

Signal Butte Casas
Homeowners Association
CC&R's



Signal Butte Casas
Homeowners Association
P.O. Box 5720
Mesa, AZ 85211

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***DECLARATION OF COVENANTS, CONDITIONS,
RESTRICTIONS AND EASEMENTS
FOR
SIGNAL BUTTE CASITAS***

MARICOPA COUNTY, ARIZONA

TABLE OF CONTENTS

ARTICLE 1 DEFINITIONS	2
ARTICLE 2 PROJECT PLAN	6
2.1 Project General Plan; Binding Effect	6
2.2 Disclaimer of Representations	6
2.3 Right of Annexation	7
ARTICLE 3 USE RESTRICTIONS	8
3.1 Architectural Control	8
3.2 Temporary Occupancy and Temporary Structures	11
3.3 Nuisances; Construction Activities/Maintenance of Improvements	11
3.4 Diseases and Insects	11
3.5 Antennas	11
3.6 Mineral Exploration	11
3.7 Environmental Restrictions	12
3.8 Trash and Recycling Collection	12
3.9 Clothes Drying Facilities	12
3.10 Utility Service	12
3.11 Overhead Encroachments	12
3.12 Residential Use	12
3.13 Animals	13
3.14 Machinery and Equipment	14
3.15 Roof Structures and Equipment	14
3.16 Window Treatments	14
3.17 Signs	14
3.18 Restriction on Subdivision, Restrictions and Rezoning	15
3.19 Commercial Vehicles	15
3.20 General Vehicle Restrictions and Invitee Parking	15
3.21 Towing of Vehicles	16
3.22 Lighting	16
3.23 Drainage	16
3.24 Garages/Garage Sales	16
3.25 Basketball Goals and Backboards	17
3.26 Planting and Landscaping	17
3.27 Gated Community	17
3.28 Variances	17
3.29 No Warranty of Enforceability	18
ARTICLE 4 AGE RESTRICTIONS	18
4.1 Housing for Older Persons	18
4.2 Fair Housing Amendments Act	18
4.3 Statement of Intent	19
4.4 Requirements for Exemption	19
4.5 Declarant Conveyances	19
4.6 Notification of Change	19
4.7 No Warranty of Fair Housing Act Compliance	20
ARTICLE 5 EASEMENTS	20
5.1 Owners' Easements of Enjoyment in Common Area	20
5.2 Utility Easement/Irrigation Lines	21
5.3 Avigation Easement	21
5.4 Electric Transmission Line Easement and Facilities License	21

5.5	Declarant's Use for Sales and Leasing Purposes	22
5.6	Declarant's Easements	22
5.7	Easements in Favor of Association	23
5.8	Easements for Encroachments	23
ARTICLE 6	THE ASSOCIATION	23
6.1	Formation of Association	23
6.2	Board of Directors and Officers	23
6.3	Association Rules	23
6.4	Personal Liability	23
6.5	Implied Rights	24
6.6	Identity of Members	24
6.7	Classes of Membership and Voting Rights	24
6.8	Voting Procedures	24
6.9	Transfer of Membership	25
6.10	Architectural Control	25
6.11	Conveyance or Encumbrance of Common Area	25
6.12	Suspension of Voting Rights	26
6.13	Association Contracts	26
ARTICLE 7	ASSESSMENTS	26
7.1	Creation of Lien and Personal Obligation of Assessments	26
7.2	Annual Assessments	27
7.3	Rate of Assessment	27
7.4	Obligation of Declarant for Deficiencies	27
7.5	Special Assessments	27
7.6	Enforcement Assessments	28
7.7	Assessment Period	28
7.8	Commencement Date of Assessment Obligation	28
7.9	Rules Regarding Billing and Collection Procedures	28
7.10	Effect of Nonpayment of Assessments; Association Remedies	29
7.11	Evidence of Payment of Assessments	30
7.12	Purposes for which Association's Funds May Be Used	30
7.13	Surplus Funds	31
7.14	Working Capital Fund	31
7.15	Transfer Fee	31
7.16	No Offsets	31
7.17	No Exemption of Owners	31
7.18	Maintenance of Reserve Fund	31
7.19	Notice and Quorum for any Action Under Sections 7.2 or 7.5	32
7.20	Unallocated Taxes	32
7.21	Assessments on Lots Subsequently Annexed	32
ARTICLE 8	MAINTENANCE	33
8.1	Maintenance of Areas of Association Responsibility	33
8.2	Maintenance of Lots by Owners	34
8.3	Assessment of Certain Costs of Maintenance and Repair	34
8.4	Improper Maintenance and Use of Lots	34
8.5	Boundary Walls	35
8.6	Maintenance of Walls Other than Boundary Walls	35
8.7	Payment of Utility Charges	36
ARTICLE 9	INSURANCE	36
9.1	Scope of Coverage	36

9.2	Contents of Policies.....	37
9.3	Limitation of Liability	37
9.4	Certificates of Insurance.....	37
9.5	Payment of Premiums/Deductibles.....	37
9.6	Payment of Insurance Proceeds.....	38
9.7	Repair and Replacement of Damaged or Destroyed Property.....	38
ARTICLE 10	CONSTRUCTION CLAIMS PROCEDURES.....	38
10.1	Right to Cure Alleged Defects	38
10.2	Legal Actions.....	40
10.3	Approval of Litigation	40
10.4	Binding Arbitration	41
10.5	Declarant's Option to Litigate	42
10.6	Arizona Statutory Compliance	42
ARTICLE 11	ENFORCEMENT	43
11.1	General Right of Enforcement.....	43
11.2	Items of Construction/Equitable Relief.....	43
11.3	Enforcement by Association	43
11.4	Limited Enforcement Obligation	44
ARTICLE 12	GENERAL AND MORTGAGEE PROVISIONS.....	44
12.1	Term; Method of Termination	44
12.2	Amendments	45
12.3	Certain Mortgagee Rights.....	46
12.4	Interpretation	48
12.5	Severability.....	48
12.6	Rule Against Perpetuities	48
12.7	Change of Circumstances	48
12.8	Notice of Violation	48
12.9	Laws, Ordinances and Regulations	49
12.10	Right to Inspect Documents; Audited Financial Statements.....	49
12.11	Condemnation	49
12.12	References to this Declaration in Deeds.....	50
12.13	Gender and Number.....	50
12.14	Captions and Titles.....	50
12.15	Notices	50
12.16	FHA/VA Approval	51
12.17	No Absolute Liability	51
12.18	References to VA and FHA	51
12.19	Declarant's Right to Use Similar Name.....	51
12.20	Attorneys' Fees	51

**DECLARATION OF COVENANTS, CONDITIONS,
RESTRICTIONS AND EASEMENTS
FOR
SIGNAL BUTTE CASITAS**

This Declaration of Covenants, Conditions, Restrictions and Easements for Signal Butte Casitas is made this 2nd day of June, 2003, by Creative Properties, Inc., an Arizona corporation ("**Declarant**").

RECITALS

A. Declarant is the owner of that certain parcel of real property situated in Maricopa County, Arizona, more particularly described on Exhibit A attached hereto and incorporated herein by this reference (the "**Project**"). The Project also includes all Improvements (as defined below) and all easements, rights and privileges appurtenant thereto.

B. Declarant desires to create a planned residential community which will include common facilities for the benefit of the community.

C. Declarant desires to submit and ^{Unofficial Document}subject the Project, including any real property subsequently annexed thereto pursuant to Article 2 of this Declaration, together with all Improvements and all easements, rights, appurtenances and privileges belonging to or in any way pertaining thereto, to the covenants, conditions and restrictions herein set forth.

D. Declarant desires to establish for its own benefit and for the mutual benefit of all future Owners and Residents of the Project and every part thereof, certain easements and rights in, over and upon the Project and certain mutually beneficial restrictions and obligations with respect to the proper use, conduct and maintenance thereof.

E. Declarant desires and intends that the Owners and all other Persons acquiring any interest in the Project, including, without limitation, First Mortgagees, shall at all times enjoy the benefits of, and shall hold their interests subject to, the rights, easements, privileges, covenants and restrictions hereinafter set forth, all of which shall run with the land and be binding upon the Project and all Persons having or acquiring any right, title or interest in or to the Project, or any part thereof, and shall inure to the benefit of each holder of an interest therein, and all of which are declared to be in furtherance of a plan to promote and protect the Project and are established for the purpose of enhancing and perfecting the value, desirability, and attractiveness of the Project.

DECLARATIONS

NOW, THEREFORE, Declarant, for the purposes set forth above, declares as follows:

ARTICLE 1 DEFINITIONS

Unless otherwise defined, the following words and phrases when used in this Declaration shall have the meanings set forth in this Article.

1.1 “Annexable Property” means any real property located in Maricopa County, Arizona, and located within a one-mile radius of the Project, together with all buildings and other Improvements located thereon and all easements, rights and privileges appurtenant thereto.

1.2 “Annual Assessment” means the assessments levied against each Lot, and the Owner thereof, pursuant to Section 7.2 of this Declaration.

1.3 “Architectural Committee” means any committee of the Association as may be created as a separate committee of the Board pursuant to the provisions of Section 5.10 of this Declaration. If so created, the Architectural Committee shall exercise the duties of the Board under Section 3.1 of this Declaration and other similar duties or obligations as may be delegated to said Committee. **“Committee”** means any other committee of the Board established pursuant to the provisions of said Section 6.10.

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1.4 “Architectural Rules” means any rules, guidelines, standards and procedures adopted by the Architectural Committee or the Board pursuant to Section 6.10 of this Declaration, as amended or supplemented from time to time.

1.5 “Area(s) of Association Responsibility” means (i) all Common Area; (ii) all land, and the Improvements situated thereon, located within the boundaries of a Lot which the Association is obligated to maintain, repair and replace pursuant to the terms of this Declaration or the terms of another Recorded document executed by the Association; and (iii) all real property, and the Improvements situated thereon, within the Project located within dedicated rights-of-way with respect to which the State of Arizona or any county or municipality has not accepted responsibility for the maintenance thereof, but only until such time as the State of Arizona or any county or municipality has accepted all responsibility for the maintenance, repair and replacement of such areas.

1.6 “Articles” means the Articles of Incorporation of the Association, as amended from time to time.

1.7 “Assessment” means an Annual Assessment, Special Assessment, Enforcement Assessment, or any other charge properly levied against a Lot by the Association pursuant to this Declaration or Arizona law, including, without limitation, late charges, interest, monetary

penalties for infractions of the Project Documents, and Collection Costs incurred in the collection of Assessments and enforcement of the Project Documents and the like.

1.8 “Assessment Lien” means the lien created and imposed by Article 7 of this Declaration and Arizona law and intended to secure repayment of Assessments levied by the Association.

1.9 “Assessment Period” means the period set forth in Section 7.7 of this Declaration.

1.10 “Association” means the Arizona nonprofit corporation to be organized by Declarant to administer and enforce the Project Documents and to exercise the rights, powers and duties set forth therein, and its successors and assigns. Declarant intends to incorporate the Association under the name “Signal Butte Casitas Homeowners Association,” but if such name is not available, Declarant reserves the right to incorporate the Association under such other name as the Declarant deems appropriate.

1.11 “Association Rules” means any rules adopted by the Board pursuant to Section 6.3 of this Declaration, as amended from time to time.

1.12 “Board” means the Board of Directors of the Association.

1.13 “Bylaws” means the Bylaws of the Association, as amended from time to time.

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1.14 “City” means the City of Mesa, Arizona.

1.15 “Collection Costs” means all costs, fees, charges and expenditures (including, without limitation, attorneys’ fees, court costs, filing fees, lien fees, Recording fees, title report fees, and fees and costs charged by any collection agent), monetary penalties, late charges, or interest incurred or lawfully charged by the Association in collecting and/or enforcing payment of Assessments or other charges payable to the Association or incurred by the Association in enforcing the Project Documents, without regard to whether a law suit is filed or legal action otherwise undertaken by or on behalf of the Association.

1.16 “Common Area” means (i) *Tracts A, B, C, D, E, F, G, H and I*, inclusive, according to the Plat, including the recreational Improvements thereon; and (ii) all land, together with all Improvements situated thereon, which the Association at any time owns in fee or in which the Association has a leasehold interest for as long as the Association is the owner of the fee or leasehold interest. Improvements on the Common Area include, but are not limited to, a clubhouse, pool, spa and related recreational amenities, sidewalks, streetlights leased from Salt River Project, parking, perimeter walls, cluster mailboxes, and permanent signage.

1.17 “Common Expense(s)” means expenditures made by or financial liabilities incurred by the Association, together with required allocations to reserves.

1.18 "Declarant" means Creative Properties, Inc., an Arizona corporation, and any Person to whom it may expressly assign any or all of its rights under this Declaration by an instrument Recorded with the County Recorder of Maricopa County, Arizona. Without limiting the foregoing, Creative Communities of Arizona, Inc. or any other Person who may enter into a binding Recorded option agreement to buy all or substantially all of the Lots from Creative Properties, Inc. shall automatically be considered the Declarant under this Declaration for as long as such option remains in effect.

1.19 "Declaration" means this *Declaration of Covenants, Conditions, Restrictions and Easements for Signal Butte Casitas*, as amended from time to time.

1.20 "Enforcement Assessment" means an Assessment levied pursuant to Section 7.6 of this Declaration.

1.21 "First Mortgage" means any mortgage or deed of trust on a Lot which has priority over all other mortgages and deeds of trust on the same Lot.

1.22 "First Mortgagee" means the holder or beneficiary of any First Mortgage.

1.23 "Improvement" means any building, fence, gate, sidewalk, wall, equipment, swimming pool, spa, road, driveway, parking area (paved or unpaved), cluster mailboxes, permanent signage, statuary, fountain, artistic work or ornamentation of any kind, lighting fixtures, basketball poles/hoops, play structures, patio covers and balconies, and trees, plants, shrubs, grass or other landscaping of every type and kind and any other structure of any type, kind or nature. For purposes of Section 3.1, "Improvement" shall not include swing sets without play platforms or other recreational equipment or structures placed within Private Yards which do not exceed a height of eight (8) feet from ground level and are placed a minimum of five (5) feet away from all Boundary Walls between neighboring Lots.

1.24 "Invitee" means any person whose temporary or periodic presence within the Project, including within any Residential Dwelling, has been solicited, approved by or arranged for by an Owner, Lessee, or Resident, including without limitation, his guests, employees, business invitees, contractors and agents.

1.25 "Lessee" means the lessee or tenant under a lease, oral or written, of any Residential Dwelling on a Lot, including an assignee of a lease.

1.26 "Lot" means a portion of the Project intended for independent ownership and use and designated as a lot on the Plat and, where the context indicates or requires, shall include any Residential Dwelling or other Improvements situated on the Lot.

1.27 "Member" means any Person who is a member of the Association.

1.28 "Owner" means the record owner, whether one or more Persons, of beneficial or equitable title (and legal title if the same has merged with the beneficial or equitable title) to the

fee simple title interest of a Lot. An Owner shall include a purchaser under a contract for the conveyance of real property, subject to the provisions of A.R.S. §33-741 et seq. An Owner shall not include: (i) Persons having an interest in a Lot merely as security for the performance of an obligation or a Lessee or (ii) a purchaser under a purchase contract and receipt, escrow instructions or similar executory contract which are intended to control the rights and obligations of the parties to the executory contract pending the closing of a sale or purchase transaction. In the case of Lots the fee simple title to which is vested in a trustee pursuant to A.R.S. §33-801 et seq., the trustor shall be deemed to be the Owner. In the case of Lots, the fee simple title to which is vested in a trustee pursuant to a subdivision trust agreement or similar agreement, the beneficiary of any such trust who is entitled to possession of the trust property shall be deemed to be the Owner.

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

1.30 “Plat” means the *Final Plat of Signal Butte Casitas* Recorded on March 15, 2002 in Book 587 of Maps, page 24, records of Maricopa County, Arizona, or any plat of the Annexable Property, if any portion thereof is added to the Project, and all amendments, supplements and corrections thereto.

1.31 “Project” means the real property described on Exhibit A attached to this Declaration, and all real property subsequently annexed by the Declarant pursuant to Section 2.3 of the Declaration, together with all Improvements located thereon and all easements, rights and privileges appurtenant thereto.

1.32 “Project Documents” means this Declaration, the Articles, the Bylaws, and the Association Rules and Architectural Rules, if any.

1.33 “Purchaser” means any Person, other than the Declarant, who by means of a voluntary transfer becomes the Owner of a Lot, except for: (i) a Person who purchases a Lot and then leases it to the Declarant for use as a model home or (ii) a Person who, in addition to purchasing a Lot, is assigned any or all of the Declarant’s rights under this Declaration.

1.34 “Recording” means placing an instrument of public record in the office of the County Recorder of Maricopa County, Arizona and **“Recorded”** means having been so placed of record.

1.35 “Resident” means each individual occupying or residing in any Residential Dwelling, including, without limitation, an Owner’s or Lessee’s family members and other members of their household residing with them on a regular basis.

1.36 “Residential Dwelling” means any building, or portion of a building, situated on a Lot and designed and intended for independent ownership and for use and occupancy as a Single Family residence.

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

1.38 “Special Assessment” means any assessment levied and assessed pursuant to Section 7.5 of this Declaration.

1.39 “Visible from Neighboring Property” means, with respect to any given object, that such object is or would be visible to a person six feet tall standing on any part of such neighboring property at an elevation no greater than the elevation of the base of the object being viewed; provided, however, that an object shall not be considered as being Visible From Neighboring Property if the object is visible only through a wrought iron fence and would not be Visible From Neighboring Property if the wrought iron fence were a solid fence.

1.40 “Yard” means the portion of the Lot devoted to Improvements other than the Residential Dwelling. **“Private Yard”** means that portion of a Yard which is enclosed or shielded from view by walls, fences, hedges or the like so that it is not generally Visible from Neighboring Property. **“Public Yard”** means that portion of a Yard which is generally Visible from Neighboring Property, whether or not it is located in front of, beside, or behind the Residential Dwelling.

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ARTICLE 2 PROJECT PLAN

2.1 Project General Plan; Binding Effect. This Declaration is being Recorded to establish a general plan for the development, sale, lease and use of the Project in order to protect and enhance the value and desirability of the Project. The Declarant declares that the Project shall be held, sold, and conveyed subject to this Declaration. By acceptance of a deed or by acquiring an interest in any portion of the Project, each Person, binds himself, his heirs, personal representatives, successors, transferees and assigns, and all Residents of his Lot, to all of the provisions, restrictions, covenants, conditions, and Rules now or hereafter imposed by this Declaration, without regard to whether the Declaration is referenced in the instrument of conveyance or encumbrance. In addition, each such Person by so doing thereby acknowledges that this Declaration sets forth a general scheme for the development, sale, lease and use of the Project and hereby evidences his interest that all restrictions, conditions and covenants contained in this Declaration shall run with the land and be binding on all subsequent and future Owners and their Lessees, transferees and assigns. Furthermore, each such Person fully understands and acknowledges that this Declaration shall be mutually beneficial, prohibitive and enforceable by the Association and all Owners. Declarant hereby covenants and agrees that the Lots and the membership in the Association and the other rights created by this Declaration shall not be separated or separately conveyed, and each shall be deemed to be conveyed or encumbered with its respective Lot even though the description in the instrument of conveyance or encumbrance may refer only to the Lot.

2.2 Disclaimer of Representations. Declarant makes no representations or warranties whatsoever that: (i) the Project will be completed in accordance with the plans for the

Project as they exist on the date this Declaration is Recorded; (ii) any portion of the Project will be committed to or developed for a particular use or for any use, except that all such uses shall be consistent with the development of the Project for Single Family residential purposes; (iii) the use of any portion of the Project will not be changed in the future or (iv) that any Annexable Property will be added to the Project.

2.3 Right of Annexation.

2.3.1 Declarant hereby expressly reserves the right, until seven (7) years from the date of Recording of this Declaration, to annex and subject to this Declaration, without the consent of any Owner or First Mortgagee, all or any portion of the Annexable Property. The annexation of all or any portion of the Annexable Property shall be accomplished by the Declarant Recording with the County Recorder of Maricopa County, Arizona, a Declaration of Annexation stating (i) the legal description of the Annexable Property being annexed; and (ii) a description of any portion of the Annexable Property which will be Common Area, if any.

2.3.2 Any portion of the Annexable Property annexed pursuant to this Section 2.3 shall not become irrevocably annexed to the Project until the date on which the first Lot within the annexed portion of the Annexable Property is conveyed to a Purchaser. If any Declaration of Annexation Recorded pursuant to this Section 2.3 divides the portion of the Annexable Property being annexed into separate phases, then each phase of the Annexable Property being annexed shall not become irrevocably annexed until the date on which the first Lot within such Phase is conveyed to a Purchaser.

2.3.3 Declarant shall have the ^{Unofficial Document}right to amend any Declaration of Annexation Recorded pursuant to this Section 2.3 to change the description of phases within the Annexable Property being annexed except that the Declarant may not change any portion of the Annexable Property which has already become irrevocably annexed to the Project.

2.3.4 At any time prior to the date which is seven (7) years after the Recording of this Declaration, the Declarant may either annex any portion of the Annexable Property not then subjected to the Declaration pursuant to a Declaration of Annexation or withdraw from the Project any part of the Annexable Property which has not then been irrevocably annexed to the Project pursuant to the provisions of this Section 2.3. Any such withdrawal of Annexable Property from the Project shall be accomplished by the Recording with the County Recorder of Maricopa County, Arizona, within said seven (7) years of a Declaration of Withdrawal describing the portion of the Annexable Property being withdrawn. Upon the Recordation of any such Declaration of Withdrawal, that portion of the Annexable Property described therein shall no longer be a part of the Project or subject to this Declaration.

2.3.5 The voting rights of the Owners of Lots annexed pursuant to this Section 2.3 shall be effective as of the date the Declaration of Annexation is Recorded. The Owners' obligations to pay Assessments shall commence as provided in Section 7.21 of this Declaration.

2.3.6 The Annexable Property may be added as a whole at one time or in one or more portions at different times, or it may never be added, and there are no limitations upon the

order of addition or the boundaries thereof. The Annexable Property annexed into the Project need not be contiguous and the exercise of the right as to any portion of the Annexable Property shall not bar the further exercise of the right of annexation as to any other portions of the Annexable Property.

2.3.7 There are no limitations on the locations or dimensions of Improvements to be located on the Annexable Property. No assurances are made as to what, if any, further Improvements will be made by Declarant on any portion of the Annexable Property.

2.3.8 Any Improvements placed, constructed, replaced or reconstructed on the Annexable Property annexed into the Project will be compatible with other Residential Dwellings in the Project as to quality of construction and materials and architectural style.

2.3.9 Declarant makes no assurances as to the exact number of Lots which may be added to the Project by annexation of all or any portion of the Annexable Property.

2.3.10 All Common Area Improvements to be constructed on any portion of the Annexable Property will be substantially completed prior to the time at which such portion of the Annexable Property is irrevocably annexed in accordance with this Section 2.3 or acceptable irrevocable assurances therefor shall have been deposited with the appropriate governmental agencies regulating such completion.

2.3.11 All taxes and other assessments relating to all or any portion of the Annexable Property annexed into the Project covering any period prior to the time when such portion of the Annexable Property is irrevocably annexed in accordance with Section 2.3 of this Declaration shall be the responsibility of Declarant.

ARTICLE 3 USE RESTRICTIONS

3.1 Architectural Control.

3.1.1 All references to "Board" in this Section 3.1 and elsewhere in this Declaration referring to matters of architectural control and design approval shall mean and refer to the Architectural Committee if one is designated by the Board pursuant to Section 6.10 below.

3.1.2 No excavation or grading work shall be performed on any Lot without the prior written approval of the Board, except as is reasonably necessary for Private and Public Yard landscaping. All such excavation and grading, whether for landscaping or any other purpose, shall be consistent at all times with the drainage plans on file with the City and good engineering practices.

3.1.3 No construction, installation, addition, alteration, repair, change or other work which in any way alters the exterior appearance of any part of a Lot and/or any Improvements located thereon from its/their appearance on the date this Declaration is Recorded, or which in any way may impair the structural integrity of an adjoining Residential Dwelling (a

"Modification"), shall be made or done without the prior written approval of the Board. Any Owner desiring approval of the Board for such Modification shall submit to the Board a written request for approval specifying in detail the nature and extent of the Modification which the Owner desires to perform. Any Owner requesting the approval of the Board shall also submit to the Board any additional information, plans and specifications which the Board may request. No request for approval of a Modification shall be deemed complete until the Owner requesting the approval has received a written notice (the **"Architectural Submission Notice"**) from the Board stating that all supporting information, plans and specifications requested or required by the Board, have been submitted to the Board and all fees required, if any, pursuant to Section 3.1.7 of the Declaration have been paid. In the event that the Board fails to approve or disapprove an application for Modification approval within forty-five (45) days after the Architectural Submission Notice, Board approval of the requested Modification will not be required and this Section 3.1 will have been deemed to have been complied with by the Owner who had requested approval of such Modification. The approval by the Board of any Modification pursuant to this Section 3.1 shall not be deemed a waiver of the Board's right to withhold approval of any similar Modification subsequently submitted for approval.

3.1.4 The Board may disapprove plans and specifications for any Modification which must be approved by the Board pursuant to this Section 3.1 if the Board determines, in its sole and absolute discretion, that the proposed Modification: (i) would violate any provision of this Declaration; (ii) does not comply with any Architectural Rule; (iii) is not in harmony with existing Improvements in the Project or with Improvements previously approved by the Board but not yet constructed; (iv) is not aesthetically acceptable; (v) would be detrimental to or adversely affect the appearance of the Project; or (vi) is not otherwise in accord with the general plan of development for the Project. In the event ^{Unofficial Document} that the Board fails to approve or disapprove an application for Modification approval within forty-five (45) days after the Board has given the Owner its Architectural Submission Notice, Board approval of the requested Modification will not be required and this Section 3.1 will have been deemed to have been complied with by the Owner who had requested approval of such Modification. The approval by the Board of any Modification pursuant to this Section 3.1 shall not be deemed a waiver of the Board's right to withhold approval of any similar Modification subsequently submitted for approval.

3.1.5 Upon receipt of approval from the Board for any Modification, the Owner who had requested such approval shall proceed to perform or cause to be performed the Modification approved by the Board as soon as practicable and shall diligently pursue such work so that it is completed as soon as reasonably practicable and within such time as may be prescribed by the Board.

3.1.6 Any change, deletion or addition to the plans and specifications approved by the Board for the Modification must be approved in writing by the Board.

3.1.7 The Board shall have the right to charge a fee for reviewing requests for approval of any Modification pursuant to this Section 3.1, which fee shall be payable at the time the application for approval is submitted to the Board.

3.1.8 All Improvements constructed on Lots shall be of new construction, and no buildings or other structures shall be removed from other locations and placed on any Lot as part of the original construction of Improvements or as part of any Modification.

3.1.9 Only a Lot Owner may request approval of a Modification. Notwithstanding the foregoing, the provisions of this Section 3.1 do not apply to, and approval of the Board shall not be required for, any Modification made by, or on behalf of, Declarant.

3.1.10 The approval required of the Board pursuant to this Section 3.1 shall be in addition to, and not in lieu of, any approvals or permits which may be required under any federal, state or local law, statute, ordinance, rule or regulation. Before commencing any Modification and, after receiving Board approval, the Owner shall provide the Board with a copy of any applicable permits required by law for the Modification.

3.1.11 The approval by the Board of any Modification pursuant to this Section 3.1 shall not be deemed a warranty or representation by the Board as to the quality of such Modification or that such Modification conforms to any applicable building codes or other federal, state or local law, statute, ordinance, rule or regulation.

3.1.12 The Board may condition its approval of plans and specifications upon the agreement of the Owner submitting such plans and specifications to furnish to the Association a bond or other security acceptable to the Board in an amount to be determined by the Board to be reasonably sufficient to: (i) assure the completion of the proposed Modifications or the availability of funds adequate to remedy Unofficial Document any nuisance or unsightly conditions occurring as a result of the partial completion of such Modifications, and (ii) repair any damage which might be caused to an Area of Association Responsibility as a result of such work. Any such bond shall be released or security shall be fully refundable to the Owner upon: (i) the completion of the Modifications in accordance with the plans and specifications approved by the Board; and (ii) the Owner's written request to the Board, provided that there is no damage caused to an Area of Association Responsibility by the Owner or its agents or contractors.

3.1.13 If the plans and specifications pertain to a Modification which is within an Area of Association Responsibility so that the Association is responsible for maintenance, repair and replacement of such Modification, the Board may condition its approval of the plans and specifications for the proposed Modification on the agreement of the Owner to reimburse the Association for the future cost of the repair, maintenance or replacement of such Modification.

3.1.14 No submittal to the Board pursuant to this Article 3 or elsewhere in this Declaration shall be deemed to have been received by the Board unless a receipt for the submittal (setting forth in detail the matters included therein) has been personally signed for by a member of the Board and the Board has issued the Architectural Submission Notice. It is the submitting Owner's responsibility to ensure that the Board has received and signed for the applicable submittal and has approved or failed to disapprove the submittal within the applicable time period after issuance of the Architectural Submission Notice before proceeding with any Modification.

3.2 Temporary Occupancy and Temporary Structures. No trailer, basement of an incomplete building, tent, shack, garage, and no temporary buildings or structures of any kind shall be used at any time as a Residential Dwelling, either temporarily or permanently. Temporary structures used during the construction of Improvements or Modifications approved by the Board shall be removed immediately after the completion of construction.

3.3 Nuisances; Construction Activities/Maintenance of Improvements. No rubbish or debris of any kind shall be placed or permitted to accumulate upon or adjacent to any Lot or any other portion of the Project and no odors or loud noises shall be permitted to arise or emit therefrom, so as to render any portion of the Project or activity thereon, unsanitary, unsightly, offensive or detrimental to any other portion of the Project or the Owners or Residents. No nuisance shall be permitted to exist or operate upon any Lot or any other portion of the Project so as to be offensive or detrimental to any other portion of the Project or to its Owners or Residents. Without limiting the generality of any of the foregoing provisions, no exterior speakers, horns, whistles, bells or other sound devices, except ordinary and customary security devices used exclusively for security purposes, shall be located, used or placed on any Lot or any other portion of the Project. Normal construction activities and parking in connection with the building of Improvements or Modifications on a Lot or other portion of the Project shall not be considered a nuisance or otherwise prohibited by this Declaration, but Lots and all other portions of the Project shall be kept in a neat and tidy condition during construction periods and trash and debris shall not be permitted to accumulate. The Board, in its sole discretion, shall have the right to determine the existence of any such nuisance. The provisions of this Section 3.3 shall not apply to construction activities of Declarant. Unofficial Document No improvement on any Lot shall be permitted to fall into disrepair, and each such Improvement shall at all times be kept in good condition and repair and adequately painted, or otherwise finished. In the event any Improvement is damaged or destroyed, then subject to the approvals required in Section 3.1 above, such Improvement shall be immediately repaired or rebuilt or shall be demolished. Any Improvement not so maintained as provided herein and in Article 8 below shall be declared a nuisance and shall afford the Association and the Owners the remedies set forth in this Declaration.

3.4 Diseases and Insects. No Person shall permit any thing or condition to exist upon any Lot or other portion of the Project which shall induce, breed or harbor infectious plant or animal diseases or noxious insects.

3.5 Antennas. Subject to the provisions of Section 3.15 regarding the protected class of satellite dishes under the FCC Rules, no antenna or other device for the transmission or reception of television or radio signals or any other form of electromagnetic radiation including, without limitation, satellite or microwave dishes, shall be erected, used, or maintained on any Lot without the prior written approval of the Board who may limit or restrict the placement of such antennas or other devices absent appropriate screening and architectural conformity.

3.6 Mineral Exploration. No Lot or other portion of the Project shall be used in any manner to explore for or to remove any water, oil or other hydrocarbons, minerals of any kind, gravel, earth or any earth substance of any kind.

3.7 Environmental Restrictions. All Owners and Residents in the Project shall be responsible for complying with all federal and state environmental and health laws and for causing their Invitees to so comply. Without limiting the foregoing, no Person may dispose of, transport, or store "hazardous materials" on a Lot or on the Common Area other than small amounts of ordinary household non-combustible cleaning agents maintained by a Resident on his Lot or ordinary amounts of gasoline maintained to run lawn mowers and other gas powered Lot maintenance equipment. In no event may any Person dispose of any hazardous materials, including without limitation, motor oil, hydrocarbons, or other petroleum products, in or down a dry well within or adjacent to the Project.

3.8 Trash and Recycling Collection. No Person shall place or keep garbage, trash or recyclable materials on the Public Yard of a Lot except in covered canisters or barrels supplied by the City or otherwise designated by the Board. All rubbish, trash, garbage and recyclable materials shall be regularly removed from Lots and other portions of the Project to prevent odors and the attraction of vermin or other pests. In no event shall such containers be maintained at the collection point on a Public Yard of a Lot or at any location Visible From Neighboring Property except to make the same available for collection in accordance with City ordinances and then only for the shortest time reasonably necessary to effect such collection, not exceeding twelve (12) hours before or after collection. Due to the location of Lots 44 and 45 at the end of Tract I, Declarant and/or the Association may designate collection points for the trash or recycling barrels maintained on those Lots that are not located on those Lots. The Association shall have the right to monetary fines as provided in the Project Documents for violation of this section. No indoor incinerators shall be kept or maintained on any Lot or other portion of the Project.

3.9 Clothes Drying Facilities. No outside clotheslines or other outside facilities for drying or airing clothes shall be erected, placed or maintained on the Public Yard of a Lot or other portion of the Project so as to be Visible from Neighboring Property.

3.10 Utility Service. Subject to the further provisions of Sections 3.15 below, no lines, wires, or other devices for the communication or transmission of electric current or power, including telephone, television, and radio signals, shall be erected, placed or maintained anywhere in or upon any Lot or other portion of the Project unless the same shall be contained in conduits or cables installed and maintained underground or concealed in, under or on Improvements or Modifications approved by the Board. No provision of this Declaration shall be deemed to forbid the erection of temporary power or telephone structures incident to the construction of Improvements or Modifications approved by the Board.

3.11 Overhead Encroachments. No tree, shrub, or planting of any kind on any Lot or other portion of the Project shall be allowed to overhang or otherwise to encroach upon any sidewalk, street, pedestrian way or other area from ground level to a height of eight (8) feet.

3.12 Residential Use. Subject to the provisions of any applicable federal or state Fair Housing Acts, all Residential Dwellings shall be used, improved and devoted exclusively to residential use by a Single Family. Subject to such Fair Housing Acts, no trade or business may be conducted on any Lot or in or from any Residential Dwelling, except that an Owner or other Resident of a Residential Dwelling may conduct a business activity within a Residential

Dwelling so long as: (i) the existence or operation of the business activity is not readily apparent or detectable by sight, sound or smell from outside the Residential Dwelling; (ii) the business activity conforms to all applicable zoning ordinances or requirements for the Project; (iii) the business activity only results in occasional or minimal time duration visits or contact with non-Residents coming onto the Lot and does not involve the door-to-door solicitation of Residents; (iv) the trade or business conducted by the Owner or Resident does not require more than one (1) employee working in or from such Residential Dwelling unless such additional employees are also lawful Residents of the Residential Dwelling; (v) the volume of vehicular or pedestrian traffic generated by such trade or business does not result in traffic congestion or parking violations; (vi) the trade or business does not use flammable liquids or hazardous materials in quantities not customary for residential use; and (vii) the business activity is consistent with the residential character of the Project, does not attract Invitees during evening or non-standard local business hours and does not constitute a nuisance or a hazardous or offensive use or threaten security or safety of other Residents in the Project, as may be determined from time to time in the sole discretion of the Board. The terms "business" and "trade" as used in this Section 3.12 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 Residential Dwelling by the Owner thereof shall not be considered a trade or business within the meaning of this Section 3.12 and the Owner of a Lot shall have the absolute right to lease his Lot and the Residential Dwelling thereon, provided that the lease is in writing and all Residents occupying the Residential Dwelling under the Lease, including the Lessee, are specifically made subject to the covenants, conditions, restrictions, easements, limitations and uses contained in this Declaration, the Bylaws and any Association Rules and provided further that the lease shall not be for a period of less than ninety (90) days.

3.13 Animals. No animals, bird, fowl, poultry, reptile or livestock may be kept on a Lot temporarily or permanently, except for a reasonable number of dogs, cats, common domestic birds such as parakeets, cockatiels and parrots, or similar household pets kept, bred or raised thereon solely as domestic pets and not for commercial purposes. No more than two (2) dogs occupy any Lot regardless of size or weight. All dogs, cats or other household pets permitted to be kept on the Lots under this Section 3.13 shall be confined to their owners' Lots in which they are residing or visiting, except that dogs, cats or other pets capable of being walked on a leash may be permitted to leave their Lot without being confined if such animals are kept at all times on a leash not to exceed six feet (6') in length and is not permitted to enter upon any other Lot. It shall be the responsibility of the Residents of the Lot to immediately remove any droppings from pets residing or visiting their Lot. No household pet permitted on a Lot under this Section 3.13 shall be allowed to make an unreasonable amount of noise or to become a nuisance. No structure for the care, housing or confinement of any permitted household pet shall be maintained so as to be Visible from Neighboring Property. Upon the written request of any Resident, the Board shall conclusively determine, in its sole discretion, whether for the purposes of this Section 3.13, a particular animal constitutes a household pet pursuant to this Section 3.13 or whether such

animal is a nuisance or making an unreasonable amount of noise. Any decision rendered by the Board shall be enforceable in the same manner as other restrictions set forth in this Declaration. The right of Residents to maintain a reasonable number of house pets pursuant to this section is expressly subject to the right of the Board to prospectively restrict the size and number of dogs or other pets which may be maintained or kept on the Lots while "grandfathering" such pets which do not satisfy the newly adopted Rules if such pets otherwise conform to this Section 3.13 and are not a nuisance.

3.14 Machinery and Equipment. No machinery or equipment of any kind shall be placed, operated or maintained upon or adjacent to any Lot, or any other portion of the Project, except: (i) such machinery or equipment used in connection with the maintenance or construction of an Improvement or Modification; (ii) such machinery that is used solely within the interior of a Residential Dwelling (including an enclosed garage) and does not emit noise of a decibel level that would pose a nuisance to adjacent Lots; or (iii) such machinery or equipment which Declarant or the Association may require for the operation and maintenance of the Project.

3.15 Roof Structures and Equipment. No solar units or panels, heating, air-conditioning or ventilation equipment, or any other equipment or structures shall be located or installed on any roof of a Residential Dwelling or other Improvement on a Lot except as expressly permitted herein. The Board may grant a variance for solar panels or other solar equipment if attractively screened in accordance with standards established by the Board, subject to applicable federal or state energy conservation laws governing the installation of solar equipment on Residential Dwellings. Without limiting the foregoing, the Association may not prohibit or unduly restrict the placement of: (i) solar panels, solar devices or solar equipment on the Lot or (ii) satellite dishes and antennas ^{Unofficial Document} or ~~antennas~~ covered by the Federal Communications Commission rules promulgated pursuant to the Telecommunications Act of 1996, as amended from time to time. Nothing shall preclude the Association from adopting reasonable safety and/or architectural aesthetics Rules which do not impede the Owner's ability to obtain solar power or to obtain adequate reception from a protected class of satellite dishes or antennas within the scope of the FCC Rules. Without limiting the foregoing, all satellite dishes or antennas within the scope of the FCC Rules shall be ground-mounted unless, as a result of such placement, the Owner is not able to obtain a satisfactory signal as defined in the FCC Rules.

3.16 Window Treatments. Each Purchaser shall cause all windows within his Residential Dwelling to be covered with appropriate window treatments within ninety (90) days after first occupancy by a Resident. No reflective materials, including but not limited to, aluminum foil, reflective screens or glass, mirrors or similar-type items shall be installed or placed on the outside or inside of any windows. The exterior of all drapes, curtains or other window coverings shall be white, off-white, beige or natural wood-toned in color or such other colors as permitted by the Board.

3.17 Signs. No emblem, logo, sign or billboard of any kind whatsoever (including, but not limited to, commercial, political, "for sale," "for rent" and similar signs) which are Visible from Neighboring Property shall be erected or maintained on any Lot except: (i) signs required by legal proceedings or by applicable law; (ii) Residential Dwelling identification signs

not exceeding 6 x 12 inches in size; (iii) one standard size realty company "for sale" or "for lease" sign; (iv) Project identification signs and other marketing signs installed by Declarant or the Association; (v) one small alarm company sign located near the front door of a Residential Dwelling; and (vi) such other signs as are approved by the Board.

3.18 Restriction on Subdivision, Restrictions and Rezoning. No Lot shall be further subdivided or separated into smaller Lots or parcels or divided into "time share" intervals as that term is defined in A.R.S. §32-2197, as amended from time to time, and no portion less than all of any such Lot shall be conveyed or transferred by an Owner other than Declarant to another Owner, without the prior written consent of the Board. No further covenants, conditions, restrictions or easements shall be recorded by any Person other than Declarant or the Board without the provisions thereof having first been approved by the Board. No application for rezoning, variances or use permits pertaining to any Lot shall be filed with any governmental authority by any Person other than Declarant or the Board, unless the application has been approved by the Board and the proposed use otherwise complies with this Declaration.

3.19 Commercial Vehicles. No truck (other than a Family Vehicle truck as defined below), mobile home, bus, travel trailer, tent trailer, trailer, camper shell, detached camper, recreational vehicle, boat, boat trailer, or other similar equipment or vehicle (hereinafter "**Commercial Vehicles**") may be parked, maintained, constructed, reconstructed or repaired on any Lot or Common Area (including driveways or Public Yards of Lots and any Common Area streets) so as to be Visible from Neighboring Property without the prior written approval of the Board, except for: (i) the temporary parking of any Commercial Vehicle on a Lot or street for loading and unloading for a period of not more than twenty-four (24) consecutive hours; (ii) temporary construction trailers or facilities ^{Unofficial Document} maintained during, and used exclusively in connection with, the construction of any Improvement by the Declarant or any Improvement approved by the Board; and (iii) Commercial Vehicles parked completely within enclosed Residential Dwelling garages. A "**Family Vehicle**" means any domestic or foreign car, station wagon, sport wagon, pick-up truck of less than one (1) ton capacity with camper shells not exceeding eight (8) feet in height measured from ground level, mini-van, jeep, sport utility vehicle, motorcycle and similar non-commercial and non-recreational vehicles that are used by a Resident for family and domestic purposes and which are used on a regular and recurring basis for basic transportation. The Board may, acting in good faith, designate a Commercial Vehicle as a Family Vehicle, if, prior to use, the Resident petitions the Board to classify the same as a Family Vehicle and the parking of such Vehicle on a Lot will not adversely affect the Project or the Residents. Family Vehicles and Commercial Vehicles are collectively referred to in this Article 3 as "**Vehicles.**"

3.20 General Vehicle Restrictions and Invitee Parking.

3.20.1 Except for emergency Vehicle repairs, no Vehicle shall be constructed, reconstructed or repaired on a Lot or any other portion of the Project except within the enclosed garage of a Residential Dwelling.

3.20.2 Subject to the further restrictions of Section 3.19 above, no Vehicle shall be parked on the Public Yard of any Lot, except for the driveway or attached garage of a Residential Dwelling.

3.20.3 Parking spaces located on the Common Area shall be available for temporary use by Residents and their Invitees; provided, however, that the Board shall have the right to assign such parking spaces to the exclusive use of a Lot. The Board shall have the right to adopt Association Rules limiting the duration of Resident and Invitee parking on Common Areas (including Tract I (private road)). There shall be no parking on the portion of Tract I (private road) directly adjacent to Tract B.

3.20.4 The City Code requires that there shall be no parking or other obstructions in designated fire lanes of Tract I (private road), if any. At the address of 2565 S. Signal Butte Road, the Project address, the Board shall be obligated to enforce the "no parking" requirement and the City Fire Department will not require the posting of fire lane signs in conjunction therewith. If the City Fire Department finds that this enforcement is not working, then the Board or their legal representatives shall install the posts and signs per City Code and the maintenance thereof will fall to and be binding upon the Association as a Common Expense.

3.21 Towing of Vehicles. The Board shall have the right to have any Vehicle towed away at the sole cost and expense of the owner of the Vehicle if that Vehicle is parked, kept, maintained, constructed, reconstructed or repaired in violation of the Project Documents or in violation of City posted fire lane restrictions. Unofficial Document Any expense incurred by the Association in connection with the towing of any Vehicle shall be paid to the Association upon demand by the owner of the Vehicle. If the Vehicle is owned by an Owner, any amounts payable to the Association under this Section 3.21 shall be secured by the Assessment Lien, and the Association may enforce collection of such amounts in the manner provided in this Declaration for the collection of Enforcement Assessments.

3.22 Lighting. Except as initially installed by Declarant, no spotlights, flood lights or other high intensity lighting shall be placed or utilized on any Lot which will allow light to be directed or reflected in any manner on the Common Area or onto another Lot.

3.23 Drainage. No Residential Dwelling or other Improvement or Modification thereto shall be constructed, installed, placed or maintained in any manner that would obstruct, interfere with or change the direction or flow of water in the Project as originally developed by Declarant including through any drainage easements set forth on the Plat, or for any Lot as shown on the drainage plans on file with the City.

3.24 Garages/Garage Sales. Garages shall be used only for the parking of Vehicles and shall not be used or converted for living or recreational activities without the prior written approval of the Board. Garage doors shall be kept closed at all times when the garage is not in use. All Family Vehicles shall be parked in the garage unless the garage is already then occupied by the maximum capacity of Vehicles and in no event may an Owner or Resident use the garage for storage in such a manner that would block or impede the parking of any Vehicle. Because the Project is a gated community, garage sales or any similar type of sales or organized activities that

would require the invitation to the Project of the public at large are not allowed within the Project, except that the Board may coordinate a cooperative garage sale or other organized activity for participation by all the Residents on a periodic basis.

3.25 Basketball Goals and Backboards. No basketball goal, pole, or backboard shall be attached to a roof and/or installed in a Public Yard of a Residential Dwelling. Except when in use, portable basketball goals, hoops or courts shall be stored in the garage or in a manner that is not Visible From Neighboring Property.

3.26 Planting and Landscaping. Except for: (i) such planting and landscaping as is installed by Declarant in accordance with the initial construction of Residential Dwellings on a Lot or (ii) Private Yard plantings and landscaping, no planting or landscaping shall be done and no fences, hedges or walls shall be erected or maintained on any Lot without the prior written approval of the Board. The Association shall maintain Public Yard landscaping as provided in Article 8 below and shall have an easement to maintain and operate the irrigation/sprinkler system under the driveway and Public Yard areas as provided in Section 5.2 below.

3.27 Gated Community. The Declarant shall install and the Association shall maintain and operate an entry or privacy gate at the entrance to the Project. The exit or "crash gate" located near Lot 45 is not intended for use by Owners but only as an emergency entrance/exit for emergency service vehicles and other service vehicles such as, but without limitation, City trash service vehicles. Neither the Declarant nor the Association, the Board, any architectural or other committee of the Board, or any member, director, officer, shareholder, employee, or agent thereof, makes any representation to any Owner, Resident or any other Person as to the security afforded by the existence of such gates or as to the ease of entry to the Project by fire, police or other emergency personnel, and, Declarant reserves the right to require the privacy gates to remain open during daylight hours or during any evening marketing events sponsored by or for Declarant at any time while Declarant owns and is marketing Lots in the Project. All Owners and Residents and their Invitees assume the risk of harm, damage or injury to person or property of any kind from trespassers and agree that no claim or cause of action shall be maintained against Declarant, the Association, the Board, any Architectural or other Committee of the Board, or any member, director, officer, shareholder, employee, or agent thereof as a result of any harm resulting to an Owner, Resident or other Person from a trespass through or around the gated areas or any delay in entering the Project by emergency personnel.

3.28 Variances. The Board, may, at its option and in extenuating circumstances, grant variances from the restrictions set forth in this Article 3 if the Board determines in its discretion that: (i) a restriction would create an unreasonable hardship or burden on an Owner or Resident or a change of circumstances since the Recording of this Declaration has rendered such restriction obsolete and (ii) the activity permitted under the variance will not have any substantial adverse effect on the Owners or Residents of the Project. Such variances must be evidenced in writing and must be signed by a majority of the Board. If such variance is granted, no violation of the covenants, conditions and restrictions contained in this Declaration shall be deemed to have occurred with respect to the specific matter for which the variance was granted. The granting of such a variance shall not operate to waive any of the terms and provisions of this Declaration for any purpose except as to the particular provision hereof covered by the variance,

and only for so long as the special circumstances warranting the variance exist, nor shall it affect in any way the Owner's and/or Resident's obligation to comply with all governmental laws and regulations affecting the use of his Lot. The Board shall have the right to condition the granting of a variance as it may determine in the Board sole discretion, including, without limitation, making a variance temporary or permanent; or requiring the removal or replacement of a non-permanent or semi-permanent structure upon the sale or other conveyance of a Lot. Moreover, because of the unique facts and circumstances surrounding each variance request, the granting of a variance in one instance or under certain circumstances, terms and conditions does not mandate the granting of a variance under similar or related circumstances, terms or conditions if the experiences of the Association and the Project as a whole or the differences in circumstances (however slight) of a variance request from a previously approved variance lead the Board, in good faith, to disapprove a variance request in such instance. In no event, may the Board grant any variance that would create or cause the Association to be in violation of any insurance policy limitation or restriction issued in favor of the Association and its Members.

3.29 No Warranty of Enforceability. While Declarant has no reason to believe that any of the restrictive covenants contained in this Article 3 or elsewhere 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 the Project in reliance on one or more of such restrictive covenants shall assume all risks of the validity and enforceability thereof and by acquiring the Lot agrees to hold Declarant harmless therefrom.

ARTICLE 4 Unofficial Document AGE RESTRICTIONS

4.1 Housing for Older Persons. The Property is intended for and operated for occupancy in at least eighty percent (80%) of its Residential Dwellings by at least one person fifty-five (55) years of age or older per Residential Dwelling. All Residential Dwellings must be occupied by at least one person forty-five (45) years of age or older. Subject to compliance with Section 12.2 below, no person who has not yet reached their nineteenth birthday shall reside permanently in the Project. The Board, in its sole discretion, shall have the right and power to determine when a person resides "permanently" in the Project.

4.2 Fair Housing Amendments Act. The Fair Housing Amendments Act of 1988 (Public Law 100-430, approved September 13, 1988) (the "Fair Housing Act") prohibits discrimination in the sale, rental, and financing of Residential Dwellings based on familial status; that is, discrimination based on the domicile of individuals under eighteen (18) years of age. However, the Fair Housing Act provides that a housing facility is exempt from this restriction if the following requirements (as more fully set forth in the Fair Housing Act) and supplemented by the regulations promulgated thereunder, the "Requirements for Exemption" are satisfied, as amended from time to time:

4.2.1 At least eighty percent (80%) of the Residential Dwellings are occupied by at least one (1) person fifty-five (55) years of age or older per Residential Dwelling;

4.2.2 Policies and procedures are published and adhered to which demonstrate an intent by the owner or manager to provide housing for persons fifty-five (55) years of age or older; and

4.2.3 The Project complies with rules issued by the Secretary of Housing and Urban Development (HUD) for verification of occupancy, including procedures for verification by reliable surveys and affidavits; and rules concerning the type of policies and procedures relevant to a determination of compliance with the Fair Housing Act.

4.3 Statement of Intent. Declarant intends that the Project comply with the Requirements of Exemption of the Fair Housing Act. Therefore: (i) at least one Resident must be at least fifty-five (55) years of age or older, except as hereinafter set forth; and (ii) the Association is hereby directed to publish and adhere to policies and procedures that demonstrate an intent to provide housing for persons fifty-five (55) years of age or older and to comply with all rules promulgated by the Secretary of HUD with regard thereto.

4.4 Requirements for Exemption. The Requirements for Exemption contemplate that up to twenty percent (20%) of the Residential Dwellings in the Project may be occupied by persons all of whom are under the age of fifty-five (55) without the loss of an exemption. Accordingly, the Board, upon application of an Owner, Resident, or proposed purchaser or lessee, shall have the right and option, at the Board's sole discretion, to allow a Residential Dwelling to be occupied only by individuals under the age of fifty-five (55), provided at least one (1) occupant of the Residential Dwelling is at least forty-five (45) years of age and provided that the Board takes appropriate action to comply with the Requirements of Exemption. The Board shall exercise its discretion based upon criteria that the Board shall determine, which criteria shall include, by way of example, and not of limitation, information then known to the Board concerning potential or pending changes in occupancy of other Residential Dwellings, proximity to age fifty-five (55) of those Residents of other Residential Dwellings in the Project then under such age, and any other information known to and deemed relevant by the Board in its sole discretion. The Association, acting through the Board, shall have the right to promulgate rules and regulations necessary to comply with the Requirements of Exemption, including, without limitation, the adoption of mandatory surveys as requested or required by the Secretary of HUD.

4.5 Declarant Conveyances. Notwithstanding the provisions of Section 4.4 above, Declarant shall have the right to convey Residential Dwellings owned by Declarant to Purchasers who intend that the Residential Dwellings be occupied solely by persons under fifty-five (55) years, but for so long as the Fair Housing Act is in effect, Declarant must take reasonable action to adhere to policies to comply with the Requirements for Exemption. Each Residential Dwelling shall at the first change of occupancy be subject to the requirement that at least one (1) Resident be fifty-five years of age or older unless waived by the Board pursuant to the provisions of Section 4.4 above.

4.6 Notification of Change. In the event that there is a change in the Residents of the Residential Dwelling (e.g. a death or a divorce) so that there is not then at least one (1)

Resident fifty-five (55) years of age or older, the Owner of the Residential Dwelling or his heirs or representatives must immediately notify the Association in writing of such change.

4.7 No Warranty of Fair Housing Act Compliance. Notwithstanding anything contained herein to the contrary, it is acknowledged and agreed that although it is the intent of the Declarant and the Association that the Project be exempt from the familial status provisions of the Fair Housing Act and that persons eighteen (18) years of age or younger be prohibited from residing permanently at the Project, no representation or warranty is given that the Project will comply with the Requirements for Exemption. If, for any reason, the Project is not exempt from the familial status provisions of the Fair Housing Act and therefore, it is unlawful to discriminate in the Project on the basis of familial status, the Declarant, the Board, and the Association as a whole, shall not have any liability in connection therewith.

ARTICLE 5 EASEMENTS

5.1 Owners' Easements of Enjoyment in Common Area.

5.1.1 Subject to the rights and easements granted to the Declarant in Section 5.5 and Section 5.6 of this Declaration, every Owner, and any Resident, shall have a right and easement of enjoyment in and to the Common Area (including, but not limited to, the right to use any private streets which are part of the Common Area for ingress and egress to the Owner's Lot), which right shall be appurtenant to and shall pass with title to every Lot, subject to the following provisions:

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(i) The right of the Association to dedicate, convey, transfer, mortgage or encumber the Common Area as provided in Section 6.11 of this Declaration;

(ii) The right of the Association to regulate the use of the Common Area through Association Rules and to charge reasonable admission or other fees for the use of any clubhouse or recreational facilities situated on the Common Area and to prohibit access to such portions of the Common Area, such as landscaped areas, not intended for use by the Owner or Residents;

(iii) The right of the Association to suspend the right of an Owner and any Resident of the Owner's Residential Dwelling to use the Common Area (other than the right of an Owner and such Resident to use any private streets which are part of the Common Area for ingress or egress to the Owner's Lot) if such Owner is more than fifteen (15) days' delinquent in the payment of Assessments or other amounts due to the Association or if the Owner or Resident has violated any provision of the Project Documents and has failed to cure such violation within thirty (30) days after the Association notifies the Owner of the violation, with such suspension not to exceed sixty (60) days for any infraction of the Project Documents other than the failure to pay Assessments, which suspension shall continue until the delinquent Assessment and all other late fees, interest and other charges in conjunction therewith shall be paid;

(iv) An easement for ingress and egress over the Common Area private streets for public utility, U.S. mail delivery and collection, refuse collection and emergency access vehicles

for purposes of providing such services as may be required by law or contracted for by the Association on behalf of the Owners; and

(v) The right of Declarant to regulate the hours of operation of the privacy gates pursuant to Section 3.27 above.

5.1.2 Only current Residents and Invitees accompanied by the Resident shall have the right to use the Common Area for recreational purposes.

5.1.3 Declarant shall convey the Common Area free and clear of all liens and monetary encumbrances to the Association not later than the conveyance of the first Lot to a Purchaser.

5.1.4 Declarant shall have the right to grant and convey a twenty-four foot (24') multi-use recreational easement over a portion of Tract B for the benefit of the City and/or the general public for pedestrian and bicycle uses as shown on the Plat or by separate Recorded instrument.

5.2 Utility Easement/Irrigation Lines. There is hereby created a blanket easement upon, across, over and under the Common Area for reasonable ingress, egress, installation, replacing, repairing or maintaining of all utilities, including, but not limited to, gas, water, sewer, telephone, cable television and electricity. By virtue of this easement, it shall be expressly permissible for the providing utility company to erect and maintain the necessary equipment on the Common Area but no sewer, electrical, water, or other utility or service lines may be installed or located on the Common Area Unofficial Document except as initially designed, approved and constructed by the Declarant or the Board. The Association shall also have an easement under and across the concrete driveways of each Lot's Public Yard to maintain irrigation lines and sprinkler system to water and maintain the Public Yard landscaping as installed by Declarant or thereafter modified.

5.3 Avigation Easement. Each Owner and Resident hereby acknowledges by their receipt of this Declaration that the Declarant has granted an Avigation Easement and Release Recorded on March 15, 2002 at Instrument No. 2002-0268410 in the Official Records of the Maricopa County, Arizona Recorder and that the Project and each Owner and Resident is subject to this Easement and the terms thereof. The Project is within five (5) miles of Williams Gateway Airport as it may expand from time to time and each Owner and Resident understands that, due to such proximity, he is subject to the risks of noise, changes in flight patterns, falling objects, and other disturbances from aircraft flying overhead from time to time.

5.4 Electric Transmission Line Easement and Facilities License. Common Area Tract B (retention, drainage, public utility and facilities easement area) and a portion of Tract I (private roadway) is subject to a one hundred thirty foot (130') electric transmission easement (the "***Electric Easement Area***") as shown on the Plat. In addition, Declarant's predecessor has entered into a license dated October 26, 1999 with the United States Department of Energy Western Area Power Administration ("***WAPA***") to maintain the road, utilities, and drainage and retention type facilities to be constructed by Declarant on the Electric Easement

Area (the "*License*"). Upon completion of the Improvements on the Electric Easement Area, Declarant hereby assigns the License to the Association for the benefit of the Owners. The License provides, in pertinent part, that: (i) the Improvements in the Electric Easement Area may not be altered in any without the prior written consent of the WAPA; (ii) no structures may be placed in the Electric Easement Area; (iii) no long-term or storage parking is permitted in the Electric Easement; (iv) no material change may be made to the topography of the Electric Easement Area; (v) utilities may not be located longitudinally along the right-of-way; (vi) there may be no excavation within twenty (20) feet of a WAPA transmission line structure; (vii) trees or vegetation exceeding twelve (12) feet in height at maturity may not be located in the Electric Easement Area; (viii) fencing constructed along WAPA's right-of-way must have a 16 foot dual-lock gate installed at each end of the right-of-way and metal fencing properly grounded; (ix) the Licensee indemnify and hold harmless WAPA and its employees and agents from loss, damage or liability on account of personal injury, death or property damage arising out of Licensee's, its agents, and contractors use of the Electric Easement Area.

5.5 Declarant's Use for Sales and Leasing Purposes. Declarant shall have the right and an easement to maintain sales and leasing offices, management offices and model homes and to maintain one or more advertising, identification or directional signs throughout the Project except on Lots sold to Purchasers. Declarant shall also have the sole right and easement to operate the privacy gates in the Project while Declarant is selling or building upon Lots. Declarant reserves the right to place sales trailers, model homes, parking facilities, management offices and sales and leasing offices on any Lots owned by Declarant or on any portion of the Common Area in such number, of such size and in such locations as Declarant deems appropriate. Declarant reserves the right to retain all personal property and equipment used in the sales, management, or development of the Project that has not been represented as property of the Association and to remove all such goods and Improvements used in marketing, whether or not they have become fixtures. So long as Declarant is marketing Lots in the Project, Declarant shall have the right to reserve parking spaces on the Common Area not otherwise assigned to Owners or Residents, for use by prospective Purchasers, Declarant's employees, agents and others engaged in sales, leasing, maintenance, construction or management activities. In the event of any conflict or inconsistency between this Section 5.5 and any other provisions of this Declaration, this Section 5.5 shall control.

5.6 Declarant's Easements. Declarant shall have the right and an easement on or over the Areas of Association Responsibility to construct all Improvements or Modifications the Declarant may deem necessary and to use the Areas of Association Responsibility and any Lots and other property owned by Declarant for construction related purposes including the storage of tools, machinery, equipment, building materials, appliances, supplies and fixtures, and the performance of work respecting the Project. Irrespective of whether Declarant at any time is an Owner of Lots, Declarant shall have the right and an easement upon, over, and through the Areas of Association Responsibility as may be reasonably necessary for the purpose of discharging its obligations or exercising the rights granted to or reserved by the Declarant in this Declaration, including, without limitation, warranty work. In the event of any conflict or inconsistency between this Section 5.6 and any other provisions of this Declaration, this Section 5.6 shall control.

5.7 Easements in Favor of Association. The Lots are hereby made subject to easements in favor of the Association and its directors, officers, agents, employees and independent contractors for: (i) inspection of the Lots (but not the interior of Residential Dwellings) in order to verify the performance by Owners of all items of maintenance and repair for which they are responsible and compliance by Owners and Residents with the Project Documents; (ii) inspection, maintenance, repair and replacement of the Areas of Association Responsibility accessible only from such Lots; (iii) correction of emergency conditions on one or more Lots; and (iv) 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 Project Documents.

5.8 Easements for Encroachments. Each Residential Dwelling and other Improvements on the Lot are hereby declared to have an easement over adjoining Lots and Common Area for the purpose of accommodating minor encroachments due to engineering errors, errors in original construction, settlement or shifting of Improvements or any similar cause for as long as such encroachments shall exist; provided however, that in no event shall such easement exist for willful misconduct by any Owner or intentional encroachments, and provided, further that Declarant may remove and/or relocate any boundary wall or other encroachments onto Lots owned by Declarant at Declarant's sole expense (unless such encroachment(s) were caused by the willful misconduct of an adjacent Owner or Resident); in which case the relocation shall be at the expense of the encroaching Owner.

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ARTICLE 6 THE ASSOCIATION

6.1 Formation of Association. The Association shall be a non-profit Arizona corporation charged with the duties and invested with the powers prescribed by law and set forth in the Articles, Bylaws and this Declaration.

6.2 Board of Directors and Officers. The affairs of the Association shall be conducted by the Board and such officers as the Board may elect or appoint in accordance with the Articles and the Bylaws. Unless the Project Documents specifically require the vote or written consent of the Members, such as in the case of Section 10.3 below, approvals or actions to be given or taken by the Association shall be valid if given or taken by the Board.

6.3 Association Rules. The Board may, from time to time, and subject to the provisions of this Declaration, adopt, amend and repeal Rules pertaining to: (i) the management, operation, and use of the Areas of Association Responsibility including, but not limited to, any recreational facilities situated upon the Areas of Association Responsibility; (ii) minimum standards for maintenance of Lots; or (iii) the health, safety and welfare of the Owners and Residents.

6.4 Personal Liability. No member of the Board or of any committee of the Association, no officer of the Association, and no managing agent, representative or employee of the Association shall be personally liable to any Member, or to any other Person, including the Association, for any damage, loss or prejudice suffered or claimed on account of any act,

omission, error, or negligence of the Association, the Board, a managing agent, any representative or employee of the Association, or any committee, committee member or officer of the Association; provided, however, the limitations set forth in this Section 6.4 shall not apply to any Person who has failed to act in good faith or has engaged in willful or intentional misconduct.

6.5 Implied Rights. The Association may exercise any right or privilege given to the Association expressly by the Project Documents and every other right or privilege reasonably to be implied from the existence of any right or privilege given to the Association by the Project Documents or reasonably necessary to effectuate any such right or privilege, including, without limitation, the right to employ a managing agent or other independent contractor to perform all of the duties and responsibilities of the Association and the Board, subject to Section 6.13 hereof, the Bylaws and restrictions imposed by any governmental or quasi-governmental body or agency having jurisdiction over the Project.

6.6 Identity of Members. Membership in the Association shall be limited to Owners of Lots. An Owner of a Lot shall automatically, upon becoming the Owner thereof, be a Member of the Association and shall remain a Member until such time as his ownership ceases for any reason, at which time his membership in the Association shall automatically cease. Membership and the voting rights described below are appurtenant to, and inseparable from, ownership of the lot.

6.7 Classes of Membership and Voting Rights. The Association shall have the following two classes of voting membership:

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6.7.1 Class A. Class A Members are all of the Owners of Lots, with the exception of Declarant until the termination of the Class B membership. Each Class A member shall be entitled to one (1) vote for each Lot owned. Upon the termination of the Class B membership, Declarant shall be a Class A Member with one vote for each Lot owned by Declarant but only for so long as Declarant owns any Lots.

6.7.2 Class B. The Class B Member shall be Declarant. The Class B Member shall be entitled to three (3) votes for each Lot owned. The Class B membership shall cease and be converted to Class A membership on the earlier of: (i) the date on which the votes entitled to be cast by the Class A Members equals or exceeds the votes entitled to be cast by the Class B Member; (ii) the date which is seven (7) years after the Recording of this Declaration; or (iii) when Declarant notifies the Association in writing that it relinquishes its Class B membership. If any Person to whom Declarant has assigned, or hereafter assigns, all or substantially all of its rights under this Declaration as security for an obligation succeeds to the interests of Declarant by virtue of the assignment, Class B membership shall not be terminated and the Person so succeeding to Declarant's interest shall hold Class B membership on the same terms as they were held by Declarant.

6.8 Voting Procedures. No change in the ownership of a Lot shall be effective for voting purposes unless and until the Board is given actual written notice of such change and is provided satisfactory proof thereof. The vote for each Lot must be cast as a unit and fractional

votes shall not be allowed. In the event that a Lot is owned by more than one Person and such Owners are unable to agree among themselves as to how their vote or votes shall be cast, they shall lose their right to vote on the matter in question. If any Member casts a vote representing a certain Lot, it will thereafter be conclusively presumed for all purposes that he was acting with the authority and consent of all other Owners of the same Lot unless objection thereto is made at the time the vote is cast. In the event more than one vote is cast by a Class A Member for a particular Lot, none of the votes cast for that Lot shall be counted and all of the votes so cast for that Lot shall be deemed void.

6.9 Transfer of Membership. The rights and obligations of any Member other than Declarant shall not be assigned, transferred, pledged, conveyed or alienated in any way except upon transfer of ownership of an Owner's Lot, and then only to the transferee of ownership to the Lot. A transfer of ownership to a Lot may be effected by deed, intestate succession, testamentary disposition, foreclosure of a mortgage of record, or such other legal process as now in effect or as may hereafter be established under or pursuant to the laws of the State of Arizona. Any attempt to make a prohibited transfer shall be void. Any transfer of ownership to a Lot shall operate to transfer the membership appurtenant to said Lot to the new Owner thereof. Each Purchaser or other Person who becomes an Owner of a Lot shall notify the Association within ten (10) days after he becomes an Owner.

6.10 Architectural Control. The Board may establish an Architectural Committee to perform the architectural design review and related functions of the Board set forth in this Declaration. If established, the Architectural Committee shall be a committee of the Board and shall consist of such number of regular members and alternate members as may be provided for in the Bylaws. The Board, and/or Architectural Committee, if any, may promulgate Architectural Rules to be followed in rendering its decisions. Such Rules may include, without limitation, provisions regarding: (i) architectural design, with particular regard to the harmony of the design with the surrounding structures and topography; (ii) requirements concerning exterior Improvements; and (iii) signage. The decision of the Architectural Committee shall be final on all matters submitted to it pursuant to this Declaration. The Board may establish such other Committees as the Board may determine in its sole discretion and may establish Association Rules governing such Committee, including the number of Board members and alternate members as shall serve on such Committee and the function and delegated duties of such Committee.

6.11 Conveyance or Encumbrance of Common Area. Subject to the further First Mortgagee restrictions of Article 12 below, the Common Area shall not be mortgaged, conveyed, transferred, dedicated or encumbered without the prior written consent or affirmative vote of the Class B Member while Declarant holds Class B membership, and the affirmative vote or written consent of the Owners representing at least two-thirds (2/3) of the votes entitled to be cast by Class A Members (including Declarant, if Declarant is then a Class A Member). Without limiting the foregoing, no portion of the Common Area providing ingress and egress to any Lots may be mortgaged, conveyed, transferred, dedicated or encumbered without the prior written consent or affirmative vote of the Owners of the affected Lots and all First Mortgagees whose First Mortgages encumber those Lots.

6.12 Suspension of Voting Rights. If any Owner fails to pay any Assessments or any other amounts due to the Association under the Project Documents within fifteen (15) days after such payment is due or if any Owner or a Resident violates any other provisions of the Project Documents and such violation is not cured within thirty (30) days after the Association notifies the Owner of the violation, the Board shall have the right to suspend such Owner's right to vote until such time as all payments, including late charges, interest and attorneys' fees, are brought current and, for a period of sixty (60) days from the date of suspension for any other infractions or violations of the Project Documents.

6.13 Association Contracts.

6.13.1 While Class B Membership exists, any agreement for professional management of the Project executed by Declarant, or any member, agent or representative of Declarant or any agreement providing for services of, or lease or other contract with, the Declarant and/or its affiliates, may not exceed three (3) years. Any such agreements, contracts or leases must also provide for termination by either party without cause and without payment of a termination fee upon thirty (30) days' or less written notice.

6.13.2 The Board, acting on behalf of the Association, shall have the right, power and authority to enter into one or more bulk service agreements with service providers for such duration, at such rate(s) and on such other terms and conditions as the Board deems appropriate, including cable and satellite television and communications services, utility services, pest control, and monitoring or security services as may be in the best interests of the Project. The cost of any such service agreements shall be a Common Expense and included within the budget for the Annual Assessment.

6.13.3 Declarant may enter into, or cause the Board on behalf of the Association to enter into, a street light lease with Salt River Project (SRP) governing the operation, maintenance and expense of street lights on or adjacent to Tract I on terms reasonably consistent with street light lease agreements for subdivisions of a similar size and/or type.

ARTICLE 7 ASSESSMENTS

7.1 Creation of Lien and Personal Obligation of Assessments. Declarant, for each Lot owned by it, hereby covenants and agrees, and all other Owners, by becoming the Owner of a Lot, are deemed to covenant and agree to pay Assessments to the Association in accordance with this Declaration. All Assessments shall be established and collected as provided in this Declaration. The Assessments, Collection Costs, and all other fees, costs and charges permitted under the Project Documents, shall be a charge on the Lot and shall be a continuing lien upon the Lot against which each such Assessment is made. Each such Assessment shall also be the personal obligation of the Person who was the Owner of the Lot at the time when the Assessment became due. The personal obligation for delinquent Assessments shall not pass to the successors in title of the Owner unless expressly assumed by them.

7.2 Annual Assessments.

7.2.1 In order to provide for the operation and management of the Association and to provide funds for the Association to pay all Common Expenses and to perform its duties and obligations under the Project Documents, including the establishment of replacement and maintenance reserves, the Board, for each Assessment Period, shall assess an Annual Assessment against each Lot.

7.2.2 The Board shall give notice of the Annual Assessment to each Owner at least thirty (30) days prior to the beginning of each Assessment Period, but the failure to give such notice shall not affect the validity of the Annual Assessment established by the Board nor relieve any Owner from its obligations to pay the Annual Assessment. If the Board determines during any Assessment Period that the funds budgeted for that Assessment Period are, or will, become inadequate to meet all Common Expenses for any reason, including, without limitation, nonpayment of Assessments by Members, it may increase the Annual Assessment for that Assessment Period (except as expressly limited in Section 7.2.3 below and by Arizona law) and the revised Annual Assessment for that Assessment Period shall commence on the date designated by the Board.

7.2.3 The Association may not impose an Annual Assessment for any Assessment Period that is more than twenty percent (20%) greater than the Annual Assessment established for the most recent Assessment Period prior to the current Assessment Period without the approval of a majority of the Members of the Association or, if less, the number of Members or votes as may be required to approve such ^{Unofficial Document} an Assessment increase by the Arizona Planned Communities Act, A.R.S. §33-1801 et seq., as amended from time to time.

7.3 Rate of Assessment. The Owners of all Lots other than those Lots owned by Declarant shall each pay an equal amount of each Annual or Special Assessment. Declarant shall not pay any Assessment for Lots owned by Declarant or leased by Declarant for Declarant's model home purposes; provided, further, however, that Declarant shall be obligated to pay any shortfall on a monthly basis in the operating expenses of the Association.

7.4 Obligation of Declarant for Deficiencies. Declarant shall pay and contribute to the Association on a monthly basis, or at such other times as may be reasonably requested by the Board, such funds as may be necessary (when added to the Assessments levied and collected by the Association) to pay all Common Expenses of the Association as they become due. Declarant's obligation to fund any shortfall in Association revenues under this Section 7.4 shall cease if Declarant elects to pay Annual Assessments for all Lots owned or leased by Declarant for Declarant's model home purposes at the same rate charged to the other Lot Owners.

7.5 Special Assessments. In any Assessment Period, the Association may levy a Special Assessment against each Lot which is then subject to assessment, for the purpose of defraying, in whole or in part, the cost of any construction, reconstruction, repair or replacement of an Improvement on the Common Area or in an Area of Association Responsibility, including fixtures and personal property related thereto, provided that any Special Assessment shall have

the assent of Declarant, while Class B membership exists, and two-thirds (2/3) of the votes entitled to be cast by Class A Members who are voting in person or by proxy at a meeting duly called for this purpose. Special assessments made pursuant to Section 8.7 below shall only require the consent of the Board and fifty percent (50%) of the total allocated votes in the Membership.

7.6 Enforcement Assessments. The Association may assess against a Lot an Enforcement Assessment any of the following expenses: (i) any Collection Costs incurred by the Association in attempting to collect Assessments or other amounts payable to the Association by the Owner of the Lot; (ii) any Collection Costs, including attorneys' fees (whether or not a law suit is filed), incurred by the Association with respect to any violation of the Project Documents by the Owner, his Lessee or any other Resident of his Lot and their respective Invitees; (iii) any monetary penalties levied against the Owner for infractions of the Project Documents in accordance with procedures set forth in the Bylaws or Association Rules; or (iv) late charges and any other amounts (other than Annual Assessments or Special Assessments) which become due and payable to the Association by the Owner, his Lessee or any other Resident of his Lot pursuant to the Project Documents. For purposes of this Section 6.6, the Association shall be deemed to automatically have assessed any late charges and delinquent interest charges accruing against a specific Lot for non-payment of Assessments as provided for in this Declaration and/or adopted by Association Rule as an Enforcement Assessment without the requirement of a hearing or a formal Board resolution or assessment against the applicable Lot.

7.7 Assessment Period. The period for which the Annual Assessment is to be levied shall be the calendar year, except that the first Assessment Period, and the obligation of the Owners to pay an Annual Assessment shall commence upon the conveyance of the first Lot to a Purchaser and terminate on December 31 of such year. The Board in its sole discretion from time to time may change the Assessment Period.

7.8 Commencement Date of Assessment Obligation. Except as provided in Section 7.21 below with respect to Lots annexed into the Project pursuant to Section 2.3 of this Declaration, all Lots shall be subject to assessment upon the conveyance of the first Lot to a Purchaser.

7.9 Rules Regarding Billing and Collection Procedures. Annual Assessments shall be collected on a monthly basis or such other basis as may be selected by the Board (but no less frequently than quarterly). Special Assessments may be collected as specified by the Board. The Board shall have the right to adopt Rules setting forth procedures for levying Assessments and for the billing and collection thereof provided that the procedures are not inconsistent with the provisions of this Declaration, the Articles or Bylaws. The failure of the Association to send a bill to a Member shall not relieve any Member of his liability for any Assessment or charge under this the Project Documents, but the Assessment Lien therefore shall not be foreclosed until the Member has been given not less than thirty (30) days' written notice prior to such foreclosure that the Assessment or any installation thereof is or will be due and of the amount owing. Such notice may be given at any time prior to or after delinquency of such payment. The Association shall be under no duty to refund any payments received by it even though the ownership of a Lot

changes during an Assessment Period, but successor Owners of Lots shall be given credit for prepayments, on a prorated basis, made by prior Owners.

7.10 Effect of Nonpayment of Assessments; Association Remedies.

7.10.1 Any Assessment, or any installment of an Assessment, not paid within fifteen (15) days after the Assessment or any installment thereof first became due, shall bear interest from the original due date at the rate of twelve percent (12%) per annum or the prevailing VA/FHA interest rate for new homes, whichever is higher. In addition to or in lieu of delinquent interest, the Board may establish a late fee to be charged to any Owner who has not paid any Assessment or installment thereof or any other charges payable to the Association pursuant to the Project Documents. In said event, the late charge shall automatically attach to the Assessment within fifteen (15) days after such Assessment was first due in an amount not to exceed the limitations of A.R.S. §33-1803, as amended from time to time.

7.10.2 The Association shall have a lien on each Lot for: (i) all Assessments levied against the Lot; (ii) all interest, lien fees, late charges, fines, penalties and other fees and charges assessed against the Lot or payable by the Owner of the Lot; (iii) all Collection Costs and any other fees or costs incurred by the Association in attempting to collect Assessments or other amounts due to the Association by the Owner of a Lot; (iv) any amounts payable to the Association pursuant to Section 8.3 or 8.4 of this Declaration; and (v) any other amounts payable to the Association pursuant to the Project Documents. The Recording of this Declaration constitutes record notice and perfection of the Assessment Lien. The Association may, at its option, record a Notice of Lien setting forth the name of the delinquent Owner as shown in the records of the Association, the legal description or street address of the Lot against which the Notice of Lien is Recorded and the amount claimed to be past due as of the date of the Recording of the Notice, including interest, late charges, lien Recording fees and Collection Costs. Before Recording any Notice of Lien against a Lot, the Association shall make a written demand to the defaulting Owner for payment of the delinquent amounts. The demand shall state the date and amount of the delinquency and a statement as to the nature of the amounts due. Each default shall constitute a separate basis for a demand, but any number of defaults may be included within a single demand. If the delinquency is not paid within thirty (30) days after delivery of the demand, the Association may proceed with Recording a Notice of Lien against the Lot. If the Association records a Notice of Lien, the Association may charge the Owner of the Lot against which the Notice of Lien is Recorded a lien fee in an amount to be set from time to time by the Board.

7.10.3 Except as may be otherwise provided by Arizona law, the Assessment Lien shall have priority over all liens or claims except for: (i) tax liens for real property taxes; (ii) assessments in favor of any municipal or other governmental body; and (iii) the lien of any First Mortgage. Any First Mortgagee or other Person acquiring title or coming into possession of a Lot through foreclosure of the First Mortgage, purchase at a foreclosure sale or trustee sale, or through any equivalent proceedings, such as, but not limited to, the taking of a deed in lieu of foreclosure, shall acquire title free and clear of any claims for unpaid Assessments and charges against the Lot which became payable prior to the acquisition of such Lot by the First Mortgagee

or other Person. Any Assessments and charges against the Lot which accrue prior to such sale or transfer shall remain the obligation of the defaulting Owner of the Lot.

7.10.4 Except as may be otherwise provided by Arizona law or in this Declaration, the Association shall not be obligated to release the Assessment Lien until all delinquent Assessments, including, without limitation, interest, late charges, lien fees, fines, penalties, reasonable attorneys' fees, court costs, collection costs and all other sums payable to the Association by the Owner of the Lot have been paid in full.

7.10.5 The Association shall have the right, at its option, to enforce collection of any delinquent Assessments and all other sums due to the Association in any manner allowed by law, including, but not limited to: (i) bringing an action at law against the Owner personally obligated to pay the delinquent Assessments and such action may be brought without waiving the Assessment Lien securing the delinquent Assessments or (ii) bringing an action to foreclose the Assessment Lien against the Lot in the manner provided by law for the foreclosure of a realty mortgage. The Association shall have the power to bid at any foreclosure sale and to purchase, acquire, hold, lease, mortgage and convey any and all Lots purchased at such sale.

7.11 Evidence of Payment of Assessments. Upon receipt of a written request by a Member or other Person, and within a reasonable period of time thereafter (but not to exceed fifteen (15) days or such earlier time period as may be established under A.R.S. §33-1807 from time to time), the Association shall issue to such Member or other Person a written certificate stating that all Assessments, interest, late charges, lien fees, fines, penalties, and other fees and costs have been paid with respect to any specified Lot as of the date of such certificate, or if all Assessments or other charges have not been paid, the amount of such Assessments or other charges due and payable as of such date. The Association may make a reasonable charge for the issuance of such certificates, which charges must be paid at the time the request for any such certificate is made. Any such certificate, when duly issued as herein provided, shall be conclusive and binding with respect to any matters therein stated as against the Association, every Owner, and the bona fide Purchaser or Person acquiring the Lot in question, and any First Mortgagee thereof, if the statement is requested by an escrow agency that is licensed pursuant to Title 6, Chapter 7. In addition to the foregoing information, the Association shall also provide such information to prospective Purchasers as may be requested by a Member for purposes of complying with A.R.S. §33-1806, as amended from time to time, in the event of a resale of a Lot, and the Association may charge a reasonable fee for such services as determined by the Board from time to time.

7.12 Purposes for which Association's Funds May Be Used. The Association shall apply all funds and property collected and received by it (including Assessments, fees, loan proceeds, surplus funds and property from any other source) for the common good and benefit of the Project and the Owners and Residents by devoting said funds and property, among other things, to the acquisition, construction, alteration, maintenance, provision and operation, by any manner or method whatsoever, of any and all land, properties, Improvements, facilities, services, projects, programs, studies and systems, within or without the Project, which may be necessary, desirable or beneficial to the general common interests of the Project, the Owners and Residents. The following are some, but not all, of the areas in which the Association may seek to aid,

promote and provide for such common benefit: social interaction among the Residents, maintenance of landscaping in Areas of Association Responsibility, recreation, insurance, communication, education, transportation, health, utilities, public services, safety and indemnification of officers and directors of the Association. The Association may also expend its funds for any purpose for which a nonprofit corporation may expend funds under the laws of the State of Arizona.

7.13 Surplus Funds. The Association shall not be obligated to spend in any year all the Assessments and other sums received by it in such year, and may carry forward as surplus any balances remaining. The Association shall not be obligated to reduce the amount of the Annual Assessment in the succeeding year if a surplus exists from a prior year, and the Association may carry forward from year to year such surplus as the Board, in its discretion, may determine to be desirable for the greater financial security of the Association and the accomplishment of its purposes.

7.14 Working Capital Fund. To insure that the Association shall have adequate funds to meet its expenses or to purchase necessary equipment or services, each Purchaser of a Lot from the Declarant shall pay to the Association immediately upon becoming the Owner of the Lot a sum equal to one-sixth (1/6th) of the current Annual Assessment for the Lot. Funds paid to the Association pursuant to this Section 7.14 may be used by the Association for payment of operating expenses or any other purpose permitted under the Project Documents. Payments made pursuant to this Section 7.14 shall be nonrefundable and shall not be considered as an advance payment of any Assessments levied by the Association pursuant to this Declaration.

7.15 Transfer Fee. Each Purchaser ^{Unofficial Document} of a Lot from any Owner other than Declarant shall pay to the Association immediately upon becoming the Owner a transfer fee in such amount as is established from time to time by the Board to compensate the Association for the administrative costs incurred resulting from the transfer of the Lot. The transfer fee is not intended to compensate the Association for the costs incurred in the preparation of the statement which the Association is required to mail or deliver pursuant to A.R.S. §33-1806(A) and, therefore, the transfer fee shall be in addition to the fee which the Association is entitled to charge pursuant to A.R.S. §33-1806(C).

7.16 No Offsets. All Assessments and other amounts payable to the Association shall be payable in accordance with the provision of the Project Documents, and no offsets against such Assessments or other amounts shall be permitted for any reason, including, without limitation, a claim that the Association is not properly exercising its duties and powers as provided in the Project Documents.

7.17 No Exemption of Owners. No Owner of a Lot may exempt himself from liability for Assessments levied against his Lot or for other amounts which he may owe to the Association under the Project Documents by waiver and non-use of any of the Common Area facilities or by abandonment of his Lot.

7.18 Maintenance of Reserve Fund. The Annual Assessments shall include a reasonable amount for reserves as determined by the Board of Directors for the future periodic

maintenance, repair or replacement of all or a portion of the Common Area and other Areas of Association Responsibility and Improvements thereon, or any other reasonable purpose as determined by the Board of Directors. All amounts collected as reserves, whether pursuant to this Section 7.18 or otherwise, shall be deposited by the Board of Directors in a separate bank account (the "**Reserve Account**") commencing no later than the expiration or termination of Class B Membership. All funds in the Reserve Account shall be held in trust for the purposes for which they are collected and are to be segregated from and not commingled with other Association funds. Such reserves shall be deemed a contribution to the capital account of the Association by the Members. The Board of Directors shall not expend funds from the Reserve Account for any other purpose other than those purposes for which they are collected. Withdrawal of funds from the Reserve Account shall require the signatures of two members of the Board of Directors or one member of the Board and an officer of the Association who is not also a Board member. After the termination or expiration of Class B Membership, the Board of Directors shall obtain a reserve study at least once every seven years, which study shall at a minimum include: (i) identification of the major components of the Common Area having a remaining useful life of less than thirty (30) years as of the date of the study and their estimated probable remaining useful life; (ii) an estimate of the cost of maintenance, repair, replacement, restoration of such Common Area during and at the end of their useful life; (iii) an estimate of the annual contribution to the Reserve Account necessary to defray such costs, after subtracting the funds in the Reserve Account as of the date of the study. The Board of Directors shall modify the budget in accordance with the findings of the reserve study.

7.19 Notice and Quorum for any Action Under Sections 7.2 or 7.5. Written notice of any meeting called for the purpose of obtaining the consent of the Members for any action for which the consent of Members is ^{Unofficial Document} required under Sections 7.2 or 7.5 of this Declaration shall be sent to all Members not less than thirty (30) days nor more than fifty (50) days in advance of the meeting. At the first such meeting called, the presence of Members or of proxies entitled to cast sixty percent (60%) of all the votes of each class of membership shall constitute a quorum. If the required quorum is not present, another meeting may be called subject to the same notice requirement, and the required quorum at the subsequent meeting shall be one-half (1/2) of the required meeting at the preceding meeting. No such subsequent meeting shall be held more than fifty (50) days following the preceding meeting without the quorum requirements reverting back to the original level.

7.20 Unallocated Taxes. In the event that any taxes are assessed against the Common Area or the personal property of the Association rather than against the Lots, said taxes shall be included in the Assessments made under the provisions of this Article 7, and, if necessary, a Special Assessment may be levied on a pro rata basis to each of the Lots.

7.21 Assessments on Lots Subsequently Annexed. The Annual Assessment for Lots annexed by the Declarant pursuant to Section 2.3 of this Declaration shall commence on the first day of the first month following the month in which any annexed portion or phase of the Annexable Property becomes irrevocably annexed to the Project in accordance with said Section 2.3, and no Assessments may be levied against any such Lot until such time.

ARTICLE 8 MAINTENANCE

8.1 Maintenance of Areas of Association Responsibility. The Association, or its duly designated representatives, without any approval of the Owners or First Mortgagees being required, shall undertake all of the following for the benefit of the Project and its Owners and Residents:

8.1.1 Maintain, reconstruct, repair, replace, or refinish in first class condition in accordance with the standards of the Project and community as a whole any Improvements on the Common Area or in an Area of Association Responsibility (including any Project perimeter wall regardless of whether located on a portion of a Lot or Common Area and including the Project recreational facilities consisting of, without limitation, a pool, spa, and clubhouse facilities building) to the extent that such work is not being done by a governmental entity, if any, responsible for such maintenance or upkeep (The City is not responsible for and will not accept maintenance of any private utilities, streets, facilities, and landscaped areas within this Project).

8.1.2 Construct, reconstruct, repair, replace or refinish any portion of the Common Area used as a road, street, walk, driveway and parking area.

8.1.3 Maintain and replace all landscaping and plantings in the Common Area and in public rights-of-way and public utility easement areas to the extent the Board deems reasonably necessary for the conservation of water and soil, to replace damaged or injured trees, and for aesthetic purposes; provided, however, that the Board shall not vary the landscape plan installed by the Declarant and approved by the City without the prior written approval of the City.

8.1.4 Replace and maintain all landscaping and other Improvements as originally installed by Declarant on the Public Yards of Lots in accordance with the standards for Common Area landscape maintenance set forth in Section 8.1.3 above.

8.1.5 Maintain the private bleed off line for Common Area retention basin drainage within or immediately adjacent to the right-of-way of S. Signal Butte Road.

8.1.6 Place and maintain upon any such area such signs as the Board may deem appropriate for the proper identification, use and regulation thereof.

8.1.7 Enforce the City fire lane restrictions of Section 3.20.4 above.

8.1.8 Do all such other and further acts which the Board deems necessary to preserve and protect the Common Area and other Areas of Association Responsibility and the appearance thereof, in accordance with the Project Documents.

8.1.9 The City is not responsible for and will not accept maintenance of any private utilities, streets, facilities, and landscaped areas within this Project.

8.2 Maintenance of Lots by Owners.

8.2.1 Each Owner of a Lot shall be responsible for maintaining, repairing or replacing his Lot, and/or all Improvements thereon, as applicable, including his Residential Dwelling, except for any Areas of Association Responsibility established in accordance with this Declaration. All such Improvements shall be kept in good condition and repair. No yard equipment, wood piles or storage areas may be maintained so as to be Visible from Neighboring Property. Any Lots without Residential Dwellings thereon shall be maintained in a weed free manner.

8.2.2 Owners shall be responsible for maintenance of the roofs and exteriors of their Residential Dwellings and repairing all damage thereto regardless of whether due to age, weathering, ordinary wear and tear, acts of God, or willful or accidental damage. Such maintenance shall include periodic painting of the Residential Dwelling exterior in accordance with the color scheme established by the Board from time to time. No Owner, Resident or other Person may paint the exterior surfaces of any Residential Dwelling or make any Modifications to the exterior color scheme of any Residential Dwelling without the prior written approval of the Board. The type of paint to be used in painting the exterior surfaces of the Residential Dwellings and the timing and frequency of such painting of exterior surfaces shall be in the sole discretion of the Board and in accordance with the Association Rules. All paint colors used shall be approved in advance by the Board in accordance with Article 3 above.

8.3 Assessment of Certain Costs of Maintenance and Repair. Unofficial Document In the event that the need for maintenance, repair or replacement of Common Area or other Area of Association Responsibility (including the Public Yard landscaping and facilities) is caused through the willful or negligent act of any Owner or Resident of a Lot, or their Invitees or animals for whom the Owner or Resident is legally responsible under Arizona law, the Association shall cause the maintenance, repairs or replacement to be performed and the cost of such work shall be paid by the Owner of the Lot to the Association upon demand as an Enforcement Assessment to the extent the Owner is liable under Arizona law. Payment of such amounts shall be secured by the Assessment Lien and the Association may enforce collection of any such amounts in the same manner provided in this Declaration for the collection and enforcement of Enforcement Assessments.

8.4 Improper Maintenance and Use of Lots. In the event any portion of a Lot is so maintained as to present a public or private nuisance, or as to substantially detract from the appearance or quality of the surrounding Lots or other areas of the Project which are substantially affected thereby or related thereto, or in the event any portion of a Lot is being used in any manner which violates the Project Documents, or in the event an Owner or any Resident of any Owner's Lot is failing to perform any obligations under the Project Documents, the Board may make a finding to that effect. The Board shall specify the particular condition or conditions which exist, and pursuant thereto, give notice of such findings to the offending Owner that unless corrective action is taken within thirty (30) days, the Board may cause such action to be taken at said Owner's expense. If, at the expiration of said thirty (30) day period, the requisite action has not been taken, the Board shall be authorized and empowered to cause such action to be taken and the cost thereof shall be paid by such Owner to the Association upon demand as an

Enforcement Assessment regardless of whether such costs were caused by the Owner directly or any other Resident of the Lot. Payment of such amounts shall be secured by the Assessment Lien.

8.5 Boundary Walls. Each wall or fence which is located between two Lots shall constitute a boundary wall and, to the extent not inconsistent with this Section 8.5, the general rules of law regarding boundary or "party" walls shall apply. The Owners or Residents of contiguous Lots who share a boundary wall shall both equally have the right to use such wall provided that such use by one Owner or Resident does not interfere with the use and enjoyment of the same by the other Owner or Resident. In the event that any boundary wall is damaged or destroyed through the act of an Owner or Resident of a Lot, or their Invitees or animals, it shall be the obligation of the Lot Owner to rebuild and repair the boundary wall without cost to the other Owner of the adjoining Lot sharing the boundary wall. In the event any such boundary wall is damaged or destroyed by some other cause (including ordinary wear and tear and deterioration through lapse of time), then, in such event, both adjoining Owners shall proceed forthwith to rebuild or repair the same to as good condition as formerly existed at their joint and equal expense. The right of an Owner to contribution from any other Owner under this Section 8.5 shall be appurtenant to the land and shall pass to such Owner's successors in title. In addition to meeting the other requirements of this Declaration and of any other building code or similar regulations or ordinances, any Owner proposing to modify, make additions to or rebuild a boundary wall shall first obtain the written consent of the adjoining Owners and the Board. In the event any boundary wall encroaches upon a Lot, pursuant to the provisions of Section 5.8, a valid easement for such encroachment and for the maintenance of the boundary wall shall and does exist in favor of the Owners of the Lots which share the boundary wall. To the extent necessary for an Owner to construct Improvements in the Private Yard of his Lot, an Owner may remove all or part of a boundary wall, provided the Owner gives reasonable notice to the adjoining Owners and Residents that all or part of the boundary wall will be removed and the Owner desiring to temporarily remove a portion of the wall makes appropriate arrangements (including the erection of a temporary fence or barrier) or pays appropriate compensation for the protection of children and pets on the adjoining Lot. Any Owner removing all or part of a boundary wall pursuant to this Section 8.5 shall rebuild and restore the boundary wall to its prior condition at such Owner's sole cost and expense within a reasonable time after entry through the boundary wall is no longer necessary in connection with the construction of Improvements.

8.6 Maintenance of Walls Other than Boundary Walls. Walls or fences (other than boundary walls as described in Section 8.5 above) located on a Lot shall be maintained, repaired and replaced by an Owner of the Lot. Any wall which is placed on the boundary line between a Lot and the Common Area shall be maintained, repaired and replaced by the Owner of the Lot, except that the Association shall be responsible for the repair and maintenance of the side of the wall which faces the Common Area. In the event any such wall encroaches upon the Common Area or a Lot, an easement for such encroachment shall exist in favor of the Association or the Owner as the case may be, pursuant to Section 5.8 above. Any wall which is placed on the boundary line between a Lot and public right-of-way (including all Project perimeter walls) shall be maintained, repaired and replaced by the Association, except that the Owner of the Lot shall be responsible for the repair, painting and stuccoing or retexturing of the surface of the wall which faces the Private Yard or interior of the Lot and is Not Visible from

Neighboring Property. To the extent necessary for an Owner to construct Improvements in the Private Yard of his Lot, an Owner may remove all or part of a wall separating his Lot from Common Area or public right-of-way with the prior written consent of the Board and the City, as applicable. Such approval may be conditioned on the erection of a temporary fence or barrier.

8.7 Payment of Utility Charges. Each Residential Dwelling shall be separately metered for water, sewer, electrical and cable TV service, and all charges for such service to the Residential Dwellings shall be the sole obligation and responsibility of the Owner of each Lot. All bills for water, sewer and electrical service to the Common Area shall be billed to the Association, and the Association shall be responsible for the payment of such charges as a Common Expense to be included in the budget of the Association.

ARTICLE 9 INSURANCE

9.1 Scope of Coverage. Commencing not later than the time of the first conveyance of a Lot to a Purchaser, the Association shall maintain, to the extent reasonably available, the following insurance coverage:

9.1.1 Comprehensive General Liability insurance, including medical payments insurance, in an amount determined by the Board, but not less than \$1,000,000 for any single occurrence and \$2,000,000 general aggregate. Such insurance shall cover all occurrences commonly insured against for death, bodily injury and property damage arising out of or in connection with the use, ownership or maintenance of Areas of Association Responsibility.

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9.1.2 Property insurance for all Areas of Association Responsibility insuring against all risk of direct physical loss, in an amount equal to the maximum insurable replacement value of the Areas of Association Responsibility, as determined by the Board; provided, however, that the total amount of insurance after application of any deductibles shall not be less than one hundred percent (100%) of the current replacement cost of the insured property, exclusive of land, excavations, foundations and other items normally excluded from a property policy. If the Common Area or other Areas of Association Responsibility are located in an area identified by the Secretary of Housing and Urban Development as an area having special flood hazards, the Association shall also maintain a "blanket" policy of flood insurance on those areas. Such policy shall be in form and amount as determined by the Board, but, in any event, shall always satisfy the requirements of the Federal National Mortgage Association and the Federal Home Loan Mortgage Corporation, as amended from time to time.

9.1.3 Workmen's compensation insurance to the extent necessary to meet the requirements of Arizona law.

9.1.4 Such other insurance as the Association shall determine from time to time to be appropriate to protect the Association, the Board, or the Owners and Residents or as is required by the Federal National Mortgage Association or the Federal Home Loan Mortgage Corporation, including, without limitation, directors' and officers' errors and omissions coverage and fidelity coverage against dishonest acts by directors, managing agents, officers, trustees,

employees or volunteers of the Association who are responsible for handling funds belonging to or administered by the Association. The fidelity insurance shall name the Association as the insured and shall provide coverage in an amount not less than one and one-half times the Association's estimated annual operating expenses and reserves.

9.2 Contents of Policies. The insurance policies purchased by the Association shall, to the extent reasonably available, contain the following provisions: (i) that there will be no subrogation with respect to the Association, its agents, servant, and employees, with respect to Owners and Residents; (ii) no act or omission by any Owner or Resident, unless acting within the scope of his authority on behalf of the Association, will void the policy or be a condition to recovery on the policy; (iii) that the coverage afforded by such policy shall not be brought into contribution or proration with any insurance which may be purchased by Owners or Residents, their First Mortgagees, or other mortgagees or beneficiaries; (iv) a "severability of interest" endorsement which shall preclude the insurer from denying the claim of an Owner because of the negligent acts of the Association or other Owners; (v) a statement of the name of the insured as the Association; and (vi) for policies of hazard insurance, a standard mortgagee clause providing that the insurance carrier shall notify all First Mortgagees named in the policy at least ten (10) days in advance of the effective date of any substantial modification, reduction or cancellation of the policy.

9.3 Limitation of Liability. Neither the Declarant nor the Association, or any member, director, officer, shareholder, employee, or agent thereof, shall be liable to any Owner or Resident or any other Person if any risk or hazard is not covered by insurance or the amount thereof is inadequate. Without limiting the foregoing, each Owner shall be responsible for obtaining insurance for his own benefit ^{Unofficial Document} and at his own expense insuring his Lot and the Improvements thereon against loss and providing personal liability coverage to the extent such insurance is not obtained by the Association. Each Owner is responsible for ascertaining the Association's coverage and for procuring such additional coverage as such Owner deems necessary. First Mortgagees may pay overdue premiums and may secure new insurance coverage upon the lapse of any policy with respect to any insurance required to be maintained by the Association or any Owner under this Declaration, and any First Mortgagee making such expenditure shall be entitled to immediate reimbursement from the Association or Owner on whose behalf the expenditure was made.

9.4 Certificates of Insurance. An insurer that has issued an insurance policy under this Article 9 shall issue a certificate or a memorandum of insurance to the Association and, upon request, to any Owner, First Mortgagee or other mortgagee or beneficiary of a deed of trust. Any insurance obtained pursuant to this Article 9 may not be canceled until thirty (30) days after notice of the proposed cancellation has been mailed to the Association, each Owner and each First Mortgagee or other mortgagee or beneficiary of a deed of trust to whom certificates of insurance have been issued.

9.5 Payment of Premiums/Deductibles. Premiums for all insurance obtained by the Association pursuant to this Article and all deductibles thereunder shall be Common Expenses and shall be paid for by the Association; provided, however, the Association may assess to an Owner any deductible amount expended as a result of the negligence, misuse or

neglect for which such Owner is legally responsible under this Declaration and Arizona law. The Board of Directors may select deductibles in reasonable amounts applicable to the insurance coverage maintained by the Association pursuant to Section 9.1 above to reduce the payments payable for such insurance.

9.6 Payment of Insurance Proceeds. With respect to any loss to any Area of Association Responsibility covered by property insurance obtained by the Association in accordance with this Article 9, the loss shall be adjusted with the Association, and the insurance proceeds shall be payable to the Association and not to any mortgagee or beneficiary under a deed of trust. Subject to the provisions of Section 9.7 of this Declaration, the proceeds shall be disbursed for the repair or restoration of the damage to the Area of Association Responsibility.

9.7 Repair and Replacement of Damaged or Destroyed Property.

9.7.1 Any portion of an Area of Association Responsibility which is damaged or destroyed shall be repaired or replaced promptly by the Association unless: (i) repair or replacement would be illegal under any state or local health or safety statute or ordinance, or (ii) Owners representing at least eighty percent (80%) of the total authorized votes in the Association elect not to rebuild by vote or proxy cast at a duly held meeting or by written agreement. The cost of repair or replacement in excess of insurance proceeds and reserves shall be paid by the Association and the Association may levy a Special Assessment on all Lot Owners as provided in Section 7.5 above for purposes of obtaining sufficient funds to complete restoration of any such damaged areas of the Project. If all of the Areas of Association Responsibility are not repaired or replaced, insurance proceeds attributable to the damaged Areas shall be used to restore the damaged Areas to a condition which is not in violation of any state or local health or safety statute or ordinance and the remainder of the proceeds shall either: (i) be retained by the Association as an additional capital reserve or (ii) be used for payment of operating expenses of the Association if such action is approved by the affirmative vote or written consent, or any combination thereof, of Owners representing more than fifty percent (50%) of the votes in the Association.

9.7.2 Subject to other provisions of this Declaration, in the event of damage to or destruction of any part of a Residential Dwelling or Lot, the Owner of each Lot shall reconstruct the same as soon as reasonably practicable and substantially in accordance with the plans and specifications therefore or shall remove all debris from the Lot such that the Lot does not have an unsightly appearance or otherwise constitute a nuisance. Each Owner shall have an easement of reasonable access into any adjacent Lot for purposes of repair or reconstruction of his Residential Dwelling as provided in this Section 9.7.

ARTICLE 10 CONSTRUCTION CLAIMS PROCEDURES

10.1 Right to Cure Alleged Defects. It is Declarant's intent that the Common Area, each Lot and all Improvements constructed on the Property be built in compliance with all applicable building codes and ordinances and that they be of a quality that is consistent with good construction and development practices for production housing of this type. Nevertheless, due to

the complex nature of construction and the subjectivity involved in evaluating such quality, disputes may arise as to whether a defect exists and Declarant's (or any agent or contractor's) responsibility therefore. It is Declarant's intent to resolve all disputes and claims regarding **"Alleged Defects"** (as defined below) amicably, and without the necessity of time-consuming and costly litigation. However, it is expressly acknowledged by all parties that because the individual Residential Dwellings are located on separate Lots and are not part of a common building or structure, neither the Association nor the Members as a group or class have any jurisdiction over the construction of the Residential Dwellings, except to the extent any such construction is alleged to affect the Common Area in some adverse manner. Alleged Defects (as defined below) within a Residential Dwelling shall be governed by the contract of purchase and sale between Declarant and its Purchaser. To the extent an Alleged Defect is governed by this Declaration, the Association, Board and all Owners shall be bound by the following claim resolution procedure:

10.1.1 In the event that the Association, Board, or any Owner or Owners (collectively, **"Claimant"**) claim, contend or allege that: (i) any portion of the Common Area or Improvements constructed thereon are defective, (ii) Residential Dwellings or other Improvements on a Lot are constructed in such a manner as to adversely affect the Common Area; or (iii) that Declarant, its agents, consultants, brokers, contractors or subcontractors (collectively, **"Agents"**) were negligent in the planning, design, engineering, grading, construction, selling or other development of any Improvement within the Project such that the Common Area is adversely affected or damaged (with items i, ii, and iii collectively referred to herein as an **"Alleged Defect"**), Declarant hereby reserves the right for itself and any Agent of Declarant to inspect, repair and/or replace such Alleged Defect as set forth herein. In the event that a Claimant discovers any Alleged Defect, Unofficial Document Claimant shall notify Declarant in writing within thirty (30) days of discovery of the Alleged Defect of the specific nature of such Alleged Defect (**"Notice of Alleged Defect"**). Within a reasonable time after the receipt by Declarant of a Notice of Alleged Defect, or the independent discovery of any Alleged Defect by Declarant, as part of Declarant's reservation of rights hereunder, Declarant, and any of its Agents, shall have the right, upon reasonable notice to Claimant and during normal business hours, to enter onto or into, as applicable, the Common Area, any Lot, including any Residential Dwelling constructed thereon, and/or any Improvements for the purposes of inspecting and/or conducting testing and, if deemed necessary by Declarant, repairing and/or replacing such Alleged Defect. In conducting such inspection, testing, repairs and/or replacements, Declarant shall be entitled to take any actions as it shall deem reasonable and necessary under the circumstances.

10.1.2 Nothing set forth in this Section 10.1 shall be construed to impose any obligation on Declarant or any of its Agents to inspect, test, repair or replace any item or Alleged Defect for which Declarant or such other Person is not otherwise obligated under applicable law or any limited warranty provided by Declarant in connection with the sale of Lots and/or the Improvements constructed thereon or on the Common Area. The right of Declarant and its Agents to enter, inspect, test, repair and/or replace reserved hereby shall be irrevocable and may not be waived or otherwise terminated except by a writing, in recordable form, executed and Recorded by Declarant. In no event shall any statute of limitations be tolled during the period in which Declarant and/or its Agents conduct any inspection or testing of any Alleged Defects.

10.2 Legal Actions. All legal actions initiated by Claimants (as defined in Section 10.1 above) shall be brought in accordance with and subject to Sections 10.3 and 10.4 below. In the event a Claimant initiates any legal action, cause of action, proceeding, reference or arbitration against Declarant or any Agent of Declarant alleging damages (i) for the cost of repairing or the replacement of an Alleged Defect, (ii) for the diminution in value of any real or personal property resulting from such Alleged Defect, or (iii) for any other consequential damages resulting from such Alleged Defect, any judgment or award in connection therewith shall first be used to correct and/or repair such Alleged Defect or to reimburse the Claimant for any costs actually incurred by such Claimant in correcting and/or repairing the Alleged Defect. In the event the Claimant is the Association, the Association must provide written notice to all Members prior to initiation of any legal action, cause of action, proceeding, or arbitration against Declarant or any Agent of Declarant which notice shall (at a minimum) include (i) a description of the Alleged Defect, (ii) a description of the attempts of Declarant to correct such Alleged Defect and the opportunities provided to Declarant to correct such Alleged Defect, (iii) a certification from an engineer licensed in the State of Arizona that such Alleged Defect exists along with a description of the scope of work necessary to cure such Alleged Defect and a resume of such engineer, (iv) the estimated cost to repair such Alleged Defect, (v) the name and professional background of the attorney retained by the Association to pursue the claim against Declarant and a description of the relationship between such attorney and the member(s) of the Board, (vi) a description of the fee arrangement between such attorney and the Association, (vii) the estimated attorneys' fees and expert fees and costs necessary to pursue the claim against Declarant and the source of the funds which will be used to pay such fees and expenses, (viii) the estimated time necessary to conclude the Unofficial Document action against Declarant, and (ix) an affirmative statement from the Board that the action is in the best interests of the Association and its Members. In the event the Association recovers any funds from Declarant (or any other Person) to repair an Alleged Defect, any excess funds remaining after repair of such Alleged Defect shall be paid into the Association's reserve fund.

10.3 Approval of Litigation. The Board shall not be authorized to incur legal expenses, including without limitation, attorneys' fees or bring any legal proceeding of a material nature for which the claimed or alleged damages or the current economic value of other available remedies would exceed \$25,000 in the aggregate, unless the Association has received the vote or written consent of Members representing not less than sixty-seven percent (67%) of the total votes held by the Membership (other than votes held by Declarant or any Person who would be a defendant in such proceedings) to commence such an action or to incur such expenses. The foregoing restriction shall not apply to: (i) actions to enforce the collection of Assessments or an Assessment Lien; (ii) actions to challenge ad valorem taxation or condemnation proceedings; (iii) actions to defend claims filed against the Association or to assert mandatory counterclaims therein; (iv) actions to enforce any specific covenant hereunder; or (v) or claims brought by an Owner in his individual capacity concerning Improvements located solely on his Lot or Lots. The Association must finance any legal proceeding with monies that are specifically collected for same and may not borrow money or use reserve funds or other monies that are collected for specific Association obligations other than legal fees. In the event that the Association commences any legal proceedings, all Owners must notify prospective purchasers of such legal proceedings and must provide such prospective purchasers with a copy of the notice received from the Association in accordance with Section 10.2 above.

10.4 Binding Arbitration. In the event of a dispute between Declarant or its Agents, and any Owner(s) or the Association regarding any controversy or claim, including any claim based on contract, tort or statute, arising out of or in any way related to the rights or duties of the parties under this Declaration, or an Alleged Defect that is not satisfactorily resolved, settled or is not otherwise the subject to a forbearance or tolling agreement, the matter will be resolved by binding arbitration which shall be conducted in accordance with the following rules. In no event shall any such claim be submitted to binding arbitration on or before the sixty-first (61st) day after a Notice of Alleged Defect is delivered to Declarant.

10.4.1 The arbitration shall be initiated by either party delivering to the other a Notice of Intention to Arbitrate as provided for in the American Arbitration Association ("**AAA**") Commercial Arbitration Rules, as amended from time to time (the "**AAA Rules**"). The arbitration shall be conducted in accordance with the AAA Rules and A.R.S. §12-1501 et seq. In the event of a conflict between the AAA Rules and this Article 10, the provisions of this Article 10 shall govern.

10.4.2 The parties shall appoint a single arbitrator by mutual agreement; provided, however, if the amount of the Alleged Defect exceeds \$150,000, then the matter shall be arbitrated by a panel of three arbitrators, with one Arbitrator each selected by the plaintiff(s) and defendant(s) and the third Arbitrator selected by the two Arbitrators chosen by the parties. If the parties have not agreed within ten (10) days of the date of the Notice of Intention to Arbitrate on the selection of an arbitrator (or arbitrators) willing to serve, the AAA shall appoint a qualified arbitrator (or arbitrators) to serve. Unofficial Document Any arbitrator chosen in accordance with this Article 10 is referred to herein as the "**Arbitrator.**" The Arbitrator shall be neutral and impartial. The Arbitrator shall be fully active in such Arbitrator's occupation or profession, knowledgeable as to the subject matter involved in the dispute, and experienced in arbitration proceedings. The foregoing shall not preclude otherwise qualified retired lawyers or judges. Any candidate for the role of Arbitrator shall promptly disclose to the parties all actual or perceived conflicts of interest involving the subject matter of the dispute or the parties. If an Arbitrator resigns or becomes unwilling to continue to serve as an Arbitrator, a replacement shall be selected in accordance with the procedure set forth in this Article 10. The Arbitrator shall be fully compensated for all time spent in connection with the arbitration proceedings in accordance with the Arbitrator's hourly rate not to exceed Three Hundred Dollars (\$300.00) per hour, unless otherwise agreed to by the parties, for all time spent by the Arbitrator in connection with the arbitration proceeding. Pending the final award, the Arbitrator's compensation and expenses shall be advanced equally by the parties.

10.4.3 The Arbitrator shall actively manage the proceedings as the Arbitrator deems best so as to make the proceedings expeditious, economical and less burdensome than litigation. All papers, documents, briefs, written communications, testimony and transcripts, as well as any arbitration decisions, shall be confidential and not disclosed to anyone other than the Arbitrator, the parties or the parties' attorneys and expert witnesses (where applicable to their testimony), except that upon prior written consent of all parties, such information may be divulged to additional third parties. All third parties shall agree in writing to keep such information confidential. Hearings may be held at any place within the State of Arizona

designated by the Arbitrator and, in the case of particular witnesses not subject to subpoena at the usual hearing site, at a place where such witnesses can be compelled to attend. All statutes of limitation applicable to claims which are subject to binding arbitration pursuant to this Section 10.4 shall apply to the commencement of arbitration proceedings under this Section 10.4. If arbitration proceedings are not initiated within the applicable period, the claim shall forever be barred.

10.4.4 Within thirty (30) days after the Arbitrator has been appointed, a preliminary hearing among the Arbitrator and counsel for the parties shall be held for the purpose of developing a plan for the management of the arbitration, which shall then be memorialized in an appropriate order. The matters which may be addressed include, in addition to those set forth in the AAA Rules, the following: (i) definition of issues, (ii) scope, timing and types of discovery, if any, (iii) schedule and place(s) of hearings, (iv) setting of other timetables, (v) submission of motions and briefs, (vi) whether and to what extent expert testimony will be required, whether the Arbitrator should engage one or more neutral experts, and whether, if this is done, engagement of experts by the parties can be obviated or minimized, (vii) whether and to what extent the direct testimony of witnesses will be received by affidavit or written witness statement; and (viii) any other matters which may promote the efficient, expeditious, and cost-effective conduct of the proceedings.

10.4.5 The Arbitrator shall promptly (within sixty (60) days of the conclusion of the proceedings or such longer period as the parties mutually agree) determine the claims of the parties and render a final award in writing. The Arbitrator may award the prevailing party in the proceeding all or part of such party's reasonable attorneys' fees and expert witness fees, taking into account the final result of arbitration, ^{Unofficial Document} the conduct of the parties and their counsel in the course of the arbitration, and other relevant factors. The Arbitrator shall not award any punitive damages nor any indirect, consequential or special damages regardless of whether the possibility of such damages or loss was disclosed to, or reasonably foreseen by the party against whom the claim is made; provided, however, that such damages may be deemed by the Arbitrator to be direct damages in an award reimbursing payments made by a party therefor to a third party. The Arbitrator shall assess the costs of the proceedings (including, without limitation, the fees of the Arbitrator) against the non-prevailing party, but each party shall bear the cost of its own attorneys' fees and expert witness fees.

10.5 Declarant's Option to Litigate. Notwithstanding the foregoing provisions of this Article 10 and any other provisions contained in the Project Documents, Declarant shall, in its sole and absolute discretion, have the right to elect to waive the binding arbitration provisions regarding the disposition of Alleged Defects set forth above and to require that any such claim by a Claimant be resolved in a court of law rather than by the binding arbitration provisions set forth herein or in any purchase contract between Declarant and a Claimant. Declarant shall make such election, if at all, on or before the sixtieth (60th) day following its receipt of the Notice of Alleged Defect.

10.6 Arizona Statutory Compliance. In the event a court of competent jurisdiction invalidates all or part of this Article 10 regarding the resolution of Alleged Defects and litigation unfortunately becomes necessary, the Declarant, the Association, and all Owners shall be bound

by the applicable Arizona construction defect statute presently codified at A.R.S. §12-1361 et seq. and A.R.S. §33-2001 et seq.

BY ACCEPTANCE OF A DEED OR BY ACQUIRING A LOT, EACH PERSON, FOR HIMSELF, HIS HEIRS, PERSONAL REPRESENTATIVES, SUCCESSORS, TRANSFEREES AND ASSIGNS, AGREES TO HAVE ANY CLAIM FOR ALLEGED DEFECT RESOLVED ACCORDING TO THE PROVISIONS OF THIS ARTICLE 10 AND WAIVES THE RIGHT TO PURSUE DECLARANT OR ANY DECLARANT AGENTS IN ANY MANNER OTHER THAN AS PROVIDED IN THIS ARTICLE 10. THE ASSOCIATION, EACH OWNER AND DECLARANT ACKNOWLEDGE THAT BY AGREEING TO RESOLVE ALL CLAIMS FOR ALLEGED DEFECTS AS PROVIDED IN THIS ARTICLE 10, THEY ARE GIVING UP THEIR RESPECTIVE RIGHTS TO HAVE SUCH CLAIMS TRIED BEFORE A JURY. THE ASSOCIATION, EACH OWNER AND DECLARANT FURTHER WAIVE THEIR RESPECTIVE RIGHTS TO AN AWARD OF PUNITIVE AND CONSEQUENTIAL DAMAGES RELATING TO A CLAIM FOR ALLEGED DEFECT. BY ACCEPTANCE OF A DEED OR BY ACQUIRING A LOT, EACH OWNER VOLUNTARILY ACKNOWLEDGES THAT HE IS GIVING UP ANY RIGHTS HE MAY POSSESS TO PUNITIVE AND CONSEQUENTIAL DAMAGES OR THE RIGHT TO A TRIAL BEFORE A JURY RELATING IN ANY WAY TO A CLAIM FOR ALLEGED DEFECT.

ARTICLE 11 ENFORCEMENT

11.1 General Right of Enforcement. Subject to the further provisions of Article 10 above, the Association, or any Owner, shall have the right to enforce, by any proceeding at law or in equity, all restrictions, conditions, covenants, ^{Unofficial Document}servations, liens or charges now or hereafter imposed by the provisions of the Project Documents. Failure by the Association or by any Owner to enforce any covenant or restriction contained in the Project Documents shall in no event be deemed a waiver of the right to do so thereafter.

11.2 Items of Construction/Equitable Relief. As provided in Section 11.3 below, Declarant, the Association, and/or any Owner shall have the right to use summary abatement or similar means to enforce the restrictions set forth in this Declaration, provided, however, a judicial decree authorizing such action must be obtained before any items of construction or any Modification can be altered or demolished by any Person other than the Owner or other Person who caused the Modification to be made.

11.3 Enforcement by Association. The Association may enforce the Project Documents in any manner provided for in the Project Documents or by law or in equity, including, but not limited to:

11.3.1 imposing reasonable monetary penalties after notice and hearing as provided in the Bylaws. An Owner shall be responsible for payment of any fine levied or imposed against an Owner as a result of the actions or omissions of the Owner, his Lessee or Resident or their respective Invitees;

11.3.2 suspending an Owner's right to vote for violations of the Project Documents as further provided in Section 6.12 above;

11.3.3 suspending any Person's right to use any facilities within the Common Area, as further provided in Section 5.1 above, provided, however, that nothing shall authorize the Board to limit ingress or egress to or from a Lot;

11.3.4 suspending any services provided by the Association to an Owner or the Owner's Lot if the Owner is more than fifteen (15) days' delinquent in paying any Assessment or other charge owed to the Association;

11.3.5 exercising self-help or taking action to abate any violation of the Project Documents or to remove any structure of Improvement further subject to any limitations of Arizona law and the provisions of Section 11.2 of this Declaration;

11.3.6 without liability to any Person, prohibiting any Invitee of an Owner, Lessee or other Resident who fails to comply with the terms and provisions of the Project Documents from continuing or performing any further activities within the Project;

11.3.7 towing Vehicles which are parked in violation of this Declaration or the Rules as further provided in Section 3.21 of this Declaration;

11.3.8 filing a suit at law Unofficial Document to enjoin a violation of the Project Documents, to compel compliance with the Project Documents, to recover Assessments, monetary penalties, Collection Costs or damages or to obtain such other relief as to which the Association may be entitled, including the remedies provided for in Section 7.10 of this Declaration;

11.3.9 Recording a written notice of violation by any Owner of any restriction or provision of the Project Documents as further provided in Section 12.16 of this Declaration; and

11.3.10 Recording an Assessment Lien against a Lot as provided in Section 7.10.2 of this Declaration and the Arizona Planned Communities Act, A.R.S. §33-1801 et seq.

11.4 Limited Enforcement Obligation. The Association shall not be obligated to take any enforcement action if the Board of Directors determines, in its sole discretion, that, because of the strength of the Association's possible defenses, the time and expense of litigation or other enforcement action, the likelihood of a result favorable to the Association, or other facts deemed relevant by the Board of Directors, enforcement action would not be appropriate or in the best interests of the Association.

ARTICLE 12 GENERAL AND MORTGAGEE PROVISIONS

12.1 Term; Method of Termination. This Declaration shall continue in full force and effect for a term of twenty (20) years from the date this Declaration is Recorded. After

which time, this Declaration shall be automatically extended for successive periods of ten (10) years each. This Declaration may be terminated at any time during the initial term of this Declaration or any extension or renewal term, if such termination is approved by the affirmative vote or written consent, or any combination thereof, of the Owners representing ninety percent (90%) or more of the votes in each class of membership and by the holders of First Mortgages on Lots, the Owners of which have seventy-five percent (75%) or more of the votes in the Association. If the necessary votes and consents are obtained, the Board shall cause to be Recorded with the County Recorder of Maricopa County, Arizona, a Certificate of Termination, duly signed by the President or Vice President and attested by the Secretary or Assistant Secretary of the Association, with their signatures acknowledged. Thereupon, this Declaration shall have no further force or effect and the Association shall be dissolved pursuant to the provisions set forth in the Articles.

12.2 Amendments.

12.2.1 Except for amendments made pursuant to Sections 12.2.2 of this Declaration, and subject to the further limitations of Sections 12.2.3, 12.2.4 and 12.2.6, this Declaration may be amended at any time during the initial term of this Declaration or any renewal or extension term, without regard to whether such amendments are of uniform effect as to the Owners or the Lots, by the written approval or the affirmative vote, or any combination thereof, of Owners of not less than sixty-seven percent (67%) of the Lots, with one vote per Lot.

12.2.2 Declarant, so long as Declarant owns any Lot, may unilaterally amend this Declaration or the Plat to: (i) correct any error or inconsistency in the Declaration; (ii) conform this Declaration or the Plat to the requirements or guidelines of the Federal National Mortgage Association, the Federal Home Loan Mortgage Corporation, any federal, state or local governmental agency or quasi-governmental agency whose approval of the Project is required by law or requested by the Declarant; or (iii) alter the size of and boundaries between any Lots (including an increase or reduction of the total number of Lots) so long as: (I) all such altered Lots are owned by Declarant, (II) all First Mortgagees then encumbering the Lots to be altered consent in writing, (III) such alterations do not modify or change the size, the boundaries of any other Lot or materially modify the size or boundaries of the Common Area; (IV) such alterations do not result in the removal or abandonment of any recreational facilities shown on the Improvement plans on file with the City; and (V) such alterations do not increase the share of Common Expenses payable by Owners.

12.2.3 So long as the Declarant owns any Lot, any amendment to this Declaration must be approved in writing by the Declarant. Article 10 of this Declaration may not be amended without the consent of Declarant at any time during the initial term of this Declaration; Declarant's interest being deemed coupled with an interest, without regard to whether Declarant owns any Lot at that time; provided, further, however, that if Declarant is deemed by any court of applicable jurisdiction not to have such an interest, then, in no event may Article 10 of this Declaration be amended without the consent of one hundred percent (100%) of the then Owners of Lots.

12.2.4 So long as there is a Class B Membership in the Association, any amendment to this Declaration must have the prior written approval of the Veterans Administration or the Federal Housing Administration as further provided in Section 12.16 below.

12.2.5 So long as Declarant owns the requisite number of Lots under this Section 12.2 to effect an amendment hereunder, any amendment to this Declaration shall be signed by Declarant and Recorded in the records of the County Recorder of Maricopa County, Arizona. At any time Declarant does not own the requisite number of Lots, any amendment made pursuant to Section 12.2.1 shall be signed by the President or Vice President of the Association and shall be Recorded with the County Recorder of Maricopa County, Arizona, and shall certify that the amendment has been approved by the Board as well as by the requisite number of Owners, if any, as may be required by this Section 12.2. Unless a later effective date is specified in the amendment, any amendment to this Declaration shall be effective upon the Recording of the instrument.

12.2.6 All amendments to Section 8.1 of this Declaration or otherwise affecting or amending any provisions related to landscaping maintenance, or which have been required by the City in its stipulations for development of the Project, shall be approved in advance by the City.

12.3 Certain Mortgagee Rights.

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12.3.1 Any First Mortgagee will, upon written request identifying the name and address of the First Mortgagee for any Lot and the Lot number or address, shall be entitled to receive timely written notice of: (i) all meetings of the Members and be permitted to designate a representative to attend all such meetings; (ii) any condemnation loss or any casualty loss which affects a material portion of the Project or the Lot subject to the First Mortgage; (iii) any delinquency in the payment of Assessments or other charges owed or any other default in the performance of obligations under the Project Documents by the Owner of the Lot subject to the First Mortgage which remains uncured for a period of sixty (60) days; and (iv) any lapse, cancellation or material modification of any insurance policy or fidelity bond maintained by the Association.

12.3.2 No Lot shall be partitioned or subdivided without the prior written approval of the First Mortgagee of any such Lot subject to a First Mortgage.

12.3.3 Unless at least two-thirds (2/3) of the First Mortgagees (based upon one vote for each First Mortgage owned by the First Mortgagee in the Project) or the Owners (other than Declarant) of at least two-thirds (2/3) of the Lots have given their prior written approval, the Association shall not be entitled to:

(i) seek to abandon, partition, subdivide, sell or transfer the Common Area owned, directly or indirectly, by the Association. The granting of easements for public utilities or for other public purposes consistent with the intended use of such Common Area shall not be deemed a transfer within the meaning of this Section 12.3.3.

(ii) change the method of determining the obligations, Assessments, dues or other charges which may be levied against any Owner.

(iii) change, waive or abandon any scheme or regulations, or enforcement thereof, pertaining to the architectural design or the exterior appearance of the Lots or the maintenance of Common Area.

(iv) fail to maintain fire and extended insurance coverage on a current replacement cost basis for the Common Area in an amount of at least one hundred percent (100%) of insurable value.

(v) use hazard insurance proceeds for losses to Project Improvements other than for the repair, replacement or reconstruction of such Project Improvements.

12.3.4 No provision of this Declaration gives or shall be construed as giving any Owner or other Person priority over any rights of a First Mortgagee of a Lot in the case of distribution to such Owner of insurance proceeds or condemnation awards for losses to or taking of the Common Area.

12.3.5 Any First Mortgagee who receives a written request from the Board to respond to or consent to any action requiring the consent of the First Mortgagee shall be deemed to have approved such action if the Association has not received a negative response from such First Mortgagee within thirty (30) days of the date of the Association's request.

12.3.6 No breach of any of the covenants, conditions and restrictions contained in this Declaration, and no enforcement of any lien provisions herein shall render invalid the lien of any First Mortgage, but all of said covenants, conditions and restrictions shall be binding upon and effective against any Owner whose title is derived through foreclosure, trustee's sale or otherwise.

12.3.7 All amenities pertaining to the Project and located thereon (such as parking, recreation and service areas) are a part of the Project and shall be covered by and subject to a First Mortgage on a Lot to the same extent as is the Common Area.

12.3.8 An action to abate the breach of any of these covenants, conditions and restrictions may be brought against the First Mortgagee or other Person who has acquired title through foreclosure of a First Mortgage and subsequent sheriff's sale (or through any equivalent proceedings) and the successor in interest to said First Mortgagee or other Person, if the breach continues to exist after the time said First Mortgagee or other Person acquires an interest in such Lot.

12.3.9 During the pendency (including any period of redemption) of any proceedings to foreclose a First Mortgage (or from the time a trustee under a first deed of trust has given notice of sale pursuant to the power of sale conferred under the deed of trust and pursuant to law), the First Mortgagee, or a receiver appointed in any such action, may, but need

not, exercise any or all of the rights and privileges of the Owner of the Lot in default, including, but not limited to, the right to vote as a Member of the Association in the place and stead of the defaulting Owner, irrespective of whether the Member's voting rights have been suspended for nonpayment of Assessments.

12.3.10 Notwithstanding anything contained herein to the contrary, at such time as the First Mortgagee shall become record Owner of a Lot, the First Mortgagee shall be subject to all of the terms and conditions of this Declaration, including, but not limited to, the obligations to pay all Assessments and charges accruing thereafter in the same manner as any other Owner.

12.3.11 The right of any Owner to sell, transfer or otherwise convey his Lot shall not be subject to any right of first refusal or any similar restriction in favor of the Association and no such right of first refusal or similar restriction shall be hereinafter imposed by amendment of this Section 12.3.11 without the prior written consent of all First Mortgagees of record at the time the requested amendment is proposed.

12.4 Interpretation. Except for judicial construction, the Association shall have the exclusive right to construe and interpret the provisions of this Declaration. In the absence of any adjudication to the contrary by a court of competent jurisdiction, the Association's construction and interpretation of the provisions hereof shall be final, conclusive and binding as to all Persons and property benefited or bound by this Declaration. In the event of any conflict between this Declaration and the Articles, Bylaws, Association Rules or Architectural Rules, this Declaration shall control. In the event of any conflict between the Articles and the Bylaws, the Articles shall control. In the event of any conflict between the Bylaws and the Association Rules or the Architectural Rules, the Bylaws shall control.

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

12.6 Rule Against Perpetuities. If any interest, privilege, covenant or right created by this Declaration shall be unlawful, void or voidable for violation of the Rule against Perpetuities or any related rule, then such interest, privilege, covenant or right shall continue until twenty-one (21) years after the death of the last survivor of the now living descendants of the President of the United States in office on the date this Declaration is Recorded.

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

12.8 Notice of Violation. The Association shall have the right to record a written notice of a violation by any Owner or Resident of any restriction or other provision of the Project Documents. The notice shall be executed by an officer of the Association and shall contain substantially the following information: (i) the name of the Owner or Resident violating, or responsible for the violation of, the Project Documents; (ii) the legal description of the Lot

against which the notice is being Recorded; (iii) a brief description of the nature of the violation; (iv) a statement that the notice is being Recorded by the Association pursuant to this Declaration; (v) a statement of the specific steps which must be taken by the Owner or Resident to cure the violation. Recordation of a notice of violation shall serve as notice to the Owner and Resident, and any subsequent Purchaser or other Person who may acquire 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, and 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 that the violation does not exist. Failure by the Association to record a notice of violation shall not constitute a waiver of any such violation, constitute any evidence that no violation exists with respect to a particular Lot or constitute a waiver of any right of the Association to enforce the Project Documents.

12.9 Laws, Ordinances and Regulations. The covenants, conditions and restrictions set forth in this Declaration and the provisions requiring Owners and other Persons to obtain the approval of the Board or the Architectural Committee, as applicable, with respect to certain actions are independent of the obligation of the Owners and other Persons to comply with all applicable laws, ordinances and regulations. Compliance with this Declaration shall not relieve an Owner or any other Person from the obligation to also comply with all applicable laws, ordinances and regulations. Any violation of any state, municipal or local law, ordinance or regulation pertaining to the ownership, occupation or use of any property within the Project is hereby declared to be a violation of this Declaration and subject to any or all of the enforcement procedures set forth herein.

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12.10 Right to Inspect Documents; Audited Financial Statements. The Association shall make available to Owners, mortgagees and insurers or guarantors of First Mortgagees, current copies of the Project Documents and the books, records and financial statements of the Association. "**Available**" means available for inspection (and copying at the expense of the requesting party), within five (5) business days after written request, during normal business hours or under other reasonable circumstances. Any First Mortgagee or any holder or insurer of any First Mortgage shall be entitled to receive, upon written request, an audited financial statement for the immediately preceding fiscal year from a certified public account or other acceptable financial statement preparer. Such audit shall be at the expense of the requesting party if an audited financial statement has not already been prepared and shall be furnished within a reasonable time following receipt by the Association of the request and the payment of the cost of the audit to the preparer of the statement.

12.11 Condemnation.

12.11.1 Common Area. Upon receipt of notice of intention or notice of proceedings whereby all or any part of the Common Area or other Area of Association Responsibility is to be taken by any governmental body by exercise of the power of condemnation or eminent domain, all Owners shall be immediately notified by the Association thereof. The Association shall represent the Owners in any condemnation or eminent domain

proceedings or in negotiations, settlements and agreements with the condemning authority for acquisition of any part of the Common Area or other Area of Association Responsibility, and every Owner appoints the Association as his attorney-in-fact for this purpose. The entire award made as compensation for such taking, including, but not limited to, any amount awarded as severance damages or the entire amount received and paid in anticipation and settlement for such taking, after deducting therefrom, in each case, reasonable and necessary costs and expenses, including, but not limited to, attorneys' fees, appraisers' fees and court costs (which net amount shall hereinafter be referred to as the "*Award*"), shall be paid to the Association as trustee for the use and benefit of the Owners and their First Mortgagees as their interests may appear. The Association shall, as it is practicable, cause the Award to be utilized for the purpose of repairing and restoring the Project, including, if the Association deems it necessary or desirable, the replacement of any Improvements so taken or conveyed.

12.11.2 Lots. In the event of any taking of any Lot in the Project by eminent domain, the Owner of such Lot shall be entitled to receive the award for such taking, and after acceptance thereof he and all of his mortgagees shall be divested of all interest in the Project if such Owner shall vacate his Lot as a result of such taking. The remaining Owners shall decide by majority vote whether to rebuild or repair the Project or take other action. The remaining portion of the Project shall be resurveyed, if necessary, and the Declaration shall be amended to reflect such taking. In the event of a taking by eminent domain of more than one Lot at the same time, the Association shall participate in the negotiations and shall propose the method of division of the proceeds of condemnation where Lots are not valued separately by the condemning authority or by the court. In the event any Owner disagrees with the proposed allocation, he may have the matter submitted to arbitration under the rules of the American Arbitration Association.

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12.12 References to this Declaration in Deeds. Deeds to and instruments affecting any Lot or any other portion of the Project may contain the covenants, conditions and restrictions herein set forth by reference to this Declaration, but, regardless of whether any such reference is made in any deed or instrument, each and all of the provisions of this Declaration shall be binding upon the Owner or other Person claiming through any deed or other instrument and his heirs, executors, administrators, successors and assignees.

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

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

12.15 Notices. If notice of any action or proposed action by the Board or any committee thereof or of any meeting is required by applicable law, this Declaration or resolution of the Board, to be given to any Owner or Resident, then, unless otherwise specified in the

Project Documents, or unless otherwise required by applicable Arizona law or by resolution of the Board, such notice requirement shall be deemed satisfied if notice of such action or meeting is published in any newspaper of general circulation within Maricopa County, Arizona. This Section 12.15 shall not be construed to require that any notice be given if not otherwise required and shall not prohibit satisfaction of any notice requirement in any other manner.

12.16 FHA/VA Approval. So long as there is Class B membership in the Association, the following actions shall require the prior written approval of the Federal Housing Administration or the Veterans Administration: annexation of additional properties, dedication, mortgaging or conveyance of Common Area, and amendment of this Declaration.

12.17 No Absolute Liability. No provision of the Project Documents shall be interpreted or construed as imposing on Owners absolute liability for damage to the Common Area or the Lots. Owners shall only be responsible for damage to the Common Area or Lots caused by the negligence or intentional acts of the Owners or Residents of the Lots or their Invitees or pets.

12.18 References to VA and FHA. In various places throughout the Project Documents, references are made to the Department of Veterans Affairs ("**VA**") and the Federal Housing Administration ("**FHA**") and, in particular, to various consents or approvals required of either or both of such agencies. Such references are included so as to cause the Project Documents to meet certain requirements of such agencies should Declarant, in its discretion, request approval of the Project by either or both of those agencies. Unless and until FHA or VA have approved the Project as acceptable for insured or guaranteed loans and at any time during which such approval, once given, has been Unofficial Document revoked, withdrawn, canceled or suspended and there are no outstanding mortgages or deeds of trust Recorded against a Lot to secure payment of an insured or guaranteed loan by either of such agencies, all references herein to required approvals of consents of such agencies shall be deemed null and void and of no force and effect.

12.19 Declarant's Right to Use Similar Name. The Association hereby irrevocably consents to the use by any other corporation or other entity which may be formed or incorporated by Declarant of an entity name which is the same or deceptively similar to the name of the Association, provided, however, one or more words are added to the name of such other entity to make the name of the Association distinguishable from the name of such other entity. 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 or the Arizona Secretary of State in order for any other corporation or other entity formed or incorporated by the Declarant to use a name which is similar to the name of the Association.

12.20 Attorneys' Fees. In the event the Declarant, the Association or any Owner employs an attorney or attorneys to enforce an Assessment Lien or to collect any amounts due from another Owner or to enforce compliance with or recover damages for any violation or noncompliance with the Project Documents or in any other manner arising out of the Project Documents or the operations of the Association, the prevailing party shall be entitled to recover Collection Costs (including reasonable attorneys' fees) incurred in the action.

IN WITNESS WHEREOF, the undersigned, being the Declarant herein, has hereunto set its hand to be effective as of the date first set forth above.

DECLARANT:

Creative Properties, Inc.,
an Arizona corporation

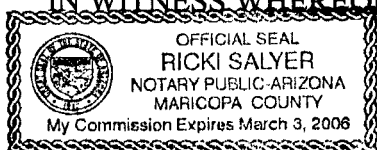
By Wayne S. Funk
Wayne S. Funk, Its President

STATE OF ARIZONA)
)ss.
COUNTY OF MARICOPA)

On this 20th day of May, 2003, before me, the undersigned notary public, in and for said county and state, personally appeared WAYNE S. FUNK, the President of CREATIVE PROPERTIES, INC., an Arizona corporation, personally known (or proved) to me to be the persons whose names are subscribed to the above instrument and who acknowledged that they executed the above instrument for and on behalf of the corporation, in his capacity as an officer thereof.

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IN WITNESS WHEREOF, I hereunto set my hand and official seal.



Ricki Salyer
NOTARY PUBLIC

My Commission Expires:
March 3, 2006

EXHIBIT A***DESCRIPTION OF PROPERTY SUBJECT TO DECLARATION***

Lots 1 through 62, inclusive, and Common Area Tracts A, B, C, D, E, F, G, H, and I, according to the plat of SIGNAL BUTTE CASITAS, Recorded on March 15, 2002 in Book 587 of Maps, page 24, in the Official Records of the Maricopa County, Arizona Recorder.

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RATIFICATION OF DECLARATION AND PLAT

THIS RATIFICATION OF DECLARATION AND PLAT is made and entered into to be effective as of the 20th day of May, 2003, by Wells Fargo Bank Arizona, National Association ("Lender"), the beneficiary of two Construction Deeds of Trust respectively recorded on May 31, 2002 at Instrument Nos. 2002-0562541 and 2002-0562542, Official Records of Maricopa County, Arizona and other security documents (collectively, the "**Loan Documents**") concerning certain real property affected by the Declaration (defined below). The undersigned hereby acknowledges that it has reviewed, read and/or approved the Declaration of Covenants, Conditions, Restrictions and Easements for Signal Butte Casitas to which this Ratification is attached and the Plat thereof recorded in Book 587 of Maps , page 24, in the Official Records of the Maricopa County, Arizona Recorder. Lender agrees that the Loan Documents shall be subject and subordinate to the Declaration and the Plat, provided, however, that the Lender's execution of this Ratification shall not be deemed a waiver or relinquishment of the Lender's rights and remedies under the Loan Documents.

IN WITNESS WHEREOF, the Lender has executed this Ratification to be effective as of the date first set forth above.

WELLS FARGO BANK ARIZONA,
National Association

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Its VICE PRESIDENT

STATE OF ARIZONA)
)ss.
COUNTY OF MARICOPA)

On this 20th day of May, 2003, before me, the undersigned notary public in and for said county and state, personally appeared G. PAUL HOEFER, who acknowledged him/herself to be the VICE PRESIDENT of WELLS FARGO BANK ARIZONA, National Association, and that s/he as such VICE PRESIDENT, being authorized so to do, executed the foregoing instrument on behalf of the corporation for the purposes therein contained.

IN WITNESS WHEREOF, I have hereunto set my hand and official seal.

Lea A. Cynecki
NOTARY PUBLIC

My commission expires:

11-9-05

