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AMENDED AND RESTATED
DECLARATION OF COVENANTS
CONDITIONS AND RESTRICTIONS
FOR
THE ESTATES AT CIENEGA CREEK PRESERVE

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AMENDED AND RESTATED
DECLARATION OF COVENANTS
CONDITIONS AND RESTRICTIONS
FOR
THE ESTATES AT CIENEGA CREEK PRESERVE

This Declaration of Covenants, Conditions and Restrictions is made as of the 9th day of March 2004, by Stewart Title & Trust of Tucson, an Arizona corporation, as Trustee under its Trust No. 3605, as "Declarant," with reference to the following:

A. Declarant is the "Successor Owner" under and pursuant to that certain Declaration of Establishment of Covenants, Conditions and Restrictions for The Estates At Cienega Creek Preserve, dated December 12, 2002, which was recorded in the office of the Recorder of Pima County, Arizona, on February 18, 2003 in Docket 11989 commencing at page 6236 (the "Original Declaration").

B. Pursuant to Section 10.3 of the Original Declaration, "Successor Owner" desires to amend and restate the terms and provisions of the Original Declaration by the execution and recordation of this Amended and Restated Declaration of Covenants, Conditions and Restrictions for The Estates At Cienega Creek Preserve, (this "Declaration").

C. As of the date hereof, Declarant is the owner of fee title to each Lot within the Property.

D. Declarant intends by this Declaration to impose upon the Property mutually beneficial restrictions under a general plan of improvement for the benefit of all owners of Lots within the Property. Declarant desires to provide a flexible (yet common) and reasonable procedure for the overall development of the Property, and to establish a method for the administration, maintenance, preservation, use and enjoyment of the Property.

NOW, THEREFORE, Declarant hereby declares that the Property shall be held, sold and conveyed subject to the following easements, restrictions, covenants and conditions, which are for the purpose of protecting the value and desirability of and which shall run with the Property now and hereafter subjected to this Declaration and which shall be binding on all parties having any right, title or interest in said Property or any part thereof, and their heirs, personal representatives successors and assigns, and shall inure to the benefit of each owner of all or any part thereof.

ARTICLE I

DEFINITIONS

Except as otherwise expressly provided in this Declaration, the following terms shall, for purposes of this Declaration, have the meanings set forth below:

1.1 "Annexable Property" means any and all real property any part of which is located within two (2) miles of the Property described on Exhibit A hereto.

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- 1.2 "Annual Assessments" means the Assessments levied pursuant to Article 8.
- 1.3 "Architectural Committee" means the committee established pursuant to Article 9.
- 1.4 "Architectural Committee Rules" means the rules and guidelines adopted by the Architectural Committee pursuant to Section 9.21 as amended or supplemented from time to time.
- 1.5 "Articles" means the articles of incorporation of the Association, as amended from time to time.
- 1.6 "Assessments" means the Annual Assessments, the Special Assessments and any other amounts declared by this Declaration to be a part of the Assessments or declared by this Declaration to be secured by the lien created under Section 8.3.
- 1.7 "Association" means THE ESTATES AT CIENEGA CREEK PRESERVE COMMUNITY ASSOCIATION, an Arizona nonprofit corporation, and its successors and assigns.
- 1.8 "Association Rules" means the rules and regulations adopted by the Association pursuant to Section 7.31 as amended from time to time.
- 1.9 "Board" means the board of directors of the Association.
- 1.10 "Bylaws" means the bylaws of the Association, as amended from time to time.
- 1.11 "Common Area" means all real property (including the improvements thereon, all easements and licenses, all other real property interests, and all personal property and facilities owned, managed or maintained by the Association for the common use and enjoyment of the Owners.
- 1.12 "Common Expenses" means expenditures made by or financial liabilities of the Association, together with any allocations to reserves.
- 1.13 "Declarant" means Stewart Title and Trust of Tucson, an Arizona corporation, as Trustee under its Trust No.3605, its successors and any Person to whom it may expressly assign any or all of its rights under this Declaration, as well as Developer who shall be entitled to exercise the rights and powers of Declarant hereunder as long as Developer is the sole and only beneficiary of the above-referenced Trust.
- 1.14 "Declarant Affiliate" means any Person directly or indirectly controlling, controlled by or under common control with Declarant, and shall include, without limitation, any general or limited partnership, limited liability company, limited liability partnership or corporation in which Declarant (or another Declarant Affiliate) is a general partner, managing member or controlling shareholder.
- 1.15 "Declaration" means this Declaration of Covenants, Conditions and Restrictions for THE ESTATES AT CIENEGA CREEK PRESERVE, as amended from time to time.
- 1.16 "Designated Builder" means any Person other than Declarant who (i) is engaged in the business of construction and selling residences in the Property to the public, (ii) has acquired one or more Lots in connection with and in the course of such business, and (iii) is designated by Declarant by written notice to the Association as having any of the special rights, privileges or immunities of Declarant under this Declaration.

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1.17 "Developer" means Canoa Development, Inc., an Arizona corporation, which is the sole and only beneficiary of the Trust referenced in paragraph 1.13 hereof.

1.18 "Dwelling Unit" means any building or part thereof situated upon a Lot and intended for use and occupancy as a residence by a Single Family.

1.19 "First Mortgage" means a Mortgage Recorded against a Lot which has priority over all other Mortgages Recorded against that Lot.

1.20 "Lot" means a Lot into which any part of the Property is subdivided as set forth in a subdivision plat now or hereafter Recorded with respect to all or any part of the Property. For purposes of this Declaration, a Lot shall be deemed to come into existence on and as of the date the plat depicting and establishing such Lot is Recorded. In no event shall the term "Lot" mean or refer to all or any part of the Common Area.

1.21 "Maximum Annual Assessment" means the amount determined for each fiscal year of the Association in accordance with Section 8.7.

1.22 "Member" means any Person entitled to membership in the Association, as provided in this Declaration.

1.23 "Mortgage" means a deed of trust, as well as a mortgage, which, in either case, is Recorded against a Lot.

1.24 "Mortgagee" means a beneficiary under a deed of trust, as well as a mortgagee under a mortgage, which, in either case, is Recorded against a Lot.

1.25 "Occupant" means any Person other than an Owner who occupies or is in possession of a Lot, whether as a lessee under a lease or otherwise.

1.26 "Owner" means the Person or Persons who individually or collectively own fee title to a Lot (as evidenced by a Recorded instrument), provided that: (a) Declarant (and not the fee title holder) shall be deemed to be the "Owner" of each Lot with respect to which fee title is held by a Declarant Affiliate or by a trustee (other than the trustee of a deed of trust) for the benefit of Declarant or a Declarant Affiliate; (b) in the event that, and for so long as, Declarant or a Declarant Affiliate has an existing right or option to acquire any one or more Lots, pursuant to a written agreement, Declarant shall also be deemed to be the "Owner" of each Lot with respect to which Declarant or a Declarant Affiliate has such right or option; and (c) in any case where fee title to a Lot is vested in a trustee under a deed of trust pursuant to Chapter 6.1 of Title 33 of the Arizona Revised Statutes, the owner of the trustor's interest under the deed of trust shall be deemed to be the "Owner" of that Lot. Where reference is made in this Declaration to Lots "owned by" a Person, such phrase shall be deemed to refer to Lots of which that Person is the Owner, as determined pursuant to this Section. The term "Owner" shall not include: (i) any Person who holds an interest in a lot merely as security for the performance of an obligation; or (ii) a lessee, tenant or other Occupant of a Lot.

1.27 "Person" means a natural Person, corporation, business trust, estate, trust, partnership, association, limited liability company, limited liability partnership, joint venture, government, governmental subdivision or agency, or other legal or commercial entity.

1.28 "Phrase" means: with respect to any additional property hereafter annexed to the Property pursuant to Article 6 of this Declaration, any one of the groups of Lots designated as a "phase" in the Recorded instrument effecting such annexation in accordance with Article 6. In

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the event that the Recorded instrument effecting any such annexation does not divide the particular property being annexed in Phases, then such property shall be deemed to constitute a single Phase for purposes of this Declaration. The numbers or letters (or numbers and letters) assigned to Phases area and shall be for reference only and Declarant owning such Lots comprising the Phase shall retain full discretion as to the order and timing of development or sale of Lots within any Phase or from Phase to Phase.

1.29 "Property Documents" means this Declaration, the Articles, the Bylaws, the Association Rules and the Architectural Committee Rules.

1.30 "Property" means the real Property described on Exhibit A hereto; and shall further refer to such additional real property, if any, as may hereafter be annexed thereto pursuant to Article 6 or as is now or may hereafter be owned in fee simple by the Association, but shall not include real property, if any, which is deleted and removed from the Property pursuant to Section 6.6.

1.31 "Record", "Recording", "Recorded", and "Recordation" means placing or having placed an instrument of public record in the official records of Pima County, Arizona.

1.32 "Retail Purchaser" means a Person who in a retail transaction purchases a Lot on which a completed Dwelling Unit has been constructed. The term "Retail Purchaser" shall not include a Person who purchases such a Lot and simultaneously with such purchase leases such Lot and the Dwelling Unit thereon back to Declarant or any Declarant or any Declarant Affiliate for use as a Model home, for so long as the Dwelling Unit continues to be used for marketing rather than residential purposes.

1.33 "Single Family" means a group of Persons each related to the other by blood, marriage or legal adoption, or a group of not more than three (3) persons not all so related, who maintain a common household.

1.34 "Special Assessments" means those Assessments levied pursuant to Section 8.9.

1.35 "Special Use Fees" means fees levied by the Association for the use of the Common Area pursuant to Section 2, 1 (d).

1.36 "Visible From Neighboring Property" means, with respect to any given object, that the object is or would be visible to a person 6 feet tall standing on neighboring property, on the level of the base of the structure or building being viewed.

ARTICLE 2

EASEMENTS

2.1 Owners' Easements of Enjoyment.

2.1.1 Subject to the rights and easements granted to Declarant in Section 2.4, each Owner, and each Occupant of such Owner's Lot, shall have a non-exclusive right and easement of enjoyment in, to and over the Common Area, which right and easement shall be appurtenant to and shall pass with the title to each Lot, subject to the provisions of this Declaration including, without limitation, the following:

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

restrict the use of the recreational facilities by guests and invitees to certain specified times.

2.2 Utility Easement. There are hereby created easements upon, across, over and under the Common Area, Lots and other portions of the Property for reasonable ingress, egress, installation, replacement, repair and maintenance of all utilities, including, but not limited to, gas, water, sewer, telephone, cable television and electricity. By virtue of these easements, it shall be expressly Permissible for the providing utility company to erect and maintain the necessary equipment on the Common Area, Lots and other portions of the Property, but no sewers, electrical lines, water lines or other utility or service lines may be installed or located on the Common Area, Lots and other portions of the Property except as initially designed, approved and constructed by the Declarant or as approved by the Board (and, in the case of a Lot, by the Owner of such Lot).

2.3 Easements for Ingress and Egress. There are hereby created easements for ingress and egress for pedestrian traffic over, through and across sidewalks, paths, walks and lanes that from time to time may exist upon the Common Area. There are also hereby created easements for ingress and egress for pedestrian and vehicular traffic over, through and across such driveways and parking areas as from time to time may be paved and intended for such purposes. Such easements shall run in favor of and be for the benefit of the Owners and Occupants of the Lots and their guests, families, tenants and invitees. There are also hereby created easements upon, across and over the Common Area and all private streets, private roadways, private driveways and private parking areas within the Property for vehicular and pedestrian ingress and egress for police, fire, medical and other emergency vehicles and personnel.

2.4. Declarants Use and Easements.

2.4.1 Declarant shall have the right and an easement to maintain sales or leasing offices, management offices and models on any Parcel owned by such Declarant, and each Designated Builder shall have the right and easement to maintain such offices and models on the respective Lots owned by such Designated Builder. Declarant shall have the right and easement to maintain, and to grant to any Designated Builder the right and easement to maintain, one or more advertising signs on the Common Area located upon the property owned by Declarant while Declarant and/or such Designated Builder, as applicable, is selling Lots or other property within the Property. Such advertising signs shall be erected in compliance with any and all ordinances, regulations and other requirements of the applicable governmental entities, shall be maintained in a good and slightly manner and shall not substantially interfere with the views to the models or other signage of any other Declarant or Designated Builders from adjacent roadways, sidewalks or Common Areas. Declarant reserves the right to place models, management offices and sales and leasing offices on any Lots or other property owned by Declarant and on any portion of the Common Area in such number, of such size and in such locations as Declarant deems appropriate.

2.4.2 So long as Declarant or any Designated Builder is marketing Lots or other portions of the Property or the Annexable Property, Declarant or Designated Builder shall have the right to restrict the use of the parking spaces on the Common Area. Such right shall include reserving such spaces for use by prospective purchasers, Declarant's employees, the Designated Builders and their employees, and others engaged in sales, leasing, maintenance, construction or management activities.

2.4.3 Declarant shall have the right and an easement on and over the Common Area to construct all improvements Declarant may deem necessary and to use the

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otherwise required by zoning stipulations or agreements with Pima County or any municipality having jurisdiction over the Property, or any part thereof, effective prior to the date hereof or specified on a Recorded subdivision plat, no such dedication or transfer shall be effective unless approved by Owners representing two-thirds (2/3) of each class of Members, except that the Board shall have authority to transfer to such public agencies, authorities or utilities easements and rights-of-way which are intended to benefit the Property and which do not have any substantial adverse effect on the enjoyment of the Common Area by the Owners.

(b) The Association shall have the right to regulate the use of the Common Area through the Association Rules (which may include, without limitation, the Adoption and implementation of a reservation system for such portions of the Common Area, or improvements or amenities thereon, as the Board deems appropriate) and to prohibit access to such portions of the Common Area, such as landscaped right-of-ways, not intended for use by the Owners or Occupants.

(c) Declarant and the Association shall each have the right to convey certain portions of the Common Area to Owners of adjoining Lots, provided, however, that neither the Association nor Declarant shall have the right to transfer or convey any portion of the Common Area upon which is situated any recreational facility unless approved by a vote of the Owners pursuant to Subsection 2. 1. 1 (a).

(d) The Association shall have the right to charge Special Use Fees for the use of the Common Area. The Special Use Fees, if any, shall be set by the Board from time to time, in its discretion. Special Use Fees shall be charged only for actual entry upon or use of those portions of the Common Area, if any, selected by the Board to be subject to a Special Use Fee, and shall be imposed only where the Board deems it appropriate to collect revenue from the actual users of such selected portions of the Common Area so that all of the costs of operating such selected portions of the Common Area 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 using such selected portions of the Common Area.

(e) The Board shall have the right to suspend the rights of any Owner or Occupant to use and enjoy recreational facilities on the Common Area: (1) for any period during which an Assessment remains delinquent; (2) for a period not to exceed sixty (60) days for any infraction of the Property Documents; or (3) for successive sixty (60) day periods if any such infraction is not corrected during any preceding suspension period. Any suspension of the rights of an Owner or Occupant to use and enjoy recreational facilities on the Common Area shall automatically, without any further action, also act as a suspension of any rights or privileges any guest, family member, lessee or invitee of such Owner or Occupant might otherwise have to use and enjoy any such recreational facilities.

2.1.2 If a Lot is leased or rented by its Owner, the Occupants of such Lot shall have the right to use the Common Area during the term of the lease, and the Owner of such Lot shall have no right to use the Common Area until the termination or expiration of such lease.

2.1.3 The Board shall have the right to limit the number of guests and invitees who may use the recreational facilities located on the Common Area at any one time and may

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Common Area and any Lots and other property owned by Declarant for construction or renovation related purposes including the storage of tools, machinery, equipment, building materials, appliances, supplies and fixtures, and the performance of work respecting the property or portion thereof owned by the Designated Builder, provided that such Designated Builder keeps the Lots owned by such Designated Builder in a reasonably clean and neat fashion.

2.4.4 Declarant shall have the right and an easement upon, over, and through the Common Area as may be reasonably necessary for the purpose of exercising the rights granted to or reserved by Declarant by this Declaration. Upon the written approval of Declarant, any Designated Builder may have the right and an easement upon, over, and through the Common Area upon portion of the Property owned by Declarant as may be reasonably necessary for the purpose of exercising the rights granted to or reserved by such Designated Builder by this Declaration.

2.5 Easement in Favor of Association. The Lots are hereby made subject to the following easements in favor of the Association and its directors, officers, agents, employees and independent contractors:

2.5.1 For inspection during reasonable hours of the Lots in order to verify the performance by Owners or other Persons of all items of maintenance and repair for which they are responsible;

2.5.2 For inspection, maintenance, repair and replacement of portions of the Common Area accessible only from such Lots;

2.5.3 For correction of emergency conditions on one or more Lots or on portions of the Common Area accessible only from such Lots;

2.5.4 For the purpose of enabling the Association, the Board, the Architectural Committee or any other committees appointed by the Board to exercise and discharge their respective rights, powers and duties under the Property Documents;

2.5.5 For inspection of the Lots in order to verify that the Owners and Occupants, and their guests, tenants and invitees, are complying with the provisions of the Property Documents.

ARTICLE 3

MEMBERSHIP AND VOTING RIGHTS

3.1 Membership; Power to Vote. Every Owner of a Lot automatically shall be a Member of the Association and shall remain a Member for so long as such ownership continues. Each Owner's membership in the Association shall be appurtenant to and may not be separated from ownership of the Lot to which the membership is attributable. In the event any Lot is owned by two or more Persons, whether by joint tenancy, tenancy in common, community property or otherwise, each such Person shall be considered a Member but the membership as to such Lot shall be joint, and such Persons shall jointly designate to the Association in writing one of their number who shall have the power to vote said membership, and, in the absence of such designation and until such designation is made, the Board shall either: (a) make such designation, in which event such designation shall be binding for all purposes; or (b) declare that until all Persons who together hold such membership jointly make such written designation, the vote(s) attributable to such membership under this Declaration shall not be cast or counted on any questions before the Members; provided, however, that if any one of such Persons casts a vote

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representing a certain Lot without objection from any other Person sharing ownership of such Lot, that Person will thereafter be conclusively presumed to be acting with the authority and consent of all other Persons sharing ownership of such Lot unless and until objection thereto is made to the Board, in writing. Notwithstanding the foregoing, so long as the Class B membership is in existence, no Class B Member shall at the same time be a Class A Member nor shall a Class B Member have any Class A votes, and the membership and number of votes of the Class B Member(s) shall be determined in accordance with Subsection 3.3.2.

3.2 Declarant's Membership. Declarant shall be a Member of the Association for so long as it holds a Class A or Class B membership.

3.3 Voting Classes; Number of Votes. The Association shall have two classes of Members, as follows:

3.3.1 Class A. Class A Members shall be all Owners, except that until the conversion of Declarant's Class B membership to Class A membership as provided below, Declarant shall be a Class B Member, not a Class A Member. 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 one vote for each Lot owned by such Member; and

3.3.2 Class B. The Class B Member shall be Declarant. The Class B Member shall be entitled to three (3) votes for each Lot owned by such Member. Declarant shall have the right, at any time and from time to time, to assign all or any part of its voting rights appurtenant to its Class B membership (as well as all or any other rights appurtenant thereto) to one or more Persons acquiring, for purposes of development and sale, including a Designated Builder, any part of the Property. Further, Declarant shall have the right, at any time and from time to time, to designate an individual or individuals to exercise Declarant's voting rights (whether appurtenant to Class A or Class B membership); provided, however, that such designation shall not act as an assignment by Declarant of its membership or voting rights hereunder. Subject to the provisions of Article 6 below, the Class B membership automatically shall cease and be converted to a Class A membership upon the happening of the first of the following events:

(a) the date which is ninety (90) days after the date upon which the total number of votes of the Class A Members equals the total number of votes of the Class B Member;

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

(c) the date on which Declarant Records a written notice electing to convert the Class B membership to Class A membership.

3.4 Right to Vote. The Board shall not be required to recognize a change in the ownership of a Lot as being effective for voting purposes until the Board receives written notice of such change together with satisfactory evidence thereof. The vote for each Member must be cast as a single unit. Split or fractional votes shall not be allowed. Any Owner of a Lot which is leased or which is subject to a valid, outstanding and Recorded executory agreement of sale may, in the lease, agreement of sale or other written instrument, assign the voting rights appurtenant to the Lot to the lessee thereof or to the purchaser thereof under such agreement of sale, as applicable, provided that a copy of the written assignment of such voting rights is furnished to the Secretary of the Association prior to any meeting at which such lessee or purchaser seeks to

exercise such voting rights. The Board shall have the right to suspend the voting rights of any Owner for such period of time as the Owner is delinquent in the payment of any Annual Assessments and/or Special Assessments required to be paid by this Declaration.

3.5 Members' Rights. Each Member shall have the rights, duties and obligations set forth in this Declaration, the Articles, the Bylaws, the Association Rules and any other rules and regulations adopted pursuant to any of the foregoing.

3.6 Transfer of Membership. Except as otherwise provided in this Declaration, 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 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, shall operate to transfer the membership appurtenant thereto to the new Owner and any attempt to make any other form of transfer shall be void.

ARTICLE 4

MAINTENANCE

4.1 Association's General Responsibilities. The Association shall maintain and keep in good condition and repair the Common Area (and certain other areas, as more expressly provided in this Section 4.1, and the costs of such maintenance shall be Common Expenses of the Association (subject to any insurance then in effect). This maintenance shall include, but not be limited to:

4.1.1 maintenance, repair and replacement of all landscaping, structures and improvements (including, without limitation, any and all recreational facilities and appurtenant improvements) situated upon the Common Area;

4.1.2 maintenance, repair and replacement of landscaping in or upon public rights-of-way immediately adjacent to the exterior boundaries of the Property (or between such public rights-of-way and perimeter or boundary walls on or surrounding the exterior boundaries of the Property), and of any perimeter or boundary walls on or surrounding the exterior boundaries of the Property;

4.1.3 maintenance, repair and replacement of landscaping and signs within areas designated on one or more subdivision plats or other instruments Recorded by, or bearing the written approval of, Declarant (or, after termination of the Class B membership, the Association) with respect to all or portions of the Property as "landscape easements, "landscape and wall easements" or "landscape and sign easements" (or similar designations) to be maintained by the Association;

4.1.4 except where otherwise provided in an instrument Recorded by, or bearing the written approval of Declarant, the Association shall be responsible for maintaining the side of any boundary wall facing a public street or roadway (or a private street or roadway owned by the Association), while the Owner of a Lot shall be responsible for maintaining the side of any boundary wall facing such Owner's Lot. For purposes of the preceding sentence a "boundary wall" shall be any wall or fence separating a Lot from a public street or roadway adjacent to or along the exterior perimeter boundaries of the Property or adjacent to or along a major arterial street or roadway (whether public or owned by the Association) within the Property if, in the case of a wall within the Property, such wall is designed as a "common" or

"theme" wall presenting a uniform appearance along its length; and

4.1.5 maintenance and repair of any drainage easements upon or across the Common Area. The Association shall also have the right, power and authority to maintain and repair drainage easements upon and across one or more Lots where: (a) the Association is required to do so by applicable statute, ordinance, code, rule or regulation, or by the terms of a Recorded subdivision plat signed or otherwise approved in writing by Declarant or the Association; (b) in the reasonable discretion of the Board, such maintenance and repair is necessary or advisable to protect any Common Area or other Lots or to permit proper flow of runoff through other portions of the Property; or (c) in the reasonable discretion of the Board, such maintenance and repair is otherwise in the best interests of the Association or serves a reasonable goal of the Association. The costs of any maintenance and repair described in the preceding sentence shall be Common Expenses, subject to any right the Association may have to recover all or any portion of such costs from insurance or from any Owner or other Person whose negligent or reckless act, breach of this Declaration or other misconduct gave rise to need for such maintenance or repair. Except for public parks, if any, within the Property, Pima County is not responsible for and will not accept maintenance of any private facilities, landscaped areas, etc. within the Property, although interior roadways will be public and maintained by Pima County.

4.2 Maintenance of Owner's Structures. Each Owner shall be responsible for the maintenance, cleaning, painting, repair and general care of all structures existing or constructed upon such Owner's Lot and, in particular, each Owner shall cause the exterior of said structures to be maintained in good condition and repair and in an attractive state consistent with general community standards within the Property. In the event that the Board shall determine, after providing reasonable notice and an opportunity to be heard, that any Owner is in breach of such Owner's obligations under the preceding sentence, the Board shall promptly give such Owner written notice of such determination, including a reasonably detailed list or description of the repairs, maintenance or other work required to cure such Owner's breach, and in the event the Owner shall not have cured such breach within thirty (30) days after the date of said written notice, the Association may, in the discretion of the Board, cause the repairs, maintenance or other work to be performed so as to cure such Owner's breach, and the costs of doing so, together with interest from the date of expenditure at the rate set forth in Section 8.2, shall be the personal obligation of such Owner and shall constitute a lien on such Owner's Lot, which lien shall have the priority and may be enforced in the manner described in Section 8.3. The Association shall also have standing and authority to request that a court of competent jurisdiction compel such Owner to cure such breach, and to the extent not inconsistent with an order of such court, the Association may pursue either or both of the courses of action described in the preceding sentence. The Association shall have an easement on, over, across and through each Lot to permit it to exercise its rights and carry out its duties and obligations under this Article 4.

4.3 Publicly Dedicated Areas. Except: (a) as expressly provided in this Article 4; (b) as may otherwise be required by applicable law; and (c) as may be voluntarily assumed by the Board, the Association shall have no responsibility to maintain any areas within the Property (including, but not limited to, public streets) which are dedicated to or the responsibility of a municipality, utility or other governmental entity.

4.4 No Discrimination. The provision of services in accordance with this Article shall not be deemed to be discrimination in favor of or against any Owner.

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ARTICLE 5

INSURANCE AND FIDELITY BONDS; CASUALTY LOSSES

5.1 Insurance to be Obtained by the Association.

5.1.1 Hazard Insurance.

(a) The Board, acting on behalf of the Association, shall obtain and maintain at all times insurance for all insurable improvements on the Common Area against loss or damage by fire or other hazards, casualties and risks embraced within the coverage of the standard "extended coverage" policy available from time to time in the State of Arizona, against all other perils customarily covered for similar types of projects (including those covered by the "special form" endorsement available from time to time in the State of Arizona), and against loss or damage due to vandalism and malicious mischief. Said insurance shall be in an amount equal to 100% of the current replacement cost, from time to time, without deduction for depreciation, of all such insurable improvements (excluding land, foundations, excavations and other items usually excluded from such insurance coverage, but including fixtures and building service equipment and personal property and supplies owned by the Association), with such amount to be redetermined annually (and upon the subjection of any portion, or all, of the Annexable Property to the effect of this Declaration if such subjection results in an addition to the Common Area of property upon which are situated improvements required to be insured hereunder) by the Board with the assistance of the insurer or insurers providing such coverage.

(b) The policy or policies providing the insurance required by this Subsection 5.1.1 shall provide that: (i) any insurance trust agreement shall be recognized; (ii) the insurer shall waive any right of subrogation against the Owners, the Board or the Association, and their respective agents, tenants, servants, employees, guests and household members; (iii) such insurance shall not be canceled, invalidated or suspended by reason of any acts or omissions of any Owner (or of such Owner's invitees, agents, tenants, servants, employees, guests or household members), or of any member, officer or employee of the Board without a prior written demand to the Board that any such act or omission be cured and without providing a sixty (60) day period within which the Board may cure such act or omission (or cause the same to be cured); (iv) such insurance coverage shall be primary, and shall in no event be brought into contribution with any insurance maintained by individual Owners, their Mortgagees or other lien holders; and (v) the coverage afforded by such policy or policies shall not be prejudiced by any act or omission of any Owner or Occupant (or their agents) when such act or omission is not within the control of the Association.

(c) The policy or policies providing the insurance required by this Subsection 5.1.1 shall also contain (if available at no additional cost or at such additional cost as is not demonstrably unreasonable) the following endorsements (or their equivalents): (i) "agreed amount" and "inflation protection" endorsements (ii) "increased cost of construction" endorsement; (iii) "contingent liability from operation of building laws or codes" endorsement; (iv) "demolition cost" endorsement; and (v) "current replacement cost" endorsement.

(d) If determined by the Board to be necessary, the policy or policies

providing the insurance required by this Subsection 5. 1.1 shall also contain a steam boiler and machinery endorsement providing coverage in an amount not less than the lesser of \$2,000,000 or the insurable value of the building(s) housing such boiler and machinery, if any.

(e) Unless a higher maximum deductible amount is required by applicable law, each policy providing the insurance coverage required by this Subsection 5. 1.1 shall provide for deductibles determined to be commercially reasonable at the discretion of the Board.

5.1.2 Liability Insurance. The Board, acting on behalf of the Association, shall obtain and maintain at all times a comprehensive general liability policy insuring the Association, each member of the Board, each Owner and each Declarant Designee (as defined below), against any liability to the public or to any Owner or Occupant (and such Owner's or Occupant's invitees, agents, employees, tenants, guests, servants and household members) for death, bodily injury and property damage arising out of or incident to the ownership or use of the Common Area or arising out of or incident to the performance by the Association of its maintenance and other obligations hereunder. The Board, with the assistance of the insurer(s) providing such coverage, shall review annually the amounts of coverage afforded by said comprehensive general liability policy or policies and adjust such amounts of coverage as the Board deems appropriate, but in no event shall said policy or policies provide coverage less than One Million and 00/100 Dollars (\$1,000,000.00) for death, bodily injury and property damage for any single occurrence. The policy or policies providing such insurance shall, by specific endorsement or otherwise, preclude denial by the insurer(s) providing such insurance of a claim under such policy or policies because of negligent acts or omissions of the Association, any Owner(s) or any Declarant Designee(s) or any other Person named as an insured or additional insured thereunder. For purposes of this Subsection 5.1.2 (and Subsection 5.1.7), the term "Declarant Designee" shall mean Declarant and, so long as Declarant or any Declarant Affiliate, or any Person with whom Declarant or any such Declarant Affiliate contracts directly for the performance of all or a substantial portion of Declarant's rights and obligations hereunder, or for the construction of substantial improvements on the Property, retains an interest in the Property or any Lot, such affiliate and such other Person, if identified by Declarant to the Association, provided that any added premium cost or other expense resulting from naming any Declarant Designee(s) as insured(s) shall be borne by such Declarant Designee(s).

5.1.3 Flood Insurance. In the event any part of the Common Area is in a "special flood hazard area," as defined by the Federal Emergency Management Agency (or its successors), the Board, acting on behalf of the Association, shall obtain (and maintain at all times during which any part of the Common Area is in such a "special flood hazard area") a "master" or "blanket" policy of flood insurance covering all insurable improvements on the Common Area and covering any personal property situated from time to time within such improvements (to the extent such personal property is normally covered by the standard flood insurance policy available from time to time in the State of Arizona). Said insurance shall be in an amount not less than the lesser of: (a) 100% of the current replacement cost, from time to time, of all such insurable improvements (and such insurable personal property) located in the "special flood hazard area"; or (b) the maximum coverage available for such insurable improvements and insurable personal property under the National Flood Insurance Program. Unless a higher maximum deductible amount is required by applicable law, the policy providing such insurance shall provide for a deductible not to exceed the lesser of \$5,000 or one percent (1%) of the face amount of such policy.

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5.1.4 General Provisions Governing Insurance. The insurance required to be obtained under Subsections 5.1.1, 5.1.2 and 5.1.3 shall be written in the name of the Association as trustee for each of the Owners and for each Mortgagee (as their respective interests may appear) and shall be governed by the provisions hereinafter set forth:

(a) All policies shall be written with one or more companies authorized to provide such insurance in the State of Arizona;

(b) Exclusive authority to adjust losses under policies in force on property owned or insured by the Association shall be vested in the Board;

(c) In no event shall the insurance coverage obtained and maintained by the Board hereunder be brought into contribution with insurance purchased by individual Owners, Occupants or their Mortgagees or other lienholders, and the insurance carried by the Association shall be primary;

(d) The Board shall be required to make every reasonable effort to secure insurance policies that will provide for a waiver of subrogation by the insurer as to any claims against the Board or the Owners and their respective tenants, servants, agents, employees, guests and household members;

(e) Each policy providing insurance coverage required by Subsections 5.1.1, 5.1.2 and 5.1.3 shall require the applicable insurer to endeavor to give not less than ten (10) days prior written notice to the Association, and to each Mortgagee which shall have previously given such insurer written notice of such Mortgagee's interest in a Lot (which notice must include the name and address of such Mortgagee), of any cancellation, refusal to renew or material modification of such policy; and

(f) To the extent reasonably available, each policy providing insurance coverage required by Subsections 5.1.1, 5.1.2 and 5.1.3 shall contain a waiver by the applicable insurer of its rights to repair and reconstruct instead of paying cash.

5.1.5 Fidelity Bonds. The Board, acting on behalf of the Association, shall obtain and maintain at all times adequate fidelity bond coverage to protect against dishonest acts on the part of officers, directors and employees of the Association and all others who handle, or are responsible for handling, funds held or administered by the Association, whether or not such officers, directors, employees or others receive compensation for services they render to or on behalf of the Association. In addition, the Board shall have the right, power and authority, at its reasonable discretion, to obtain and maintain fidelity bond coverage with respect to the activities of any independent management agent which handles funds for the Association and of the officers, directors and employees of such agent (separate and apart from any fidelity bond or similar coverage such agent may itself maintain). Each fidelity bond: (a) shall name the Association as obligee; (b) shall be issued by one or more companies authorized to issue such bonds in the State of Arizona; (c) in the case of fidelity bond coverage with respect to the Association and its officers, directors, employees and the like, shall be in an amount sufficient to cover the maximum total of funds reasonably expected by the Board to be in the custody of the Association at any time while such bond is in force, but in no event shall the amount of such fidelity bond coverage be less than the sum of three (3) months' Annual Assessments on all Lots, plus the total of funds held in the Association's reserves; and (d) in the case of fidelity bond coverage obtained by the Association, at the Board's discretion, with respect to the activities of any independent management agent (or the directors, officers or employees of such agent), shall be in such amount as the Board

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reasonably deems appropriate. Each fidelity bond shall provide that the issuer thereof shall endeavor to provide not less than ten (10) days prior written notice to the Association and to each Mortgagee which shall have previously given such insurer written notice of such Mortgagee's interest in a Lot (which notice must include the name and address of such Mortgagee), of any cancellation, refusal to renew or material modification of such policy.

5.1.6 Workers' Compensation Insurance. The Board, acting on behalf of the Association, shall obtain and maintain workers' compensation insurance if and to the extent necessary to meet the requirements of applicable law.

5.1.7 Cost of Insurance. All premiums for the insurance or bonds required to be obtained by the Board by this Section 5.1 shall be Common Expenses (except that, as provided in Subsection 5.1.2, any added premium cost of naming any Declarant Designee as an insured shall be borne by such Declarant Designee). The Board shall not be liable for failure to obtain or maintain any of the insurance coverage required by this Section 5.1, or for any loss or damage resulting from such failure, if such failure is due to the unavailability of such insurance coverage from reputable companies authorized to provide such insurance in the State of Arizona, or if such insurance coverage is available only at an unreasonable cost.

5.2 Insurance to be Obtained by the Owners.

5.2.1 Public Liability Insurance. Each Owner shall be responsible for providing, as such Owner sees fit and at such Owner's sole expense, such comprehensive public liability insurance as such Owner may desire against loss or liability for damages and any expense of defending against any claim for damages which might result from the ownership, use or occupancy of such Owner's Lot.

5.2.2 Hazard and Contents Insurance. Each Owner shall be responsible for providing, as such Owner sees fit and at such Owner's sole expense, such fire, liability, theft and any other insurance covering: (a) any Dwelling Unit and any other structure on such Owner's Lot; and (b) any and all fixtures and personal property upon such Lot or in such Dwelling Unit or other structure(s).

5.3 Casualty Losses.

5.3.1 Damage and Destruction.

(a) Immediately after any damage or destruction by fire or other casualty to all or any part of the property required to be insured by the Association under Section 5.1, the Board or its duly authorized agent shall: (i) proceed with the filing and adjustment of all claims arising under such insurance; (ii) obtain reliable and detailed estimates of the cost of repair or reconstruction of the damaged or destroyed property; and (iii) upon receipt of the proceeds of such insurance and except as is otherwise provided in this Subsection 5.3.1, use such proceeds to repair or reconstruct the damaged or destroyed part of the property. The terms "repair" and "reconstruction" (or variants thereof), as used in this Article 5 shall mean repairing or restoring the part of the property in question to substantially the same condition as that in which it existed prior to the fire or other casualty (or, where applicable, replacing the damaged or destroyed property with property substantially similar to the damaged or destroyed part of the property as it existed prior to such damage or destruction).

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(b) Any major damage or destruction to the property required to be insured by the Association under Section 5.1 shall be repaired or reconstructed unless at a special meeting of the Members of the Association duly noticed and convened within sixty (60) days after the occurrence of such damage or destruction, the Members determine, by a vote of Persons holding not less than seventy-five percent (75%) of the votes in each class of Members, not to so repair or reconstruct. If for any reason either the amount of the insurance proceeds to be paid as a result of such damage or destruction, or reliable and detailed estimates of the cost of repair or reconstruction, or both, are not made available to the Association within said period, then the period shall be extended until such information shall be made or become available; provided, however, that such extension shall not exceed an additional sixty (60) days. The Board shall determine whether any minor damage or destruction to the Common Area should be repaired or reconstructed.

(c) In the event that it is determined in the manner described above that the damage or destruction of any part of the Common Area shall not be repaired or reconstructed and no alternative improvements are authorized, then and in that event such property shall be maintained by the Association in a neat and attractive condition as an undeveloped portion of the Common Area.

5.3.2 Excess or Deficiency of Proceeds. If the damage or destruction for which the insurance proceeds are paid is to be repaired or reconstructed and such proceeds are not sufficient to pay the cost thereof, the Board may, without the necessity of a vote of the Members, levy Assessments against the Owners of all Lots, which Assessments shall be allocated equally among all Lots. Additional Assessments may be made in like manner at any time during or following the completion of any repair or reconstruction. Any Assessments levied pursuant to this Subsection 5.3.2 shall be deemed to be a part of the Assessments and shall be secured by the lien created by Section 8.3. If the funds available from insurance exceed the cost of repair, such excess shall be used to meet Common Expenses or, in the discretion of the Board, placed in a reserve account for contingencies or capital improvements.

5.3.3 Repair or Reconstruction of Dwelling Units or Other Structures. In the event of the destruction of a Dwelling Unit or other structure on a Lot, or of damage to such Dwelling Unit or other structure which, in the reasonable judgment of the Board, materially affects the exterior appearance thereof, the Board shall have the right, at its option, exercisable by written notice to the Owner of the Lot upon which such Dwelling Unit or other structure is situated, to require such Owner to repair or reconstruct (or cause to be repaired or reconstructed), at such Owner's expense (subject to any insurance proceeds as such Owner may then or thereafter receive in respect of such destruction or damage), such Dwelling Unit or other structure within such reasonable period of time as shall be specified by the Board in such notice (which period of time shall in no event be less than eight (8) months from the date of such destruction or damage). The Board may exercise such right and establish such time period notwithstanding such Owner's failure to maintain hazard or casualty insurance upon such Owner's Lot or any structures thereon and notwithstanding any unavailability or delay in receipt of proceeds of any insurance policy or policies, although the Board may take such matters into account in establishing or extending the time period within which such repair or reconstruction must be completed. Any such repair or reconstruction work shall be performed in compliance with all applicable provisions thereof, and the Owner of such Lot shall take such steps as are reasonably necessary to prevent damage to surrounding property and injury to persons as may result from or arise in connection with the destroyed or damaged Dwelling Unit or other structure or the repair or reconstruction activities with respect thereto. Nothing contained in

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this Declaration shall create or impose absolute liability upon any Owner for damages to Common Area or any Lot.

ARTICLE 6

ANNEXATION OF ADDITIONAL PROPERTY; DEANNEXATION

6.1 Reservation of Certain Annexation Rights. Declarant hereby reserves the right, privilege and Option from time to time hereafter to add and annex to the Property (and thereby to subject to the provisions of this Declaration) any part(s) or all of the Annexable Property, without the vote of the Members and without notice to or approval of any holder, insurer or guarantor of any Mortgage or of any other Person, provided, however, that the right, privilege and option reserved in this sentence shall expire and terminate at 11:59 P.M. local time on December 31 of the calendar year in which falls the ten (10th) anniversary of the date this Declaration is Recorded. Notwithstanding the foregoing sentence, no portion of the Annexable Property may be annexed to the Property unless, at the time of each and any such annexation either: (a) the portion of the Annexable Property to be annexed is owned either by Declarant or by a trustee for the benefit of Declarant or (b) the owner of the portion to be annexed (if other than Declarant or such trustee) consents in writing to the purposed annexation of the Annexable Property.

6.2 Limitations on Other Annexations. As of the date this Declaration is Recorded, Declarant does not anticipate that any additional Property, other than portions or all of the Annexable Property, as provided in Section 6.1, will be annexed to the Property, and additional Property not included within the Annexable Property may be annexed to the Property only: (a) by the affirmative vote of two-thirds (2/3) of the votes of each class of Members represented in person or by valid proxy at a meeting of Members duly called for that purpose; and (b) with the express written consent of each owner of all or any part of the Property proposed to be annexed.

6.3 Recordation of Annexation Instrument. Upon approval to the extent required by this Article 6 of any annexation of Property to the Property, Declarant, in the case of annexation of all or any part of the Annexable Property pursuant to Section 6.1, or the President and Secretary of the Association, in the case of any other annexation, shall execute, acknowledge and Record an instrument effecting and evidencing such annexation (which instrument shall also be duly executed and acknowledged by each owner of all or any part of the Property being annexed), and such annexation shall be deemed effective only upon such Recordation. Such instrument (o a separate instrument Recorded by Declarant or the Association, as applicable, against any Property annexed to the Property pursuant to this Article 6 and executed by the Owner of such annexed Property) may subject the annexed Property to such additional covenants, conditions and restrictions as the owner thereof may deem appropriate or desirable (subject, however, to approval thereof by Declarant or the Association, as applicable, and to such other approval rights as may be granted hereby to other parties in connection with such annexation), provided, however, that any and all such additional covenants, conditions and restrictions shall be subordinate and subject to the provisions of this Declaration.

6.4 Effect of Annexation. Upon the effective date of an annexation pursuant to this Article 6: (a) the Property so annexed shall immediately be and become a part of the Property and subject to all of the provisions hereof; (b) any Lot then or thereafter constituting a part of the annexed Property, and the Owner of any such Lot, shall thereupon be subject to all of the provisions of this Declaration; (c) any part or parts of the Property annexed which is or are designated or declared to be Common Area shall thereupon be subject to the provisions of this Declaration; and (d) improvements then or thereafter situated upon the annexed Property shall be subject to the provisions of this Declaration and shall be reasonably consistent, in terms of quality,

of construction, with the improvements situated upon other portions of the Property prior to such annexation.

6.5 No Obligation to Annex. Nothing herein shall constitute a representation, warranty or covenant that Declarant, any successor or assign of Declarant, or any other Person will subject any additional Property (whether or not a part of the Annexable Property) to the provisions of this Declaration, nor shall Declarant, any successor or assign of Declarant, or any other Person be obligated so to do, and Declarant may, by Recorded instrument executed by Declarant, waive its rights so to do, in whole or in part, at any time or from time to time.

6.6 De-Annexation. Notwithstanding any other provision of this Declaration, Declarant shall have the right from time to time, at its sole option and without the consent of any other Person (except as provided in this Section 6.6, to delete from the Property and remove from the effect of this Declaration one or more portions of the Property, provided, however, that: (a) a portion of the Property may not be so deleted and removed unless at the time of such deletion and removal such portion is either (i) owned by Declarant, (a Declarant Affiliate or a trustee of a trust for the benefit of Declarant or a Declarant Affiliate), or (ii) Declarant executes and Records an instrument approving such deletion and removal; (b) a portion of the Property may not be so deleted and removed unless at the time of such deletion and removal no Dwelling Units or Common Area recreational facilities have been constructed thereon (unless the de-annexation is for purposes of accomplishing minor adjustments to the boundaries of one or more Lots, any Common Area or another portion of the Property); and (c) a portion of the Property may not be so deleted and removed if such deletion and removal would deprive Owners and Occupants of other parts of the Property of access or other easements or rights-of-way necessary to the continued use of their respective parts of the Property (unless at the same time provision is made for reasonably adequate replacement easements or rights-of-way). Declarant may exercise its rights under this Section 6.6 in each case by executing and causing to be Recorded an instrument which identifies the portion of the Property to be so deleted and removed and which is executed by each owner of such portion (if other than Declarant), and the deletion and removal of such portion of the Property shall be effective upon the later of: (i) the date such instrument is Recorded; or (ii) the effective date specified in such instrument, if any, whereupon, except as otherwise expressly provided in this Section 6.6, the portion of the Property so deleted and removed shall thereafter for all purposes be deemed not a part of the Property and not subject to this Declaration, and the owner(s) thereof (or of interests therein) shall not be deemed to be Owners or Members with respect to the deleted portion of the Property or have any other rights or obligations hereunder with respect to the deleted portion of the Property except as members of the general public. No such deletion and removal of a portion of the Property shall act to release such portion from the lien for Assessments or other charges hereunder which have accrued prior to the effective date of such deletion and removal, but all such Assessments or other charges shall be appropriately prorated to the effective date of such deletion and removal, and no Assessments or other charges shall thereafter accrue hereunder with respect to the portion of the Property so deleted and removed.

ARTICLE 7

RIGHTS AND OBLIGATIONS OF THE ASSOCIATION

7.1 Common Area. The Association, subject to the rights of the Owners set forth in this Declaration, shall be responsible for the management and control of the Common Area and shall keep the Common Area in good, clean, attractive and sanitary condition, order and repair, pursuant to the terms and conditions hereof. Except for public streets, if any, within the Property, Pima County is not responsible for and will not accept maintenance of any private facilities, landscaped areas, etc. within the Property.

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7.1.1 The Association shall be responsible for the payment of ad valorem taxes on the Common Areas.

7.2 Personal Property and Real Property for Common Use. The Association, through action of the Board, may acquire, hold and dispose of tangible and intangible personal property and real property, except that, unless otherwise provided in this Declaration, no dedication, sale or transfer of all or any part of the Common Area shall be made or effective unless approved by not less than two-thirds (2/3) of the votes of each class of Members represented in person or by valid proxy at a meeting of Members duly called for such purpose (except in connection with minor adjustments to the boundaries of any Lot(s), any Common Area or any other portion of the Property, which may be approved by the Board without submitting the same to the Members for approval). The Board, acting on behalf of the Association, shall accept any real or personal property, leasehold or other property interests within, adjacent to or related to all or any part of the Property as may be conveyed or assigned to the Association by Declarant (including, but not limited to, such parts of the Common Area as may now or hereafter be held by Declarant). Any conveyance or encumbrance of any Common Area will be subject to any ingress or egress rights of Owners to access their residences within the Property.

7.3 Rules and Regulations. 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 shall be reasonable. The Association Rules may restrict and govern the use of the Common Area; 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 Property and the Common Area. Upon adoption, the Association Rules shall have the same force and effect as if set forth herein. Sanctions for violation of the Association Rules or of this Declaration may be imposed by the Board and may include suspension of the right to vote and the right to use the recreational facilities on the Common Area, and may also include reasonable monetary fines. No suspension of an Owner's right to vote or of the right of such Owner (or any Occupant of such Owner's Lot or any guest or household member of such Owner or Occupant) to use the recreational facilities on the Common Area due to a violation of the Association Rules may be for a period longer than sixty (60) days (except where such Owner or Occupant fails or refuses to cease or correct an ongoing violation or commits the same or another violation, in which event such suspension may be extended for additional periods not to exceed sixty (60) days each until such violation ceases or is corrected).

7.4 Availability of Books, Records, and Other Documents. The Association shall maintain complete and current copies of this Declaration, the Articles, the Bylaws and the Association Rules (as well as any amendments to the foregoing) and of the books, records and financial statements of the Association, and, upon the prior written request to the Association by any Owner or by any holder, insurer or guarantor of a First Mortgage, shall make the same available for inspection, at reasonable times and under reasonable circumstances, by such Owner or such holder, insurer or guarantor.

7.5 Financial Statements. In the event any holder, insurer or guarantor of a First Mortgage submits to the Association a written request for a financial statement of the Association for the most recently concluded fiscal year of the Association, the Association shall promptly deliver such a financial statement to such holder, insurer or guarantor, and in the event no such financial statement has been prepared for the most recently concluded fiscal year, the Association shall cause the same to be prepared and delivered to such holder, insurer or guarantor as soon as reasonably possible. The cost of having such a financial statement prepared

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shall be a Common Expense. The financial statements, books and records of the Association shall be audited or unaudited, as determined by the Board (subject to the requirements of the applicable law).

7.6 Implied Rights. The Association may exercise any other right or privilege given to it expressly by this Declaration, the Articles or the Bylaws, and every other right or privilege reasonably to be implied from the existence of any right or privilege given to it herein or reasonably necessary to effectuate any such right or privilege.

7.7 Board of Directors and Officers. The affairs of the Association shall be conducted by the Board and such officers as the Board may elect or appoint in accordance with the Articles and the Bylaws. The Board may appoint various committees at its discretion. The Board may also appoint or engage a manager to be responsible for the day-to-day operation of the Association and the Common Area. The Board shall determine the compensation to be paid to the manager.

ARTICLE 8

ASSESSMENTS

8.1 Creation of Assessment Right. In order to provide funds to enable the Association to meet its financial and other obligations and to create and maintain appropriate reserves, there is hereby created a right of assessment exercisable on behalf of the Association by the Board. Annual Assessments and Special Assessments shall be for Common Expenses and shall be allocated equally among all Lots, subject to the provisions of this Article 8.

8.2 Covenants with Respect to Assessments. Each Owner, by acceptance of his, her or its deed (or other conveyance instrument) with respect to a Lot, is deemed to covenant and agree to pay the Assessments levied pursuant to this Declaration with respect to such Owner's Lot, together with: (a) interest from the date due at a rate equal to the greater of: (i) ten percent (10%) per annum; or (ii) the annual rate of interest, if any, then in effect for new first priority single family residential mortgage loans guaranteed by the Veterans Administration; (b) such late fees as may be established from time to time by the Board; and (c) such costs and reasonable attorneys' fees, costs and other litigation fees and costs as may be incurred by the Association in seeking to collect such Assessments. Each of the Assessments with respect to a Lot, together with interest, late fees, costs and reasonable attorneys' fees, costs and other litigation fees and costs as provided in this Section 8.21 shall also be the personal obligation of the Person who or which was the Owner of such Lot at the time such Assessment arose with respect to such Lot, provided, however, that the personal obligation for delinquent Assessment shall not pass to a successor in title of such Owner unless expressly assumed by such successor (unless title is transferred to one or more such successors for purposes of avoiding payment of any Assessments or is transferred to a Person controlling, controlled by or under common control with the Owner transferring title). No Owner shall be relieved of his, her or its obligation to pay any of the Assessments (or any other amounts owing by such Owner to the Association hereunder, all of which shall be deemed a part of the Assessments) by abandoning or not using his, her or its Lot or the Common Area, or by leasing or otherwise transferring occupancy rights with respect to his, her or its Lot. However, upon transfer by an Owner of fee title to such Owner's Lot, as evidenced by a Recorded instrument, such transferring Owner shall not be liable for any Assessments thereafter levied against such Lot. The obligation to pay Assessments is a separate and independent covenant on the part of each Owner. No diminution or abatement of Assessments or setoff shall be claimed or allowed by reason of the alleged failure of the Association or Board to take some action or perform some function required to be taken or performed by the Association or Board under this Declaration, the Articles or the Bylaws, or for

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inconvenience or discomfort arising from the making of repairs or improvements which are the responsibility of the Association, or from any action taken to comply with any law or ordinance or with any order or directive of any municipal or other governmental authority.

8.3 **Lien for Assessments: Foreclosure.** There is hereby created and established a lien against each Lot which shall secure payment of all present and future Assessments assessed or levied against such Lot or the Owner thereof (together with any present or future charges, fines, penalties or other amounts levied against such Lot or the Owner thereof pursuant to this Declaration or any of the other Property Documents). Such lien is and shall be prior and superior to all other liens affecting the Lot in question, except: (a) all taxes, bonds, assessments and other levies which, by law, would be superior thereto; and (b) the lien or charge of any First Mortgage made in good faith and for value. Such liens may be foreclosed in the manner provided by law for the foreclosure of mortgages. The sale and transfer of any Lot pursuant to a mortgage foreclosure or any proceeding in lieu thereof pertaining to a First Mortgage shall extinguish the lien of the Assessments as to payments which became due prior to such sale or transfer, but no such sale or transfer shall relieve such Lot from liability for any Assessments becoming due after such sale or transfer, or from the lien thereof. The holder of a First Mortgage shall have no obligation to collect or pay Assessments prior to the foreclosure of the lien of such First Mortgage. The Association shall have the power to bid for any Lot at any sale to foreclose the Association's lien on the Lot, and to acquire and hold, lease, mortgage and convey the same. During the period any Lot is owned by the Association, no right to vote shall be exercised with respect to said Lot and no Assessments shall be assessed or levied on or with respect to said Lot, provided, however, that the Association's acquisition and ownership of a Lot under such circumstances shall not be deemed to convert the same into Common Area. The Association may maintain a suit to recover a money judgment for unpaid Assessments, rent, interest and attorneys' fees and costs and other litigation related fees and costs without foreclosing or waiving the lien securing same. Recording of this Declaration constitutes record notice and perfection of the liens established hereby, and further Recordation of any claim of a lien for Assessments or other amounts hereunder shall not be required, whether to establish or perfect such lien or to fix the priority thereof, or otherwise (although the Board shall have the option to Record written notices of claims of lien in such circumstances as the Board may deem appropriate). No provision hereof shall create an event of default under a First Mortgage by virtue of a failure to pay an Assessment hereunder.

8.4 **Dates Assessments Commence.** Assessments shall be payable with respect to a Lot from the date upon which title to the Lot shall first be conveyed to a Retail Purchaser, and such Assessments shall be payable regardless of whether a Dwelling Unit or other structure shall be situated upon such Lot on such date. As to any Lot owned by Declarant, Developer or a Designated Builder, the Assessments shall be payable by Declarant, Developer or the Designated Builder, as applicable, beginning upon the date of the first sale of a Lot within the Phase to a Retail Purchaser; provided, however, the Assessments shall be an amount equal to twenty-five (25%) of the Assessments which would otherwise be payable hereunder with respect to a Lot if it were owned by an Owner and not Declarant or a Designated Builder. As to any Lot conveyed by Declarant or a Designated Builder to a Retail Purchaser, Assessments as to such Lot shall be prorated as of the close of escrow with respect to such Lot (or, if no escrow is utilized, as of the date of Recordation of the deed conveying such Lot to such Retail Purchaser). No assessment shall be payable with respect to a Lot so long as Declarant or Designated Builder shall own all the Lots within the Phase containing such Lot.

8.5 **Computation of Assessments; Annual Budget.** The Board shall prepare and adopt an estimated annual budget for each fiscal year of the Association, which annual budget shall serve as the basis for determining the Annual Assessments for the applicable fiscal year (subject to the limitations of Section 8.7 hereof). Such budget shall take into account the estimated

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Common Expenses and cash requirements of the Association for the year. The annual budget shall also take into account the estimated net available cash income for the year, if any, from the operation or use of any of the Common Area. The annual budget shall also provide for a reserve for contingencies for the year (and for subsequent fiscal years) and a reserve for replacements, all in such reasonably adequate amounts as shall be determined by the Board, taking into account the number and nature of replaceable assets, the expected life of each asset, and each asset's expected repair or replacement cost. Not later than sixty (60) days following the meeting of the Board at which the Board adopts the annual budget for the year in question, the Board shall cause to be delivered or mailed to each Owner a copy of the budget and a statement of the amount of the Annual Assessments to be levied against such Owner's Lot for the fiscal year in question. In the event the Board fails to adopt a budget for any fiscal year prior to commencement of such fiscal year, then until and unless such budget is adopted, the budget (and the amount of the Annual Assessments provided for therein) for the year immediately preceding shall remain in effect. Subject to the provisions of this Section 8.5 and of Sections 8.7 and 8.9, neither the annual budget (nor any amended budget) adopted by the Board, nor any Assessment levied pursuant thereto, shall be required to be ratified or approved by the Owners. If, at any time during a fiscal year of the Association the Board deems it necessary to amend the budget for such year, the Board may do so and may levy an additional Annual Assessment for such year (subject to the limitations imposed by Section 8.7) or may call a meeting of the Members to request that the Members approve a Special Assessment pursuant to Section 8.9. Within sixty (60) days after adoption of the amended budget (if the Board elects to levy an additional Annual Assessment), the Board shall cause a copy of the amended budget and a statement of the additional Annual Assessments to be levied against the Lots to be delivered or mailed to each Owner; if, instead, the Board elects to call a meeting of Members to seek approval of a Special Assessment, the Board shall cause a copy of the amended budget proposed by the Board to be delivered or mailed to each Owner with the notice of such meeting, and if a Special Assessment is duly approved by the Members at such meeting, shall cause a statement of the Special Assessment to be levied against each Lot to be promptly mailed or delivered to each Owner.

8.6 Due Dates. Annual Assessments for each fiscal year shall be due and payable in equal periodic installments, payable not more frequently than monthly nor less frequently than semiannually, as determined for such fiscal year by the Board, with each such installment to be due and payable on or before the first day of the applicable period during that fiscal year. Special Assessments, if any, shall be paid in such manner and on such dates as may be fixed by the Board. In addition to any other powers of collection or enforcement granted hereunder, in the event any Assessments (or installments thereof) with respect to a Lot are delinquent, the Board shall have the right, in its sole discretion, to accelerate the date on which all Assessments With respect to such Lot are due and payable. For purposes of this Declaration, Assessments shall be deemed "paid" when actually received by the Association or by its manager or agent designated by the Association to collect the same (provided, however, that if any Assessments were paid by check and the bank or other institution upon which such check is drawn thereafter dishonors and refuses to pay such check, those Assessments shall not be deemed "paid" and shall remain due and payable with interest accruing from the date such Assessments were originally due). As provided in Section 8.2 the Board shall have the right to establish from time to time, in its reasonable discretion, late fees which may be charged in the event Assessments or other amounts payable to the Association are not paid on or before the applicable due dates, and may, at its election, provide grace period(s) following the applicable due date(s) before such late fees begin to accrue.

8.7 Maximum Annual Assessment. The Annual Assessments provided for herein shall not at any time exceed the Maximum Annual Assessment, as determined in accordance with this Section 8.7. For the fiscal year ending December 31, 2004, the Maximum Annual Assessment shall be Six Hundred and 00/100 Dollars (\$600.00) for each Lot. Thereafter, unless

a greater increase is approved by the affirmative vote of sixty-seven percent (67%) of the votes of each class of Members represented in person or by valid proxy at a meeting of Members duly called for such purpose, the Maximum Annual Assessment for any fiscal year shall be equal to the Maximum Annual Assessment for the immediately preceding fiscal year increased at a rate equal to the greater of: (a) the percentage increase for the applicable fiscal year over the immediately preceding fiscal year in the Consumer Price Index All Urban Consumers All Items (1982 1984 Average = 100 Base) published by the Bureau of Labor Statistics of the U.S. Department of Labor (or its successor governmental agency), or, if such index is no longer published by said Bureau or successor agency, then the index most similar in composition to such index; or (b) ten percent (10%). Notwithstanding the foregoing, the Board may, without the approval of the Members, increase the Maximum Annual Assessment for any fiscal year by an amount sufficient to permit the Board to meet any increases over the preceding fiscal year in: (i) premiums for any insurance coverage required by the Declaration to be maintained by the Association; or (ii) charges for utility services necessary to the Association's performance of its obligations under this Declaration, in either case (i) or (ii) notwithstanding the fact that the resulting increase in the Maximum Annual Assessment is at a rate greater than otherwise permitted under the preceding sentence. Nothing herein shall obligate the Board to levy, in any fiscal year, Annual Assessments in the full amount of the Maximum Annual Assessment for such fiscal year, and the election by the Board not to levy Annual Assessments in the full amount of the Maximum Annual Assessments for any fiscal year shall not prevent the Board from levying Annual Assessments in subsequent fiscal years in the full amount of the Maximum Annual Assessment for such subsequent fiscal year (as determined in accordance with this Section 8.7). In the event that, for any fiscal year, the Board elects to levy an Annual Assessment at less than the full amount of the Maximum Annual Assessment for such fiscal year, the Board may, in its reasonable discretion circumstances so warrant, subsequently levy a supplemental Annual Assessment during said fiscal year so long as the total of the Annual Assessments levied during said fiscal year does not exceed the Maximum Annual Assessment for such fiscal year.

8.8 Notice and Quorum for Meetings to Consider Special Assessments and Certain Increases in Annual Assessments. Notwithstanding any other provision hereof or of the other Property Documents, written notice of any meeting called for the purpose of: (a) approving the establishment of any Special Assessment, as required by Section 8.9 hereof; or (b) approving any increase in the Maximum Annual Assessment greater than that permitted by application of the formula as set forth in Section 8.7, shall be sent to all Members not less than thirty (30) days nor more than sixty (60) days prior to the date of said meeting. At the first meeting thus called to consider the particular Special Assessment or increase in the Maximum Annual Assessment, a quorum shall consist of sixty percent (60%) of the votes in each class of Members (whether represented in person or by valid proxy), provided, however, that if a quorum, as so determined, is not present at said first meeting, a second meeting may be called (subject to the same notice requirements as set forth above) to consider the same issue, and a quorum at said second meeting shall be one-half (1/2) of the required quorum at the first meeting, as described above. Such second meeting may not be held more than sixty (60) days after the first meeting.

8.9 Special Assessments. In addition to the Annual Assessments, the Association may levy Special Assessments from time to time, provided, however, that any Special Assessment shall be effective only with the approval of not less than two-thirds (2/3) of the votes of each class of Members represented in person or by valid proxy at a meeting of Members duly called and convened to consider such Special Assessment. Subject to Section 8.4, Special Assessments shall be allocated equally among all Lots.

8.10 Certificates. The Association shall, upon the written request of any Owner or the holder, insurer or guarantor of any Mortgage, and upon payment of such reasonable charge as may be determined by the Board, furnish to the requesting party a certificate, executed by an

officer of the Association, stating the date to which Assessments with respect to such Owner's Lot have been paid and the amount, if any, of any Assessments which have been levied with respect to said Lot but which remain unpaid as of the date of such certificate; said certificate shall be binding upon the Association as to the matters set forth therein as of the date thereof

8.11 Surplus Monies. Unless otherwise expressly determined by the Board, any surplus monies of the Association shall be held by the Association and placed in one or more reserve accounts as determined by the Board, and shall not be paid to the Owners or credited against the Owners' respective liabilities for Assessments.

8.12 Declarant's Obligation for Deficiencies. So long as the Class B membership exists, Declarant and all of the Designated Builders may pay and contribute to the Association, within thirty (30) days after the end of each fiscal year of the Association, or at such other times as may be requested by the Board, such funds as may be necessary, when added to the Assessments levied by the Association pursuant to this Declaration, to provide for: (a) the operation and maintenance of the Common Area and the recreational facilities located thereon; (b) the maintenance of adequate reserves; and (c) the performance by the Association of all other obligations of the Association under this Declaration or the Articles or Bylaws. Declarant's and the Designated Builders' obligations under this Section 8.12 may be satisfied in the form of a cash subsidy or by "in kind" contributions of services or materials, or a combination of both. Declarant's pro rata share of the subsidy shall be an amount equal to the total subsidy, multiplied by a fraction, the numerator of which is the total number of Lots owned by that Declarant as of the date the subsidy is assessed by the Board, and the denominator of which is the total number of Lots owned by Declarant and all Designated Builders as of the date the subsidy is assessed by the Board. The Designated Builder's pro rata share of the subsidy shall be an amount equal to the total subsidy, multiplied by a fraction, the numerator of which is the total number of Lots owned by that Designated Builder as of the date the subsidy is assessed by the Board, and the denominator of which is the total number of Lots owned by Declarant and all Designated Builders as of the date the subsidy is assessed by the Board. Declarant may elect to advance funds to the Association as loans to be repaid from future assessments by the Association.

8.13 Common Expenses Resulting from Misconduct. Notwithstanding any other provision of this Article 8, if any Common Expense is caused by the misconduct of any Owner (or of any Occupant, tenant, employee, servant, agent, guest or invitee for whose actions such Owner is responsible under applicable law), the Association may assess that Common Expense exclusively against such Owner and such Owner's Lot, which amount (together with any and all costs and expenses, including but not limited to attorney's fees costs and other litigation fees and costs incurred by the Association in recovering the same) shall be secured by the lien created pursuant to Section 8.3.

8.14 Additional Assessments Against Certain Lots. Where the Association has the responsibility to maintain, repair, replace, repave, resurface and operate private streets or private roadways constituting a part of the Common Area (or private street lights, light poles, street signs and other equipment and facilities appurtenant thereto), or any open space, recreational or other common facilities constitute a part of the Common Area (collectively referred to herein as the "Amenities"), and where any of the Amenities exclusively or disproportionately benefit the Owners of certain Lots within a portion of the Property as compared to the Owners of other Lots within the Property, the Board, in its sole discretion, may assess all (or such appropriate portion as the Board shall reasonably determine) of the costs of such maintenance, repair, replacement, repaving, resurfacing and operation solely against those Lots within the applicable portion of the Property (and the respective Owners thereof) as additional Assessments, which shall be assessed equally against each of the Lots within the portion of the Property that are benefited and shall be secured by the lien for Assessments created by and described in, and enforceable in accordance

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with this Article 8. Such additional Assessments may also include amounts to establish and fund reserves for such maintenance, repair, replacement, repaving, resurfacing and operation, and to purchase public liability, property damage and/or casualty insurance with respect to any of the amenities, all if and as the Board may deem reasonable and appropriate.

8.15 Working Capital Fund. To insure that the Association shall have adequate funds to meet its expenses or purchase necessary equipment or services, at the option of Declarant, the Association may require each person or entity (with the exception of Declarant and any Designated Builders) who purchases a Lot to pay to the Association immediately upon becoming the Owner of the Lot a sum equal to one-fourth (1/4 th) of the current Annual Assessment for the Lot. Funds paid to the Association pursuant to this Section may be used by the Association for payment of operating expenses or any other purpose permitted under this Declaration. Payments made pursuant to this Section shall be nonrefundable and shall not be offset or credited against or considered as advance payment of any Assessments levied by the Association pursuant to this Declaration.

8.16 Transfer Fee. Each Person or entity (other than Declarant and any Designated Builders) who purchases a Lot may be required to pay to the Association immediately upon becoming the Owner of the Lot a transfer fee in such amount as may be established from time to time by the Board provided Declarant determines to institute such transfer fee.

ARTICLE 9

ARCHITECTURAL STANDARDS; ARCHITECTURAL COMMITTEE

9.1 Appointment of Architectural Committee Standing to Enforce. The Property which is now or hereafter subject to this Declaration shall be subject to architectural, landscaping and aesthetic review as provided herein. This review shall be in accordance with this Article 9 and such standards as may be promulgated by the Architectural Committee, which is hereby established. Authority and standing on behalf of the Association to enforce in any court of competent jurisdiction decisions of the Architectural Committee and the provisions of this Article 9 shall be vested in the Board, provided, however, that so long as Declarant has the right to appoint the Architectural Committee under this Section 9. 1, Declarant shall have the right, but not the obligation, to enforce decisions of the Architectural Committee and the provisions of this Article 9, on behalf of the Association, in courts of competent jurisdiction. So long as Declarant (or a trustee for the benefit of Declarant) owns any part of the Property, the Architectural Committee shall consist of three (3) individuals appointed by Declarant. At such time as either: (a) neither Declarant nor a trustee for the benefit of Declarant owns any part of the Property; or (b) Declarant Records a written waiver of its right to appoint the Architectural Committee the Board shall appoint the members of the Architectural Committee, which shall have such number of members (but not less than three (3)) as the Board may elect, from time to time. Each member of the Architectural Committee appointed by the Board shall serve in such capacity until: (i) such member is removed by the Board; or (ii) such member resigns such position or dies. Prior to the appointment of the initial members of the Architectural Committee, and at any time when there is no one serving on the Architectural Committee (whether due to death, resignation or removal), the Board shall have and exercise any and all rights, powers, duties and obligations of the Architectural Committee

9.2 Jurisdiction of the Architectural Committee: Promulgation of Standards. The Architectural Committee shall have exclusive jurisdiction over all original construction and any modifications, additions or alterations to improvements on any portion of the Property (including, but not limited to, the construction or installation of, or modifications, additions or alterations to: (a) Dwelling Units and any other buildings or other structures; (b) landscaping;

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Committee fails either to approve or disapprove the proposed construction, installation, modification, alteration or addition (or to request additional information) within said forty-five (45) day period, such proposed construction, installation, modification, alteration or addition shall be deemed approved.

9.4 Obligation to Obtain Approval.

9.4.1 Except as otherwise expressly provided in this Declaration or the Architectural Committee Rules, without the prior written approval by the Architectural Committee of plans and specifications prepared and submitted to the Architectural Committee in accordance with the provisions of this Declaration and the Architectural Committee Rules:

(a) no improvements, alterations, repairs, excavation, grading, landscaping or other work shall be done which in any way alters the exterior appearance of any property or improvements thereon from their natural or improved state existing on the date such property first becomes subject to this Declaration; and

(b) no building, fence, exterior wall, pool, roadway, driveway or other structure, improvement or grading shall be commenced, erected, maintained, altered, changed or made on any Lot at any time.

9.4.2 No exterior trees, bushes, shrubs, plants or other landscaping shall be planted or placed upon the Property except in compliance with plans and specifications therefor which have been submitted to and approved by the Architectural Committee in accordance with the Architectural Committee Rules and except in compliance with Section 9.12.

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

9.4.4 No other item or matter required by this Declaration to be approved in accordance with this Article 9 shall be done, undertaken or permitted until approved by the Architectural Committee

9.5 Changes to Interiors of Dwelling Units or Other Structures. Nothing contained herein shall be construed to limit the right of an Owner to remodel the interior of his, her or its Dwelling Unit or other structure on such Owner's Lot or to paint the interior of his, her or its Dwelling Unit or such other structure any color desired, except to the extent such remodeling or painting is Visible From Neighboring Property or other structure or affects the exterior appearance of such Dwelling Unit or other structure.

9.6 Other Approvals; liability. No approval by the Architectural Committee of any proposed construction, installation, modification, addition or alteration shall be deemed to replace or be substituted for any building permit or similar approval required by any applicable governmental authority, nor shall any such approval be deemed to make the Architectural Committee (or the Board or the Association) liable or responsible for any damage or injury resulting or arising from any such construction, modification, addition or alteration. None of Declarant, the Association, the Board or the Architectural 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:

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9.6.1 the approval or disapproval of any plans, drawings or specifications,

9.6.2 the construction or performance of any work, whether or not pursuant to approved plans, drawings and specifications; or

9.6.3 the development of any Lot.

9.7 Fee. The Architectural Committee may establish, in the Architectural Committee Rules, a reasonable processing fee to defer the costs of the Architectural Committee in considering any request for approvals submitted to the Architectural Committee or for appeals to the Board, which fee shall be paid at the time the request for approval or review is submitted. Such fee, if established and charged by the Architectural Committee, shall be set at such reasonable level as the Architectural Committee may estimate will be necessary to defray the reasonable costs and expenses of the Architectural Committee in reviewing and evaluating any such request or application, and may include, if the Architectural Committee deems it reasonably necessary under the circumstances, an amount to cover the reasonable costs of professional consultation to the Architectural Committee by an architect or engineer.

9.8 Inspection. Any member or authorized consultant of the Architectural Committee or any authorized officer, director, employee or agent of the Association, may at any reasonable time and without being deemed guilty of trespass enter upon any Lot, after reasonable notice to the Owner or Occupant of such Lot, in order to inspect the improvements constructed or being constructed on such Lot to ascertain that such improvements have been, or are being, built in compliance with this Declaration, the Architectural Committee Rules and any approved plans, drawings or specifications.

9.9 Waiver. Approval by the Architectural Committee of any plans, drawings or specifications for any work done or proposed, or for any other matter requiring approval of the Architectural 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.

9.10 Appeal to Board. Except as provided in this Section 9.10, any Owner or Occupant aggrieved by a decision of the Architectural Committee may appeal the decision to the Board in accordance with procedures to be established in the Architectural Committee's standards and procedures. In the event the decision of the Architectural Committee is overruled by the Board on any issue or question, the prior decision of the Architectural Committee shall be deemed modified to the extent specified by the Board. Notwithstanding the foregoing, until termination of Declarant's right to appoint the members of the Architectural Committee pursuant to Section 9.1, no decision of the Architectural Committee may be appealed to the Board.

9.11 Non applicability to Declarant. The provisions of this Article 9 shall not apply to any portions of the Property owned by Declarant, by any Declarant Affiliate, or by a trustee for the benefit of any of the foregoing so long as any improvements constructed thereon (or any additions, modifications or alterations to any such improvements) are constructed or made in a good and workmanlike fashion and are generally comparable in terms of quality of construction to other improvements theretofore constructed by Declarant, or by any Declarant Affiliate on the Property (or on other property adjacent to or near the Property). Further, this Article 9 may not be amended without the written consent of Declarant so long as Declarant, any Declarant Affiliate, or a trustee for the benefit of any of the foregoing owns any of the Property.

9.12 Landscaping. All Lots, excluding driveways, parking areas and areas covered

by structures, shall be landscaped in a manner and using plants and soil approved in advance by the Architectural Committee. No exterior trees, bushes, shrubs, plants or other landscaping shall be planted or placed upon any Lot except in compliance with plans and specifications therefor which have been submitted to and approved by the Architectural Committee in accordance with this Article 9 and the Architectural Committee Rules. No material changes or deviations in or from the plans and specifications for any work to be done on any Lot, once approved by the Architectural Committee, shall be permitted without approval of the change or deviation by the Architectural Committee. Neither this Section 9.12 nor Sections 9.3 or 9.4 above shall be construed to prevent normal landscape maintenance or the replacement of dead or diseased plants with other similar plants (so long as the replacement plants are permitted by the Architectural Committee Rules).

ARTICLE 10

USE RESTRICTIONS AND OTHER COVENANTS, CONDITIONS AND EASEMENTS

10.1 Residential and Recreational Purpose. The Property shall be used only for residential, recreational and related purposes. No Lot or any other part of the Property shall be used, directly or indirectly, for any business, commercial, manufacturing, industrial, mercantile, vending or other similar purpose, except for use by Declarant or a Designated Builder (or a Declarant Affiliate or affiliate of a Designated Builder or assignee of Declarant), for a period not to exceed ten (10) years from the first conveyance by Declarant of a Lot to a Retail Purchaser, directly in connection with construction and sales activities with respect to the Property (including, but not limited to, maintenance and operation of model homes, sales offices and signs advertising the Property or portions thereof). Notwithstanding the foregoing, an Owner or other Occupant of a Dwelling Unit may conduct a business activity upon a Lot so long as: (a) the existence or operation of the business activity is not apparent or detectable by sight, sound or smell from outside the Dwelling Unit; (b) the business activity conforms to all applicable zoning ordinances or requirements for the Property; (c) the business activity does not involve the door-to-door solicitation of Owners or other Occupants in the Property; (d) the use of the Dwelling Unit for trade or business shall in no way destroy or be incompatible with the residential character of the Dwelling Unit or the surrounding neighborhood; (e) the trade or business shall be conducted only inside the Dwelling Unit or inside an accessory building or garage; (f) the trade or business shall be conducted by an Occupant or Occupants of the Dwelling Unit with no more than one (1) employee working in or from such Dwelling Unit who is not an Occupant thereof; (g) no more than twenty percent (20%) of the total floor area of the Dwelling Unit shall be used for trade or business; (h) the Residential Unit used for trade or business shall not be used as a storage facility for a business conducted elsewhere; (i) the volume of vehicular or pedestrian traffic or parking generated by such trade or business shall not result in congestion or be in excess of what is customary in a residential neighborhood; (j) a trade or business shall not utilize flammable liquids or hazardous materials in quantities not customary to a residential use; and (k) a trade or business shall not utilize large vehicles not customary to a residential use. The terms "business" and "trade" as used in this Section shall be construed to have ordinary, generally accepted meanings, and shall include, without limitation, any occupation, work or activity undertaken on an ongoing basis which involves the provision of goods or services to persons other than the provider's family and for which the provider receives a fee, compensation or other form of consideration, regardless of whether: (i) such activity is engaged in full or part time; (ii) such activity is intended to or does generate a profit; or (iii) a license is required for such activity. The leasing of a Dwelling Unit by the Owner thereof shall not be considered a trade or business within the meaning of this Section.

10.2 Garages and Driveways. The interior of all garages situated upon the Property shall be maintained by the respective Owners or Occupants thereof in a neat, clean and sightly

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condition. Such garages shall be used for parking vehicles and storage only, and shall not be used or converted for living or recreational activities. All driveways on Lots shall be of concrete construction.

10.3 Temporary Structures. No temporary residence, structure or garage shall be placed or erected upon any part of the Property (except as may otherwise be permitted by Section 10.4 or Section 10.21). Except with the express written approval of Declarant, no Dwelling Unit or other structure on any Lot shall be occupied in any manner while in the course of original construction or prior to issuance by the appropriate local governmental authority of a certificate of occupancy (or other similar document) with respect to such Dwelling Unit or other structure.

10.4 New Construction. All buildings or structures erected on the Property shall be of new construction and the buildings and structures shall not have been moved to the Property from other locations (except for temporary construction and/or sales facilities placed or maintained on the Property by Declarant or a Declarant Affiliate or assignee of Declarant in connection with the construction and sales activities of Declarant or such Declarant Affiliate or assignee of Declarant).

10.5 Signs. No billboards or signs of any type or character shall be erected or permitted on any part of the Property or on any Lot, except for signs used by Declarant or a Designated Builder (or a Declarant Affiliate, or assignee of Declarant or Designated Builder) to advertise the Property (or to identify builders, contractors or lenders) during the construction and sales period. Nothing herein shall be deemed to prohibit attachment to the exterior of a Dwelling Unit of a single nameplate and a single address plate identifying the occupant and the address of such Dwelling Unit or the placing upon the exterior of any Dwelling Unit (or upon the Lot containing the Dwelling Unit) of a single "For Sale" or "For Lease" sign, provided that such nameplates and address plates shall be subject to the rules and regulations of the Architectural Committee, and except that such "For Sale" or "For Lease" sign shall not have dimensions exceeding eighteen (18) inches by twenty-four (24) inches. Further, nothing herein shall be deemed to prohibit installation and maintenance of directional signs, subdivision identification signs, street signs or similar signs as may be approved by Declarant or by the Architectural Committee for installation or maintenance by the Association.

10.6 Heating, Ventilating and Air Conditioning Units. No heating, air conditioning or evaporative cooling units or equipment shall be placed, constructed or maintained upon the Property, including, but not limited to, upon the roof or exterior walls of any structure on any part of the Property unless: (a) where such unit or equipment is installed upon the roof of any structure upon the Property, such unit or equipment is fully screened so as not to be Visible From Neighboring Property by a parapet wall which conforms architecturally with such structure; or (b) in all other cases, such unit or equipment is attractively screened or concealed so as not to be Visible From Neighboring Property, which means of screening or concealment shall (in either case (a) or (b)) be subject to the regulations and approval of the Architectural Committee.

10.7 Solar Collecting Panels or Devices. Declarant recognizes the benefits to be gained by permitting the use of solar energy as an alternative source of electrical power for residential use. At the same time, Declarant desires to promote and preserve the attractive appearance of the Property and the improvements thereon, thereby protecting the value generally of the Property and the various portions thereof, and of the various Owners' respective investments therein. Therefore, subject to prior approval of the plans therefor by the Architectural Committee pursuant to Article 9 above, solar collecting panels and devices may be placed, constructed or maintained upon any Lot within the Property including upon the roof of any structure upon any Lot, so long as either: (a) such solar collecting panels and devices are placed, constructed and

maintained so as not to be Visible From Neighboring Property; or (b) such solar collecting panels and devices are placed, constructed and maintained in such location(s) and with such means of screening or concealment as the Architectural Committee may reasonably deem appropriate to limit, to the extent possible, being Visible From Neighboring Property.

10.8 Antennas, Poles, Towers and Dishes. No television, radio, shortwave, microwave, satellite, flag or other antenna, pole, tower or dish shall be placed, constructed or maintained upon the Property (including, but not limited to, upon the roof or exterior walls of any Dwelling Unit or other structure), unless: (a) such antenna, pole, tower or dish has been approved by the Architectural Committee, and (b) such antenna, pole, tower or dish complies with the rules and regulations relating thereto established by the Architectural Committee in conformance with applicable law. The Architectural Committee may establish, as part of the Architectural Committee Rules, rules and regulations relating to such antennas, poles, towers and dishes (including, but not limited to, the location, placement, and appearance thereof), which rules and regulations shall be subject to the requirements of applicable law. Notwithstanding the foregoing, the Board may (but shall not be obligated to) install (or permit to be installed) upon the Common Area a television and/or radio "dish type" antenna designed and intended to serve all Owners and Occupants of the Property (or as many of such Owners and Occupants as elect to use such service). Further, notwithstanding the foregoing, the Architectural Committee may adopt a rule or regulation permitting an Owner or Occupant to install and maintain a flagpole upon such Owner's or Occupant's Lot, provided that the location and size of such flagpole (and the number and size of any flag(s) mounted thereon) may be regulated by the Architectural Committee and may, if so provided in such rule or regulation, be made subject to the prior approval thereof by the Architectural Committee. Poles to which basketball backboards, goals and related equipment are affixed shall be governed by Section 10.9.

10.9 Basketball Goals or Similar Structures. No basketball goal or similar structure or device (whether mounted on a pole, wall or roof) shall be placed or constructed upon the front yard, front elevation or front roof surface of any structure on any part of the Property (except upon the Common Area). For purposes of the foregoing sentence, the term "front" shall be deemed to mean visible from ground level view from the street(s) running immediately in front of a Dwelling Unit or other structure. A basketball goal may be placed on a Lot in a location where such goal would be visible from a street running along the side of a Dwelling Unit so long as: (a) such goal is not visible from a street running in front of such Dwelling Unit; (b) such goal is located within an enclosed rear yard on such Lot; and (c) the location of, and any proposed methods of screening from view, such goal are approved in advance, in writing, by the Architectural Committee.

10.10 Tanks. No tanks of any kind (including tanks for the storage of fuel) shall be erected, placed or maintained on the Property unless such tanks are either: (a) buried underground; or (b) of such size and height, in such location and attractively screened and not Visible From Neighboring Property in such manner, as may be required by the Architectural Committee. Nothing herein shall be deemed to prohibit use or storage upon the Property of propane or similar fuel tanks with a capacity of ten (10) gallons or less used in connection with a normal residential gas barbecue, grill or fireplace.

10.11 Vehicles.

10.11.1 No private passenger automobiles or pickup trucks shall be parked upon the Property or any roadway adjacent thereto except within a garage, in a private driveway appurtenant to a Dwelling Unit, or within areas designated for such purpose by the Board.

10.11.2 No other vehicles (including, but not limited to, mobile homes, motor

homes, boats, recreational vehicles, commercial vehicles, trailers, trucks, campers, permanent tents or similar vehicles or equipment) shall be kept, placed or maintained upon the Property or any roadways adjacent thereto, except: (a) within a fully enclosed garage appurtenant to a Dwelling Unit; or (b) in such areas and subject to such rules and regulations as the Board may designate and adopt.

10.11.3 No vehicle (including, but not limited to, those enumerated in Subsections 10.11.1 and 10.11.2) shall be constructed, reconstructed or repaired upon the Property or any roadway adjacent thereto except within a fully enclosed garage.

10.11.4 No motor vehicles of any kind which are not in operating condition shall be parked in any unenclosed parking areas (including, but not limited to, private driveways appurtenant to a Dwelling Unit).

10.11.5 The provisions of this Section 10.11 shall not apply to vehicles of Declarant, the Designated Builders, or their employees, agents, affiliates, contractors or subcontractors during the course of construction activities upon or about the Property.

10.12 Underground Facilities. No cesspool or well may be dug or installed without the prior written approval of the Board. No part of the Property shall be used for purposes of boring mining, exploring for or removing oil or other hydrocarbons, minerals, gravel or earth (except to the limited extent required in connection with the normal construction activities of Declarant, the Designated Builders, a Declarant Affiliate or assignee of Declarant during the applicable construction period).

10.13 Outdoor Burning. There shall be no outdoor burning of trash or other debris; provided, however, that the foregoing shall not be deemed to prohibit the use of normal residential barbecues or other similar outside cooking grills or outdoor fireplaces.

10.14 Sanitation. Garbage and refuse facilities, containers and the like shall be attractively screened and camouflaged in such manner as not to be Visible From Neighboring Property including other Dwelling Units, property, roads or streets (except during reasonable periods to allow for collection by the appropriate municipal or private sanitation service). All equipment for the storage or disposal of garbage or other waste shall be kept in a clean and sanitary condition. All rubbish, trash and garbage shall be kept only in containers meeting applicable municipal sanitation requirements (and any applicable reasonable rules and regulations of the Association), shall be regularly removed from the Property and shall not be allowed to accumulate thereon.

10.15 Fences, Interferences and Obstructions.

10.15.1 All fences shall be of block construction (except as may be otherwise permitted with the prior written consent of the Architectural Committee) and, except as otherwise approved by the Architectural Committee, shall be color coordinated with the exterior of the structure(s) enclosed by or upon the same Lot as such fence. No fence shall exceed six and one-half (6 1/2) feet in height, provided that no fence within fifteen (15) feet of the front property line of a Lot shall exceed three (3) feet in height (provided that the Architectural Committee shall have the authority to establish and enforce even more restrictive limitations on the height, locations and appearance of fences and fence walls, either in individual cases or as a general restriction on portions or all of the Property, where necessary or appropriate, in the reasonable judgment of the Architectural Committee, to comply with applicable zoning, building or public safety ordinances). The foregoing shall not apply to boundary walls or fences (if any) constructed by Declarant along Property lines bounding public rights-of-way, provided,

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however, that such boundary walls or fences shall be constructed so as to comply with applicable municipal zoning and other laws and ordinances. No fence shall be permitted to interfere with existing recorded restrictions, drainageways or easements. Except as otherwise provided by applicable law or governmental rule or regulation, and subject to any applicable restrictions or requirements set forth in any recorded plat of all or any part of the Property, fences may be constructed in or over a recorded utility easement, provided, however, that should the utility companies ever require access to such easement, it shall be the responsibility of the Owner of the applicable Lot, at his, her or its sole expense, to remove and replace such fence.

10.15.2 No structure, shrubbery or other vegetation shall be permitted to exist on any Lot or other portion of the Property, the height or location of which shall be deemed by the Architectural Committee either to constitute a traffic hazard or to be unattractive in appearance or unreasonably detrimental to adjoining Property. As an aid to freer movement of vehicles at and near street intersections and in order to protect the safety of pedestrians, property and the operators of vehicles, the Board or Architectural Committee may impose further limitations on the height of fences, walls, gateways, ornamental structures, hedges, shrubbery and other fixtures, and construction and planting on corner Lots at the intersection of two or more streets or roadways.

10.16 Nuisance. No rubbish or debris of any kind shall be placed or permitted to accumulate for any unreasonable length of time on any portion of the Property, and no odors shall be permitted to arise therefrom, so as to render the Property or any portion thereof unsanitary, unsightly or offensive or detrimental to any other portion of the Property in the vicinity thereof or to its Owners or Occupants. No noxious destructive or offensive activity, or any activity constituting an unreasonable source of annoyance, shall be conducted on any Lot or on the Common Area. Without limiting the generality of any of the foregoing provisions, no exterior speakers, horns, whistles, bells or other sound devices, except ordinary intercom systems or security devices used exclusively for security purposes, shall be located, used or placed on the Property. The Board in its discretion shall have the right to determine the existence of any such activity or item. The Association shall have the standing and authority to institute legal proceedings to abate such activity or to secure the removal of such item. Furthermore, the Board shall have the right to remove any such activity or item at the expense of the Owner responsible for the nuisance (or at the expense of the Owner whose tenant, Occupant or guest is responsible for such activity or item). Each Owner and Occupant shall refrain from any act on or use of his, her or its Lot or the Common Area which could reasonably cause embarrassment, discomfort or annoyance to other Owners or Occupants, and the Board shall have the power to make and enforce reasonable rules and regulations in furtherance of this provision.

10.17 Drainage Alteration; Easements. No vegetation (except suitable ground cover) may be planted or permitted to remain on areas subject to drainage easements, as shown on Recorded plats, in such manner as to interfere with drainage or which shall be deemed by the Board to be a detriment to utilities located under or near such vegetation. Except as otherwise provided herein, or by applicable governmental rule, regulation or ordinance, the owner of property subject to Recorded easements shall be responsible for maintaining said property.

10.18 Clothes Drying Facilities. Outside clotheslines or other outside facilities for drying or airing clothes shall not be erected, placed or maintained on any part of the Property unless they are erected, placed or maintained exclusively within a fenced yard or otherwise concealed and shall not be Visible From Neighboring Property.

10.19 Pets. No animals, livestock or poultry of any kind shall be raised, bred or kept on the Property; provided, however, that nothing herein shall be construed as prohibiting the

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keeping of a reasonable number of ordinary household pets in or on a Lot, subject to rules and regulations adopted by the Board, provided that such pets are not kept, bred or maintained for any commercial purpose. Notwithstanding the foregoing, no pets may be kept upon the Property or on or in any Lot which, in the opinion of the Board, result in any annoyance or are obnoxious to Owners or Occupants of other Lots in the vicinity.

10.20 Leasing, Obligations of Tenants and Other Occupants.

10.20.1 All leases shall be in writing and shall provide that the terms of the lease shall be subject in all respects to the provisions of this Declaration, the Articles, the Bylaws, the Association Rules and the Architectural Committee Rules. All tenants shall be subject to the terms and conditions of this Declaration, the Articles, the Bylaws, the Association Rules and the Architectural Committee Rules as though such tenant were an Owner (except that such tenant shall not have any voting rights appurtenant to the Lot occupied by such tenant except pursuant to an express written assignment complying with Subsection 3.4. Each Owner shall cause his, her or its tenants or other Occupants to comply with this Declaration, the Articles, the Bylaws, the Association Rules and the Architectural Committee Rules and, to the extent permitted by applicable law, shall be responsible and liable for all violations and losses caused by such tenants or Occupants, notwithstanding the fact that such tenants or Occupants are also fully liable for any violation of each and all of those documents.

10.20.2 In the event that a tenant or other Occupant violates any provision of this Declaration, the Articles, the Bylaws, the Association Rules or the Architectural Committee Rules, the Association shall have the power to bring an action or suit against such tenant or other Occupant to recover sums due for damages or injunctive relief, or for any other remedy available at law or equity. The Association's costs in doing so, including, but not limited to, reasonable attorneys' fees, costs and other litigation fees and costs, together with interest as provided in Section 8.2, shall be reimbursed by the tenant or other Occupant to the Association (or, in the absence of reimbursement by the tenant or other Occupant, or at the election of the Board, by the Owner of the Lot occupied by such tenant or other Occupant) and constitute a lien on the applicable Lot which shall have the priority, and may be enforced in the manner described in Section 8.3.

10.20.3 The Board shall also have the power to suspend the right of the tenant or other Occupant to use the recreational facilities on or constituting a part of the Common Area for any violation by the tenant or other Occupant of any duty imposed under this Declaration, the Articles, the Bylaws, the Association Rules or the Architectural Committee Rules and, where approved by Members holding a majority of the votes in each class of Members represented in Person or by valid proxy at a meeting of Members duly called for such purpose, to impose reasonable monetary fines upon the tenant, Occupant or the Owner of the applicable Lot, or upon all such parties. No suspension hereunder of the right of a tenant or other Occupant to use the recreational facilities on or constituting part of the Common Area may be for a period longer than sixty (60) days except where the tenant or other Occupant fails or refuses to cease or correct an ongoing violation or commits the same or another violation, in which event such suspension may be extended for additional periods not to exceed sixty (60) days each until such violation ceases or is corrected; the foregoing limitation shall not affect or prevent termination of the applicable lease if permitted by the terms of said lease or otherwise by applicable law.

10.20.4 No Owner may lease less than his, her or its entire Lot. No Lot may be leased for a period of less than thirty (30) days. Upon leasing his, her or its Lot, an

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Owner shall promptly notify the Association of the commencement and termination dates of the lease and the names of each tenant or other Person who will occupy the Lot during the term of the lease, and thereafter shall advise the Association promptly of any changes in any of such information. Within five (5) business days following written request by the Board, by any officer of the Association or by the Association's independent management agent, the Owner shall deliver to the Board, such officer or such agent, as applicable, a true, correct and complete copy of the fully signed lease, including any and all amendments or modifications thereto.

10.20.5 The provisions of this Section 10.20 shall not apply to Declarant's or Designated Builder's use of Lots owned by (or leased to) Declarant or any such Designated Builder as a model home or office or for marketing purposes pursuant to Section 10.1.

10.21 Storage and Tool Sheds or Structures. No storage or tool sheds or similar structures shall be placed, erected or maintained upon any part of the Property except: (a) where such storage or tool shed or similar structure is constructed as an integral part of a Dwelling Unit (including materials, color and the like); or (b) where such storage or tool shed or similar structure is temporarily placed on the Property by Declarant or a Declarant Affiliate in connection with construction activities of Declarant or such Declarant Affiliate. Notwithstanding part (a) of this Section 10.21, an Owner or other Person shall be permitted to erect, on his, her or its Lot, a storage building which is not attached to the Dwelling Unit on that Lot, so long as the storage building meets all of the following requirements:

- (a) The storage building shall be stuccoed and painted to match the Dwelling Unit on the same Lot;
- (b) The roof of the storage building shall be tiled to match the roof of the Dwelling Unit on the same Lot;
- (c) The storage building shall be no higher than eight (8) feet at its highest point;
- (d) The storage building shall comply with all laws, ordinances and regulations (including, but not limited to, city set back requirements); and
- (e) The storage building shall not be attached at any point to any fence (including any block wall fence).

Any Owner or other Person who wishes to erect such a storage building on his, her or its Lot must still comply with all other provisions of this Declaration and, in particular, shall submit plans for the proposed storage building to the Architectural Committee for review in accordance with Article 9 of this Declaration, and shall not commence erection or construction of such storage building until such plans are approved by the Architectural Committee in accordance with Article 9 of this Declaration.

10.22 Landscaping and Maintenance. Within ninety (90) days of acquiring a Lot, each Owner (other than Declarant or a Designated Builder) shall landscape, if not already landscaped, such Lot and any public right-of-way areas (other than sidewalks or bicycle paths) lying between the front or side boundaries of such Lot and an adjacent street, except where the installation or maintenance (or both) of landscaping within any public right-of-way area is designated on a plat Recorded by or with the written approval of Declarant as being the

responsibility of the Association. Each Owner shall maintain the landscaping on such Owner's Lot and any public right-of-way areas lying between the front or side boundaries of such Lot and an adjacent street and shall keep the land free of debris and weeds at all times and promptly repair portions of the landscaping which have been damaged. Each Owner shall maintain the aforementioned landscaping and exterior of the Owner's Dwelling Unit in accordance with standards prescribed by the Board and otherwise in a manner and to a level not less than the standards of quality established by the Board with respect to the quality, quantity and frequency of watering, mowing, weeding, trimming, fertilizing, painting and the like. In the event any Owner fails to perform the obligations provided herein, the Association may, at the discretion of the Board, perform those obligations at the expense of such Owner, which expense, together with attorneys' fees, costs and other litigation fees and costs, plus any interest as provided in Section 8.2 shall be secured by the lien on such Owner's Lot established by Section 8.3. The provisions of this Section 10.22 shall not apply to portion of the Property owned by Declarant or a Designated Builder, or any Lot or other portion of the Property that has not been conveyed to a Retail Purchaser and that any Designated Builder has rights to purchase from a party other than Declarant. Notwithstanding the foregoing sentence, any Declarant (including Fulton and Standard Pacific), Designated Builder, or Owner owning a Lot or any other portion of the Property, whether improved or not, shall maintain such Lot or portion of the Property free of debris and weeds at all times and promptly repair portions of the land which may have been damaged.

10.23 Roof Materials. The roof of each Dwelling Unit (or of any building containing Dwelling Units) within the Property shall consist of concrete or clay tile, unless such Dwelling Unit has a flat roof with no pitch (i.e., a horizontal roof).

10.24 Encroachments. There are reserved and granted for the benefit of each Lot, over, under and across each other Lot and the Common Area, and for the benefit of the Common Area, over, under and across each Lot, non-exclusive easements for encroachment, support, occupancy and use of such portions of Lots and/or Common Area as are encroached upon, used and occupied as a result of any original construction design, accretion, erosion, deterioration, decay, errors in original construction, movement, settlement, shifting or subsidence of any building or structure or any portion thereof, or any other cause. In the event any improvements on a Lot or on the Common Area are partially or totally destroyed, the encroachment easement shall exist for any replacement structure which is rebuilt pursuant to the original construction design. The easement for the maintenance of the encroaching improvement(s) shall exist for as long as the encroachment exists; provided, however, that no easement of encroachment shall be created due to the willful misconduct of the Association or any Owner. Any easement of encroachment may but need not be cured by repair and restoration of the structure.

10.25 Easement for Annexable Property. Declarant shall have, and hereby expressly reserves, for itself and its agents, successors and assigns, an easement over and across the Common Area for the purposes of reasonable ingress to and egress from, over and across the Property, including private roads and pathways, to the Annexable Property until all of the Annexable Property is fully developed and sold to retail purchasers.

10.26 Miscellaneous. The Board, in its good faith discretion, is hereby authorized to grant such waivers of the restrictions contained in this Article 10 as it shall deem appropriate in the circumstances, so long as the use permitted by such waiver shall not result in an unsafe, unsanitary or aesthetically displeasing condition and shall not result, in the Board's discretion, in a substantial departure from the common plan of development contemplated by this Declaration. In addition, all portions of the Property shall continue at all times to be subject to any and all applicable zoning laws and ordinances, provided, however, that where the provisions of this Declaration are more restrictive than such laws or ordinances, the provisions of this Declaration shall control.

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ARTICLE 11

PARTY WALLS

11.1 General Rules of Law to Apply. Each wall or fence which is located between two Lots or between a Lot and Common Area shall constitute a party wall, and, to the extent not inconsistent with the provisions of this Article 11, the general rules of law regarding party walls and liability for property damages due to negligent or willful acts or omissions shall apply thereto. (For purposes of this Article 11 only, in the case of a party wall between a Lot and Common Area, in interpreting the provisions of this Article the Common Area bounded by such wall shall be deemed to be a "Lot" and the Association shall be deemed to be the "Owner" of such "Lot.")

11.2 Repair and Maintenance. No Owner or Occupant of any Lot (or any tenant, guest, invitee, employee or agent of such Owner or Occupant) shall do or permit any act (or omit to do any act) that will or does damage, destroy or impair the structural soundness or integrity of any party wall, or which would cause any party wall to be damaged by exposure to the elements, and, in the event any such Owner, Occupant, tenant, guest, invitee, employee or agent does or permits any such act (or so omits to do any act), such Owner's or Occupant's liability with respect to such damage, destruction, impairment or exposure shall be determined in accordance with applicable law.

11.3 Sharing of Repair and Maintenance. In the event any repair, maintenance or reconstruction of any party wall shall be necessary (other than due to the negligence or willful act or omission of the Owner or Occupant of one Lot, or such Owner's or Occupant's tenants, guests, invitees, employees or agents in which event such costs shall be the sole responsibility of the Owner) the cost thereof shall be borne equally by the Owners and/or Occupants of the Lot(s) having in common such party wall, and in the event any Owner (or Occupant) fails or re-timely to pay such Owner's (or Occupant's) share of such cost, the other Owner (or Occupant) shall have the right to pay in full such cost and recover from such Owner (or Occupant) such Owner's (or Occupant's) share of such cost (together with interest as provided in Section 8.2).

11.4 Consents to Modification. No Owner or Occupant shall alter or modify any party wall in any respect without having first obtained the written consent of the Owner of the other Lot adjoining such party wall, provided that such consent shall not be required in the case of repair or restoration of such party wall to its condition prior to any damage or destruction if the negligence or willful act or omission of the Owner or Occupant of such other Lot was the cause of such damage or destruction and such Owner or Occupant fails or refuses to repair or restore such party wall promptly upon the request of the other Owner or Occupant. Any consent required by this Section 11.4 shall be in addition to and not in substitution for the consents or approvals of the Architectural Committee required by this Declaration or of any municipal or other governmental body having jurisdiction over the Property.

ARTICLE 12

GENERAL PROVISIONS

12.1 Term. The covenants, conditions and restrictions of this Declaration: (a) shall run with and bind the Property; (b) shall inure to the benefit of and shall be enforceable by the Association or by the owner of any property subject to this Declaration, their respective legal representatives, heirs, successors and assigns; and (c) shall remain in full force and effect until January 1, 2050; beginning January 1, 2050 and at January 1 every twenty-five (25) years thereafter, this Declaration, and all of the conditions, covenants and restrictions herein, shall

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automatically be extended for successive periods of twenty-five (25) years each, unless and until revoked by an affirmative vote of Members holding not less than sixty-seven percent (67%) of all votes then entitled to be cast. For any such revocation to be effective, the vote required by this Section 12.1 shall be taken at a special meeting of Members duly called for such purpose, which meeting shall be held no earlier than six (6) months before the January 1 date at which this Declaration would automatically be extended absent such vote; in the event such meeting is duly called and held, and at that meeting the requisite number of votes are cast to revoke this Declaration, the President and Secretary of the Association shall execute and Record a notice of such revocation, and such revocation shall be effective as of the applicable January 1 date at which this Declaration would automatically be extended absent such vote. Notwithstanding any such revocation of this Declaration, each Owner of a Lot (and such Owner's Occupants, tenants, agents, guests and invitees) shall nevertheless have a permanent easement across the Common Area for access to such Lot and for access to and use of such recreational facilities as may exist on the Common Area at the time of such revocation.

12.2 Amendment. Except as otherwise provided in this Declaration, this Declaration may be amended only by the affirmative vote (in person or by proxy) or written consent of: (a) Members holding not less than sixty-seven percent (67%) of all Class A votes then entitled to be cast; and (b) so long as the Class B membership is in existence, Declarant. No amendment to this Declaration shall be effective unless and until such amendment is Recorded.

12.3 Indemnification. The Association shall indemnify each and every officer and director of the Association (including, for purposes of this Section, former officers and directors of the Association, and members of the Architectural Committee) against any and all expenses, including attorneys' fees and costs and other litigation related fees and costs, reasonably incurred by or imposed upon any officer, director or member of the Association in connection with any action, suit, or other proceeding (including settlement of any suit or proceeding, if approved by the Board serving at the time of such settlement) to which he or she may be a party by reason of being or having been an officer, director of the Association or member of the Architectural Committee, except for their own individual willful misfeasance, malfeasance, misconduct or bad faith. The officers, and directors shall have no personal liability with respect to any contract or other commitment made by them, in good faith, on behalf of the Association (except indirectly to the extent that such officers or directors may also be members of the Association and therefore subject to Assessments hereunder to fund a liability of the Association), and the Association shall indemnify and forever hold each such officer and director free and harmless for, from and against any and all liability to others on account of any such contract or commitment. Any right to indemnification provided for herein shall not be exclusive of any other rights to which any officer, director or member of the Architectural Committee former officer, director of the Association, or member of the Architectural Committee may be entitled. If the Board deems it appropriate, in its sole discretion, the Association may advance funds to or for the benefit of any director, officer or member of the Architectural Committee (or former director, officer or member of the Architectural Committee of the Association who may be entitled to indemnification hereunder to enable such Person to meet ongoing costs and expenses of defending himself or herself in any action or proceeding brought against such Person by reason of his or her being, or having been, an officer or director of the Association or member of the Architectural Committee. In the event it is ultimately determined that a current or former officer or director to whom, or for whose benefit, funds were advanced pursuant to the preceding sentence does not qualify for indemnification pursuant to this Section 12.3 or otherwise under the Articles, Bylaws or applicable law, such current or former officer or director shall promptly upon demand repay to the Association the total of such funds advanced by the Association to him or her, or for his or her benefit, with interest (should the Board so elect) at a rate not to exceed ten percent (10%) per annum from the date(s) advanced until paid.

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12.4 Easements for Utilities. There is hereby reserved to the Board, acting on behalf of the Association, the power to grant easements upon, across, over and under all or any portion(s) of the Common Area for installation, replacement, repair, and maintenance of master television antenna systems, security and similar systems, and all utilities, including, but not limited to, water, sewer, telephone, cable television, gas and electricity, and for delivering or providing public or municipal services such as refuse collection and fire and other emergency vehicle access (which easements shall also include appropriate rights of ingress and egress to facilitate such installation, replacement, repair and maintenance, and the delivery or provision of such public, municipal or emergency services), provided that no such easement shall interfere with a Dwelling Unit or its reasonable use or with Declarant's or Designated Builder's construction and sales activities and such easements shall require the holder of the easement to repair any damage caused to the property of any Owner. The Association shall have the right to grant any such easement either: (a) as a "blanket" easement covering all or a significant portion of the Common Area; or (b) if the Board deems it appropriate, as an easement affecting a smaller, more particularly identified portion of the Common Area.

12.5 No Partition. No Person acquiring any interest in the Property or any part thereof shall have a right to, nor shall any Person seek, any judicial partition of the Common Area. No Owner shall have any interest in the Common Area or any funds or other assets of the Association, other than indirectly as a Member of the Association, and no Owner sell, convey, transfer, assign, hypothecate or otherwise alienate any interest in the Common Area or any funds or other assets of the Association except that this Section shall not be deemed to prohibit an Owner from selling, conveying, encumbering or hypothecating such Owner's Lot (or an interest therein), including Owner's rights and interests under this Declaration and as a Member of the Association (which are appurtenant to title to such Lot). This Section shall not be construed to prohibit the Board from acquiring and disposing of tangible personal property nor from acquiring or disposing of title to real property (other than disposition of title to the Common Area, which shall be subject to Section 7.2 .

12.6 Severability; Interpretation; Exhibits; Gender. Invalidation of any one of these covenants or restrictions by judgment or court order shall in no way affect any other provisions which shall remain in full force and effect. The provisions hereof shall be construed and interpreted with reference to the laws of the State of Arizona. References in this Declaration to Articles, Sections and Subsections shall be deemed to be references to the specified Articles, Sections and Subsection of this Declaration (unless otherwise specifically stated), whether or not phrases such as "of this Declaration," "hereof" or "herein" are used in connection with such references. Any Exhibits referred to in this Declaration are hereby incorporated herein by reference and fully made a part hereof. Where the context hereof so requires, any personal pronouns used herein, whether used in the masculine, feminine or neuter gender, shall include all genders, and the singular shall include the plural and vice versa. Titles of Articles and Sections are for convenience only and shall not affect the interpretation hereof.

12.7 Perpetuities. If any of the covenants, conditions, restrictions or other provisions of this Declaration shall be unlawful, void or voidable for violation of the rule against perpetuities, then such provisions shall continue only until twenty-one (21) years after the death of the last survivor of the now living descendants of the person holding the office of President of the United States on the date this Declaration is Recorded.

12.8 Alternative Method for Resolving Disputes. Declarant, the Association, its officers, and directors, all Owners and Members or other parties subject to this Declaration (each a "Bound Party") agree to encourage the amicable resolution of disputes involving any Bound Party without the emotional and financial costs of litigation. Accordingly, each bound Party covenants and agrees to submit those claims, grievances or disputes described in

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Subsection 12.8.1 (collectively, "Claims") to the procedures set forth in Subsection 12.8.2.

12.8.1 Claims. Unless specifically exempted below, all Claims arising out of or related to the interpretation, application or enforcement of the Declaration, or the rights, obligations and duties of any bound Party under the Declaration or relating to the design or construction of improvements on the Property shall be subject to the provisions of Subsection 12.8.2. Notwithstanding the foregoing sentence, unless all parties thereto otherwise agree, the following shall not be Claims and shall not be subject to the provisions of Subsection 12.8.2 (collectively "Claims Exempt from Dispute Resolution"):

- (a) any suit or action by the Association against any Bound Party for delinquent Assessments;
- (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 to preserve the Association's ability to act under and enforce the provisions of Article 9 and Article 10;
- (c) any suit between or among Owners, which does not include Declarant or the Association as a party, if such suit asserts a Claim which would constitute a cause of action independent of this Declaration;
- (d) any suit in which any indispensable party is not a Bound Party; and
- (e) any suit as to which any applicable statute of limitations has expired or would expire within one hundred eighty (180) days of giving the Notice required by Subsection 12.8.2.

12.8.2 Mandatory Procedures.

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

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

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

(iii) the proposed remedy; and

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

(b) Negotiation and Mediation.

(i) The Parties shall make every reasonable effort to meet in person and confer for the purpose of resolving the Claim by good

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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.

(ii) If the Parties do not resolve the Claim within thirty (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 have an additional thirty (30) days to submit the Claim to mediation under the auspices of an independent mediation service designated by the Association, or, if the Parties otherwise agree, to an independent agency providing dispute resolution services with substantial experience with comparable disputes.

(iii) If Claimant does not submit the Claim to mediation within such time, or does not appear for the mediation, Claimant shall be deemed to have waived the Claim, and Respondent shall be released and discharged from any and all liability to Claimant on account of such Claim; provided, nothing herein shall release or discharge Respondent from any liability to any Person other than the Claimant.

(iv) Any settlement of the Claim through mediation shall be documented in writing by the mediator and signed by the Parties. If the Parties do not settle the Claim within thirty (30) days after submission of the matter to the mediation, or within such other time as determined by the mediator or agreed to by the Parties, the mediator shall issue a notice of termination of the mediation proceedings ("Termination of Mediation"). The Termination of Mediation notice shall set forth that the Parties are at an impasse and the date that mediation was terminated.

(v) Each Party shall bear its own costs of the mediation, including attorneys' fees, costs and other mediation fees and costs, and each Party shall share equally all charges rendered by the mediator. If the Parties agree to a resolution of any Claim through negotiation or mediation in accordance with this Subsection 12.8.2 and any Party thereafter fails to abide by the terms of such agreement, then any other Party may file suit or initiate administrative proceedings to enforce such agreement without the need to again comply with the procedures set forth in this Subsection 12.8.2. In such event, the Party taking action to enforce the agreement shall be entitled to recover from the non-complying Party (or if more than one non-complying Party, from all such Parties pro rata) all costs incurred in enforcing such agreement, including, without limitation, attorney's fees and court costs.

(c) Termination of Mediation. Upon Termination of Mediation, Claimant shall thereafter be entitled to submit the matter to binding arbitration. Any arbitration proceeding will (a) proceed in Phoenix, Arizona; (b) be governed by the Federal Arbitration Act (Title 9 of the United States Code); and (c) be conducted in accordance with the Commercial Arbitration Rules of the American Arbitration Association ("AAA"). Any arbitration proceeding will be before a single arbitrator. The parties shall use reasonable efforts to agree upon a single arbitrator within ten (10) days after written notice from one party to the

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other requesting arbitration. If the parties are unable to agree upon an arbitrator with such ten (10) day period, at any time thereafter either party may require that the arbitrator be selected according to the Commercial Arbitration Rules of the AAA. The arbitrator will be a neutral attorney who practices in the area of real estate, commercial or business law. The arbitrator will determine whether or not an issue is arbitrable and will give effect to the statutes of limitation in determining any claim. Judgment upon the award rendered by the arbitrator may be entered in any court having jurisdiction. In any arbitration proceeding, the arbitrator will decide (by documents only or with a hearing at the arbitrator's discretion) any pre-hearing motions which are similar to motions to dismiss for failure to state a claim or motions for summary adjudication. In any arbitration proceeding, discovery will be permitted and will be governed by the Arizona Rules of Civil Procedure. All discovery must be completed no later than twenty (20) days before the hearing date one hundred eighty (180) days of the commencement of arbitration proceedings. Any requests for an extension of the discovery period, or any discovery disputes, will be subject to final determination by the arbitrator upon a showing that the request for discovery is essential for the party's presentation and that no alternative means for obtaining information is available. The arbitrator shall award costs and expenses of the arbitration proceeding in accordance with the provisions of this forbearance agreement. The laws of the State of Arizona shall apply in any arbitration proceeding, without regard to its conflict of laws rules.

(d) Member Approval of Association Claims and Actions. Notwithstanding anything contained herein to the contrary and in addition to any requirements prescribed by law, the Association may not submit a Claim against Declarant or Declarant Affiliate to binding arbitration upon Termination of Mediation, and may not file any action against Declarant or Declarant Affiliate arising out of or related to the design, construction, condition or sale of any part of the Property or any improvements thereon, until all of the following have occurred:

(i) In advance of the meeting described in Subsection 12.8.2(d)(ii) below, the Board has provided full disclosure in writing to all Members of all material information relating to the Claim or action. The material information shall include, without limitation, a statement that describes the manner in which the action will be funded and a statement describing any demands, notices, offers to settle or responses to offers to settle made either by the Association or Declarant or the Declarant Affiliate, if applicable.

(ii) The Association has held a duly called meeting of its Members and the Board, at which a majority of the Class A Members, voting in person or by proxy, authorize the submittal of the Claim to arbitration or the filing of the action, as applicable.

(iii) The Board has authorized the submittal of the Claim to arbitration or the filing of the action, as applicable.

(e) **WAIVER. THE DECLARANT AND, BY ACCEPTING A DEED FOR THE ASSOCIATION PROPERTY OR A RESIDENTIAL UNIT, AS THE CASE MAY BE, THE ASSOCIATION AND EACH OWNER AGREE TO HAVE ANY DISPUTE RESOLVED ACCORDING TO THE PROVISIONS OF THIS SUBSECTION 12.8 AND WAIVE THEIR RESPECTIVE RIGHTS TO PURSUE ANY DISPUTE IN ANY MANNER OTHER THAN AS PROVIDED**

IN THIS SUBSECTION 12.8. SUCH PARTIES ACKNOWLEDGE THAT BY AGREEING TO RESOLVE ALL DISPUTES AS PROVIDED IN THIS SUBSECTION 12.8, THEY ARE GIVING UP THEIR RESPECTIVE RIGHTS TO HAVE SUCH DISPUTES TRIED BEFORE A COURT OR JURY.

12.9 Property Held in Trust. Any and all portions of the Property (and of the Annexable Property) which are now or hereafter held in a subdivision or similar trust or trusts (or similar means of holding title to property), the beneficiary of which trust(s) is Declarant or a Designated Builder, shall be deemed for all purposes under this Declaration to be owned by Declarant or such Designated Builder and shall be treated for all purposes under this Declaration in the same manner as if such property were owned in fee by Declarant or such Designated Builder. If fee simple title to a Lot is held by a trustee pursuant to a trust agreement, the beneficiary of the trust who is entitled to possession shall be deemed to be the Owner. No conveyance, assignment or other transfer of any right, title or interest in or to any of such property by Declarant or a Designated Builder to any such trust (or the trustee thereof) or to Declarant or such Designated Builder by any such trust (or the trustee thereof) shall be deemed for purposes of this Declaration to be a sale of such property or any right, title or interest therein.

12.10 Notices to Certain Mortgage Holders Insurers Or Guarantors. The Association shall give timely written notice of any of the following actions, events or occurrences to any holder, insurer or guarantor of a Mortgage who or which, prior to such action, event or occurrence, shall have made written request to the Association for such notice (which written request shall state the name and address of such holder, insurer or guarantor and the Lot number or street address of the Lot to which the applicable Mortgage pertains):

12.10.1 Any condemnation or casualty loss that affects either a material portion of the Property or the Lot securing the applicable Mortgage;

12.10.2 Any delinquency lasting sixty (60) days or more in payment of any Assessments or other charges owed to the Association by the Owner of the Lot securing the applicable Mortgage, or any other breach or default hereunder by the Owner of the Lot securing the applicable Mortgage which is not cured within sixty (60) days after notice thereof from the Association to such Owner; or

12.10.3 Any lapse, cancellation or material modification of any insurance policy or fidelity bond maintained by the Association.

12.11 Amendments Requested by Governmental Agency. Notwithstanding any other provision of this Declaration, Declarant shall have the right to amend all or any part of this Declaration to such extent and with such language as may be requested by the Federal Housing Administration, Veterans Administration, Federal National Mortgage Association, Federal Home Loan Mortgage Corporation or other governmental or quasi-governmental agency which issues, guarantees, insures or purchases Mortgages (or securities or other debt instruments backed or secured by Mortgages), or otherwise governs transactions involving Mortgages or instruments evidencing same, or otherwise governs development of the Property or the Annexable Property, as a condition to such agency's approval of this Declaration, the development encompassing the Property or any subdivision constituting a part of the Property. Any such amendment shall be effected by Declarant's Recording an instrument executed by Declarant and appropriately acknowledged, specifying the governmental or quasi-governmental agency requesting such amendment and setting forth the appropriate amendatory language. Recording of such amendment shall constitute conclusive proof of such governmental or quasi-governmental agency's request for such amendment. Such amendment shall be effective, without the consent or approval of any other Person, on and as of the date the same is Recorded, and shall thereupon and

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thereafter be binding upon any and all Owners or other Persons having any interest in all or any part of the Property. Except as expressly provided in this Section, neither Declarant nor any other Person(s) shall have the right to amend this Declaration except in accordance with and pursuant to the other provisions and requirements of this Declaration.

12.12 Number of Days. In computing the number of days for purposes of any provision of this Declaration or the Articles or Bylaws, all days shall be counted including Saturdays, Sundays and holidays; provided however, that if the final day of any time period falls on a Saturday, Sunday or legal holiday, then the final day shall be deemed to be the next day which is not a Saturday, Sunday or legal holiday.

12.13 Right to Use Similar Name. The Association hereby irrevocably consents to the use by any other nonprofit corporation which may be formed or incorporated by Declarant a corporate name which is the same as or deceptively similar to the name of the Association provided one or more words are added to the name of such other corporation to make the name of the Association distinguishable from the name of such other corporation. Within five (5) days after being requested to do so by Declarant, the Association shall sign such letters, documents or other writings as may be required by the Arizona Corporation Commission in order for any other non-profit corporation formed or incorporated by Declarant to use a corporate name which is the same or deceptively similar to the name of the Association.

12.14 Notice of Violation. The Association shall have the right to Record a written notice of a violation by any Owner or Occupant of any restriction or provision of this Declaration, the Articles, the Bylaws, the Association Rules or the Architectural Committee Rules. The notice shall be executed and acknowledged by an officer of the Association and shall contain substantially the following information: (a) the name of the Owner or Occupant; (b) the legal description of the Lot against which the notice is being Recorded; (c) a brief description of the nature of the violation; (d) a statement that the notice is being Recorded by the Association pursuant to this Declaration; and (e) a statement of the specific steps which must be taken by the Lot Owner or Occupant to cure the violation. Recordation of a notice of violation shall serve as a notice to the Owner and Occupant, and to any subsequent purchaser of the Lot, that there is such a violation. If, after the Recordation of such notice, it is determined by the Association that the violation referred to in the notice does not exist or that the violation referred to in the notice has been cured, the Association shall Record a notice of compliance which shall state the legal description of the Lot against which the notice of violation was recorded, the Recording data of the notice of violation, and shall state that the violation referred to in the notice of violation has been cured or, if such be the case, that it did not exist. Notwithstanding the foregoing, failure by the Association to Record a notice of violation shall not constitute a waiver of any existing violation or evidence that no violation exists.

12.15 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 the Property can or will be carried out, or that any real property now owned or hereafter acquired by Declarant 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 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 agrees to hold Declarant harmless therefrom.

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12.16 Declarant's Rights. Any or all of the special rights and obligations of Declarant may be transferred to other Persons, provided that the transfer shall not reduce an obligation nor enlarge a right beyond that contained herein, and provided, further, that no such transfer shall be effective unless it is in a written instrument signed by the Declarant and duly Recorded. Nothing in this Declaration shall be construed to require any Declarant, Designated Builder, or any successor to develop any of the Annexable Property in any manner whatsoever. Notwithstanding any provisions contained in this Declaration to the contrary, so long as construction and initial sale of Lots shall continue, (i) it shall be expressly permissible for Declarant (and any Designated Builder, to the extent permitted by Declarant) to maintain and carry on upon portions of the Common Area such facilities and activities as, in the sole opinion of Declarant, may be reasonably required, convenient or incidental to the construction or sale of such Lots, including, but not limited to, business offices, signs, model units and sales offices, and Declarant (and any Designated Builder, as applicable) shall have an easement for access to such facilities, and (ii) subject to the express grant by Declarant, a Designated Builder may maintain and carry on upon those Lots which are owned by such Designated Builder, such facilities and activities as may be reasonably required, convenient or incidental to the construction or sale of such Lots including, but not limited to, business offices, signs, model units. The right to maintain and carry on such facilities and activities shall include specifically the right to use Lots owned by Declarant any clubhouse or community center which may be owned by the Association, as models, sales offices and other purposes related to Declarant's sales activities on the Property and the Annexable Property. Notwithstanding any other provision in this Declaration to the contrary, this Section may not be amended without the express written consent of Declarant; provided, however, the rights contained in this Section shall terminate upon the earlier of: (a) ten (10) years from the date this Declaration is Recorded; or (b) upon Recording by Declarant of a written statement that all sales activity has ceased.

12.17 Amendments Affecting Declarant Rights. Notwithstanding any other provision of this Declaration to the contrary, no provision of this Declaration (including, but not limited to, this Section) which grants to or confers upon Declarant any rights, privileges, easements, benefits or exemptions (except for rights, privileges, easements, benefits, or exemptions granted to or conferred upon Owners generally) shall be modified, amended or revoked in any way, so long as Declarant or a trustee for the benefit of Declarant owns any portion of the Property, without the express written consent of Declarant.

12.18 Amendments to Articles and Bylaws. Except as otherwise provided in this Declaration, the Articles and Bylaws may only be amended by following the procedures set forth therein.

ARTICLE 13

FHA/VA PROVISIONS

13.1 Approvals During Period of Declarant Control. Notwithstanding any other provision of this Declaration or of any of the other Property Documents to the contrary, during the period: (a) commencing with the earlier of: (i) the date FHA or VA first approves any subdivision in the Property for single family residential loan insurance or guarantee programs offered by FHA or VA; or (ii) the date FHA or VA first insures or guarantees a loan on any Lot within the Property; and (b) ending with the conversion of the Class B Membership to Class A Membership:

13.1.1 property which is not included within the Annexable Property shall not be annexed to the Property without the prior approval of either FHA or VA (except to the extent such annexation involves only minor adjustments to boundaries of the Property);

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13.1.2 neither the Common Area nor any part thereof shall be dedicated without the prior approval of either FHA or VA (except in connection with minor adjustments to the boundaries of any Common Area or any other portion of the Property);

13.1.3 no amendment to this Declaration or to the Articles or Bylaws shall be effective without the prior approval of either FHA or VA (except to make clerical or technical corrections or in connection with matters which are not inconsistent with the prior approval by FHA or VA); and

13.1.4 the Association shall not be dissolved, or merged or consolidated with any other entity, without the prior approval of FHA or VA.

13.2 Obtaining Approvals. As to any action required by this Article 13 to be approved by FHA or VA before becoming effective or before being taken, such action shall be submitted to FHA or VA for approval, and if the agency whose approval is requested fails to disapprove the same, by written notice to the Association, Declarant or other Person requesting such approval, within thirty (30) days after delivery to such agency of the request for approval, the action in question shall be deemed approved by such agency.

13.3 Common Area Vesting. The Common Area is to be fully vested in the Association free and clear of monetary liens and encumbrances (other than taxes and governmental assessments) prior to issuance of FHA or VA insurance for any First Mortgage.

13.4 Definitions. For purposes of this Article 13, the term "FHA" means the Federal Housing Administration (or its successor federal agency), and the term "VA" means the Veterans Administration (or its successor federal agency).

ARTICLE 14

BENEFICIARY DISCLOSURE

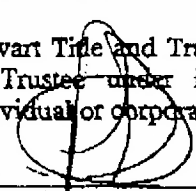
14.1 Name and Address. Pursuant to Arizona Revised Statutes Section 33-404, the name and address of the beneficiary of the Trust designated as Declarant is:

Canoa Development, Inc.
310 S. Williams Blvd., #340
Tucson, Arizona 85711

IN WITNESS WHEREOF, the undersigned has executed this Declaration as of the day and year first set forth above.

DECLARANT:

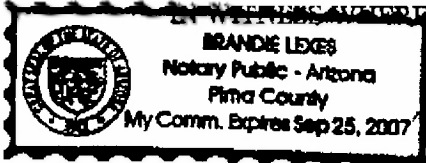
Stewart Title and Trust of Tucson, an Arizona corporation,
as Trustee under its Trust No. 3605 and not in its
individual or corporate capacity

By: 
Pat Spaulding
Its: Trust Officer

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STATE OF ARIZONA)
) ss.
COUNTY OF PIMA)

The foregoing instrument was acknowledged before me this 9th day
March 2004, by PAT SPAULDING
as TRUST OFFICER of Stewart Title and Trust of Tucson,
an Arizona corporation, as trustee under its Trust No. 3605, and not in its individual or corporate
capacity.



Brandie LeGes

Notary Public

Official Seal:

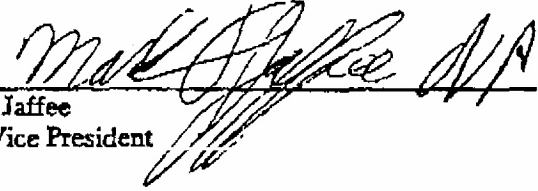
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BENEFICIARY DIRECTION TO EXECUTE

The undersigned, as the sole and only beneficiary of Stewart Title and Trust of Tucson, Trust No. 3605, hereby authorizes and directs the execution and recordation of the foregoing Amended and Restated Declaration of Covenants, Conditions and Restrictions for The Estates At Cienega Creek Preserve.

Dated: 3/4/04

Canoa Development, Inc., an Arizona corporation

By 
Mark S. Jaffee
Title: Vice President

WONG JUNN

EXHIBIT "A"

LEGAL DESCRIPTION

THE ESTATES AT CIENEGA CREEK PRESERVE, Lots 1-67 and Common Areas A, B, and C, according to the map or plat thereof recorded in the Office of the Recorder of Pima County, Arizona, in Book 56 Maps and Plats at page 90.