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**AMENDED AND RESTATED DECLARATION  
OF  
COVENANTS, CONDITIONS AND RESTRICTIONS  
FOR  
SANDS McCORMICK TOWNHOMES**

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**AMENDED AND RESTATED DECLARATION  
OF  
COVENANTS, CONDITIONS AND RESTRICTIONS  
FOR  
SANDS McCORMICK TOWNHOMES**

This Amended and Restated Declaration of Covenants, Conditions and Restrictions for Sands McCormick Townhomes is made as of the day hereinafter set forth by the Sands McCormick Townhomes Association (the "Association").

WITNESSETH:

WHEREAS, American Builders, Inc., an Arizona corporation (hereinafter called "Declarant"), as the sole beneficiary of Transamerica Title Insurance Company's Trust No. 7084, and Transamerica Title Insurance Company, a California corporation, as Trustee thereunder (hereinafter called "Trustee"), recorded a Declaration of Covenants, Conditions and Restrictions on June 14, 1979 at Docket 13699, Page 0742, Official Records of Maricopa County, Arizona Recorder and a First Amendment Declaration of Covenants, Conditions and Restrictions on July 23, 1980 at Docket 14565, Page 15, Official Records of Maricopa County, Arizona Recorder (the "Original Declaration") which governs the following real property (the "Property" or "Properties") located in the County of Maricopa, State of Arizona described as:

Lots 1 through 59, inclusive and Tracts A, B, C, D, E, F, G, H, I and J, SANDS McCORMICK TOWNHOMES, according to the plat of record in the office of the County Recorder of Maricopa County, Arizona in Book 211 of Maps at page 29;

Lots 60 through 83 and Lots 89 through 99, both inclusive and Tracts K, L, M, N, O, P, Q, R and S, SANDS McCORMICK TOWNHOMES II, according to the plat of record in the office of the County Recorder of Maricopa County, Arizona in Book 263 of Maps at page 24; and

Lots 84 through 87, REPLAT OF LOTS 84 THRU 88 OF SANDS McCORMICK TOWNHOMES II according to the plat of record in the office of the County Recorder of Maricopa County, Arizona in Book 367 of Maps at page 02;

WHEREAS, the Association, by and through its members, wishes to amend and restate the Declaration in its entirety as set forth herein;

NOW, THEREFORE, the Association hereby declares that all of the Property, and any and all additional properties which may from time to time hereafter be added or otherwise subjected to this Declaration, shall be held, sold and conveyed subject to the following easements, restrictions, covenants and conditions, all of which are for the purpose of enhancing



and protecting the value, desirability and attractiveness of the real property, and all of which are hereby declared to be for the benefit of the Property described herein and the Owners thereof, their heirs, successors, grantees and assigns. These easements, covenants, restrictions and conditions shall run with the Property and shall be binding on all parties having or acquiring any right, title or interest in the described properties or any part thereof, and shall inure to the benefit of each owner thereof. This Declaration hereby establishes a plan for the individual ownership of real property estates, consisting of a Lot and the improvements contained thereon, and the ownership by a nonprofit corporation comprised of all Owners of Lots, of all of the remaining property, both real and personal, which is hereinafter defined and referred to as the "Common Area". Said restrictions establish and impose a general plan for the improvement and development of the Property and the adoption and establishment of covenants, conditions and restrictions upon the Lots and upon any and all townhome units constructed or to be constructed thereon, and upon the use, occupancy and enjoyment thereof. Every conveyance of any Lot, townhome, Property or portion thereof shall be and is subject to the easements, covenants, conditions and restrictions contained herein.

## ARTICLE I DEFINITIONS

Section 1. "Articles" shall mean and refer to the Articles of Incorporation of the Association, as the same may be amended from time to time.

Section 2. "Association" shall mean and refer to Sands McCormick Townhomes Association, an Arizona non-profit corporation, its successors and assigns.

Section 3. "Board of Directors" or "Board" shall be the elected (and sometimes appointed) body of the Association, as further provided in the Articles and Bylaws.

Section 4. "Bylaws" shall mean and refer to the Bylaws of the Association, as the same may be amended from time to time.

Section 5. "Common Area" shall mean all property owned by the Association for the common use and enjoyment of the Members of the Association, including, but not limited to, all of the Property except the land specifically designated as a "lot" or "unit" on the plat of record and all recorded amendments thereto, and except streets dedicated to the public and accepted by a governmental agency. The Common Area shall also include any and all recreational facilities, community facilities, swimming pool, pumps, tennis court, trees, parking, pipes, wires, conduits and other public utility lines thereon. Common Area owned by the Association as of the date this Declaration is recorded consists of the following:

Tracts A, B, C, D, E, F, G, H, I and J, SANDS McCORMICK TOWNHOMES, according to the plat of record in the office of the County Recorder of Maricopa County, Arizona in Book 211 of maps, at page 29 and Tracts K, L, M, N, O, P, Q, R and S, SANDS McCORMICK TOWNHOMES II, according to the plat of record

in the office of the County Recorder of Maricopa County, Arizona  
in Book 263 of Maps at page 24.

In the event additional lands are added to the Property pursuant to the provisions hereof, the Common Area shall include such common area tracts as are included within such lands and as are conveyed to the Association as common area.

Section 6. “Community Documents” means this Declaration, the Bylaws, Articles, Association Rules, and any other documents governing the Association.

Section 7. “Lot” shall mean and refer to a separately designated and legally described freehold estate consisting of any plot of land and the improvements thereon shown upon any recorded subdivision map of the Properties with the exception of the Common Area.

Section 8. “Member” shall mean and refer to every person or entity who holds membership in the Association, as provided herein.

Section 9. “Owner” shall mean and refer to the record owner, whether one or more persons or entities, of equitable title (or legal title if equitable title has merged) of any Lot. In the case of a Lot owned by a revocable trust, the Owner shall be deemed to be the trustor and in the case of a Lot owned by an irrevocable trust, the Owner shall be deemed to be the trustee. An Owner does not include a person or entity who holds an interest in a Lot merely as security for the performance of an obligation.

Section 10. “Single Family” means a group of one or more persons each related to the other by blood, marriage or legal adoption, or a group of not more than three (3) persons not all so related, who maintain a common household in a Townhome.

Section 11. “Townhome” shall mean any structure constructed on a Lot which is intended for use and occupancy as a residence by a Single Family.

Section 12. “Visible From Frontage Roadway” shall mean, with respect to any given object, that such object is or would be visible to a person six feet tall standing on a public or private roadway abutting the front of the Lot (excluding a driveway), on the level of the base of the object being viewed.

## ARTICLE II THE ASSOCIATION AND BOARD OF DIRECTORS

Section 1. Purpose of the Association. The Association is a nonprofit corporation organized under the laws of the state of Arizona for the general welfare and benefit of the Owners and occupants in the Property. The Association, through its members and Board of Directors, shall take the appropriate action to manage and maintain the Common Areas and to perform other activities, as permitted or required by the Community Documents and applicable law.



Section 2. Board of Directors and Officers. The affairs of the Association shall be conducted by a Board of Directors and such officers as the Directors may elect or appoint, in accordance with the Articles and the Bylaws, as same may be amended from time to time. Unless the Community Documents specifically require the vote or written consent of the Members, approvals or actions to be given or taken by the Association shall be valid if given or taken by the Board of Directors.

Section 3. Rules. By a majority vote of the Board, the Association may, from time to time and subject to the provisions of this Declaration, adopt, amend, and repeal rules and regulations to be known as the "Association Rules" or "Rules". The Association Rules may (i) restrict and govern the use of any area of the Property by any Owner, or by any invitee, licensee, or lessee of such Owner (ii) adopt standards concerning matters affecting the outside appearance of the Property, and (iii) may govern all aspects of the Association's rights, activities and duties. Anything to the contrary notwithstanding, the Rules may not discriminate among Owners and shall not be inconsistent with this Declaration, the Articles or Bylaws. A copy of the Rules as they may from time to time be adopted, amended or repealed, shall be mailed or otherwise delivered to each Owner and may be recorded. Such Rules shall have the same force and effect as if they were set forth in and were a part of this Declaration.

Section 4. Limitation of Director Liability. In accordance with the provisions of the Nonprofit Corporation Act (set forth at A.R.S. § 10-3101 et seq., as may be amended from time to time), each Director shall be immune from civil liability and shall not be subject to suit indirectly or by way of contribution for any act or omission resulting in damage or injury if said Director was acting in good faith and within the scope of his official capacity (which is any decision, act, or event undertaken by the Association in furtherance of the purpose or purposes for which it is organized) unless such damage or injury was caused by willful and wanton or grossly negligent conduct of the Director. This provision intends to give all Directors the full extent of immunity available under the Nonprofit Corporation Act.

### ARTICLE III MEMBERSHIP AND VOTING RIGHTS

Section 1. Membership. Membership in the Association shall be limited to Owners of Lots and ownership of a Lot shall be the sole qualification and criteria for membership. When more than one person is an Owner of any Lot, all such persons shall be Members. Although all persons who are Owners of a Lot shall be Members of the Association, only one (1) membership shall exist for a single Lot. Membership shall be appurtenant to and may not be separated from ownership of any Lot. An Owner shall automatically, upon becoming the Owner of a Lot, be a Member of the Association, and shall remain a Member of the Association until such time as his or her ownership ceases for any reason, at which time such membership in the Association shall automatically cease. Membership in the Association shall not be transferred, pledged or alienated in any way, except upon the sale of a Lot and then only to such purchaser, or by intestate succession, testamentary disposition, foreclosure of mortgage of record or other legal process by which ownership of a Lot changes. Any attempt to make a prohibited transfer is void and will not be reflected upon the books and records of the Association. Nothing herein contained is intended



to require issuance by the Association of membership certificates or to condition membership upon the existence or possession of any such certificate.

Section 2. Voting Rights. All Owners shall be entitled to one (1) vote for each Lot owned. When a Lot is owned by one or more individuals, an individual Owner is entitled to cast the vote. When a Lot is owned by an LLC, then a member or manager of the LLC is entitled to cast the vote. When a Lot is owned by a partnership, a partner is entitled to cast the vote. When a Lot is owned by a corporation, an officer of the corporation is entitled to cast the vote. When more than one person owns a Lot, the vote for the Lot shall be exercised as they themselves determine, but in no event shall more than one (1) vote be cast with respect to any Lot and fractional votes shall not be permitted. If the Owners are unable to agree among themselves as to how their vote(s) shall be cast, they shall lose their right to cast their vote(s) on the matter in question. If any Member casts a vote representing a certain Lot, it will thereupon conclusively be presumed for all purposes that he or she was acting with the authority and consent of all other Owners of the same Lot unless objection thereto is made prior to the deadline for casting the vote. In the event that more than one vote is cast for a particular Lot, and one or more conflicting votes are cast, then none of the votes shall be counted and all of the votes for the Lot shall be deemed void.

Section 3. Suspension of Voting Rights. In the event any Owner is in arrears in the payment of Assessments or any amounts due under any of the provisions of this Declaration for a period of fifteen (15) days or more, such Owner's right to vote shall be suspended and shall remain suspended until all payments are brought current. In the event any Owner is in default in the performance of any of the terms of the Community Documents, such Owner's right to vote may be suspended by the Board of Directors until all defaults are remedied.

#### ARTICLE IV PROPERTY RIGHTS AND EASEMENTS

Section 1. Members' Easements of Enjoyment. Every Owner shall have a right and easement of enjoyment in and to the Common Area, and such easement shall be appurtenant to and shall pass with the title to each and every Lot. The Common Area shall remain undivided and no Owner shall bring any action for partition. It is expressly acknowledged and agreed by all parties concerned that this paragraph is for the mutual benefit of all Owners and is necessary for the protection of such Owners. Such right and easement of enjoyment shall be subject to such reasonable rules and regulations as from time to time are promulgated by the Board of Directors, and which may include, but shall not be limited to:

- (a) The right of the Association to limit the number of guests of members.
- (b) The suspension of the right to use the recreation facilities and/or parking storage area by an Owner if such Owner is in arrears in the payment of Assessments or any amounts due under any of the provisions of this Declaration for a period of fifteen (15) days or more and the right of the Association to suspend the right to use the recreation facilities and/or parking storage area by an Owner if such Owner is in default in the performance of any of the terms of the Community Documents.

(c) The right of the Association, in accordance with the Articles and Bylaws, to borrow money and grant security interests (including without limitation real property mortgages) covering the Common Area.

(d) The right of the Association to dedicate or transfer all or any part of the Common Areas to any public agency, authority or utility for such purposes and subject to such conditions as may be agreed to by the Board of Directors.

(f) The right of the Association to dedicate or transfer all or any part of the Common Areas to any other entity for such purposes and subject to such conditions as may be agreed to by the Members. No such dedication or transfer shall be effective unless it is approved, in writing, by Owners of two-thirds (2/3) of the Lots.

Section 2. Delegation of Use. In accordance with such restrictions as may be from time to time set forth in the Community Documents, any Owner may delegate his or her right of enjoyment to the Common Areas and facilities to his or her family members, tenants or contract purchasers who reside on the Lot.

Section 3. Blanket Easement. There is hereby created a blanket easement upon, across, over and under the Property, including any property hereafter added and subjected hereto, for ingress, egress, installation, replacing, repairing and maintaining all utility and service lines and systems, including but not limited to, water, sewers, gas, telephones, internet, television and electricity, and may include a master television antenna system. By virtue of this easement, it shall be expressly permissible for providing utility or service company to install and maintain facilities and equipment on the Property and (subject to the requirements of Article X, Section 6) to affix and maintain electrical and telephone wires, circuits and conduits on, in and under the roofs and exterior walls of the Townhomes. Notwithstanding anything to the contrary contained in this paragraph, no sewers, electrical lines, water lines or other utilities may be installed or relocated on the Property except as initially programmed and approved by the major builder of the Property without the approval of the Association's Board of Directors. This easement shall in no way affect any other recorded easements on the Property.

Section 4. Easement for Encroachments. Each Lot and the Common Area shall be subject to an easement for encroachments created by construction, settling and overhangs, as designed or constructed by the original builder. A valid easement for such encroachments and for the maintenance of same, so long as it stands, shall and does exist. In the event a multi-family structure is partially or totally destroyed, and then rebuilt, the Owners of the affected Townhomes agree that minor encroachments of parts may be permitted and that a valid easement for said encroachments and the maintenance thereof shall exist.

## ARTICLE V ASSESSMENTS

Section 1. Creation of the Lien and Personal Obligation of Assessments. Each Owner of any Lot by acceptance of a deed or other conveyance therefor, whether or not it shall



be so expressed in any such deed or other conveyance, is deemed to covenant and agree to pay to the Association: (1) annual assessments or charges (2) special assessments, and (3) individual assessments, all such assessments to be fixed, established, and collected from time to time as hereinafter provided (collectively or individually referred to herein as "Assessments"). The Assessments, together with interest thereon and costs of collection thereof, as hereinafter provided, shall be a charge on the land and shall be a continuing lien upon the property against which each such assessment is made. The Assessments, together with late fees, interest, collection costs, court costs, and reasonable attorneys' fees shall be a charge on the land and shall be a continuing lien (hereinafter sometimes called an "Assessment Lien") upon the Lot against which each such Assessment is made. Such amounts shall immediately become a lien upon said Owner's Lot from the date the Assessment is made and/or levied and from the date such interest, collection costs, court costs, and reasonable attorneys' fees are incurred, and shall continue to be a lien until fully paid. Each such Assessment, together with late fees, interest, collection costs, court costs, and reasonable attorneys' fees, shall also be the personal obligation of the person who is the Owner of such Lot at the time when the Assessment became due. The personal obligation for past due Assessments shall not pass to his successor in title unless it is expressly assumed by such successor.

Section 2. Purpose of Assessments. The assessments levied by the Association shall be used for the purpose of promoting the recreation, health, safety and welfare of the Owners and occupants of the Property, including, but not limited to, for the management, improvement and maintenance of the Properties, for services and facilities devoted to this purpose and related to the use and enjoyment of the Common Area and the Townhomes.

Section 3. Annual Assessments.

(a) The Board of Directors of the Association, on behalf of the Association, shall determine and establish a budget and fix the amount of the annual assessments based upon the costs and expenses incurred or estimated to be incurred by the Association. The Board may fix the annual assessment not in excess of the maximum annual assessment as set forth herein. The Board shall give each Owner written notice of the annual assessment at least thirty (30) days in advance of each annual assessment period. However, the failure to give such notice shall not affect the validity of the annual assessment established by the Board nor relieve any Owner from its obligation to pay the annual assessment equal to the annual assessment for the year immediately preceding until the Owner has been given thirty (30) days notice of the new annual assessment amount.

(b) The Board may increase the maximum annual assessment each fiscal year up to eight percent (8%) above the maximum annual assessment for the prior fiscal year. The maximum annual assessment may be increased by more than eight percent (8%) over the prior fiscal year's maximum annual assessment if approved by two-thirds (2/3) of the members voting in person or by absentee ballot at a meeting duly called for the purpose of increasing the maximum annual assessment, approve such increase.

(c) Notwithstanding the provisions of this Section 3 and any and all other provisions of this Declaration, the Association may charge annual assessments for any given year



in an amount less than the maximum annual assessments for that year. In such event, increases in the maximum annual assessment without approval of the Members pursuant to the provisions of Subsection (b) above shall be based, not upon the amount actually assessed, but upon the maximum amount which could have been assessed.

(d) Notwithstanding the foregoing, the Association shall not impose an annual assessment in any annual assessment period that is more than twenty percent (20%) greater than the immediately preceding fiscal year's annual assessment without the approval of the majority of the Members, or as otherwise provided by Arizona law.

Section 4. Special Assessments. In addition to the annual assessments authorized above, the Association may levy a special assessment for any proper Association purpose, provided that any such assessment shall have the assent of two-thirds (2/3) of the votes cast by Members who are voting in person or by absentee ballot at a meeting duly called for this purpose.

Section 5. Quorum Requirements. For purposes of Section 3(b) and Section 4, the presence, in person or by absentee ballot, of Members entitled to cast sixty percent (60%) of the votes entitled to be cast by the membership shall constitute a quorum at a duly called meeting. If the required quorum is not present at any meeting, another meeting may be called by sending written notice to all Members, setting forth the purposes of the meeting, and the required quorum at any such subsequent meeting shall be one-half (1/2) of the required quorum at the preceding meeting. No such subsequent meeting shall be held more than sixty (60) days following the preceding meeting.

Section 6. Individual Assessment. Individual assessments shall be levied by the Association against a Lot and its Owner to reimburse the Association for costs incurred in bringing an Owner and such Owner's Lot into compliance with the provisions of the Community Documents, any costs incurred by the Association due to the Owner's misconduct or other failure to comply, any other charge designated as an individual assessment in the Community Documents, and all attorneys' fees, interest, and other charges relating thereto.

Section 7. Uniform Rate of Assessment. Except as otherwise provided herein, both annual and special assessments must be fixed at a uniform rate for all Lots.

Section 8. Due Dates for Assessments. Both annual and special assessments shall have due dates as established by the Board and may be collected on a monthly or other periodic basis as determined by the Board of Directors.

Section 9. Effect of Nonpayment of Assessments and Remedies of the Association. Each Owner, for himself, his heirs, executors, administrators, successors and assigns, covenants and agrees that with respect to Assessments so determined during the period that he is an Owner, he will remit those Assessments directly to the management agent or to such other party or parties as directed by the Association's Board of Directors and further agrees to the enforcement of the Assessments in the manner herein specified.

(a) Any Assessment or installment thereof which is not paid within fifteen (15) days of its due date shall be deemed delinquent and shall bear interest from the date of delinquency at the rate of twelve percent (12%) per annum from the date of delinquency and may be subject to a late fee, as established by the Board and as permitted by applicable law.

(b) The Association is hereby authorized to record notice of the Assessment Lien in the office of the County Recorder for Maricopa County, Arizona.

(c) In the event the Owner of any Lot fails to pay an Assessment due, the Association, by and through its Board of Directors, may enforce the payment of the Assessment in any manner provided by law or in equity or, without any limitation of the foregoing, by either or both of the following actions concurrently or separately (and by exercising any of the remedies hereinafter set forth the Association does not prejudice or waive its right to exercise any other remedies):

(1) Enforcement by Suit. Commence a suit at law in the name of the Association against the Owner (or former Owner) personally obligated to pay the Assessment, to enforce each such Assessment obligation. Any judgment rendered in any such action shall include the amount of the delinquency, together with interest thereon at the rate of twelve percent (12%) per annum from the date of delinquency, late fees, collection costs, lien fees, court costs, and reasonable attorneys' fees in such amount as the court may adjudge against the delinquent Owner (or former Owner).

(2) Enforcement by Foreclosure. Foreclose the Assessment Lien against the Lot in accordance with the then prevailing Arizona law relating to the foreclosure of realty mortgages (including the right to recover any deficiency), subject to the right of redemption of the Lot after foreclosure sale as provided by law. The Association, acting on behalf of the Owners, shall have the power to bid in an interest foreclosed at foreclosure sale and to acquire and hold, lease, mortgage and convey the Lot.

Section 10. Non-Exemption. No owner of a Lot may exempt him or her self from payment of Assessments by waiver of the use or enjoyment of any of the Common Area or by the abandonment of his or her Lot.

Section 11. Certificate of Payment of Assessments. The Association shall, upon written request, furnish to a person acquiring an interest in any Lot and to a lienholder, escrow agent, Owner or person designated by an Owner, a certificate in writing signed by an officer of the Association setting forth whether the assessments on a specified Lot have been paid. A reasonable charge may be made by the Board for the issuance of these certificates. Such certificate will be provided within the time period required by law. Such certificates shall be conclusive evidence of payment of any Assessment therein stated to have been paid.

Section 12. Subordination of the Lien to Mortgages. The Assessment lien shall be junior and subordinate to the lien of any first realty mortgage against the Lot, and foreclosure of the Assessment lien shall not affect or impair the lien of any such first realty mortgage. Any first mortgage foreclosure purchaser, or grantee taking by deed in lieu of foreclosure, shall take the



Lot free of the Assessment lien for all charges that have accrued up to the date of issuance of a sheriff's deed or deed given in lieu of foreclosure, but shall take subject to the Assessment lien for all Assessments and charges accruing subsequent to the issuance of a sheriff's deed or deed given in lieu of foreclosure.

ARTICLE VI  
WALL MAINTENANCE

Section 1. Maintenance of Party Walls. The rights and duties of the Owners of Lots with respect to party walls shall be governed by the following:

(a) Each wall, including Townhome walls and fence walls, which are constructed as a part of the original construction of the Lot, any part of which is placed on the dividing line between separate Lots, shall constitute a party wall. With respect to any such wall, each of the adjoining Owners shall assume the burdens and be entitled to the benefits of these restrictive covenants, and, to the extent not inconsistent herewith, the general rules of law regarding party walls shall apply. Any party wall or wall solely on one Lot may have all or part of its footing and/or foundation extended a reasonable distance on to the adjacent Lot, and said adjacent Lot shall be burdened with such encroachment for the benefit of the wall owner.

(b) In the event any such party wall is damaged or destroyed through the act of one adjoining Owner, or any of such Owner's guests, tenants, licensees, agents or members of his family (whether or not such act is negligent or otherwise culpable) so as to deprive the other adjoining Owner of the full use and enjoyment of such wall, then the first of such Owners shall forthwith proceed to rebuild and repair the same to as good condition as formerly without cost to the adjoining Owner.

(c) In the event any such party wall is damaged or destroyed by some cause other than the act of one of the adjoining Owners, or such Owner's agents, tenants, licensees, guests or family (including ordinary wear and tear and deterioration from lapse of time), then in such event both such adjoining Owners shall proceed forthwith to rebuild or repair the same to as good condition as formerly at their joint and equal expense.

(d) Notwithstanding any other provision of this article, an Owner who by his negligent or willful act causes any party wall to be exposed to the elements shall bear the whole cost of furnishing the necessary protection against such elements.

(e) The right of any Owner to contribution from any other Owner under this article shall be appurtenant to the land and shall pass to such Owner's successors in title.

(f) In addition to meeting the other requirements of this Declaration and of any building code or similar regulations or ordinances, any Owner proposing to modify, make additions to or rebuild his or her Townhome or party wall fence in any manner which requires the extension or other alteration of any party wall shall first obtain the written consent of the Owner of the adjoining Lot.



(g) These covenants shall be binding upon the heirs and assigns of any Owners, but no persons shall be liable for any act or omission respecting any party wall except such as occurred during such person's ownership.

Section 2. Maintenance of Other Walls. Each wall, including Townhome walls and fence walls, which are constructed as a part of the original construction of the Lot, any part of which is placed on or adjacent to the dividing line between the Lot and Common Area shall be maintained, repaired and replaced by the Owner of the Lot. Each wall, including Townhome walls and fence walls, which are constructed as a part of the original construction of the Lot, any part of which is placed on or adjacent to the dividing line between the Lot and property owned by the McCormick Ranch Property Owners Association, Inc. or a governmental entity shall be maintained by the Owner of the Lot to the extent maintenance is not assumed by the McCormick Ranch Property Owners Association, Inc. or governmental entity.

## ARTICLE VII ARCHITECTURAL CONTROL

Section 1. Improvements, Alterations and Construction. No excavations, improvements, alterations, construction or other work that is or would be Visible From Frontage Roadway and/or which in any way alters the exterior appearance of any Lot or any landscaping or structures located thereon including but not limited to, any building, fence, wall, sign or other structure or object of any nature or kind shall be commenced, erected or maintained on any Lot until the plans and specifications for the same showing all construction details, including without limitation the nature, shape, kind, height, materials, exterior colors, location, and other material attributes thereof shall have been submitted to and approved in writing by the Board of Directors.

Section 2. Timeline for Review. In the event the Board does not, in writing, approve or reject plans and specifications within forty-five (45) days from the date same were submitted to it, along with all other information required by the Board of Directors, approval will not be required and this Article will be deemed to have been fully complied with; provided, however, the building, structure or improvement to be built, placed or modified on the Lot shall comply with all of the restrictions in this Declaration and be in harmony with existing buildings, structures and improvements within the Property.

Section 3. Standard of Review. The Board shall have the right, in its sole and absolute discretion, to deny approval of any plans or specifications which, in its opinion, are not suitable or desirable for aesthetic or any other reasons. In this regard the Board shall have the right to take into consideration all matters mentioned above (i.e., location, kind, material, etc.), as well as the effect any proposed building or structure may have upon the site where it is proposed to be constructed or placed, and the suitability of the same with respect to the surrounding area and the effect thereof (including but not limited to harmony of external design and location) upon adjacent Lots and Properties as a whole.

Section 4. Changes or Alterations from Approved Plans. All subsequent additions to or changes or alterations in any building, fence, wall or other structure, including exterior color scheme and building materials, shall be subject to the prior approval of the Board of Directors.



No changes or deviations in or from such plans and specifications once approved shall be made without the prior written approval of the Board of Directors.

Section 5. Architectural Committee. The Board may assign its rights and duties of architectural review to an architectural committee composed of the Board of Directors of the Association, or by a representative or committee designated by the Board of Directors; however, at least one Director must serve on the architectural committee as the chairperson of the architectural committee. The members of such committee shall not be entitled to compensation for services performed pursuant to this paragraph.

## ARTICLE VIII MAINTENANCE

Section 1. Maintenance by Association. The Association shall maintain the Common Areas. Any cooperative action necessary or appropriate for the proper maintenance and upkeep of the Common Areas, including but not limited to recreation and parking storage areas, shall be taken by the Association at the request of the Board of Directors or by its duly delegated representative. The Board shall be the sole judge as to the appropriate maintenance of the Common Area. In addition to maintenance upon the Common Area, the Association shall provide exterior maintenance upon each Lot as follows: paint, repair and care for the exterior surfaces of Townhomes. This maintenance shall include repair and patching of minor cracks and voids on the Townhome surfaces. This exterior maintenance shall not include glass surfaces or the roofs of the Townhomes.

Section 2. Maintenance by Owners. Each Owner shall be responsible for the upkeep, maintenance, repair and replacement of the Lot, the Townhome, the individual patios and patio walls, and all other areas, features or parts of such Owner's Townhome and Lot (exterior or elsewhere) not otherwise maintained by the Association in an attractive condition and state of repair consistent with general community standards within the Property. Notwithstanding the generality of the foregoing, each Owner shall be responsible for the maintenance, repair and replacement of all glass surfaces, windows, window frames and casings, shutters, awnings, doors, door frames and casings, weather strips, roofs, gutters, downspouts, scuppers, vents and hardware attached to these items on such Owner's Townhome. Each Owner shall be responsible for any irrigation system on their Lot and shall care for and maintain all landscaping on their Lots in a good and attractive condition, and shall keep all shrubs, trees, grass and plantings of every kind thereon neatly trimmed, properly cultivated, and free of trash, weeds, and other unsightly material. Termite and other pest control shall be the responsibility of the Owner. In the event any Townhome is substantially damaged or destroyed, whether by force of nature or act or inaction by any person, the Owner shall repair and rebuild the exterior of the Townhome in a good and workmanlike manner in conformance with the original plans and specifications used in the construction of the Townhomes.

Section 3. Fixtures and Equipment. All fixtures and equipment installed within a townhome unit, commencing at a point where the utility lines, pipes, wires, conduits or systems enter the exterior walls of a Townhome, shall be maintained and kept in repair by the owner thereof.



Section 4. Forbidden Acts and Damages. An Owner shall do no act or any work that will impair the structural soundness or integrity of a Townhome or impair any easement and shall not do any act or allow any condition to exist which will adversely affect the other Lots, Townhomes or the Owners thereof. Excessive watering of planters next to the outside walls that could allow the water to seep below the foundation level could cause damage.

Section 5. Necessitated by Owner. In the event that the need for upkeep, maintenance, repair, or replacement of the Common Area or portion of the Lot maintained by the Association, including without limitation any unusual or extraordinary rubbish or trash removal, is caused through the act or neglect of the Owner or of the Owner's family members, tenants, guests, agents, contractors or pets, the Association's cost of such upkeep, maintenance, repairs, together with interest thereon at the rate of twelve percent (12%) per annum until paid, shall be added to and become a part of the Assessment to which such Lot is subject.

Section 6. Owner's Failure to Maintain. In the event the Board shall determine that any Owner is in breach of such Owner's obligations contained in Section 2 of this Article VIII, the Association shall give such Owner written notice of such determination, including a reasonably detailed list or description of the upkeep, maintenance, repairs, replacement, or other work required to cure such Owner's breach. In the event the Owner has not cured such breach within a reasonable time period, as determined by the Board, the Association shall have the right to cause the upkeep, maintenance, repairs, replacement, or other work to be performed so as to cure such Owner's breach, and the Association's costs in doing so, together with interest thereon at the rate of twelve percent (12%) per annum until paid, shall be added to and become part of the Assessment to which such Lot is subject.

Section 7. Easement for Maintenance. The Association is hereby granted and does hereby reserve an easement for the purpose of ingress and egress to the various Lots and for the purpose of accomplishing any and all reasonable maintenance as described in this Article VIII. The Owner of a Lot covenants and agrees to honor this easement owned and held by the Association for all of the purposes, and for all of the areas described herein, and the failure to honor and abide by all such easements shall give rise to all remedies in law or equity against the violating Owner.

## ARTICLE IX INSURANCE

Section 1. By Association. The Board of Directors, or its duly authorized agent, shall have the authority to and shall obtain fire and extended coverage insurance for all Common Area insurable property, against loss or damage by fire or other hazards sufficient to cover the full current replacement cost in an amount not less than one hundred percent (100%) of the insurable value, and shall also obtain a broad-form public liability policy in a minimum amount of \$1,000,000.00 covering all Common Areas, and all damage or injury caused by the negligence of the Association or any of its agents. Said insurance may include coverage against vandalism. Premiums for all such insurance shall be part of the annual assessments. All such insurance coverage attained by the Board of Directors shall be written in the name of the Association.



Section 2. By Owners. Each Owner is obligated and hereby covenants to secure and maintain in force at such Owner's sole cost and expense a policy of extended coverage hazard insurance insuring the Townhome and other improvements in and upon the Owner's Lot in an amount sufficient to cover the full current replacement cost in an amount of not less than one hundred percent (100%) of the insurable value. Each such policy shall name the Association as an additional insured and no such policy shall be cancelled without a minimum thirty (30) days prior written notice to the Association. Each Owner shall be obligated and covenants to provide or cause the Association to be provided with a copy of such policy. In the event that any Owner fails upon request to provide the Association with a copy of any such policy and such other evidence as the Association may reasonably request establishing that such policy is in full force and effect, the Association shall have the right and is hereby irrevocably granted the power, but without obligation, to procure and pay for such a policy for and on behalf of the Owner and the Association's costs in obtaining such policy, together with interest thereon at the rate of twelve percent (12%) per annum until paid, shall be added to and become part of the Assessment to which such Lot is subject. In addition to the aforesaid insurance required to be carried by each Owner, an Owner may, if he wishes, at his own expense, carry any and all other insurance he deems advisable, including but not limited to, homeowners' liability insurance, theft and other insurance covering personal property damage and loss.

Section 3. Damage or Destruction of Common Area. In the event of damage or destruction to the Common Area by fire or other casualty, the Board of Directors shall, upon receipt of the insurance proceeds, contract to rebuild or repair such damaged or destroyed portions of the property to as good a condition as formerly unless an alternative plan is approved by the Members at a meeting of the Members. Such meeting of the Members may be called by the Board of Directors at any time after the damage or destruction or by petition of the Members (signed by Owners of not less than ten percent (10%) of the Lots) received by the Association within thirty (30) days after the date of the damage or destruction. In the event that it is determined by the Association in the manner described above that the damage or destruction of any part of the Common Area shall not be repaired or reconstructed and no alternative improvements are authorized, then and in that event the property shall be maintained by the Association in a neat and attractive condition as an undeveloped portion of the Common Area. In the event the insurance proceeds are insufficient to pay all the costs of repairing and/or rebuilding the Common Area to the same condition as formerly, the Board of Directors shall levy a Special Assessment against all Owners to make up any deficiency and a vote of the Owners shall not be necessary to approve such Special Assessment. In the event such insurance proceeds exceed the cost of repair and reconstruction, such excess shall be retained by the Association.

Section 4. Damage or Destruction of Townhome. In the event of damage or destruction by fire or other casualty to any Townhome or other improvement on a Lot, the Owner of the Lot shall, upon receipt of the insurance proceeds, contract to repair or rebuild such damaged or destroyed Townhome and/or other improvements in a good workmanlike manner in conformance with the original plans and specifications of such Townhome and other improvements on the Lot or as otherwise approved by the Board of Directors in accordance with Article VII herein. In the event such Owner refuses or fails to so repair and rebuild within a reasonable time frame, as determined by the Board of Directors, the Association, is hereby



irrevocably authorized by such Owner to repair and rebuild any such Townhome and/or other improvements in a good and workmanlike manner in conformance with the original plans and specifications or in accordance with plans submitted to the Board by the Owner of the Townhome and approved by the Board. The amount the Association actually expended for such repairs and/or rebuilding, together with interest thereon at the rate of twelve percent (12%) per annum until paid, shall be added to and become part of the Assessment to which such Lot is subject.

Section 5. Insurance Company Liability. Nothing contained in this Article shall be construed in any way so as to relieve any insurance company from the payment of any and all amounts which would be payable under any policy or policies had not this Article been inserted.

Section 6. No Implied Obligations. Nothing contained in this Article is intended to imply the existence of any obligation on the part of the Association to take or see to the taking of any action, including without limitation any obligation to verify or certify the compliance of Owners with the requirements of this Article, to monitor the insurance coverage obtained by the Owners or to see that such policies remain in force or are replaced in a timely manner and are of a sufficient amount. The only obligations which the Association is to have pursuant to this Article are those which are expressly set forth herein.

## ARTICLE X USE RESTRICTIONS

Section 1. Residential Use. Lots shall be used only for Single Family residential and related purposes. No Lot shall have more than one Townhome situated thereon. No gainful occupation, profession, trade, business, or other non-residential use shall be conducted on any Lot, except that an Owner or other resident of a Lot may conduct a business activity upon the Lot so long as: (i) the existence or operation of the business activity is not apparent or detectable by sight, sound or smell from outside of the Lot; (ii) the business activity conforms to all applicable zoning ordinances or requirements for the Lot; (iii) the business activity does not involve the door-to-door solicitation of Owners or other residents in the Property; and (iv) the business activity is consistent with the residential character of the Property and does not constitute a nuisance or a hazardous or offensive use or threaten security or safety of other residents in the Property, as may be determined from time to time in the sole discretion of the Board. Furthermore, no advertising or directional signs may be placed upon the Lot or any portion of the Common Areas regarding the business activity. The terms "business" and "trade" as used in this section shall be construed to have ordinary, generally accepted meanings, and shall include, without limitation, any occupation, work or activity undertaken on an ongoing basis which involves the provision of goods or services to persons other than the provider's family and for which the provider receives a fee, compensation or other form of consideration, regardless of whether: (a) such activity is engaged in full or part time; (b) such activity is intended or does generate a profit; or (c) a license is required for such activity.

Section 2. Construction. Construction on a Lot shall be limited to a Townhome no more than one story in height, a storage building or casita, and patio and/or boundary walls. All buildings or structures erected upon a Lot shall be of new construction and no buildings or



structures shall be moved from other locations onto a Lot. No structures of a temporary character, trailer, basement, tent, shack, garage, barn or other outbuilding shall be used on any portion of the Property at any time as a residence either temporarily or permanently.

Section 3. Nuisances or Offensive Activities. No noxious or offensive activity may be carried on or permitted on any Lot, nor shall anything be done thereon which may be or become an annoyance, nuisance or embarrassment to the Association, the Property or the residents therein. The Board of Directors in its sole discretion shall have the right to determine the existence of any such nuisance. No activity or condition shall be carried on or permitted on any Lot that harbors or induces insects, rodents, or other pests.

Section 4. Animals, Pets. No animals, fish or birds of any kind shall be raised, bred or kept on the Property; except that a reasonable number of commonly accepted household pets may be kept on a Lot, provided that such pets are kept in accordance with the Association Rules and are not kept, bred or maintained for commercial purposes. No hogs, goats, cows, horses, poultry, sheep or pigeons shall be kept on any Lot. No structure for the care, housing or confinement of any animal shall be maintained on a Lot so as to be Visible From Frontage Roadway. Household pets shall be restrained by fence, cage or leash at all times and shall not be allowed to commit a trespass or to eliminate excrement in the Common Area or on other Lots, make an unreasonable amount of noise or create a nuisance. Pet feces must be picked up off of the Lot and disposed of properly to prevent the smell of dog feces from being detected from neighboring property. Upon written request of any Owner, the Association may conclusively determine, in its sole and absolute discretion, whether any animal as described herein is a commonly accepted household pet, whether the number of pets on the Lot is reasonable, and whether one or more pets constitutes a nuisance. The Board may require the removal of any animal that does not meet the qualifications of this Section. Any decision rendered by the Association shall be enforceable as are other restrictions contained herein. Owners shall be liable for any and all damage to property and injuries to persons and other animals caused by their household pets.

Section 5. Unsightly Items: Trash. All clotheslines, equipment, service yards, woodpiles, garbage cans or storage piles shall be kept screened by adequate planting or fencing so they are not Visible From Frontage Roadway. An electric garbage disposal unit shall be installed in each Townhome. All rubbish, trash or garbage shall be kept in closed containers and shall be kept so as not to be Visible From Frontage Roadway except as necessary to make such rubbish, trash or garbage available for collection. No garbage or trash shall be kept or maintained on the street for period longer than is permitted by the Rules. No rubbish, trash, garbage or debris of any kind shall be placed or permitted to accumulate upon or adjacent to any Lot and no odors shall be permitted to arise therefrom, so as to render any such Property or any portion thereof unsanitary, unsightly, offensive, or detrimental to any other Property in the vicinity thereof or to its occupants. No rubbish, trash or garbage shall be burned on the premises. Incinerators of every kind shall be prohibited.

Section 6. Utility Lines. Gas, electric, power, telephone, water, sewer, cable, television and other utility or service lines (used for the general benefit of the Lot Owners) and other utility or service lines of every kind or character (whether now or hereafter invested or



used) shall be placed and kept underground up to the walls of the buildings on the premises (except to the extent, if any, such underground placement may be prohibited by law or, by the nature of the service to be rendered, such underground placement prevents the lines from being functional). This restriction shall apply to the service and utility lines for each and every lot and the Common Areas, as well as to the distribution lines located in the streets or elsewhere in the subdivision. However, the foregoing shall not prohibit service pedestals and above ground switch cabinets and transformers, where required.

Section 7. Antennas and Satellite Dishes. No radio, television or other antennas or devices of any kind or nature, or device for the reception or transmission of television, radio, microwave or other similar signals, shall be placed or maintained upon any Lot except in compliance with the Rules and except those devices covered by 47 C.F.R. § 1.400 (Over-the-Air Reception Devices Rule), as amended, repealed, or recodified, will be permitted as provided herein. Any such device shall comply with the applicable antenna installation rules of the Association and shall be mounted, to the extent reasonably possible, so as to not be Visible From Frontage Roadway. The devices governed by 47 C.F.R. § 1.400 (Over-the-Air Reception Devices Rule) as of the date of the recording of this Declaration are as follows: (i) Direct Broadcast Satellite ("DBS") antennas one meter in diameter or less, and designed to receive direct broadcast satellite service, including direct-to-home satellite service, or receive or transmit fixed wireless signals via satellite; (ii) Multi-point Distribution Service ("MDS") antennas one meter or less in diameter or diagonal measurement, designed to receive video programming services (wireless cable) or to receive or transmit fixed wireless signals other than via satellite; (iii) Antennas designed to receive local television broadcast signals ("TVBS"); and (iv) Antennas designed to receive and/or transmit data services, including Internet access. If the FCC expands the types of antennas that fall under the FCC Rule, this Section 7 shall encompass those antennas as well.

Section 8. Fences and Gates. All fences shall be masonry walls only. No such fence or wall shall have any gate opening therein, save and except as limited to one ornamental gate not wider than four feet.

Section 9. Signs. No sign of any nature whatsoever shall be permitted on any Lot except:

- (a) a single nameplate and/or address plate not exceeding 9" x 30" in size, provided that such nameplates and address plates shall be subject to the Rules;
- (b) signs the nature, number and location of which have been approved in advance and in writing by the Board or are permitted by the Rules; and
- (c) signs required by legal proceedings and signs required by law to be allowed on the Lot.

Section 10. Renting. No Lot shall be used for hotel or other lodging or transient service or purpose. No Owner shall lease his Lot except in accordance with the following terms and conditions: (a) all leases must be in writing; (b) the entire Lot must be leased; (c) a Lot may



be leased only to a Single Family; (d) all leases must be for a minimum thirty (30) days; (e) all leases shall provide that the terms of the lease shall be subject in all respects to the provisions of the Community Documents, and any failure by the lessee to comply with the terms of the Community Documents shall be a default under the lease and grounds for eviction; and, (f) a copy of the lease and a completed copy of any rental registration form adopted by the Board must be delivered to the Association within ten (10) days of the commencement of the lease term or renewal term. An Owner who leases his Lot to any Person shall be responsible for assuring compliance by his lessee with all of the provisions of the Community Documents and shall be jointly and severally responsible for any violations by his lessee thereof.

Section 11. Vehicles and Parking. No Commercial Vehicle, mobile home, motorhome, boat, recreational vehicle, ATV, dune buggy, go kart, trailer of any kind, camper, permanent tent, or similar equipment or structure shall be parked, kept, placed, maintained, constructed, reconstructed or repaired upon any Property or the streets within or adjacent to the Property, in such a manner as will be Visible From Frontage Roadway without the prior written approval of the Board of Directors except for vehicles that the Association must allow to be parked on a driveway pursuant to Arizona law. A "Commercial Vehicle" shall be defined as any vehicle that meets any one or more of the following criteria: displays any type of exterior signage, design or lettering for advertising; vehicle classed by manufacturer's rating exceeding three-quarter ( $\frac{3}{4}$ ) ton; commercial utility racks located on the vehicle, or work equipment stored on the vehicle that is visible from outside of the vehicle. Passenger vehicles (including golf carts) may be parked in driveways or other uncovered parking areas so as to be Visible From Frontage Roadway, so long as such passenger vehicle is not covered (with a car cover, sheet, tarp or otherwise), is not abandoned or inoperative and so long as such passenger vehicle does encroach upon or block sidewalks. An abandoned or inoperative vehicle is one that is not running, has one or more flat tire(s) for ten (10) or more days, is up on blocks, is not properly licensed, or is not currently registered. No passenger motor vehicle shall be parked on any road or street within or adjacent to the Property, except as permitted by the Rules adopted by the Board of Directors and vehicles that the Association must allow to be parked on a road or street pursuant to Arizona law. Except for emergency vehicle repairs, no passenger vehicle shall be constructed, reconstructed or repaired upon a Lot or other property in the Property.

Section 12. Flags and Flagpoles. An Owner may install a flagpole on the Lot, no higher than the rooftop of the Townhome, after first obtaining the written approval of the Association in accordance with Article VII herein. The following flags may be flown on the Lot in accordance with the Federal Flag Code (P.L. 94-344): the United States flag, the Arizona state flag, the Gadsden flag, the flag of the United States Army, Navy, Air Force, Marine Corps, or the Coast Guard, the POW/MIA flag, and an Arizona Indian Nations; however, the Rules may limit the number of flags flown to no more than two at once. Other flags may be flown only with the prior written approval of the Board of Directors.

Section 13. Violation of Law. Any violation of any state, municipal, or local law, ordinance or requisition, pertaining to the ownership, occupation or use of any property within the Property is hereby declared to be a violation of this Declaration and subject to any or all of the enforcement procedures set forth in this Declaration.



Section 14. Variances. The Board, in its good faith discretion, is hereby authorized to grant such variances from the restrictions contained in this Article X as it shall deem appropriate in the circumstances, so long as the use permitted by such variance shall not result in an unsafe, unsanitary or aesthetically displeasing condition and shall not result, in the Board's discretion, in a substantial departure from the common plan of development contemplated by this Declaration. In addition, all portions of the Property shall continue at all times to be subject to any and all applicable zoning laws and ordinances, provided, however, that where the provisions of this Declaration are more restrictive than such laws or ordinances, the provisions of this Declaration shall control.

ARTICLE XI  
GENERAL PROVISIONS

Section 1. Prior Recorded Instruments. This instrument and the provisions hereof are expressly subject to all prior recorded covenants affecting the lots, including without limitation:

(a) That certain Reservation of Architectural Control, recorded by Kaiser Aetna, a California general partnership, on the 29th day of December, 1971, in Docket 9148, commencing at page 701, Records of Maricopa County, Arizona;

(b) That certain Declaration of Covenants, Conditions, Assessments, Charges, Servitudes, Liens, Reservations and Easements for McCormick Ranch recorded by Kaiser Aetna on the 29th day of December, 1971, in Docket 9148 at page 706, Records of Maricopa County, Arizona, as amended; and

(c) That certain Declaration of Restrictions recorded by Kaiser Aetna on November 24, 1976 in Docket 11958, page 1187, Records of Maricopa County, Arizona.

To the extent that the provisions of this Declaration are inconsistent with or in derogation of any of the provisions of the aforesaid instruments, then the instruments described in (a), (b) and (c) above shall control. The Board of Directors of the Association may, but shall not be required to, include any assessments payable to the McCormick Ranch Property Owners Association, Inc. If this procedure shall be adopted, the Board of Directors of the Association shall notify each owner and a combined statement for both assessments shall be sent to and paid by each owner. The Association shall, in turn, remit the required assessment to the McCormick Ranch Property Owners Association, Inc.

Section 2. Enforcement. The restrictions in this Declaration and the Community Documents may be enforced by the Association, through its Board of Directors, and any Owner of any Lot. This right of enforcement shall be in any manner provided for in the Community Documents or by law or in equity, including, but not limited to, an action to obtain an injunction to compel removal of any Improvements constructed in violation of this Declaration or to otherwise compel compliance with the Community Documents. Nothing herein shall be construed as meaning that damages are an adequate remedy where equitable relief is sought. In the event the Association acts to enforce the Community Documents, regardless of whether suit is filed, the Association shall be entitled to recover, in addition to any other remedy,



reimbursement for attorneys' fees, court costs, costs of investigation and other related expenses incurred in connection therewith including but not limited to the Association's administrative costs and fees. Said attorneys' fees, costs and expenses shall be imposed and collectible in the same manner as Assessments. If, however, a lawsuit is filed, and the Owner is the prevailing party in such lawsuit, the Owner shall not be required to pay the Association's attorneys' fees, court costs, costs of investigation and other related expenses incurred therewith. If any lawsuit is filed by any Owner to enforce the provisions of the Community Documents or in any other manner arising out of the Community Documents or the operations of the Association, the prevailing party in such action shall be entitled to recover from the other party all attorneys' fees incurred by the prevailing party in the action.

Section 3. Equitable Treatment of Owners. Except as expressly authorized herein, no action shall at any time be taken by the Association or its Board of Directors which in any manner unreasonably discriminates against any Owner or Owners in favor of the other Owners.

Section 4. Severability. The invalidity of any one or more phrases, sentences, clauses, paragraphs or sections hereof shall not affect the remaining portions of this instrument or of any part thereof, all of which are inserted conditionally on their being held valid in law; and in the event that one or more of the phrases, sentences, clauses, paragraphs or sections contained therein should be invalid or should operate to render this agreement invalid, this agreement shall be construed as if such invalid phrase or phrases, sentence or sentences, clause or clauses, paragraph or paragraphs, or section or sections had not been inserted.

Section 5. Gender. The singular, wherever used herein, shall be construed to mean the plural when applicable, and the necessary grammatical changes required to make the provisions hereof apply either to corporations or individuals, men or women, shall in all cases be assumed as though in each case fully expressed.

Section 6. Topical Headings. The marginal or topical headings of the paragraphs contained in this declaration are for convenience only and do not define, limit or construe the contents of the paragraphs or of this declaration.

Section 7. Term and Termination. These covenants, restrictions, reservations and conditions remained in full force and effect for an initial period of thirty (30) years from the date of recording of the Original Declaration. They shall be deemed to have been renewed for successive terms of ten (10) years, unless revoked by an instrument in writing, executed and acknowledged by the then Owners of not less than three-fourths (3/4) of the Lots, which said instrument shall be recorded in the office of the Recorder for the County of Maricopa, State of Arizona, within ninety (90) days prior to the expiration of any ten (10) year extension.

Section 8. Amendment. The Declaration may be amended at any time by the written approval of Owners of not less than seventy-five percent (75%) of the Lots and the written approval of the Board of Directors. Any such amendment must be recorded in the Office of the County Recorder of Maricopa County, Arizona. Notwithstanding anything herein to the contrary, the Board of Directors may amend the Declaration without the approval of the Owners, solely for compliance with the law.

Section 9. Waiver or Abandonment. The waiver of or failure to enforce any breach of violation of any restriction herein contained shall not be deemed to be a waiver or abandonment of such restrictions, or a waiver of the right to enforce any subsequent breach or violation of such restriction. The foregoing shall apply regardless of whether any person affected hereby (or having the right to enforce these restrictions) had knowledge of the breach or violation. No restriction contained herein shall be deemed to have been waived or abandoned unless this Declaration is amended to delete such restriction.

Section 10. Construction. In the event of any inconsistency between the provisions of this Declaration, as from time to time amended, and the Association's Articles of Incorporation and By-Laws, the provisions of Declaration shall control. In the event of any inconsistency between the Association's Articles of Incorporation as from time to time amended and its By-Laws, the provisions of the Articles of Incorporation shall control.

Section 11. Guests and Tenants. Each Owner shall, to the extent permitted by Arizona law, be responsible for compliance by his agents, tenants, lessees, guests, invitees, licensees and their respective agents and employees with the provisions of the Community Documents. An Owner's failure to ensure compliance by such persons shall be grounds for the same action available to the Association or any other Owner by reason of such Owner's own noncompliance.

Section 12. Joint and Several Liability. In the case of joint ownership of a Lot, the liabilities and obligations of each of the joint Owners set forth in, or imposed by, the Community Documents shall be joint and several.

Section 13. Interpretation. Except for judicial construction, the Association shall have the exclusive right to construe and interpret the provisions of this Declaration. In the absence of any adjudication to the contrary by a court of competent jurisdiction, the Association's construction or interpretation of the provisions hereof shall be final, conclusive and binding as to all persons and Properties benefited or bound by this Declaration.

Section 14. Remedies Cumulative. Each remedy provided by this Declaration is cumulative and not exclusive.

Section 15. Attorneys' Fees in Administrative Proceedings. In the event the Association incurs legal expenses and costs, including, but not limited to, attorney's fees, in bringing claims against Owners or defending claims brought by Owners in an administrative action or proceeding, including but not limited to, proceedings before an Administrative Law Judge, and any appeal thereof, the Association shall be entitled to recover its attorney's fees and costs from the Owner involved in the administrative proceeding if the Association is the prevailing party in such action, and the amount of such attorneys' fees and costs shall be a individual assessment with respect to the Lot(s) involved in the action.

Section 16. Notices and Communications. Notices provided for in the Community Documents shall be in writing and shall be addressed to the Association at the address specified in the notice recorded from time to time in the official records of the Maricopa County, Arizona



Recorder. The Association may designate a different and/or alternative address or addresses for notice by giving written notice of such change of address to all Owners and Members at such time. All notices to Owners shall be to their respective Lot(s) or to the last address shown on the records of the Association and to other Members at the last address shown on the records of the Association. Any Member may designate a different address or addresses for notices to him by giving written notice of his change of address to the Association. Notices addressed as above shall be deemed delivered when mailed by United States registered or certified mail, or when delivered in person with written acknowledgment of the receipt thereof.

CERTIFICATION

IN WITNESS WHEREOF, the President of the Association hereby certifies that the provisions contained with this Amended and Restated Declaration have been approved by the required number of Owners of Lots.

DATED this 19 day of DEC, 2013.

SANDS MCCORMICK TOWNHOMES ASSOCIATION,  
an Arizona non-profit corporation

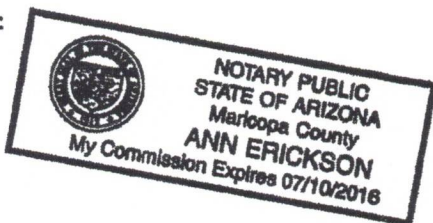
By Fred A. Neuman  
Its: President

STATE OF ARIZONA     )  
                                  ) ss.  
County of Maricopa    )

On this 19 day of December, 2013 before me personally appeared Fred Neuman, whose identity was proved to me on the basis of satisfactory evidence to be the person whose name is subscribed to this document, and who acknowledged that he/she signed this document.

Ann Erickson  
Notary Public

Notary Seal:





20131073968

ACKNOWLEDGEMENT & RECEIPT ADDENDUM (SMTA)

By signing below, I hereby acknowledge receipt of these Covenants, Conditions and Restrictions (CC&R's) together with governing documents for SMTA and further acknowledge I am ultimately responsible for any violations and potential fines that may transpire during ownership of my property.

Signature of Owner(s) \_\_\_\_\_ Date \_\_\_\_\_

\_\_\_\_\_ Date \_\_\_\_\_

Address of Property \_\_\_\_\_