

DECLARATION
OF
COVENANTS, CONDITIONS AND RESTRICTIONS
FOR
MISSION HILLS SUBDIVISION

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DECLARATION
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FOR
MISSION HILLS SUBDIVISION

This Declaration of Covenants, Conditions and Restrictions for Mission Hills Subdivision (the "Declaration") is made and entered into as of the _____ day of June, 1989, by First American Title Insurance Agency of Yavapai, Inc., an Arizona corporation ("Declarant"), as Trustee under Trust No. 5971 (the "Trust") in the records of Declarant, and The Condominium Development Limited Partnership, an Arizona limited partnership ("Developer").

RECITALS

A. Declarant is the record title holder, in trust, of that parcel of real property situated in Yavapai County, Arizona, described on Exhibit "A" attached hereto and by reference made a part hereof, hereinafter sometimes called the "Parcel"; and

B. Developer is the beneficial owner of the Parcel and the beneficiary of the Trust; and

C. Declarant and Developer desire to submit and subject the Parcel, together with all buildings, improvements and other permanent fixtures of whatever kind now or hereafter located thereon, and all easements, rights, appurtenances and privileges belonging or in any way pertaining thereto (all of which are included within the terms "Property" as defined in Section 1.26 hereof) to a plan of ownership intended to benefit all portions of the Property and enhance the value and appeal thereof; and

D. Declarant and Developer further desire to establish for their own benefit and for the mutual benefit of all future owners or occupants of the Property, and every part thereof, certain easements and rights in, over and upon Property and certain mutually beneficial restrictions and obligations with respect to the proper use, conduct and maintenance thereof; and

E. Declarant and Developer intend, but are not obligated, to annex real property to the Property in addition to the Parcel, and thereby subject such property to the plan of this Declaration, and to bind the owners of any interests therein to the covenants, conditions and restrictions contained in this Declaration; and

F. Declarant and Developer intend to form a property owners' association, whose members shall be the owners of Lots within the Property, for the purpose of owning, operating, maintaining and regulating the Common Areas of the Property and administering the affairs of the residents of the Property; and

G. Declarant and Developer desire and intend that the owners, mortgages, beneficiaries and trustees under trust deeds, occupants and all other persons hereafter acquiring any interest in the Property shall at all times enjoy the benefits of, and shall hold their interests subject to, the rights, easements, privileges and restrictions hereafter set forth, all of which shall run with the land and be binding upon the Property and all parties having or acquiring any right, title or interest in or to the Property, or any part thereof, and shall inure to the benefit of each owner thereof, and all of which are declared to be in furtherance of a plan to promote and protect the Property and are established for the purpose of enhancing and perfecting the value, desirability and attractiveness of the Property.

DECLARATIONS

NOW, THEREFORE, Declarant and Developer, for the purposes above set forth, hereby declare that the Property shall hereafter be held, transferred, sold, conveyed, leased, occupied and used subject to the covenants, conditions, restrictions, liens, assessments, easements, privileges and rights set forth herein, all of which shall run with the land and be binding upon the Property and all parties having or acquiring any right, title or interest in or to the Property, or any part thereof, and shall inure to the benefit of each owner thereof, the Association, and each member of the Association.

1. Definitions. Defined terms appear throughout this Declaration with the first letter of each word in the term capitalized. Unless the context clearly requires otherwise, defined terms shall have the following meanings:

1.1 "Annexation Property" means that real property identified on Exhibit "B", which may be annexed to the Property, thereby becoming a part thereof and subject to this Declaration, in accordance with Article 18 entitled "Annexation of Additional Property."

1.2 "Articles" means the articles of incorporation of the Association, as amended from time to time.

1.3 "Association" means the Mission Hills Property Owners Association, an Arizona nonprofit corporation, its successors and assigns.

1.4 "Association Rules" means those rules and regulations adopted or amended from time to time by the Association pursuant to Section 2.7 hereof.

1.5 "Board" means the Board of Directors of the Association.

1.6 "Bylaws" means the bylaws of the Association.

1.7 "Common Areas" means the real property (and all interests therein) and all improvements and amenities thereon which may from time to time be owned or leased by the Association or otherwise held by the Association for the common use and enjoyment of Owners and Occupants, including, but not limited to, any areas designated as private roads, Common Areas or tracts on the Plat.

1.8 "Common Expenses" means the actual and estimated expenses incurred by the Association in operating, administering and maintaining the Property and in owning or leasing the Common Areas, together with any reserves for such purposes determined by the Board pursuant to this Declaration.

1.9 "Declarant" means above-recited Declarant in its capacity only as Trustee for Developer and not in any proprietary or other capacity, and any successors or assigns in such capacity as Trustee.

1.10 "Developer" means the above-recited Developer or any person to whom Developer's rights hereunder are hereafter assigned (in whole or in part) by recorded instrument.

1.11 "Eligible Mortgages" and "Eligible First Mortgages" have the meanings set forth in Section 14.5

1.12 "First Mortgage" means a Mortgage which is the first and most senior of all Mortgages upon the same property.

1.13 "First Mortgages" means the holder of the note secured by the First Mortgage and includes, as appropriate, any Institutional Guarantor with respect to said note or First Mortgage.

1.14 "Improvements" means all structures erected and fixtures attached to the Property and all physical modifications to the land physically attached to it including, but not limited to, buildings and paving.

1.15 "Institutional Guarantor" means the Federal Housing Administration ("FHA"), the Veterans Administration ("VA"), the Federal Home Loan Mortgage Corporation ("FHLMC"), and the Federal National Mortgage Association ("FNMA"), including any successors thereto, which purchases any note, or guarantees or

insures the payment of any note, secured by a First Mortgage.

1.16 "Lot" means the separately designated and described parcels of land shown on the Plat, with any easements, rights of way, and appurtenances thereto. A Lot shall not include any Common Areas except that a Lot may be subject to rights of the Association including, but not limited to, easements and rights of way that constitute Common Areas but do not consist of fee ownership. Each Lot shall include all Improvements located on it.

1.17 "Majority of Owners" means the Owners holding more than 50% of the votes in the Association (irrespective of the total number of Owners) entitled to be cast with respect to a particular matter. Any specified fraction or percentage of the Owners means the Owners of that fraction or percentage of votes in the Association (irrespective of the total number of Owners) entitled to be cast with respect to a particular matter.

1.18 "Mortgage" means any recorded, filed or otherwise perfected instrument pertaining to a Lot or Lots (which is not a fraudulent conveyance under Arizona law), given in good faith and for valuable consideration as security for the performance of an obligation including, but not limited to, deeds of trust, but shall not include any instrument creating or evidencing solely a security interest arising under the Uniform Commercial Code.

1.19 "Mortgagee" means the holder of a note secured by a Mortgage including the trustee and beneficiary under any deed of trust.

1.20 "Mortgagor" means the party executing a Mortgage as the obligor.

1.21 "Occupant" means a person or persons, other than an Owner, in rightful possession of a Lot.

1.22 "Owner" means the record owner, whether one or more Persons, of fee simple title to any Lot, whether or not subject to any Mortgage, including contract purchasers but excluding those having such interest merely as security for the performance of an obligation. In the case of Lots to which the fee simple title is vested of record in a trustee pursuant to Arizona Revised Statutes, Section 33-801 et seq., fee simple title shall be deemed to be in the trustor.

1.23 "Parcel" means the parcel or tract of real estate hereinabove described, which is hereby submitted to this Declaration.

1.24 "Person" means an individual, corporation, partnership, trustee or other entity capable of holding title to

real property.

1.25 "Plat" means the plat of subdivision of the Property as first recorded in the official records of Yavapai County, Arizona, in Book of Maps at page and as thereafter from time to time amended, and shall include any Annexation Plat recorded in accordance with the terms hereof. Notwithstanding anything herein to the contrary, in no event shall inclusion of any property within a Plat subject such property to the provisions of this Declaration unless and until such property is annexed to the Property as provided in Article 18 hereof.

1.26 "Property" means the Parcel and all easements, rights and appurtenances thereto and any Annexation Property following completion of annexation.

1.27 "Record" or "recording" means the act of recording a document in the office of the County Recorder of Yavapai County, Arizona.

1.28 "Servicer" means the person or entity servicing a First Mortgage (including the first Mortgagee, if applicable), its successors and assigns, pursuant to the regulations of any Institutional Guarantor.

2. Association. The Association has been, or will be, formed to act as an owner's association and to serve as the governing body for all of the Owners for the protection, improvement, alteration, maintenance, repair, replacement, administration and operation of the Property, the assessment of expenses, payment of losses, disposition of casualty insurance proceeds, and other matters as provided in this Declaration, the Articles and the Bylaws. The Association shall not be deemed to be conducting a business of any kind, and all funds received by the Association shall be held and applied by it for the Owners in accordance with the provisions of this Declaration, the Articles and the Bylaws. Each Owner shall be a member of the Association so long as he shall be an Owner and such membership shall automatically terminate when he ceases to be an Owner and, upon the transfer of his ownership interest, the new Owner succeeding to such ownership interest shall likewise automatically succeed to such membership in the Association. A membership in the Association shall not be transferred, pledged or alienated in any way except upon the sale of the Lot to which it appertains (and then only to such purchaser) or by intestate succession, testamentary disposition, foreclosure of a Mortgage or other legal process transferring fee simple title to such Lot (and then only to the Person to whom such fee simple title is transferred). Any attempt to make a prohibited transfer of a membership is void and will not be recognized by or reflected upon the books and records of the Association. In the event the Owner of any Lot should fail or refuse to transfer the membership registered in his name to the

purchaser of such Lot, the Association shall have the right to record a transfer upon the books of the Association and issue a new membership to the purchaser, and thereupon the old membership outstanding in the name of the seller shall be null and void as though the same had been surrendered.

2.1 Voting Rights.

2.1.1 Each Owner, including Developer and Declarant (whose votes shall be cast by Developer), shall be entitled to one vote for each Lot owned. Developer shall be entitled to cast all votes allocated to Lots owned by Declarant or Developer. When more than one Person holds an ownership interest in any Lot, all such Persons shall be members. The voting for any such Lot shall be exercised as the Persons collectively constituting the Owner determine among themselves but in no event shall the vote be split or more than one vote be cast with respect to any such Lot. If only one of the multiple owners of a Lot is present at a meeting of the Association he shall be entitled to cast the vote allocated to that Lot. If more than one of the multiple owners are present, the vote allocated to that Lot may be cast only in accordance with the unanimous agreement of such owners present at the meeting. There shall be deemed to be unanimous agreement if any one of the multiple owners casts the vote allocated to the Lot without protest being made in person or by proxy promptly to the person presiding over the meeting by any of the other owners of the Lot. If multiple owners are unable to agree upon how their single vote is to be cast, their vote shall not be counted.

2.1.2 Votes may be cast pursuant to a proxy duly executed by an Owner. If a Lot is owned by more than one Person, each of the multiple owners may vote or register protest to the casting of votes by the other owners of the Lot through a duly executed proxy. An Owner may not revoke a proxy given except by actual notice of revocation to the person presiding over a meeting of the Association. A proxy is void if it is not dated or purports to be revocable without notice. The proxy is revoked on presentation of a later dated proxy executed by the Owner. A proxy terminates one year after its date unless it specifies a shorter term or unless it states that it is coupled with an interest and is irrevocable.

2.1.3 Notwithstanding anything to the contrary in this Section 2.13, in the event that an Owner has granted an irrevocable proxy or otherwise pledged or alienated the voting right of his Lot regarding special matters to a Mortgagee as additional security, only the vote of such Mortgagee will be recognized in regard to such special matters if a copy of such proxy or other instrument pledging or alienating such vote has been filed with the Board. In the event that more than one such instrument has been filed, the Board shall recognize the rights of

the first Mortgagee to so file regardless of the priority of the Mortgagees themselves.

2.2 Meetings. An annual meeting of the Association shall be held in accordance with the Articles and Bylaws. Special meetings of the Association may be called by the president, a majority of the Board or by 25% of the Owners. Not fewer than 10 nor more than 50 days in advance of any meeting, the secretary or any other officer specified in the Bylaws shall cause notice thereof to be given to every Owner. The notice shall state the time and place of the meeting. Notice of any special meetings shall also state the items on the agenda, including the general nature of any proposed amendment to the Declaration or Bylaws, any budget changes and any proposal to remove a director or officer.

2.3 Association Board of Directors.

2.3.1 The Board shall consist of at least three, but no more than seven, directors and shall initially be comprised of the individuals specified in the Articles. Each Board member shall serve until his successor is elected and qualified at the next annual meeting of the Association or upon his resignation or removal from office, as the case may be. Except for members named by Developer, each director shall be an Owner or the spouse of an Owner (or if an Owner is a corporation, partnership or trust, a director may be an officer, partner or beneficiary of such Owner). If a director shall cease to meet such qualifications during his term, he will thereupon cease to be a director and his place on the Board shall be deemed vacant. Except as specifically provided otherwise herein or in the Articles or Bylaws, the Board may act in all instances on behalf of the Association and is expressly authorized to adopt and amend budgets from time to time without requirement of ratification by vote of the Owners.

2.3.2 Notwithstanding anything herein to the contrary, Developer shall have the absolute power and right to appoint and remove the members of the Board at any time and from time to time without the vote or approval of the Owners until the expiration or sooner termination of Developer's control of the Association pursuant to Section 2.12.

2.3.3 Subject to the provisions of Sections 2.3.1 and 2.3.2, a director shall hold office for a term as provided in the Articles unless he sooner resigns. Following the expiration or sooner termination of Developer's control of the Association pursuant to Section 2.12, all or any member of the Board may be removed from office at any time by action of the Owners, as provided in this Section 2.3. Upon the presentation to the president of a petition duly executed by 10% of the Owners in favor of the removal from office of the member or members of the Board therein named, a vote of the Owners shall be promptly held in accordance with the Bylaws to determine whether such member or

members of the Board should be removed from office. Upon the vote for removal by no less than 67% of the Owners present at any meeting at which a quorum is present held for the purpose of considering the removal of a director, any member of the Board may be removed with or without cause. Notwithstanding the foregoing, no member of the Board who was appointed by Developer pursuant to Section 2.12 shall be removed during the period of Developer's control of the Association without the express written consent of the Developer.

2.4 Approval of Owners. Unless elsewhere otherwise specifically provided in the Declaration, the Articles or Bylaws, any provision of this Declaration, the Articles or Bylaws which require the vote or written assent of the Owners or members of the Association shall be deemed satisfied by the following:

(a) The vote in person or by proxy of the specified percentage of Owners at a meeting duly called and noticed pursuant to the provisions of the Articles or Bylaws dealing with annual or special meetings.

(b) Written consent signed by the specified percentage of Owners as provided in the Bylaws.

(c) If no percentage is otherwise specified, then the vote or written assent of a Majority of Owners shall be required.

2.5 Board's Determination Binding. In the event of any dispute or disagreement between any Owners or other Persons relating to the Property, or any question of interpretation or application of the provisions of this Declaration, the Articles, Bylaws or the Association Rules, the determination thereof by the Board shall be final and binding on each and all of such Owners or other Persons.

2.6 Additional Provisions in Articles and Bylaws. The Articles and Bylaws may contain any provision relating to the conduct of the affairs of the Association and the rights and powers of its directors, officers, employees, agents, members or other interested Persons not inconsistent with law or this Declaration.

2.7 Association Rules. The Board shall be empowered to adopt, amend or repeal such rules and regulations as it deems reasonable and appropriate binding upon all Persons subject to this Declaration and governing the use, occupancy, management, operation, maintenance and repair of the Property including, but not limited to, the Common Areas. The Association Rules may include the establishment of a system of fines and penalties enforceable as special assessments. The Association Rules shall govern such matters in furtherance of the purposes of the Association: provided, however, that the Association Rules may

not discriminate among Owners except as expressly provided or permitted herein, and shall not be inconsistent with this Declaration, the Articles or Bylaws. A notice setting forth the adoption, amendment or repeal of specific portions of the Association Rules shall be delivered to each Owner in the same manner established in this Declaration for the delivery of notices. Upon completion of the notice requirements, Association Rules shall have the same force and effect as if they were set forth in and were part of this Declaration and shall be binding on the Owners and all other persons having any interest in, or making any use of, any of the Property, whether or not actually received thereby. In the event of any conflict between any provision of the Association Rules and any provisions of this Declaration, the Articles or Bylaws, the Provisions of the Association Rules shall be deemed to be superseded by the provisions of this Declaration, the Articles or Bylaws to the extent of any such conflict.

2.8 Indemnification. Every director, officer and agent of the Association (whether or not such agency relationship results from appointment, election or employment), including Declarant, Developer and any managing agent of Developer when acting in any such capacity, shall be indemnified by the Association, to the extent permitted by law, against all expenses and liabilities, including attorneys' fees, reasonably incurred by or imposed upon him in connection with any proceeding to which he may be a party, or in which he may become involved, by reason of his being or having been a director, officer or agent of the Association, or any settlement thereof, whether or not he is a director, officer or agent at the time such expenses are incurred, except to the extent such expenses and liabilities are covered by insurance, and provided that the Board shall determine, in good faith, that such director, officer or agent acted, or failed to act, in good faith and in a manner he reasonably believed to be in or not opposed to the best interests of the Association, and, with respect to a criminal action or proceeding, has no reasonable cause to believe his conduct was unlawful. The foregoing rights of indemnification shall be in addition to and not exclusive of all other rights to which such directors, officers or agents may be entitled.

2.9 Non-liability of Officials. To the fullest extent permitted by applicable law, neither Declarant, Developer, the Board, nor any committees of the Association, nor any member thereof, nor any directors or officers of the Association, shall be liable to any Owners, Occupants, the Association or any other Person for any damage, loss or prejudice suffered or claimed on account of any decision, course of action, act, inaction, omission, error, negligence or the like made in good faith and which Declarant, Developer, the Board or such committees or Persons reasonably believed to be within the scope of their respective duties.

2.10 Easements. In addition to the blanket easements granted in Section 3.1 below, the Board is authorized and empowered to grant such licenses, easements and rights-of-way for sewer lines, water lines, underground conduits, storm drains and other public utility purposes as may be necessary and appropriate for the orderly maintenance, preservation and enjoyment of the Property or for the preservation of the health, safety, convenience and welfare of the Owners, provided that any damage to a Lot resulting from such grant shall be repaired by the Association at its expense.

2.11 Accounting and Project Documents. The Board, at all times, shall keep, or cause to be kept, true and correct records of account in accordance with generally accepted accounting principles, which records may be audited or unaudited as the Board elects from time to time. The Board shall have available for the inspection of all Owners and First Mortgagees, upon request, during normal business hours or other reasonable times, current copies of this Declaration, the Articles and Bylaws and Association Rules. Such books and financial statements shall specify in reasonable detail all expenses incurred and funds accumulated from assessments or otherwise. Prospective purchasers of Lots shall have available during normal business hours the Association's most recent audited annual financial statement, if such is prepared. A holder, insurer or guarantor of any First Mortgage shall be entitled to receive a copy of the most recent audited financial statement without cost by submitting a written request for it.

2.12 Developer's Control of Association. Notwithstanding anything in this Declaration to the contrary, Developer shall maintain absolute control over the Association, including appointment of the president and the members of the Board, until the earlier of (i) 90 days after conveyance of 75% of the Lots in the Property to a purchaser unrelated to Declarant or Developer, or (ii) five years after the first conveyance of a Lot to a purchaser unrelated to Declarant or Developer. Developer may voluntarily surrender the right to appoint and remove officers and members of the Board before termination of the period provided in this Section 2.12, and, in such event, the Owners shall immediately assume control of the Association, provided that Developer may require, for the remainder of such period, that specified actions of the Association or the Board, as described in a recorded instrument executed by Developer, be approved by Developer before they become effective.

3. Blanket Easements and Use of Common Areas.

3.1 Blanket Easement. There is hereby created a blanket easement upon, across, over and under the Common Areas for ingress and egress (including the right to use existing roadways), installing, constructing, replacing, repairing, maintaining and operating all utilities, including, but not limited to, water,

sewer, gas, telephone, electricity, television cable, security systems, and communication lines and systems, and in addition thereto for the use of emergency vehicles of all types. By virtue of said easement, it shall be expressly permissible for the providing utility company to erect and maintain the necessary facilities and equipment on the Property and to affix and maintain wires, circuits, conduits, cables and related appurtenances, facilities and equipment in, on, above, across and under the roofs and exterior walls of the Improvements. Notwithstanding anything to the contrary contained in this Section 3.1, no easements shall be created nor shall any sewers, electrical lines, water lines or other facilities for utilities be installed or relocated on the Property except as initially created and approved by Developer or thereafter created or approved by the Board. This provision shall in no way affect any other recorded easements on the Property.

3.2 Use of Common Areas. Each Owner shall have the non-exclusive rights to use the Common Areas in common with all other Owners as required for the purposes of access and ingress to and egress from, and use, occupancy and enjoyment of, the respective Lot owned by such Owner. Such right to use the Common Areas shall extend to each Owner and Occupant and the agents, servants, tenants, family members and invitees of each Owner. Such right to use and possess the Common Areas shall be subject to and governed by the provisions of this Declaration, the Articles, Bylaws and Association Rules and such reasonable limitations and restrictions as may from time to time be contained therein.

4. Managing Agent; Contract Termination. All powers, duties and rights of the Association or the Board, as provided by law and herein, may be delegated to a managing agent under a management agreement. Any management agent that handles funds for the Association must obtain a fidelity bond, which must provide not less than the coverage required of the Association in Section 7.2.5. The Association should be named as an additional obligee in the management agent's bond. Developer has the right to enter into a management agreement prior to the time when control of the Association passes from Developer, alone, to the members of the Association pursuant to Section 2.12. Any agreement for management or employment, or any lease to recreational or parking areas or facilities, or any contract or lease between the Association and Declarant, Developer or any affiliated party, shall not exceed a term of one year, which term may be renewed by agreement of the parties for successive one-year periods. Any such agreement shall provide for termination by either party with or without cause and without payment of a termination fee upon 60 days written notice: provided, however, that any such contract entered into before the first Board elected by the Owners following expiration of Developer control pursuant to Section 2.12 takes office may be terminated without penalty by the Association at any time after such Board takes office upon 30 days written notice. Any decision by the Association to terminate professional management and assume self-

management of the Property shall not be effective until approved in writing by 51% of the Eligible First Mortgagees (based upon one vote for each Mortgage owned).

5. Common Expenses

5.1 Owner's Obligation. Except as otherwise specifically provided herein, each Owner shall pay his proportionate share of the expenses of the administration and operation of the Common Areas and of any other expenses incurred in conformance with this Declaration, the Articles, Bylaws and the Association Rules (which expenses are herein sometimes referred to as "Common Expenses"), including specifically, but not by way of limitation, insurance, such maintenance and repair of the Common Areas (and any and all replacements and additions thereto) as is the responsibility of the Association hereunder, water provided to the Property (including the Lots) which is not individually metered by Lot, and establishment and maintenance of such reasonable reserves for contingencies, replacements and other proper purposes as the Board may from time to time elect to establish and maintain. If any Common Expenses is caused by the misconduct of any Owner or Occupant or any person for whom an Owner or Occupant is responsible, the Association may assess that expense as a special assessment exclusively against that Owner and that Owner's Lot. Common Expenses shall include such amounts as may be determined by the Board for the establishment and maintenance of a reserve fund, which reserve fund shall be adequate to meet the costs and expenses of maintenance, repairs and replacements of those Common Areas which must be maintained, repaired, and replaced on a periodic basis. Any reserve fund shall be funded and derived from the regular assessments payable in regular installments and not by means of a special assessment or levy. The proportionate share of the Common Expenses for each Owner shall be a fraction in which the numerator is one and the denominator is the total number of Lots constituting a part of the Property at the time of calculation. Notwithstanding anything herein to the contrary, assessments to pay a judgment against the Association may be made only against the Lots subject to this Declaration at the time the judgment was entered, in accordance with their then-existing proportionate share of the Common Expenses.

5.2 Frequency of Assessment. Assessments for Common Expenses provided herein shall be made annually but shall be payable in monthly installments. Assessments shall commence for all Owners, including Declarant and Developer, upon the first day of the month immediately following the sale and delivery of the first Lot by Declarant or Developer.

5.3 Capital Contribution. In addition to the regular assessment for Common Expenses provided herein, each Owner may be required by contract at the time of purchase of a Lot from Declarant or Developer or at the time the Property is transferred

to control of the Association, whichever occurs first, to pay to the Association an amount equal to two monthly installments of such Lot's share of the Common Expenses, which sum shall be a contribution to the capital of the Association and shall be used by the Association as a reserve and for working capital. While Developer is in control of the Association, Developer may not use any of these funds to defray Developer's expenses, required reserve contributions (if any), and construction costs or to make up budget deficits. Payment of capital contributions shall not relieve an Owner from making the regular payment of his share of the Common Expenses. With respect to each unsold Lot, Developer shall make the required payment to the Association within 60 days following conveyance by Declarant or Developer of the first Lot to a purchaser unrelated to Declarant or Developer. Developer's contribution for an unsold Lot shall be reimbursed at the time of sale to an Owner in the event that such Owner is required by contract to make the contribution to the Association's capital reserve provided for above.

5.4 Payment; Lien. Except as otherwise provided herein, payment of assessments shall be in such amounts and at such times as may be provided in the Articles and Bylaws or as determined by the Board in accordance with Section 5.5 hereof. Required payments of assessments and, if such payments are delinquent, such payments together with interest at 18% per annum (provided that in no event shall said interest exceed the maximum lawful rate), costs, reasonable attorneys' fees and such reasonable late charges as the Board may impose by rule or regulation, shall constitute the personal obligation of the Person who was the Owner of the Lot at the time the payment fell due. The personal obligation for delinquent payments shall not pass to an Owner's successor in title unless expressly assumed by him. If any Owner fails or refuses to pay any assessments when due, the amount thereof, together with interest, costs, reasonable attorneys' fees and any late charges, shall constitute a lien on the Owner's Lot and on any rents or proceeds there from the date the amount was due; provided, however, that the lien shall be subordinate in the lien of a First Mortgage on the Lot, except for Common Expenses which accrue from and after the date on which the First Mortgagee comes into possession of or acquires title to the Lot, whichever occurs first (together with any interest, costs, reasonable attorneys' fees and any late charges related thereto). If any lien for unpaid assessments prior to the date the First Mortgagee comes into possession of or acquires title to the Lot has not been extinguished by the process by which the First Mortgagee came into possession of or acquired title to the Lot, the First Mortgagee shall not be liable for the unpaid assessments and, upon written request to the Board by the First Mortgagee, the lien shall be released in writing by the Association.

5.4.1 Any person acquiring an interest in any Lot shall be entitled to receive a recordable statement from the Association setting forth the amount of unpaid assessments, if any, against such Lot. The statement shall be made available within 20 business days following a written request to the Association for it. Any Person receiving such a statement shall not be liable for more than, nor shall any lien attach to the subject Lot in excess of, the amount set forth in the statement. The foregoing shall not, however, limit any liability for assessments which occur or become due after the date of such statement and any interest, costs, reasonable attorneys' fees and any late charges related to such assessments nor shall any such statement relieve an Owner of a Lot from personal liability for amounts coming due while he was the Owner. The Association may charge a reasonable fee for the preparation of any such statement.

5.4.2 The lien provided for in this Section 5.4 may be foreclosed by the Association in any manner provided or permitted for the foreclosure of realty mortgages in the State of Arizona. All of the provisions of this Section 5.4 relating to the lien provided for herein (including, but not limited to, the subordination provisions) shall apply with equal force in each other instance provided for in this Declaration wherein it is stated that payment of a particular assessment, charge, or other sum shall be secured by the lien provided for in this Section 5.4.

5.5 Annual Budget. Not later than 60 days prior to the beginning of each fiscal year of the Association, the Board shall prepare, or cause to be prepared, a pro forma annual budget for the Association for the upcoming fiscal year. The budget shall take into account all reasonably anticipated Common Expenses, and, to the extent that assessments from the prior year(s) shall have been more or less than the expenditures and provision for reserves of such prior year(s), the surplus or deficit thereof. Developer shall pay, with respect to each Lot owned by it or by Declarant, the Owner's proportionate share of the Common Expenses. If, during any fiscal year or portion thereof, it appears that the assessments determined in accordance with the estimated annual budget are insufficient to cover the actual Common Expenses or are in excess of the amount necessary to cover the actual amount necessary for payment of Common Expenses, then the Board may prepare a supplemental budget and increase or decrease the assessment as may be necessary, subject, however, to the limitations set forth in Section 5.6.

5.6 Assessment Limitations. Prior to January 1 of the year immediately following conveyance of the first Lot by Declarant or Developer to an unaffiliated Owner, the maximum amount which any Owner shall be required to pay as his proportionate share of the Common Expenses may not exceed \$300.00 per year. Notwithstanding the provisions of Section 5.5, prior to January 1 of the year immediately following conveyance of the first Lot by

Declarant or Developer to an unaffiliated Owner, the Board may fix and thereafter adjust the assessment payable by all Owners for Common Expenses at such amounts as the Board reasonably elects, provided the maximum amount payable by each Owner does not exceed the maximum set forth in the preceding sentence. From and after said January 1, the maximum amount which each Owner may be required to pay as his proportionate share of the Common Expenses may be increased each year by the Board to an amount not in excess of the sum of the amount of the assessment due and payable by such Owner as his proportionate share of Common Expenses for the preceding year, plus the greater of (i) an amount equal to 5% of the assessment due and payable by such Owner for the preceding year, or (ii) an amount equal to the percentage change in the Consumer Price Index, United States. All urban Consumers, All Items (1967 - 100), as published by the United States Department of Labor, Bureau of Labor Statistics (or such other government index with which it may be replaced) for the preceding year times the amount of the assessment due and payable by such Owner for the preceding year; provided, however, that if the Association pays insurance premiums for casualty and liability coverage which had previously been paid directly by the Owners, then the maximum allowable amount of assessments shall automatically be increased by the pro rata amount of such premiums, without regard to the foregoing limitations. Notwithstanding the foregoing, if 67% of the Owners approve, the maximum allowable assessment may be increased by an amount greater than otherwise permitted pursuant to this Section 5.6.

6. Mortgage. Each Owner shall have the right, subject to the provisions hereof, to make separate Mortgages for his respective Lot. No Owner shall have the right or authority to make or create or cause to be made or created any Mortgage, or other lien or security interest, on or affecting the Property or any part thereof, except only to the extent of his Lot and any rights or interests appurtenant to it.

7. Insurance. Insurance shall be carried by the Association consistent with the following provisions:

7.1 Authority to Purchase. The Association, by and through the Board, shall purchase and maintain certain insurance upon the Common Areas including but not limited to the insurance described in Section 7.2. Provision shall be made for the issuance of certificates of endorsement to any First Mortgagee. Such policies and endorsements thereon, or copies thereof, shall be deposited with the association. The Board shall deliver a copy of the policies or, by and through its agent, advise the Owners of the coverage of said policies to permit the Owners to determine which particular items are included within the coverage so that the Owners may insure themselves as they see fit if certain items are not insured or are (in such Owner's opinion) under-insured by the Association. Without limiting the generality of the foregoing, it

shall be each Owner's responsibility to provide for himself insurance on his own Lot, his additions and improvements thereto, decorating therein and furnishings and personal property therein, his personal property stored elsewhere on the Property, his personal liability to the extent not covered by the liability insurance for all of the Owners obtained as part of the Common Expenses as above provided, and such other insurance which is not carried by the Association as the Owner desires. No Owner shall maintain any insurance on his Lot (or otherwise) which would limit or reduce the insurance proceeds payable under the casualty insurance maintained by the Association in the event of damage to the improvements or fixtures on the Property.

7.2 Coverage. The Association shall maintain and pay for the following policies of insurance:

7.2.1 A multi-peril type policy covering the Common Areas providing, as a minimum, fire and extended coverage, and all other coverage in kinds and amounts customarily acquired or required for projects similar in construction, location and use, including, but not limited to, sprinkler leakage, debris removal, cost of demolition, vandalism, malicious mischief, and windstorm and water damage, in an amount not less than 100% of current replacement cost (exclusive of land, foundation, excavation and other items normally excluded from coverage) as determined by the Board from time to time. The Board may, but need not, obtain periodic replacement cost appraisals of the Common Areas.

7.2.2 A comprehensive policy of public liability insurance covering all of the Common Areas and any public ways in the Property in a minimum amount of at least \$1,000,000.00 per occurrence for personal injury and/or property damage. Such insurance policy shall make each Owner an insured person thereunder and shall contain a "severability of interest" endorsement which shall preclude the insurer from denying the claim of an Owner because of the negligent acts of the Association and its agents or other Owners. The scope of such coverage shall include all other coverage in the kinds and amounts customarily acquired or required for projects similar in construction, location and use, including, but not limited to, liability of the Association related to the operation, maintenance or use of the Common Areas, employment contracts of the Association, water damage liability, liability for nonowned and hired automobiles, and liability for property of others.

7.2.3 If there is a steam boiler in operation in connection with the Common Areas, there must be in force boiler explosion insurance evidenced by the standard form of boiler and machinery insurance policy and providing, as minimum coverage, the lesser of \$2,000,000.00 or the value of the building(s) in which the boiler(s) or machinery are located.

7.2.4 If the Common Areas are located in an area identified by the Secretary of Housing and Urban Development as an area having special flood hazards, a "blanket" policy of flood insurance on the Common Areas must be maintained in the amount of 100% of the insurable value of the Common Areas or the maximum limit of coverage available under the National Flood Insurance Act of 1968, as amended, whichever is less. Such flood insurance policy shall be in the form of the standard policy issued by the National Flood Insurance Association.

7.2.5 Fidelity coverage against dishonest acts on the part of directors, officers, managers, trustees, agents, employees or volunteers responsible for handling funds belonging to or administered by the Association. The blanket fidelity bond or insurance must name the Association as the named insured and shall be written to provide protection which is in no event less than three months assessments on all Lots in the Property, plus the Association's estimated annual reserves. The premiums shall be paid as a Common Expense of the Owners. In connection with such coverage, an appropriate endorsement to the policy to cover any person who serves without compensation shall be added if the policy would not otherwise cover volunteers. If a management agent handles funds for the Association it shall provide its own fidelity bond, providing the same coverage as the Association's fidelity bond, and naming the Association as an additional obligee.

7.2.6 A worker's compensation policy, if necessary to meet the requirements of the law.

7.2.7 Such other insurance as the Board shall determine from time to time to be desirable.

7.2.8 Notwithstanding any other provisions herein, the Association shall continuously maintain in effect such casualty, flood and liability insurance and fidelity bonds as may be necessary to meet the insurance and fidelity bond requirements established by any Institutional Guarantor, so long as such Institutional Guarantor is a Mortgagee or Owner of a Lot within the Property, except to the extent such coverage is not reasonably available or has been waived in writing by the Institutional Guarantor.

7.3 Provisions Required. The insurance policies purchased by the Association shall, to the extent reasonably possible, contain the following provisions.

7.3.1 The coverage afforded by such policies shall not be brought into contribution or proration with any insurance which may be purchased by Owners or First Mortgagees; the Association's coverage shall in all events be primary.

7.3.2 There shall be no subrogation with respect to the Association, its agents or employees, Owners and members of their household and their families and employees, and each Mortgagee of all or any part of the Property or of any Lot, and each policy must contain a waiver of any defenses bases on co-insurance or on invalidity arising from the acts of the insured.

7.3.3 A "severability of interest" endorsement shall be obtained which shall preclude the insurer from denying the claim of an Owner because of any act or acts of the Association or other Owners.

7.3.4 An Agreed Amount and Inflation Guard endorsement.

7.3.5 A Construction Code endorsement, if necessary due to local building codes.

7.3.6 A statement of the name of the insured shall be included in all policies, in form and substance similar to the following:

"Mission Hills Property Owners Association, for the use and benefit of the individual owners" (designated by name, if required).

7.3.7 A standard mortgagee clause which shall:

(a) provide that any reference to a mortgagee in the policy shall mean and include all holders of Mortgages of any Lot or Lot lease or sublease in their respective order of preference, whether or not their name therein;

(b) provide that such insurance as to the interest of any Mortgagee shall not be invalidated by any act or neglect of the Board or Owners or any Persons under any of them;

(c) waive any provision invalidating such mortgagee clause by reason of the failure of any Mortgagee to notify the insurer of any hazardous use or vacancy, and requirement that the Mortgagee pay any premium thereon, and any contribution clause; and

(d) provide that, without affecting any protection afforded by such mortgagee clause, any proceeds payable under such policy shall be payable to the Association or to any insurance trustee.

7.3.8 Any "other insurance" clause shall exclude insurance purchased by Owners or First Mortgagees.

7.3.9 Coverage must not be prejudiced by (i) any act or omission of Owners when such act or neglect is not within the control of the Association, or (ii) any failure of the Association to comply with any warranty or condition regarding any portion of the Property over which the Association has no control.

7.3.10 Coverage may not be cancelled or substantially modified without at least 10 days (or such lesser period as otherwise provided herein) prior written notice to any and all insureds including First Mortgagees, their successors, and assigns and to Servicers, if any.

7.3.11 Any policy of property insurance which gives the carrier the right to elect to restore damage in lieu of a cash settlement must provide that such election is not exercisable without the prior written approval of the Association, or when in conflict with the insurance trust provisions contained herein, or any requirement of law.

7.3.12 Any insurance trust agreement will be recognized.

7.4 Additional First Mortgagee Protection.

7.4.1 The Association shall provide each Eligible First Mortgagee with a letter wherein the Association agrees (i) to give timely written notice to each Eligible First Mortgagee or Servicer, or any Person designated by such First Mortgagee or Servicer, whenever damage to the Common Areas and related facilities exceeds \$10,000, and (ii) to give timely written notice to the Eligible First Mortgagee or Servicer, or any Person designated by such Eligible First Mortgagee or Servicer, whenever damage to a Lot covered by such First Mortgage exceeds \$1,000.00.

7.4.2 Each insurance policy shall be written by an insurance carrier which has a financial rating by Best's Insurance Reports of Class VI or better, or, if such rating service is discontinued, an equivalent rating by a successor thereto or a similar such rating service.

7.4.3 Each insurance carrier must be specifically licensed or authorized by law to transact business within the State of Arizona.

7.4.4 Policies shall not be utilized where; under the terms of the carrier's charter, bylaws or policy, contributions may be required from or assessments may be made against any Owner or First Mortgagee or any Person purchasing or guaranteeing any First Mortgage or may become a lien superior to

any First Mortgage; by the terms of the carrier's charter, bylaws or policy, loss payments are contingent upon action by the carrier's board of directors, policyholders, or members; or, the policy includes any limiting clauses (other than insurance conditions) which could prevent any Owner or the First Mortgagee, its successors or assigns, from collecting insurance proceeds.

7.4.5 The mortgagee clause of each insurance policy shall be properly endorsed, and there must have been given necessary notices of transfer, and any other action required to be taken must be taken in order to fully protect, under the terms of the policies and applicable law, the interest of all First Mortgagees, their successors and assigns. Where permissible, the insurance carrier shall be required to name the Servicer of a First Mortgage, or "(name of Servicer), its successors or assigns," as the First Mortgagee under the mortgagee clause. If permissible, where a deed of trust is utilized, the insurance carrier shall be required to use "(name of Servicer), its successors or assigns, beneficiary" or "(name of trustee), its successors or assigns, for the benefit of (name of Servicer)" instead of only the name of the trustee under the deed of trust.

7.4.6 All insurance drafts, notices, policies, invoices and all other similar documents, or their equivalent, to be delivered to any First Mortgagee shall be delivered directly to each Servicer involved, if any, regardless of the manner in which the mortgagee clause is endorsed. The Servicer's address on any First Mortgagee endorsement on a policy shall be used in the endorsements in lieu of the address of the First Mortgagee if requested by the First Mortgagee.

7.4.7 First Mortgagees may pay overdue premiums, or may secure new insurance coverage on the lapse of a policy, with respect to any insurance required to be maintained by the Association as provided in this Article 7 and First Mortgagees making expenditures therefor shall be owed immediate reimbursement by the Association.

7.5 Non-Liability of Association/Board. Notwithstanding the duty of the Association to obtain insurance coverage as stated herein, neither the Association nor any Board member or other person shall be liable to any Owner or Mortgagee if any risks of hazards are not covered by insurance or if the amount of insurance is not adequate, and it shall be the responsibility of each Owner to ascertain the coverage and protection afforded by the Association's insurance and to procure and pay for such additional insurance coverage and protection as the Owner may desire.

7.6 Premiums. Premiums upon insurance policies and fidelity bonds purchased by the Association shall be paid by the Association as a Common Expense, except that the amount of increase

over any annual or other premium occasioned by the use, misuse, occupancy or abandonment of a Lot or its appurtenances, or of the Common Areas, by an Owner, or by any Occupant, guest or invitee of such Owner, shall be assessed against that particular Owner.

7.7 Insurance Claim. The Association, acting by and through its Board, is hereby irrevocably appointed agent for each Owner and for each holder of a First Mortgage or other lien upon a Lot, and for each owner of any other interest in the Property, subject to the provisions contained herein, to adjust all claims arising under insurance policies purchased by the Association and to execute and deliver releases upon the payment of claims, and the Board has full and complete power to act for the Association in this regard.

7.8 Benefit. Except as otherwise provided herein, all insurance policies purchased by the Association shall be for the benefit of the Association, the Owners and First Mortgagees, as their interest may appear.

8. Damage and Repair of Damage to the Common Areas.

8.1 Initial Board Determination. In the event of Damage to any part of the Common Areas, the Board shall promptly, and in all events within 30 days after the date of damage, make the following determinations with respect thereto, employing such advice as the Board deems advisable:

8.1.1 The nature and extent of the Damage, together with an inventory of the Improvements and property directly affected thereby.

8.1.2 A reasonably reliable estimate of the cost to Repair the Damage, which estimate shall, if reasonably practicable, be based upon two or more firm bids obtained from responsible contractors.

8.1.3 The expected insurance proceeds, if any, to be available from insurance covering the loss based on the amount paid or initially offered by the insurer.

8.1.4 The amount, if any, by which the estimated cost of Repair exceeds the expected insurance proceeds and the amount of the assessments that would have to be made against each Lot if the excess cost were to be paid as Common Expense and specially assessed against all the Lots in proportion to their shares of the Common Expenses.

8.1.5 The Board's recommendation whether the Damage should be Repaired.

8.2 Notice of Damage. The Board shall promptly, and in all events within 30 days after the date of Damage, provide each Owner and each Eligible First Mortgagee with a written notice describing the Damage and summarizing the initial Board determinations made under Section 8.1. If the Board fails to do so within said 30 days, any Owner or Mortgagee may make the determinations required under Section 8.1 and give the notice required under this Section 8.2.

8.3 Definitions: Damage, Repair, Emergency Work.
As used in this Article 8:

8.3.1 "Damage" shall mean all kinds of damage, whether of slight degree or total destruction.

8.3.2 "Repair" shall mean restoring the Improvements to substantially the condition they were in before they were damaged, with each Lot and the Common Areas having substantially the same vertical and horizontal boundaries as before. Modifications to conform to applicable governmental rules and regulations or available means of construction may be made.

8.3.3 "Emergency Work" shall mean work that the Board deems reasonably necessary to avoid further damage or substantial diminution in value to the Improvements and to protect the Owners from liability from the condition of the site.

8.4 Execution of Repairs.

8.4.1 The Board shall promptly repair Damage and use available insurance proceeds therefor unless, before the Repairs (other than Emergency Work) are begun, (i) the Owners decide in accordance with this Section not to Repair or (ii) Repair or replacement would be illegal under any state or local health or safety statute or ordinance. If the cost of Repair exceeds the available insurance proceeds, the Board shall impose a special assessment against all Lots in proportion to their shares of the Common Expenses in an amount sufficient to pay the excess costs.

8.4.2 The Board shall have the authority to employ architects and engineers, advertise for bids, let contracts to contractors and others, and take such other action as is reasonably necessary to make the Repairs. Contracts for the Repair work shall be awarded when the Board, by means of insurance proceeds and sufficient assessments, has provided for paying the cost. The Board may authorize the insurance carrier to make the Repairs if the Board is satisfied that the work will be done satisfactorily, and if such authorization does not contravene any insurance trust agreement or requirement of law.

8.4.3 The Board may enter into a written agreement with a reputable financial institution or trust or escrow company that the institution or company shall act as an insurance trustee to collect the insurance proceeds and carry out the provisions of this Article 8.

8.4.4 Either the Board or the requisite number of Owners, within 15 days after the notice required under Section 8.2 has been given, may, but shall not be required to, call a special Owners' meeting in accordance with Section 2.2 and the Bylaws to decide whether to Repair the Damage.

8.4.5 Except for Emergency Work, no Repairs shall be commenced until after the 15-day period and until after the conclusion of the special meeting if such a special meeting is called within the 15 days.

8.4.6 A decision by at least 30% of the Owners and the consent of 51% of all Eligible First Mortgagees (based upon one vote for each Mortgage owned) will be required to elect not to Repair Damage. The failure of the Board and the Owners within the 15-day period to call a special meeting shall be deemed a decision to Repair the damage.

8.5 Effect of Decision not to Repair. If a decision is made not to Repair and restore all Damage, the following shall apply:

8.5.1 Insurance proceeds attributable to damaged Common Areas shall be used to restore damaged areas to a condition compatible with the remainder of the Property.

8.5.2 Any insurance proceeds remaining after the application provided for in Section 8.5.1 shall be distributed to all Owners or lienholders as their interests may appear in proportion to the shares of all Owners in the Common Expenses.

9. Condemnation. The Association shall represent the Owners in any proceedings, negotiations, settlements, or agreements pertaining to the Condemnation of all or any portion of the Common Areas and each Owner hereby appoints the Association as the Owner's attorney-in-fact for this purpose, as provided in Article 23 below. Proceeds from any settlement shall be payable to the Association, or the insurance trustee, for the benefit of the Owners and their Mortgagees as their interests may appear.

9.1 Definition. As used in this Section, the following terms shall have the following definitions:

9.1.1 "Condemnation" means the taking of any property interest by the exercise of a power of eminent

domain, or the transfer or conveyance of such interest to a condemning authority in anticipation of such exercise.

9.1.2 "Partial Taking" means the Condemnation of any portion of the Common Areas.

9.1.3 "Complete Taking" means the Condemnation of all of the Common Areas.

9.1.4 "Restoration" means the repair or reconstruction of the remaining portions of the Common Areas, if any, to restore the Common Areas to an attractive, sound, functional and desirable condition including, if the Board deems it desirable or necessary, the replacement of any Improvements taken. Insofar as reasonably possible, taking into account the portions of the Property taken by Condemnation, repair or reconstruction shall be in conformance with the original plans and specifications. If the Board determines that adherence to such original plans and specifications is impracticable or is not in conformance with applicable laws, ordinances, building codes or other governmental rules or regulations then in effect, repair or reconstruction shall be of a kind and quality substantially the same as the condition in which such portions of the Property existed before the Condemnation. Any reconstruction not in accordance with original plans and specifications shall first be approved by 80% of the Eligible First Mortgagees, based on one vote for each Mortgage owned.

9.1.5 "Restoration Funds" means the entire amount received by the Association as compensation for any Condemnation, including, but not limited to, any amount awarded as severance damages, but deducting therefrom reasonable and necessary costs and expenses, including, but not limited to, attorneys' fees, appraiser's fees and court costs, together with any uncommitted funds or income of the Association other than that derived through assessments or special assessments. Amounts awarded to any individual Owner shall not be included in the Award.

9.2 Restoration. The Association shall undertake the Restoration of the Common Area unless 80% of the Owners and 67% of the Eligible First Mortgagees (based upon one vote for each Mortgage owned) agree in writing that the Common Areas shall not be restored.

9.3 Insurance Trustee. The Board may enter into a written agreement with a reputable financial institution or trust or escrow company enabling the institution or company to act as trustee to collect the condemnation award and carry out the provisions of this Article 9.

9.4 Special Assessments.

9.4.1 If the Restoration Funds are, or appear to the Board to be, insufficient to pay all of the costs of Restoration, the Board shall levy a special assessment to make up any deficiency. Such special assessment shall be levied against all Owners to the extent necessary to make up any deficiency for Restoration of the Common Areas. The amount of the required special assessment shall be determined by the Board, in its sole discretion. Subject to the terms and conditions hereof, the special assessments relating to the Restoration of the Common Areas shall, subject to the provisions of the preceding sentence, be levied against the Owners in the same proportion as their shares of the Common Expenses. The special assessment shall be payable at such time (including, but not limited to, in advance of the commencement of the repair or reconstruction), or in such installments from time to time, as the Board may determine. The special assessment provided for herein shall be secured by the lien provided for in Section 5.4 of this Declaration.

9.4.2 Notwithstanding any other provision of this Declaration, any such special assessment in an amount exceeding 10% of the fair market value of the Lot of any Owner who did not vote in favor of or consent to Restoration shall not be a personal obligation of that Owner but, if such special assessment is not paid by the Owner when due, may be recovered only by foreclosure of the lien against the Lot of such Owner in the manner provided in Section 5.4 of this Declaration.

9.5 Necessary Repairs. Notwithstanding any provision of this Article 9, the Board may, without any vote of the Owners or First Mortgagees, undertake any repair which the Board deems reasonably necessary to avoid further damage or destruction which is likely, in the board's sole opinion, to cause substantial diminution in the value of the Property.

10. Maintenance, Repairs and Replacements.

10.1 By Owners.

10.1.1 Each Owner shall furnish and be responsible for, at his own expense, all of the maintenance, repairs and replacements for his own Lot and all utility lines and air conditioning and heating units (wherever located) serving only such Owner's Lot.

10.1.2 If any maintenance, repair, replacement or reconstruction involves more than one Lot, and if the Owners of the affected Lots do not agree as to who should perform the work, or as to the allocation of the cost thereof, the decision shall be made by the Board and the decision shall be final and binding upon the Owners.

10.2 By the Association. Except as otherwise provided herein to the contrary, maintenance, repairs and replacements of the Common Areas shall be furnished by the Association as part of the Common Expenses, subject to the Bylaws and the Association Rules. If, due to the intentional act or negligence of an Owner or his invitee, guest or other authorized visitor, or an Occupant, damage is caused to the Common Areas or maintenance, repairs and replacements as may be determined by the Board, to the extent not covered by the Association's insurance. The failure of any such Owner to pay the same shall carry with it the same consequences as the failure to pay any assessment hereunder when due, including the imposition of interest at the rate set forth in Section 5.4 and late charges in accordance with the Association Rules, all of which shall be the personal obligation of the Owner and secured by the lien provided for in Section 5.4. An authorized representative of the Board, or of the manager or managing agent of the Property, and all contractors and repairmen employed or engaged by the Board or such manager or managing agent, shall be entitled to reasonable access to each of the Lots as may be required in connection with maintenance, repairs or replacements of or to the Common Areas or any equipment, facilities or fixtures affecting or serving other Lots and the Common Areas.

10.3 Right of Association to Enter and Repair. In the event that any Owner shall fail to maintain and repair his Lot and Improvements as required hereunder, the Association, following reasonable notice to the Owner (except in emergency situations where such notice is not practical), in addition to all other remedies available to it hereunder or by law, and without waiving any of said alternative remedies, shall have the right, through its agents and employees, to enter said Lot at any reasonable time and in any reasonable manner, and to repair, maintain, and restore the Lot and the Improvements erected thereon; and each Owner (by acceptance of a deed for his Lot) hereby covenants and agrees to repay to the Association the cost thereof immediately upon demand, and the failure of any such Owner to pay the same shall carry with it the same consequences as the failure to pay any assessment hereunder when due, including the imposition of interest at the rate set forth in Section 5.4 and late charges in accordance with the Association Rules, all of which shall be the personal obligation of the Owner and secured by the lien provided for in Section 5.4.

11. Alterations, Additions or Improvements. No construction, reconstruction, maintenance, repair, or alteration of (i) any Lot or Improvements thereon visible from the Common Areas or from other Lots or (ii) other portions of the Property may be commenced by or on behalf of any Owner without the prior written approval of the Board (or a committee designated by it) except maintenance and repair of the Owner's Lot and Improvements which

will only refurbish and not materially change the appearance of the Lot and Improvements. Any Owner may make interior alterations within the Improvements on his Lot which are not visible from the Common Areas or other Lots without the prior written approval of the Board, provided such alterations do not interfere with, obstruct or otherwise adversely affect any Common Areas or other Lots. Any Owner affecting any alteration, addition or improvement to his Lot shall in all cases be responsible for any damage to other Lots or the Common Areas resulting from such work. The Board may require complete plans and specifications and may charge a reasonable fee for professional services connected with reviewing and approving such plans and specifications. The board, in considering any request for approval, may consider the architectural compatibility of the proposal with the surrounding area and any reasonable architectural guidelines adopted by the Board for uniform application to all Lots.

12. Rental of Lots. Notwithstanding anything herein to the contrary, Developer and any Owner may rent or lease any and all Lots (but not less than an entire Lot) owned by them, with the lessee or rector being entitled to the same privileges of use of the Lot and Common Areas and subject to the same restrictions to which the Owner of the Lot would be subject. With the exception of a First Mortgagee in possession of a Lot following a default in a First Mortgage, or a foreclosure proceeding or deed or other arrangement in lieu of foreclosure, no Owner may rent or lease his Lot for transient or hotel purposes or for a period of less than 30 days. All lease agreements, including those for a month-to-month tenancy, shall be in writing and shall provide that the terms of the lease shall be subject in all respects to this Declaration and the Articles, Bylaws and Association Rules, and that failure to comply with the provisions of such documents shall constitute a default under the lease. A copy of the lease shall be delivered by the Owner to the Board on or before the commencement of occupancy by the tenant. Each Owner renting or leasing his Lot shall remain jointly and severally liable with his tenant for the payment of any assessment required hereunder and compliance with this Declaration, the Articles, Bylaws and Association Rules, including any fines or penalties levied as a result of a violation thereof.

13. Use and Occupancy Restrictions.

13.1 Residential Use. No part of the Property shall be used for other than residential or related purposes except that Declarant and Developer may maintain sales or rental offices, model units, and signs on the Property, and shall have rights of ingress and egress therefrom, until all Lots have been sold and conveyed by Declarant or Developer. Each Lot shall be used as permitted by this Declaration and for no other purpose.

13.2 No Violations. No Owner shall permit anything to be done or kept on his Lot or in or upon any Common Areas which will result in the cancellation of insurance thereon or which would be in violation of any law or other applicable requirement of governmental authorities.

13.3 Signs. No sign of any kind shall be displayed to the public view or from any Lot or any Common Areas without the approval of the Board except such signs as may be used by Declarant or Developer in connection with the development and sale or leasing of the Property and such signs as may be required (or the prohibition of which may be forbidden) by law.

13.4 Pets. Subject to the provisions of Section 13.5 and 13.19, one dog, cat or other small, commonly accepted household pet may be kept on each Lot without the prior approval of the Board. All additional pets are prohibited unless approved in advance by the Board. No animal shall be kept, bred or maintained for any commercial purpose, and, except as otherwise provided above, no animals of any kind shall be allowed to become a nuisance, whether by making an unreasonable amount of noise or otherwise. All pets shall be leashed or otherwise appropriately restrained when in any Common Area. Upon the request of any Owner, the Board shall determine, in its sole and absolute discretion, whether, for the purposes of this Section 13.4, a particular animal is a commonly accepted household pet or whether a particular animal is a nuisance. The keeping of pets shall also be subject to such additional rules and regulations with respect thereto as the Association may adopt, including rules and regulations prohibiting the keeping of any pets whatsoever.

13.5 Nuisance. No Owner shall permit or suffer anything to be done or kept about or within his Lot which will obstruct or interfere with the rights of other Owners or Occupants, or annoy them by unreasonable noises or otherwise, nor commit or permit any nuisance about or within his Lot or commit or suffer any illegal act to be committed therein. The Owner shall comply with all of the requirements of the health authorities and of all other governmental authorities with respect to the Property.

13.6 Minimum Size. No residential dwelling unit may be erected, placed or maintained on a Lot which contains fewer than 1,600 square feet of livable space. The area of detached structures shall not be added together for purposes of satisfying this minimum size requirement.

13.7 Vehicles; Boats. Except as specifically permitted by the Board, (i) no boats, trailers, motor homes, campers, trucks classified by manufacturer capacity rating as exceeding three quarters of a ton, or other vehicles shall be parked or stored in or upon the Common Areas; (ii) no vehicles shall be repaired, serviced or rebuilt on any Lot or upon the

Common Areas; and, (iii) nothing shall be parked overnight on the private streets or drives serving the Lots except in such parking areas as may be designated by the Board or on the Plat.

13.8 Lights. Except as installed by Developer, no spotlights, flood lights or other high intensity lighting shall be placed or utilized upon any Lot which in any manner will allow light to be directed or reflected on the Common Areas, or any part thereof, or any other Lot.

13.9 Wind Devices. No windbells, windchimes or similar devices shall be permitted on the Property.

13.10 Air Conditioners. No window air conditioners or portable units of any kind visible from any other Lot shall be installed on any Lot.

13.11 Reflective Materials. No reflective materials, including, but not limited to, aluminum foil, reflective screens or glass, mirrors or similar type items, shall be permitted to be installed or placed on the outside or inside of any windows visible from the Common Areas or any other Lot without the prior written approval of the Board.

13.12 Antennas. No radio, television or other antennas of any kind of nature shall be placed or maintained upon any Lot except as may be permitted by the Association Rules or as may be installed by Developer or the Board to serve as a master antenna for more than one Lot.

13.13 Refuse. The Association may maintain trash and garbage collection bins or similar facilities in such portions of the Common Areas as the Board determines. No garbage or trash shall be kept, maintained or contained on any Lot so as to be visible from another Lot or the Common Areas.

13.14 Clothesline. Outside clotheslines or other facilities for drying or airing clothes shall not be erected, placed or maintained on the Property unless they are within the Improvements on a Lot and not visible from any other Lot or the Common Areas.

13.15 Vegetation. No shrub, tree or other vegetation belonging to any Owner shall be allowed to overhang another Lot without the consent of the Owner thereof, which consent may be revoked at any time after having been given.

13.16 Mining. No portion of the Property shall be used in any manner to explore for or remove any water, oil or other hydrocarbons or minerals of any kind or earth substance of any kind.

13.17 Owner's Responsibility. Without limiting the foregoing, each Owner shall maintain and keep his Lot at all times in a safe, sound and sanitary condition and shall correct any condition or refrain from any activity which might interfere with the reasonable enjoyment by other Owners of their respective Lots or the Common Areas.

13.18 Correction of Violations. The Board or its authorized agents may enter any Lot in which a violation of these restrictions or the Association Rules exists and may correct the violation at the expense of the Owner of the Lot. Such expenses, and such fines as may be imposed pursuant to the Bylaws or the Association Rules, shall constitute a lien upon such Lot in accordance with the provisions of Section 5.4.

13.19 Modification or Waiver. The Association may modify or waive the foregoing restrictions or otherwise restrict and regulate the use and occupancy of the Property and the Lots by reasonable rules and regulations of general application adopted by the Board from time to time pursuant to Section 2.7. All remedies described in Article 23 hereof and all other rights and remedies available at law or equity shall be available in the event of any breach by any Owner, or his guests, invitees, licensees, family members, or tenants, or any Occupant or other Person of any provision of this Article 13 or the Association Rules.

14. Rights and Duties of First Mortgagees. Notwithstanding and prevailing over any other provisions of this Declaration, the Articles, Bylaws, the Association Rules, and management agreements, the following provisions shall apply to and benefit each holder of a First Mortgage:

14.1 No Restrictions on Transfer by Owner. The right of an Owner to sell, transfer or otherwise convey his Lot will not be subject to any right of first refusal, or similar restriction, in favor of the Association. Any "right of first refusal" that may ever be contained in this Declaration, the Articles, Bylaws or Association Rules shall not impair or affect the rights of a First Mortgagee to foreclose or take title to a Lot pursuant to the remedies provided in the First Mortgage, to accept a deed (or assignment) in lieu of foreclosure in the event of default by a Mortgagor, or interfere with a subsequent sale or lease of a Lot so acquired by the First Mortgagee.

14.2 No Liability for Unpaid Assessments. A First Mortgagee who comes into possession of a mortgaged Lot by virtue of foreclosure of the Mortgage, or through any equivalent proceedings, such as, but not limited to, the taking of a deed or assignment in lieu of foreclosure or acquiring title at a trustee's sale under a first deed of trust, or any third-party purchaser at a foreclosure sale or trustee's sale, will not be liable for the Lot's unpaid dues, charges or assessments which may accrue prior

to the time the First Mortgagee or third-party purchaser comes into possession of the Lot, and shall acquire title free and clear of any lien authorized by or arising out of the provisions of this Declaration which secures the payment of any dues, charges or assessments accrued prior to the time the First Mortgagee or third-party purchaser comes into possession of the Lot. Any such unpaid dues, charges or assessments against the foreclosed Lot shall be deemed to be a Common Expense charged proratably against all of the Lots. Nevertheless, in the event the Owner against whom the original assessment or charge was made is the purchaser or redemptioner, the lien shall continue in effect and may be enforced by the Association for the amount of the unpaid dues, charges or assessments that were due prior to the final conclusion of any such foreclosure or equivalent proceedings. Further, any such unpaid assessment or charge shall continue to exist as the personal obligation of the defaulting Owner to the Association and the Board may use reasonable efforts to collect the same from the Owner even after he is no longer a member of the Association.

14.3 No Prior Liens on Property. All taxes, assessments and charges which may become liens prior to a First Mortgage under local law shall relate only to the individual Lot and not to the Property as a whole.

14.4 Distribution of Proceeds. No provision of this Declaration, the Articles, Bylaws or Association Rules shall give an Owner, or any other party, priority over any rights of the First Mortgagee of a Lot pursuant to its First Mortgage in the case of a distribution to such Owner of insurance proceeds or condemnation awards for losses to or a taking of Lots and/or Common Areas.

14.5 Notices to Mortgagees. Any Mortgagee may file with the secretary of the Board a written request that it be given copies of notices. Any Mortgagee or First Mortgagee who files such a request shall be, respectively, an "Eligible Mortgagee" or an "Eligible First Mortgagee." Until such time thereafter as the Eligible Mortgagee withdraws the request or satisfies the Mortgage of record, the Board shall send to the Eligible Mortgagee a copy of (i) all notices of meetings of the Association; (ii) all other notices sent to the Owner of the Lot covered by the Mortgagee's Mortgage; (iii) within 90 days following the end of any fiscal year, financial statements prepared pursuant to Section 14.6; (iv) notices of any intention of the Association to transfer any part of the Common Areas, or terminate professional management of the Property; (v) notice of any lapse, cancellation or material modification of any insurance policy or fidelity bond maintained by the Association; and (vi) notice of any proposal to effect an amendment to this Declaration which requires the consent of Eligible First Mortgagees pursuant to Section 17.1. Holders of First Mortgages shall be entitled to prompt notice if any default in an Owner's obligations under this Declaration, the Articles, Bylaws or the Association Rules is not cured within 30 days of the

date of default and to notices under Articles 8 (Damage and Repair of Damage to Property) and Article 9 (Condemnation) irrespective of whether they have filed requests for notices. The provisions of this Section 14.5 shall prevail over any inconsistent or contrary provisions in this Declaration or in the Articles or Bylaws.

14.6 Inspection of Books; Financial Statements; Notice of Meetings. First Mortgagees shall have the right upon reasonable written request to (i) examine the books and records of the Association at reasonable times; (ii) receive an annual financial statement of the Association within 90 days following the end of any fiscal year of the Association, which financial statement shall be audited by an independent accountant if required by the regulations of any Institutional Guarantor; and (iii) to receive written notice of all meetings of the Association and to designate a representative to attend all such meetings.

14.7 No Personal Liability. A First Mortgagee shall not in any case or manner be personally liable for the payment of any assessment or charge, nor the observance or performance of any covenant, restriction, or rule and regulation of the Association, or any provision of the Articles or Bylaws, or any management agreement, except for those matters which are enforceable by injunctive or other equitable actions, not requiring the payment of money, except as specifically provided in this Article 14.

14.8 Actions for Abatement. An action to abate the breach of any of these covenants, restrictions, reservations and conditions may be brought against the purchasers who have acquired title to a Lot through foreclosure of a First Mortgage and the subsequent foreclosure or trustee's sale (or through any equivalent proceedings), and the successors in interest to said purchasers, even though the breach existed prior to the time said purchaser acquired an interest in the Lot.

14.9 Exercise of Rights of Owner in Default. During the pendency of any proceedings to foreclose a First Mortgage (including any period of redemption) or from the time a trustee under a first deed of trust has given notice of sale pursuant to power of sale conferred under the deed of trust and pursuant to law, the First Mortgagee, or a receiver appointed in any such action, may, but need not, exercise any or all of the rights and privileges of the Owner in default including, but not limited to, the right to vote as a member of the Association in the place and stead of the defaulting Owner.

14.10 First Mortgagee in Possession. At such time as the First Mortgagee shall come into possession of or become record Owner of a Lot, the First Mortgagee shall be subject to all of the terms and conditions of this Declaration including, but not limited to, the obligation to pay all assessments and charges

accruing thereafter, in the same manner as any other Owner.

14.11 Assessment Lien Subordinate. The lien of the assessments provided for herein shall be subordinate to the lien of any First Mortgage now or hereafter placed upon any Lot; provided that such First Mortgage is in favor of a bank, savings and loan association, insurance company, mortgage banker, other institutional lender, or Institutional Guarantor and their successors or assigns; and provided further that such subordination shall apply only to the assessments which have accrued prior to a sale or transfer of the Lot to which the First Mortgage relates pursuant to a decree of foreclosure or any other proceeding in lieu of foreclosure.

14.12 Violations Not Affecting First Mortgage. Notwithstanding anything herein to the contrary, no provision of this Declaration or the Articles, Bylaws or Association Rules related to costs, use, set-back, minimum size, building materials, architectural, aesthetic or similar matters shall provide for reversion or foreclosure of title to a Lot in the even of violation thereof. No breach or violation of any provision of the such documents shall affect, impair, defeat or render invalid the interest or lien of any First Mortgagee.

14.13 Limitation Upon Amendments. Notwithstanding and prevailing over all other provisions hereof, no amendment to this Declaration shall be made or become effective which in any way affects, diminishes or impairs any of the rights, privileges or powers granted to any First Mortgagee or which is in any way inconsistent with the customary rules, regulations or requirements of institutional First Mortgagees or their successors or assigns without the prior written consent of 51% of all Eligible First Mortgagees. First Mortgagees shall have the right to enforce against Owners, the Association and all others, any and all provisions of this Declaration including, but not limited to, this Section 14.13. Enforcement by First Mortgagees may be by injunction, mandatory or prohibitory, or any other lawful procedure. This Declaration shall be interpreted in conformity with all rules, regulations and requirements of any Institutional Guarantor of a Mortgage on any Lot in effect as of this date or as hereafter amended, and any provision hereof which is inconsistent therewith shall be deemed modified to conform thereto. The Articles, Bylaws and the Association Rules shall be governed by this Declaration and all provisions thereof which are inconsistent herewith shall be void.

15. Exemption of Declarant and Developer from Restrictions. Notwithstanding anything contained in this Declaration to the contrary (except that in the event of a conflict with the provisions of Article 14 hereof those provisions shall be controlling), none of the restrictions contained in this Declaration shall be construed or deemed to limit or prohibit any

act of Declarant, Developer, their employees, agents and subcontractors, or parties designated by either of them in connection with the sale or leasing of the Lots, construction, completion and operation of the Common Areas, or repair of Lots or Improvements as required in this Declaration or any contracts of sale with Owners.

16. Remedies.

16.1 Association's Remedies. In the event of any default by any Owner under the provisions of this Declaration or the Articles, Bylaws or the Association Rules, the Association, or the Board, or its agents, shall have each and all of the rights and remedies which may be provided for in this Declaration, the Articles, Bylaws and the Association Rules, and which may be available at law or equity, and may prosecute any action or other proceedings against the defaulting Owner and others for enforcement or foreclosure of its lien and the appointment of a receiver for the Lot, or for damages or injunction, whether mandatory or prohibitory, or specific performance, or for judgment for payment of money and collection thereof, or the right to take possession of the Lot and to rent the Lot and apply the rents received to payment of unpaid assessments and interest accrued thereon, and to sell the same as hereinafter in this Article 16 provided, or for any combination of remedies or for any other relief, all without notice and without regard to the value of the Lot or the solvency of such Owner. The proceeds of any such rental or sale shall first be paid to discharge court costs, other litigation costs, including, but not limited to, reasonable attorneys' fees, and the other expenses of the proceeding and sale, and all such items shall be taxed against the defaulting Owner in a final judgment. Any balance of proceeds after satisfaction of such charges and any unpaid assessments hereunder or any liens shall be paid to the Owner. Upon confirmation of the sale, the purchasers shall be entitled to a deed to the Lot and to immediate possession of the Lot and may apply to the court for a writ of restitution for the purpose of acquiring such possession. It shall be a condition of any such sale, and the judgment shall so provide, that the purchaser shall take the interest in the property sold subject to this Declaration. All expenses of the Association in connection with any action or proceeding described or permitted by this Article 16, including court costs and reasonable attorneys' fees and other fees and expenses, and all damages, liquidated or otherwise, together with interest thereon at the rate set forth in Section 5.4, but in no event in excess of the maximum lawful rate, until paid, shall be charged to and assessed against the defaulting Owner and shall be added to and deemed part of his respective share of the Common Expenses, and the Association shall have a lien as provided in Section 5.4 hereof for all of the same, as well as for nonpayment of his respective share of the Common Expenses, upon the Lot of the defaulting Owner and upon all of his additions and improvements thereto. In the event of any such default by an

Owner, the Association and the Board, and the manager or managing agent, if so authorized by the Board, shall have the authority to correct such default and to do whatever may be necessary for such purpose, and all expenses in connection therewith shall be charged to and assessed against the defaulting Owner, and the assessment shall constitute a lien against the defaulting Owner's Lot. Any and all such rights and remedies may be exercised at any time and from time to time, cumulatively or otherwise, by the Association or the Board.

16.2 General Remedies. If any Owner (either by his conduct or by the conduct of any Occupant of his Lot, or the Owner's family, guests, invitees or tenants) or the Association violates any of the provisions of this Declaration, or the Articles, Bylaws or the Association Rules, as then in effect, and the violation continues for 10 days after notice in writing from the Board (or, in the case of a violation by the Association, after notice from an aggrieved Owner) or occurs repeatedly during any 10-day period after written notice or request to cure the violation from the Board (or Owner, as the case may be), then the Board, Declarant, Developer or any affected or aggrieved Owner, shall have the power to file an action for a judgment or injunction, whether mandatory or prohibitory, against the Owner, Occupant, other Person or Association requiring the defaulting Owner, Occupant, other Person or Association to comply with the provisions of this Declaration, or the Articles, Bylaws or Association Rules, and granting other appropriate relief, including money damages. In addition, the Board is specifically empowered to suspend all or part of an Owner's right or rights to use the Common Areas (other than for ingress or egress) and to suspend all voting rights of such Owner for as long as any amounts due from such Owner to the Association remain unpaid. The Board may also suspend all or part of an Owner's rights to use the Common Areas (other than for ingress or egress) and to suspend all voting rights of such Owner for a reasonable period of time to be determined by the Board in the event an Owner violates any provisions of this Declaration, the Articles, Bylaws or the Association Rules other than provisions requiring the payment of money, after reasonable notice of such violation and an opportunity to be heard have been granted to such Owner. Anything to the contrary herein notwithstanding, any breach of any of the covenants, restrictions, reservations, conditions and servitudes shall be binding upon and effective against any lessee or Owner of a Lot whose title thereto is acquired by foreclosure, trustee's sale, sale, deed in lieu of foreclosure or otherwise.

17. Amendment.

17.1 Adoption of Amendments. Amendments to this Declaration shall be made by an instrument in writing entitled "Amendment to Declaration" which sets forth the entire amendment. Except as otherwise specifically provided for in this Declaration,

any proposed amendment must be approved by a majority of the Board prior to its adoption by the Owners. Amendments may be adopted upon the approval of 67% of the Owners at a duly held meeting of the Owners or without a meeting if all Owners have been duly notified provided, however, that approvals shall be in writing in the event of a vote taken without a meeting of the Owners. In all events, the amendment when adopted shall bear the signatures of the president and the secretary of the Association, who shall certify that the amendment has been properly adopted, and shall be attested by the secretary, and shall be acknowledged by them as officers of the Association. Amendments shall be recorded within 30 days after adoption. Notwithstanding the foregoing, any amendment of this Declaration not expressly provided for herein which would increase the number of Lots, change the boundaries of any Lot, change the allocated interests of any Lot or which would change the uses to which any Lot is restricted may be adopted only with the unanimous consent of the Owners and the consent of 51% of all Eligible First Mortgagees (based on one vote for each Mortgage owned). Approval by an Eligible Mortgagee which has failed to submit a response to any proposed written amendment within 30 days after the Eligible Mortgagee has received notice of the amendment by certified or registered mail, return receipt requested, shall be conclusively presumed. Furthermore, all other material amendments to this Declaration not expressly provided for herein shall also require the consent of 51% of all Eligible First Mortgagees. Material amendments include, but are not limited to, those amending the terms of this Declaration with respect to (i) voting rights; (ii) assessments, assessment liens, or subordination of assessment liens; (iii) reserves for maintenance, repair and replacement of Common Areas; (iv) responsibility for maintenance and repairs; (v) expansion or contraction of the Property, or the addition, annexation or withdrawal of property to or from the Property; (vi) insurance or fidelity bonds; (vii) leasing of Lots; (viii) imposition of any restrictions on an Owner's right to sell or transfer his Lot; (ix) a decision by the Association to establish self-management when professional management had previously been required; (x) restoration or repair of the Property after a hazard damage or partial condemnation; or (xi) any provisions that especially benefit Mortgagees or Institutional Guarantors.

17.2 Effect of Amendments. It is specifically covenanted and agreed that any amendment to this Declaration properly adopted will be completely effective to amend any and all of the covenants, conditions and restrictions contained herein which may be affected and any or all clauses of this Declaration or the Plat, unless otherwise specifically provided in the paragraph being amended or the amendment itself. Notwithstanding the foregoing, no amendment shall terminate or decrease any unexpired period of Developer control unless Developer approves the amendment by executing it.

17.3 Amendment of Plat. Except as otherwise provided herein, the Plat may be amended by revised versions or revised portions thereof referred to and described as to effect in an Amendment to Declaration adopted as provided for herein. Copies of any amendment to the Plat shall be made available for the examination of every Owner upon request. Any such amendment to the Plat shall be effective, once properly adopted, upon recording the Amendment to Declaration describing the amendment to the Plat.

17.4 Developer's Right to Amend. Notwithstanding any provision of this Article 17, so long as Developer controls the Association pursuant to Section 2.12, Developer reserves the right, and shall be authorized and empowered, acting alone, to amend this Declaration as necessary to (i) comply with, or conform this Declaration to, the requirements or guidelines of any Institutional Guarantor (provided, however, that Developer shall obtain the approval of any interested Institutional Guarantor to such amendment), or (ii) comply with, or conform this Declaration to, applicable law and the requirements or guidelines of any governmental authority, or (iii) conform the Declaration and the Plat to the actual location of any of the constructed improvements or as may reasonably be required by title insurance companies to correct errors so as to meet reasonable requirements for title insurance. Upon the adoption and recording of any such amendment by Developer, a copy of the amendment shall be made available for the inspection of every Owner or First Mortgagee upon request.

17.5 Effective Date of Amendments. Any change, modification or rescission of this Declaration accomplished under any of the provisions of this Article 17 shall be effective upon recording such instrument or at such later date as the instrument may specify.

17.6 Amendments Affecting Rights of Mortgagees. Anything to the contrary herein notwithstanding, no amendment shall be effective to modify, change, limit or alter the rights expressly conferred upon Mortgagees in this Declaration or which is in any way inconsistent with the rules, regulations or requirements of any Institutional Guarantor, unless the amendment shall be consented to in writing by such Institutional Guarantor.

18. Annexation of Additional Property.

18.1 Annexation. Notwithstanding any other provision of this Declaration, Developer may from time to time, without the approval, assent or vote of the Association, the Owners or, to the extent permissible under their regulations, Institutional Guarantors, within seven years from the date of recording of this Declaration, annex to the Property all or any portion of the Annexation Property if Developer is then the owner thereof; provided, however, that nothing contained in this Declaration shall obligate Developer to annex all or any portion

of the Annexation Property at any particular time prior to such seven-year deadline, and no portion of the Annexation Property shall become subject to this Declaration unless and until an amendment to this Declaration and the Plat, if necessary, (an "Annexation Amendment") shall have been recorded as herein provided and shall have become effective.

18.2 General Plan of Development. Developer intends to develop the Property (including any portion of the Annexation Property which is ultimately annexed to the Property) sequentially on a phased basis. It is anticipated that the first phase will consist of six Lots as shown on the Plat. The second phase is expected to consist of 21 additional Lots but may consist of any number, configuration or combination of Lots, in the sole discretion of Developer. In the event all anticipated phases are developed and the entire Annexation Property is annexed to the Property as provided herein, it is contemplated that the Property ultimately will consist of a total of 27 Lots. Any improvements which may be constructed by Developer in subsequent phases of the Property shall be consistent in quality of construction and architectural style with the improvements constructed in connection with the first phase and shall be substantially completed prior to annexation; provided, however, that Declarant and Developer make no representations or give any assurances whatsoever concerning, and reserve the right to alter, the exact number, size, configuration design or location of any phase, Improvement or Lot.

18.3 Annexation Amendments. An Annexation Amendment shall be a writing in recordable form which annexes all or any part of the Annexation Property to the plan of this Declaration and which incorporates by reference all of the covenants, conditions, restrictions, easements, definitions and other provisions of this Declaration and shall state, with respect to the phase intended to be developed on the Annexation Property so annexed, the number and description of the Lots and the Common Areas included within such phase. The annexation shall become effective only upon recordation of the Annexation Amendment, including any plat (the "Annexation Plat") required to describe the portion of the Annexation Property included in the phase (unless a description of such matters is contained in any Plat already appearing in the public record). The effective date of the annexation shall be the date of recordation of the Annexation Amendment or such later date as may be specified in the Annexation Amendment. An Annexation Amendment may contain such complementary additions and modifications of the covenants, conditions and restrictions contained in this Declaration as may be necessary to reflect the different character, if any, of the Annexation Property and as are not inconsistent with the plan of this Declaration. In no event, however, shall any such Annexation Amendment revoke, modify or add to the covenants established by this Declaration with respect to the Property already subject to this Declaration.

18.4 Adjustment of Interests. In the event additional property is annexed to the Property in accordance with this Article 18, the proportionate share of Common Expenses for each Owner (including any additional property annexed to the Property) shall, as of the effective date of the annexation and for all purposes, be adjusted to equal the fraction, the numerator of which is one and the denominator of which is the total number of all Lots then included within the Property, including any Lots annexed to the Property.

18.5 Completion of Annexation. Any annexation of additional property and expansion of the Property must occur within seven years from the recordation of this Declaration. The recordation of an Annexation Amendment and any required Annexation Plat shall, as of the effective date of the annexation, constitute and complete the annexation of the portion of the Annexation Property described therein, making the real property subject to this Declaration and subject to the functions, powers and jurisdiction of the Association. From the effective date of the annexation, the annexed portion of the Annexation Property shall be part of the Property for all intents and purposes of this Declaration, all of the Owners in the annexed portion of the Annexation Property shall automatically be Owners in accordance with this Declaration, and all Owners shall have all voting rights and other rights appurtenant to their status as Owners. All taxes, assessments, mechanics liens and other charges relating to the Annexation Property prior to annexation of such property are the sole responsibility of Developer.

19. Notices. Notices provided for in this Declaration, or in the Bylaws or Association Rules, shall be in writing and shall be addressed to the Association or the Board, as the case may be, at an address to be established by the Board, or at such other address as hereinafter provided. The Association or the Board may at any time designate a different address for notices to them respectively by giving written notice of such change of address to all Owners. All notices to Owners shall be to their respective Lots. Any Owner may also designate a different address for notices to him by giving written notice of his change of address to the Board. In the event that a Lot has multiple owners, notice shall be given at the Lot only, unless the multiple owners unanimously agree upon a single different address for notices to them and give the Board notice of such change of address in a writing signed by every one of the multiple owners. Notices addressed as above shall be deemed delivered when deposited in the United States mail, postage prepaid, or when delivered in person with written acknowledgment of the receipt thereof.

20. Captions and Exhibits Construction. Captions given to various paragraphs herein are for convenience only and are not intended to modify or affect the meaning of any of the substantive provisions hereof. The various exhibits referred to herein are

incorporated as though fully set forth where such reference is made.

21. Severability. If any provision of this Declaration, the Articles, Bylaws or the Association Rules, or any section, clause, sentence, phrase or word, or the application thereof in any circumstance, is held invalid, the validity of the remainder of this Declaration, the Articles, Bylaws or the Association Rules, and of the application of any such provision, section, sentence, clause, phrase or word in any other circumstances, shall not be affected thereby and the remainder of this Declaration, the Articles, Bylaws, or Association Rules shall be construed as if such invalid part were never included therein.

22. Rights and Obligations. Each grantee of Declarant and Developer, by the acceptance of a deed of conveyance, and each purchaser under any contract for a deed of conveyance, and each purchaser under any agreement of sale, and each Person at any time owning or acquiring any interest in any part of the Property, accepts the same subject to all restrictions, conditions, covenants, reservations, liens and charges, and the jurisdiction, rights and powers created or reserved by this Declaration. All rights, benefits and privileges of every character hereby granted, created, reserved or declared and all impositions and obligations hereby imposed shall be deemed and taken to be covenants running with the land and equitable servitudes and shall bind any Person having at any time any interest or estate in said land and shall inure to the benefit of such grantee, purchaser or Person in like manner as though the provisions of this Declaration were recited and stipulated at length in each and every deed of conveyance, purchase contract or other instrument whereby a Person acquires any interest in the Property.

23. Power of Attorney. Whenever the Association or the Board is granted rights, privileges or duties in this Declaration, the Board shall have the authority to act for the Association in accordance with the Articles and Bylaws. Further, unless otherwise specifically restricted by the provisions of this Declaration, wherever the Association or the Board is empowered to take any action or do any act including, but not limited to, action or acts in connection with the Common Areas, the Owners each hereby constitute and appoint the Association, acting through its Board, as their attorney-in-fact for the purposes of taking such action or doing such acts including, but not limited to, executing, acknowledging and delivering any instruments or documents necessary, appropriate or helpful for such purposes. By the acceptance of a deed for a Lot or by signing a contract for purchase of a Lot or by succeeding in any other manner to the ownership of a Lot, each Owner shall be deemed and construed to have ratified and expressly granted the above power of attorney.

24. No Inconsistency with Law. Notwithstanding anything to the contrary in this Declaration, in no event shall the provisions of this Declaration be applied in a manner which is inconsistent with applicable law or requirements of governmental authorities, as they may be amended from time to time.