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AND WHEN RECORDED MAIL TO:
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Attn: Suzy Tubbs
500 N. Club Dr.
Payson, AZ 85541



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CAPTION HEADING: DECLARATION OF COVENANTS, CONDITIONS AND RESTRICTIONS FOR THE RIM GOLF CLUB

This document is being re-recorded solely for the purpose of attaching Exhibit "E" (By-Laws of The Rim Golf Club Community Association, Inc.)

This document was originally recorded May 27, 1998 as 1998-7934, and re-recorded June 1, 1998 as 1998-8273..



When recorded mail to:



This space reserved for recording information

Re-recording to correct map # incorrectly assigned.

Recorded on 5/27/98 Fee# 19987934

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This is part of the official document.

Unofficial

STATE OF ARIZONA

COUNTY OF GILA

The foregoing instrument is a full, true and correct copy as appears of record in this office

Fee # 1998-8273

Attested July 28, 2005 # Pages: 01

Linda Haught, Recorder

By [Signature] Deputy



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DECLARATION OF COVENANTS, CONDITIONS AND RESTRICTIONS
FOR
THE RIM GOLF CLUB

WHEN RECORDED MAIL TO:

THE RIM GOLF CLUB
Attn: LEEANN SPANGLER
8320 N. HAYDEN ROAD
SUITE C-115
SCOTTSDALE, AZ 85258

These restrictions are being recorded and are intended to supercede and replace entirely the restrictions previously recorded on November 5, 1997 in Fee # 716236.



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DECLARATION OF COVENANTS, CONDITIONS, AND RESTRICTIONS

FOR

THE RIM GOLF CLUB

THIS DECLARATION OF COVENANTS, CONDITIONS, AND RESTRICTIONS is made by Rim Golf Investors L.L.C., an Arizona limited liability company (the "Declarant"), as of the date set forth on the signature page hereof.

Declarant is the owner of the real property described in Exhibit "A," which is attached and incorporated by reference. By this Declaration, Declarant imposes upon the Properties (as defined in Article I below) mutually beneficial restrictions under a general plan of improvement for the benefit of the owners of each portion of the Properties, and establishes a flexible and reasonable procedure for the overall development, administration, maintenance and preservation of the Properties. In furtherance of such plan, Declarant has caused or intends to cause The Rim Golf Club Community Association, Inc., to be formed as an Arizona nonprofit corporation to own, operate and maintain the Common Area, as defined below, and to administer and enforce the provisions of this Declaration, the By-Laws, Design Guidelines and Use Restrictions and Rules (as further described in Article I) promulgated pursuant to this Declaration.

Declarant hereby declares that all of the property described in Exhibit "A" and any additional property subjected to this Declaration by Supplemental Declaration (as defined in Article I below) shall be held, sold, used and conveyed subject to the following easements, restrictions, covenants, and conditions, which shall run with the title to the real property subjected to this Declaration. This Declaration shall be binding upon all parties having any right, title, or interest in any portion of the Properties, their heirs, successors, successors-in-title, and assigns, and shall inure to the benefit of each owner of any portion of the Properties.

Article I
DEFINITIONS

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

1.1. "Area of Common Responsibility": The Common Area, together with those areas, if any, for which the Association has or assumes responsibility pursuant to the terms of this Declaration, any Supplemental Declaration or other applicable covenants, contract, or agreement.

1.2. "Articles of Incorporation" or "Articles": The Articles of Incorporation of The Rim Golf Club Community Association, Inc., as filed with the Arizona Corporations Commission.

1.3. "Association": The Rim Golf Club Community Association, Inc., an Arizona nonprofit corporation, its successors or assigns.

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

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1.5. **"Builder"**: Any Person designated by Declarant purchasing one or more Units to construct dwellings thereon for later sale or one or more parcels of land within the Properties to subdivide, develop, and/or resell in the ordinary course of such Person's business.

1.6. **"By-Laws"**: The By-Laws of The Rim Golf Club Community Association, Inc., attached as Exhibit "E," as they may be amended.

1.7. **"Class "B" Control Period"**: The period of time during which the Class "B" Member is entitled to appoint a majority of the members of the Board of Directors as provided in Section 3.3 of the By-Laws.

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

1.9. **"Common Expenses"**: The actual and estimated expenses incurred, or anticipated to be incurred, by the Association, including any reasonable reserve, as the Board may find necessary and appropriate pursuant to this Declaration, the By-Laws, and the Articles of Incorporation. Common Expenses shall not include any expenses incurred during the Class "B" Control Period for initial development, original construction, installation of infrastructure, original capital improvements, or other original construction costs unless approved by Members representing a majority of the total Class "A" vote of the Association.

1.10. **"Community-Wide Standard"**: The standard of conduct, maintenance, or other activity generally prevailing throughout the Properties. Such standard shall initially be established by the Declarant and may be more specifically determined by the Board of Directors and the Architectural Review Committee.

1.11. **"Covenant to Share Costs"**: Any agreement or contract between the Association and an owner or operator of property adjacent to the Properties for the allocation of expenses that benefit both the Association and the owner or operator of such property.

1.12. **"Declarant"**: Rim Golf Investors L.L.C., an Arizona limited liability company, or any successor, successor-in-title, or assign who takes title to any portion of the property described on Exhibit "A" or "B" for the purpose of development and/or resale and who is designated as the Declarant in a recorded instrument executed by the immediately preceding Declarant; provided, there shall be only one Declarant at any time.

1.13. **"Design Guidelines"**: The design and construction guidelines and application and review procedures applicable to the Properties promulgated and administered pursuant to Article IX.

1.14. **"General Assessment"**: Assessments levied on all Units subject to assessment under Article VIII to fund Common Expenses for the general benefit of all Units, as more particularly described in Sections 8.1 and 8.2.

1.15. **"Golf Club"**: Certain real property and any improvements and facilities thereon located adjacent to, in the vicinity of, or within the Properties which is privately owned by Persons other than the Association and which are operated as a golf course.

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1.16. "Governing Documents": The Declaration, any Supplemental Declaration, the By-Laws, the Articles of Incorporation, Design Guidelines, and the Use Restrictions and Rules, or any of the above, as each may be amended from time to time.

1.17. "Master Plan": The preliminary land use plan for the development of The Rim Golf Club prepared by Gage Davis and Associates, dated _____ November 1997 _____, as it may be amended from time to time, which plan includes the property described on Exhibit "A" and all or a portion of the property described on Exhibit "B." Inclusion of property on the Master Plan shall not, under any circumstances, obligate Declarant to subject such property to this Declaration, nor shall the exclusion of property described on Exhibit "B" from the Master Plan bar its later annexation in accordance with Article VII.

1.18. "Member": A Person subject to membership in the Association pursuant to Section 3.2.

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

1.20. "Mortgagee": A beneficiary or holder of a Mortgage.

1.21. "Mortgagor": Any Person who gives a Mortgage.

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

1.23. "Person": A human being, a corporation, partnership, a limited liability company, a trustee, or any other legal entity.

1.24. "Properties": The real property described on Exhibit "A," together with such additional property as is subjected to this Declaration in accordance with Article VII.

1.25. "Public Records": The Land Records of Gila County, Arizona, or such other place which is designated as the official location for recording of deeds and similar documents affecting title to real estate.

1.26. "Special Assessment": Assessments levied in accordance with Section 8.5.

1.27. "Specific Assessment": Assessments levied in accordance with Section 8.6.

1.28. "Supplemental Declaration": An instrument filed in the Public Records pursuant to Article VII which subjects additional property to this Declaration and/or imposes, expressly or by reference, additional restrictions and obligations on the land described in such instrument.

1.29. "Unit": A portion of the Properties, whether improved or unimproved, which may be independently owned and conveyed and which is intended for development, use, and occupancy as a residence for a single family. The term shall include within its meaning, by way of illustration but not limitation, each numbered lot shown on a subdivision plat filed in the Public Records with respect to any portion of the Properties, together with the structures, if any, constructed thereon, as well as vacant land intended for further subdivision, but shall not include Common Areas.



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In the case of a portion of the Properties intended and suitable for subdivision into single-family lots but as to which no subdivision plat has been filed, such property shall be deemed to be a single Unit until such time as a subdivision plat is filed of record with respect to all or a portion of the property. Thereafter, the portion encompassed by such plat shall contain the number of Units determined as set forth in the preceding paragraph and any portion not platted shall continue to be treated as a single Unit.

With prior written approval of Declarant, the Owner of two or more contiguous Units may consolidate the Units for the sole purpose of constructing a dwelling thereon. The Owner of this consolidated Unit shall be responsible for assessments as if the Units had not been consolidated and shall have the number of votes for purposes of voting on Association matters as if the Units had not been consolidated.

1.30. "Use Restrictions and Rules": Those use restrictions and rules affecting the Properties, which may be adopted, modified and repealed as set forth in Article X. The initial Use Restrictions and Rules are set forth on Exhibit "C."

Article II
PROPERTY RIGHTS

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

- (a) this Declaration and any other applicable covenants;
- (b) any restrictions or limitations contained in any deed conveying such property to the Association;
- (c) the right of the Board and the membership to adopt, amend and repeal rules pursuant to Article X regulating the use and enjoyment of the Common Area, including rules limiting the number of guests who may use the Common Area;
- (d) the right of the Board to impose reasonable membership requirements, adopt a code of rules governing use of any structure or improvement on the Common Area, and charge reasonable admission or other use fees for the use of any recreational or social facilities situated upon the Common Area;
- (e) the right of the Board to suspend the right of an Owner, his or her family, lessees, and social invitees to use recreational and social facilities within the Common Area (i) for any period during which any charge against such Owner's Unit remains delinquent, (ii) for a period not to exceed 30 days for a single violation, or for a longer period in the case of any continuing violation, of the Governing Documents, and (iii) for a period not to exceed 30 days for conduct deemed, in the discretion of the Board, to be unacceptable or abusive, which causes damage to the Common Area, or which interferes with the ability of the Declarant to sell Units;
- (f) the right of the Association, acting through the Board, to dedicate or transfer all or any part of the Common Area, subject to such approval requirements as may be set forth in this Declaration; and
- (g) the right of the Association, acting through the Board, to mortgage, pledge, or hypothecate any or all of its real or personal property as security for money borrowed or debts incurred.



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

2.2. Golf Club. Access to and use of the Golf Club is strictly subject to the rules and procedures of the owner of the Golf Club and the property thereof, and no Person gains any right to enter or to use the Golf Club by virtue of membership in the Association or ownership or occupancy of a Unit except as may be permitted in the membership plan for the Golf Club.

2.3. Golf Club at Chaparral Pines. Every Owner shall have the opportunity to apply for a Trailhead Membership in the Golf Club at Chaparral Pines located in the residential community known as "Chaparral Pines.". Membership in the Golf Club at Chaparral Pines is subject to the terms of the Membership Program for the Golf Club at Chaparral Pines, payment of membership fees and dues, and the Golf Club at Chaparral Pine's, rules, policies and application procedures.

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

2.5. Condemnation. If any part of the Common Area shall be taken by any authority having the power of condemnation or eminent domain, or conveyed in lieu of and under threat of condemnation, each Owner shall be entitled to written notice prior to disbursement of the condemnation award or proceeds of conveyance. The award made for such taking or proceeds of such conveyance shall be payable to the Association to be disbursed as follows:

If the taking or conveyance involves a portion of the Common Area on which improvements have been constructed, the Association shall restore or replace such improvements on the remaining land included in the Common Area to the extent available, unless within 60 days after such taking the Declarant, so long as the Declarant owns any property described in Exhibits "A" and "B" of this Declaration, and Members representing at least 75% of the total Class "A" vote of the Association shall otherwise agree. Any such construction shall be in accordance with plans approved by the Board. The provisions of Section 6.1(c) regarding funds for the repair of damage or destruction shall apply.

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

Article III MEMBERSHIP AND VOTING RIGHTS

3.1. Function of Association. The Association shall be the entity responsible for management, maintenance, operation and control of the Area of Common Responsibility. The Association shall be the primary entity responsible for enforcement of this Declaration and such reasonable rules regulating use of the Properties as the Board or the membership may adopt pursuant to Article X. The Association shall also be responsible for



administering and enforcing the architectural standards and controls set forth in this Declaration and in the Design Guidelines. The Association shall perform its functions in accordance with the Governing Documents and the laws of the State of Arizona.

3.2. Membership. Every Owner shall be a Member of the Association. There shall be only one membership per Unit. In the event two or more contiguous Units are consolidated for the purpose of constructing a dwelling thereon, the Owner of the consolidated Unit shall have as many memberships and the rights and responsibilities thereof as if the Units had not been consolidated. If a Unit is owned by more than one Person, all co-Owners shall share the privileges of such membership in the Association, subject to reasonable Board regulation and the restrictions on voting set forth in Section 3.3 and in the By-Laws. All co-Owners shall be jointly and severally obligated to perform the responsibilities of Owners. The membership rights of an Owner which is a corporation, partnership, limited liability company, trust or other entity may be exercised by any officer, director, partner or trustee, or by the individual designated from time to time by the Owner in a written instrument provided to the Secretary of the Association.

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

(a) Class "A". Class "A" Members shall be all Owners except the Class "B" Member, if any.

Class "A" Members shall have one equal vote for each Unit in which they hold the interest required for membership under Section 3.2; provided, there shall be only one vote per Unit. However, in the event two or more contiguous Units are consolidated for the purpose of constructing a dwelling thereon, the Owner of the consolidated Unit shall have as many votes as if the Units had not been consolidated. In any situation where there is more than one Owner of a Unit, the vote for such Unit shall be exercised as the co-Owners determine among themselves and advise the Secretary of the Association in writing prior to the vote being taken. Absent such advice, the Unit's vote shall be suspended if more than one Person seeks to exercise it.

(b) Class "B". The sole Class "B" Member shall be the Declarant. The rights of the Class "B" Member, including the right to approve, or withhold approval of, actions proposed under the Governing Documents, are specified in the relevant sections of this Declaration, the By-Laws and the Articles. The Class "B" Member may appoint members of the Board of Directors during the Class "B" Control Period, as specified in Sections 3.3 and 3.5 of the By-Laws. After termination of the Class "B" Control Period, the Class "B" Member shall have a right to disapprove actions of the Board and committees as provided in Section 3.19 of the By-Laws.

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

- (i) two years after termination of the Class "B" Control Period; or
- (ii) when, in its discretion, the Declarant so determines and declares in a recorded instrument.

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



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Article IV
RIGHTS AND OBLIGATIONS OF THE ASSOCIATION

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

4.2. **Personal Property and Real Property for Common Use.** The Association, through action of its Board, may acquire, hold, and dispose of tangible and intangible personal property and real property. The Declarant and its designees may convey to the Association improved or unimproved real estate, or interests in real estate, located within the properties described in Exhibits "A" or "B," personal property and leasehold and other property interests. Such property shall be accepted by the Association and thereafter shall be maintained by the Association at its expense for the benefit of its Members, subject to any restrictions set forth in the deed or other instrument transferring such property to the Association.

4.3. **Enforcement.** The Association may impose sanctions for violations of the Governing Documents in accordance with procedures set forth in the By-Laws, including reasonable monetary fines and suspension of the right to vote and to use any recreational or social facilities within the Common Area. In addition, in accordance with Section 3.24 of the By-Laws, the Association may exercise self-help to cure violations and may suspend any services it provides to the Unit of any Owner who is more than 30 days delinquent in paying any assessment or other charge due to the Association. All remedies set forth in this Declaration and the By-Laws shall be cumulative of any remedies available at law or in equity. In any action to enforce the provisions of this Declaration or Association rules, if the Association prevails it shall be entitled to recover all costs, including, without limitation, attorneys' fees and court costs, reasonably incurred in such action.

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

The Association, by contract or other agreement, may enforce county and town of Payson ordinances, if applicable, and permit local governments to enforce their ordinances within the Properties for the benefit of the Association and its Members.

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

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4.5. Governmental Interests. For so long as the Declarant owns any property described on Exhibit "A" or "B," the Declarant may designate sites within the Properties for public or quasi-public facilities. The sites may include Common Area, in which case the Association shall take whatever action is required with respect to such site to permit such use, including conveyance of the site, if so directed by Declarant. The sites may include other property not owned by Declarant provided the owner consents.

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

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

4.7. Dedication of Common Area. The Association may dedicate portions of the Common Area to the Town of Payson or to Gila County, Arizona, or to any other local, state, or Federal governmental or quasi-governmental entity.

4.8. Security. The Association may, but shall not be obligated to, maintain or support certain activities within the Properties designed to make the Properties safer than they otherwise might be. Neither the Association, the original Declarant, nor any successor Declarant shall in any way be considered insurers or guarantors of security within the Properties, nor shall any of them be held liable for any loss or damage by reason of failure to provide adequate security or ineffectiveness of security measures undertaken. No representation or warranty is made that any fire protection system, burglar alarm system or other security system or measures cannot be compromised or circumvented, nor that any such systems or security measures undertaken will in all cases prevent loss or provide the detection or protection for which the system is designed or intended. Each Owner acknowledges, understands and covenants to inform its tenants and all occupants of its Unit that the Association, its Board of Directors and committees, Declarant, and any successor Declarant are not insurers and that each Person using the Properties assumes all risks of personal injury and loss or damage to property, including Units and the contents of Units, resulting from acts of third parties.

4.9. Utility Lines. Each Owner, occupant, guest, and invitee acknowledges that neither the Association, the Board nor Declarant shall in any way be considered insurers or guarantors of health within the Properties and neither the Association, the Board, nor Declarant shall be held liable for any personal injury, illness or any other loss or damage caused by the presence or malfunction of utility lines or utility sub-stations adjacent to, near, over, or on the Properties. Each Owner, occupant, guest, and invitee assumes all risk of personal injury, illness, or other loss or damage arising from the presence of utility lines or utility sub-stations and further acknowledges that neither Declarant nor the Association



have made any representations or warranties, nor has any Owner, occupant, guest, or invitee relied upon any representations or warranties, expressed or implied, relative to the condition or impact of utility lines or utility sub-stations.

4.10. Provision of Services. The Association may provide services and facilities for the Members of the Association and their guests, lessees and invitees. The Association shall be authorized to enter into contracts or other similar agreements with other entities, including Declarant, to provide such services and facilities. The costs of services and facilities provided by the Association may be funded by the Association as a Common Expense. In addition, the Board shall be authorized to charge additional use and consumption fees for services and facilities. By way of example, some services and facilities which may be provided include landscape maintenance, pest control service, cable television service, security, caretaker, fire protection, utilities, firewood, and similar services and facilities. The Board, without the consent of the Class "A" Members of the Association, shall be permitted to modify or cancel existing services or facilities provided, if any, or to provide additional services and facilities. Nothing contained herein can be relied upon as a representation as to what services and facilities, if any, will be provided by the Association.

4.11. Change of Use of Common Areas. During the Class "B" Control Period without the approval or consent of any Member or other Person, and after the Class "B" Control Period upon (a) adoption of a resolution by the Board stating that, in the Board's opinion, a service provided by the Association pursuant to Section 4.10 or the then present use of a designated part of the Common Areas is no longer in the best interest of the Owners or is no longer necessary or appropriate for the purposes intended, and (b) the approval of such resolution by Voting Members representing a majority of the Class "A" votes cast at a meeting duly called for such purpose, and (c) the consent of Declarant (so long as Declarant owns any property described in Exhibits "A" or "B"), the Board shall have the power and right to terminate such service or to sell, exchange, convey or abandon such Common Area or change the use thereof (and, in connection therewith, construct, reconstruct, alter or change the buildings, structures and improvements thereon in any manner deemed necessary by the Board to accommodate the new use), provided that any such new use (i) shall be for the benefit of the Owners, (ii) shall be consistent with any deed restrictions and zoning regulations restricting or limiting the use of the Common Areas, and (iii) shall be consistent with the then effective Master Plans. Regardless of the above, if the Board determines, and the resolution of the Board recites, that any transaction involving the disposition or exchange of Common Area will not have an adverse effect on the Association and the Owners, the Board may, in lieu of calling a meeting pursuant to (b) above, give notice to all Owners of the proposed transaction and of any right to object thereto which might be available hereunder and, if Voting Members representing less than 10% of the Class "A" votes object in writing to the Association within 30 days after the giving of such notice, the transaction shall be deemed approved by the Voting Members and the meeting of the Voting Members shall not be necessary.

4.12. View Impairment. Neither the Declarant nor the Association guarantees or represents that any view over and across the open space from adjacent Units will be preserved without impairment. Neither the Declarant nor the Association shall have the obligation to prune or thin trees or other landscaping except as set forth in Article V. The owner of the open space shall have the right, in its sole and absolute discretion, to add trees and other landscaping to the open space from time to time subject to applicable law, the Declaration, and the Design Guidelines, if applicable. Any express or implied easements for view purposes or for the passage of light and air are hereby expressly disclaimed.



Article V
MAINTENANCE

5.1. **Association's Responsibility.**

(a) The Association shall maintain and keep in good repair the Area of Common Responsibility, which shall include, but need not be limited to:

- (i) all Common Area;
- (ii) all landscaping and other flora, recreational centers and other structures and improvements, including any parking areas, situated upon the Common Area;
- (iii) all landscaping, entry features and signage within or adjacent to public rights-of-way within or abutting the Properties; and
- (iv) such portions of any additional property included within the Area of Common Responsibility as may be dictated by this Declaration, any Supplemental Declaration, or any contract or agreement for maintenance thereof entered into by the Association.

The Association may maintain other property which it does not own, including, without limitation, storm drainage facilities, and other property dedicated to the public, if the Board of Directors determines that such maintenance is necessary or desirable to maintain the Community-Wide Standard.

(b) There are hereby reserved to the Association perpetual, non-exclusive easements over the Properties as necessary to enable the Association to fulfill such responsibilities.

(c) Except as otherwise specifically provided herein, all costs associated with maintenance, repair, and replacement of the Area of Common Responsibility shall be a Common Expense to be allocated among all Units as part of the General Assessment. Notwithstanding the foregoing, the Board may, within its sole discretion, allocate the expense of maintenance, repair, and replacement which benefits one or more, but less than all Units, as a Specific Assessment in accordance with the benefit so received by such Units, pursuant to Section 8.6.

5.2. **Owner's Responsibility.** Each Owner shall maintain his or her Unit and all structures, parking areas, and other improvements comprising the Unit in a manner consistent with the Community-Wide Standard, unless such maintenance responsibility is otherwise assumed by or assigned to the Association pursuant to this Declaration, any Supplemental Declaration or other covenants applicable to such Unit.

To ensure consistency in scheduling and compliance with the Community-Wide Standard, the Association, in the discretion of the Board, shall have the right to designate a trash collection service to be used by all Owners. Notwithstanding this right of the Association, the cost of trash collection for each Unit shall be borne by the Unit Owner.

Owners shall not permit any structures, equipment or other items on the exterior portions of a Unit to become rusty, dilapidated or otherwise fall into disrepair. In addition to any other enforcement rights, if an Owner fails properly to perform his or her maintenance responsibility, the Association may perform such maintenance responsibilities and assess all costs incurred by the Association against the Unit and the Owner in



accordance with Section 8.6. The Association shall afford the Owner reasonable notice and an opportunity to cure the problem prior to entry, except when entry is required due to an emergency situation.

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

Article VI
INSURANCE AND CASUALTY LOSSES

6.1. Association Insurance.

(a) Required Coverages. The Association, acting through its Board or its duly authorized agent, shall obtain and continue in effect the following types of insurance, if reasonably available, or if not reasonably available, the most nearly equivalent coverages as are reasonably available:

(i) Blanket property insurance covering "risks of direct physical loss" on a "special form" basis (or comparable coverage by whatever name denominated) for all insurable improvements on the Common Area and on other portions of the Area of Common Responsibility to the extent that it has assumed responsibility for maintenance, repair and/or replacement in the event of a casualty. If such coverage is not generally available at reasonable cost, then "broad form" coverage may be substituted. The Association shall have the authority to and interest in insuring any property for which it has maintenance or repair responsibility, regardless of ownership. All property insurance policies obtained by the Association shall have policy limits sufficient to cover the full replacement cost of the insured improvements;

(ii) Commercial general liability insurance on the Area of Common Responsibility, insuring the Association and its Members for damage or injury caused by the negligence of the Association or any of its Members, employees, agents, or contractors while acting on its behalf. If generally available at reasonable cost, the commercial general liability coverage (including primary and any umbrella coverage) shall have a limit of at least \$1,000,000.00 per occurrence with respect to bodily injury, personal injury, and property damage; provided, if additional coverage and higher limits are available at a reasonable cost such that a reasonably prudent person would obtain it, the Association shall obtain such additional coverage or limits;

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

(iv) Directors and officers liability coverage;

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

(vi) Such additional insurance as the Board, in the exercise of its business judgment, determines advisable, which may include, without limitation, flood insurance and building ordinance coverage.



(b) **Policy Requirements.** The Association shall arrange for an annual review of the sufficiency of insurance coverage by one or more qualified Persons, at least one of whom must be familiar with insurable replacement costs in the Payson, Arizona area.

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

The policies may contain a reasonable deductible and the amount thereof shall not be subtracted from the face amount of the policy in determining whether the policy limits satisfy the requirements of Section 6.1(a). In the event of an insured loss, the deductible shall be treated as a Common Expense; provided, if the Board reasonably determines, after notice and an opportunity to be heard in accordance with Section 3.24 of the By-Laws, that the loss is the result of the negligence or willful misconduct of one or more Owners, their guests, invitees, or lessees, then the Board may specifically assess the full amount of such deductible against such Owner(s) and their Units pursuant to Section 8.6.

All insurance coverage obtained by the Board shall:

- (i) be written with a company authorized to do business in the State of Arizona which satisfies the requirements of the Federal National Mortgage Association, or such other secondary mortgage market agencies or Federal agencies as the Board deems appropriate;
- (ii) be written in the name of the Association as trustee for the benefited parties. Policies on the Common Areas shall be for the benefit of the Association and its Members;
- (iii) not be brought into contribution with insurance purchased by Owners, occupants, or their Mortgagees individually;
- (iv) contain an inflation guard endorsement; and
- (v) include an agreed amount endorsement, if the policy contains a co-insurance clause.

In addition, the Board shall use reasonable efforts to secure insurance policies which list the Owners as additional insureds and provide:

- (i) a waiver of subrogation as to any claims against the Association's Board, officers, employees, and its manager, the Owners and their tenants, servants, agents, and guests;
- (ii) a waiver of the insurer's rights to repair and reconstruct instead of paying cash;
- (iii) an endorsement precluding cancellation, invalidation, suspension, or non-renewal by the insurer on account of any one or more individual Owners, or on account of any curable defect or violation without prior written demand to the Association to cure the defect or violation and allowance of a reasonable time to cure;
- (iv) an endorsement excluding Owners' individual policies from consideration under any "other insurance" clause;
- (v) an endorsement requiring at least 30 days' prior written notice to the Association of any cancellation, substantial modification, or non-renewal;



(vi) a cross liability provision; and

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

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

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

If either the insurance proceeds or reliable and detailed estimates of the cost of repair or reconstruction, or both, are not available to the Association within such 60-day period, then the period shall be extended until such funds or information are available.

However, such extension shall not exceed 60 additional days. No Mortgagee shall have the right to participate in the determination of whether the damage or destruction to the Common Area shall be repaired or reconstructed.

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

Any insurance proceeds remaining after paying the costs of repair or reconstruction, or after such settlement as is necessary and appropriate, shall be retained by and for the benefit of the Association and placed in a capital improvements account. This is a covenant for the benefit of Mortgagees and may be enforced by the Mortgagee of any affected Unit.

If insurance proceeds are insufficient to cover the costs of repair or reconstruction, the Board of Directors may, without a vote of the Members, levy a Special Assessment to cover the shortfall.

6.2. Owners' Insurance. By virtue of taking title to a Unit, each Owner covenants and agrees with all other Owners and with the Association to carry property insurance for the full replacement cost of all insurable improvements on his or her Unit, less a reasonable deductible. Each Owner further covenants and agrees that in the event of damage to or destruction of structures on or comprising his Unit, the Owner shall proceed promptly to repair or to reconstruct in a manner consistent with the original construction or such other plans and specifications as are approved in accordance with Article IX. Alternatively, the Owner shall clear the Unit of all debris and ruins and maintain the Unit in a neat and attractive, landscaped condition consistent with the Community-Wide Standard. The Owner shall pay any costs which are not covered by insurance proceeds.



Article VII
ANNEXATION AND WITHDRAWAL OF PROPERTY

7.1. Annexation Without Approval of Membership. Declarant may from time to time within 20 years of recording this Declaration in the Public Records unilaterally subject to the provisions of this Declaration all or any portion of the real property described in Exhibit "B." The Declarant may transfer or assign this right to annex property, provided that the transferee or assignee is the developer of at least a portion of the real property described in Exhibits "A" or "B" and that such transfer is memorialized in a written, recorded instrument executed by Declarant.

Such annexation shall be accomplished by filing a Supplemental Declaration in the Public Records describing the property being annexed. Such Supplemental Declaration shall not require the consent of Members, but shall require the consent of the owner of such property, if other than Declarant. Any such annexation shall be effective upon the filing for record of such Supplemental Declaration unless otherwise provided therein.

Nothing in this Declaration shall be construed to require the Declarant or any successor to annex or develop any of the property set forth in Exhibit "B" in any manner whatsoever.

7.2. Annexation With Approval of Membership. The Association may annex any real property to the provisions of this Declaration with the consent of the owner of such property, the affirmative vote of Members representing a majority of the Class "A" votes of the Association represented at a meeting duly called for such purpose, and the consent of the Declarant so long as Declarant owns property subject to this Declaration or which may become subject to this Declaration in accordance with Section 7.1.

Such annexation shall be accomplished by filing in the Public Records a Supplemental Declaration describing the property being annexed. Any such Supplemental Declaration shall be signed by the President and the Secretary of the Association, and by the owner of the annexed property, and by the Declarant, if the Declarant's consent is required. Any such annexation shall be effective upon filing unless otherwise provided therein.

7.3. Withdrawal of Property. The Declarant reserves the right to amend this Declaration so long as it has a right to annex additional property pursuant to Section 7.1, for the purpose of removing any portion of the Properties from the coverage of this Declaration, provided such withdrawal is not unequivocally contrary to the overall, uniform scheme of development for the Properties. Such amendment shall not require the consent of any Person other than the Owner of the property to be withdrawn, if not the Declarant.

7.4. Additional Covenants and Easements. The Declarant may subject any portion of the Properties to additional covenants and easements by filing a Supplemental Declaration in the Public Records, concurrent with or after the annexation of the subject property, setting forth such additional covenants and easements. Any such Supplemental Declaration shall require the written consent of the owner(s) of the subject property, if other than the Declarant. Any such Supplemental Declaration may supplement, create exceptions to, or otherwise modify the terms of this Declaration as it applies to the subject property in order to reflect the different character and intended use of such property.

7.5. Amendment. This Article shall not be amended without the prior written consent of Declarant so long as the Declarant owns any property described in Exhibits "A" or "B."

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Article VIII
ASSESSMENTS

8.1. **Creation of and Obligation for Assessments.**

(a) **Purposes and Types.** There are hereby created, and the Association is hereby authorized to levy, assessments for the Common Expenses of the Association. There shall be three types of assessments: (a) General Assessments as described in Section 8.3; (b) Special Assessments as described in Section 8.6; and (c) Specific Assessments as described in Section 8.7. Each Owner, by accepting a deed or entering into a recorded contract of sale for any portion of the Properties, is deemed to covenant and agree to pay these assessments.

(b) **Personal Obligation and Lien.** All assessments, together with interest computed from the due date of such assessment at a rate determined by the Board (not to exceed the maximum rate permitted by Arizona law), late charges in such amount as the Board may establish by resolution (subject to the limitations of Arizona law), costs, and reasonable attorneys' fees, shall be a charge and continuing lien upon each Unit, including any Unit owned by Declarant, against which the assessment is made until paid, as more particularly provided in Section 8.8. Each such assessment, together with interest, late charges, costs, including lien fees and administrative costs, and reasonable attorneys' fees, also shall be the personal obligation of the Person who was the Owner of such Unit at the time the assessment arose. Upon a transfer of title to a Unit, the grantee shall be jointly and severally liable for any assessments and other charges due at the time of conveyance. However, no first Mortgagee who obtains title to a Unit by exercising the remedies provided in its Mortgage shall be liable for unpaid assessments which accrued prior to such acquisition of title.

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

Assessments shall be paid in such manner and on such dates as the Board may establish, which may include discounts for early payment or similar time/price differentials. The Board may require advance payment of assessments at closing of the transfer of title to a Unit and impose special requirements for Owners with a history of delinquent payment. The General Assessment shall be an annual assessment due and payable in advance on the first day of each fiscal year; provided, the Board may by resolution permit payment in two or more installments. If any Owner is delinquent in paying any assessments or other charges levied on his Unit, the Board may require any unpaid installments of all outstanding assessments to be paid in full immediately.

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

The Association is specifically authorized to enter into subsidy contracts or contracts for "in kind" contribution of services, materials, or a combination of services and materials with the Declarant or other entities for payment of Common Expenses.

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8.2. Declarant's Obligation for Assessments. During the Class "B" Control Period, Declarant may annually elect either to pay regular assessments on all of its unsold Units or to pay the difference between the amount of assessments collected on all other Units subject to assessment and the amount of actual expenditures by the Association during the fiscal year. Unless the Declarant otherwise notifies the Board in writing at least 60 days before the beginning of each fiscal year, the Declarant shall be deemed to have elected to continue paying on the same basis as during the immediately preceding fiscal year. The Declarant's obligation hereunder may be satisfied in the form of cash or by "in kind" contributions of services, materials, or unsold Units, or by a combination of these. After termination of the Class "B" Control Period, the Declarant shall pay assessments on its unsold Units in the same manner as any other Owner.

Declarant may at any time, in its sole and absolute discretion, convey unsold Units to the Association as Common Area or otherwise and shall have no assessment obligations on such Units for the year in which they are transferred. Such Units shall be accepted by the Association and thereafter shall either be maintained as Common Area or sold, as the Board deems appropriate, with the proceeds of any sale being used to offset Common Expenses or to fund reserves, as the Board deems appropriate.

8.3. Computation of General Assessments. At least 60 days before the beginning of each fiscal year, the Board shall prepare a budget covering the estimated Common Expenses during the coming year, including a capital contribution to establish a reserve fund in accordance with a budget separately prepared as provided in Section 8.5.

Except as otherwise provided in Section 8.9, General Assessments shall be fixed at a uniform rate for all Units. In the event two or more contiguous Units are consolidated for the purpose of constructing a dwelling thereon, the Owner of the consolidated Unit shall be responsible for assessments as if the Units had not been consolidated and the Board shall count the Units as if the Units had not been consolidated for the purpose of determining the proportionate assessment share for all Units. Such assessment rate shall be set at a level which is reasonably expected to produce total income for the Association equal to the total budgeted Common Expenses, including reserves. In determining the total funds to be generated through the levy of General Assessments, the Board, in its discretion, may consider other sources of funds available to the Association, including any surplus from prior years and any assessment income expected to be generated from any additional Units reasonably anticipated to become subject to partial or full assessment during the fiscal year.

The Board shall send a copy of the budget and notice of the amount of the General Assessment for the upcoming year to each Owner at least 30 days prior to the effective date of such budget. Such budget and assessment shall become effective unless disapproved at a meeting by Members representing at least 75% of the total Class "A" votes in the Association and by the Class "B" Member, if any. If the budget proves inadequate for any reason, the Board may prepare a revised budget for the remainder of the fiscal year, which revised budget shall become effective unless disapproved at a meeting by Members in the same manner as prescribed for the initial budget. There shall be no obligation to call a meeting for the purpose of considering the budget or any revised budget except on petition of the Members as required for special meetings in the By-Laws, which petition must be presented to the Board within 10 days after delivery of the notice of assessments.

If a budget is not adopted for any year, then until such time as a budget is adopted, the budget in effect for the immediately preceding year shall continue for the current year.

8.4. Declarant's Subsidy Option. So long as the Declarant has the right unilaterally to annex additional property pursuant to Section 7.1, the Declarant may, but shall not be obligated to, reduce the General Assessment or fund any budget deficit for any fiscal year by payment of a subsidy (in addition to any amounts paid by Declarant under Section 8.2) which may be treated as either a contribution, an advance against future



assessments due from the Declarant, or a loan, in the Declarant's discretion. Any such subsidy shall be conspicuously disclosed as a line item in the Common Expense budget and the treatment of such subsidy shall be made known to the membership. The payment of such subsidy in any year shall under no circumstances obligate the Declarant to continue payment of such subsidy in future years, unless otherwise provided in a written agreement between the Association and the Declarant.

8.5. Reserve Budget and Capital Contribution. The Board may annually prepare a reserve budget which takes into account the number and nature of replaceable assets within the Area of Common Responsibility, the expected life of each asset, and the expected repair or replacement cost. The Board may set the required capital contribution in an amount sufficient to permit meeting the projected needs of the Association, as shown on the budget, with respect both to amount and timing by annual General Assessments over the budget period.

8.6. Special Assessments. In addition to other authorized assessments, the Association may levy Special Assessments from time to time to cover unbudgeted, extraordinary or other expenses which the Board determines, in its sole discretion, to more appropriately be handled outside of the regular operating budget. Except as provided in Section 6.1(c), any Special Assessment which would cause the amount of Special Assessments allocable to any Unit to exceed \$3,000.00 per Unit in any year may be disapproved at a meeting by Members representing at least 75% of the total Class "A" votes in the Association and by the Class "B" Member, if any. There shall be no obligation to call a meeting for the purpose of considering such a Special Assessment except on petition of the Members as required for special meetings in the By-Laws, which petition must be presented to the Board within 10 days after delivery of the notice of Special Assessment.

Special Assessments shall be payable in such manner and at such times as determined by the Board, and may be payable in installments extending beyond the fiscal year in which the Special Assessment is approved. Special Assessments shall be levied equally on all Units. Nothing in this Section 8.4 shall be construed as a limitation on the Board's power to revise the operating budget pursuant to Section 8.3 above.

8.7. Specific Assessments. The Association shall have the power to levy Specific Assessments against a particular Unit as follows:

(a) to cover the costs, including overhead and administrative costs, of providing benefits, items, or services to the Unit or occupants thereof upon request of the Owner pursuant to a menu of special services which the Board may from time to time authorize to be offered to Owners and occupants (which might include, without limitation, landscape maintenance, pest control, etc.), which assessments may be levied in advance of the provision of the requested benefit, item or service as a deposit against charges to be incurred by the Owner; and

(b) to cover costs incurred in bringing the Unit into compliance with the terms of this Declaration, any applicable Supplemental Declaration, the By-Laws, Design Guidelines, or Use Restrictions and Rules, or costs incurred as a consequence of the conduct of the Owner or occupants of the Unit, their agents, contractors, employees, licensees, invitees, or guests; provided, the Board shall give the Unit Owner prior written notice and an opportunity for a hearing, in accordance with Section 3.24 of the By-Laws, before levying any Specific Assessment under this subsection (b).

8.8. Lien for Assessments. The Association shall have a lien against each Unit to secure payment of delinquent assessments, as well as interest, late charges (subject to the limitations of Arizona law), and costs of collection (including attorneys' fees). Such lien shall be superior to all other liens, except (a) the liens of all taxes, bonds, assessments, and other levies which by law would be superior, and (b) the lien or charge

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of any first Mortgage of record (meaning any recorded Mortgage with first priority over other Mortgages) made in good faith and for value. Such lien, when delinquent, may be enforced by suit, judgment, and foreclosure in the same manner as mortgages are foreclosed under Arizona law.

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

The sale or transfer of any Unit shall not affect the assessment lien or relieve such Unit from the lien for any subsequent assessments. However, the sale or transfer of any Unit pursuant to foreclosure of the first Mortgage shall extinguish the lien as to any installments of such assessments due prior to such sale or transfer. A Mortgagee or other purchaser of a Unit who obtains title pursuant to foreclosure of the Mortgage shall not be personally liable for assessments on such Unit due prior to such acquisition of title. Such unpaid assessments shall be deemed to be Common Expenses collectible from Owners of all Units subject to assessment under Section 8.9, including such acquirer, its successors and assigns.

8.9. Date of Commencement of Assessments. The obligation to pay assessments shall commence as to each Unit made subject to the Declaration on the first day of the month in which a building permit could be obtained from the Town of Payson, Arizona; provided, however, no assessments shall be due prior to the month in which the Board first determines a budget and levies assessments pursuant to this Article. The first annual General Assessment levied on each Unit shall be adjusted according to the number of months remaining in the fiscal year at the time assessments commence on the Unit.

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

8.11. Exempt Property. The following property shall be exempt from payment of assessments:

- (a) All Common Area and such portions of the property owned by the Declarant as are included in the Area of Common Responsibility pursuant to Section 5.1; and
- (b) Any property dedicated to and accepted by any governmental authority or public utility.

8.12. Capitalization of Association. Upon acquisition of record title to a Unit by the first Owner thereof other than the Declarant or a Builder, a contribution shall be made by or on behalf of the purchaser to the working capital of the Association in an amount equal to one-sixth of the annual Base Assessment per Unit for that year. This amount shall be in addition to, not in lieu of, the annual Base Assessment and shall not be considered an advance payment of such assessment. This amount shall be deposited into the purchase and sales escrow and disbursed therefrom to the Association for use in covering operating expenses and other expenses incurred by the Association pursuant to this Declaration and the By-Laws.



Article IX
ARCHITECTURAL STANDARDS

9.1. General. No structure shall be placed, erected, or installed upon any Unit, and no improvements (including staking, clearing, excavation, grading and other site work, exterior alteration of existing improvements, and planting or removal of landscaping materials) shall take place except in compliance with this Article and the Design Guidelines promulgated pursuant to Section 9.3.

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

All dwellings constructed on any portion of the Properties shall be designed by and built in accordance with the plans and specifications of a licensed architect, unless otherwise acceptable to the Declarant or Architectural Review Committee, as appropriate, in their sole discretion. All plans and specifications shall be subject to review as provided herein.

This Article shall not apply to the activities of the Declarant, nor to improvements to the Common Area by or on behalf of the Association by Declarant. This Article shall apply to all other improvements to the Common Area.

This Article may not be amended without the Declarant's written consent so long as the Declarant owns any land subject to this Declaration or subject to annexation to this Declaration.

9.2. Architectural Review. Until 100% of the Properties have been developed and conveyed to Owners other than Builders or 15 years from the date of recordation of this Declaration, whichever occurs first, the Declarant shall have exclusive authority to administer and enforce architectural controls under this Article and to review and act upon all applications for construction and modifications within the Properties. There shall be no surrender of this authority prior to that time except in a written instrument in recordable form executed by Declarant. Upon the expiration or surrender of such authority, the Board shall appoint an Architectural Review Committee ("ARC"), the members of which shall thereafter serve and may be removed in the Board's discretion. The ARC shall have no rights or authority until the Declarant's authority under this Article expires or is surrendered. (For purposes of this Article, "Reviewing Body" shall refer to either the Declarant or the ARC, as appropriate under the circumstances.)

The Declarant or, upon formation of the ARC, the Board, may establish and charge reasonable fees for review of applications hereunder and may require such fees to be paid in full prior to review of any application. Such fees may include the reasonable costs incurred in having any application reviewed by architects, engineers or other professionals. The Declarant and the Association may employ architects, engineers, or other persons as deemed necessary to perform the review. The Board may include the compensation of such persons in the Association's annual operating budget as a Common Expense.

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9.3. Guidelines and Procedures.

(a) Design Guidelines. The Declarant shall prepare Design Guidelines for the Properties and shall have sole and full authority to amend them as long as it owns any portion of the Properties or has a right to annex any property described on Exhibit "B." Thereafter, the ARC shall have the authority to amend the Design Guidelines. The Design Guidelines may contain general provisions applicable to all of the Properties, as well as landscape plans and other specific provisions which vary from one portion of the Properties to another depending upon the location and unique characteristics. The Design Guidelines are intended to provide guidance to Owners and Builders regarding matters of particular concern in considering applications hereunder. The Design Guidelines are not the exclusive basis for decisions of the Reviewing Body and compliance with the Design Guidelines does not guarantee approval of any application.

Any amendments to the Design Guidelines shall be prospective only and shall not apply to require modifications to or removal of structures previously approved once the approved construction or modification has commenced. There shall be no limitation on the scope of amendments to the Design Guidelines; the Declarant or, upon its formation, the ARC, is expressly authorized to amend the Design Guidelines to remove requirements previously imposed or otherwise to make the Design Guidelines less restrictive.

The Association shall make the Design Guidelines available to Owners and Builders who seek to engage in development or construction within the Properties and all such Persons shall conduct their activities in accordance with such Design Guidelines.

All structures and improvements constructed upon a Unit shall be constructed in strict compliance with the Design Guidelines in effect at the time the plans for such improvements are submitted to and approved by the appropriate committee, unless the Reviewing Body has granted a variance in writing pursuant to Section 9.5. So long as the Reviewing Body has acted in good faith, its findings and conclusions with respect to appropriateness of, applicability of or compliance with the Design Guidelines and this Declaration shall be final.

(b) Procedures. No activities within the scope of Section 9.1 shall commence on any portion of the Properties until an application for approval of the proposed work has been submitted to and approved by the Reviewing Body. Such application shall be in the form required by the Reviewing Body or the Design Guidelines and shall include plans and specifications, and an architectural model, if such is requested in the discretion of the Reviewing Body ("Plans") showing the site layout, structural design, exterior elevations, exterior materials and colors, landscaping, drainage, lighting, irrigation, utility facilities layout and screening therefor, and other features of proposed construction as required by the Design Guidelines and, as applicable. The Reviewing Body may require the submission of such additional information as it deems necessary to consider any application. The Plans shall be in such form and shall contain such information as may be reasonably required pursuant to the Design Guidelines.

In reviewing each submission, the Reviewing Body will consider (but shall not be limited to consideration of) the design, including, color schemes and materials, harmony of external design with existing structures, and location in relation to surrounding structures, topography, and finish grade elevation, among other things. Decisions of the Reviewing Body may be based on purely aesthetic considerations. Each Owner acknowledges that opinions on aesthetic matters are subjective and may vary as the Reviewing Bodies and their members change over time.

The Reviewing Body shall, within 30 days after receipt of each submission of the Plans, advise the party submitting the same, in writing, at an address specified by such party at the time of submission, of (i) the

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approval of Plans, or (ii) the disapproval of such Plans, specifying the segments or features of the Plans which are objectionable and suggestions, if any, for the curing of such objections. In the event the Reviewing Body fails to advise the submitting party by written notice within the time set forth above of either the approval or disapproval of the Plans, the applicant may give the Reviewing Body written notice of such failure to respond and stating that unless the Reviewing Body responds within 10 days of receipt of such notice, approval shall be deemed granted and, upon such further failure, approval shall be deemed to have been given, subject to the right of the Declarant to veto approvals by the ARC as set forth in this Section. However, no approval, whether expressly granted or deemed granted pursuant to the foregoing, shall be inconsistent with the Design Guidelines unless a variance has been granted in writing pursuant to Section 9.5. Notice shall be deemed to have been given at the time the envelope containing such notice, properly addressed, and postage prepaid, is deposited with the U. S. Postal Service, registered or certified mail, return receipt requested. Personal delivery of such written notice shall, however, be sufficient and shall be deemed to have been given at the time of delivery.

Within three business days after the ARC has approved any application relating to proposed Work within the scope of matters delegated to the ARC by the Declarant, the ARC shall give written notice to Declarant of such action, together with such other information as the Declarant may require. The Declarant shall have 10 days after receipt of such notice to veto any such action, in its sole discretion, by written notice to the ARC and the applicant.

If construction does not commence on any Work for which approval has been granted within 12 months of such approval, such approval shall be deemed withdrawn, and it shall be necessary for the Owner to re-submit the Plans for reconsideration prior to commencing such Work. All Work shall be completed within 12 months of commencement unless completion is delayed due to causes beyond the reasonable control of the Owner, as determined in the sole discretion of the Reviewing Body, or an extension has been approved by the Declarant. If approved Work is not completed within the required time, it shall be considered nonconforming and shall be subject to enforcement action by the Declarant, the Association, or any aggrieved Owner.

9.4. No Waiver of Future Approvals. Approval of proposals, plans and specifications, or drawings for any work done or proposed, or in connection with any other matter requiring approval, shall not be deemed to constitute a waiver of the right to withhold approval as to any similar proposals, plans and specifications, drawings, or other matters subsequently or additionally submitted for approval.

9.5. Variance. The Reviewing Body may authorize variances from compliance with any of its guidelines and procedures when circumstances such as topography, natural obstructions, hardship, or aesthetic or environmental considerations require. Such variances may only be granted, however, when unique circumstances dictate and no variance shall (a) be effective unless in writing; (b) be contrary to this Declaration; or (c) estop the Reviewing Body from denying a variance in other circumstances. For purposes of this Section, the inability to obtain approval of any governmental agency, the issuance of any permit, or the terms of any financing shall not be considered a hardship warranting a variance.

9.6. Limitation of Liability. The standards and procedures established pursuant to this Article are intended to provide a mechanism for maintaining and enhancing the overall aesthetics of the Properties only, and shall not create any duty to any Person. Neither the Declarant, the Association, the Board, nor the ARC shall bear any responsibility for ensuring the structural integrity or soundness of approved construction or modifications or the adequacy of soils or drainage, nor for ensuring compliance with building codes and other governmental requirements. Neither the Declarant, the Association, the Board, nor the ARC or any member of any of the foregoing shall be held liable for any injury, damages, or loss arising out of the manner or quality of approved construction or modifications to any Unit. In all matters, the ARC and its members shall be defended and indemnified by the Association as provided in Section 4.6.



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9.7. Enforcement. Any structure, improvement or landscaping placed or made in violation of this Article or the Design Guidelines shall be deemed to be nonconforming. Upon written request from the Declarant, the ARC or the Board, Owners shall, at their own cost and expense, remove such structure or improvement and restore the property to substantially the same condition as existed prior to the nonconforming work. Should an Owner fail to remove and restore as required, the Declarant, the Association or its designees shall have the right to enter the property, remove the violation, and restore the property to substantially the same condition as previously existed. All costs, together with interest at the maximum rate then allowed by law, may be assessed against the benefited Unit and collected as a Specific Assessment.

All approvals granted hereunder shall be deemed conditioned upon completion of all elements of the approved work and all work previously approved with respect to the same Unit, unless approval to modify any application has been obtained. In the event that any Person fails to commence and diligently pursue to completion all approved work, the Declarant or the Association shall be authorized, after notice to the Owner of the Unit and an opportunity to be heard in accordance with Section 3.24 of the By-Laws, to enter upon the Unit and remove or complete any incomplete work and to assess all costs incurred against the Unit and the Owner thereof as a Specific Assessment.

Any contractor, subcontractor, agent, employee, or other invitee of an Owner who fails to comply with the terms and provisions of this Article and the Design Guidelines may be excluded from the Properties, subject to the notice and hearing procedures contained in the By-Laws. In such event, neither the Declarant, the Association, its officers, or directors shall be held liable to any Person for exercising the rights granted by this paragraph.

In addition to the foregoing, the Association and the Declarant shall have the authority and standing to pursue all legal and equitable remedies available to enforce the provisions of this Article and the decisions of the Reviewing Body.

Article X
USE RESTRICTIONS AND RULES

10.1. Plan of Development; Applicability; Effect. Declarant has established a general plan of development for the Properties in order to enhance all Owners' quality of life and collective interests, the aesthetics and environment within the Properties, and the vitality of and sense of community within the Properties, all subject to the Board's and the Members' ability to respond to changes in circumstances, conditions, needs, and desires within the community and to regulate and control the Area of Common Responsibility. The Properties are subject to the land development, architectural, and design provisions set forth in Article IX, the other provisions of this Declaration governing individual conduct and uses of and actions upon the Properties, and the guidelines, rules and restrictions promulgated pursuant to this Declaration, all of which establish affirmative and negative covenants, easements, and restrictions on the land subject to this Declaration.

All provisions of this Declaration and any Association rules shall apply to all Owners, occupants, tenants, guests and invitees of any Unit. Any lease on any Unit shall provide that the lessee and all occupants of the leased Unit shall be bound by the terms of the Governing Documents.

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



(a) Subject to the Board's duty to exercise business judgment and to act reasonably on behalf of the Association and its Members, the Board may adopt rules which modify, cancel, limit, create exceptions to, or expand the initial use restrictions set forth on Exhibit "C." The Board shall send notice by mail to all Owners concerning any such proposed action at least five business days prior to the Board meeting at which such action is to be considered. Members shall have a reasonable opportunity to be heard at a Board meeting prior to such action being taken.

Such action shall become effective unless, at a meeting of the Association, it is challenged and overturned by a vote of at least 51% of the total Class "A" votes in the Association and by the Class "B" Member, if any. The Board shall have no obligation to call a meeting of the Members to consider disapproval except upon petition of the Members as required for special meetings in the By-Laws.

(b) Alternatively, the Members, at a meeting duly called for such purpose as provided in the By-Laws, may adopt rules which modify, cancel, limit, create exceptions to, or expand the use restrictions and rules previously adopted by a vote of Members representing at least 51% of the total Class "A" votes in the Association and the approval of the Class "B" Member, if any.

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

(d) Notwithstanding the above, after termination of the Class "B" Membership, no amendment to or modification of any Use Restrictions and Rules shall be effective without prior notice to and the written approval of Declarant so long as the Declarant owns any portion of the Properties.

(e) Nothing in this Article shall authorize the Board or the Members to modify, repeal or expand the Design Guidelines. In the event of any inconsistency between the Design Guidelines and the Use Restrictions and Rules, the Design Guidelines shall control.

10.3. Owners' Acknowledgment. All Owners and occupants of Units are given notice that use of the Units is limited by the Use Restrictions and Rules as they may be amended, expanded and otherwise modified hereunder. Each Owner, by acceptance of a deed or entering into and recording a contract of sale, acknowledges and agrees that the use and enjoyment and marketability of his or her Unit can be affected and that the Use Restrictions and Rules may change from time to time.

10.4. Rights of Owners. Except as may be specifically set forth in this Declaration (either initially or by amendment) or in Exhibit "C," neither the Board nor the Members may adopt any rule in violation of the following provisions:

(a) Equal Treatment. Similarly situated Owners and occupants shall be treated similarly.

(b) Speech. The freedom of speech rights of Owners and occupants shall not be abridged, except that the Association may adopt time, place, and manner restrictions (including design criteria) for the purpose of minimizing damage and disturbance to other Owners and occupants of Units.

(c) Religious and Holiday Displays. The rights of Owners to display religious and holiday signs, symbols, and decorations inside structures on their Units of the kinds normally displayed in residences



located in single-family residential neighborhoods shall not be abridged, except that the Association may adopt reasonable time, place, and manner restrictions and restrictions on the extent of such displays for the purpose of minimizing damage and disturbance to other Owners and occupants.

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

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

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

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

(h) Reasonable Rights to Develop. No rule or action by the Association or Board shall unreasonably impede the Declarant's right to develop the Properties.

(i) Abridging Existing Rights. If any rule would otherwise require Owners or occupants of Units to dispose of personal property which they maintained in or on the Unit prior to the effective date of such rule, or to vacate a Unit in which they resided prior to the effective date of such rule, and such property was maintained or such occupancy was in compliance with this Declaration and all rules previously in force, such rule shall not apply to any such Owners without their written consent unless the rule was in effect at the time such Owners or occupants acquired their interest in the Unit.

The limitations in this Section 10.4 shall apply to rules only; they shall not apply to amendments to this Declaration adopted in accordance with Section 17.2.

Article XI EASEMENTS

11.1. Easements of Encroachment. There shall be reciprocal appurtenant easements of encroachment, and for maintenance and use of any permitted encroachment, between each Unit and any adjacent



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

11.2. Easements for Utilities, Etc.

(a) There are hereby reserved to the Declarant, so long as the Declarant owns any property described on Exhibit "A" or "B" of this Declaration, the Association, and the designees of each (which may include, without limitation, any governmental or quasi-governmental entity and any utility company) perpetual non-exclusive easements upon, across, over, and under all of the Properties (but not through a structure) to the extent reasonably necessary for the purpose of monitoring, replacing, repairing, maintaining and operating cable television systems, master television antenna systems, and other devices for sending or receiving data and/or other electronic signals; security and similar systems; roads, walkways, pathways and trails; drainage and irrigation systems; street lights and signage; and all utilities, including, but not limited to, water, sewers, telephone, gas, and electricity, and utility meters; and for the purpose of installing any of the foregoing on property which the Declarant or the Association owns or within easements designated for such purposes on recorded plats of the Properties.

Declarant specifically grants to the local water supplier, electric company, and propane gas supplier easements across the Properties for ingress, egress, installation, reading, replacing, repairing, and maintaining utility lines, meters and boxes, as applicable.

(b) There is hereby reserved to the Declarant, so long as the Declarant owns any property described on Exhibit "A" or "B" of this Declaration, the non-exclusive right and power to grant such specific easements as may be necessary, in the sole discretion of Declarant, in connection with the orderly development of any property described on Exhibits "A" or "B."

(c) Any damage to a Unit resulting from the exercise of the easements described in subsections (a) and (b) of this Section shall promptly be repaired by, and at the expense of, the Person exercising the easement. The exercise of these easements shall not extend to permitting entry into the structures on any Unit, nor shall it unreasonably interfere with the use of any Unit and, except in an emergency, entry onto any Unit shall be made only after reasonable notice to the Owner or occupant.

(d) Declarant reserves unto itself the right, in the exercise of its sole discretion, upon the request of any Person holding, or intending to hold, an interest in the Properties, or at any other time, (i) to release all or any portion of the Properties from the burden, effect, and encumbrance of any of the easements granted or reserved under this Section 11.2, or (ii) to define the limits of any such easements; provided, however, Declarant shall relocate, at its own expense, any utility lines or facilities located on or under that portion of the Properties being released.

11.3. Easements for Maintenance and Flood Water. The Declarant reserves for itself, the Association, and their successors, assigns, and designees, the nonexclusive right and easement over the Properties for access, ingress and egress to creeks or streams located within the Area of Common Responsibility and for (a) installing, keeping, maintaining, repairing, and replacing pumps in order to provide water for the irrigation of any of the Area of Common Responsibility; (b) constructing, maintaining, and repairing any bulkhead, retaining wall, levee, or other structure retaining water; and (c) removing trash and other debris



therefrom. All persons entitled to exercise these easements shall use reasonable care in, and repair any damage resulting from, the intentional exercise of such easements. Nothing herein shall be construed to make Declarant, the Association or any other Person liable for damage resulting from flooding due to heavy rainfall or other natural occurrences.

11.4. Easements to Serve Additional Property. The Declarant hereby reserves for itself and its duly authorized agents, representatives, and employees, successors, assigns, licensees, and mortgagees, an easement over the Common Area for the purposes of enjoyment, use, access, and development of the property described in Exhibit "B," whether or not such property is made subject to this Declaration. This easement includes, but is not limited to, a right of ingress and egress over the Common Area for connecting and installing utilities on such property. Declarant agrees that it and its successors or assigns shall be responsible for any damage caused to the Common Area as a result of the exercise of this easement.

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

11.6. Easement for Access. The Declarant reserves for itself and Rim Golf Developer L.L.C., its successors, assigns, and designees, a perpetual easement over the roads and trails within the Properties for access by employees, independent contractors, and accompanied guests of Rim Golf Developer L.L.C.

Article XII GOLF CLUB

12.1. General. The Golf Club is not part of the Properties nor part of the Common Areas. Access to and use of the Golf Club is strictly subject to the rules and procedures of the owner(s) of the Golf Club, and no Person gains any right to enter or to use such facilities by virtue of membership in the Association or ownership or occupancy of a Unit.

The transfer of a Unit by an Owner who is a member of the Golf Club does not automatically transfer the Owner's membership in the Golf Club to the purchaser of the Unit. The transfer of the Owner's membership must be in accordance with the rules and regulations of the Golf Club as they may change from time to time.

Rights to use the Golf Club will be granted only to such persons, and on such terms and conditions, as may be determined from time to time by the owner(s) of the Golf Club. The owner(s) of the Golf Club shall have the right, from time to time in their sole and absolute discretion and without notice, to amend or waive the terms and conditions of use of the Golf Club, including, without limitation, eligibility for and duration of use rights, categories of use and extent of use privileges, and number of users, and shall also have the right to reserve use rights and to terminate use rights altogether, subject to the provisions of any outstanding membership documents.



12.2. Ownership and Operation of the Golf Club. All Persons, including all Owners, are hereby advised that no representations or warranties, either written or oral, have been or are made by the Declarant or any other Person with regard to the nature or size of improvements to, or the continuing ownership or operation of the Golf Club. No purported representation or warranty, written or oral, in regard to the Golf Club shall be effective unless set forth in an amendment to this Declaration executed by the Declarant and the owner(s) of the Golf Club.

The ownership and/or operation of the Golf Club may change at any time and from time to time by virtue of, but without limitation, (a) the sale to or assumption of operations of the Golf Club by an independent Person; (b) the transfer of ownership or control of the Golf Club to one or more affiliates, shareholders, employees, or independent contractors of the Declarant. No consent of the Association or any Owner shall be required to effectuate such transfer or conversion.

12.3. Easements Respecting the Golf Club. The following easements apply only to the Golf Club:

(a) The owner(s) of the Golf Club, their respective agents, successors, and assigns, shall have non-exclusive easements over the Common Areas for ingress and egress, utilities, and such other purposes as may be reasonably necessary or convenient to the establishment, operation, maintenance, repair and replacement of the Golf Club. The owner(s) of the Golf Club, members (regardless of whether such members are Owners hereunder), if any, of the Golf Club, their guests and invitees, such other guests or customers having a right to use the Golf Club, and the employees, agents, contractors, and designees of the Golf Club shall at all times have a right and non-exclusive easement of access and use over the Common Area for purposes commonly associated with playing the game of golf on the Golf Club. This right and easement shall include access and use over all roadways and golf cart paths, if any, located within the Properties reasonably necessary to travel to and from the entrance to the Properties to and from the Golf Club, respectively, and over those portions of the Properties (Common Area or otherwise) reasonably necessary to the operation, maintenance, repair, and replacement of the Golf Club. Without limiting the generality of the foregoing, Members of the Golf Club and permitted members of the public shall have the right to park their vehicles on the roadways located within the Properties and have limited access over the Common Area at reasonable time before, during, and after functions held by/at the Golf Club which may include, without limitation, golf tournaments.

The benefited parties shall be obligated to use due care in the exercise of such easement rights. Any specific damage to the Common Area caused by the failure to exercise due care shall be the responsibility of the owner(s) of the Golf Club and the user of the Common Area pursuant to the easement rights stated herein.

Such easement shall also include, but not be limited to, allowing the flight of golf balls over and above the Properties, the use of necessary and usual equipment on the Golf Club, the usual and common noise level created by the playing of the game of golf, and permitting golf balls unintentionally to come upon such Common Area or the Units and for golfers at reasonable times and in a reasonable manner to come upon the Common Area or the exterior portions of a Unit to retrieve errant golf balls; provided, however, if any Unit is fenced or walled, the golfer shall seek the Owner's permission before entry. The existence of this easement shall not relieve golfers of liability for damage caused by errant golf balls. Under no circumstances shall any of the following Persons be held liable for any damage or injury resulting from errant golf balls or the exercise of this easement: the Declarant, the Association or its Members (in their capacity as such); the owner(s) of the Golf Club or their successors, successors-in-title, or assigns; any successor Declarant; any Builder or contractor (in their capacities as such); any officer, director or partner of any of the foregoing, or any officer or director of any partner; or any organizer or sponsor of any tournament or special event.



The Association shall not exercise its authority over the Common Areas to frustrate the rights of the owners of the Golf Club, their respective agents, successors and assigns, as well as their members, guests, invitees, employees, contractors, designees, and authorized users.

(b) The Properties immediately adjacent to the Golf Club are hereby burdened with a non-exclusive easement in favor of the adjacent Golf Club for overspray of water from the irrigation system serving the Golf Club. Under no circumstances shall the Association or the owner(s) of the Golf Club be held liable for any damage or injury resulting from such overspray or the exercise of this easement.

(c) The owner(s) of the Golf Club, their respective agents, employees, contractors, successors and assigns, shall have a perpetual, exclusive easement of access over the Properties for the purpose of retrieving golf balls from bodies of water within the Common Area lying reasonably within range of golf balls hit from the Golf Club.

(d) The owner(s) of the Golf Club, their respective agents, employees, contractors, successors and assigns, shall have a perpetual non-exclusive easement, to the extent reasonably necessary, over the Properties, for the installation, operation, maintenance, repair, replacement, monitoring and controlling of irrigation systems and equipment, including, without limitation, wells, pumps and pipelines, utility lines, wires and drainage pipelines serving all or portions of the Golf Club.

(e) The Properties are hereby burdened with easements in favor of the Golf Club for natural drainage of storm water runoff from the Golf Club.

(f) The Declarant hereby reserves for itself, its successors and assigns, and may assign to the owner(s) of the Golf Club, an easement to draw water from bodies of water within the Common Area for purposes of irrigation of the Golf Club and for access to and the right to enter upon the Common Area for installation and maintenance of any irrigation systems.

12.4. View Impairment. Neither the Declarant nor the Association guarantees or represents that any view over and across the Golf Club from adjacent Units will be preserved without impairment. The owner(s) of the Golf Club shall have no obligation to prune or thin trees or other landscaping and shall have the right, in its sole and absolute discretion, to add trees and other landscaping to the Golf Club from time to time. In addition, the owner(s) of the Golf Club may, in its sole and absolute discretion, change the location, configuration, size and elevation of the tees, bunkers, fairways and greens on the Golf Club from time to time. Any such additions or changes to the Golf Club may affect the view of the Golf Club from the Units.

12.5. Allocation of Costs. The Association may enter into a contractual arrangement or covenant to share costs with the Golf Club whereby the Golf Club will maintain and bear the cost of maintaining certain portions of the Area of Common Responsibility or will contribute funds for, among other things, maintenance of the Area of Common Responsibility.

12.6. Limitations on Amendments. In recognition of the fact that the provisions of this Article are for the benefit of the owner of the Golf Club, no amendment to this Article, and no amendment in derogation of any rights reserved or granted to the owner of the Golf Club by other provisions of this Declaration, may be made without the written approval of the owner of the Golf Club. The foregoing shall not apply, however, to amendments made by the Declarant.

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12.7. Jurisdiction and Cooperation. It is Declarant's intention that the Association and the owner of the Golf Club shall cooperate to the maximum extent possible in the operation of the Properties and the Golf Club. Each shall reasonably assist the other in upholding the Community-Wide Standard. The Association shall have no power to promulgate rules and regulations affecting activities on or use of the Golf Club.

12.8. Assumption of Risk and Indemnification. Each Owner, by its purchase of a Unit in the vicinity of the Golf Club, hereby expressly assumes the risk of noise, personal injury or property damage caused by maintenance and operation of the Golf Club, including, without limitation: (a) noise from maintenance equipment (it being specifically understood that such maintenance typically takes place around sunrise or sunset and during daylight hours)(b) noise caused by golfers, (c) use of pesticides, herbicides and fertilizers, (d) view restrictions caused by maturation of trees and shrubbery, (e) use of effluent in the irrigation of the Golf Club, (f) reduction in privacy caused by constant golf traffic on the Golf Club or the removal or pruning of shrubbery or trees on the Golf Club, (g) errant golf balls and golf clubs, and (h) design of the Golf Club.

Each such Owner agrees that neither Declarant, the Association nor any of Declarant's affiliates or agents nor any other entity owning or managing the Golf Club shall be liable to Owner or any other person claiming any loss of damage, including, without limitation, indirect, special or consequential loss or damage arising from personal injury, destruction of property, trespass, loss of enjoyment or any other alleged wrong or entitlement to remedy based upon, due to, arising from or otherwise related to the proximity of Owner's Unit to the Golf Club, including, without limitation, any claim arising in whole or in part from the negligence of Declarant, the Association or any other entity owning or managing the Golf Club. The Owner hereby agrees to indemnify and hold harmless Declarant, the Association and any other entity owning or managing the Golf Club against any and all claims by Owner's visitors, tenants and others upon such Owner's Unit.

Article XIII
MORTGAGE PROVISIONS

The following provisions are for the benefit of holders, insurers and guarantors of first Mortgages on Units in the Properties.

13.1. Notices of Action. An institutional holder, insurer, or guarantor of a first Mortgage who provides a written request to the Association (such request to state the name and address of such holder, insurer, or guarantor and the street address of the Unit to which its Mortgage relates, thereby becoming an "Eligible Holder"), will be entitled to timely written notice of:

- (a) Any condemnation loss or any casualty loss which affects a material portion of the Properties or which affects any Unit on which there is a first Mortgage held, insured, or guaranteed by such Eligible Holder;
- (b) Any delinquency in the payment of assessments or charges owed by a Unit subject to the Mortgage of such Eligible Holder, where such delinquency has continued for a period of 60 days, or any other violation of the Declaration or By-Laws relating to such Unit or the Owner or Occupant which is not cured within 60 days; or
- (c) Any lapse, cancellation, or material modification of any insurance policy maintained by the Association.



13.2. No Priority. No provision of this Declaration or the By-Laws gives or shall be construed as giving any Owner or other party priority over any rights of the first Mortgagee of any Unit in the case of distribution to such Owner of insurance proceeds or condemnation awards for losses to or a taking of the Common Area or such Owner's Unit.

13.3. Notice to Association. Upon request, each Owner shall be obligated to furnish to the Association the name and address of the holder of any Mortgage encumbering such Owner's Unit.

Article XIV DECLARANT'S RIGHTS

Any or all of the special rights and obligations of the Declarant set forth in this Declaration or the By-Laws may be transferred or assigned in whole or in part to other Persons, provided that the transfer shall not reduce an obligation nor enlarge a right beyond that which the Declarant has under this Declaration or the By-Laws. No such transfer or assignment shall be effective unless it is in a written instrument signed by the Declarant and duly recorded in the Public Records.

The Declarant and Builders authorized by Declarant may maintain and carry on upon portions of the Common Area such facilities and activities as, in the sole opinion of the Declarant, may be reasonably required, convenient, or incidental to the construction or sale of Units, including, but not limited to, business offices, signs, model homes, and sales offices. The Declarant and authorized Builders shall have easements for access to and use of such facilities.

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

No Person shall record any declaration of covenants, conditions and restrictions or similar instrument affecting any portion of the Properties without Declarant's review and written consent. Any attempted recordation without such consent shall result in such instrument being void and of no force and effect unless subsequently approved by written consent signed by the Declarant and recorded in the Public Records.

Notwithstanding any contrary provision of this Declaration, no amendment to or modification of any Use Restrictions and Rules or Design Guidelines made after termination of the Class "B" Control Period shall be effective without prior notice to and the written approval of Declarant so long as the Declarant owns any portion of the Properties primarily for development and sale.

This Article may not be amended without the written consent of the Declarant. The rights contained in this Article shall terminate upon the earlier of (a) 20 years from the date this Declaration is recorded, or (b) upon recording by Declarant of a written statement that all sales activity has ceased.

Article XV DISPUTE RESOLUTION AND LIMITATION ON LITIGATION

15.1. Agreement to Avoid Litigation. The Declarant, the Association, its officers, directors, and committee members, all Persons subject to this Declaration, any Builder, and any Person not otherwise subject to this Declaration who agrees to submit to this Article (collectively, "Bound Parties") agree to encourage the



amicable resolution of disputes involving the Properties, without the emotional and financial costs of litigation. Accordingly, each Bound Party covenants and agrees that those claims, grievances or disputes described in Sections 15.2 ("Claims") shall be resolved using the procedures set forth in Section 15.3 in lieu of filing suit in any court.

15.2. Claims. Unless specifically exempted below, all claims, grievances or disputes arising out of or relating to the interpretation, application or enforcement of the Governing Documents, or the rights, obligations and duties of any Bound Party under the Governing Documents or relating to the design or construction of improvements on the Properties shall be subject to the provisions of Section 15.3.

Notwithstanding the above, unless all parties thereto otherwise agree, the following shall not be Claims and shall not be subject to the provisions of Section 15.3:

- (a) any suit by the Association against any Bound Party to enforce the provisions of Article VIII (Assessments);
- (b) any suit by the Association to obtain a temporary restraining order, or other mandatory or prohibitive equitable relief, and such other ancillary relief as permitted to enforce the provisions of Article IX (Architectural Standards) or Article X (Use Restrictions and Rules);
- (c) any suit by an Owner to challenge the actions of the Declarant, the Association, the ARC, or any committee with respect to the approval or disapproval of plans and specifications in accordance with Article IX (Architectural Standards);
- (d) any suit by an Owner to challenge the enforcement or application of specific use restrictions promulgated in accordance with the procedures set forth in Article X (Use Restrictions);
- (e) any suit between Owners, which does not include Declarant or the Association as a party, if such suit asserts a Claim which would constitute a cause of action independent of the Governing Documents;
- (f) any suit in which any indispensable party is not a Bound Party; and
- (g) any suit which otherwise would be barred by any applicable statute of limitations.

With the consent of all parties thereto, any of the above may be submitted to the alternative dispute resolution procedures set forth in Section 15.3.

15.3. Mandatory Procedures.

(a) Notice. Any Bound Party having a Claim ("Claimant") against any other Bound Party ("Respondent") (collectively, the "Parties") shall notify each Respondent in writing (the "Notice"), stating plainly and concisely:

- 1. the nature of the Claim, including the Persons involved and Respondent's role in the Claim;
- 2. the legal basis of the Claim (i.e., the specific authority out of which the Claim arises);



3. Claimant's proposed remedy; and
4. that Claimant will meet with Respondent to discuss in good faith ways to resolve the Claim.

(b) Negotiation and Mediation.

1. The Parties shall make every reasonable effort to meet in person and confer for the purpose of resolving the Claim by good faith negotiation. If requested in writing, accompanied by a copy of the Notice, the Board may appoint a representative to assist the Parties in resolving the dispute by negotiation.
2. If the Parties do not resolve the Claim within 30 days of the date of the Notice (or within such other period as may be agreed upon by the Parties) ("Termination of Negotiations"), Claimant shall have 30 additional days to submit the Claim to mediation under the auspices of an independent dispute resolution center, or such other independent agency providing dispute resolution services in the Gila County, Arizona area upon which the Parties may mutually agree.
3. If Claimant does not submit the Claim to mediation within 30 days after Termination of Negotiations, or does not appear for the mediation, Claimant shall be deemed to have waived the Claim, and Respondent shall be released and discharged from any and all liability to Claimant on account of such Claim; provided, nothing herein shall release or discharge Respondent from any liability to any Person other than the Claimant.
4. Any settlement of the Claim through mediation shall be documented in writing by the mediator. If the Parties do not settle the Claim within 30 days after submission of the matter to the mediation process, or within such time as determined by the mediator, the mediator shall issue a notice of termination of the mediation proceedings ("Termination of Mediation"). The Termination of Mediation notice shall set forth that the Parties are at an impasse and the date that mediation was terminated.
5. Within five days of the Termination of Mediation, the Claimant shall make a final written settlement demand ("Settlement Demand") to the Respondent and the Respondent shall make a final written settlement offer ("Settlement Offer") to the Claimant. If the Claimant fails to make a Settlement Demand, Claimant's original Notice shall constitute the Settlement Demand. If the Respondent fails to make a Settlement Offer, Respondent shall be deemed to have made a "zero" or "take nothing" Settlement Offer.

(c) Final and Binding Arbitration.

1. If the Parties do not agree in writing to a settlement of the Claim within 15 days of the Termination of Mediation, the Claimant shall have 15 additional days to submit the Claim to arbitration in accordance with the Rules of Arbitration contained in Exhibit "D" or such rules as may be required by the agency providing the arbitrator. If not timely submitted to arbitration or if the Claimant fails to appear for the arbitration proceeding, the Claim shall be deemed abandoned, and Respondent shall be released and discharged from any and all liability to Claimant arising out of such Claim; provided, nothing herein shall release or discharge Respondent from any liability to Persons other than Claimant.
2. This subsection (c) is an agreement to arbitrate and is specifically enforceable under the applicable arbitration laws of the State of Arizona. The arbitration award (the "Award") shall be final and binding, and judgment may be entered upon it in any court of competent jurisdiction to the fullest extent permitted under the laws of the State of Arizona.



15.4. Allocation of Costs of Resolving Claims.

(a) Subject to Section 15.4(b), each Party shall bear its own costs, including any attorneys fees incurred, and each Party shall share equally all charges rendered by the mediator(s) and all filing fees and costs of conducting the arbitration proceeding ("Post Mediation Costs").

(b) Any Award which is equal to or more favorable to Claimant than Claimant's Settlement Demand shall add Claimant's Post Mediation Costs to the Award, such costs to be borne equally by all Respondents. Any Award which is equal to or less favorable to Claimant than any Respondent's Settlement Offer shall award to such Respondent its Post Mediation Costs.

15.5. Enforcement of Resolution. After resolution of any Claim, if any Party fails to abide by the terms of any agreement or Award, then any other Party may file suit or initiate administrative proceedings to enforce such agreement or Award without the need to again comply with the procedures set forth in Section 15.3. In such event, the Party taking action to enforce the agreement or Award shall be entitled to recover from the non-complying Party (or if more than one non-complying Party, from all such Parties pro rata) all costs incurred in enforcing such agreement or Award, including, without limitation, attorneys' fees and court costs.

Article XVI
SALE OR TRANSFER OF TITLE TO UNIT

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

16.2. Transfer Fee. Upon the sale or transfer of title to a Unit by an Owner who is a Regular Member in the Rim Golf Club, L.L.C., ("Club") pursuant to the terms of the By-Laws of the Rim Golf Club, L.L.C. ("Club By-Laws"), as they may be amended from time to time, the Club shall transfer such membership to the new owner of the Unit. The Club shall collect a transfer fee from the proceeds of the sale of the Unit in such amount as provided in the Club By-Laws, which are incorporated herein by this reference, unless the Unit is transferred to a Person who was entitled to exercise the privileges of the transferor's membership pursuant to the Club By-Laws.

A lien in favor of the Club shall be created against the Unit in the amount of the transfer fee, and the transferee and transferor shall be jointly and severally liable for such transfer fee. The lien in favor of the Club shall be subordinate to the lien or charge of any first Mortgage of record made in good faith and for value. The sale or transfer of any Unit pursuant to foreclosure of the first Mortgage shall extinguish the lien as to any transfer fee due prior to such sale or transfer. A Mortgagee or other purchaser of a Unit who obtains title pursuant to foreclosure of the Mortgage shall not be personally liable for a transfer fee for such Unit due prior to such acquisition of title. However, should that purchaser of a Unit who obtains title pursuant to foreclosure of the Mortgage desire to be a Regular Member of the Club, he or she may apply to become such only upon payment of any transfer fee not previously paid.



Article XVII
GENERAL PROVISIONS

17.1. Duration.

(a) Unless terminated as provided in Section 17.1(b) or unless otherwise limited by Arizona law, this Declaration shall have perpetual duration. If Arizona law hereafter limits the period during which covenants may run with the land, then, unless terminated as provided herein or, if such termination method is not consistent with Arizona law, in such other manner as required by Arizona law, this Declaration shall automatically be extended at the expiration of such period for successive periods of 20 years each. Notwithstanding the above, if any of the covenants, conditions, restrictions, or other provisions of this Declaration shall be unlawful, void, or voidable for violation of the rule against perpetuities, then such provisions shall continue only until 21 years after the death of the last survivor of the now living descendants of Elizabeth II, Queen of England.

(b) Unless otherwise provided by Arizona law, in which case such law shall control, this Declaration may not be terminated within 20 years of the date of recording without the consent of all Owners. Thereafter, it may be terminated only by an instrument signed by Owners of at least 75% of the total Units within the Properties and by the Declarant, if the Declarant owns any portion of the Properties, which instrument is recorded in the Public Records. Nothing in this Section shall be construed to permit termination of any easement created in this Declaration without the consent of the holder of such easement.

17.2. Amendment.

(a) By Declarant. In addition to specific amendment rights granted elsewhere in this Declaration, until termination of the Class "B" membership, as provides in Section 3.3(b) of the Declaration and Section 3.3 of the By-Laws, Declarant may unilaterally amend this Declaration for any purpose. Thereafter, the Declarant may unilaterally amend this Declaration if such amendment is necessary (i) to bring any provision into compliance with any applicable governmental statutes, rule, regulation, or judicial determination; (ii) to enable any reputable title insurance company to issue title insurance coverage on the Units; (iii) to enable any institutional or governmental lender, purchaser, insurer or guarantor of mortgage loans, including, for example, the Federal National Mortgage Association, to make, purchase, insure or guarantee mortgage loans on the Units; (iv) to enable any reputable private insurance company to insure mortgage loans on the Units; or (v) to satisfy the requirements of any local, state or Federal governmental agency. However, any such amendment shall not adversely affect the title to any Unit unless the Owner shall consent in writing. In addition, so long as the Declarant owns property described in Exhibits "A" or "B" for development as part of the Properties, it may unilaterally amend this Declaration for any other purpose, provided the amendment has no material adverse effect upon any right of any Owner.

(b) By Members. Except as otherwise specifically provided above and elsewhere in this Declaration, this Declaration may be amended only by the affirmative vote or written consent, or any combination thereof, of Owners of not less than 75% of the total number of Units within the Properties and the consent of the Declarant, so long the Declarant has an option to subject additional property to this Declaration pursuant to Section 7.1.

Notwithstanding the above, the percentage of votes necessary to amend a specific clause shall not be less than the prescribed percentage of affirmative votes required for action to be taken under that clause.

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(c) Validity and Effective Date. No amendment may remove, revoke, or modify any right or privilege of the Declarant or the Class "B" Member without the written consent of the Declarant or the Class "B" Member, respectively (or the assignee of such right or privilege).

If an Owner consents to any amendment to this Declaration or the By-Laws, it will be conclusively presumed that such Owner has the authority to consent, and no contrary provision in any Mortgage or contract between the Owner and a third party will affect the validity of such amendment.

Any amendment shall become effective upon recording in the Public Records, unless a later effective date is specified in the amendment. Any procedural challenge to an amendment must be made within six months of its recordation or such amendment shall be presumed to have been validly adopted. In no event shall a change of conditions or circumstances operate to amend any provisions of this Declaration.

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

17.4. Litigation. Except as provided below, no judicial or administrative proceeding shall be commenced or prosecuted by the Association unless approved by a vote of Members holding 75% of the total Class "A" votes in the Association. This Section shall not apply, however, to (a) actions brought by the Association to enforce the provisions of this Declaration (including, without limitation, the foreclosure of liens); (b) the imposition and collection of assessments as provided in Article VIII; (c) proceedings involving challenges to ad valorem taxation; (d) counterclaims brought by the Association in proceedings instituted against it; or (e) actions brought by the Association against any contractor, vendor, or supplier of goods or services arising out of a contract for services or supplies. This Section shall not be amended unless such amendment is approved by the percentage of votes, and pursuant to the same procedures, necessary to institute proceedings as provided above. This Section shall apply in addition to the provisions of Article XV, if applicable.

17.5. Cumulative Effect, Conflict. The provisions of this Declaration shall be cumulative with the provisions of any applicable Supplemental Declaration. Nothing in this Section shall preclude any Supplemental Declaration or other recorded declaration, covenants and restrictions applicable to any portion of the Properties from containing additional restrictions or provisions which are more restrictive than the provisions of this Declaration, and the Association shall have the standing and authority to enforce the same.

17.6. Use of the Words "The Rim Golf Club." No Person shall use the words "The Rim Golf Club" or any derivative in any printed or promotional material without the Declarant's prior written consent. However, Owners may use the words "The Rim Golf Club" in printed or promotional matter where such terms are used solely to specify that particular property is located within The Rim Golf Club development and the Association shall be entitled to use the words "The Rim Golf Club" in its name.

17.7. Compliance. Every Owner and occupant of any Unit shall comply with this Declaration, any applicable Supplemental Declaration, the By-Laws, and the Use Restrictions and Rules promulgated pursuant to Article X. Subject to the terms of Article XV, failure to comply shall be grounds for an action by the Association or, in a proper case, by any aggrieved Unit Owner(s) to recover sums due, for damages or injunctive relief, or for any other remedy available at law or in equity, in addition to those enforcement powers granted to the Association in Section 4.3.

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17.8. Exhibits. Exhibits "A," "B," and "D" attached to this Declaration are incorporated by this reference and amendment of such exhibits shall be governed by the provisions of Section 17.2. All other exhibits are attached for informational purposes and may be amended as provided therein or in the provisions of this Declaration which refer to such exhibits.

IN WITNESS WHEREOF, the undersigned Declarant has executed this Declaration this 13th day of May, 1998.

DECLARANT: RIM GOLF INVESTORS L.L.C., an Arizona limited liability company
by: Chaparral Pines L.L.C., an Arizona limited liability company,
its: Member
by: Lyon and Beckham L.L.C., an Arizona limited liability company,
its: Member
by: [Signature]
its: Member

STATE OF ARIZONA)
COUNTY OF Maricopa) ss.:

The foregoing instrument was acknowledged before me this 13th day of May, 1998
by Scott B. Lyon, Member of Lyon and Beckham L.L.C., an Arizona limited liability company,
Member of Chaparral Pines L.L.C., an Arizona limited liability company, Member of Rim Golf Investors L.L.C.,
an Arizona limited liability company.

By: [Signature]
Name: Kathy A. Schmidt
Title: Notary Public

My Commission expires: July 26, 1999

CCR-The Rim Golf Club-Clean



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EXHIBIT "A"

Land Initially Submitted

All that tract of real property located in Gila County, Arizona, more particularly described as:

The Rim Golf Club, as shown on that certain Final Map of The Rim Golf Club, Phase One, recorded on MAY 27, 1998 in the office of the County Recorder of Gila County, Arizona, recorded in Map No. 713 through 713EE. Lots 1 - 99, 101 - 111, 181 - 231, 236, 242-245, 267, 269-319, Tracts "B", "C", "D", "E", "F", "G", "H", "I", "J", "K", "L", "M" and "N."

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EXHIBIT "B"

Land Subject to Annexation

The 10 mile radius from the point of intersection of Arizona State Highway 260 and Chaparral Pines Drive.

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EXHIBIT "C"

Initial Use Restrictions and Rules

The following restrictions shall apply to all of the Properties until such time as they are amended, modified, repealed or limited by rules of the Association adopted pursuant to Article X of the Declaration.

1. **General.** The Properties shall be used only for residential, recreational, and related purposes (which may include, without limitation, an information center, development office and/or a sales office of the Declarant and offices for any property manager retained by the Association) consistent with this Declaration.

2. **Restricted Activities.** The following activities are prohibited within the Properties unless expressly authorized by, and then subject to such conditions as may be imposed by, the Board of Directors:

(a) Any outside burning including the burning of trash, leaves, debris or other materials, at any time by Owners, Builders, their designees, or any other person;

(b) Parking of any vehicles overnight on private streets or thoroughfares, or parking at any time of commercial vehicles or equipment, mobile homes, campers, recreational vehicles, golf carts, snow mobiles, boats and other watercraft, trailers, stored vehicles or inoperable vehicles in places other than enclosed garages; provided, construction, service and delivery vehicles shall be exempt from this provision during daylight hours for such period of time as is reasonably necessary to provide service or to make a delivery to a Unit or the Common Areas;

(c) Raising, breeding or keeping of animals, livestock, or poultry of any kind, except that a reasonable number of dogs, cats, or other usual and common household pets may be permitted in a Unit; however, those pets which are permitted to roam free, or, in the sole discretion of the Board, make objectionable noise, endanger the health or safety of, or constitute a nuisance or inconvenience to the occupants of other Units shall be removed upon request of the Board. If the pet owner fails to honor such request, the Board may remove the pet. Dogs shall be kept on a leash or otherwise confined in a manner acceptable to the Board whenever outside the dwelling. Pets shall be registered, licensed and inoculated as required by law;

(d) Any activity which emits foul or obnoxious odors outside the Unit or creates noise or other conditions which tend to disturb the peace or threaten the safety of the occupants of other Units;

(e) Any activity which violates local, state or Federal laws or regulations; however, the Board shall have no obligation to take enforcement action in the event of a violation;

(f) Pursuit of hobbies or other activities which tend to cause an unclean, unhealthy or untidy condition to exist outside of enclosed structures on the Unit;

(g) Any noxious or offensive activity which in the reasonable determination of the Board tends to cause embarrassment, discomfort, annoyance, or nuisance to persons using the Common Area or to the occupants of other Units;

(h) Use or discharge of any radio, loudspeaker, horn, whistle, bell, or other sound device so as to be audible to occupants of other Units, except alarm devices used exclusively for security purposes;

(i) Use and discharge of firecrackers and other fireworks;

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(j) Dumping of grass clippings, leaves or other debris, petroleum products, fertilizers, or other potentially hazardous or toxic substances in any drainage ditch, stream, pond, or lake, or elsewhere within the Properties, except that fertilizers may be applied to landscaping on Units provided care is taken to minimize runoff, and Declarant and Builders may dump and bury rocks and trees removed from a building site on such building site;

(k) Accumulation of rubbish, trash, or garbage except between regular garbage pick ups, and then only in approved containers;

(l) Obstruction or rechanneling of drainage flows after location and installation of drainage swales, storm sewers, or storm drains, except that the Declarant and the Association shall have such right; provided, the exercise of such right shall not materially diminish the value of or unreasonably interfere with the use of any Unit without the Owner's consent;

(m) Subdivision of a Unit into two or more Units, or changing the boundary lines of any Unit after a subdivision plat including such Unit has been approved and filed in the Public Records, except that the Declarant shall be permitted to subdivide or replat Units which it owns;

(n) Swimming, boating, use of personal flotation devices, or other active use of lakes, ponds, streams or other bodies of water within the Properties, except that the Declarant, its successors and assigns shall be permitted and shall have the exclusive right and easement to retrieve golf balls from bodies of water within the Common Areas and to draw water from lakes, ponds and streams within the Properties for purposes of irrigation and such other purposes as Declarant shall deem desirable. The Association shall not be responsible for any loss, damage, or injury to any person or property arising out of the authorized or unauthorized use of rivers, lakes, ponds, streams or other bodies of water within or adjacent to the Properties;

(o) Use of any Unit for operation of a timesharing, fraction-sharing, or similar program whereby the right to exclusive use of the Unit rotates among participants in the program on a fixed or floating time schedule over a period of years, except that Declarant and its assigns may operate such a program with respect to Units which it owns;

(p) Discharge of firearms; provided, the Board shall have no obligation to take action to prevent or stop such discharge;

(q) On-site storage of gasoline, heating, or other fuels, except that a reasonable amount of fuel may be stored on each Unit for emergency purposes and operation of lawn mowers and similar tools or equipment, and the Association shall be permitted to store fuel for operation of maintenance vehicles, generators, and similar equipment;

(r) Any business, trade, garage sale, moving sale, rummage sale, or similar activity, except that an Owner or occupant residing in a Unit may conduct business activities within the Unit so long as: (i) the existence or operation of the business activity is not apparent or detectable by sight, sound, or smell from outside the Unit; (ii) the business activity conforms to all zoning requirements for the Properties; (iii) the business activity does not involve regular visitation of the Unit by clients, customers, suppliers, or other business invitees or door-to-door solicitation of residents of the Properties; and (iv) the business activity is consistent with the residential character of the Properties and does not constitute a nuisance, or a hazardous or offensive use, or threaten the security or safety of other residents of the Properties, as may be determined in the sole discretion of the Board.

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The terms "business" and "trade," as used in this provision, shall be construed to have their ordinary, generally accepted meanings and shall include, without limitation, any occupation, work, or activity undertaken on an ongoing basis which involves the provision of goods or services to persons other than the 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 is intended to or does generate a profit, or (iii) a license is required.

The leasing of a Unit shall not be considered a business or trade within the meaning of this subsection. This subsection shall not apply to any activity conducted by the Declarant or a Builder approved by the Declarant with respect to its development and sale of the Properties or its use of any Units which it owns within the Properties.

(s) Capturing, trapping or killing of wildlife within the Properties, except in circumstances posing an imminent threat to the safety of persons using the Properties;

(t) Any activities which materially disturb or destroy the vegetation, wildlife, or air quality within the Properties or which use excessive amounts of water or which result in unreasonable levels of sound or light pollution;

(u) Conversion of any carport or garage to finished space for use as an apartment or other integral part of the living area on any Unit without prior approval pursuant to Article IX;

(v) Operation of motorized vehicles on pathways or trails maintained by the Association, except that golf carts may be operated on cart paths intended for such purposes;

(w) Any construction, erection, or placement of any thing, permanently or temporarily, on the outside portions of the Unit, whether such portion is improved or unimproved, except in strict compliance with the provisions of Article IX of the Declaration. This shall include, without limitation, basketball hoops, swing sets and similar sports and play equipment; clotheslines; garbage cans; woodpiles; above-ground swimming pools; hedges, walls, dog runs, animal pens, or fences of any kind; and signs of any kind except signs for street names, home address numbers, building signs and club directions.

3. Prohibited Conditions. The following shall be prohibited within the Properties:

(a) Plants, animals, devices or other things of any sort whose activities or existence in any way is noxious, dangerous, unsightly, unpleasant, or of a nature as may diminish or destroy the enjoyment of the Properties;

(b) Structures, equipment or other items on the exterior portions of a Unit which have become rusty, dilapidated or otherwise fallen into disrepair;

(c) Sprinkler or irrigation systems or wells of any type which draw upon water from lakes, creeks, streams, rivers, ponds, or other ground or surface waters within the Properties, except that Declarant and the Association shall have the right to draw water from such sources;

(d) Exterior antennas, aerials, satellite dishes, or other apparatus for the transmission or reception of television, radio, satellite, or other signals of any kind unless completely contained within the dwelling on the Unit so as not to be visible from outside the dwelling or unless otherwise approved pursuant to Article IX of the



Declaration, except that, one such apparatus measuring no more than 24 inches in diameter may be placed on a Unit unless the Board of Directors disapproves or the Reviewing Body under Article IX determines that the apparatus is aesthetically incompatible with the surrounding structure or environment. Declarant and the Association shall have the right, without obligation, to erect or install and maintain such apparatus for the benefit of all or a portion of the Properties.

4. Leasing of Units. "Leasing," for purposes of this Paragraph, is defined as regular, exclusive occupancy of a Unit by any person, other than the Owner for which the Owner receives any consideration or benefit, including, but not limited to, a fee, service, gratuity, or emolument. Units may be leased only in their entirety. No fraction or portion of a Unit may be leased. All leases shall be in writing. The Board may require a minimum lease term. Notice of any lease, together with such additional information as may be required by the Board, shall be given to the Board by the Unit Owner within 10 days of execution of the lease. The Owner must make available to the lessee copies of the Declaration, By-Laws, and the Use Restrictions and Rules.

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EXHIBIT "D"

Rules of Arbitration

1. Claimant shall submit a Claim to arbitration under these Rules by giving written notice to all other Parties stating plainly and concisely the nature of the Claim, the remedy sought and Claimant's submission of the Claim to arbitration ("Arbitration Notice").

2. The Parties shall select arbitrators ("Party Appointed Arbitrators") as follows: all the Claimants shall agree upon one (1) Party Appointed Arbitrator, and all the Respondents shall agree upon one (1) Party Appointed Arbitrator. The Party Appointed Arbitrators shall, by agreement, select one neutral arbitrator ("Neutral") so that the total arbitration panel ("Panel") has three (3) arbitrators.

3. If the Panel is not selected under Rule 2 within 45 days from the date of the Arbitration Notice, any party may notify the nearest chapter of The Community Associations Institute, for any dispute arising under the Governing Documents, or the American Arbitration Association, or such other independent body providing arbitration services, for any dispute relating to the design or construction of improvements on the Properties, which shall appoint one Neutral ("Appointed Neutral"), notifying the Appointed Neutral and all Parties in writing of such appointment. The Appointed Neutral shall thereafter be the sole arbitrator and any Party Appointed Arbitrators or their designees shall have no further duties involving the arbitration proceedings.

4. No person may serve as a Neutral in any arbitration in which that person has any financial or personal interest in the result of the arbitration. Any person designated as a Neutral or Appointed Neutral shall immediately disclose in writing to all Parties any circumstance likely to affect impartiality, including any bias or financial or personal interest in the outcome of the arbitration ("Bias Disclosure"). If any Party objects to the service of any Neutral or Appointed Neutral after receipt of that Neutral's Bias Disclosure, such Neutral or Appointed Neutral shall be replaced in the same manner in which that Neutral or Appointed Neutral was selected.

5. The Appointed Neutral or Neutral, as the case may be ("Arbitrator") shall fix the date, time and place for the hearing. The place of the hearing shall be within the Properties unless otherwise agreed by the Parties. In fixing the date of the hearing, or in continuing a hearing, the Arbitrator shall take into consideration the amount of time reasonably required to determine Claimant's damages accurately.

6. Any Party may be represented by an attorney or other authorized representative throughout the arbitration proceedings. In the event the Respondent fails to participate in the arbitration proceeding, the Arbitrator may not enter an Award by default, but shall hear Claimant's case and decide accordingly.

7. All persons who, in the judgment of the Arbitrator, have a direct interest in the arbitration are entitled to attend hearings. The Arbitrator shall determine any relevant legal issues, including whether all indispensable parties are Bound Parties or whether the claim is barred by the statute of limitations.

8. There shall be no stenographic record of the proceedings.

9. The hearing shall be conducted in whatever manner will, in the Arbitrator's judgment, most fairly and expeditiously permit the full presentation of the evidence and arguments of the Parties. The Arbitrator may issue such orders as it deems necessary to safeguard rights of the Parties in the dispute without prejudice to the rights of the Parties or the final determination of the dispute.

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10. If the Arbitrator decides that it has insufficient expertise to determine a relevant issue raised during arbitration, the Arbitrator may retain the services of an independent expert who will assist the Arbitrator in making the necessary determination. The scope of such professional's assistance shall be determined by the Arbitrator in the Arbitrator's discretion. Such independent professional must not have any bias or financial or personal interest in the outcome of the arbitration, and shall immediately notify the Parties of any such bias or interest by delivering a Bias Disclosure to the Parties. If any Party objects to the service of any professional after receipt of a Bias Disclosure, such professional shall be replaced by another independent licensed professional selected by the Arbitrator.

11. No formal discovery shall be conducted in the absence of express written agreement among all the Parties. The only evidence to be presented at the hearing shall be that which is disclosed to all Parties at least 30 days prior to the hearing; provided, however, no Party shall deliberately withhold or refuse to disclose any evidence which is relevant and material to the Claim, and is not otherwise privileged. The Parties may offer such evidence as is relevant and material to the Claim, and shall produce such additional evidence as the Arbitrator may deem necessary to an understanding and determination of the Claim. The Arbitrator shall be the sole judge of the relevance and materiality of any evidence offered, and conformity to the legal rules of evidence shall not be necessary. The Arbitrator shall be authorized, but not required, to administer oaths to witnesses.

12. The Arbitrator shall declare the hearings closed when satisfied the record is complete.

13. There will be no posthearing briefs.

14. The Award shall be rendered immediately following the close of the hearing, if possible, and no later than 14 days from the close of the hearing, unless otherwise agreed by the Parties. The Award shall be in writing, shall be signed by the Arbitrator and acknowledged before a notary public. If the Arbitrator believes an opinion is necessary, it shall be in summary form.

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EXHIBIT "E"

BY-LAWS

OF

THE RIM GOLF CLUB COMMUNITY ASSOCIATION, INC.

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BY-LAWS

OF

THE RIM GOLF CLUB COMMUNITY ASSOCIATION, INC.

Article I

Name, Principal Office, and Definitions

1.1. Name. The name of the corporation is The Rim Golf Club Community Association, Inc. (the "Association").

1.2. Principal Office. The principal office of the Association shall be located in Gila County, Arizona. The Association may have such other offices, either within or outside the State of Arizona, as the Board of Directors may determine or as the affairs of the Association may require.

1.3. Definitions. The words used in these By-Laws shall be given their normal, commonly understood definitions. Capitalized terms shall have the same meaning as set forth in that Declaration of Covenants, Conditions, and Restrictions for The Rim Golf Club filed in the Public Records, as it may be amended (the "Declaration"), unless the context indicates otherwise.

Article II

Association: Membership, Meetings, Quorum, Voting, Proxies

2.1. Membership. The Association shall have two classes of membership, Class "A" and Class "B," as more fully set forth in the Declaration, the terms of which pertaining to membership are incorporated by this reference.

2.2. Place of Meetings. Meetings of the Association shall be held at the principal office of the Association or at such other suitable place convenient to the Members as may be designated by the Board, either within the Properties or as convenient as is possible and practical.

2.3. Annual Meetings. The first meeting of the Association, whether a regular or special meeting, shall be held within one year from the date of incorporation of the Association. Subsequent regular annual meetings shall be set by the Board so as to occur during the third quarter of the Association's fiscal year on a date and at a time set by the Board.

2.4. Special Meetings. The President may call special meetings. In addition, it shall be the duty of the President to call a special meeting if so directed by resolution of the Board or upon a petition signed by Members representing at least 25% of the total Class "A" votes in the Association.

2.5. Notice of Meetings. Written or printed notice stating the place, day, and hour of any meeting of the Members shall be delivered, either personally or by mail, to each Member entitled to vote at such meeting, not less than 10 nor more than 50 days before the date of such meeting, by or at the direction of the President or the Secretary or the officers or persons calling the meeting.



In the case of a special meeting or when otherwise required by statute or these By-Laws, the purpose or purposes for which the meeting is called shall be stated in the notice. No business shall be transacted at a special meeting except as stated in the notice.

If mailed, the notice of a meeting shall be deemed to be delivered when deposited in the United States mail addressed to the Member at its address as it appears on the records of the Association, with postage prepaid.

2.6. Waiver of Notice. Waiver of notice of a meeting of the Members shall be deemed the equivalent of proper notice. Any Member may, in writing, waive notice of any meeting of the Members, either before or after such meeting. Attendance at a meeting by a Member or the Member's proxy shall be deemed waiver by such Member of notice of the time, date, and place thereof, unless such Member or proxy specifically objects to lack of proper notice at the time the meeting is called to order. Attendance at a special meeting also shall be deemed waiver of notice of all business transacted at such meeting unless an objection on the basis of lack of proper notice is raised before the business is put to a vote.

2.7. Adjournment of Meetings. If any meeting of the Association cannot be held because a quorum is not present, Members or their proxies holding a majority of the votes represented at such meeting may adjourn the meeting to a time not less than 5 nor more than 30 days from the time the original meeting was called. At the reconvened meeting, if a quorum is present, any business may be transacted which might have been transacted at the meeting originally called. If a time and place for reconvening the meeting is not fixed by those in attendance at the original meeting or if for any reason a new date is fixed for reconvening the meeting after adjournment, notice of the time and place for reconvening the meeting shall be given to Members in the manner prescribed for regular meetings.

The Members represented at a duly called or held meeting at which a quorum is present may continue to do business until adjournment, notwithstanding the withdrawal of enough Members to leave less than a quorum, provided that any action taken is approved by at least a majority of the votes required to constitute a quorum.

2.8. Voting. The voting rights of the Members shall be as set forth in the Declaration and in these By-Laws, and such voting rights provisions are specifically incorporated by this reference.

2.9. Proxies. At all meetings of Members, each Member may vote in person (if a corporation, partnership or trust, through any officer, director, partner or trustee duly authorized to act on behalf of the Member) or by proxy, subject to the limitations of Arizona law. All proxies shall be in writing specifying the Unit(s) for which it is given, signed by the Member or its duly authorized attorney-in-fact, dated and filed with the Secretary of the Association prior to any meeting for which it is to be effective. Unless otherwise specifically provided in the proxy, a proxy shall be presumed to cover all votes which the Member giving such proxy is entitled to cast, and in the event of any conflict between two or more proxies purporting to cover the same voting rights, the later dated proxy shall prevail, or if dated as of the same date, both shall be deemed invalid. Every proxy shall be revocable and shall automatically cease upon conveyance of any Unit for which it was given, or upon receipt of notice by the Secretary of the death or judicially declared incompetence of a Member who is a natural person, or of written revocation, or 11 months from the date of the proxy, unless a shorter period is specified in the proxy.

2.10. Majority. As used in these By-Laws, the term "majority" shall mean those votes, Owners, Members, or other group, as the context may indicate, totaling more than 50% of the total eligible number.



2.11. Quorum. Except as otherwise provided in these By-Laws or in the Declaration, the presence, in person or by proxy, of Members representing 25% of the total Class "A" votes in the Association shall constitute a quorum at all meetings of the Association.

2.12. Conduct of Meetings. The President shall preside over all meetings of the Association, and the Secretary shall keep the minutes of the meetings and record in a minute book all resolutions adopted and all other transactions occurring at such meetings.

2.13. Action Without a Meeting. Any action required or permitted by law to be taken at a meeting of the Members may be taken without a meeting, without prior notice and without a vote, if written consent specifically authorizing the proposed action is signed by all Members entitled to vote thereon. Such consents shall be signed within 60 days after receipt of the earliest dated consent, dated and delivered to the Association at its principal place of business in the State of Arizona. Such consent shall be filed with the minutes of the Association, and shall have the same force and effect as a vote of the Members at a meeting. Within 10 days after receiving authorization for any action by written consent, the Secretary shall give written notice to all Members entitled to vote who did not give their written consent, fairly summarizing the material features of the authorized action.

Article III

Board of Directors: Number, Powers, Meetings

A. Composition and Selection

3.1. Governing Body; Composition. The affairs of the Association shall be governed by a Board of Directors, each of whom shall have one equal vote. Except with respect to directors appointed by the Class "B" Member, the directors shall be Members or Residents; provided, no Owner and Resident representing the same Unit may serve on the Board at the same time. A "Resident" shall be any natural person 18 years of age or older whose principal place of residence is a Unit within the Properties. In the case of a Member which is not a natural person, any officer, director, partner, employee or trust officer of such Member shall be eligible to serve as a director unless otherwise specified by written notice to the Association signed by such Member; provided, no Member may have more than one such representative on the Board at a time, except in the case of directors appointed by the Class "B" Member.

3.2. Number of Directors. The Board shall consist of three to five directors, as provided in Sections 3.3 and 3.5 below. The initial Board shall consist of three directors as identified in the Articles of Incorporation.

3.3. Directors During Class "B" Control Period. Subject to the provisions of Section 3.5, the directors shall be selected by the Class "B" Member acting in its sole discretion and shall serve at the pleasure of the Class "B" Member until the first to occur of the following:

- (a) when 75% of the maximum number of Units permitted by the Master Plan for the property described on Exhibits "A" and "B" of the Declaration have been conveyed to Persons other than Builders; or
- (b) December 31, 2005; or
- (c) when, in its discretion, the Class "B" Member so determines.



3.4. Nomination and Election of Directors. Elected directors shall be nominated from the floor and may also be nominated by a nominating committee, if such a committee is established by the Board. All candidates shall have a reasonable opportunity to communicate their qualifications to the members and to solicit votes.

Each Owner may cast the entire vote assigned to his or her Unit for each position to be filled. There shall be no cumulative voting. That number of candidates equal to the number of positions to be filled receiving the greatest number of votes shall be elected. Directors may be elected to serve any number of consecutive terms.

3.5. Election and Term of Office. Notwithstanding any other provision of these By-Laws:

(a) Within 30 days after the time that Class "A" Members other than Builders own 25% of the Units proposed by the Master Plan for the property described in Exhibits "A" and "B" of the Declaration, or whenever the Class "B" Member earlier determines, the President shall call for an election by which the Class "A" Members shall be entitled to elect one of the three directors who shall be an at-large director. The remaining two directors shall be appointees of the Class "B" Member. The director elected by the Class "A" Members shall not be subject to removal by the Class "B" Member and shall be elected for a term of two years or until the happening of the event described in subsection (b), whichever is shorter. If such director's term expires prior to the happening of the event described in subsection (b), a successor shall be elected for a like term.

(b) Not later than the first annual meeting after the termination of the Class "B" Control Period, the Board shall be increased to five directors. The President shall call for an election by which the Class "A" Members shall be entitled to elect four of the five directors, with the two directors receiving the largest number of Class "A" votes being elected for a term of two years and the remaining two directors being elected for a term of one year. Until termination of the Class "B" membership, the Class "B" Member shall be entitled to appoint, remove or replace one director. Upon termination of the Class "B" membership, the director elected by the Class "B" Member shall resign and the remaining directors shall be entitled to appoint a director to serve until the next annual meeting, at which the Class "A" Members shall be entitled to elect a director to fill such position. Such director shall be elected for a term of two years.

Upon the expiration of the term of office of each director elected by the Class "A" Members, a successor shall be elected to serve a term of two years. The directors elected by the Class "A" Members shall hold office until their respective successors have been elected.

3.6. Removal of Directors and Vacancies. Any director elected by the Class "A" Members may be removed, with or without cause, by Members holding two-thirds (2/3) of the votes entitled to be cast for his or her election. Any director whose removal is sought shall be given notice prior to any meeting called for that purpose. Upon removal of a director elected by the Class "A" Members, a successor shall be elected by the Class "A" Members to fill the vacancy for the remainder of the term of such director.

Any director elected by the Class "A" Members who has three or more consecutive unexcused absences from Board meetings, or who is more than 30 days delinquent (or is the representative of a Member who is so delinquent) in the payment of any assessment or other charge due the Association, may be removed by a majority of the directors present at a regular or special meeting at which a quorum is present, and the Board may appoint a successor to fill the vacancy for the remainder of the term.



In the event of the death, disability, or resignation of a director elected by the Class "A" Members, the Board may declare a vacancy and appoint a successor to fill the vacancy until the next annual meeting, at which time the Class "A" Members shall elect a successor for the remainder of the term.

This Section shall not apply to directors appointed by the Class "B" Member nor to any director serving as a representative of the Declarant. The Class "B" Member shall be entitled to appoint a successor to fill any vacancy on the Board resulting from the death, disability or resignation of a director appointed by or elected as a representative of the Class "B" Member.

B. Meetings.

3.7. Organizational Meetings. The first meeting of the Board following each annual meeting of the membership shall be held within 10 days thereafter at such time and place as the Board shall fix.

3.8. Regular Meetings. Regular meetings of the Board may be held at such time and place as a majority of the directors shall determine, but at least four such meetings shall be held during each fiscal year with at least one per quarter.

3.9. Special Meetings. Special meetings of the Board of Directors shall be held when called by written notice signed by the President or Vice President or by any two directors.

3.10. Notice; Waiver of Notice.

(a) Notice of the time and place of a regular meeting shall be communicated to directors not less than four calendar days prior to the meeting. Notice of the time and place of a special meeting shall be communicated to directors not less than 72 hours prior to the meeting. No notice need be given to any director who has signed a waiver of notice or a written consent to holding of the meeting. The notice shall specify the time and place of the meeting and, in the case of a special meeting, the nature of any special business to be considered. Notices shall be given to each director by: (i) personal delivery; (ii) first class mail, postage prepaid; (iii) telephone communication, either directly to the director or to a person at the director's office or home who would reasonably be expected to communicate such notice promptly to the director; (iv) telecopier transmission to the director's home or office, with confirmation of receipt by the receiving telecopier; or (v) telegram, charges prepaid. All such notices shall be given at the director's telephone or telecopier number or sent to the director's address as shown on the records of the Association. Notices sent by first class mail shall be deemed communicated when deposited into a United States mailbox. Notices given by personal delivery, telephone, telecopier or telegraph shall be deemed communicated when delivered, telephoned, telecopied or given to the telegraph company.

(b) The transactions of any meeting of the Board, however called and noticed or wherever held, shall be as valid as though taken at a meeting duly held after regular call and notice if (i) a quorum is present, and (ii) either before or after the meeting each of the directors not present signs a written waiver of notice, a consent to holding the meeting, or an approval of the minutes. The waiver of notice or consent need not specify the purpose of the meeting. Notice of a meeting also shall be deemed given to any director who attends the meeting without protesting before or at its commencement about the lack of adequate notice.

3.11. Telephonic Participation in Meetings. Members of the Board or any committee designated by the Board may participate in a meeting of the Board or committee by means of conference telephone or similar communications equipment, by means of which all persons participating in the meeting can hear each other. Participation in a meeting pursuant to this subsection shall constitute presence in person at such meeting.



3.12. Quorum of Board of Directors. At all meetings of the Board, a majority of the directors shall constitute a quorum for the transaction of business, and the votes of a majority of the directors present at a meeting at which a quorum is present shall constitute the decision of the Board, unless otherwise specifically provided in these By-Laws or the Declaration. A meeting at which a quorum is initially present may continue to transact business, notwithstanding the withdrawal of directors, if any action taken is approved by at least a majority of the required quorum for that meeting. If any meeting of the Board cannot be held because a quorum is not present, a majority of the directors present at such meeting may adjourn the meeting to a time not less than 5 nor more than 30 days from the date of the original meeting. At the reconvened meeting, if a quorum is present, any business which might have been transacted at the meeting originally called may be transacted without further notice.

3.13. Compensation. Directors shall not receive any compensation from the Association for acting as such unless approved by Members representing a majority of the total Class "A" votes in the Association at a regular or special meeting of the Association. Any director may be reimbursed for expenses incurred on behalf of the Association upon approval of a majority of the other directors. Nothing herein shall prohibit the Association from compensating a director, or any entity with which a director is affiliated, for services or supplies furnished to the Association in a capacity other than as a director pursuant to a contract or agreement with the Association, provided that such director's interest was made known to the Board prior to entering into such contract and such contract was approved by a majority of the Board of Directors, excluding the interested director.

3.14. Conduct of Meetings. The President shall preside over all meetings of the Board, and the Secretary shall keep a minute book of Board meetings recording all Board resolutions and all transactions and proceedings occurring at such meetings.

3.15. Open Meetings. Subject to the provisions of Section 3.16, all meetings of the Board shall be open to all Members, but Members other than directors may not participate in any discussion or deliberation unless permission to speak is requested on his or her behalf by a director. In such case, the President may limit the time any Member may speak. Notwithstanding the above, the President may adjourn any meeting of the Board and reconvene in executive session, and may exclude Members, to discuss matters of a sensitive nature, such as pending or threatened litigation, personnel matters, etc.

3.16. Action Without a Formal Meeting. Any action to be taken at a meeting of the directors or any action that may be taken at a meeting of the directors may be taken without a meeting if a consent in writing, setting forth the action so taken, shall be signed by all of the directors, and such consent shall have the same force and effect as a unanimous vote.

C. Powers and Duties.

3.17. Powers. The Board of Directors shall have all of the powers and duties necessary for the administration of the Association's affairs and for performing all responsibilities and exercising all rights of the Association as set forth in the Declaration, these By-Laws, the Articles, and as provided by law. The Board may do or cause to be done all acts and things as are not directed by the Declaration, Articles, these By-Laws, or Arizona law to be done and exercised exclusively by the membership generally.



3.18. Duties. The duties of the Board shall include, without limitation:

- (a) preparing and adopting, in accordance with the Declaration, an annual budget establishing each Owner's share of the Common Expenses;
- (b) levying and collecting such assessments from the Owners;
- (c) providing for the operation, care, upkeep, and maintenance of the Area of Common Responsibility;
- (d) designating, hiring, and dismissing the personnel necessary to carry out the rights and responsibilities of the Association and where appropriate, providing for the compensation of such personnel and for the purchase of equipment, supplies, and materials to be used by such personnel in the performance of their duties;
- (e) depositing all funds received on behalf of the Association in a bank depository which it shall approve, and using such funds to operate the Association; provided, any reserve fund may be deposited, in the directors' best business judgment, in depositories other than banks;
- (f) making and amending use restrictions and rules in accordance with the Declaration;
- (g) opening of bank accounts on behalf of the Association and designating the signatories required;
- (h) making or contracting for the making of repairs, additions, and improvements to or alterations of the Common Area in accordance with the Declaration and these By-Laws;
- (i) enforcing by legal means the provisions of the Declaration, these By-Laws, and the rules of the Association and bringing any proceedings which may be instituted on behalf of or against the Owners concerning the Association; provided, the Association shall not be obligated to take action to enforce any covenant, restriction or rule which the Board reasonably determines is, or is likely to be construed as, inconsistent with applicable law, or in any case in which the Board reasonably determines that the Association's position is not strong enough to justify taking enforcement action;
- (j) obtaining and carrying property and liability insurance and fidelity bonds, as provided in the Declaration, paying the cost thereof, and filing and adjusting claims, as appropriate;
- (k) paying the cost of all services rendered to the Association;
- (l) keeping books with detailed accounts of the receipts and expenditures of the Association;
- (m) making available to any Owner, and the holders, insurers, and guarantors of any Mortgage on any Unit, current copies of the Declaration, the Articles of Incorporation, the By-Laws, rules and all other books, records, and financial statements of the Association, as provided in Section 6.4;
- (n) permitting utility suppliers to use portions of the Common Area reasonably necessary to the ongoing development or operation of the Properties; and



(o) indemnifying a director, officer or committee member, or former director, officer or committee member of the Association to the extent such indemnity is required under Arizona law, the Articles of Incorporation or the Declaration.

3.19. Right of Class "B" Member to Disapprove Actions. So long as the Class "B" membership exists, the Class "B" Member shall have a right to disapprove any action, policy or program of the Association, the Board and any committee which, in the sole judgment of the Class "B" Member, would tend to impair rights of the Declarant or Builders under the Declaration or these By-Laws, or interfere with development of or construction on any portion of the Properties, or diminish the level of services being provided by the Association.

(a) The Class "B" Member shall be given written notice of all meetings and proposed actions approved at meetings (or by written consent in lieu of a meeting) of the Association, the Board or any committee. Such notice shall be given by certified mail, return receipt requested, or by personal delivery at the address it has registered with the Secretary of the Association, which notice complies as to the Board meetings with Sections 3.8, 3.9, 3.10, and 3.11 and which notice shall, except in the case of the regular meetings held pursuant to the By-Laws, set forth in reasonable particularity the agenda to be followed at said meeting; and

(b) The Class "B" Member shall be given the opportunity at any such meeting to join in or to have its representatives or agents join in discussion from the floor of any prospective action, policy, or program which would be subject to the right of disapproval set forth herein.

No action, policy or program subject to the right of disapproval set forth herein shall become effective or be implemented until and unless the requirements of subsections (a) and (b) above have been met.

The Class "B" Member, its representatives or agents shall make its concerns, thoughts, and suggestions known to the Board and/or the members of the subject committee. The Class "B" Member, acting through any officer or director, agent or authorized representative, may exercise its right to disapprove at any time within 10 days following the meeting at which such action was proposed or, in the case of any action taken by written consent in lieu of a meeting, at any time within 10 days following receipt of written notice of the proposed action. This right to disapprove may be used to block proposed actions but shall not include a right to require any action or counteraction on behalf of any committee, or the Board or the Association. The Class "B" Member shall not use its right to disapprove to reduce the level of services which the Association is obligated to provide or to prevent capital repairs or any expenditure required to comply with applicable laws and regulations.

3.20. Management. The Board of Directors may employ for the Association a professional management agent or agents at such compensation as the Board may establish, to perform such duties and services as the Board shall authorize. The Board may delegate such powers as are necessary to perform the manager's assigned duties, but shall not delegate policy-making authority or those duties set forth in Sections 3.18(a), 3.18(b), 3.18(f), 3.18(g) and 3.18(i). The Declarant, or an affiliate of the Declarant, may be employed as managing agent or manager.

The Board may delegate to one of its members the authority to act on behalf of the Board on all matters relating to the duties of the managing agent or manager, if any, which might arise between meetings of the Board.

3.21. Accounts and Reports. The following management standards of performance shall be followed unless the Board by resolution specifically determines otherwise:



(a) accrual accounting, as defined by generally accepted accounting principles, shall be employed;

(b) accounting and controls should conform to generally accepted accounting principles;

(c) cash accounts of the Association shall not be commingled with any other accounts;

(d) no remuneration shall be accepted by the managing agent from vendors, independent contractors, or others providing goods or services to the Association, whether in the form of commissions, finder's fees, service fees, prizes, gifts, or otherwise; any thing of value received shall benefit the Association;

(e) any financial or other interest which the managing agent may have in any firm providing goods or services to the Association shall be disclosed promptly to the Board;

(f) commencing at the end of the quarter in which the first Unit is sold and closed, financial reports shall be prepared for the Association at least quarterly containing:

(i) an income statement reflecting all income and expense activity for the preceding period on an accrual basis;

(ii) a statement reflecting all cash receipts and disbursements for the preceding period;

(iii) a variance report reflecting the status of all accounts in an "actual" versus "approved" budget format;

(iv) a balance sheet as of the last day of the preceding period; and

(v) a delinquency report listing all Owners who are delinquent in paying any assessments at the time of the report and describing the status of any action to collect such assessments which remain delinquent (Any assessment or installment thereof shall be considered to be delinquent on the 15th day following the due date unless otherwise specified by Board resolution); and

(g) an annual report consisting of at least the following shall be made available to all Members within 120 days after the close of the fiscal year: (1) a balance sheet; (2) an operating (income) statement; and (3) a statement of changes in financial position for the fiscal year. Such annual report may be prepared on an audited, reviewed or compiled basis, as the Board determines, by an independent public accountant.

3.22. Borrowing. The Association shall have the power to borrow money for any legal purpose; provided, the Board shall obtain Member approval in the same manner provided for Special Assessments in Section 8.5 of the Declaration if the proposed borrowing is for the purpose of making discretionary capital improvements and the total amount of such borrowing, together with all other debt incurred within the previous 12-month period, exceeds or would exceed 10% of the budgeted gross expenses of the Association for that fiscal year.

3.23. Right to Contract. The Association shall have the right to contract with any Person for the performance of various duties and functions. This right shall include, without limitation, the right to enter into common management, operational, or other agreements with trusts, condominiums, cooperatives, or neighborhood and other owners or residents associations, within and outside the Properties; provided, any



common management agreement shall require the consent of a majority of the total number of directors of the Association.

3.24. Enforcement. In addition to such other rights as are specifically granted under the Declaration, the Board shall have the power to impose reasonable monetary fines, which shall constitute a lien upon the Unit of the violator, and to suspend an Owner's right to vote or to use the Common Area (for purposes other than ingress and egress to and from such Owner's Unit) for violation of any duty imposed under the Declaration, these By-Laws, or any Association rules. In addition, the Board may suspend any services provided by the Association to an Owner or the Owner's Unit if the Owner is more than 30 days delinquent in paying any assessment or other charges owed to the Association. In the event that any occupant, tenant, employee, guest or invitee of a Unit violates the Declaration, By-Laws, or a rule and a fine is imposed, the fine shall first be assessed against the occupant; provided, however, if the fine is not paid by the occupant within the time period set by the Board, the fine shall be assessed against the Unit and the Owner thereof upon notice from the Association. The failure of the Board to enforce any provision of the Declaration, By-Laws, or any rule shall not be deemed a waiver of the right of the Board to do so thereafter.

(a) Notice. Prior to imposition of any sanction hereunder or under the Declaration, the Board or its delegate shall serve the alleged violator with written notice describing (i) the nature of the alleged violation, (ii) the proposed sanction to be imposed, (iii) a period of not less than 10 days within which the alleged violator may present a written request for a hearing to the Board or the Covenants Committee, if one has been appointed pursuant to Article V; and (iv) a statement that the proposed sanction shall be imposed as contained in the notice unless a challenge is begun within 10 days of the notice. If a timely challenge is not made, the sanction stated in the notice shall be imposed; provided, the Board or Covenants Committee may, but shall not be obligated to, suspend any proposed sanction if the violation is cured within the 10-day period. Such suspension shall not constitute a waiver of the right to sanction future violations of the same or other provisions and rules by any Person.

(b) Hearing. If a hearing is requested within the allotted 10-day period, the hearing shall be held before the Covenants Committee, if one, or if none, then before the Board in executive session. The alleged violator shall be afforded a reasonable opportunity to be heard. Prior to the effectiveness of any sanction hereunder, proof of proper notice shall be placed in the minutes of the meeting. Such proof shall be deemed adequate if a copy of the notice, together with a statement of the date and manner of delivery, is entered by the officer, director, or agent who delivered such notice. The notice requirement shall be deemed satisfied if the alleged violator or its representative appears at the meeting. The minutes of the meeting shall contain a written statement of the results of the hearing and the sanction, if any, imposed.

(c) Appeal. Following a hearing before the Covenants Committee, the violator shall have the right to appeal the decision to the Board of Directors. To exercise this right, a written notice of appeal must be received by the manager, President, or Secretary of the Association within 10 days after the hearing date.

(d) Additional Enforcement Rights. Notwithstanding anything to the contrary in this Article, the Board may elect to enforce any provision of the Declaration, these By-Laws, or the rules of the Association by self-help (specifically including, but not limited to, the towing of vehicles that are in violation of parking rules) or, following compliance with the dispute resolution procedures set forth in Article XV of the Declaration, if applicable, by suit at law or in equity to enjoin any violation or to recover monetary damages or both, without the necessity of compliance with the procedure set forth above. In any such action, to the maximum extent permissible, the Owner or occupant responsible for the violation of which abatement is sought shall pay all costs, including reasonable attorneys' fees actually incurred. Any entry onto a Unit for purposes of exercising this power of self-help shall not be deemed as trespass.



Gila County, AZ

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Article IV
Officers

4.1. Officers. The officers of the Association shall be a President, Vice President, Secretary, and Treasurer. The President and Secretary shall be elected from among the members of the Board, other officers may, but need not be members of the Board. The Board may appoint such other officers, including one or more Assistant Secretaries and one or more Assistant Treasurers, as it shall deem desirable, such officers to have such authority and perform such duties as the Board prescribes. Any two or more offices may be held by the same person, except the offices of President and Secretary.

4.2. Election and Term of Office. The Board shall elect the officers of the Association at the first meeting of the Board following each annual meeting of the Members, to serve until their successors are elected.

4.3. Removal and Vacancies. The Board may remove any officer whenever in its judgment the best interests of the Association will be served, and may fill any vacancy in any office arising because of death, resignation, removal, or otherwise, for the unexpired portion of the term.

4.4. Powers and Duties. The officers of the Association shall each have such powers and duties as generally pertain to their respective offices, as well as such powers and duties as may specifically be conferred or imposed by the Board of Directors. The President shall be the chief executive officer of the Association. The Treasurer shall have primary responsibility for the preparation of the budget as provided for in the Declaration and may delegate all or part of the preparation and notification duties to a finance committee, management agent, or both.

4.5. Resignation. Any officer may resign at any time by giving written notice to the Board of Directors, the President, or the Secretary. Such resignation shall take effect on the date of the receipt of such notice or at any later time specified therein, and unless otherwise specified therein, the acceptance of such resignation shall not be necessary to make it effective.

4.6. Agreements, Contracts, Deeds, Leases, Checks, Etc. All agreements, contracts, deeds, leases, checks, and other instruments of the Association shall be executed by at least two officers or by such other person or persons as may be designated by Board resolution.

4.7. Compensation. Compensation of officers shall be subject to the same limitations as compensation of directors under Section 3.13.

Article V
Committees

5.1. General. The Board may appoint such committees as it deems appropriate to perform such tasks and to serve for such periods as the Board may designate by resolution. Each committee shall operate in accordance with the terms of such resolution.

5.2. Covenants Committee. In addition to any other committees which the Board may establish pursuant to the Declaration, these By-Laws and, specifically, Section 5.1, the Board may appoint a Covenants



Committee consisting of at least three and no more than seven Members. Acting in accordance with the provisions of the Declaration, these By-Laws, and resolutions the Board may adopt, the Covenants Committee, if established, shall be the hearing tribunal of the Association and shall conduct all hearings held pursuant to Section 3.24 of these By-Laws.

Article VI
Miscellaneous

6.1. Fiscal Year. The fiscal year of the Association shall be the calendar year unless the Board establishes a different fiscal year by resolution.

6.2. Parliamentary Rules. Except as may be modified by Board resolution, Robert's Rules of Order Newly Revised (current edition) shall govern the conduct of Association proceedings when not in conflict with Arizona law, the Articles of Incorporation, the Declaration, or these By-Laws.

6.3. Conflicts. If there are conflicts between the provisions of Arizona law, the Declaration, the Articles of Incorporation, and these By-Laws, the provisions of Arizona law, the Declaration, the Articles of Incorporation, and these By-Laws (in that order) shall prevail.

6.4. Books and Records.

(a) Inspection by Members and Mortgagees. The Board shall make available for inspection and copying by any holder, insurer or guarantor of a first Mortgage on a Unit, any Member, or the duly appointed representative of any of the foregoing at any reasonable time and for a purpose reasonably related to his or her interest in a Unit: the Declaration, By-Laws, and Articles of Incorporation, any amendments to the foregoing, the rules of the Association, the membership register, books of account, and the minutes of meetings of the Members, the Board, and committees. The Board shall provide for such inspection to take place at the office of the Association or at such other place within the Properties as the Board shall designate.

(b) Rules for Inspection. The Board shall establish reasonable rules with respect to:

- (i) notice to be given to the custodian of the records;
- (ii) hours and days of the week when such an inspection may be made; and
- (iii) payment of the cost of reproducing copies of documents requested.

(c) Inspection by Directors. Every director shall have the absolute right at any reasonable time to inspect all books, records, and documents of the Association and the physical properties owned or controlled by the Association. The right of inspection by a director includes the right to make a copy of relevant documents at the expense of the Association.

6.5. Notices. Except as otherwise provided in the Declaration or these By-Laws, all notices, demands, bills, statements, and other communications under the Declaration or these By-Laws shall be in writing and shall be deemed to have been duly given if delivered personally or if sent by United States mail, first class postage prepaid.



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

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

6.6. Amendment.

(a) By Class "B" Member. Prior to termination of the Class "B" Control Period, the Class "B" Member may unilaterally amend these By-Laws. Thereafter, the Class "B" Member may unilaterally amend these By-Laws at any time and from time to time if such amendment is necessary (i) to bring any provision into compliance with any applicable governmental statute, rule or regulation, or judicial determination; (ii) to enable any reputable title insurance company to issue title insurance coverage on the Units; or (iii) to enable any institutional or governmental lender, purchaser, insurer or guarantor of mortgage loans, including, for example, the Federal National Mortgage Association, to make, purchase, insure or guarantee mortgage loans on the Units; provided, however, any such amendment shall not adversely affect the title to any Unit unless the Owner shall consent thereto in writing. So long as the Class "B" membership exists, the Class "B" Member may unilaterally amend these By-Laws for any other purpose, provided the amendment has no material adverse effect upon any right of any Member.

(b) By Members Generally. Except as provided above, these By-Laws may be amended only by the affirmative vote or written consent, or any combination thereof, of Members representing at least 51% of the total Class "A" votes in the Association, and the consent of the Class "B" Member, if such exists. Notwithstanding the above, the percentage of votes necessary to amend a specific clause shall not be less than the prescribed percentage of affirmative votes required for action to be taken under that clause.

(c) Validity and Effective Date of Amendments. Amendments to these By-Laws shall become effective upon recordation in the Public Records, unless a later effective date is specified therein. Any procedural challenge to an amendment must be made within six months of its recordation or such amendment shall be presumed to have been validly adopted. In no event shall a change of conditions or circumstances operate to amend any provisions of these By-Laws.

No amendment may remove, revoke, or modify any right or privilege of Declarant or the Class "B" Member without the written consent of Declarant, the Class "B" Member, or the assignee of such right or privilege.

If a Member consents to any amendment to the Declaration or these By-Laws, it will be conclusively presumed that such Member has the authority so to consent and no contrary provision in any Mortgage or contract between the Member and a third party will affect the validity of such amendment.

**FIRST AMENDMENT TO BYLAWS
FOR
THE RIM GOLF CLUB COMMUNITY ASSOCIATION, INC.**

THIS FIRST AMENDMENT TO BYLAWS is made as of January 10, 2002.

RECITALS

- A. The original Bylaws for The Rim Golf Club Community Association, Inc. (the "Association") were adopted as of April 28, 1998 (the "Bylaws").
- B. Section 6.6(a) of the Bylaws permits the amendment of the Bylaws by the Class "B" Member prior to the termination of the Class "B" Control Period, and the Class "B" Control Period has not yet terminated.
- C. Pursuant to the authority contained in Section 6.6(a) of the Bylaws, the Class "B" Member desires to amend the Bylaws of the Association as provided herein.

NOW THEREFORE, the Bylaws are hereby amended as follows:

- 1. Section 3.21(g) is amended in its entirety to read as follows:

3.21(g) an annual report consisting of at least the following shall be made available to all Members on or before each June 15th for the next preceding fiscal year: (1) a balance sheet; (2) an operating (income) statement; and (3) a statement of changes in financial position for the fiscal year. Such annual report shall be prepared by an independent public accountant on an audited, reviewed, or compiled basis, as the Board determines for each fiscal year.

- 2. Section 6.6(c) is amended in its entirety to read as follows:

6.6(c) Validity and Effective Date of Amendments. Amendments to these By-Laws made pursuant to Section 6.6(a) shall become effective upon the execution of such Amendments by the Class "B" Member. Amendments to these By-Laws made pursuant to Section 6.6(b) shall become effective upon the affirmative vote or written consent of the required number of Class "A" votes and the consent of the Class "B" Member, if such exists at the time of such amendment. Any procedures challenge to an amendment must be made within six months of its effective date or such amendment shall be conclusively presumed to have been validly adopted. In no event shall a change of conditions or circumstances operate to amend any provisions of these By-Laws.

No amendment may remove, revoke, or modify any right or privilege of the Declarant or the Class "B" Member without the written consent of the Declarant, the Class "B" Member, or the assignee of such right or privilege.

If a Member consents to any amendment to the Declaration or these By-Laws, it will be conclusively presumed that such Member has the authority so to consent and no contrary provision in any Mortgage or contract between the Member and a third party will affect the validity of such amendment.



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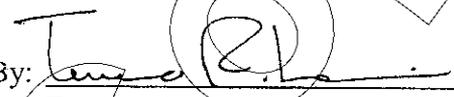


- 3. Except as provided herein, all other provisions of the Bylaws remain in full force and effect.

IN WITNESS WHEREOF, this First Amendment to Bylaws is executed as of the date first above written.

RIM GOLF INVESTORS, L.L.C., an Arizona limited liability company

By: Chaparral Pines Management, L.L.C., an Arizona limited liability company, its Manager

By: 
Terrence R. Lowrie
Its Member/Manager

Unofficial



AMENDMENT TO BYLAWS
OF
THE RIM GOLF CLUB COMMUNITY ASSOCIATION, INC.

Article III, Section 12 of the Bylaws is amended in its entirety to read as follows:

Section 12. Quorum and Voting. A majority of the number of directors shall constitute a quorum for the transaction of business. Every act or decision done or made by a majority of the directors present at a duly held meeting at which a quorum is present shall be regarded as the act of the Board. A director may vote in person or by proxy. A director may appoint any other member of the then current Board of Directors as his or her proxy to vote or otherwise act for the director by signing an appointment form. The appointment does not relieve the director of liability for acts or omissions imposed by law on directors. An appointment of a proxy is effective when received by the Secretary. An appointment is valid for one (1) month unless a different period is expressly provided in the appointment form. An appointment of a proxy is revocable by the director. The death or incapacity of a director appointing a proxy shall not affect the right of the Association to accept the proxy's authority unless written notice of death or incapacity is received by the Secretary before the proxy exercises its authority under the appointment. Subject to any express limitation on the proxy's authority appearing on the face of the appointment form, the Association is entitled to accept the proxy's vote or other action as the vote of the director making the appointment.