                      Appears                      on                      the                      Following                      Page]

IN WITNESS WHEREOF, the Declarant has signed this document as of the date set forth above.

DECLARANT:

VASARO, LLC, an Arizona limited liability company

By: [Signature]  
Jeffrey R. Simpson, Manager

State of Arizona        )  
                              : ss.  
County of Maricopa    )

This instrument was acknowledged before me this 19th day of March, 2003 by Jeffrey R. Simpson, Manager of Vasaro, LLC, an Arizona limited liability company.

[Signature]

Notary Public

Notary Seal:



EXHIBIT "A"

Lots 1 through 116, inclusive and Tracts A through W, inclusive, BA, BC, OA, OB and PS of Citrus Preserve as recorded in Book 428 of Maps, page 24, Official Records of Maricopa County.

# Unofficial Document

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When recorded return to:

2003-0555443 05/01/03 12.  
1 OF 1

DELR030304

**Matthew R. Berens, Esq.**  
**BERENS, KOZUB, LORD & KLOBERDANZ, PLC**  
**7047 East Greenway Parkway, Suite 140**  
**Scottsdale, AZ 85254**

## FIRST AMENDMENT TO DECLARATION OF COVENANTS, CONDITIONS AND RESTRICTIONS FOR CITRUS PRESERVE (DBA VASARO)

This FIRST AMENDMENT to DECLARATION of COVENANTS, CONDITIONS and RESTRICTIONS for CITRUS PRESERVE (DBA VASARO) (the "*First Amendment*") is made and effective as of the 30<sup>th</sup> day of April, 2003, by Vasaro, LLC, an Arizona limited liability company ("*Declarant*").

### RECITALS:

A. WHEREAS, Declarant has subjected certain real property to protective covenants conditions, reservation, liens and charges as set forth in Document No. 2003-0359320, records of Maricopa County, Arizona (the "*Declaration*"); and

B. WHEREAS, Declarant, as the Owner of over sixty-seven (67%) of the Lots, now wishes to amend the Declaration.

### DECLARATION

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

1. **Capitalized Terms.** All capitalized terms utilized herein and not otherwise defined herein shall have the same meaning as set forth in the Declaration.

2. **Witnesseth:** The second paragraph on the first page of the Declaration has been deleted in its entirety and the following second paragraph has been substituted therefore:

WHEREAS, Declarant is the beneficial owner of certain property (the "Property") in the County of Maricopa, State of Arizona, which is more particularly described as follows, to wit

20030555443

Lots 1 through 116, inclusive and Tracts A through V, inclusive, BA, BC, OA, OB and PS, of Citrus Preserve recorded in Book 628 of Maps, page 24, Official Records of Maricopa County.

3. **Section 1, Definitions.** Subsection 1.10 has been deleted in its entirety and the following Section 1, Subsection 1.10 has been substituted therefore:

*1.10 Common Areas.* All real property, and all improvements located thereon, owned by the Association for the common use and enjoyment of the Owners. The Common Area to be owned by the Association at the time of the conveyance of the first Lot to a Purchaser is described as follows:

Tracts A through V, inclusive, BA, BC, OA, OB and PS, of Citrus Preserve recorded in Book 628 of Maps, page 24, Official Records of Maricopa County.

4. **Remainder Unchanged.** Except as specifically set forth above, the Declaration contained in Document No. 2003-0359320 shall remain in full force and effect.

Unaffiliated Declarant

IN WITNESS WHEREOF, this First Amendment has been executed as of the date and year first written above.

**"DECLARANT"**

VASARO, LLC an Arizona limited liability company

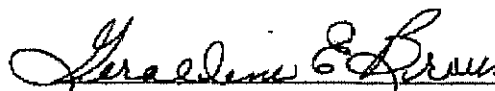
By: 

Jeffrey R. Simpson, Authorized Signatory

20030555443

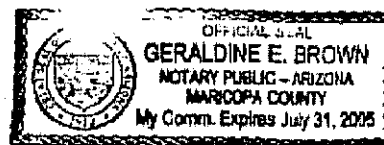
STATE OF ARIZONA       )  
                                  ) ss.  
County of Maricopa       )

The foregoing instrument was acknowledged before me this 20<sup>th</sup> day of April, 2003 by Jeffrey R. Simpson, an Authorized Signatory of Vasaro, LLC, an Arizona limited liability company, on behalf of the company.

  
Notary Public

My Commission Expires:

July 31, 2005



UnOfficial Document

**WHEN RECORDED, RETURN TO:**

Matthew R. Berens, Esq.  
**BERENS, KOZUB, LORD & KLOBERDANZ, PLC**  
7047 East Greenway Parkway, Suite 140  
Scottsdale, Arizona 85254

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**SECOND AMENDMENT TO  
DECLARATION OF  
COVENANTS, CONDITIONS AND RESTRICTIONS FOR  
CITRUS PRESERVE (DBA VASARO)**

This Second Amendment to the Declaration of Covenants, Conditions and Restrictions for Citrus Preserve (dba Vasaro) (this "Second Amendment") is made as of this \_\_\_\_\_ day of April, 2004, by **VASARO, LLC**, an Arizona limited liability company (referred to herein as the "Declarant") and **VASARO HOMEOWNERS ASSOCIATION, INC.**, an Arizona nonprofit corporation (the "Association").

**RECITALS**

**WHEREAS**, Declarant originally owned that parcel of real property situated in Maricopa County, Arizona, and Declarant has subjected certain real property to protective covenants, conditions, reservation, liens and charges as set forth in Document No. 2003-0359320, recorded on March 25, 2003, records of Maricopa County, Arizona and amended by First Amendment to Declaration of Covenants, Conditions and Restrictions for Citrus Preserve (dba Vasaro) as set forth in Document No. 2003-0555443, recorded on May 1, 2003, records of Maricopa County Arizona (collectively, the "Declaration").

**WHEREAS**, Declarant and the Association now desire to amend the Declaration and to have the Association ratify the Declaration as amended herein.

**AMENDMENT**

**NOW, THEREFORE**, the Declarant and the Association hereby amend the Declaration and agrees as follows:

1. **Capitalized Terms.** Unless otherwise defined in this Second Amendment, each capitalized term used in this Second Amendment shall have the meaning given to such term in the Declaration.

2. Section 2.4 (k) of the Declaration is hereby deleted in its entirety and the following shall be substituted in its place:

Section 2.4 (k) **Construction and Design Guidelines (the "Design Guidelines")**. Included with each landscaping plan and required to be installed as part of the landscaping of each lot, and in addition to the trees planted by the developer, each Lot Owners shall be required to plant a minimum of two (2) thirty-six (36) inch boxed trees in the front yard to be selected and located as set forth in the Design Guidelines and applicable landscape plan.

3. A new Section 4.11 shall be added to the Declaration as follows:

Section 4.11 **Operation and Maintenance of Existing Irrigation Easement**. The Association hereby agrees to operate and maintain, in good working condition such portion of the irrigation structure as currently contained in Tract G of the Property. All expenses related thereto shall be paid by the Association.

4. **Remainder Unchanged**. Except as amended by this Second Amendment, the Declaration shall remain unchanged and in full force and effect.

5. **Ratification of Declaration**. The Association hereby ratifies and approves in all respects the Declaration as hereby amended.

**"DECLARANT"**

VASARO, LLC., an Arizona limited liability company

By: \_\_\_\_\_

Its: \_\_\_\_\_

**"ASSOCIATION"**

VASARO HOMEOWNERS ASSOCIATION, INC., LLC., an Arizona nonprofit corporation

By: \_\_\_\_\_

Its: \_\_\_\_\_

STATE OF ARIZONA       )  
                                      ) ss.  
County of Maricopa       )

The foregoing instrument was acknowledged before me this \_\_\_\_ day of April, 2004, by \_\_\_\_\_, the \_\_\_\_\_ of Vasaro, LLC, an Arizona limited liability company, for and on behalf of said limited liability company.

\_\_\_\_\_  
Notary Public

My Commission Expires:

\_\_\_\_\_

STATE OF ARIZONA       )  
                                      ) ss.  
County of Maricopa       )

The foregoing instrument was acknowledged before me this \_\_\_\_ day of April, 2004, by \_\_\_\_\_, the \_\_\_\_\_ of Vasaro Homeowners Association, Inc., LLC, an Arizona nonprofit corporation, for and on behalf of said corporation.

\_\_\_\_\_  
Notary Public

My Commission Expires:

\_\_\_\_\_