

F. ANN RODRIGUEZ, RECORDER
RECORDED BY: D_K
DEPUTY RECORDER
7864 PE1

W
LEWIS MANAGEMENT RESOURCES
180 W MAGEE STE 134
TUCSON AZ 85704



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NOTICE FOR CONTINENTAL RESERVE MASTER HOMEOWNERS ASSOCIATION

Pursuant to A.R.S. §33-1256(J) (for Condominiums) or 33-1807(J) (for Planned Communities) Continental Reserve Master Homeowners Association gives Notice of the following information:

The name of this Association (as reflected in the records of the Arizona Corporation Commission) is: "Continental Reserve Master Homeowners Association".

The address of the Association is: 180 W. Magee, Suite 134, Tucson, AZ 85704.

The designated agent/management company for the Association is: Lewis Management Resources, Inc.

The telephone number for the Association is (520) 742-5674.

The Declaration of Covenants, Conditions and Restrictions for the Association was recorded on 3/13/02 in Docket 11755 at 2475, Office of the Pima County Recorder.

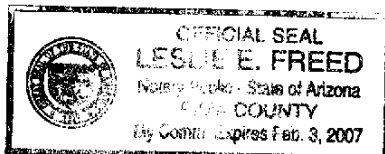
Amendments to the Declaration are recorded as follows: NONE

By:
Its:

Patti Jo Lewis
Managing Agent

STATE OF ARIZONA)
) ss.
County of Pima)

ACKNOWLEDGED before me on the 1st day of August, 2004 by Patti Jo Lewis, the Managing Agent of the Association.



Leslie E. Freed
Notary Public

F. ANN RODRIGUEZ, RECORDER
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7864 PE1

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**SECOND AMENDED AND RESTATED DECLARATION
OF COVENANTS, CONDITIONS, RESTRICTIONS,
AND EASEMENTS
FOR CONTINENTAL RESERVE**

Dated Jan 6, 2005

12469 04010

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SECOND AMENDED AND RESTATED DECLARATION OF COVENANTS, CONDITIONS, RESTRICTIONS, AND EASEMENTS FOR CONTINENTAL RESERVE

THIS SECOND AMENDED AND RESTATED DECLARATION OF COVENANTS, CONDITIONS, RESTRICTIONS, AND EASEMENTS is executed to be effective as of the 6th day of January, 2005, by Fidelity National Title Agency, Inc., as Trustee under Trust Nos. 30121 and 30222, and not otherwise (collectively, "Declarant").

RECITALS

A. Declarant is the initial owner and developer of all or portions of that certain land located west of Silverbell Road in Marana, Arizona, generally known as Continental Reserve, described as follows:

Continental Reserve, Blocks 1 through 20 and Common Areas A, B and C, a subdivision of Pima County, Arizona, recorded Book 53 of Maps and Plats at Page 35, Pima County Records.

B. A portion of the above-described land is defined herein as the "Covered Property" and is subject to the terms and provisions hereof, and the remainder of the above-described land shall constitute a portion of the Annexable Property, as defined herein, and shall be subject to the terms and provisions hereof only if annexed. Declarant desires that the Covered Property developed as one or more planned communities with residential and other areas, together with recreational areas, developed and undeveloped open spaces, pedestrian and equestrian trails, bicycle paths and other facilities, while preserving, to the maximum extent practicable, the natural desert character of the land comprising the Covered Property.

C. As part of the development of the Covered Property, and without obligation to do so, Declarant intends to provide for the Recordation of various additional covenants, conditions and restrictions apart from this Declaration in the form of separate Tract Declarations which shall cover certain portions of the Covered Property to be specified in such Tract Declarations.

D. Declarant desires and intends that the Covered Property shall be held, sold and conveyed subject to the covenants, conditions, restrictions and easements in this Declaration, which: (i) are for the purpose of protecting the value, desirability, attractiveness and character of the Covered Property; (ii) shall run with all of the real property comprising the Covered Property; (iii) shall be binding on all parties having any right, title or interest in the Covered Property, or any part thereof; and (iv) shall inure to the benefit of the aforementioned parties and their successors and assigns.

E. Declarant has formed an Arizona nonprofit corporation known as "Continental Reserve Master Homeowners Association," for the purposes of, among

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other things: (i) holding title in fee or otherwise to the Common Areas; (ii) fostering the efficient preservation of the Covered Property, in regard to which the Association will be delegated certain powers of administering and maintaining the Common Areas and enforcing the Governing Documents adopted pursuant hereto; and (iii) establishing, collecting, disbursing and enforcing the Assessments created herein.

F. Pursuant to Declarant's reserved rights under Section 17.2 of the Declaration, Declarant being entitled to cast at least two-thirds of the votes of the membership without a meeting, this instrument amends and restates in its entirety that certain Declaration of Covenants, Conditions Restrictions, and Easements for Continental Reserve recorded March 13, 2002 at Docket 11755 Page 2475, Pima County Records.

NOW, THEREFORE, Declarant hereby declares, covenants and agrees as follows:

ARTICLE 1 DEFINITIONS

As used in this Declaration, the following terms shall have following meanings:

1.1 "Additional Covenants" shall mean the covenants, restrictions, reservations, charges, servitudes, assessments, conditions, liens or easements in addition to those provided for in this Declaration, which are provided for in any Tract Declaration, any Recorded contract, deed, declaration or other instrument that may be permitted under this Declaration.

1.2 "Annexable Property" shall mean any real property near or adjacent to the Covered Property which Declarant may wish to annex, and shall include any portion of the Covered Property which may have been withdrawn from the purview hereof.

1.3 "Agency" or "Agencies" shall mean FHA, VA, Federal National Mortgage Association, Federal Home Loan Mortgage Corporation and any other governmental agency or financial institution participating in the insuring or guaranteeing of home loans within the Covered Property.

1.4 "Annual Assessments" shall mean the annual assessments levied by the Board pursuant to Section 8.2 of this Declaration.

1.5 "Apartment Parcel" shall mean a Parcel designated in the Master Development Plan or in a Tract Declaration as having a Residential Apartment Land Use Classification.

1.6 "Apartment Unit" shall mean a Dwelling Unit located on a portion of the Covered Property which has been designated as being for Residential Apartment Development use, the occupancy of which is or is planned to be governed by a rental agreement as defined in A.R.S. §33-1310(11).

1.7 "Articles" shall mean the Articles of Incorporation of the Association, as amended or restated, on file with the Arizona Corporation Commission.

1.8 "Assessments" shall mean all Annual Assessments, Special Assessments and Maintenance Assessments.

1.9 "Assessment Lien" shall mean the charge and lien against a Lot or Parcel securing the payment of Assessments and Special Use Fees as described in Section 8.1 of this Declaration.

1.10 "Assessment Period" shall mean each period for which Assessments are to be levied against a Lot or Parcel pursuant to this Declaration, as more particularly described in Section 8.8 below.

1.11 "Association" shall mean the "Continental Reserve Master Homeowners Association," an Arizona nonprofit corporation, its successors and assigns.

1.12 "Association Rules" shall mean the rules and regulations adopted by the Association pursuant to Section 6.3 and 12.2 of this Declaration.

1.13 "Board" shall mean the Board of Directors of the Association.

1.14 "Bylaws" shall mean the Bylaws of the Association, as amended or restated from time to time.

1.15 "Common Areas" shall mean all real property and the improvements or amenities thereon, all easements and licenses, and all personal property and facilities, which shall from time to time be owned, controlled or operated by the Association (including, but not limited to, the Special Conservation Area, as defined herein, and areas used for landscaping, flood control, drainage, bicycle or jogging paths, parks, recreational areas, open space, walkways, equestrian trails and pedestrian and vehicular ingress and egress), or areas which the Association has undertaken to provide administrative, maintenance or other similar responsibilities.

1.16 "Condominium Parcel" shall mean a Parcel designated in the Master Development Plan or in a Tract Declaration as having a Residential Condominium Development Land Use Classification.

1.17 "Condominium Unit" shall mean a Dwelling Unit constituting a "unit" in a "condominium", together with any appurtenant interest in all "common elements", as such terms are defined in Chapter 9, Title 33, Arizona Revised Statutes, as amended.

1.18 "Covered Property" shall mean Blocks 1 through 20, and Common Areas A, B, and C, as shown on the plat for the Property as described above in the Recitals, as such land may be resubdivided, and such portions of the Annexable Property as may be annexed pursuant to the provisions hereof by Recordation of a Tract Declaration, all subject to the further provisions of this Declaration dealing with withdrawal of land.

1.19 "Declarant" shall mean Fidelity National Title Agency, Inc., as Trustee under Trusts Nos. 30121 and 30222, and not otherwise, and any Declarant Affiliate or assignee of all or part of the rights and duties granted or reserved to Declarant.

1.20 "Declarant Affiliate" shall mean any Person directly or indirectly controlling, controlled by or under common control with Declarant and owning any Lot or Parcel, and shall also include without limitation, any general or limited partnership, limited liability company, corporation or trust in which Declarant (or another Declarant Affiliate) is a general partner, managing member, controlling shareholder, or beneficiary.

1.21 "Declaration" shall mean this Declaration of Covenants, Conditions, Restrictions and Easements for Continental Reserve, as amended or supplemented from time to time.

1.22 "Delinquent Amount" shall mean any Assessment or Special Use Fee, or installment thereof, not paid when due.

1.23 "Design Guidelines" shall mean the rules and regulations adopted, amended and supplemented by the Design Review Committee pursuant to Section 4.4 of this Declaration, and shall include architectural and landscape Design Guidelines.

1.24 "Design Review Committee" shall mean the committee(s) formed pursuant to Article 4 of this Declaration. The Design Review Committee may elect to adopt any other name it may desire, including Architectural and Landscape Review Committee.

1.25 "Developer Owner" shall mean a Person in the business of developing, leasing and/or selling real property and who has acquired four or more Lots or all or a portion of a Parcel in the Covered Property, in connection with, and in the course of, such business, for the purpose of developing, leasing or selling such Lots or Parcel, or portion thereof, and shall also include a Person who acquires a Non-Residential Parcel for such Person's own development and use.

1.26 "Dwelling Unit" shall mean any building, or part thereof situated upon a Lot or Parcel and intended for use and occupancy as a residence by a Single Family.

1.27 "Eligible Insurer or Guarantor" shall mean a governmental insurer or guarantor of a First Mortgage who has in writing requested notice of certain matters from the Association in accordance with Section 13.1 if this Declaration.

1.28 "Eligible Mortgage Holder" shall mean a First Mortgagee who has in writing requested notice of certain matters from the Association in accordance with Section 13.1 if this Declaration.

1.29 "Event of Foreclosure" shall mean the foreclosure, the acceptance of a deed in lieu of foreclosure, or the transfer of title by trustee's deed at a trustee's sale in regard to a mortgage, deed of trust or other encumbrance inferior in priority to an Assessment Lien.

1.30 "Exempt Property" shall mean the following areas now or hereafter located within Continental Reserve, none of which are subject to Assessment, and no voting rights shall be associated therewith:

1.30.1 All Government Property;

1.30.2 A Parcel with a Land Use Classification of School Use or Church Use, except to the extent that the applicable Tract Declaration or other appropriate Recorded instrument indicates such a Lot or Parcel is subject to Assessments;

1.30.3 All Common Areas for so long as Declarant or the Association is the owner thereof;

1.30.4 all Limited Common Areas; and,

1.30.5 All unmanned utility substations which provide utility services to all or any portion of the covered Property unless and to the extent that the applicable Tract Declaration or other appropriate Recorded instrument indicates such a Lot or Parcel is subject to Assessments.

1.31 "FHA" shall mean the Federal Housing Administration.

1.32 "First Mortgage" shall mean any mortgage or deed of trust on any Lot or Parcel, or portion thereof, with the first priority over any other mortgage or deed of trust encumbering such Lot or Parcel, or portion thereof.

1.33 "First Mortgagee" shall mean the holder of any First Mortgage.

1.34 "Funds" shall mean all funds and property collected and received by the Association from any source.

1.35 "Governing Documents" collectively refers to this Declaration, the Articles of Incorporation and Bylaws for the Association, the Rules and the Design Guidelines as amended from time to time.

1.36 "Government Property" shall mean all land and improvements owned by or dedicated to a public or governmental agency or authority for so long as the public or governmental agency or authority is the owner or beneficiary thereof, except for land or improvements, or both, owned and/or operated by a public or governmental agency or authority acting in a proprietary capacity, or owned and occupied as a residence by a Single Family.

1.37 "Improvement" means a building, fence, wall, pool, roadway, driveway, or other structure, excavation, grading, landscaping, or other work on any portion of the Covered Property, including any exterior additions, changes or alterations to any structure regardless of whether any such addition or alteration is attached to an exterior surface, awnings, rolling shutters (interior or exterior), play equipment, patio covers, antennas, exterior walls, fences, the color of any structure or the drainage or grading on any Lot or Parcel.

1.38 "Land Use Classification" shall mean a classification of a portion of the Covered Property, as set forth in a Tract Declaration, restricting development to the applicable classification(s).

1.39 "Limited Common Areas" shall mean all areas of any Parcel now or hereafter designated on a Recorded Tract Declaration or a Recorded subdivision plat as

an area to be used in common by the Owners or Occupants of a particular Parcel or subdivision, but not by all Owners or Occupants of the Covered Property, which areas shall also be maintained by and at the expense of the Owners or Occupants of such Parcel or subdivision, or by a homeowners or similar Subsidiary Association established with respect to such Parcel or subdivision.

1.40 "Lot" shall mean:

1.40.1 an area of real property designated as a "Lot" on any Recorded subdivision plat and which has a designated Land Use Classification of Single Family Residential Use or Cluster Residential use; or

1.40.2 a Condominium Unit.

1.41 "Maintenance Assessments" shall mean the Assessments, if any, levied by the Board pursuant to Sections 8.6 and 11.2 through 11.5 of this Declaration.

1.42 "Master Development Plan" shall mean the conceptual or site development plan at any time in effect for the Covered Property and the Annexable Property, if annexed, and approved by the Town or any other governmental jurisdiction having the authority to approve and regulate master plans for planned area communities located in the Covered Property, as the same may be amended from time to time in Declarant's sole and absolute discretion, subject to necessary governmental approvals. A current copy of the then applicable Master Development Plan shall be on file at all times in the Association office.

1.43 "Member" shall mean any Owner, including Declarant, and shall include Declarant while Declarant is deemed for purposes of voting rights to possess votes of Developer Owners paying Assessments at the Reduced Rate.

1.44 "Membership" shall mean the amalgam of rights and duties of Owners, including Declarant, with respect to the Association.

1.45 "Net Acre" shall mean a gross acre of forty-three thousand five hundred sixty (43,560) square feet, less any dedicated rights-of-way for public roads, public and private drainage ways, and public utilities, and, except as the context may otherwise clearly indicate, less Common Areas accepted for ownership by the Association, if any. Net Acre computations shall be rounded to the nearest one-hundredth.

1.46 "Non-Developer Owner" shall mean any Owner who is not a Developer Owner.

1.47 "Non-Residential Parcel" shall mean a Parcel restricted in the Master Development Plan or in a Tract Declaration or other Recorded instrument to a nonresidential use as permitted under this Declaration.

1.48 "Occupant" shall mean:

1.48.1 each Tenant who resides on the Covered Property and the licensees, guests, and members of the immediate family of each Tenant who reside on the Covered Property;

1.48.2 each Owner who resides on the Covered Property and the licensees, guests, and members of the immediate family of each Owner who reside on the Covered Property; and

1.48.3 such other person or persons as the Board, in its absolute discretion, may designate.

1.49 "Owner" shall mean (a) a record holder of beneficial or equitable title, and legal title if legal title has merged with the beneficial or equitable title, to the fee simple interest in any Lot or Parcel, including without limitation Declarant and all Developer Owners or (b) the purchaser under a contract for the conveyance of real property, a contract for deed, a contract to convey, an agreement for sale, or any similar contract governed by A.R.S. § 33-741, et seq. The foregoing does not include persons or entities who hold an interest in any Lot or Parcel merely as security for the performance of an obligation, or a lessee or tenant of an Owner as defined above, or a purchaser or vendee under any executory contract of sale which has not been fully consummated with a Recorded deed to the purchaser.

1.50 "Parcel" shall mean any parcel of land within the Covered Property, including a Parcel designated for Residential Apartment Development Use or Residential Condominium Development Use, other than Common Areas to be owned in fee title by the Association, and including any portion, pad, or subparcel thereof, if such portion, pad, or subparcel shall have been created by a parcel split or subdivision approved or permitted in accordance with this Declaration. Notwithstanding the foregoing, a Parcel other than a Non-Residential Parcel shall cease being a Parcel upon Recording of a subdivision plat or a declaration of condominium creating Lots or Condominium Units in regard thereto. In the case of the staged development of a Parcel having a Land Use Classification of Cluster Residential Use, Single Family Residential Use or Residential Condominium Development Use, those areas of such Parcel not yet covered by a Recorded subdivision plat or declaration of condominium creating Lots or Condominium Units shall continue to be a Parcel for purposes of this Declaration.

1.51 "Person" shall mean a corporation, partnership, limited liability company, joint venture, individual, trust or any other legal entity.

1.52 "Record", "Recording" and "Recorded" shall mean placing or having placed a document of public record, or the act of recording, in the Official Records of Pima County, Arizona.

1.53 "Reduced Rate" refers to the percentage of the Annual Base Assessment paid by a Developer Owner under Section 8.3.1.

1.54 "Rental Business Space" shall mean an area within a commercial building or shopping center designed for lease to a business Tenant.

1.55 "Residential Apartment Development" shall mean a development comprised of Apartment Units and the surrounding area which is intended to be integrated and under the same ownership.

1.56 "Residential Condominium Development" shall mean a development comprised of Condominium Units and the surrounding Limited Common Areas.

1.57 "Single Family" shall mean a group of persons living together and maintaining a single nonprofit housekeeping unit together with their domestic servants.

1.58 "Single Family Parcel" shall mean a Parcel designated in the Master Development Plan or in a Tract Declaration as having a Single Family Residential or Cluster Residential Land Use Classification.

1.59 "Special Assessments" shall mean the assessments, if any, levied by the Board pursuant to Section 8.4 of this Declaration.

1.60 "Special Use Fees" shall mean any fees charged by the Association for use of the Common Areas pursuant to Section 3.1, Section 8.1 and other provisions of this Declaration.

1.61 "Subsidiary Association" shall mean an Arizona nonprofit corporation, its successors and assigns, established for the purpose of administering and enforcing the provisions of any Tract Declaration.

1.62 "Taking" shall mean condemnation by eminent domain or sale or other transfer under threat of condemnation.

1.63 "Tenant" shall mean a Person occupying any part of the Covered Property under any type of rental agreement, whether such rental agreement is within the definition set forth in A.R.S. §33-1310(11) or otherwise.

1.64 "Town" shall mean the Town of Marana, Arizona.

1.65 "Tract Declaration" shall mean any declaration of covenants, conditions and restrictions or like instrument Recorded after the Recording of this Declaration in regard to one or more Parcels, or portions thereof, or group(s) of Lots, by the Owner of such Parcels or portions thereof, or group(s) of Lots, which shall in all cases be consistent with and subordinate to this Declaration.

1.66 "VA" shall mean the United States Veterans' Administration.

1.67 "Visible From Neighboring Property" shall mean, with respect to any given object, that such object is or would be visible to a Person six feet tall, standing at ground level on neighboring property (including Common Area) six feet back from the property line of the neighboring property, provided, however, that the Design Review Committee shall have the right to determine the meaning of the term "Visible From Neighboring Property" as applied on a case by case basis, and the determination of the Design Review Committee shall be binding in that regard, subject to any appeal rights to the Board.

**ARTICLE 2
PROPERTY AND PERSONS BOUND
BY THIS DECLARATION**

2.1 General Declaration. Declarant desires to see the Covered Property developed in accordance with the Master Development Plan, as may be amended from time to time in the sole and absolute discretion of Declarant, and to dedicate or convey to other Persons the Lots and Parcels or other portions of the Covered Property. As portions of the Covered Property are developed, Declarant, without obligation, intends to Record one or more Tract Declarations that will, among other things, create Parcels, designate Land Use Classifications, designate Common Areas and Limited Common Areas, and establish such additional covenants, conditions and restrictions as may be appropriate for the respective portions of the Covered Property. Declarant hereby declares that all of the Covered Property is and shall be held, conveyed, hypothecated, encumbered, leased, occupied, built upon or otherwise used, improved or transferred, in whole or in part, subject to this Declaration and any Tract Declarations applicable thereto, as amended or modified from time to time. Notwithstanding the preceding sentence, except as expressly provided herein, property owned by or dedicated to a governmental agency or to the public shall not be subject to this Declaration, provided, however, that any restrictions imposed in this Declaration upon the Owners and Occupants concerning the use and maintenance of such property shall be applicable at all times. This Declaration is declared and agreed to be in furtherance of a general plan for the development and sale of the Covered Property and is established for the purpose of enhancing and perfecting the value, desirability and attractiveness of the Covered Property. This Declaration shall run with the Covered Property for all purposes and shall be binding upon and inure to the benefit of Declarant, the Association, and all Owners and Occupants of the Covered Property and their successors in interest. Nothing in this Declaration or in any Tract Declaration shall be construed to prevent Declarant from modifying any part of the Master Development Plan with respect to property as to which a Tract Declaration has not been Recorded, or from dedicating or conveying portions of the Covered Property for uses other than as a Lot, a Parcel, or Common Areas.

2.2 Owners and Occupants Bound. Upon the Recording of this Declaration, this Declaration shall be binding upon all Owners and Occupants of the Covered Property and their successors and assigns, whether or not stated in any document or deed transferring any interest in any Parcel or Lot to or from such Owners or Occupants.

2.3 Association Bound. Upon the incorporation of the Association, this Declaration shall be binding upon and benefit the Association, and its successors and assigns.

2.4 Subsidiary Associations Bound. Upon the incorporation or other formation of any Subsidiary Association, this Declaration shall be binding upon and shall benefit such Subsidiary Association, and its successors and assigns.

2.5 Government Property. Notwithstanding any other provision herein, Government Property comprising a park, or other property owned in fee by a town, city,

or county, shall not be deemed encumbered by any of the provisions of this Declaration. Owners shall, however, be restricted in their use of Government Property consisting of roads (i.e., the parking, signage, and other regulations hereof).

ARTICLE 3 EASEMENTS AND RIGHTS OF ENJOYMENT IN THE COMMON AREAS

3.1 Easements and Rights of Enjoyment. Each Owner shall have a nonexclusive easement for use and enjoyment in and to the Common Areas, which nonexclusive easement shall be appurtenant to and shall pass with the title to each Owner's Lot or Parcel. All Occupants shall have a nonexclusive, nontransferable temporary license to use and enjoy the Common Areas so long as they remain Occupants. The foregoing grants and rights are subject, among other things, to the following limitations:

3.1.1 The right of the Association pursuant to this Declaration to charge reasonable Special Use Fees for the use of the Common Areas. The Special Use Fees shall be set by the Board from time to time, in its absolute discretion. Special Use Fees shall be charged only for actual entry upon or utilization of those Common Areas selected by the Board to be subject to a Special Use Fee, and shall be intended to collect revenue from the actual users of such selected Common Areas so that all of the costs of operating such selected Common Areas are not borne by all of the Owners through Annual Assessments, but rather are borne, at least in part, by the Owners, Occupants and other persons utilizing such selected Common Areas;

3.1.2 The right of the Association to suspend the voting rights and the rights to use and enjoyment of the Common Areas (other than roadways) of any Owner or Occupant, as the case may be:

(a) for any period during which an Assessment remains delinquent;

(b) for a period not to exceed sixty (60) days for any infraction of this Declaration, a Tract Declaration, the Association Rules, or the Design Guidelines, or for so long as the Owner remains in violation, whichever is longer; or

(c) for successive sixty (60) day periods if any such delinquency or infraction is not corrected during any preceding suspension period.

3.1.3 The right of the Association to limit the number of guests of an Owner or Occupant (or the number of Persons from a Rental Business Space or a Non-Residential Parcel) who may use the Common Areas; and,

3.1.4 The right of the Association to regulate use of the Common Areas in accordance with this Declaration, and to mortgage or convey portions of Common Area with the affirmative vote or written consent of Owners representing at least two-thirds (2/3rds) of the total votes held by the Membership, except that notwithstanding the foregoing, at any time during the pendency of the Class B Membership Declarant shall

have the right to convey, or cause the Association to convey minor, insignificant, or immaterial portions of Common Area (such as those caused by encroachment areas, boundary line discrepancies, survey errors and other such matters) without the consent or vote of any other Person or Member, should Declarant determine that such conveyance or transfer is in the best interests of the Covered Property and that the said interests of the Association are best served by disposing of same. Any sale or disposition of the Common Area shall serve to extinguish any interests therein of Owners pursuant to the provisions hereof. The rights of the Association hereunder with respect to Common Area shall include conveyance and dedication to the public of roads, streets, drainageways, culverts, and sewer facilities, none of which shall require the approval of any Owners or Members of the Association. In addition, the Association shall have the right without a vote of the Members to dedicate to the public any private park or open space, including equestrian trails.

3.2 Delegation of Use. Any Owner or Occupant, in accordance with the Association Rules and this Declaration, may delegate his rights of use and enjoyment in the Common Areas to the members of his family or his occupants, employees, customers or guests subject to the limitations set forth herein and in the Association Rules, provided, however, that the Association Rules may limit the number of Persons from a Rental Business Space or a Non-Residential Parcel who may have access to the Common Areas, and may restrict or limit the use of Common areas by Tenants, guests and invitees.

3.3 Waiver of Use. No Owner shall be exempted from personal liability for Assessments, nor shall the Owner's Parcel be released from liens or charges arising under this Declaration or any Tract Declaration, by waiver of any rights of use or enjoyment of the Common Areas.

3.4 Acceptance of Certain Common Areas. In the course of development and sale of Parcels within the Covered Property, fee title to land which is, or is to be, restricted to use as future common area (the "Restricted Tracts") may be transferred by Declarant to Persons acquiring fee title to one or more Parcels. In such event, and notwithstanding that fee title to the Restricted Tracts may be held by Persons other than the Association (or Declarant), such Restricted Tracts, unless designated as common area of a Subsidiary Association, shall upon acceptance by the Association, if such is the case, become Common Areas hereunder upon the platting thereof. If such areas become Common Area of the Association, all Owners and Occupants shall have the easements, licenses and rights to the use and enjoyment of such Restricted Tracts as with respect to the other Common Areas generally, subject in all cases to the provisions of this Declaration and the Association Rules. In the event such areas are accepted by the Association, and the Person owning fee title to any such Restricted Tract transfers such fee title to the Association, the Association shall accept such fee title so long as, at the time of and in connection with such transfer, the Person transferring title to the Association provides to the Association, at no expense to the Association, a standard coverage owner's policy of title insurance in an amount reasonably acceptable to the Association (but in no event less than the minimum amount, if any, required for such policies by VA or FHA, if VA or FHA are involved in the insurance or guarantee of loans affecting portions of the Covered Property), issued by a title insurance company authorized to transact such business in the State of Arizona, insuring that the

Association is the owner of fee title to the transferred Restricted Tract subject only to such liens or other matters as may be approved by the Association, which approval shall not be unreasonably withheld. The Association shall be conclusively deemed reasonable in withholding its approval of any monetary liens or encumbrances affecting title to any Restricted Tract proposed to be transferred to the Association.

3.5 Temporary Sign Easement. Declarant hereby reserves to itself and its agents and assignees a temporary easement over, upon and across those portions of the Common Areas adjacent to publicly dedicated streets and roadways for purposes of installing and maintaining signs for the purpose of, among other things, identifying Persons building upon or developing portions of the Covered Property, and otherwise promoting the Covered Property or any property owned by Declarant. The easement reserved hereby shall expire and terminate upon completion of construction and sales activities upon the Covered Property, but in no event later than 25 years after the date this Declaration is recorded.

3.6 Exclusive Use and Benefit Easements. On certain Common Areas, including those along streets and thoroughfares, patio walls may with the approval of the Design Review Committee be constructed partially within the Common Area at varying minor distances from the adjacent Lot line, including for purposes of enhancing the visual appearance of the property and avoiding monotony of design that would otherwise be inherent in straight runs of patio wall. Portions of the Common Areas may be located on the Lot side of any such wall (each, an "Easement Area"). Each Easement Area may adjoin and be contiguous to a Lot (each, a "Dominant Lot"). In the case of Dominant Lot a perpetual exclusive use and benefit easement over the Easement Area abutting that Dominant Lot for the use, benefit and enjoyment of that Owner (each, an "Easement"). The Easements contemplated hereby are to be minor and limited in scope, and shall only be for the purposes stated. Each Easement shall be deemed to exist upon approval by the Design Review Committee of the improvements depicting the encroachment, but only after completion of construction in accordance with such approval, and no consent of the Owner of the Dominant Lot shall be required. Each Easement runs with the land and is appurtenant to the abutting Dominant Lot and may not be sold, transferred or otherwise conveyed apart therefrom. The Easements are limited to the extent that no structure or improvement of any nature may be placed, maintained or permitted to remain in any Easement Area. The Association will have no possession or control of the Easement Areas. Each Easement Area must be possessed, controlled, maintained and insured by the Owner of the abutting Dominant Lot and not by the Association. Any separate insurance maintained by the Association is excess and non-contributory. Each Owner of a Dominant Lot shall indemnify, protect, defend and hold harmless the Association for, from and against any and all losses, costs, claims, actions, damages, expenses and liabilities of any kind whatsoever arising from or in connection with the Easement Area abutting that Owner's Dominant Lot.

3.7 Equestrian Easement. Portions of the Covered Property, including Common Area, are subject to the terms and conditions of that certain "Continental Reserve Grant of Easement" recorded Docket 11445 Page 1513, Pima County Records (hereinafter the "Equestrian Easement"). It is acknowledged and understood that the Equestrian Easement is subject to use by persons who do not (and may not in the future) own property within the Covered Property. Use or access to the land burdened

by the Equestrian Easement by any Owner within the Covered Property shall be subject to regulation by the Association. It is acknowledged and understood that equestrian activities have inherent risks associated therewith, including the act of observing or being in the proximity of activities involving horses, and each Owner and Occupant shall act in a sensible and responsible manner to avoid damage to property and injury to other persons, including riders, pedestrians and other users of the Common Areas.

Any and all obligations of the Declarant or "Trust One," as defined in the Equestrian Easement, are hereby expressly assumed by the Association, and the Declarant may execute such supplemental assumption agreements in the name of the Association as it may deem appropriate. Without limitation, the Association shall be deemed to have assumed all liability and obligation of Trust One to obtain insurance and to indemnify others pursuant to the terms of the Equestrian Easement. The foregoing assumption does not include any existing duty to construct initial improvements, nor any existing tort liability for acts or occurrences prior to the date of Recording hereof.

3.8 Blanket Easements. There is hereby created a blanket easement in favor of Declarant and its assigns upon, over and under each Lot, each Parcel, the Common Areas and the Limited Common Areas for ingress to, egress from, all portions of the Covered Property and the installation, replacement, repair and maintenance of all utility equipment and service lines and systems (including electric, gas, telephone, cable, water and sewer), as such equipment, lines and systems are installed in connection with the initial development of Lots, Parcels, Common Areas and Limited Common Areas and the construction of buildings thereon; provided that such easements shall be specifically and permanently described and fixed by Recorded instrument either:

(a) at the time a subdivision plat, approved as required by this Declaration, is Recorded with respect to the portion of the Covered Property to be served or burdened by such easement(s), as applicable; or

(b) within one hundred twenty (120) days following approval, as required by this Declaration and by the appropriate governmental agencies, of a site plan for the portion of the Covered Property to be served or burdened by such easement(s), as applicable.

ARTICLE 4 DESIGN REVIEW COMMITTEE

4.1 Organization of Design Review Committee. The Board shall establish a Design Review Committee and shall adopt the procedural rules and regulations for the performance of the duties of the Design Review Committee. The Design Review Committee shall be organized as follows:

4.1.1 Powers and Duties. The Design Review Committee shall have all of the powers, authority, and duties conferred upon it by the Governing Documents or by any Tract Declaration or similar Recorded instrument approved in advance by the Board. Without limiting the generality of the foregoing, it shall be the duty of the Design Review Committee to consider and act upon all proposals or plans submitted to it

pursuant to the provisions of this Declaration or the Design Guidelines, including approval of all landscaping to be planted or placed upon the Covered Property, to perform any other duties delegated to it by the Board, and to carry out all other duties imposed upon it by this Declaration. The Design Review Committee shall have the right from time to time to assign certain of its powers, authority and duties hereunder to one or more Subsidiary Associations.

4.1.2 Committee Composition. The Design Review Committee shall consist of seven (7) members. The number of members may be increased or decreased at any time by a vote of the Board. One person from the Marana Planning and Zoning Commission and one person from the Scenic Drive Neighborhood Association will be invited to be a member of the Design Review Committee. A member may be a member of the Board, an officer of the Association, or an officer, agent or employee of Declarant.

4.1.3 Alternate Members. In the event of the absence or disability of a regular member or members of the Design Review Committee, the remaining regular members, even though less than a quorum, may designate an alternate member to act as a substitute regular member of the Design Review Committee so long as any one or more regular members remain absent or disabled.

4.1.4 Term of Office. Unless a member of the Design Review Committee has resigned or been removed, his or her term of office shall be for a period of two (2) years, or until the appointment of his or her respective successor. Any new member appointed to replace a member who has resigned or been removed shall serve such member's unexpired term. Members of the Design Review Committee who have resigned, been removed or whose terms have expired may be reappointed.

4.1.5 Appointment and Removal. Except as hereinafter provided, the right to appoint and remove all regular and alternate members of the Design Review Committee at any time shall be and is hereby vested solely in the Board, provided, however, that no regular or alternate member may be removed from the Design Review Committee by the Board except by the vote or written consent of at least fifty-one percent (51%) of the members of the Board.

4.1.6 Resignations. Any regular or alternate member of the Design Review Committee may at any time resign from the Committee.

4.1.7 Vacancies. Vacancies on the Design Review Committee, however caused, shall be filled by the Board. A vacancy or vacancies on the Design Review Committee shall be deemed to exist in case of the death, resignation or removal of any regular or alternate member.

4.1.8 Control By Declarant. Notwithstanding the foregoing, in order to enhance the aesthetic and economic value of the Covered Property and to maintain uniformity of architectural and landscaping standards throughout the Covered Property, until the Class B Membership ceases, or so long as Declarant owns a single Lot or Parcel within the Covered Property, whichever is later, Declarant shall have the right:

4.1.8.1 to appoint and remove all regular and alternate members of the Design Review Committee; and

4.1.8.2 to supplement and amend the Design Guidelines, as deemed necessary by Declarant.

To better assist in the review and administration of submittals pursuant to the Design Guidelines, until such time as Declarant relinquishes its control of the Design Review Committee it may, at its sole and absolute discretion, appoint an advisory committee, of a size and composition determined solely by Declarant, and composed of representatives of Developer Owners.

4.2 Multiple Committees. The Board may, at its discretion, create more than one Design Review Committee and give each such Committee the authority to perform duties delegated to it by the Board with respect to specific portions of the Covered Property.

4.3 Meetings and Compensation of Design Review Committee. The Design Review Committee shall meet from time to time as necessary to perform its duties hereunder. The vote of the majority of a quorum of the members or written consent of a majority of the regular members shall constitute the act of the Design Review Committee. The Design Review Committee shall keep and maintain a written record of all actions taken by it. Although members of the Design Review Committee shall not be entitled to compensation for their services, consultants hired by such Committee, if such are authorized by the Board, may be, entitled to compensation at the discretion of the Board. Notwithstanding the foregoing, for so long as Declarant is in control of the Design Review Committee pursuant to Section 4.1.8 of this Declaration, members of the Design Review Committee may be paid for their services at the discretion of the Board.

4.4 Design Guidelines. Subject to the written approval of the contents thereof by the Declarant for so long as Declarant is in control of the Design Review Committee pursuant to Section 4.1.8 of this Declaration, the Board shall adopt, and may from time to time amend, supplement and repeal, the Design Guidelines, which may be different for various portions of the Covered Property. The Design Guidelines shall interpret, implement and supplement this Declaration, and shall set forth procedures for Design Review Committee review, standards for development within the Covered Property, fees and charges for the review of plans and other materials submitted, and such further content as may be appropriate. The Design Guidelines shall include, without limitation, provisions regarding:

4.4.1 the size of Single Family Dwelling Units;

4.4.2 architectural design, with particular regard to the harmony of the design with surrounding structures and topography;

4.4.3 placement of buildings;

4.4.4 landscaping design, content and conformity with the natural desert character of the Covered Property;

4.4.5 requirements concerning exterior color schemes, exterior finishes, and materials, and requirements concerning yard and building ornaments, recreational equipment, exterior lighting and exterior furniture, and other items or improvements Visible From Neighboring Property;

4.4.6 signage and mailboxes;

4.4.7 perimeter and screen wall design and appearance; and

4.4.8 time limits for the commencement and completion of any Improvements.

The Design Guidelines may elaborate upon types of acceptable plants and shrubs and may contain rules for the treatment and control of plants, including weeds, which may pose a public or private nuisance. The Design Guidelines shall have the same force and effect as the Association Rules. Notwithstanding the foregoing, Declarant hereby reserves to itself the right to Record Tract Declarations wherein Declarant shall have the right to establish and enforce architectural standards for Non-Residential Parcels.

4.5 Obligation to Obtain Approval

4.5.1 No Improvement can be installed, constructed, erected, repaired, or maintained on any Lot or Parcel, except in compliance with plans and specifications that have been submitted to and approved by the Design Review Committee and any applicable Subsidiary Committee in accordance with the Governing Documents.

4.5.2 No trees, bushes, shrubs, plants or other landscaping shall be planted or placed upon the Covered Property except in compliance with plans and specifications therefor which have been submitted to and approved by the Design Review Committee in accordance with this Declaration and the Design Guidelines;

4.5.3 No material changes or deviations in or from the plans and specifications for any work to be done on the Covered Property, once approved by the Design Review Committee, shall be permitted without approval of the change or deviation by such Committee.

4.6 Waiver. The approval by the Design Review Committee of any plans, drawings or specifications for any work done or proposed, or for any other matter requiring the approval of the Design Review Committee, shall not be deemed to constitute a waiver of any right to withhold approval of any similar plan, drawing, specification or matter subsequently submitted for approval.

4.7 Liability. Neither Declarant nor the Design Review Committee nor any member thereof shall be liable to the Association, any Owner or any other party for any damage, loss or prejudice suffered or claimed on account of:

4.7.1 the approval or disapproval of any plans, drawings or specifications, whether or not defective;

apply thereto. The owner of any nonresidential parcel of land within the Commercial Blocks shall be entitled to at least one voting representative on the Design Review Committee, unless the parcel is governed by an independent association of property owners, in which case the association shall be entitled to one such representative who shall act for and on behalf of such owners, as a group.

4.11.2 The Design Review Committee shall not act in any discriminatory manner toward property within said Commercial Blocks, and the Design Guidelines shall not be amended to impose burdensome new conditions applicable to such property or to establish new guidelines or conditions which differ markedly from those applicable to the property within said Commercial Blocks at the time of approval of initial improvements.

4.11.3 Submittals of plans for improvements and landscaping within the Commercial Blocks shall be required to be made to the Design Review Committee, in the same fashion as for all other property and improvements, except that once initial improvements within each parcel of land within the Commercial Blocks have been approved, no approval shall be required of the Design Review Committee (unless provided for in a Tract Declaration) for revisions of the design or exterior appearance which conform to the original architectural themes. Further, no material change may be made to the Design Guidelines applicable to the Commercial Blocks unless approved in writing by Declarant for so long as Declarant owns any portion of the Commercial Blocks, and thereafter, the approval of a majority of owners within the Commercial Blocks by area and number shall be required for such material change.

4.11.4 All decisions of the Design Review Committee with respect to the Commercial Blocks shall be reasonable, and any aggrieved owner may pursue legal and equitable remedies in court should approval be denied for unreasonable reasons. Unless Declarant otherwise agrees in writing, including by virtue of a Tract Declaration, no restriction, rule, condition or guideline for design may operate to restrict or prohibit any Non-Residential use of the Commercial Blocks allowed by applicable zoning, nor to lessen the density or intensity of use.

4.11.5 No special fee or charge, nor any levy, may be made against any owner of property within the Commercial Blocks, except that a reasonable fee for submittal of plans may be charged as set forth in the Design Guidelines.

4.11.6 The provisions of this Section 4.11 may not be amended without the consent, in writing, of Declarant for so long as Declarant owns any portion of the Commercial Blocks, and thereafter, the consent, in writing, of a majority of owners within the Commercial Blocks by area and number.

4.11.7 In the event of the recording of a Notice Withdrawal with respect to the Commercial Blocks the sole provisions hereof applicable to the Commercial Blocks shall be those set forth above in the this Section 4.11, incorporating the review and submittal provisions.

ARTICLE 5
LAND USE CLASSIFICATIONS, PERMITTED USES AND
RESTRICTIONS

5.1 Land Use Classifications. As portions of the Covered Property are readied for development, the Land Use Classifications shall be fixed in a Tract Declaration which may be Recorded at such time as the applicable portion of the Covered Property is conveyed by deed or, if retained by Declarant, at such time as Declarant begins development thereof. Each Tract Declaration shall be construed as a supplement to this Declaration and fully a part hereof as if all of the provisions thereof were set forth herein; provided, however, that if any provision of a Tract Declaration is inconsistent with any provision of this Declaration, the provision of this Declaration shall control.

Except with respect to Covered Property owned by Declarant, no Tract Declaration, or further covenants, conditions, restrictions, or easements, or any amendments or modifications thereto, shall be Recorded against any Lot or Parcel without the written approval of the Declarant or, if Declarant has waived and relinquished such right, of the Board, which approval shall be evidenced on the Recorded instrument, and without such approval such Tract Declaration or further covenants, conditions, restrictions, and easements, or any amendments or modifications thereto, shall be null and void. All Tract Declarations or other Recorded covenants, conditions, or restrictions, or any amendments or modifications thereto, shall be consistent with and subordinate to this Declaration and shall contain such provisions as Declarant or the Class B Member shall reasonably require. A Tract Declaration shall not be amended except as specifically permitted by this Declaration or by such Tract Declaration.

The Land Use Classifications contemplated as of the date of this Declaration are:

5.1.1 "Cluster Residential Use", consisting of Lots with Dwelling Units including those types of single family residential housing arrangements known as "townhouses", "clustered housing", "zero-lot line housing", and similar arrangements (but not including Condominium Units), together with related amenities;

5.1.2 "Residential Apartment Development Use", which shall include congregate care or similar facilities;

5.1.3 "Residential Condominium Development Use";

5.1.4 "Single Family Residential Use";

5.1.5 "Common Areas";

5.1.6 "Commercial Office Use";

5.1.7 "General Commercial Use",

5.1.8 "Park Use";

5.1.9 "School Use";

5.1.10 "Church Use";

5.1.11 "Medical Use."

Unless otherwise specifically provided in this Declaration, the definitions and characteristics of the Land Use Classifications and specific permitted and prohibited uses of the real property within a particular Land Use Classification shall be set forth in the respective Tract Declarations. Such uses may at any time be amended to permit other uses, provided the provisions of the Tract Declaration dealing with amendment have been met. In the event of any ambiguity or dispute regarding the nature and scope of permitted and prohibited uses of the real property within a particular Land Use Classification, the provisions of Section 19.1 hereof shall apply. Notwithstanding the foregoing listing, Declarant shall not be obligated to establish within the Covered Property each of the uses listed above, nor shall such listing prohibit the establishment by Declarant of other Land Use Classifications. Without limitation, certain commercial uses may be established near or adjacent to the Covered Property, and the Covered Property may or may not actually contain any commercial uses.

A Lot or Parcel shall, prior to being used or improved, be defined and limited to a specific development type or land use by a Tract Declaration approved by Declarant in accordance with the provisions hereof. Declarant or the Class B Member may require imposition of special conditions in a Tract Declaration in any case where deemed appropriate in the sole and absolute discretion of said Declarant or Class B Member, and may require adequate provisions for assessments, maintenance of property and improvements and such other provisions as are deemed proper. Should for any reason a Parcel be subdivided and developed or partially developed prior to Declarant's Recordation of a Tract Declaration establishing the Land Use Classification therefor, then Declarant may later record the appropriate Tract Declaration with the consent of the Owner of the property in question, and until such time the Land Use Classification shall be deemed to be Single Family Residential Use.

No Condominium Parcel or subdivision containing common area may be developed nor shall a Tract Declaration therefor be approved, unless an incorporated owners association is established for the maintenance and repair of common elements or common area, except in cases where the Association may elect to accept ownership of same.

Declarant may approve of other Land Use Classifications in the case of Additional Property annexed under the purview hereof, in which case the Tract Declaration shall set forth such Land Use Classification.

5.2 Covenants, Conditions, Restrictions, and Easements Applicable to All Land Use Classifications. The following covenants, conditions, restrictions and reservations of easements and rights shall apply to all Lots and Parcels in the Covered Property included within all Land Use Classifications, and to the Owners and Occupants thereof:

5.2.1 Plat Notes. In addition to the restrictions contained herein, the Covered Property shall be subject to all restrictions and limitations set forth on the Recorded plat for Continental Reserve, as may be amended from time to time.

5.2.2 Prohibited Uses. The following uses are prohibited:

(a) any use which is offensive by reason of odor, fumes, dust, smoke, noise, glare, heat, sound, vibration, radiation or pollution, or which constitutes a nuisance, or which is hazardous by reason of risk of fire or explosion, or which is injurious to the reputation of any Lot, Parcel or Owner; and,

(b) any use which is in violation of the laws (after taking into account the application of any validly granted or adopted variance, exception or special use ordinance or regulation) of the United States, the State of Arizona, the Town or any other governmental entity having jurisdiction over the Covered Property.

5.2.3 Temporary Occupancy and Temporary Buildings; Outside Storage. No trailer, tent, shack, garage, barn or temporary structure of any kind shall be used as a residence, whether temporary or permanent, except that during the construction process, a temporary building or structure may be erected, installed or maintained on a Lot or Parcel with the prior written approval of the Design Review Committee, including the approval of the structure's location and appearance. Such temporary structures shall be removed immediately after completion of such construction, and that portion of the Lot or Parcel from which the same are removed shall be promptly placed in such condition as is otherwise required by this Declaration. Except during construction, no materials, supplies, equipment, finished or semifinished products or articles of any nature shall be stored on any area outside of a building unless approved in advance in accordance with Article 4. Any permitted outside storage shall be screened by a solid visual barrier so as not to be Visible From Neighboring Property, provided, however, that during construction of Improvements on any Lot or Parcel, necessary construction materials and supplies may be stored on the Lot or Parcel without the need for a solid visual barrier providing such materials and supplies are kept in neat order considering the construction activities. The Design Review Committee is authorized to designate the areas and manner in which supplies of building materials and construction equipment shall be stored and the routes construction vehicles may use. All such designations shall be reasonable.

5.2.4 Repair of Buildings. No building or Improvement on any Lot or Parcel shall be permitted to fall into disrepair and each such building and Improvement shall at all times be kept in good condition and repair and adequately painted or otherwise finished to maintain a first class appearance of the building or Improvement. In the event any building or improvement is damaged or destroyed, then, subject to approval in accordance with Article 4, such building or Improvement shall be immediately repaired, rebuilt or demolished by the Owner. If any Owner fails to make the necessary repairs, after receiving notice from the Board of the requirement to perform such repairs within the time limits established by the Board, the Board and its agents and representatives are empowered to enter on the Lot or Parcel and to make the necessary repairs. The cost of these corrective measures shall be charged to the Owner and collected in the same manner as Assessments. Any such entry shall be after

reasonable notice of the time and date of entry, and after such hearings and notice as the law may require.

5.2.5 Maintenance of Landscaping and Driveways. Unless otherwise provided in a Tract Declaration, each Owner shall be responsible for the proper maintenance of all landscaping in the following locations:

(a) on the Owner's Lot or Parcel (including set back areas), except that in the event the maintenance of any portions of such Owner's Lot or Parcel is the responsibility of the Association, a utility, or a governmental or similar authority, then only for so long as such entities are not undertaking such responsibility;

(b) portions of the Common Areas adjacent to an Owner's Lot or Parcel and which are on the Lot's or Parcel's side of any wall erected on the Common Areas; and,

(c) public right-of-way area; between sidewalks (or bicycle paths or equestrian trails) and the street curb on the Owner's Lot or Parcel, or other public or easement areas adjacent to the Owner's Lot or Parcel, except that in the event the maintenance of such areas is the responsibility of the Association, a utility, or a governmental or similar authority, then only for so long as such entities are not undertaking such responsibility.

As used herein, maintenance shall include but not be limited to keeping the areas neatly trimmed, cultivated and free of trash, weeds and unsightly materials. All lawn areas shall be timely mowed needed to keep an even, well groomed appearance and shall be watered and fertilized at such times and in such quantities as required to keep the grass alive and attractive and free of weeds. All trees, shrubs, plants and ground covers shall be timely and properly trimmed (including, without limitation, the removal of dead wood therefrom) according to their plant culture and landscape design and shall be watered and fertilized at such times and in such quantities as required to keep them alive and attractive. Any dead tree, shrub, plant or ground cover shall be removed and replaced immediately. All bed areas shall be kept free of weeds and cultivated periodically as needed. Landscaping may be required to be placed on a Lot or Parcel within certain time frames established by the Design Review Committee. Each Owner shall maintain in good condition and repair all paved and concrete areas, including driveways, roadways and parking areas, located on the Owner's Lot or Parcel. Any Owner who fails to properly maintain the landscaping upon the Lot or Parcel, shall be given a reasonable period to conduct such maintenance. In the event Owner fails to provide such landscaping maintenance to his/her Lot or Parcel, after receiving notice from the Board to do so, the Association is empowered to enter upon the Lot or Parcel, conduct the necessary landscaping maintenance, and charge the cost to the Owner. Such charges shall be collected in the same manner as assessments.

5.2.6 Nuisances; Dust Control; Construction Activities. No rubbish or debris of any kind shall be permitted to accumulate upon or adjacent to any Lot or Parcel so as to create a nuisance or render any such property or activity thereon unsanitary, unsightly or offensive. Each Lot and Parcel shall be landscaped and

maintained in a manner which will minimize the possibility of dust being transmitted into the air and over adjacent properties. Although normal construction activities shall not be considered a nuisance or otherwise prohibited, Lots and Parcels must be kept in a neat and tidy condition during construction periods. No noxious or offensive activity shall be carried on or permitted on any Lot or Parcel, nor shall anything be done thereon which may be, or may become, an annoyance or nuisance to Persons or property in the vicinity of such Lot or Parcel, or which shall interfere with the quiet enjoyment of each of the Owners and Occupants.

5.2.7 Diseases and Insects. No Owner or Occupant shall permit any thing or condition to exist upon any Lot or Parcel which shall induce, breed or harbor infectious plant or animal diseases or noxious insects.

5.2.8 Antennas and Dishes; Solar Devices. No television, radio, or other electronic towers, aerials, antennae, satellite dishes or device of any type for the reception or transmission of radio or television broadcasts or other means of communication shall hereafter be erected, constructed, placed or permitted to remain on any Lot or upon any Improvements thereon, except that this prohibition shall not apply to Declarant's rights reserved pursuant to this Declaration, nor to those antennae specifically covered by 47 CFR Part 1, Subpart S, Section 1.4000 (or any successor provision) promulgated under the Telecommunications Act of 1996, as amended from time to time.

The Association shall be empowered to adopt rules governing the types of antennae that are permissible hereunder, and to establish reasonable, non-discriminatory restrictions relating to location and safety of antennae structures.

To the extent that reception of an acceptable signal would not be impaired, an antenna permissible pursuant to rules of the Association may only be installed in a side or rear yard location, not Visible From Neighboring Property, or integrated with the Residence and surrounding landscaping to prevent or limit such visibility. Antennae shall be installed in compliance with all applicable laws and regulations.

No solar heating or cooling equipment or other visible solar device may be installed or erected without approval of the Design Review Committee, which shall give due regard to state law restricting the limitation of such devices.

5.2.9 Mineral Exploration. No Lot or Parcel shall be used in any manner to explore for, quarry, mine, remove or transport any water, oil or other hydrocarbons, minerals, gravel, gas, earth or any earth substance of any kind, except in each case as Declarant shall specifically approve.

5.2.10 Clothes Drying Facilities. No outside clotheslines or other facilities for drying or airing clothes shall be placed on any Lot or Parcel without the prior written consent of the Design Review Committee unless they are not Visible from Neighboring Property.

5.2.11 Party Walls. Except as hereinafter provided, the rights and duties of Owners of contiguous Lots or Parcels which have shared walls or fences ("Party Walls") shall be as follows:

(a) each Owner shall have the right to use the Party Wall, provided that such use does not interfere with the other Owner's use and enjoyment thereof;

(b) if a Party Wall is damaged or destroyed through the willful or negligent act of an Owner or the Owner's Occupants, agents, guests or family, the Owner or Occupant as the case may be, shall be obligated to rebuild and repair the Party Wall at the Owner's sole expense. Any dispute over an Owner's liability shall be resolved as provided in Subsection 5.2.11 (d) below;

(c) in the event any Party Wall is damaged or destroyed other than by the willful or negligent act of an adjoining Owner or the Owner's Occupants, agents, guests or family, or deteriorates from ordinary wear and tear, it shall be the joint obligation of all Owners whose Lots or Parcels adjoin the damaged or destroyed portion of such Party Wall to immediately rebuild and repair such Party Wall, such expense to be ratably divided among such Owners on the basis of the amount of frontage of their respective Lots or Parcels on the damaged or destroyed Party Wall;

(d) in the event of a dispute between Owners with respect to a Party Wall or the sharing of the cost thereof, such Owners shall submit the dispute to the Design Review Committee; whose decision shall be binding unless appealed to the Board, in which event the Board's decision shall be binding and final.

(e) notwithstanding the foregoing and, unless otherwise expressly agreed in writing by the Association, in the case of walls or fences: (a) between Common Areas and Lots or Parcels; or, (b) situated on Common Areas within or adjacent to a Lot or Parcel, the Owners and Occupants of such Lots or Parcels shall be responsible, at their expense, for all maintenance, repair, painting and replacement thereof. Further, unless otherwise approved in writing by the Board, any wall situated generally between a Lot or Parcel and Common Areas shall be situated entirely upon such Lot or Parcel, and not upon the Common Areas, immediately adjacent to the boundary line between the Lot or Parcel and the Common Areas; and

(f) this Section 5.2.11 does not and is not intended to control or relate to Party Walls between Residential Condominium Developments or Condominium Units, or between non-residential condominium units, if any.

5.2.12 Overhead Encroachments. No tree, shrub or planting of any kind shall be allowed to overhang or encroach upon any public right-of-way, bicycle path or any other pedestrian way from ground level to a height of eight (8) feet, without the prior written approval of the Design Review Committee. The Association shall have the right to trim any offending tree, shrub or planting.

5.2.13 Trucks, Trailers, Campers, Boats and Motor Vehicles. No motor vehicle, motor home, mobile home, trailer, camper shell, detached camper, boat, boat

trailer, snow mobile, jet ski or other similar equipment or vehicle may be parked, maintained, constructed, reconstructed, repaired or stored on any Lot or Parcel or on any street so as to be Visible From Neighboring Property (including but not limited to any Common Areas, Limited Common Areas or street). The foregoing limitation on parking shall not apply to:

(a) automobiles, trucks or vans, or mini-motor homes not exceeding seven (7) feet in height from ground level and twenty-two (22) feet in length, so long as such automobiles, trucks or vans or mini-motor homes (i) are parked as provided in Section 5.3.9 (to the extent applicable, i.e., not a Non-Residential Parcel) and (ii) are used on a regular and recurring basis for basic transportation. The Board or the Design Review Committee shall have the authority, however, to adopt and enforce regulations regarding parking of such vehicles on a Lot or Parcel (including, but not limited to, regulations requiring the screening of delivery trucks and vans, or other business vehicles) if, in the sole discretion of the Board or the Design Review Committee, such regulations are necessary to prevent such vehicles from being or becoming an eyesore or nuisance to the Owners or Occupants of adjacent property; or

(b) temporary facilities maintained during, and used exclusively in connection with, construction activities, provided, however, that such activities are approved in advance and in writing by the Design Review Committee.

Notwithstanding subsection 5.2.13 (a) above, no automobile, motorcycle, motorbike or other motor vehicle shall be constructed, repaired or, if inoperable, stored upon any Lot, Parcel or street so as to be Visible From Neighboring Property.

5.2.14 Health, Safety and Welfare. In the event uses of, activities on, or facilities upon or within a Parcel or Lot are deemed by the Board to be a nuisance or to adversely affect the health, safety or welfare of Owners or Occupants, the Board or the Design Review Committee may make rules restricting or regulating their presence.

5.2.15 Incidental Uses. Subject to the provisions of any applicable Tract Declaration, the Board may approve, regulate and restrict incidental uses of property within a Land Use Classification. By way of example and not of limitation, the Board may permit: private roadways; tennis and/or swimming clubs intended primarily for the benefit of all or certain Owners or Occupants; tennis courts; swimming pools; and other recreational facilities.

5.2.16 Window Coverings. No window covering, awning, rolling shutter or reflective covering may be placed, or permitted to remain, on or adjacent to any window of any building, structure or other Improvement without the prior written approval of the Design Review Committee.

5.2.17 Parcel Coverage. The percentage of each Lot or Parcel which may be covered by buildings within a Residential Land Use Classification (as well as the location of such buildings and other Improvements on each Lot or Parcel) shall be subject to the review and approval of the Design Review Committee, as part of the Design Review Committee's review of plans for proposed Improvements on such Lot or

Parcel pursuant to this Declaration, but shall in no event violate Town ordinances and regulations in effect from time to time or impose onerous conditions on any Owner thereby frustrating the development of an allowed use.

5.2.18 Duty of Maintenance. Each Owner shall, at such Owner's sole cost and expense, keep such Owner's Lot or Parcel, including buildings, Improvements, private drives, easement areas and grounds thereon, in a well-maintained, clean, neat and attractive condition at all times and shall comply in all respects with all governmental health, fire and safety statutes, ordinances, regulations and requirements.

5.2.19 Utility Lines and Connections. All utility wires, lines, pipes, conduits, facilities, connections and installations, including, without limitation, electrical, telephone, cable television, water, gas and sanitary sewer, shall be installed and maintained underground or concealed in, under, or on structures approved in writing in advance by the Design Review Committee, except that Declarant, in its discretion, may install or cause to be installed certain overhead utility lines and facilities if made reasonably necessary due to existing overhead facilities. All transformers shall be placed on or below the surface of the Lot or Parcel. Temporary aboveground power or telephone structures and water lines incident to construction activities shall be permitted but only with the prior written approval of the Design Review Committee.

5.2.20 On-Site Grading and Drainage. No water shall be drained or discharged from any Lot or Parcel, or building thereon, except in accordance with: (a) the master drainage study, if any, including any amendments thereto, approved by the appropriate governmental agency(ies) and the Design Review Committee (or other drainage study approved by such Committee, if no such master drainage study exists); and (b) grading plans approved by the Design Review Committee in accordance with Article 4 and applicable Town ordinances.

5.2.21 Building Exteriors. All colors of materials on the building exteriors and all exterior wall surfaces of any building shall be in accordance with plans and designs approved in accordance with Article 4. All materials used for the exterior of the buildings shall be high quality, long-life, low maintenance materials.

5.2.22 Restrictions on Further Subdivision, Property Restrictions, and Rezoning.

(a) All proposed site plans, subdivision plats, condominium declarations, easements or further covenants, conditions or restrictions, or applications for rezoning, variances or use permits for any Lot or Parcel, or any portion of a Lot or Parcel, other than those owned by Declarant, must be approved in writing by the Declarant. Declarant may relinquish its right of approval herein reserved, in which case the Board shall succeed to such right of approval. All submittals shall be reasonably reviewed and approved. The required approval shall be evidenced by the signature of the Declarant or of an authorized representative of the Board, as applicable. Except for property owned by the Declarant, after a subdivision plat has been approved, no Lot or Parcel, or any portion of a Lot or Parcel, shall be further subdivided and no portion less than all of the Lot or Parcel, or any easement or other interest therein, shall be conveyed or transferred by any Owner without the prior written approval of the

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Declarant or, if applicable the Board, unless such subdivision, subjection, conveyance or transfer:

(i) is made in connection with the development of one or more pads, lots or other subdivisions of a Parcel for commercial or industrial use; and,

(ii) is made in accordance with a site plan for such Lot or Parcel approved by the Board.

(b) No site plan, subdivision plat, condominium declaration, or further covenants, conditions, restrictions or easements, and no application for rezoning, variances or use permits, shall be made, filed, submitted to, or recorded with Town or any other governmental authority or agency unless it has first been approved as provided in this Section. No changes or modifications shall be made in any such documents, instruments or applications once they have been approved as provided in this Section (whether requested by the Town or otherwise) unless such changes or modifications have also been approved in advance, in writing, in accordance with this Section. This Section 5.2.22 does not apply to portions of the Covered Property owned by Declarant or to site plans, subdivision plats, condominium declarations, or further covenants, conditions, restrictions or easements, or applications for rezoning, variances or use permits, made, filed, submitted or recorded by Declarant and pertaining to portions of the Covered Property owned by Declarant.

5.2.23 Permissible Encroachments. Each Owner hereby acknowledges and agrees that Dwelling Units, or privately-owned patio walls, Improvements and fixtures, once built and completed, and which were initially constructed on the Covered Property in the course of original construction by a Developer Owner may from time to time encroach in minor degree upon the Common Areas or other Lots in the Covered Property. Such encroachments caused incidentally and which are minor in scope and degree, such as those caused by good faith survey error, and where removal of Improvements would cause gross economic waste, shall be deemed acceptable. Each Owner consents thereto and agrees that title to the land lying within such incidental encroachments is conveyed to the Owner of the Lot upon which the majority of the encroaching structure is built.

5.3 Covenants, Conditions, Restrictions and Easements Applicable to Single Family Residential Use, Residential Apartment Development Use, Residential Condominium Development Use, and Cluster Residential Use. The following covenants, conditions, restrictions and reservations of easements and rights shall apply to all Lots and Parcels included within the Land Use Classifications of Single Family Residential, Residential Apartment Development, Residential Condominium Development or Cluster Residential, and to the Owners and Occupants thereof:

5.3.1 Single Family Residential Use. No structure whatsoever, other than one private, Single Family residence, together with a private garage for not more than four (4) cars and one (1) guest residence, one gazebo, one tennis court, one swimming pool, and one storage facility shall be erected, placed or permitted on any Lot designated in a Tract Declaration as having Single Family Residential Use Land Use Classification.

5.3.2 Residential Apartment Development Use, Residential Condominium Development Use, and Cluster Residential Use. No structure whatsoever, other than one or more buildings each containing one or more private Dwelling Units, together with parking garages or structures, storage facilities, recreational facilities, including but not limited to tennis courts and swimming pools, and property management sales or rental offices incidental or appurtenant thereto, shall be erected, placed or permitted on any portion of the Covered Property designated in a Tract Declaration as having Land Use Classifications of Residential Apartment Development, Residential Condominium Development or Cluster Residential.

5.3.3 No Commercial Use. No gainful occupation, profession, trade, or other nonresidential use can be conducted on any Lot or Parcel, unless it is in accordance with this Section 5.3.3. The Declarant and a Developer Owner may maintain sales offices, construction offices and sales models on the Covered Property and an Owner or Occupant may conduct a "Home Occupation" as provided below. A "Home Occupation" on a Lot or Parcel is permitted so long as:

(a) the existence or operation of the Home Occupation is not apparent from outside of the Dwelling Unit and no sound or smell from the outside of the Dwelling Unit indicating the conduct of business is detectable;

(b) the business activity conforms to all zoning requirements for the Lot and the Owner has obtained the requisite permission and licenses from the Town and any other governmental authority having jurisdiction over the Lot;

(c) the existence or operation of the business does not increase that Lot's use of the Common Area over that which is standard for a single family residence;

(d) the existence or operation of the business does not require customers or delivery trucks which visit the Lot;

(e) the business activity does not alter the character of the neighborhood as a single family residential community;

(f) no employees regularly arrive at the Lot or Parcel to work for the Owner;

(g) the Home Occupation is consistent with the residential character of the neighborhood; and

(h) the business activity does not constitute a nuisance or become an annoyance to the neighborhood, or constitute a hazardous or offensive use, or cause the Owner of the Lot to violate any other provision of the Declaration, or threaten the security or safety of other residents in the subdivision, as determined in the sole discretion of the Board.

If the Board determines that the Home Occupation violates these provisions, then the Board has the authority to require that the Home Occupation cease immediately.

Notwithstanding any provision of this Declaration, Declarant is not prohibited from erecting or maintaining on the Covered Property wireless antennas and devices for the transmission or reception of data, communication, sound, video or other signals, whether or not such facilities serve more than just the Covered Property, or may be considered "hub" facilities under the Telecommunications Act of 1996, and any, amendments, or under any regulations or rulings of the Federal Trade Commission. Such activities do not constitute prohibited activity. The facilities governed by this paragraph are limited to antennas which are either reasonably hidden from sight within other structures, or which are no more than one meter in diameter, and which have appurtenant facilities no more than seven feet in height and which are reasonably screened from view.

5.3.4 Leasing. The entire (but not less than all) of a Dwelling Unit or Apartment Unit may be leased to a Single Family Tenant from time to time by the Owner, subject to the provisions of this Declaration, any applicable Tract Declaration and the Association Rules. All leases must be in writing, must provide that the Tenant agrees to abide by the Governing Documents and must state that if the Tenant is in violation of the Governing Documents, the Association has the right to require that the Tenant vacate the Lot. The Board may promulgate reasonable Rules regarding leases and Tenants and may require that the Owners use an addendum prepared by the Association as part of any lease to ensure that the Tenant understands and agrees to abide by the Governing Documents.

5.3.5 Animals. No animal, livestock, poultry or fowl of any kind other than a reasonable number of generally recognized house pets, shall be maintained on or in any Lot or Parcel and then only if they are kept or raised thereon solely as domestic pets and not for commercial purposes. No house pets shall be permitted to make an unreasonable amount of noise or create a nuisance. No structure for the care, housing or confinement of any permitted pet shall be Visible From Neighboring Property. Notwithstanding the foregoing, no permitted pets may be kept on or in any Lot or Parcel which result in an annoyance to other Owners or Occupants in the vicinity. All permitted pets shall be leashed when not on a Lot owned by the pet's owner or on which the pet's owner is a Tenant, guest or invitee. Persons walking pets shall carry a "pooper scooper" (a hand held shovel or other instrument designed for removing animal excrement from the ground) with them at all times and shall remove the pet's excrement from the Covered Property. The Board has the right to adopt additional Rules pertaining to pets, including Rules pertaining to the rights of the Association with respect to pets which become a nuisance.

5.3.6 Garbage. No garbage or trash shall be allowed, stored or placed on a Lot or Parcel except in sanitary, covered containers. In no event shall such containers be Visible From Neighboring Property, except for a reasonable time immediately prior to and after collection. All trash and garbage shall be regularly removed from each Lot and Parcel and shall not be allowed to accumulate thereon. The Board may also determine to require that the Association or individual Owners shall employ one or more of a limited number of waste management or pick-up companies to retrieve waste and refuse from the Covered Property or portions thereof. The Board may establish regulations as to the times and duration that waste containers may be visible from

Neighboring Property for pick-up, and may determine and regulate the type and appearance of waste containers.

5.3.7 Machinery and Equipment. No machinery or equipment of any kind shall be placed, operated, stored or maintained upon any Lot or Parcel, except:

(a) during the period of construction, such machinery or equipment as is usual and customary in connection with the use, maintenance or construction of a building, appurtenant structures or Improvements thereon; or

(b) that which Declarant or the Association may require for the development, operation and maintenance of the Covered Property or other portions of the Covered Property.

5.3.8 Signs. No signs of any nature shall be placed on the Common Areas except with respect to Association or Common Areas matters as approved by the Board. No signs of any nature shall be placed on any Lot or Parcel, except:

(a) signs required by legal proceedings;

(b) a maximum of two (2) identification signs for Dwelling Units, each with a maximum face area of seventy-two (72) square inches or less;

(c) "for sale" and "for lease" signs, and subdivision, condominium and apartment identification signs, the nature, number, location, content and design of which shall comply with the Design Guidelines; and

(d) such other signs as the Design Review Committee shall approve.

The foregoing restrictions shall be subject to such limitations and privileges as are established at law, including for the placement of political signs and signs pertaining to candidates for political office or to other such protected matters.

5.3.9 Parking. It is the intent of Declarant to eliminate on-street parking as much as possible within the Covered Property, irrespective of whether the streets have been dedicated to any public body. No vehicle may be parked on any street or roadway shown on any map of dedication, or similar instrument, recorded by Declarant unless such instrument expressly provides for on-street parking or the Design Guidelines permit on-street parking.

Vehicles must be kept in garages to the extent that the vehicle fits within the garage, in other designated parking areas or as otherwise required in a Tract Declaration. No Owner may convert a garage into a living area without approval of the Design Review Committee, which has the right to deny such approval in its sole discretion, nor may a garage be used as a storage area if it precludes that Owner from parking vehicles therein. No garage doors can remain open except for temporary purposes such as ingress and egress. The Association has the right to adopt additional parking restrictions including establishing fines and penalties for violations. The

Association may also delegate its authority to enforce parking restrictions to the appropriate Subsidiary Association.

5.3.10 Commercial Vehicles. No vehicle is allowed to park on a Lot or a Parcel if the exterior of the vehicle has any markings on it which relate to a commercial enterprise if visible by a Person out side of the vehicle (and the vehicle is not kept in an approved enclosed garage), except that signage that is solely on the exterior driver's or passenger's door is permitted if the vehicle is used by the Owner for regular transportation to commute to work. No vehicle can park on a Lot or Parcel, even if the vehicle otherwise qualifies under Sections 5.2.13 (a) or 5.2.13 (b), if that vehicle is used for a commercial enterprise or activity and such vehicle has ladders, work beds, lights and/or other commercial items attached to or hanging from the vehicle which are visible from the exterior of the vehicle (and the vehicle is not kept in an approved enclosed garage). The foregoing restrictions do not apply to vehicles parked within an enclosed structure approved by the Design Review Committee, nor to the commercial vehicles driven by contractors, Developer Owners and others working on the Covered Property.

5.3.11 Model Homes, etc. Nothing contained herein or in any applicable Tract Declaration will prohibit Persons engaged in the construction, marketing, rental or management of Dwelling Units within the Covered Property from constructing and maintaining model homes, model apartments, sales offices, apartment rental offices, property management offices and parking areas so long as the models are open only during reasonable hours and otherwise are in compliance with the provisions of this Declaration and local ordinances of the Town. Except as otherwise approved in writing by the Board:

(a) all model homes and sales offices can no longer be used as such when the Owner (or the lessee as the case may be) is not actively engaged in the construction or sale of Dwelling Units within the Covered Property (this sentence does not apply to model apartments, apartment rental offices or property management offices); and

(b) no model home, model apartment, sales office, apartment rental office or property management office can be used for the sale or rental of residences not located within the Covered Property.

5.3.12 Savings Clause. The provisions of this Declaration are to be construed to be consistent with law, and if any provision violates the law, then the applicable law governs. Without limitation, no provision will be construed to effectively prohibit the placement of solar energy devices or antennae on Lots, so long as the placement conforms to all requirements under the law and all Design Review Committee Guidelines which are not in conflict with the law, nor does any provision of this Declaration prohibit the placement of the American Flag in accordance with the Federal Flag Code or the parking of public service vehicles as permitted by law and which are in accordance with the Design Guidelines and rules and regulations of the Association not in conflict with such laws.

5.4 Covenants, Conditions and Restrictions Applicable to Commercial Use. Should any portion of the Covered Property be permitted by Declarant to be used for a

nonresidential use, Declarant may record Additional Covenants as a part of a Tract Declaration therefor, and may establish in such Tract Declaration special provisions for voting rights, assessment obligations, and other pertinent restrictions under the purview of the Association.

5.5 Variances. The Board may, at its sole discretion, grant variances from the restrictions set forth in Article 5 hereof or in any Tract Declaration if the Board determines that:

5.5.1 either (a) a particular restriction would create a substantial hardship or burden on an Owner or Occupant and that such hardship is not attributable to the Owner's or Occupant's acts; or (b) a change of circumstances has rendered the particular restriction obsolete; and

5.5.2 the activity permitted under the requested variance will not have a substantially adverse effect on other Owners and Occupants. The request for a variance must be made in writing and be accompanied by adequate supporting documentation. The Board shall approve or disapprove the request, in writing, as promptly as possible under the particular circumstances. All decisions of the Board shall be final and non-appealable.

5.6 Declarant's Exemption. Nothing contained in this Declaration shall be construed to prevent the construction, installation or maintenance by Declarant or a Declarant Affiliate or their agents during the period of development and construction on the Covered Property of improvements, landscaping or signs deemed necessary or convenient by Declarant or a Declarant Affiliate, in its sole discretion, to the development or sale of property within the Covered Property. Declarant may assign, in whole or in part, its rights and privileges under this Section, and Declarant may grant, in its sole discretion, any similar rights and privileges to any Developer Owner.

ARTICLE 6 ORGANIZATION OF ASSOCIATION

6.1 Formation of Association. The Association shall be a nonprofit Arizona corporation charged with the duties and vested with the powers prescribed by law and set forth in the Articles, the Bylaws, and this Declaration. Neither the Articles nor the Bylaws shall be amended or interpreted so as to be inconsistent with this Declaration.

6.2 Board of Directors and Officers. The affairs of the Association shall be conducted by the Board and such officers as the Board may elect or appoint in accordance with the Articles and the Bylaws. During the pendency of the Class B Membership, the Board shall consist of at least three (3) directors who shall be Members or individuals designated by a corporate, partnership or other non-individual Member, and a majority of the directors may be appointed by the Declarant during the pendency of the Class B Membership. Commencing with the first annual meeting of the Members when there is no longer a Class B Membership, the Board shall consist of, and the voting Members shall elect, not more than seven (7) directors, but never an even number, all of whom must be Members, or an individual designated by a corporate, partnership or other non-individual Member.

The Board may appoint various committees at its sole and absolute discretion, including an advisory committee of Class A Members who may provide non-binding advice to the Board and assist with gradual transition from control by the Class B Members to the Class A Members.

6.3 Association Rules. By a majority vote of the Board, the Association may, from time to time and subject to the provisions of this Declaration, adopt, amend and repeal the Association Rules. The Association Rules may restrict and govern the use of the Common Areas, provided, however, that the Association Rules shall not discriminate among Owners and Occupants except to reflect their different rights and obligations as provided herein, and shall not be inconsistent with this Declaration, the Articles, or the Bylaws. The Association Rules shall be intended to enhance the preservation and development of the Covered Property, the Common Areas and the Limited Common Areas. Upon adoption, the Association Rules shall have the same force and effect as if they were set forth herein. A copy of the Association Rules as adopted, or amended, shall be available for inspection at the office of the Association.

6.4 Personal Liability. No Board member, officer, committee member, employee or representative of the Association, or the Association, shall be personally liable to any Owner, or to any other Person, including the Association, for any damage, loss, costs, fees (including reasonable attorneys' fees), or prejudice suffered or claimed on account of any of their acts, omissions, errors or negligence, provided, however, that the limitations set forth in this Section shall not apply to any Person who has failed to act in good faith or has engaged in willful or intentional misconduct.

6.5 Subsidiary Associations. In the event any homeowners or similar Subsidiary Association is formed by a Developer Owner of a Parcel or portion thereof, or group of lots, such Subsidiary Association's governing documents shall not be effective unless they have been approved in advance by the Board and they specify that such governing documents, such Parcel or portion thereof, or group of Lots, the Subsidiary Association, and the Subsidiary Association's members are subject and subordinate to this Declaration, the Design Guidelines, the Articles, the Bylaws and the Association Rules. The Board shall not disapprove any such governing documents unless, in the Board's sole discretion, either:

6.5.1 they are inconsistent or in conflict with this Declaration, the Articles, the Bylaws, the Association Rules, the Design Guidelines and any applicable Tract Declaration; or

6.5.2 they fail to contain the specification required by the preceding sentence.

Subsidiary Associations shall have the right to own, operate and maintain Limited Common Areas and shall not be required to dedicate same as Common Area hereunder. The Board may delegate to a Subsidiary Association the responsibility and duty of billing and collecting for some or all of the Assessments.

6.6 Mergers or Consolidations. The Association shall have the right, power and authority to participate in mergers or consolidations with any other nonprofit

corporation whose objectives, methods, and taxable status and format of operation are similar to those of the Association (a "Merger Candidate"). Merger or consolidation of the Association with a Merger Candidate must, in addition to other requirements at law, be approved in advance by Members holding at least two-thirds (2/3) of the votes in each class of Members of the Association, whether in Person or by proxy, at a meeting duly called for such purpose. The Association's properties, rights and obligations shall be transferred to and assumed by the surviving or consolidated corporation by operation of law, or, alternatively, the properties, rights and obligations of the Merger Candidate shall be transferred by operation of law to the Association as the surviving corporation. The surviving or consolidated corporation, at a minimum, shall have the same administrative responsibilities and enforcement rights established by this Declaration in regard to the Covered Property. In addition, for so long as there is a Class B Member and to the extent Declarant has theretofore sought the approval of an Agency in regard to the Association or any Subsidiary Association, any such merger or consolidation will be subject to the approval by such Agency if so required by the rules and regulations of the Agency.

ARTICLE 7 MEMBERSHIPS AND VOTING

7.1 Votes of Owners of Lots and Parcels. Every Owner of a Lot or Parcel (but not an Owner who owns solely Exempt Property) shall automatically be a Member of the Association and shall remain a Member for so long as such ownership continues. Each Owner shall have the following applicable number of votes in regard to votes of the Members of the Association:

In the case of Lots, one (1) vote for each Class A Member and three (3) votes for the Class B Member for each Lot owned;

In the case of a Single Family Residential Parcel which has not been divided into Lots by a Recorded subdivision plat or other Recorded instrument, six (6) votes for each Class A Member and eighteen (18) votes for the Class B Member for each Net Acre owned within such Parcel (in the case of fractional Net Acres, rounded to the nearest whole vote with each Member to have at least one whole vote).

In the case of a Residential Condominium Development Parcel for which a condominium declaration has not been Recorded, six (6) votes for each Class A Member and eighteen (18) votes for the Class B Member for each Net Acre owned within such Parcel (in the case of fractional Net Acres, rounded to the nearest whole vote with each Member to have at least one whole vote).

In the case of a an Apartment Parcel upon which construction has not yet been completed, six (6) votes for each Class A Member and eighteen (18) votes for the Class B Member for each Net Acre owned within such Parcel (in the case of fractional Net Acres, rounded to the nearest whole vote with each Member to have at least one whole vote); provided, however, that upon completion of construction upon an Apartment Parcel, the Class A owner thereof shall have the greater of six (6) votes for each Net Acre or one-half (1/2) of a vote for each Apartment Unit built upon the Parcel, with the

Class B Member to continue to have eighteen (18) votes for each Net Acre owned within the Parcel.

If a subdivision plat, condominium declaration or other instrument creating Lots is Recorded which covers all or part of a Parcel, then the votes attributable to the Lots shall be determined as set forth above. If a subdivision plat, condominium declaration or other instrument creating Lots for such Parcel is later Recorded showing a different number of Lots, the number of votes shall be adjusted to reflect the actual number of Lots as set forth in the Recorded subdivision plat, condominium declaration or other instrument creating Lots. All votes attributed to an unsubdivided Parcel as a "Parcel" shall cease and be made applicable to Lots when all of the area is platted or otherwise divided into Lots.

The number of votes allocable to a Non-Residential Parcel, if any, within the Covered Property shall be established in a Tract Declaration for such Parcel, but in no event shall such number exceed six (6) votes per Net Acre for a Class A Member, nor eighteen (18) votes per Net Acre for a Class B Member.

7.2 Membership is Appurtenant to Ownership. Each Owner's Membership in the Association shall be appurtenant to and may not be separated from ownership of the Lot or Parcel to which the Membership is attributable. There shall be only the Memberships for each Lot and Parcel as are described herein. Joint ownership or ownership of undivided interests in any property as to which a Membership is established pursuant hereto shall not increase the number of Memberships or votes attributable to the Lot or Parcel.

7.3 Declarant. Declarant shall be a member of the Association for so long as it holds a Class A or Class B Membership.

7.4 Voting Classes. The Association shall have two classes of voting Members:

7.4.1 Class A. Class A Members shall be all Owners except Declarant, until the conversion of Declarant's Class B Membership to Class A Membership as provided below. Subject to the authority of the Board to suspend an Owner's voting rights in accordance with the provisions hereof, a Class A Member shall have the number of votes provided in Section 7.1. Notwithstanding the foregoing, a Class A Member shall not be entitled to vote with respect to any Lots or Parcels in regard to which the Owner is paying only a Reduced Rate of Assessments pursuant to Section 8.3.1 unless otherwise determined in writing by Declarant in its sole discretion on a case by case basis, and Declarant's determination in such regard shall be final and conclusive. In order to effectively pursue the development of the Covered Property as contemplated in the Master Development Plan, and solely for the purposes of calculating voting rights of the Declarant pursuant to this Article, Declarant shall at all times during the period of the Class B Membership be deemed to possess, in addition to its votes by reason of its ownership of Lots and Parcels, those additional three to one weighted votes determined by assuming that Declarant is the Owner of those Lots and Parcels owned by a Developer Owner paying a Reduced Rate of Assessments pursuant to Section 8.3.1 below (and not determined by Declarant to have voting rights);

provided, however, that upon expiration of the Class B Membership, Declarant shall be deemed to have relinquished its votes with respect to Lots or Parcels owned by Class A Members paying a Reduced Rate pursuant to Section 8.3.1 , in which case said Class A Members shall have the votes Class A Members would otherwise have with respect to such Lots or Parcels.

7.4.2 Class B. The Class B Member(s) shall be Declarant and any Declarant Affiliate owning any portion of the Covered Property. The Class B Member(s) shall have the number of votes as provided in Section 7.1 of this Declaration for all property owned in the Covered Property identified herein or in a Tract Declaration. The Class B Membership shall terminate and be converted to a Class A Membership upon the happening of the first of the following events:

(a) subject to the provisions of Section 7.4.1 above, the date which is 120 days after the date upon which the total votes of the Class A Members entitled to vote equals the total votes of the Class B Member(s) (including the three to one weighted votes Declarant is entitled to cast as a result of Developer Owners paying Assessments at the Reduced Rate, as provided herein);

(b) the date which is ten (10) years after the date this Declaration is recorded; or

(c) the date on which the Class B Member(s) relinquishes its Class B Membership by notifying the Class A Members in writing.

The Class B Membership shall revive if, once the Class B previously expired, subsequent annexations or other events should cause the votes of the Class B Member to exceed those of the Class A Members.

Declarant shall have the right to assign its rights and privileges as the Declarant and as the Class B Member, which assignment may be in whole or in part. Such assignment may include the special voting provisions set forth herein.

7.5 Right to Vote. No change in the ownership of a Lot or Parcel shall be effective for voting purposes until the Board receives written notice of such change together with satisfactory evidence thereof, for example, the Recorded deed showing the name of the Owner of such Lot or Parcel. The vote for each Member must be cast as a single unit. Fractional votes shall not be allowed, except as provided in Section 7.1 relating to apartments. In the event that a Lot or Parcel is owned by more than one Person and such Owners are unable to agree as to how their vote or votes shall be cast, they shall not be entitled to vote on the matter in question. If any Owner casts a vote or votes representing a certain Lot or Parcel, the Owner will thereafter be conclusively presumed to be acting with the authority and consent of all other Owners of such Lot or Parcel unless objection thereto is made to the Board, in writing, at or prior to the time the vote or votes are cast. In the event more than one (1) Person casts or attempts to cast a vote for a particular Lot or Parcel all such votes shall be deemed void.

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7.6 Members' Rights. Each Member shall have the rights, duties and obligations set forth in this Declaration, the Articles, the Bylaws, the Association Rules, and the Design Guidelines.

7.7 Transfer of Membership. The rights, duties and obligations of a Class A Member cannot and shall not be assigned, transferred, pledged, conveyed or alienated in any way except upon transfer of ownership of such Class A Member's Lot or Parcel, and then only to the transferee thereof. Such transfer may be effected by deed, intestate succession, testamentary disposition, foreclosure, or other legal process authorized under Arizona law. Any attempt to make a nonapproved form of transfer shall be void. Any transfer of ownership in a Lot or Parcel shall operate to transfer the Membership appurtenant to ownership to the new Owner.

ARTICLE 8 ASSESSMENTS AND CREATION OF LIEN

8.1 Creation of Assessment Lien; Personal Obligation of Lot or Parcel Owner. Each Owner, other than Declarant, by acceptance of a deed therefor (whether or not it should be so expressed in any such deed or other instrument) is deemed to covenant and agree, to pay to the Association the Assessments and Special Use Fees when due. The amount and time for payment of the Special Use Fees and the Assessments shall be determined by the Board pursuant to this Declaration and the Articles and Bylaws. In determining the amount of the Special Use Fees and the Assessments, the Board may give such consideration as it determines appropriate to any surplus funds or other revenue balances held by the Association from prior years and the Board shall be entitled to establish such reasonable reserves for the Association as it deems appropriate. Special Use Fees and the Assessments, together with interest thereon and the costs and reasonable attorneys' fees, if any, incurred by the Association in connection with the enforcement and collection thereof or in otherwise enforcing this Declaration, shall be a charge and continuing servitude and lien upon the Lot or Parcel against which such Special Use Fees or Assessments are made and, in addition, shall be the personal obligation of the Owner of such Lot or Parcel at the time when such Special Use Fees or Assessments become due and payable.

8.2 Annual Assessments. The Association by and through the Board shall determine and levy the Annual Assessments for the purposes set forth hereinbelow. The Annual Assessments levied by the Association shall be used to promote the recreation, health and welfare of the Owners and Occupants, to enhance the quality of life within the Covered Property, to preserve and enhance the value of the Covered Property, to pay the costs of administration of the Association and the maintenance of the Common Areas, to establish reasonable reserves, and to otherwise further the interests of the Association as the Board deems appropriate. Subject to the limitations hereof, the Board may, during an Assessment Period, revise the amount of the Annual Assessment in order to meet expenses which exceed the amounts previously budgeted by the Association and collect such increased Annual Assessment in accordance with the provisions hereof.

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8.3 Rate of Assessment. The amount of the Annual Assessments, Maintenance Assessments and Special Assessments shall be established by the Board, in its sole discretion.

In establishing its budget and creating its plan for Assessments each year, the Board shall first establish an Annual Assessment per Lot payable for each Lot (the "Base Assessment"). In the case of a Single Family Residential Parcel or Cluster Residential Use Parcel that has not been subdivided into Lots, the Annual Assessment shall be three (3) times the Base Assessment for each Net Acre in the Parcel.

In the case of a Residential Apartment Development Use Parcel upon which construction has not been completed, or a Residential Condominium Development Use Parcel for which a condominium declaration has not been Recorded, the Annual Assessment shall be six (6) times the Base Assessment for each Net Acre in the Parcel. Provided, however, that upon completion of construction upon an Apartment Parcel, the Class A owner thereof shall pay the greater of six (6) times the Base Assessment for each Net Acre or one-half (1/2) of the Base Assessment for each Apartment Unit built upon the Parcel.

In the case of a Non-Residential Parcel, if any, the Annual Assessment shall be established in a Tract Declaration for such parcel, but the Annual Assessment for a Non-Developer Owner of such land, shall not be less than six (6) times the Base Assessment for each Net Acre within the Non-Residential Parcel.

8.3.1 Obligation of Developer Owner. After the Board has determined the Annual Assessment due from the Owners of Lots, the Board will determine the amount due from the Developer Owners. The Developer Owner of a Lot or Parcel, including a Non-Residential Parcel, is entitled to pay a reduced rate of assessment ("Reduced Rate"). The Reduced Rate may not be less than 25% nor greater than 50% of the Annual or Special Assessments for each Lot or Parcel owned. The Reduced Rate payable by the Developer Owner will be determined each year by the Board based on the Association's operating budget for the next fiscal year.

The right to pay a Reduced Rate will continue until the earlier of 24 months from the date of the initial conveyance by Declarant of the Lot or Parcel (or the Parcel from which such Lot was established) to the first Developer Owner thereof, or

(a) in the case of a Single Family Residential Use Lot or Cluster Residential Use Lot, the date of the initial conveyance of the Lot with a completed Dwelling Unit thereon to a Non-Developer Owner; and

(b) in the case of a Parcel designated for Residential Apartment Development Use, Residential Condominium Development Use, or Non-Residential Use, the date of completion of construction of improvements on the Parcel as determined by the Board in its sole discretion.

(c) In the case of a site plan approved by the Design Review Committee for a Parcel upon which it is contemplated that more than one building will be constructed, the Parcel will, for the purposes of this Section only, be deemed

subdivided into the number of sub-parcels equal to the number of approved buildings set forth on the approved site plan.

(d) If a Developer Owner ceases to qualify for the Reduced Rate during any Assessment Period, that Developer Owner will immediately notify the Board, in writing, of its change in status. If an Owner of a Lot or Parcel having the right to pay the Reduced Rate fails to notify the Board of the date the payment amount is to be increased, that Owner will still be liable for the full amount of the Assessment as of the date it was required to pay that full amount of the Assessment and such Owner's failure to notify the Board will not relieve the Owner of liability for the full amount of the Assessment.

(e) The Board, at any time, has the right to request that any Developer Owner being assessed at a Reduced Rate furnish the Association with evidence that such Developer Owner continues to be entitled to the Reduced Rate under this Section. If such Developer Owner fails to produce the requested evidence within thirty (30) days of the date of the Board's request, or if the evidence which is furnished is unsatisfactory in the Board's reasonable discretion, to demonstrate that Developer Owner's continued entitlement to the Reduced Rate, the Board may terminate the Reduced Rate as of the date reasonably deemed appropriate by the Board.

8.3.2 Obligation of Non-Developer Owner. A Non-Developer Owner (not including Declarant) is not entitled to the Reduced Rate set forth in the above Sections and a Developer Owner is only entitled to such reduced rates if it is a Developer Owner of the specific Lot or Parcel being assessed.

8.4 Special Assessments. In addition to the Annual Assessments, the Board may levy a special Assessment a) for the purpose of constructing improvements to Common Area; b) correcting an inadequacy in the Association's accounts; c) defraying, in whole or in part, the cost of any construction, reconstruction, repair or replacement of a capital improvement owed by the Association; or d) defraying other extraordinary expenses or paying other expenses the Board may deem appropriate. The Board shall specify the effective date of any Special Assessment and may provide that the Special Assessment is payable in installments. Special Assessments shall be approved at any annual or special meeting of the Members with the approval of two-thirds of the total votes of Owners voting in person or by proxy.

8.5 Working Capital Fund. To ensure that the Association shall have adequate funds to meet its expenses or to purchase necessary equipment and services, each purchaser of a Lot or Parcel upon which the construction of improvements is complete, as evidenced by a certificate of occupancy or similar instrument which allows the Lot or Parcel to be used as a residence or in trade or business, shall pay to the Association immediately upon becoming the Owner of a Lot or Parcel a sum equal to twenty-five percent (25%) of the then-current Annual Assessment applicable to such Lot or Parcel (the "Working Capital Fund Contribution"). A Working Capital Fund Contribution shall continue to be payable upon each subsequent sale of a Lot or Parcel. Funds paid to the Association pursuant to this Section may be used by the Association for payment of operating expenses or any other purpose permitted under this

Declaration and the Articles and Bylaws. Payments made pursuant to this Section shall be nonrefundable and shall not be considered as advance payment of any Assessments levied by the Association pursuant to this Declaration.

8.6 Maintenance Assessments. In addition to any Annual Assessment or Special Assessment, the Board has the authority to levy and collect Maintenance Assessments for costs and expenses arising out of any special characteristics or needs of a particular Lot or Parcel, or if the Owner of a Lot or Parcel contracts with the Association for the Association to provide particular maintenance services to such Owner's Lot or Parcel. Furthermore, if any common expense is caused by the misconduct of an Owner of a Lot or Parcel, his/her tenants, guests, invitees or licensees, including any misconduct leading to the imposition of any fine or penalty against such Owner, or expense by the Association to bring such Owner into compliance with the provisions hereof, the Association may assess that expense exclusively against that Owner and such Owner's Lot or Parcel, but in such events only after notice and an opportunity for a hearing, including as required by law. Maintenance Assessments may be enforced in the same manner as Annual Assessments.

8.7 Fines and Penalties. If any Owner, his or her family, or any licensee, invitee, tenant or lessee violates the Governing Documents, the Board after providing the Owner with notice of the violation and an opportunity for a hearing, may levy a fine upon the Owner and may suspend the violator's right to use the Common Area. The Board may impose a fine for each day a violation continues after the Board has provided the Owner with written notice of the violation. The Board may establish a procedure for conducting hearings and imposing penalties. Any fines imposed against the Owner which are not paid within 15 days of notice of the due date may be collected in a manner provided for by law. This Section shall be subject to such limitations as are imposed by A.R.S. § 33-1807.

8.8 Annual Assessment Period. Except as otherwise provided herein below, the Assessment Period shall be the calendar year. The Board may, in its sole discretion, from time to time, change the Assessment Period. The initial Assessment Period shall commence upon conveyance of the first Lot or Parcel from Declarant to a Developer Owner, and shall terminate on December 31 of the same year. The Annual Assessments shall be prorated for the initial Assessment Period.

If any installment permitted for the payment of Assessments is not paid when due, the Board may accelerate the entire Annual Assessment or other Assessment. Late fees and interest may be added to the delinquent amount of any Assessment and become a part thereof, and may continue to accrue interest thereon, all to the extent permitted by law. Delinquent payments shall, to the extent permitted by law, apply first to delinquent Assessments, including late fees and other sums due, and then to accrued interest and attorneys fees and other legal costs, including litigation related expenses and expert witness fees, if any.

8.9 Billing and Collection Procedures. The Board shall have the right to adopt procedures for the purpose of making, billing and collecting the Assessments and Special Use Fees, which procedures may include delegating to the applicable Subsidiary Association the authority and obligation of billing and collecting some or all of

the Assessments and Special Use Fees. The failure of the Association to send a bill to an Owner shall not relieve such Owner of the Owner's liability for an Assessment or Special Use Fee. No Assessment Lien shall be foreclosed or otherwise enforced until the Owner has been given not less than thirty (30) days written notice thereof prior to the commencement of such foreclosure or enforcement. The notice shall be addressed to the Owner at the address of the Owner on the records of the Association. It shall be the responsibility of the Owner to inform the Association in writing of a change of address. The Association shall be under no duty to refund any payments received by the Association even if the ownership of a Lot or Parcel changes during an Assessment Period. Any successor Owner shall be given credit for any non-refunded prepayments made by a prior Owner. In case the Owner of a Lot or Parcel having a right to pay a Reduced Rate as provided herein fails to notify the Board at such time as the payment amount should be increased, such Owner shall nonetheless be liable for the increased amount of the Assessment and such Owner's failure to notify the Board shall not relieve such Owner of the liability for such increased Assessment.

8.10 Collection Costs and Interest on Delinquent Amounts. Any Delinquent Amount shall have added thereto a late charge of the greater of fifteen dollars (\$15.00) or ten percent (10%) of the Delinquent Amount if such Delinquent Amount is not paid within thirty (30) days after notice thereof, addressed to the Owner at the address of the Owner on the records of the Association, is given. In addition, the Delinquent Amount shall bear interest from its due date until paid at a rate equal to the greater of twelve percent (12%) per annum, or the then prevailing interest rate on loans insured by FHA or VA. The Owner shall be liable for all costs, including but not limited to attorneys, fees and collection agency fees, which may be incurred by the Association in collecting any Delinquent Amount.

8.11 Statement of Payment. Upon receipt of a written request therefor from any Owner or Resident, the Board, within a reasonable time thereafter, shall issue to the requesting party a written statement stating that as of the date of that statement:

8.11.1 all Assessments and Special Use Fees (including collection fees, if any in regard thereto), have been paid with respect to such Owner's or Occupant's Lot or Parcel; or,

8.11.2 if such have not been paid, the amount then due and payable.

The Association may make a reasonable charge for the issuance of such statement. Any such statement shall be conclusive and binding with respect to any matter set forth therein.

8.12 Exempt Property. Exempt Property shall be exempt from Assessments and the Assessment Lien, and shall have no voting rights in the Association, provided, however, that should any Exempt Property cease to be Exempt Property for any reason, it shall thereupon be subject to Assessments (prorated as of the date it ceased to be Exempt Property) and the Assessment Lien, and shall have voting rights in the Association as otherwise determined in this Declaration. Notwithstanding the foregoing, any Owner of Exempt Property, except Government Property comprising a park, and except for Common Area of the Association and property of a utility company, shall

nevertheless remain subject to reasonable architectural review and approval by the Design Review Committee, and the owners thereof shall be required to submit plans and specifications for approval of improvements, structures and landscaping as required herein.

8.13 Declarant's Exemption. Anything in this Declaration to the contrary notwithstanding, the Declarant shall not be liable for and shall not be required to pay Assessments upon Lots or Parcels owned by Declarant, except that Declarant shall pay Assessments on Completed Lots owned by Declarant. For purposes of this Section, "Completed Lots" shall mean any Lot with a Dwelling Unit ready for occupancy as a home that is in the condition of any other Dwelling Unit sold to persons living in the Covered Property (e.g., carpet, kitchen countertops and cabinets, plumbing and lighting fixtures, etc., installed), but shall not include any Lots with improvements thereon used by Declarant as models or sales offices. Nor shall Declarant be liable for the payment of any Assessments for any Lot or Parcel that, having been previously sold to a purchaser, has been deeded back to the Declarant by foreclosure or deed in lieu of foreclosure, unless such Lot is a Completed Lot.

In consideration for Declarant's exemption from assessment, Declarant agrees that it shall pay, for any given Assessment Period in which Declarant has paid or contributed to the Association less than the full Annual Assessment for each Lot or Parcel owned, the actual shortfall or deficiency, if any, in necessary ordinary operating revenue to pay current ordinary expenses for the operation and maintenance of the Association and Common Areas, but only up to the full Annual Assessment for each such Lot or Parcel actually owned by Declarant¹. A shortfall or deficiency shall exist if current ordinary expenses of the Association are greater than the revenues of the Association from all sources for the Assessment Period in question; provided, however, that Declarant shall not be liable for any shortfall or deficiency created by any decrease in the amounts of the Annual Assessments from those charged during any prior year, nor for any shortfall or deficiency incurred after expiration of the Class B Membership. Declarant may at any time at its sole discretion elect to cease paying the shortfall or deficiency, if any, and to pay up to the full Annual Assessment for each Lot or Parcel owned by Declarant instead. Declarant's obligation to contribute toward a deficiency as provided herein is supported by a lien on Declarant's Lots and Parcels.

Should Declarant assign its rights to the exemption from Assessments as provided herein, whether such assignment be in whole or in part, then the assignee shall, in the case of any deficiency as described above (and meeting the conditions set forth above), be liable for its ratable share of same, up to the full amount of the Annual Assessment for each Lot or Parcel owned, and not more. In addition, such assignee's exemption, if any, shall expire with respect to any Lot or Parcel upon which construction of improvements has been completed.

In no event shall Declarant be required to contribute to any deficiency after the termination of the Class B Membership.

¹ Lots or Parcels deemed owned by Declarant for purposes of voting rights have no application to this provision.

8.14 Savings Clause. Notwithstanding the provisions of this Article, or any other provision of this Declaration, the extent of any lien of the Association shall be subject to such provisions as are established at law or in equity, including such limitations as are established and imposed by A.R.S. § 33-1807.

ARTICLE 9 ENFORCEMENT AND THE ASSESSMENT LIEN

9.1 Association Remedies to Enforce Assessments. If any Owner fails to pay any Assessments or Special Use Fees when due, the Association may (and each Owner hereby authorizes the Association to) enforce the payment thereof and the Assessment Lien by taking either or both of the following actions, concurrently or separately (and by exercising either remedy the Association does not prejudice or waive its right to exercise the other remedy):

9.1.1 Bring an action at law against the Owner to recover judgment against the Owner who is personally liable for the Assessments or Special Use Fees; and,

9.1.2 Foreclose the Assessment Lien against the appropriate Lot or Parcel in accordance with then prevailing Arizona law, and the Association may bid for and purchase the Lot or Parcel at any foreclosure sale.

This Section shall be subject to such limitations as are imposed by A.R.S. § 33-1807.

9.2 Subordination of Assessment Lien. The Assessment Lien shall have priority from the date of recording of the original declaration to which this instrument relates (February 18, 2000), and shall be superior to all charges, liens or encumbrances which hereafter are or may be imposed on any Lot or Parcel except as provided by law. Without limitation, the Assessment lien is junior to:

9.2.1 the lien of any First Mortgage encumbering the Lots and Parcels; and

9.2.2 the lien for taxes or other governmental assessments which are deemed superior hereto by applicable law.

Sale or transfer of any Lot or Parcel shall not affect the Assessment Lien provided, however, the sale or transfer of any Lot or Parcel pursuant to any First Mortgage foreclosure or any proceeding in lieu thereof, shall extinguish the Assessment Lien only as to payments which became due prior to such sale or transfer. No other sale or transfer shall relieve a Lot or Parcel, or the Owner thereof, for liability from any Assessment theretofore becoming due nor from the Assessment Lien arising in regard thereto. In addition, no Event of Foreclosure shall impair the Assessment Lien, except that a Person obtaining an interest in a Lot or Parcel through an Event of Foreclosure shall take title subject only to such Assessments as shall accrue subsequent to the date the Person acquires its interest.

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ARTICLE 10 USE OF ASSOCIATION FUNDS

10.1 Use of Association Funds. In addition to the powers enumerated in the Articles and Bylaws, the Association shall apply all Funds to the performance of the duties and obligations of the Association and the Board hereunder, or under the Articles and Bylaws, and toward such other ends and purposes as the Board may reasonably determine. The Funds may be used, among other things, to insure, acquire, construct, alter, maintain, provide and operate, in any manner whatsoever, any and all land, properties, improvements, services, projects, programs, studies and systems, within the Covered Property and the Common Areas, which may be necessary, desirable or beneficial to the interests of the Owners and the Occupants.

10.2 Borrowing Power. The Association may borrow money in such amounts, at such rates, upon such terms and security, and for such periods of time as the Board deems necessary or appropriate.

10.3 Association's Rights in Spending Funds from Year to Year. The Association is not obligated to spend in any year all Funds received by it during that year. The Board may carry forward as surplus any balances remaining, or in its sole discretion, considering the amount of such surplus, the amount in reserves and the annual operating budget for the next fiscal year, issue a refund or a credit to the Owners in proportion to the percentage of assessments paid. The Association is not obligated to reduce the amount of the Annual Assessment in the succeeding year if a surplus exists from a prior year.

ARTICLE 11 MAINTENANCE

11.1 Common Areas and Public Rights-of-Way

11.1.1 Areas of Association Responsibility. The Association, or its duly delegated representative, shall maintain and otherwise manage all Common Areas, provided, however, that the Association shall not be responsible for providing or maintaining the landscaping or structures on any Common Areas located on or within Lots or Parcels unless:

- (a) such landscaping or structures are intended for the general benefit of the Owners and Occupants; and,
- (b) the Association assumes in writing the responsibility for such maintenance and such instrument is Recorded.

Common Areas to be maintained by the Association may be identified on Recorded subdivision plats approved by Declarant, or in a Tract Declaration or in deeds from Declarant, but the failure to so identify such areas shall not affect the Association's rights or responsibilities with respect thereto. The Association may also in its discretion elect to maintain landscaping and similar improvements within public rights of way located within the Covered Property to the extent the Association

wishes to augment or enhance the degree of repair and maintenance provided by any governmental entity to such public rights of way.

11.1.2 Delegation of Responsibilities. In the event any Recorded subdivision plat, Tract Declaration, Recorded map of dedication, Recorded deed restriction or this Declaration permits the Association to determine whether Owners of certain Lots or Parcels shall be responsible for maintenance of certain Common Areas or public rights-of-way, the Board shall have the sole discretion to determine whether the Association or an individual Owner or group of Owners should be responsible for such maintenance, considering cost, uniformity of appearance, location and other relevant factors. The Board may also cause the Association to contract with others for the performance or such maintenance and other obligations of the Association and, in order to promote uniformity and harmony of appearance, the Board may also cause the Association to contract to provide maintenance services to Owners of Lots and Parcels having such responsibilities in exchange for the payment of such fees as the Association and the Owner may agree.

11.1.3 Standard of Care. The Association shall use a reasonably high standard of care in providing for the repair, management and maintenance of the Common Areas so that the Covered Property will reflect a high degree of pride of ownership. The Board shall be the sole judge as to the appropriate level of maintenance of all Common Areas.

11.1.4 Assumption of Conservation Easement Obligations/Special Conservation Area.

(a) Assumption of Obligations and Responsibility. The Association shall, among other things, be responsible for the maintenance and protection of all property governed by that certain Declaration of Conservation Easement (the "Conservation Easement") by and between Fidelity National Title Agency, Inc., as Trustee under Trust No. 60,057 (whose sole beneficiary is the Association) and the United States of America, by and through the U.S. Army Corps of Engineers (the "Corps"). The Conservation Easement was recorded Docket 12048 Page 4156, and re-recorded Docket 12227 at Page 2682, Pima County Records, and was executed pursuant to Section 404 Permit No. 1999-15883-RJD issued by the Corps, as said permit may be amended, supplemented or replaced from time to time (the "Permit"). The Conservation Easement shall be kept in the offices of the Association for inspection and review by all Owners and interested persons, and all terms and provisions thereof are deemed incorporated herein. All Owners are deemed to have notice of the terms thereof. The said Conservation Easement governs specific real property initially proposed to comprise approximately 180 acres of land (the "Special Conservation Area"). The Association does hereby assume and agree to be bound by all obligations and duties with respect to the Special Conservation Area (including duties of preservation, prevention of unlawful entry, degradation, etc.) and, without limitation, shall not convey any portion of the property governed by the said Conservation Easement unless in strict compliance the terms of such Conservation Easement. The foregoing assumption does not include any existing duty to construct initial improvements, nor any existing tort liability for acts or occurrences prior to the

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date of Recording hereof. The Corps shall have all rights of enforcement and remedies set forth in the Conservation Easement.

(b) Rights of the Corp. To accomplish the purposes of this Conservation Easement, the Corp shall have all rights set forth in the Permit, including the following rights:

(i) To preserve and protect the conservation values of the Special Conservation Area:

(ii) To enter upon the Special Conservation Area at reasonable times in order to monitor the Association's compliance with and to otherwise enforce the terms of the Conservation Easement and for scientific research and interpretive purposes by the Corp or its designees, provided that the Corp shall not unreasonably interfere with the Association's use and quiet enjoyment of the Special Conservation Area;

(iii) To prevent any activity an or use of the Special Conservation Area that is inconsistent with the purposes of the Conservation Easement and to require the restoration of such areas or features of the Special Conservation Area that may be damaged by any act, failure to act, or any use that is inconsistent with the purposes of this Conservation Easement;

(iv) All mineral, air and water rights necessary to protect and to sustain the biological resources of the Special Conservation Area; and

(v) All present and future development rights of the Special Conservation Area.

(c) Prohibited Uses of Special Conservation Area. Any activity on or use of the Special Conservation Area inconsistent with the purposes of the Conservation Easement is prohibited. Without limiting the generality of the foregoing, the following uses are expressly prohibited:

(i) Unseasonable watering, use or herbicides, rodenticides, or weed abatement activities, incompatible fire protection activities and any and all other uses which may adversely affect the purposes of the Conservation Easement;

(ii) Use of off-road vehicles;

(iii) Grazing;

(iv) Erecting of any building, billboard, sign;

(v) Depositing of soil, trash, ashes, garbage, wane, bin-solids or any other material;

(vi) Excavating, dredging or removing of loam, gravel, soil, rock, sand or other material;

(vii) Otherwise altering the general topography of the Special Conservation Area, including but not limited to building of roads and flood control work;

(viii) removing, destroying, or cutting of trees, shrubs or other vegetation, except as necessary or required by law for (1) fire breaks, (2) maintenance of existing foot trails, equestrian trails or roads, or (3) prevention or treatment of disease.

(ix) establishing any easement, for any purpose (without the written consent of the Corp), within the boundaries already in existence as of the date of recording hereof, provided that use of the Special Conservation Area for trails, including equestrian trails and for purposes set forth in the Permit shall be acceptable.

(x) or surface entry for exploration or extraction of minerals.

(d) Costs and Liabilities. The Association remains responsible for and shall bear all costs and liabilities of any kind related to the ownership, operation, upkeep, and maintenance of the Special Conservation Area.

(i) Taxes. The Association shall pay before delinquency all taxes, assessments, fees, and charges of whatever description levied on or assessed against the Special Conservation Area by competent authority (collectively "taxes"), including any taxes imposed upon, or incurred as a result of, this Conservation Easement, and shall furnish the Corp with satisfactory evidence of payment upon request.

(ii) Hold Harmless. The Association shall hold harmless, indemnify, and defend the Corp and their officers, employees, agents, contractors, and representatives (collectively "Indemnified Parties") from and against all liabilities, penalties, costs, losses, damages, expenses, causes of action, claims, demands, or judgments, including without limitation, reasonable attorneys fees, arising from or in any way connected with: (a) injury to or the death of any person, or physical damages to any property, resulting from any negligent or willful act or omission of the Association, its agents and employees occurring on or about the Special Conservation Area; and (b) the existence or administration of the Conservation Easement.

(e) Conflicts. In the event of any conflict between the provisions hereof and the Permit or the Conservation Easement, the provisions of the Permit or the Conservation Easement, as applicable, will control.

11.2 Assessment of Certain Maintenance Costs. In the event the need for maintenance or repair of areas maintained by the Association is caused through the willful or negligent act or omission of any Owner (or of any other person for whom such Owner is legally responsible under applicable state law), the cost of such maintenance or repair shall be added to and become a part of the Assessments to which such Owner and such Owner's Lot or Parcel is subject and shall be secured by the Assessment Lien. Any charges to be paid by an Owner in connection with a maintenance contract

entered into by the Association shall also become a part of such Assessments and be secured by the Assessment Lien.

11.3 Improper Maintenance and Use of Lots and Parcels. In the event any portion of any Lot, Parcel, or Apartment Unit is maintained so as to present a nuisance, or substantially detracts from or affects the appearance or quality of any neighboring Lot, Parcel or other area, or is used in a manner which violates this Declaration or any applicable Tract Declaration, or in the event the Owner of any Lot or Parcel fails to perform such Owner's obligations under this Declaration, any applicable Tract Declaration, the Association Rules, or the Design Guidelines, the Association, by Board resolution, may make a finding to such effect, specifying the particular condition(s) that exist, and thereafter give notice to the Owner of such Lot or Parcel that unless specified corrective action is taken within a specified time period the Association, at such Owner's cost, may take whatever action is appropriate to compel compliance including, without limitation, appropriate legal action. If at the expiration of the specified time period the requisite corrective action has not been taken by the Owner, the Association is hereby authorized and empowered, at its sole discretion, to cause corrective action to be taken or to commence appropriate legal action and the cost thereof, including court costs and attorneys' fees, shall be added to and become a part of the Assessments to which the offending Owner and the Owner's Lot or Parcel is subject and shall be secured by the Assessment Lien.

11.4 Excess Maintenance Costs. In the event any use of, or activity on, any Lot or Parcel causes the maintenance or repair costs incurred or to be incurred by the Association with respect to any portion of the Common Areas to be substantially greater than those costs which would typically be incurred for such portion of the Common Areas whether such use or activity is of a continuing nature or an isolated event, the Board may, by resolution, make a finding to such effect, of the amount of the excess costs incurred or expected to be incurred by the Association and of the method of determining such excess costs. Upon the adoption of such a resolution, the amount of such excess costs at any time or from time to time incurred by the Association for the reasons specified in the resolution shall be added to and become a part of the Assessments for which the Owner of any Lot or Parcel upon which such use or activity is conducted is liable and all of such Assessments shall be secured by the Assessment Lien on such Owner's Lot or Parcel.

11.5 Certain Maintenance Activities. Where the Association has undertaken, by virtue of its obligations hereunder or pursuant to any special contract executed by the Association, the responsibility to maintain, repair, replace, repave, resurface or operate private streets or private roadways or any open space, recreational or other common facilities or any guard gates, the Board, if in its discretion determines that such private streets or private roadways (or appurtenant equipment and facilities) or open space, recreational or other common facilities or guard gates, exclusively or disproportionately benefit the Owners of Lots within a particular subdivision of other Lots or Parcels, may assess all (or such appropriate portion as the Board shall determine in its discretion) of the cost of such maintenance, repair, replacement, repaving, resurfacing and operation solely against the Lots within such subdivision (and the respective Owners thereof) as additional Maintenance Assessments, which shall be assessed equally against each of the Lots within such subdivision and shall be secured by the lien for Assessments as

described herein. Such additional Maintenance Assessments may also include amounts to establish and fund reserves as the Board may deem reasonable and appropriate. One of the purposes of this Section is to establish a mechanism whereby various facilities intended and designed solely or primarily for use by the Owners of Lots within a particular subdivision may be owned and maintained by the Association at the sole and primary expense of such Owners rather than require formation of a Subsidiary Association to undertake such ownership and maintenance.

11.6 Savings Clause. Notwithstanding the provisions of this Article, or any other provision of this Declaration, the power of the Association to commence foreclosure or other proceedings shall be limited by such provisions as are established at law or in equity, including such limitations as are established and imposed by A.R.S. § 33-1807.

ARTICLE 12 RIGHTS AND POWERS OF ASSOCIATION

12.1 Rights, Powers and Duties of the Association. In addition to the rights and powers of the Association set forth in this Declaration, the Association shall have such rights and powers as are set forth in the Articles and Bylaws, together with such rights and powers and duties as may be reasonably necessary in order to effect all the objectives and purposes of the Association as set forth herein. A copy of the Articles and Bylaws shall be available for inspection at the office of the Association during reasonable business hours.

12.2 Rules and Regulations. In addition to the right to adopt, amend and repeal rules and regulations on the matters expressly mentioned elsewhere in this Declaration, the Association, acting through the Board, shall have the right to adopt, amend and repeal rules and regulations with respect to all other aspects of the Association's rights, activities and duties, provided such rules and regulations are not inconsistent with the provisions of this Declaration, the Articles, and the Bylaws. Upon adoption, the Association Rules shall be enforceable in the same manner as this Declaration and shall have the same force and effect as if they were set forth in and were a part of this Declaration.

12.3 Association's Rights of Enforcement. The Association, as the agent and representative of the Owners, and acting through its Board, has the right, but not the obligation, to enforce the provisions of the Governing Documents and any Additional Covenants that were executed pursuant or subject to the provisions of this Declaration and which indicate that they were intended to be enforced by the Association or by the Declarant. If the Association fails or refuses to enforce the provisions of this Declaration or the Additional Covenants after receipt of a written request to enforce from any Owner, then any Owner has the right and authority, but not the obligation, to enforce the provisions of this Declaration. No Owner has the right to require that the Association take action to enforce any provision of the Governing Documents.

12.4 Enforcement Methods and Means. The Association may enforce the provisions hereof at law or in equity, including, but not limited to:

12.4.1 Imposing reasonable monetary penalties after notice and an opportunity to be heard, which penalties shall be the obligation and liability of the offending Owner to pay, with each Owner being further liable for the acts of his or her guests, invitees and Tenants or residents.

12.4.2 Suspending an Owner's right to vote.

12.4.3 Suspending any services provided by the Association to an Owner or the Owner's property if the Owner is more than 15 days delinquent in paying any Assessment or other charge owed to the Association.

12.4.4 Exercising self-help or taking action to abate any violation of the provisions hereof.

12.4.5 Requiring an Owner at the Owner's expense to remove any offending condition, structure or Improvement on the Owner's property, and further requiring the said Owner to restore his or her property to the condition in which it previously existed, without such action being a trespass.

12.4.6 Without liability to the Association or to any Person, prohibiting any contractor, subcontractor, agent, employee or other invitee of an Owner who fails to comply with the terms and provisions of the Declaration from continuing to perform and further activities on the Covered Property.

12.4.7 Towing vehicles which are parked in violation of the provisions hereof.

12.4.8 Filing suit at law or in equity to enjoin a violation of the provisions hereof, or to recover fines or Assessments or such other relief as may be appropriate.

The Board may weigh financial and other factors, such as possible defenses, legal merit and other factors, in determining whether to pursue legal action, and the Board's discretion in such matters shall be final. The rights and remedies of the Association are cumulative, and the Association may pursue any or all remedies without waiver, and any failure by the Association to take legal action shall not limit or waive the right of any Owner to pursue proper action, nor the right of the Association to pursue action at a future time should it so desire.

12.5 Contracts with Others. Subject to the restrictions and limitations contained herein, the Articles, the Bylaws, and the laws of the State of Arizona, the Association may enter into contracts with others, including Declarant and Declarant Affiliates, and such contracts shall not be invalidated by the fact that one or more directors or officers of the Association are employed by or otherwise affiliated with Declarant or Declarant Affiliates, provided, however, that the fact of such interest shall be previously disclosed or made known to the other members of the Board acting upon such contract or transaction and, provided further, that the transaction or contract is fair and reasonable. Notwithstanding the foregoing, any contract entered into by the Association be fore a term not exceeding one year and must be terminable, without penalty, by the

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Association for cause at any time and without cause upon no more than thirty (30) days notice.

ARTICLE 13 RIGHTS OF FIRST MORTGAGEES

13.1 Notification to First Mortgagees. Upon receipt by the Association of a written request from an Eligible Insurer or Guarantor or Eligible Mortgage Holder informing the Association of its correct name and mailing address and identifying the Lot or Parcel, or portion thereof, to which the request relates, the Association shall provide such Eligible Mortgage Holder or Eligible Insurer or Guarantor with timely written notice of the following:

13.1.1 Any condemnation loss or any casualty loss that affects a material portion of the Common Areas;

13.1.2 Any default in the performance of any obligation to be performed pursuant to this Declaration, including without limitation any delinquency in the payment of Assessments or any other charges owed by an Owner whose Lot or Parcel, or portion thereof, is encumbered by a First Mortgage held, insured, or guaranteed by such Eligible Mortgage Holder or Eligible Insurer or Guarantor, if such default or delinquency is not cured within sixty (60) days;

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

13.1.4 Any proposed action that requires the consent of a specified percentage of Eligible Mortgage Holders as set forth in Section 13.2 of this Declaration.

13.2 Approval Required for Amendment to Declaration. In the event this Declaration has received formal written approval by the Federal National Mortgage Association, then after expiration of the Class B Membership, the approval of Eligible Mortgage Holders representing at least fifty-one percent (51%) of the votes in the Association that are allocated to Owners whose Lots or Parcels which are subject to a Tract Declaration restricting the Lots or Parcel to Single Family Residential Use as a Single Family Parcel, and whose Lots or Parcels are subject to First Mortgages held by Eligible Mortgage Holders shall be required to make amendments of a material nature to this Declaration which specifically impact such Single Family Residential properties. A substantial amendment to this Declaration for the purpose of materially revising terms governing and administering the following matters shall be considered material:

13.2.1 Voting rights;

13.2.2 Assessments, Assessment Liens, or subordination of Assessment Liens;

13.2.3 Reserves for maintenance, repair, and replacement of Common Areas;

13.2.4 Responsibility for maintenance and repairs;

13.2.5 Reallocation of interests in the Common Areas or Limited Common Areas or rights to their use;

13.2.6 Boundaries of any Lot or Parcel, other than minor or insubstantial changes to avoid hardship, encroachment, boundary disputes, or which are approved by the applicable governmental agency;

13.2.7 Convertibility of Lots or Parcels into Common Areas or vice versa, other than as provided herein;

13.2.8 Expansion or contraction of the Covered Property, or the addition, annexation, or withdrawal of property to or from the Covered Property, other than as contemplated hereby or in order to confirm such annexation or withdrawal;

13.2.9 Insurance or fidelity bonds;

13.2.10 Leasing of Lots or Parcels;

13.2.11 Imposition of any restrictions on an Owner's right to sell the Owner's Lot or Parcel;

13.2.12 A decision by the Association to establish self-management when professional management had been required previously by an Eligible Mortgage Holder;

13.2.13 Restoration or repair of any Common Areas (after hazard damage or partial condemnation) in a manner other than that specified in this Declaration;

13.2.14 Any action to terminate this Declaration after substantial destruction or condemnation occurs; or

13.2.15 Any provisions that expressly benefit First Mortgagees, Eligible Mortgage Holders, or Eligible Insurers or Guarantors.

Any actions to terminate this Declaration for reasons other than substantial destruction or condemnation of the Covered Property shall require the approval of Eligible Mortgage Holders representing at least sixty-seven percent (67%) of the votes in the Association that are allocated to Owners whose Lots or Parcels are subject to First Mortgages held by Eligible Mortgage Holders.

Any First Mortgagee who receives a written request to approve additions or amendments to this Declaration, the Articles, or the Bylaws and who does not submit a response to the requesting party within thirty (30) days after the request is made shall be deemed to have approved such request. As an example and without limiting the determination of materiality in any way, any addition or amendment to this Declaration, the Articles, or the Bylaws shall not be considered material if it is for the purpose of correcting technical errors or for clarification only.

13.3 Condemnation or Insurance Proceeds. No Owner, or any other party, shall have priority over any rights of any First Mortgagee pursuant to its mortgage or

deed of trust in the case of a distribution to such Owner of insurance proceeds or condemnation awards for losses to or a Taking of Common Areas.

13.4 Payment of Charges by First Mortgagees. First Mortgagees may jointly or singly pay taxes or other charges that are in default and that may or have become charges against any Common Areas, and may pay overdue premiums on hazard insurance policies or secure new hazard insurance coverage for Common Areas in the case of lapse of a policy. First Mortgagees making such payments are due immediate reimbursement from the Association.

13.5 Right of Inspection of Records. Any Owner, First Mortgagee, or Eligible Insurer or Guarantor shall be entitled to: (a) inspect current copies of this Declaration, the Articles, the Bylaws, the Design Guidelines, the Association Rules, and the books, records, and financial statements of the Association during normal business hours; and (b) receive, upon written request therefor, an audited financial statement of the Association for the immediately preceding fiscal year of the Association, free of charge to the requesting party.

ARTICLE 14 EMINENT DOMAIN INVOLVING THE COMMON AREA

14.1 Eminent Domain. The term "Taking" as used in this Section shall mean condemnation by eminent domain or sale under threat of condemnation. In the event of a threatened Taking of all or any portion of the Common Area, the Owners hereby appoint the Board and such persons as the Board may delegate to represent all of the Owners in connection with the Taking. The Board shall act, in its sole discretion, with respect to any awards made or to be made in connection with the Taking and shall be entitled to make a voluntary sale to the condemnor in lieu of engaging in a condemnation action. Any awards received on account of the Taking shall be paid to the Association. In the event of a total Taking, the Board may, in its sole discretion, retain any award in the general funds of the Association or distribute pro rata all or a portion thereof to the Owners, and all holders of liens and encumbrances, as their interest may appear of Record.

14.2 Representative of Owners. The Association is hereby irrevocably appointed and authorized by the Owners to adjust all claims arising under or relating to any Taking of Common Area. The Board has full and complete power to act for the Association in this regard and may, at its discretion, appoint an authorized representative or committee to negotiate on its behalf.

ARTICLE 15 INSURANCE

15.1 Association's Insurance Requirements. The Association shall purchase and maintain at all times the following types of insurance, but only to the extent reasonably available and reasonably priced, and any other insurance the Association deems appropriate:

15.1.1 Commercial General Liability and Property Insurance. Commercial general liability insurance covering bodily injury and property damage liability insurance covering all Common Area maintained by the Association, if any, and all other areas under the jurisdiction or control of the Association, excluding the Lots and parcels. Such insurance policy or policies shall contain, if available, a "severability of interest" clause or endorsement which shall preclude the insurer from denying the claim of an Owner because of negligent acts of the Association or of any other Owners.

The scope of coverage of such policy or policies must include all other coverage in the kinds and amounts commonly required by private institutional mortgage investors for projects similar in construction, location and use to the Properties. Coverage shall be for at least one million dollars (\$1,000,000.00) combined single limit.

Such coverage shall include, without limitation, legal liability of the insureds for property damage, bodily injuries, and deaths of persons in connection with the operation, maintenance, or use of the Common Area maintained by the Association; legal liability arising out of lawsuits related to employment contracts of the Association; and protection against liability for non-owned and hired automobiles; such coverage may also include, if applicable, garagekeeper's liability, liability for property of others, host liquor liability, water damage liability, contractual liability, workmen's compensation insurance for employees of the Association, and such other risks as shall customarily be covered with respect to projects similar in construction, location and use.

Such coverage shall also include standard directors and officers coverage in amounts determined reasonably necessary by the Board, insuring the members of the Board, the officers of the Association, and any property managers to the extent the Board shall so determine.

15.1.2 Insurance of Common Area. Fire and other hazard insurance covering improvements constructed on the Common Area. Such policy or policies shall consist, at a minimum, of a multi-peril type policy covering the subject improvements, providing, as a minimum, fire and extended coverage and all other coverage in the kinds and amounts commonly required by private institutional mortgage lenders in Tucson, Arizona.

Such policies of property insurance shall contain a "Replacement Cost Endorsement" providing that any claim shall be settled on a full replacement cost basis without deduction for depreciation, an "Inflation Guard Endorsement" and an "Agreed Amount Endorsement," if possible. The Association shall also purchase a "Demolition Endorsement", an "Increased Cost of Construction Endorsement", a "Contingent Liability from Operation of Building Laws Endorsement" or the equivalent, and coverage on personal property owned by the Association.

If the Common Area or any portion thereof is located within an area identified by the Federal Emergency Management Agency as having special flood hazards, and flood insurance coverage for improvements on the Common Area has been made available under the National Flood Insurance Program, then such a policy of flood insurance shall, if deemed necessary by the Board, be obtained on the Common Area in an amount at least equal to the lesser of:

(a) the maximum coverage available under the National Flood Insurance Program for all buildings and other insurable property located within a designated flood hazard area; or

(b) one hundred percent (100%) of current replacement cost of all buildings and other insurable property located within a designated flood hazard area.

15.1.3 Worker's Compensation Insurance. Worker's Compensation insurance to the extent necessary to comply with any applicable laws.

15.1.4 Fidelity Insurance. At the Board's discretion, fidelity coverage against dishonest acts on the part of directors, officers, managers, trustees, employees, or volunteers responsible for handling funds belonging to or administered by the Association. Such fidelity bonds or insurance shall name the Association as the named insured and shall be written in an amount sufficient to provide protection, that is, in no event, less than one and one-half times the insured's estimated annual operating expenses and reserves, and provide for at least thirty (30) days notice to the Association before cancellation or substantial modification thereof. In connection with such coverage, an appropriate endorsement to the policy to cover any persons who serve without compensation shall be added, if the policy would not otherwise cover volunteers.

15.2 Exceptions. The foregoing insurance and endorsements shall be maintained only to the extent available and reasonably priced and, without limitation, the Board of Directors may elect to dispense with certain endorsements if, in the discretion of the Board of Directors, it is determined that the cost of such endorsements is excessive or the coverage not reasonably available.

15.3 Waiver of Subrogation: Claims Against Declarant, etc. Every policy of insurance obtained by the Association shall contain an express waiver, if available, of any and all rights of subrogation against Declarant, each Developer Owner, the Board and such other persons or entities affiliated with the Association such as a manager and its representatives, members and employees and a provision, if reasonably available in the discretion of the Board, preventing any cancellation or modification thereof, except upon at least thirty (30) days' written notice to the insureds.

Liability insurance hereinabove specified shall name as separately protected insureds Declarant, the Association, the Board and such other persons or entities affiliated with the Association such as a manager and its representatives, members and employees as their interest may appear with respect to any liability arising out of the maintenance or use of any insured property.

To the extent that each such policy will not be voided or impaired thereby, the Association hereby waives and releases all claims against the Declarant, the Board, and each Developer Owner and such other persons or entities named in said insurance policies, and against the agents and employees of each of the foregoing, with respect to any loss covered by such insurance, whether or not caused by negligence or breach of any agreement by said persons, but only to the extent that insurance proceeds are received in compensation for such loss.

15.4 Association's Insurance Premiums a Common Expense. Premiums for insurance purchased or obtained by the Association shall be a common expense payable through assessments of Lots and Parcels, and all such insurance coverage obtained by the Board shall be written in the name of the Association.

15.5 Insurance for Residences and Lots. All Owners shall at their own expense obtain insurance for their Dwelling Units, Lots, and Parcels insuring against fire, accident and casualty, which insurance shall be in an amount sufficient to cover the full replacement cost of any repair or reconstruction work in the event of any such loss or losses.

15.6 Use of Insurance Proceeds. In the event of damage or destruction by fire or other casualty to any Dwelling Unit, Lot or other property covered by insurance written in the name of an individual Owner, said Owner shall use any insurance proceeds for the repair of the damaged property.

ARTICLE 16 DISPUTE RESOLUTION

16.1 Consensus for Association Action

16.1.1 Except as provided in this Article, the Association may not commence a legal proceeding or an action without the approval of at least two-thirds of the votes of the Members eligible to vote. This Article shall not apply, however, to (i) actions brought by the Association to enforce governing documents (including, without limitation, the foreclosure of liens); (ii) the imposition and collection of assessments; (iii) proceedings involving challenges to ad valorem taxation; or (iv) counterclaims brought by the Association in proceedings instituted against it.

16.1.2 Prior to the Association or any Member commencing any proceeding to which Declarant or any Developer Owner is a party, including but not limited to an alleged defect of any improvement, Declarant and each Developer Owner shall have the right to be heard by the Members, or the particular Member, and to access, inspect, correct the condition of, or redesign any portion of any improvement as to which a defect is alleged or otherwise correct the alleged dispute.

16.2 Alternative Method for Resolving Disputes. Declarant, its beneficiaries, Declarant Affiliates and their beneficiaries, members, partners, officers, directors employees and agents; the Association, its officers, directors and committee members; all Persons subject to this Declaration, including all Owners and Members of the Association; any Developer Owner, its officers, directors employees and agents; and any Person not otherwise subject to this Declaration but who agrees to submit to this Article (each such entity being referred to as a "Bound Party") agree to encourage the amicable resolution of disputes, without the emotional and financial costs of litigation. Accordingly, each Bound Party covenants and agrees to submit those claims, grievances or disputes described in Section 16.3 (singularly, "Claim," and collectively, "Claims") to the procedures set forth in Section 16.4.

16.3 Claims. Unless specifically exempted below, all claims between any of the Bound Parties regardless of how the same might have arisen or on what it might be based including but not limited to, claims (a) arising out of or relating to the interpretation, application or enforcement of this Declaration, or to the Articles or Bylaws ("Governing Documents") or the rights, obligations and duties of any Bound Party under the Governing Documents; (b) relating to the design or construction of improvements; or (c) based upon any statements, representations, promises, warranties, or other communications made by or on behalf of any Bound Party, shall be subject to the provisions of 16.4.

Notwithstanding the above, unless all parties thereto otherwise agree, the following shall not be Claims and shall not be subject to the provisions of 16.4:

(a) any suit by the Association against any Bound Party to enforce the provisions hereof pertaining to assessments, fines or charges;

(b) any suit by the Association or Declarant to obtain a temporary restraining order or injunction (or equivalent emergency equitable relief) and such other ancillary relief as the court may deem necessary in order to maintain the status quo and preserve the Association's ability to act under and enforce the provisions hereof;

(c) any suit between or among Owners, which does not include Declarant, a Developer Owner or the Association as a party, if such suit asserts a Claim which would constitute a cause of action independent of the Governing Documents; and

(d) any suit in which any indispensable party is not a Bound Party.

With the consent of all parties hereto, any of the above identified in this Section may be submitted to the alternative dispute resolution procedures set forth herein.

16.4 Mandatory Procedures

16.4.1 Notice. Any Bound Party having a Claim ("Claimant") against any other Bound Party ("Respondent") (the Claimant and the Respondent referred to herein being individually, as a "Party" or, collectively, as the "Parties") shall notify each Respondent in writing (the "Notice"), stating plainly and concisely:

(a) the nature of the Claim, including the Persons involved and Respondent's role in the Claim;

(b) the legal basis of the Claim (i.e., the specific authority out of which the Claim arises);

(c) the proposed remedy; and

(d) the fact that Claimant will meet with Respondent to discuss in good faith ways to resolve the Claim.

16.4.2 Negotiation.

(a) The Parties shall make every reasonable effort to meet in person and confer for the purpose of resolving the Claim by good faith negotiation. If requested in writing, accompanied by a copy of the Notice, the Board may appoint a representative to assist the Parties in negotiation.

(b) If the Parties do not resolve the Claim within 30 days after the date of the Notice (or within such other period as may be agreed upon by the Parties) ("Termination of Negotiations"), Claimant shall, if it wishes to pursue the Claim, pursue same solely by arbitration.

16.4.3 Binding Arbitration.

(a) Claimant shall, if it elects to pursue its Claim, initiate arbitration of the Claim under the auspices of the American Arbitration Association ("AAA") in accordance with the AAA's applicable rules for arbitration, as determined by AAA. Such claims shall not be decided by or in a court of law. Any judgment upon the award rendered by the arbitrator may be entered in and enforced by any court having jurisdiction over such Claim. If the claimed amount exceeds \$250,000, the dispute shall be heard and determined by three arbitrators. Otherwise, unless mutually agreed to by the parties, there shall be one arbitrator. Arbitrators shall have expertise in the area(s) of dispute, which may include legal expertise if legal issues are involved.

(b) Arbitration fees for any claim in an amount of \$10,000 or less shall be apportioned as provided in the most applicable rules of AAA, as determined by AAA. Unless otherwise provided by the applicable rules of AAA, for claims against Declarant or Declarant's agents or affiliates, including a Declarant Affiliate, that exceed \$10,000.00, the filing party shall pay up to the first \$750 of any initial filing fee to initiate arbitration, and under the following conditions, Declarant agrees to pay up to the next \$2,000 of any initial filing fee: (i) Declarant, one or more Declarant Affiliates, or the agents, employees or representatives of them, or Declarant's beneficiary, or the beneficiary of any Declarant Affiliate, or any combination of them, are the sole defendants or respondents against whom the Claim is brought and (ii) Claimant in writing offered to participate in mediation prior to arbitration. The portion of any filing fee not covered above, and any case service fee, management fee or fees of arbitrator(s), shall be shared equally by the parties, unless under the applicable rules of AAA the Claimant would pay less. Notwithstanding the foregoing, if a party unsuccessfully contests the validity or scope of arbitration in a court of law, the non-contesting party shall be awarded reasonable attorneys' fees and expenses incurred in defending such contest. All decisions respecting the arbitrability of any Claim shall be decided by the arbitrator(s).

(c) The award of the arbitrator(s) shall be accompanied by detailed written findings of fact and conclusions of law. Except as may be required by law or for confirmation of an award, neither a party nor an arbitrator may disclose the existence, content, or results of any arbitration hereunder without the prior written consent of both parties.

16.5 Conflicts. In the event that a separate binding mediation or arbitration agreement exists by and between an Owner and any Developer Owner, or in the event an Owner is bound by a separate agreement to mediate or arbitrate disputes, then in the event of a conflict between such separate agreement and the provisions hereof, the separate agreement shall control in disputes between such Owners and such Developer Owners, but neither the Association, Declarant, nor any Bound Party other than such Owners and Developer Owners who are parties to or bound by such separate agreement shall be subject to the terms of such separate agreement, whether or not in conflict, unless they agree to be bound thereby.

16.6 Amendment of Article. Without the express prior written consent of Declarant, this Article may not be amended for a period of twenty years from the effective date of this Declaration.

16.7 Conflicts in Procedure. Notwithstanding any provision in this Article with regard to mandatory arbitration proceedings, in the event that a Developer Owner and an Owner of a Lot or Parcel, or any portion thereof, are parties to a separate agreement that contains an alternative dispute resolution provision which conflicts with this Article, any disputes between such Developer Owner and the Owner shall be governed by the alternative dispute resolution provision contained in such separate agreement to the extent it is lawful, enforceable, and applicable.

ARTICLE 17

TERM; AMENDMENTS; TERMINATION

17.1 Term; Method of Termination. This Declaration shall be effective upon its Recordation and, as amended from time to time, shall continue in full force and effect unless and until there is an affirmative vote to terminate this Declaration by the then Owners casting ninety percent (90%) of the total votes entitled to be cast by the entire Membership. Upon the Recording of a Certificate of Termination executed by the President and Secretary of the Association confirming such vote, this Declaration shall have no further force and effect and the Association thereupon shall be dissolved in accordance with the terms of its Articles and Bylaws and the laws of the State of Arizona.

17.2 Amendments. Until the first conveyance of a Lot within the Covered Property to a Non-Developer Owner for use and occupancy as a Dwelling Unit, this Declaration may be amended by Recorded instrument duly executed by Declarant, without the necessity of calling a meeting of Owners or obtaining the consent of Owners. Thereafter, this Declaration may be amended by Recording an amendment, duly executed by the President or Vice President of the Association, which amendment shall set forth in full the text of the amendment adopted, and, except as provided in Section 17.3, or except as otherwise provided below, shall certify that, with or without a

meeting, Owners representing two thirds (2/3) of the total votes entitled to be cast by the entire Membership consented to or voted affirmatively for such amendment.

During the pendency of the Class B Membership, and except as provided below, no amendment which adversely affects the rights or special privileges of Developer Owners or which imposes new fees on Developer Owners may be made to the Declaration without the vote or written consent, with or without a meeting, of Developer Owners who own at least fifty-one percent (51%) of all Lots within the Covered Property owned by Developer Owners. No amendment may interfere with plans of any Developer Owner previously approved by the Design Review Committee. No amendment may discriminate against Declarant or any single Developer Owner without the consent of Declarant and such Developer Owner.

Any amendment during such time as Declarant is a Member of the Association shall require the written approval of the Declarant.

In addition to the foregoing, Declarant shall have the right, so long as it owns any Lot or Parcel, to amend this Declaration of its own volition, and without the requirement of any further consent or approval if: a) such amendment pertains only those provisions hereof dealing with Non-Residential Parcels; or b) such amendment is to correct errors or eliminate ambiguities, and to make changes designed to further the intent of this instrument by further elaborating on existing powers, privileges and restrictions in cases where correction, clarification or elaboration is warranted. In the case of subparagraph (a) preceding, an amendment pertaining to Non-Residential Parcels shall, after Declarant no longer owns any Lot or Parcel, require only the approval, with or without a meeting, of the Owners representing two-thirds (2/3) of the total votes attributable to Non-Residential Parcels affected and the Board.

A Tract Declaration may be amended as provided in such Tract Declaration, but only with the consent of Declarant so long as Declarant owns a single Lot or Parcel in the Covered Property. Thereafter, a Tract Declaration may be amended as provided therein, and with the approval of the Board.

17.3 Right of Amendment if Requested by Governmental Agency or Federally Chartered Lending Institution. Anything in this Article to the contrary notwithstanding, Declarant reserves the right to amend this Declaration or a Tract Declaration as may be requested or required by the FHA, VA or any other Agency with whom Declarant elects to do business as a condition precedent to such Agency's approval of this Declaration or an applicable Tract Declaration, or by any federally chartered lending institution as a condition precedent to lending funds upon the security of any Lot or Parcel or purchasing loans secured thereby. Any such amendment shall be effected by Declarant Recording an amendment duly executed and acknowledged by Declarant specifying the Agency or the lending institution requesting the amendment and setting forth the requested or required amendment(s). Recordation of such amendment shall be deemed conclusive proof of the Agency's or institution's request or requirement and such amendment, when Recorded, shall be binding upon all of the Covered Property and all persons having an interest therein. It is the desire of Declarant to retain control of the Association and the Association's activities during the period of planning and development of the Covered Property. If any amendment requested or required

pursuant to the provisions of this Section deletes, diminishes or alters such control, Declarant shall have the right to prepare, provide for and adopt as an amendment hereto, other and different control provisions which shall be binding upon the Covered Property and Owners without a vote of the Owners.

ARTICLE 18 ANNEXATION AND WITHDRAWAL OF PROPERTY

18.1 Annexation by Declarant. Declarant may, at its sole discretion and without the approval, assent, or vote of the Association or other Owners, from time to time until fifteen (15) years after Recordation of this Declaration, annex to the Covered Property the Annexable Property or any portion or portions thereof. To effect such annexation, a Tract Declaration covering the Annexable Property (or the applicable portion or portions thereof) shall be executed and Recorded by Declarant. The Recordation of such Tract Declaration shall constitute and effectuate the annexation of the Annexable Property (or the applicable portion or portions thereof) described therein, making such Annexable Property (or the applicable portion or portions thereof) and the Owners and Occupants thereof subject to this Declaration and the jurisdiction of the Association. In addition to the foregoing, and notwithstanding any decision not to annex the Additional Property or any portion thereof, Declarant may grant easements for ingress, egress, utilities, and other purposes for the benefit of such Annexable Property, all on terms deemed by Declarant to be reasonable.

18.2 Annexation by Owners. The Association may, from time to time, annex to the Covered Property additional property ("Annexation Land") provided that such annexation has been approved by the Owners possessing at least seventy-five percent (75%) of the total votes then entitled to be cast by the Membership (both Classes, not each Class separately) with or without a meeting. To effect such annexation, a Tract Declaration covering the Annexation Land shall be executed by the President or Vice-President of the Association and attested to by the Secretary of the Association, and executed by the owner of the Annexation Land. The recordation of such Tract Declaration shall constitute and effectuate the annexation of the Annexation Land described therein, making such Annexation Land and the Owners and Occupants thereof subject to this Declaration and the jurisdiction of the Association.

Any annexation during the pendency of the Class B Membership shall have the written approval of the Class B Member and, for a period of ten years after recording hereof, the Declarant as well. Absent such approval, any such annexation shall be deemed void.

18.3 Tract Declarations. The annexations authorized hereunder shall be made by Recording a Tract Declaration, in like fashion as for any Parcel originally subject to this Declaration. A Tract Declaration may contain such complementary additions to and modifications of this Declaration as may be necessary to reflect the different character, if any, of the Annexable Property (or the applicable portion or portions thereof). In no event, however, shall any such Tract Declaration revoke or conflict with this Declaration or any Tract Declaration. If the Annexable Property (or the applicable portion or portions thereof) is annexed, the number of Parcels shall be adjusted accordingly, Declarant shall be entitled to additional votes as determined in accordance with the

provisions of this Declaration, and the Annexable Property (or applicable portion or portions thereof) shall thereupon become fully a part of the Covered Property subject to all provisions of this Declaration, including without limitation the provisions regarding Assessments.

18.4 Withdrawal of Covered Property. Declarant may, at its sole discretion and without the approval, assent, or vote of the Association or other Owners or Members, from time to time until twenty (20) years after Recordation of this Declaration, withdraw any real property subject to this Declaration by executing and Recording a Notice of Withdrawal, making reference to this Declaration, and specifically describing the withdrawn property. The property so described shall be deemed completely excluded from this Declaration and shall no longer be a part of the Covered Property. Declarant may, in connection therewith, cancel any Tract Declaration for the land withdrawn.

Notwithstanding the foregoing, except as otherwise provided in the applicable Declaration of Withdrawal, withdrawal of any portion or portions of the Covered Property will not be effective until the Owner of the property to be withdrawn has paid all unpaid Assessments applicable to such property, prorated to the date of withdrawal.

It is specifically understood that this right of withdrawal may be exercised in Declarant's sole and absolute discretion, and that once withdrawn, none of the provisions hereof shall apply to or encumber the land. Further, Declarant or the Class B Member may cause the Association to grant and convey such easements as may be necessary to benefit such land withdrawn, including easements for ingress, egress, and utilities, all on terms, if any, deemed by them to be proper.

ARTICLE 19 MISCELLANEOUS

19.1 Interpretation of the Covenants. Except for judicial construction and as hereinafter provided, the Association, by its Board, shall have the exclusive right to construe and interpret the provisions of this Declaration, including without limitation, the land use restrictions contained herein and in any Tract Declarations. In the absence of any adjudication to the contrary by a court of competent jurisdiction, the Association's construction or interpretation of the provisions hereof shall be final, conclusive and binding as to all persons and property benefited or bound by this Declaration.

19.2 Severability. Any determination by any court of competent jurisdiction that any provision of this Declaration is invalid or unenforceable shall not affect the validity or enforceability of any of the other provisions hereof.

19.3 Change of Circumstances. Except as otherwise expressly provided in this Declaration, no change of conditions or circumstances shall operate to extinguish, terminate or modify any of the provisions of this Declaration.

19.4 Declarant's Disclaimer of Representations. Notwithstanding anything to the contrary herein, Declarant makes no warranties or representations whatsoever that the plans presently envisioned for the complete development of Continental Reserve can or will be carried out, or that any real property now owned or hereafter acquired by

it is or will be subjected to this Declaration, or that any such real property (whether or not it has been subjected to this Declaration) is or will be committed to or developed for a particular (or any) use, or that if such real property is once used for a particular use, such use will continue in effect. While Declarant has no reason to believe that any of the restrictive covenants contained in this Declaration are or may be invalid or unenforceable for any reason or to any extent Declarant makes no warranty or representation as to the present or future validity or enforceability of any such restrictive covenant. Any Owner acquiring a Lot or Parcel in reliance on one or more of such restrictive covenants shall assume all risks of the validity and enforceability thereof and by accepting a deed to the Lot or Parcel agrees to hold Declarant harmless therefrom.

19.5 Successors and Assigns; Assignees of Declarant. Any reference in this Declaration to Declarant shall include any successors or assigns of Declarant's rights and powers hereunder, to the extent of such assignment, which may be in whole or in part, and to the extent such assignment is in writing making reference to such rights. Any such assignment shall be evidenced by a recorded instrument executed by Declarant and its successors or assigns. Without limitation, Declarant may assign, in whole or in part, its various exemptions and privileges hereunder, including but not limited to such exemptions and privileges as may relate to signage, business use during development, voting rights and assessments, design review, its status as a Class B member, and other matters, and Declarant may grant, in its sole discretion, any similar exemptions and privileges to any Developer Owner. All rights of the Declarant hereunder may be exercised directly by its beneficiary.

19.6 Gender and Number. Wherever the context of this Declaration so requires, words used in the masculine gender shall include the feminine and neuter genders; words used in the neuter gender shall include the masculine and feminine genders. Words in the singular shall include the plural; and vice versa.

19.7 Captions. All captions, titles or headings of the Articles and Sections in this Declaration are for the purpose of reference and convenience only and are not to be deemed to limit, modify or otherwise affect any of the provisions hereof or to be used in determining the intent or context thereof.

19.8 Notices. If notice of any action or proposed action by the Board or any committee or of any meeting is required by applicable law, this Declaration or any resolution of the Board to be given to any Owner or Occupant then, unless otherwise specified herein or in the resolution of the Board, such notice requirement shall be deemed satisfied if notice of such action or meeting is published once in any newspaper in general circulation within Pima County. This Section shall not be construed to require that any notice be given if not otherwise required and shall not prohibit satisfaction of any notice requirement in any other manner.

19.9 FHA/VA Approval. If this Declaration has been initially approved by the FHA or the VA in connection with any loan programs made available by FHA or VA in regard to the Covered Property, then for so long as there is a Class B Member of the Association, the following actions will require the prior approval of the FHA or the VA, as applicable, unless the need for such approval has been waived by FHA or VA: annexation of additional property (other than the Annexable Property), mortgaging or

dedication of Common Areas (except where such dedication is required as of the date hereof by the Town, or is a dedication of minor interests such as trails, drainageways and parks requested to be dedicated by a public entity), and amendments of this Declaration which concern or effect Lots or Parcels with a Land Use Classification of Single Family Residential Use, Cluster Residential Use or Residential Condominium Development Use in a project for which FHA or VA approval has previously been given. With respect to any action required by this Declaration to be approved by the FHA or the VA, the proposed action may be submitted to the FHA or the VA for approval, and if the agency whose approval is requested does not approve or disapprove the proposed action by written notice to the Association, Declarant or other Person requesting approval within fifteen (15) days after delivery to that agency of the request for approval, the proposed action in question will be deemed approved by that agency.

IN WITNESS WHEREOF, Declarant has caused this Declaration to be duly executed on the date set forth on page one of this Declaration.

DECLARANT:

Fidelity National Title Agency, Inc., as
Trustee under Trust Nos. 30121 and
30222, and not otherwise

By:

Name:

Title:

Martha L. Hill
MARTHA L. HILL
TRUST OFFICER

By: **ASSOCIATION:**

Continental Reserve Master Homeowners
Association, an Arizona nonprofit
corporation

By:

Name:

Name:

Title:

Name:

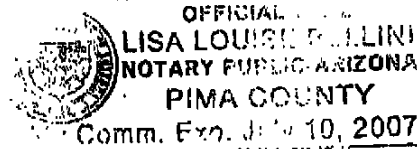
Title:

Mark Weinberg, V.P.
Mark Weinberg, V.P.
David Grobstein
Secretary / Treasurer

1024509 040000

STATE OF ARIZONA)
)
COUNTY OF PIMA)

ss.



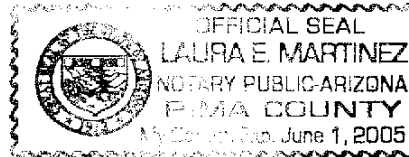
The foregoing instrument was acknowledged before me this 13th day of JANUARY, 2005, by MARTHA L. HILL, the TRUST OFFICER of Fidelity National Title Agency, Inc., as Trustee under Trust Nos. 30121 and 30222, and not otherwise.

Notary Public Laura E. Martinez

My commission expires: June 1, 2005

STATE OF ARIZONA)
)
COUNTY OF PIMA)

ss.



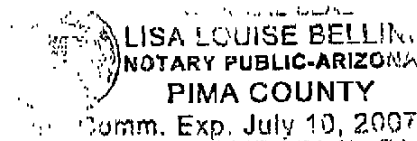
The foregoing instrument was acknowledged before me this 12 day of JANUARY, 2005, by Mark Weinberg, the VICE President of Continental Reserve Master Homeowners Association, an Arizona nonprofit corporation, on behalf of the corporation.

Notary Public Lisa Bellini

My commission expires: July 10, 2007

STATE OF ARIZONA)
)
COUNTY OF PIMA)

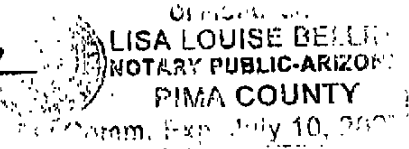
ss.



The foregoing instrument was acknowledged before me this 12 day of JANUARY, 2005, by DANIEL GIDSKEN, the Secretary/Treasurer of Continental Reserve Master Homeowners Association, an Arizona nonprofit corporation, on behalf of the corporation.

Notary Public Lisa Bellini

My commission expires: July 10, 2007



1024609 040001

EXHIBIT A

(Annexable Property)

Blocks 4 and 20 of Continental Reserve Blocks 1 through 20 and Common Areas A, B and C, a subdivision of Pima County, Arizona, recorded Book 53 of Maps and Plats at Page 35, Pima County Records.

20090401

F. ANN RODRIGUEZ, RECORDER
RECORDED BY: D_K
DEPUTY RECORDER
7864 PE1

REZMS
EZ MESSENGER ATTORNEY SERVICE
EZ-WILMER
PICKUP



DOCKET: 12469
PAGE: 4906
NO. OF PAGES: 4
SEQUENCE: 20050101276
01/14/2005
REST 16:38

PICKUP

AMOUNT PAID \$ 9.00

For Recorder's Use

TUCSON, ARIZONA 05/01-1012

**TRACT DECLARATION
OF
COVENANTS, CONDITIONS AND RESTRICTIONS
FOR
CONTINENTAL RESERVE**

DATED:

Jan 6, 2005

10450 00000

**TRACT DECLARATION
OF
COVENANTS, CONDITIONS AND RESTRICTIONS
FOR
CONTINENTAL RESERVE**

This Tract Declaration is made this 6th day of January, 2005, by Fidelity National Title Agency, Inc., an Arizona corporation, as Trustee under Trust Nos. 30,121 and 30,222 and not otherwise (collectively, the "**Declarant**").

WHEREAS, Declarant hereunder is the "Declarant" pursuant to that certain Amended and Restated Declaration of Covenants, Conditions, Restrictions, and Easements for Continental Reserve (the "Declaration") recorded in Docket 11755 at Page 2475, Pima County Records, which Declaration encumbers and has referenced certain real property referred to therein as the "Covered Property", being initially described as follows:

Blocks 1 through 3, and 5 through 19, and Common Areas A, B, and C, as shown on that certain plat for Continental Reserve, Blocks 1 through 20 and Common Areas A, B, and C, a subdivision of Pima County, recorded Book 53 of Maps and Plats at Page 35, Pima County Records.

WHEREAS, the Covered Property is subject to all terms and provisions of the Declaration, all in accordance with the more specific terms and provisions thereof.

WHEREAS, the definition of the Covered Property has heretofore been expanded to include other property annexed under the purview of the Declaration.

WHEREAS, the Declaration has reference to certain real property, among other, described as follows:

Blocks 4 and 20 of Continental Reserve, a subdivision of Pima County, Arizona known as Continental Reserve, Blocks 1 through 20 and Common Areas A, B and C, recorded Book 53 of Maps and Plats at Page 35, Pima County Records (hereinafter the "Annexation Property").

WHEREAS, the Annexation Property is a part of the Annexable Property as defined in the Declaration, and shall be subject to all terms and provisions of the Declaration upon annexation to the Covered Property.

WHEREAS, Fidelity National Title Agency, Inc., an Arizona corporation, as Trustee under Trust Nos. 30,121 and 30,222 and not otherwise, owns fee title to the Annexation Property and desires that Declarant annex the Annexation Property into the Covered Property, but subject to the terms hereof.

12400040007

NOW THEREFORE, Declarant hereby declares as follows:

1. **Annexation of Annexation Property.** Pursuant to Section 18.1 of the Declaration, Declarant hereby annexes the Annexation Property under the purview of the Declaration.

2. **Tract Declaration.** This Tract Declaration shall be deemed a "Tract Declaration" pursuant to the terms and provisions of the Declaration, and is subsidiary and supplementary thereto.

3. **Commercial Use.** The land use classification for the Annexation Property is hereby declared to be either Commercial Office or General Commercial Use pursuant to Section 5.1 of the Declaration, and may be developed as such as provided in and governed by the Declaration. At such time as the Annexation Property is subdivided and platted, each lot or parcel within the Annexation Property shall be deemed a "Lot" and "Parcel" pursuant to the Declaration. Declarant reserves full right and power to change the Land Use Classifications of the said Annexation Property, and no consent of any Member or of the Board shall be required to accomplish such change, other than the consent of Declarant and the fee owner of the land in question.

4. **Approval of Improvements.** Improvement of the Annexation Property shall be subject to the limited review of the Design Review Committee pursuant to the Declaration.

5. **Voting Rights and De-Annexation.** Nothing herein shall in any way limit the right of Declarant to withdraw the said Blocks 4 and 20 from the Declaration in which case said Blocks, the Annexation Property herein, shall no longer be subject to the purview of the Declaration. Voting rights in relation to such Blocks shall be six (6) votes for each Net Acre for Class A Members, and eighteen (18) per Net Acre for the Class B Member.

6. **Amendment of Tract Declaration.** This Tract Declaration may be amended with the approval of Declarant. Such approval by Declarant shall be required so long as it owns any Lot, Parcel, or portion of the Covered Property as defined in the Declaration, and for a period of ten (10) years thereafter. During such time no other consent or approval shall be required. Commencing ten (10) years after Declarant no longer owns any Lot, Parcel, or portion of the Covered Property, this Tract Declaration may be amended provided that any such amendment shall be consistent with and subject to the terms and provisions of the Declaration and shall require written approval of the Board.

7. **Capitalized Terms.** Unless otherwise defined herein, all capitalized terms used herein shall have the meanings ascribed by the Declaration.

Dated this 13th day of JANUARY, 2005.

Fidelity National Title Agency, Inc., an Arizona corporation, as Trustee under Trust Nos. 30,121 and 30,222, and not otherwise

By: MARSHA L. HILL
Name: MARSHA L. HILL
Title: TRUST OFFICER

"DECLARANT"

OWNER CONSENT:

Fidelity National Title Agency, Inc., an Arizona corporation, as Trustee under Trust Nos. 30,121 and 30,222 and not otherwise

By: MARSHA L. HILL
Name: MARSHA L. HILL
Title: TRUST OFFICER

STATE OF ARIZONA)

ss.

COUNTY OF PIMA)

The foregoing instrument was acknowledged before me this 13th day of JANUARY, 2005, by MARSHA L. HILL, the TRUST OFFICER of Fidelity National Title Agency, Inc., an Arizona corporation, as Trustee under Trust Nos. 30,222 and 30,121 and not otherwise.

Laura E. Martinez
Notary Public

My Commission Expires:

June 1, 2005

