



F. ANN RODRIGUEZ, RECORDER  
RECORDED BY: NMB  
DEPUTY RECORDER  
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PIMA CO SUBDIVISION COORDINATOR  
PICKUP  
TUCSON AZ 85701



DOCKET: 12204  
PAGE: 8  
NO. OF PAGES: 39  
SEQUENCE: 20032470004  
12/24/2003  
REST 09:48  
PICKUP  
AMOUNT PAID \$ 43.00

**DECLARATION OF COVENANTS, CONDITIONS, RESTRICTIONS,  
ASSESSMENTS, CHARGES, SERVITUDES, LIENS,  
RESERVATIONS AND EASEMENTS  
FOR  
SONORAN RANCH VILLAGES**

122040003

**DECLARATION OF COVENANTS, CONDITIONS, RESTRICTIONS,  
ASSESSMENTS, CHARGES, SERVITUDES, LIENS,  
RESERVATIONS AND EASEMENTS**

**FOR**

**SONORAN RANCH VILLAGES**

THIS DECLARATION of Covenants, Conditions, Restrictions, Assessments, Charges, Servitudes, Liens, Reservations and Easements (hereinafter termed the "Declaration") is made the 4<sup>th</sup> day of November, 2003, by Fidelity National Title Agency, Inc., an Arizona corporation, under Trust NO. 60,060 ("Declarant").

**WITNESSETH:**

WHEREAS, Declarant is the owner of a fee interest in that certain real property in the County of Pima, State of Arizona, described as follows: Lots 1 through 110 inclusive and the Common Areas "A" and "B" of Sonoran Ranch Villages, as recorded in the official records of the Pima County Recorder in Book 57 of Maps and Plats at Page 90 thereof (the "Property");

WHEREAS, Declarant desires to develop the Property into a detached, single-family residential community;

WHEREAS, at full development it is intended, without obligation, that such community will collectively have one or more, landscaped areas;

WHEREAS, Declarant desires to form a non-profit corporation for the maintenance of the Property and for social and recreational purposes benefiting the Property and the Owners thereof (as said terms are defined hereinbelow), which non-profit corporation (hereinafter termed the "Association") will (1) acquire, construct, operate, manage and maintain any Common Areas (as said term is defined below); (2) establish, levy, collect and disburse any Assessments and other charges imposed hereunder; and (3) as the agent and representative of the Members of the Association, administer and enforce all provisions hereof and enforce use and other restrictions imposed on the Property;

WHEREAS, Declarant is preparing the necessary documents for the incorporation and organization of the Association;

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WHEREAS, the Declarant therefore wishes to subject all of the Property to the Covenants (hereinafter defined); and

WHEREAS, in order to cause the Covenants to run with the Property and to be binding upon the Property and the Owners thereof from and after the date of recordation of this Declaration, Declarant hereby makes all conveyances of any portion of the Property, whether or not so provided therein, subject to the Covenants herein set forth; and by accepting Deeds, easements or other grants or conveyances to any portion of the Property, the Owners and other transferees for themselves and their heirs, executors, administrators, trustees, personal representatives, successors and assigns, agree that they shall be personally bound by all of the Covenants (including but not limited to the obligation to pay Assessments) hereinafter set forth except to the extent such persons are specifically excepted herefrom.

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

#### ARTICLE I DEFINITIONS

The following words, phrases or terms used in this Declaration shall have the following meanings:

A. "Annual Assessment" shall mean the charge levied and assessed each year against each Lot or Owner pursuant to Article VII, Section 2, hereof.

B. "Architectural Committee" shall mean the committee of the Association to be created pursuant to Article XI below.

C. "Articles" shall mean the Articles of Incorporation of the Association as the same may from time to time be amended or supplemented.

D. "Assessable Property" shall mean any Lot, except such part or parts thereof as may from time to time constitute Exempt Property.

E. "Assessment" shall mean an Annual Assessment, Special Assessment, and/or Maintenance Charge.

F. "Assessment Lien" shall mean the lien created and imposed by Article VII.

G. "Assessment Period" shall mean the term set forth in Article VII, Section 7.

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H. "Association" shall mean the Sonoran Ranch Villages Homeowners Association, an Arizona non-profit corporation to be organized by Declarant to administer and enforce the Covenants and to exercise the rights, powers and duties set forth in this Declaration, its successors and assigns. Declarant hereby reserves the exclusive right to cause such Association to be incorporated.

I. "Association Land" shall mean such part or parts of the Property, together with the buildings, structures and improvements thereon, and other real property which the Association may at any time own in fee or in which the Association may at any time have a leasehold interest, for as long as the Association is the owner of the fee or leasehold interest.

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

K. "Bylaws" shall mean the Bylaws of the Association as the same may from time to time be amended or supplemented.

L. "Common Area and Common Areas" shall mean (a) all Association Land; (b) all land within the Property which the Declarant, by this Declaration or other recorded instrument makes available for use by Members of the Association and evidenced its intent to convey to the Association at a later date; (c) Common Area A (landscaped), Common Area B (detention Basin / Recreation Area), and all other common area tracts and parcels, as indicated on the Plat, and all other land within the Property which the Declarant indicates on a recorded subdivision plat or tract declaration is to be used for landscaping, drainage, and/or flood control for the benefit of the Property and/or the general public or a utility company or to Pima County, but only unless and until such land is dedicated to the County; (d) all other lands within drainage easement areas which are not located, either in whole or in part, on a Lot, as set forth by any recorded instruments effecting the Property; and (e) areas on a Lot within easements granted to the Association or its Members for the location, construction, maintenance, repair and replacement of a wall, which easement may be granted or created on a Recorded subdivision plat or tract declaration or by a deed or other conveyance accepted by the Association.

M. "Association Rules" shall mean the rules for the Association, adopted by the Board pursuant to Article V, Section 3.

N. "Covenants" shall mean the covenants, conditions, restrictions, assessments, charges, servitudes, liens, reservations and easements set forth herein.

O. "Declarant" shall mean and refer to the above-recited Declarant or any person or persons to whom any part or all of Declarant's rights reserved to the Declarant hereunder are assigned. The Declarant's rights shall only be assigned by a written, recorded instrument expressly assigning those rights.

P. "Declaration" shall mean this Declaration of Covenants, Conditions, Restrictions, Assessments, Charges, Servitudes, Liens, Reservations and Easements, as amended or supplemented from time to time.

Q. "Deed" shall mean a deed or other instrument conveying the fee simple title in a "Lot".

R. "Designee" shall mean a person designated by a member pursuant to Article VI, Section 8, to exercise certain of the rights of a Member.

S. "Dwelling Unit" shall mean any building or portion of a building situated upon a Lot designed and intended for use and occupancy as a residence by a single family.

T. "Dwelling Action" shall mean any action brought by an Owner against the Declarant arising out of or related to the design, construction, condition or sale of a Dwelling Unit.

U. "Exempt Property" shall mean the following parts of the Property:

- (1) All land and improvements owned by or dedicated to and accepted by the United States, the State of Arizona, Pima County, or any political subdivision thereof for as long as any such entity or political subdivision is the owner thereof or for so long as said dedication remains effective;
- (2) All Association Land, for as long as the Association is the owner thereof.

V. "Lot" shall mean any area of real property within the Property designated as a Lot on any subdivision plat recorded or approved by Declarant, including the Plat.

W. "Maintenance Charges" shall mean any and all costs assessed pursuant to Article X, Sections 2 or 3.

X. "Member" shall mean any person holding a Membership in the Association and the rights granted to the Owners and Declarant pursuant to Article VI to participate in the Association.

Y. "Membership" shall mean a membership in the Association and the rights granted to the Owners and the Declarant pursuant to Article VI to participate in the Association.

Z. "Multiunit Dwelling Action" means a dwelling action brought by an association or by or on behalf of the Owners of five or more individual Dwelling Units.

Aa. "Owner" shall mean (when so capitalized) the record holder of legal title to the fee simple interest in any Lot including contract sellers, but excluding others who hold such title merely as security. In the case of Lots the fee simple title to which is vested of record in a trustee pursuant to Arizona Revised Statutes, Section 33-801 et seq., legal title shall be deemed to be in the Trustor. An Owner shall include any person who holds record title to a Lot in joint ownership with any other person or holds an undivided fee interest in any Lot.

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

Cc. "Plat" shall mean the final plat for the Property as recorded in the Pima County Recorder's Office in Book 57 of Maps and Plats at Page 90.

Dd. "Recording" shall mean placing an instrument of public record in the office of the County Recorder of Pima County, Arizona, and "Recorded" shall mean having been so placed of public record.

Ee. "Single Family" shall mean 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 Dwelling Unit.

Ff. "Special Assessment" shall mean any assessment levied and assessed pursuant to Article VII, Section 5.

Gg. "Special Use Fees" shall mean special fees authorized by this Declaration which an Owner or any other person is obligated to pay to the Association over, above and in addition to any Annual or Special Assessments or maintenance charges imposed or payable hereunder.

Hh. "Visible From Neighboring Property" shall mean, with respect to any given object, that such object is or would be visible to a person six feet tall, standing at ground level on any part of such neighboring property.

## ARTICLE II PROPERTY SUBJECT TO THIS DECLARATION

Section 1. General Declaration. Declarant intends to develop the Lots and/or sell the Lots for development and, to provide for the orderly development of such Lots, wishes to create certain conditions and restrictions which shall run with the Lots and shall be an encumbrance on the Lots, and shall be binding and enforceable against any and all grantees of Declarant and all

successors in title to all or any portion to the Lots or any interest, whether legal or beneficial, therein. Declarant hereby declares that all of the Property is and shall be held, conveyed, hypothecated, encumbered, leased, occupied, built upon or otherwise used, improved or transferred, in whole or in part, subject to this Declaration, as amended or modified from time to time; provided, however, property which is not part of a Lot or parcel and which is dedicated to the public or a governmental entity for public purposes shall not be subject to this Declaration and the Covenants herein contained while owned by the public or the governmental entity, although restrictions imposed in this Declaration upon the Owners concerning the use and maintenance of such public areas shall at all times apply to the Owners. This Declaration is declared and agreed to be in furtherance of a general plan for the subdivision, improvement and sale of the Property and is established for the purpose of enhancing and perfecting the value, desirability and attractiveness of the Property and every part thereof. All of this Declaration shall run with all Lots and Association Land for all purposes and shall be binding upon and inure to the benefit of Declarant, the Association, all Owners, and their successors in interest.

Section 2. Association Bound. Upon issuance of a Certificate of Incorporation by the Arizona Corporation Commission to the Association, the Covenants shall be binding upon and shall benefit the Association.

### ARTICLE III EASEMENTS AND RIGHTS OF ENJOYMENT IN COMMON AREAS

Section 1. Easements of Enjoyment. Every Owner and other Member of the Association shall have a right and easement of enjoyment in and to the Common Areas, which shall be appurtenant to and shall pass with the title to every Lot, subject to the following provisions:

(a) The right of the Association to charge reasonable admission fees for the usage of any facility situated upon the Common Areas. Fees shall be uniform among Members.

(b) The right of the Association to suspend the voting rights and right to use the recreational facilities and other Common Areas by any Member (i) for any period during which any Assessment against his Lot remains delinquent; (ii) for a period not to exceed sixty (60) days for any infraction of this Declaration or the Association Rules, and (iii) for successive sixty (60) day periods if any such infraction is not corrected during any prior sixty (60) day suspension period.

(c) The right of the Association to dedicate or transfer all or any part of the Common Areas or any easements or other rights thereon or therein to the County of Pima, or any agency thereof, or to any other public agency or authority, or to any utility company for such purposes and subject to such conditions as may be agreed to by the Association. Unless otherwise required by zoning stipulations or agreements with Pima County effective prior to the date hereof or specified on a recorded subdivision plat, no such dedication or transfer shall be effective except upon the affirmative vote of not less than two-thirds (2/3) of the Owners, excluding the Declarant.

(d) The right of the Association to use the Common Areas as set forth herein.

(e) Any use by the general public to the extent the general public possesses or is granted the right to use the same.

Section 2. Covenants, Conditions, Restrictions and Easements Applicable to Lots Within All Land Use Classifications. The following covenants, conditions, restrictions and reservations of easements and rights shall apply to all Lots and the Owners thereof.

(a) Architectural Control. The Property is subject to architectural control as established by the Architectural Committee. No improvements, alterations, repairs, excavation, grading, landscaping or other work which in any way alters the exterior appearance of any of the Property, or the improvements located thereon, from its natural or improved state existing on the date this Declaration was first recorded shall be made or done without prior written approval of the Architectural Committee, except as otherwise expressly provided in this Declaration or in such design guidelines as the Architectural Committee may adopt and from time to time amend (the "Design Guidelines"). No building, fence, deck, landscaping (other than replacing existing landscaping that was properly approved), wall, residence or other structure shall be commenced, erected, improved, altered, or made without the prior written approval of the Architectural Committee except as may be provided in the Design Guidelines. All subsequent additions to or changes or alterations in any building, fence, wall or other structure, including exterior color scheme, and all changes in the grade of Lots, shall be subject to the prior written approval of the Architectural Committee except as may be provided in the Design Guidelines. No changes or deviations in or from the plans and specifications once approved by the Architectural Committee shall be made without prior written approval of the Architectural Committee except as may be provided in the Design Guidelines.

(b) Animals. No animal, bird, fowl, poultry or livestock, other than a reasonable number of generally recognized house or yard pets, shall be maintained on any Lot and then only if they are kept, bred or raised thereon solely as domestic pets and not for commercial purposes. No animal, bird, fowl, poultry, or livestock 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 animal, bird, fowl, poultry, or livestock shall be maintained so as to be Visible From Neighboring Property. Upon the written request of any Member, the Board shall conclusively determine, in its sole and absolute discretion, whether, for the purposes of this Section, a particular animal, bird, fowl, poultry, or livestock is a generally recognized house or yard pet, whether such a pet is a nuisance, or whether the number animals or birds on any such property is reasonable. Any decision rendered by the Board shall be enforceable in the same manner as other restrictions contained herein.

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(c) Temporary Occupancy and Temporary Buildings. No trailer, basement of any incomplete building, tent, shack, garage or barn, and no temporary buildings or structures of any kind, shall be used at any time for a residence, either temporary or permanent. Temporary buildings or structures used during the construction of a dwelling on any property shall be removed immediately after the completion of construction.

(d) Maintenance of Lawns and Plantings. Each Owner of a Lot shall keep all shrubs, trees, hedges, grass, plantings and landscaping of every kind located on such Owner's Lot in good condition, properly cultivated, neatly trimmed and free of trash, weeds and other unsightly material. In addition, each Owner of a Lot shall keep all of the foregoing located on:

(i) planted public right-of-way areas between sidewalks or bike paths, and the street curb in front of his property, if any;

(ii) any other public right-of-way or easement area which abuts the Owner's Lot and which is located between the boundary line of his Lot and the paved area of any street, sidewalk, bike path or similar area; and

(iii) any non-street public right-of-way or easement area adjacent to his Lot in good condition, neatly trimmed, and shall keep all such areas described in (i) through (iii) properly cultivated and free of trash, weeds and other unsightly material; provided, however, that such Owner shall not be responsible for maintenance of any area over which (i) the Association assumes the responsibility in writing, (ii) the Association has been given such responsibility by a recorded instrument as provided in Article X, Section 1 of this Declaration, or (iii) the City of Tucson or Pima County, assumes responsibility, for so long as the Association or Pima County assumes or has responsibility as provided in Subsection (1), (2) or (3).

With respect to each Lot, no later than 180 days after the Owner's purchase of a Lot improved with a residence or 180 days after completion of a residence on a Lot (as evidenced by Pima County's issuance of a certificate of occupancy for such residence), whichever shall occur first, the Owner of such Lot shall have completed all landscaping of the front and sides of (which is all that portion of the Lot in front and on the sides of a residence located on the Lot) his Lot, including, but not limited to, set back and common areas according to landscaping plans approved by the Architectural Committee pursuant to the terms of the Declaration. In addition, the Architectural Committee may require landscaping by the Owner of the areas described in Subsections (i) through (iii) above.

(e) Nuisances; Construction Activities. No rubbish or debris of any kind shall be placed or permitted to accumulate upon or adjacent to any Lot, and no odors or loud noises shall be permitted to arise or emit therefrom, so as to render any such property or any portion thereof, or activity thereon, unsanitary, unsightly, offensive or detrimental to any other property in the vicinity thereof or to the occupants of such other property. No other nuisance shall be permitted to exist or

operate upon any Lot so as to be offensive or detrimental to any other property in the vicinity thereof or to its occupants. Without limiting the generality of any of the foregoing provisions, no exterior speakers, horns, whistles, firecrackers, bells or other sound devices, except security devices used exclusively for security purposes, shall be located, used or placed on any such property. Normal construction activities and parking in connection with the building of improvements on a Lot shall not be considered a nuisance or otherwise prohibited by this Declaration, but Lots shall be kept in a neat and tidy condition during construction periods, trash and debris shall not be permitted to accumulate, and supplies of brick, block, lumber and other building materials will be piled only in such areas as may be approved by the Architectural Committee. In addition, any construction equipment and building materials stored or kept on any Lot during construction of improvements may be kept only in areas approved by the Architectural Committee, which may also require screening of the storage areas. The Board in its reasonable discretion shall have the right to determine the existence of any such nuisance.

(f) Diseases and Insects. No Owner shall permit any thing or condition to exist upon any Lot which shall induce, breed or harbor infectious plant diseases or noxious insects.

(g) Repair of Building. No building or structure on any Lot shall be permitted to fall into disrepair and each such building and structure shall at all times be kept in good condition and repair and adequately painted or otherwise finished. In the event any building or structure is damaged or destroyed, then, subject to the approvals required by Subsection (a) above, such building or structure shall be immediately repaired or rebuilt or shall be demolished.

(h) Antennas. Subject to applicable federal and state law, no antenna or other device for the transmission or reception of television or radio signals or any other form of electromagnetic radiation shall be erected, used or maintained outdoors on any Lot, whether attached to a building or structure except in compliance with the Design Guidelines adopted by the Board.

(i) Mineral Exploration. No Lot 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.

(j) Trash Containers and Collection. No garbage or trash shall be placed or kept on any Lot, except in covered containers of a type, size and style which are approved by the Architectural Committee. In no event shall such containers be maintained so as to be Visible From Neighboring Property except to make the same available for collection and then only for the shortest time reasonably necessary to affect such collection. All rubbish, trash, or garbage shall be removed from the Lots and shall not be allowed to accumulate thereon. No outdoor incinerators shall be kept or maintained on any Lot.

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

(l) Machinery and Equipment. No machinery or equipment of any kind shall be placed, operated or maintained upon or adjacent to any Lot except (i) such machinery or equipment as is usual and customary in connection with the use, maintenance or construction (during the period of construction) of a building, appurtenant structures, or other improvements; or (ii) that which Declarant or the Association may require for the operation and maintenance of the Property.

(m) Signs. No signs whatsoever (including, but not limited to, commercial, political and similar signs) which are Visible From Neighboring Property shall be erected or maintained on any Lot except:

(i) Signs required by legal proceedings.

(ii) No more than two (2) identification signs for individual residences, each with a face area of seventy-two (72) square inches or less.

(iii) Signs (including "for sale" and "for lease" signs) the nature, number, and location of which have been approved in advance and in writing by the Architectural Committee.

(iv) Promotional and advertising signs of builders or any Lot approved from time to time by Declarant as to number, size, colors, design, message content, location and type.

(v) Such other signs (including but not limited to construction job identification signs, builder identification signs, and subdivision, shopping center, apartment and business identification signs) which are in conformance with the requirements of the City of Tucson, Pima County or other governmental agencies and which have been approved in writing by the Architectural Committee as to size, colors, design, message content and location or which otherwise comply with the Design Guidelines.

(n) Restriction on Further Subdivision, Property Restrictions and Rezoning. No Lot shall be further subdivided or separated into smaller lots or parcels by any Owner, and no portion less than all of any such Lot, nor any easement or other interest therein, shall be conveyed or transferred by any Owner, without the prior written approval of the Board, which approval must be evidenced on the plat or other instrument creating the subdivision, easement or other interest. This provision shall not, in any way, limit Declarant from subdividing or separating into Lots any property at any time owned by Declarant. Only the entirety of a Lot, together with the improvements thereon, may be rented, and then only for single-family residential purposes. No

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further covenants, conditions, restrictions or easements shall be recorded by any Owner, or other person against any Lot without the provisions thereof having been first approved in writing by the Board and any covenants, conditions, restrictions or easements recorded without such approval being evidenced thereon shall be null and void.

(o) Utility Easements. There is hereby created a blanket easement upon, across, over and under each Lot for ingress to, egress from, and the installation, replacing, repairing and maintaining of, all utility and service lines and systems, including, but not limited to water, sewers, gas, telephones, electricity, television cable or communication lines and systems, etc. as such utilities are installed in connection with the initial development of the Lot and the construction of the first Dwelling Unit or other building thereon. Pursuant to this easement, a providing utility or service company may install and maintain facilities and equipment on the property and affix and maintain wires, circuits and conduits on, in and under the roofs and exterior walls of buildings on the Lots. Notwithstanding anything to the contrary contained in this Subsection, no sewers, electrical lines, water lines, or other utilities or service lines may be installed or relocated on any Lot except as initially programmed and approved by the Declarant or the Architectural Committee.

(p) Party Walls. Except as hereinafter provided, the rights and duties of Owners with respect to party walls between Lots or party fences between Lots shall be as follows:

(i) The Owners of contiguous Lots who have a party wall or party fence shall both equally have the right to use such wall or fence, provided that such use by one Owner does not interfere with the use and enjoyment of same by the other Owner.

(ii) In the event that any party wall or party fence is damaged or destroyed through the act of an Owner or any of his tenants, lessees, agents, guests, or members of his family (whether or not such act is negligent or otherwise culpable), it shall be the obligation of such Owner to rebuild and repair the party wall or party fence without cost to the Owner of the adjoining Lot. Any dispute over an Owner's liability for such damage shall be resolved as provided in subsection (v) below, but any liability imposed on an Owner hereunder shall not prevent the Owner from seeking indemnity therefor from the persons causing such damage.

(iii) In the event any party wall or party fence is destroyed or damaged (including deterioration from ordinary wear and tear and lapse of time), other than by the act of an adjoining Owner, his tenants, lessees, agents, guests or family, it shall be the obligation of all Owners whose Lots adjoin such party wall or party fence to rebuild and repair such wall or fence at their joint expense, such expense to be allocated among the Owners in accordance with the frontage of their Lots on the party wall or party fence.

(iv) Notwithstanding anything to the contrary herein contained, there shall be no impairment of the structural integrity of any party wall or party fence without the prior consent of all Owners of any interest therein, whether by way of easement or in fee.

(v) In the event of a dispute between Owners with respect to the construction, repair or rebuilding of a party wall or party fence, or with respect to the sharing of the cost thereof, such adjoining Owners shall submit the dispute to the Board, the decision of which shall be binding.

(vi) In the case of party fences (i) between Common Areas and Lots, or (ii) constructed by the Declarant or the Association on Common Areas within a Lot, the Association shall be responsible for all maintenance thereof, subject to the provisions of Article X, Sections 2 and 3, except that each Owner of a Lot shall be responsible for painting the portion of the party fence facing his Lot or the portion thereof which is not a portion of the Common Area.

(q) Utility Service. 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 unless the same shall be contained in conduits or cables installed and maintained underground or concealed in, under or on buildings or other structures approved by the Architectural Committee. No provision hereof shall be deemed to forbid the erection of temporary power or telephone structures incident to the construction of buildings or structures approved by the Architectural Committee.

(r) Overhead Encroachments. No tree, shrub, or planting of any kind on any Lot 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 without the prior approval of the Architectural Committee.

(s) Trucks, Trailers, Campers and Boats. No motor vehicle classed by manufacturer rating as exceeding 3/4-ton, mobile home, travel trailer, tent trailer, trailer, camper shell, detached camper, boat, boat trailer, or other similar equipment or vehicle may be parked, maintained, constructed, reconstructed or repaired on any Lot or on any street in the Property so as to be Visible From Neighboring Property, the Common Areas or the streets; provided, however, the provisions of this Section shall not apply to pickup trucks of less than 3/4-ton capacity with camper shells not exceeding seven (7) feet in height measured from ground level which are parked as provided in Subsection (u) below and are used on a regular and recurring basis for basic transportation.

(t) Motor Vehicles. No automobile, motorcycle, motorbike or other motor vehicle shall be constructed, reconstructed or repaired upon any Lot or street on the Property, and no inoperable vehicle may be stored or parked on any such Lot or street, so as to be Visible From Neighboring Property or to be visible from Common Areas or streets; provided, however, that the provisions of this Section shall not apply to (i) emergency vehicle repairs or temporary construction shelters or facilities maintained during, and used exclusively in connection with, the construction of any improvement approved by the Architectural Committee; or (ii) vehicles parked in garages on

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Lots so long as such vehicles are in good operating condition and appearance and are not under repair.

(u) Parking. Vehicles of all Owners and of their employees, guests and invitees, are to be kept in garages, carports, residential driveways of the Owner, and other designated parking areas wherever and whenever such facilities are sufficient to accommodate the number of vehicles at a Lot; provided, however, this Section shall not be construed to permit the parking of the above described areas of any vehicle whose parking on the Property is otherwise prohibited or the parking of any inoperable vehicle.

(v) Right of Entry. During reasonable hours and upon reasonable notice to the Owner or other occupant of a Lot, any member of the Architectural Committee, any member of the Board, or any authorized representative of either of them, shall have the right to enter upon and inspect any Lot, and the improvements thereon, except for the interior portions of any completed residence for the purpose of ascertaining whether or not the provisions of this Declaration have been or are being complied with and such persons shall not be deemed guilty of trespass by reason of such entry.

(w) Developer and Declarant's Exemption. Nothing contained in this Declaration shall be construed to prevent the erection or maintenance by Declarant or Developer, or the duly authorized agents of either of them, of structures, improvements or signs necessary or convenient to the development or sale of any portion of the Property; provided that such improvements, structures and signs shall not obstruct access to any Lot, shall only be placed on Common Areas or Lots owned by Declarant, and shall not be inconsistent with the rights of any Lot purchaser.

(x) Health, Safety and Welfare. In the event additional uses, activities, and facilities are deemed by the Board to be a nuisance or to adversely affect the health, safety or welfare of Owners, the Board may make rules restricting or regulating their presence on the Property as part of the Association Rules or may direct the Architectural Committee to make rules governing their presence on Lots as part of the architectural guidelines.

(y) Model Homes. The provisions of this Declaration which prohibit non-residential use of Lots and regulate parking of vehicles shall not prohibit the construction and maintenance of model homes by persons engaged in the construction of residential dwellings within the Property and parking incidental to the visiting of such model homes so long as the location of such model homes is approved by the Architectural Committee, and the construction, operation and maintenance of such model homes otherwise comply with all of the provisions of this Declaration. The Architectural Committee may also permit Lots and other areas to be used for parking in connection with the showing of model homes so long as such parking and parking areas are in compliance with the rules and regulations of Pima County or other applicable governmental authority and any rules of the Architectural Committee. Any homes constructed as model homes shall cease to be used as model homes at any time the Owner or builder thereof is not actively

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engaged in the construction and sale of single family residences within the Property and no home shall be used as a model home for the sale of homes not located on the Property.

(z) Single Family Residential Use. All Lots shall be used, improved, and devoted exclusively to single-family residential use. No gainful occupation, profession, trade or other nonresidential use other than the keeping of an office for private use shall be conducted on any such property and no person shall enter into any Lot for engaging in such uses or for the purpose of receiving products or services arising out of such usage. No structure whatever, other than one private Dwelling Unit, together with a private garage, a guest house or servant quarters, shall be erected, placed or permitted to remain on any Lot and no facilities for the preparation of food shall be provided or permitted in any guest house or servants' quarters erected on said Lot. All buildings constructed on the Property or any Lot, other than the foregoing referenced Dwelling Unit, shall be limited to a two-story structure. The height of any and *all residential buildings constructed on the Lots shall not exceed twenty-four (24) feet.*

(aa) Drainage Improvements. The drainage from, to, or on any Lot or Common Area and all drainage improvements and facilities, as originally constructed by the Developer pursuant to plans approved by the County and/or other applicable governmental authorities, (collectively the "Drainage Improvements") shall not be altered, disturbed or obstructed by any Owner; provided, however, that the Developer may alter or construct any Drainage Improvement to the extent required by the County or any other governmental authority, and the Developer is hereby granted a license to enter upon any Lot or Common Area to the extent deemed necessary or convenient by Developer for the purpose of accomplishing such alteration or construction.

#### ARTICLE IV TRACT DECLARATIONS

Tract Declarations, if any, designating the purpose for which portions of the Property may be used and all additional covenants, conditions, restrictions, assessments, charges, servitudes, liens, reservations and easements applicable to such portions of the Property shall be subject to approval of Declarant so long as there is a Class B Member, and thereafter shall be subject to the approval of the Board.

#### ARTICLE V ORGANIZATION OF ASSOCIATION

Section 1. Formation of Association. The Association shall be a nonprofit Arizona corporation charged with the duties and invested with the powers prescribed by law and set forth in the Articles, Bylaws, and this Declaration. Neither the Articles nor Bylaws shall, for any reason, be amended or otherwise changed or interpreted so as to be inconsistent with this Declaration.

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Section 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 as the same may be amended from time to time. The initial Board, and each Board thereafter so long as there is a Class B Member, shall consist of three (3) Members or other persons, designated by Declarant. The Board may also appoint various committees and appoint a Manager who shall, subject to the direction of the Board, be responsible for the day-to-day operation of the Association. The Board shall determine the compensation to be paid to the Manager or any other employee of the Association.

Section 3. The Association Rules. By a majority vote of the Board the Association may, from time to time and subject to the provisions of this Declaration, adopt, amend and repeal rules and regulations to be known as the Association Rules. The Association Rules may restrict and govern the use of any Common Area by any Member or the family and Designees of such Member; provided, however, that the Association Rules shall not discriminate among Members and shall not be inconsistent with this Declaration, the Articles or Bylaws. Upon adoption, the Association Rules shall have the same force and effect as if they were set forth in and were a part of this Declaration.

Section 4. Personal Liability. No member of the Board or of any committee of the Association, no officer of the Association, and no Manager or other 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, the Manager, 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 4 shall not apply to any person who has failed to act in good faith or has engaged in willful or intentional misconduct.

## ARTICLE VI MEMBERSHIPS AND VOTING

Section 1. Owners of Lots. Every Owner of a Lot, which is subject to Assessments, shall be a Member of the Association. Each such Owner shall have one (1) Membership for each Lot Owned by the Member. Each such Membership shall be appurtenant to and may not be separated from ownership of the Lot to which the Membership is attributable. There shall be only one Membership for each Lot, which Memberships shall be shared by any joint Owners of, or Owners of undivided interests in, a Lot.

Section 2. Declarant. The Declarant shall be a Member of the Association for so long as Declarant holds a Class B Membership pursuant to Section 3 below or owns any property within the Property.

Section 3. Voting. The Association shall have two classes of voting Memberships:

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Class A. Class A Memberships shall be all Memberships, except the Class B Membership held by the Declarant, and each Owner shall be entitled to one vote for each Class A Membership held by the Owner, subject to the authority of the Board to suspend the voting rights of the Owner for violations of this Declaration in accordance with the provisions hereof.

Class B. There shall be one Class B Membership, which shall be held by the Declarant and the Class B Membership shall be entitled to three (3) votes for each Lot owned by the Declarant. The Class B Membership shall cease and be converted to Class A Memberships on the happening of the first of the following events:

(a) Within ninety (90) days after the number of Class A votes exceeds the number of Class B votes; or

(b) Five (5) years from the date of recordation of the Plat; or

(c) At such time as the Declarant notifies the Board in an express writing that it is relinquishing its Class B Membership.

For purposes of this paragraph only, the number of Lots owned by Declarant prior to the sale of any Property shall be equal to the number of Lots as specified on the Plat as of the date of recordation thereof.

Section 4. Right to Vote. No change in the ownership of a Membership 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 such Membership must be cast as a unit, and fractional votes shall not be allowed. In the event that a Membership is owned by more than one person or entity 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 Membership, 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 Membership unless objection thereto is made at the time the vote is cast. In the event more than one vote is cast for a particular Membership, none of the said votes shall be counted and all said votes shall be deemed void.

Section 5. Cumulative Voting for Board Members. In any election of the members of the Board, every owner of a Membership entitled to vote at such an election shall have the number of votes for each Membership equal to the number of directors to be elected, except that the Class B Member shall have the number of votes designated in Section 3 above times the number of directors to be elected. Each Member shall have the right to cumulate his votes for one candidate or to divide such votes among any number of the candidates. The candidates receiving the highest number of votes, up to the number of the Board members to be elected, shall be deemed elected.



The Board's failure to fix assessment amounts or rates or to deliver to each Owner an assessment notice shall not be deemed a waiver, modification or a release of any Owner from the obligation to pay assessments. In such event, each Owner shall continue to pay Annual Assessments on the same basis as during the last year for which an assessment was made, if any, until a new assessment is levied, at which time the Association may retroactively assess any shortfalls in collections.

No Owner may exempt himself or herself from liability for assessments by non-use of Common Areas, abandonment of a Lot, or any other means. The obligation to pay assessments is a separate and independent covenant on the part of each Owner. No diminution or abatement of assessments or set-off shall be claimed or allowed for any alleged failure of the Association to take some action or perform some function required of it, or for inconvenience or discomfort arising from the making of repairs or improvements, or from any other action it takes.

(b) Declarant's Option to Fund Budget Deficits. For so long as there is a Class B Membership, Declarant may satisfy its obligation for assessments on Lots which it owns either by paying such assessments in the same manner as any other Owner or by paying, on an annual basis, the difference between the amount of assessments levied on all other portions of the Property subject to assessment and the amount of actual expenditures by the Association during the preceding fiscal year (the "Budget Deficit"), provided that, if the Declarant elects to pay the Budget Deficit under the latter provision, in no event shall the Declarant be responsible for payments in excess of assessment amounts otherwise payable on Lots owned by the Declarant if the Declarant had elected to pay assessments in the same manner as any other Owner. Unless Declarant otherwise notifies the Board in writing at least 60 days before the beginning of each fiscal year, Declarant shall be deemed to have elected to continue paying on the same basis as during the immediately preceding fiscal year. Regardless of Declarant's election, Declarant's obligations hereunder may be satisfied in the form of cash or by "in kind" contributions of services or materials, or by a combination of these. After termination of the Class B Membership, Declarant shall pay assessments on its unsold Lots in the same manner as any other Owner.

(c) Sale of Property. If during any assessment period Declarant conveys any real property subject to this Declaration (the "Sale Property") for which Declarant has elected, pursuant to subsection (b), to pay the budget deficit rather than assessments on a per Lot basis, then the Association may require the grantee of the Sale Property to pay to the Association an amount equal to the pro rata portion of the assessments that would have been payable with respect to the Sale Property for the applicable assessment period had Declarant not made such election; provided the grantee shall have no such obligation if the Sale Property is otherwise exempt from assessment pursuant to Section 11. The amount of such pro rata portion shall be based on the number of days remaining in the assessment period in which such conveyance occurs.

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Section 2. Annual Assessments. To provide for the uses and purposes specified in Article IX hereof, including the establishment of replacement and maintenance reserves, the Board in each year, commencing with the year in which this Declaration is recorded, shall assess against each Lot an Annual Assessment. The amount of the Annual Assessment, subject to the provisions of Section 4 hereof, shall be in the sole discretion of the Board but shall be determined with the objective of fulfilling the Association's obligations under this Declaration and providing for the uses and purposes specified in Article IX.

Section 3. Uniform Rate of Assessment. The amount of any Annual or Special Assessment against each Lot shall be fixed at a uniform rate per Membership, except that the Owner of a Lot (excluding the Declarant for so long as the Declarant is a Class B Member) shall pay only twenty-five percent (25%) of the Annual Assessment attributable to his Membership (herein, a "Reduced Rate") until the earlier of (i) the completion of a Dwelling Unit on the Lot or (ii) six (6) months from the commencement of construction of a Dwelling Unit on the Lot. For purposes of this Section, a Dwelling Unit or other building shall be deemed completed when the City of Tucson or County of Pima, as applicable, has issued a Certificate of Occupancy in respect of such structure. If the Owner of a Lot ceases to qualify for the Reduced Rate during the period to which an Annual Assessment is attributable, the Assessment attributable to a Membership shall be prorated between the applicable rates on the basis of the number of days in the period that the Owner qualified for each rate. Annual Assessments may be collected on a monthly, quarterly or annual basis and Special Assessments may be collected as specified by the Board unless otherwise determined by the resolution of the Members of the Association approving the Special Assessments. The foregoing notwithstanding, in the event of a Budget Deficit, each Owner entitled to a Reduced Rate under the foregoing provision shall pay, not less than annually, within ten business days after receipt of written notice from the Association, an amount equal to its pro rata share of the Budget Deficit (which pro rata share shall be a fraction, the numerator of which shall be the number of Lots owned by such Owner which are subject to the Reduced Rate, and the denominator of which shall be the total number of Lots in the Property), provided that in no event shall an Owner be responsible for payments in excess of assessment amounts otherwise payable on Lots owned by such Owner if the Reduced Rate did not apply.

Section 4. Maximum Annual Assessments. The Annual Assessment to be established by the Board may not exceed a certain amount, hereinafter referred to as the "Maximum Annual Assessment," which Maximum Annual Assessment shall be determined and shall vary in accordance with the following provisions:

(a) Until January 1 of the year following the Recording of this Declaration, the Maximum Annual Assessment shall be Four Hundred Dollars (\$400.00) for each Membership.

(b) From and after January 1 of the year immediately following the recording of the Declaration, the Board may, without a vote of the Members,

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increase the Maximum Annual Assessment during each fiscal year of the Association by the greatest of (i) 10% of the Maximum Annual Assessment for the immediately preceding fiscal year, (ii) the amount permitted by law, or (iii) an amount based upon the percentage increase in the Consumer Price Index for All Urban Consumers (CPI-U) U.S. City Average (1982-84=100), issued by the United States Department of Labor, Bureau of Labor Statistics (the "Consumer Price Index"), which amount shall be computed in the last month of each fiscal year by subtracting X from Y, then dividing the result by X, then multiplying the quotient by the Maximum Annual Assessment for the year immediately preceding the year for which the Maximum Annual Assessment is to be determined where:

X = Consumer Price Index for September of the calendar year immediately preceding the year in which the Annual Assessments commenced.

Y = Consumer Price Index for September of the year immediately preceding the calendar year for which the maximum Per Membership Assessment is to be determined.

If the Consumer Price Index ceases to be published, then the index which shall be used for computing the increase in the Maximum Annual Assessment permitted under this Subsection shall be the substitute recommended by the United States government for the Consumer Price Index or, if no such successor index is recommended by the United States government, the index selected by the Board.

(c) From and after January 1 of the year immediately following the recording of the Declaration, the Maximum Annual Assessment may be increased by an amount greater than the maximum increase allowed pursuant to (b) above, only by a majority vote of Members entitled to be cast by Members who are voting in person or by proxy at a meeting duly called for such purpose.

Section 5. Special Assessments for Capital Improvements and Extraordinary Expenses. In addition to the Annual Assessments authorized above, the Association may levy, in any Assessment Period, one or more Special Assessments applicable to that period only for the purpose of defraying, in whole or in part, the cost of any construction, reconstruction, repair or replacement of a capital improvement upon the Association Land, including fixtures and personal property related thereto, or for the purpose of defraying other extraordinary expenses provided that any such Assessment shall have the assent of two-thirds (2/3) of the votes of each class of Members who are voting in person or by proxy duly called for such purpose. In connection with any such Special Assessment, Owners qualifying for paying only twenty-five percent (25%) of the Annual

Assessment attributable to their Memberships pursuant to Section 3 above shall also be required to pay only twenty-five percent (25%) of the Special Assessment otherwise attributable to each such Membership. The provisions of this Section are not intended to preclude or limit the Assessment, collection or use of Annual Assessments for the aforesaid purposes.

**Section 6. Notice and Quorum for Any Action Authorized Under Section 4 and 5.**

Written notice of any meeting called for the purpose of taking any action authorized under Sections 4 or 5 of this Article shall be sent to all Members no less than thirty (30) days nor more than sixty (60) 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 (exclusive of suspended voting rights) 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 quorum at the preceding meeting. No such subsequent meeting shall be held more than sixty (60) days following the preceding meeting.

**Section 7. Establishment of Annual Assessment Period.**

The period for which the Annual Assessment is to be levied (the "Assessment Period") shall be the calendar year, except that the first Assessment Period shall commence upon the filing of this Declaration and terminate on December 31 of such year. The Board in its sole discretion from time to time may change the Assessment Period by recording with the County Recorder of Pima County, Arizona, an instrument specifying the new Assessment Period.

**Section 8. Rules Regarding Billing and Collection Procedures.**

The Board shall have the right to adopt rules and regulations setting forth procedures for the purpose of making the Assessments provided herein and for the billing and collection of the Annual and Special Assessments and the Maintenance Charges imposed pursuant to Article X, Section 2 and 3, provided that said procedures are not inconsistent with the provisions hereof. The Rules and Regulations contemplated by this section shall, by way of illustration and not limitation, grant to the Association the right to require concurrently with the conveyance of a Lot the payment of all Assessments in respect of the Lot then outstanding, together with an estimated prepayment of Assessments for the next two (2) calendar months thereafter, as a condition precedent to the recognition by the Association of a successor grantee as a Member of the Association. 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 Declaration, but the Assessment Lien therefor shall not be foreclosed or otherwise enforced until the Member has been given not less than thirty (30) days written notice prior to such foreclosure or enforcement at the address of the Member on the records of the Association, that the Assessment or any installment 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 Membership changes during an Assessment Period; successor Owners of Lots shall be given credit for prepayments, on a prorated basis, made by prior Owners. In case the

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owner of a Membership becomes liable for payment of an increased sum pursuant to Section 3 of this Article during the Assessment Period, he shall notify the Association but his failure to notify the Association shall not relieve him of the liability for such amounts.

Section 9. Collection Costs and Interest on Delinquent Assessments. Any Assessment or installment thereof not paid when due shall be deemed delinquent and shall bear interest from thirty (30) days after the due date until paid at a rate equal to the greater of (a) twelve percent (12%) per annum or (b) the then prevailing interest rate on loans insured by the Federal Housing Association, or (c) the then prevailing interest rate on loans guaranteed by the Veterans Administration, and the Member shall be liable for all costs, including attorney's fees, which may be incurred by the Association in collecting the same. The applicable interest rate on delinquent Assessments shall be determined on a daily basis. The Board may also record a Notice of Delinquent Assessment against any Lot as to which an Assessment is delinquent and constitutes a lien and may establish a fixed fee to reimburse the Association for the Association's cost in recording such Notice, processing the delinquency and recording a notice of payment, which fixed fee shall be treated as a collection cost of the Association secured by the Assessment Lien.

Section 10. Evidence of Payment of Annual and Special Assessments and Maintenance Charges. Upon receipt of a written request by a Member or any other person, the Association within a reasonable period of time thereafter shall issue to such Member or other person a written certificate stating (a) that all Annual and Special Assessments and Maintenance Charges (including interest, costs and attorney's fees, if any, as provided in Section 9 above) have been paid with respect to any specified Lot as of the date of such certificate, or (b) if all Annual and Special Assessments and Maintenance Charges have not been paid, the amount of such Annual and Special Assessments and Maintenance Charges including interest, costs and attorney's fees, if any, 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 matter therein stated as against any bona fide purchaser of, or lender on, the Lot in question.

Section 11. Property Exempted from the Annual and Special Assessments and Assessment Lien. Exempt Property shall be exempted from the assessment of the Annual and Special Assessments and, except as provided in Article X, Section 3, from Maintenance Charges and the Assessment Lien; provided, however, that in the event any change of ownership of Exempt Property results in all or any part thereof becoming Assessable Property in any year, the same thereupon shall be subject to the assessment of the Annual and Special Assessments and, if exempt therefrom, Maintenance Charges (prorated as of the date it became Assessable Property) and the Assessment Lien.

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ARTICLE VIII  
ENFORCEMENT OF PAYMENT OF ANNUAL AND SPECIAL ASSESSMENTS  
AND MAINTENANCE CHARGES AND OF ASSESSMENT LIEN

Section 1. Association as Enforcing Body. The Association, as the agent and representative of the Members, shall have the exclusive right to enforce the provisions of this Declaration. However, if the Association shall fail or refuse to enforce this Declaration or any provision hereof for an unreasonable period of time after written request to do so, then any Member may enforce them on behalf of the Association, but not at the expense of the Association, by any appropriate action whether in law or in equity.

Section 2. Association's Remedies to Enforce Payment of Annual and Special Assessments and Maintenance Charges. If any Member fails to pay the Annual or Special Assessments or installments when due, or to pay Maintenance Charges assessed pursuant to Article X, Sections 2 and 3, the Association may enforce the payment of the Annual or Special Assessments, Maintenance Charges and/or the Assessment Lien by taking either or both of the following actions, concurrently or separately and, by exercising either of the remedies hereinafter set forth, the Association does not prejudice or waive its right to exercise the other remedy:

(a) Bring an action at law and recover judgment against the Member personally obligated to pay the Annual or Special Assessments or the Maintenance Charges;

(b) Foreclose the Assessment Lien against the Lot in accordance with the then prevailing Arizona law relating to the foreclosure of realty mortgages (including the right to recover any deficiency), and the Lot may be redeemed after foreclosure sale as provided by law.

Section 3. Subordination of Assessment Lien to First Mortgage or Deed of Trust: Priority of Lien. The Assessment Lien provided for herein shall be subordinate to any first mortgage lien held by or deed of trust which the beneficiary is a lender who has lent funds with the Lot as security, or held by the lender's successors and assigns and shall also be subject and subordinate to liens for taxes and other public charges which by applicable law are expressly made superior. Except as above provided, the Assessment Lien shall be superior to any and all charges, liens or encumbrances which hereafter in any manner may arise or be imposed upon each Lot. Sale or transfer of any Lot shall not affect the Assessment Lien; provided, however, that if the sale or transfer is pursuant to foreclosure of a mortgage or deed of trust to which the Assessment Lien is subordinate, or pursuant to any sale or proceeding in lieu thereof, the purchaser at the mortgage foreclosure or deed of trust sale, or any grantee taking by deed in lieu of foreclosure, shall take the Lot free of the Assessment Lien for all Annual and Special Assessments and Maintenance Charges that have accrued up to the date of issuance of a sheriff's or trustee's deed or deed in lieu of foreclosure; but upon the date of issuance of a sheriff's or trustee's deed or deed in lieu of foreclosure, the Assessment Lien immediately shall become and remain superior to any and all other charges, liens or encumbrances (except liens for taxes or other public charges which by

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applicable law are expressly made superior), and such mortgage or deed of trust foreclosure sale purchaser or grantee shall take subject to all Annual and Special Assessments, Maintenance Charges and the Assessment Lien thereof accruing subsequent to the date of issuance of a sheriff's or trustee's deed or deed given in lieu of foreclosure.

Section 4. Costs to be Borne by Member in Connection with Enforcement of Payment of Annual and Special Assessments and Maintenance Charges. In any action taken pursuant to Section 2 of this Article, the Member shall be personally liable for, and the Assessment Lien shall be deemed to secure the amount of, the Annual and Special Assessment and Maintenance Charges together with interest and the Association's collection costs and attorney's fees, including those costs and fees specified in Article VII, Section 9.

## ARTICLE IX USE OF FUNDS: BORROWING POWER

Section 1. Purposes for which Association's Funds may be Used. The Association shall be responsible for the control, maintenance, safety and liability, and payment of ad valorem taxes, relating to the Common Areas. The Association shall apply all funds and property collected and received by it (including the Annual and Special Assessments, fees, loan proceeds, surplus funds and all funds and property received by it from any other source, together with interest on any and all such sums) for the common good and benefit of the Property and the Members 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 Property, which may be necessary, desirable or beneficial to the general common interests of the Property and the Members. 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 Members, maintenance of landscaping on Common Areas and public right of way and drainage areas within the Property, and recreation, (including liability insurance, communications, transportation, health, utilities, public services, safety and indemnification of officers and directors of the Association). The Association also may expend its funds for any purposes which any municipality may expend its funds under the laws of the State of Arizona or such municipality's charter.

Section 2. Borrowing Power. The Association may borrow money in such amounts, at such rates, upon such terms and security, and for such period of time as is necessary or appropriate; provided, however, that the Common Areas or any part thereof may not be mortgaged without the consent of at least two-thirds (2/3) of the Owners, excluding the Declarant, and further provided that if ingress or egress to any residence is through a Common Area, any conveyances or encumbrances of such area shall be subject to the benefiting Owners' easement.

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Section 3. Association's Rights in Spending Funds From Year to Year. The Association shall not be obligated to spend in any year all the sums received by it in such year (whether by way of Annual or Special Assessments, fees or otherwise), 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.

Section 4. Administration of Special Use Fees. The Association is authorized to bill for, sue for, collect, administer and disburse all Special Use Fees and the payment thereof shall be secured by the Assessment Lien; provided, however, that all Special Use Fees collected shall, if imposed in connection with a particular improvement, be separately accounted for as to each separate improvement pertaining to which they are collected and shall be expended on the particular improvements in which they pertain.

Section 5. Insurance. The Association shall maintain insurance against liability incurred as a result of death or injury to persons or damage to property on the Common Areas.

## ARTICLE X MAINTENANCE

Section 1. Common Areas and Public Rights of Way. The Association, or its duly delegated representative, shall maintain and otherwise manage all Common Areas, including, but not limited to, the landscaping, walkways, detention and retention areas, paths, parking areas, drives, roadways, and recreational facilities; provided, however, the Association shall not be responsible for providing or maintaining the landscaping structures or other improvements on any Common Areas which are part of a Lot unless (i) such landscaping or structures are available for use by all Owners or are within easements intended for the general benefit of the Property and (ii) the Association assumes in writing the responsibility for such maintenance or such responsibility is set forth in a recorded instrument as hereinafter provided. The Association shall also maintain any landscaping and other improvements not on Lots which are adjacent to the exterior boundaries of the Property, which are within areas shown on a subdivision plat or other plat of dedication for the Property, and which are intended for the general benefit of the residents of the Property, except the Association shall not maintain areas which (i) the City of Tucson, Pima County, or other governmental entity is maintaining or (ii) are to be maintained by the Owners of a Lot pursuant to Article III of this Declaration unless the Association elects to maintain such areas and as to which the Association has made such an election to maintain. Specific areas to be maintained by the Association may be identified on subdivision plats recorded or approved by the Declarant and in Deeds from the Declarant to a transferee of a Lot, but the failure to so identify such areas shall not

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affect the Association's rights or responsibilities with respect to such Common Areas and other areas intended for the general benefit of the Property.

The Board shall use a reasonably high standard of care in providing for the repair, management and maintenance of said property so the Property development will reflect a high pride of ownership. In this connection the Association may, in the discretion of the Board:

(a) Reconstruct, repair, replace or refinish any improvement or portion thereof upon Association Land except that no permanent improvements shall be made by the Association on any Common Area that is not Association Land and the Association shall provide only maintenance on Common Areas which are not Association Land;

(b) Replace injured and diseased trees and other vegetation in any Common Area, and plant trees, shrubs and ground cover to the extent that the Board deems necessary for the conservation of water and soil and for aesthetic purposes;

(c) Place and maintain upon any Common Area such signs as the Board may deem appropriate for the proper identification, use and regulation thereof;

(d) Do all such other and further acts which the Board deems necessary to preserve and protect the Common Area and the beauty thereof, in accordance with the general purposes specified in this Declaration.

The Board shall be the sole judge as to the appropriate maintenance of all Common Areas and other properties maintained by the Association. Any cooperative action necessary or appropriate to the proper maintenance and upkeep of said properties shall be taken by the Board or by its duly delegated representative.

In the event any subdivision plat, deed restriction or this Declaration permits the Board to determine whether or not Owners of certain Lots will be responsible for maintenance of certain Common Areas or public right-of-way areas, the Board shall have the sole discretion to determine whether or not it would be in the best interest of the Owners for the Association or an individual Owner to be responsible for such maintenance, considering cost, uniformity of appearance, location and other factors deemed relevant by the Board. The Board may cause the Association to contract with others for the performance of the maintenance and other obligations of the Association under this Article X and, in order to promote uniformity and harmony of appearance, the Board may also cause the Association to contract to provide maintenance services to Owners of Lots having such responsibilities in exchange of the payment of such fees as the Association and Owner may agree upon.

Notwithstanding anything herein to the contrary, until such time as the City of Tucson, Pima County or other applicable governmental authority directs otherwise, the Association

shall have an Arizona Registered Professional Civil Engineer prepare a certified inspection report for the Drainage and Detention/Retention Facilities at least once each year. Such inspection report shall be retained in the Association's books and records and shall be subject to review by the staff of Pima County, the City of Tucson and any other applicable governmental authority, upon written request. The staff of Pima County, the City of Tucson and any other applicable governmental authority has the right to inspect the private Drainage and Detention/Retention Facilities to verify that any scheduled and unscheduled maintenance activities are being adequately performed by the Association. The Association shall be obligated to reimburse Pima County, the City of Tucson and any other applicable governmental authority for any costs associated with maintaining the private Drainage and Detention/Retention Facilities in the event that it determines that the Association has been deficient in its obligation to adequately maintain such facilities.

Section 2. Assessment of Certain Costs of Maintenance and Repair of Common Areas and Public Areas. In the event that the need for maintenance or repair of Common Areas and other areas maintained by the Association is caused through the willful or negligent act of any Member, his family, guests, invitees or Designees, the cost of such maintenance or repairs shall be added to and become a part of the Assessment to which such Member and the Member's Lot is subject and shall be secured by the Assessment Lien. Any charges or fee to be paid by the Owner of a Lot pursuant to Section 1 of this Article X in connection with a contract entered into by the Association with an Owner for the performance of an Owner's maintenance responsibilities shall also become a part of such Assessment and shall be secured by the Assessment Lien.

Section 3. Improper Maintenance and Use of Lots. In the event any portion of any 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 Property which are substantially affected thereby or related thereto, or in the event any portion of a Lot is being used in a manner which violates this Declaration, or in the event the Owner of any Lot is failing to perform any of its obligations under this Declaration, or the architectural guidelines and standards of the Architectural Committee, the Board may by Resolution make a finding to such effect, specifying the particular condition or conditions which exist, and pursuant thereto give notice thereof to the offending Owner that unless corrective action is taken within fourteen (14) days the Board may cause such action to be taken at said Owner's cost. If at the expiration of said fourteen (14) day period of time the requisite corrective 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 added to and become a part of the Assessment to which the offending Owner and the Owner's Lot is subject and shall be secured by the Assessment Lien.

ARTICLE XI  
ARCHITECTURAL CONTROL COMMITTEE

Section 1. Establishment. The Declarant shall establish an Architectural Committee to perform the functions of the Architectural Committee set forth in this Declaration and may adopt the procedural rules and regulations for the performance of such duties by the Architectural Committee, including procedures for the preparation, submission and determination of the application for any approvals required by this Declaration. The Architectural Committee shall consist of such number of regular members and alternate members as the Declarant may designate and such members shall be appointed by the Declarant. The initial Architectural Committee shall consist of two (2) regular members.

Appointees need not be architects or Owners and do not need to possess any special qualifications of any type except such as the Declarant may, in its discretion, require. The Architectural Committee shall hold regular meetings as needed, a quorum for such meeting shall consist of a quorum of the regular members, and the concurrence of a majority of the regular members shall be necessary for any decision of the Architectural Committee. An alternate member, approved by the Declarant, may participate at any meeting at which there is not a quorum of regular members present, may constitute a quorum by his (their) presence and shall have all of the authority of a regular member while so participating. The Architectural Committee may promulgate architectural guidelines and standards to be used in rendering its decisions (the "Architectural Guidelines"). Subject to the provisions of Section 2 of this Article, the decision of the Architectural Committee shall be final on all matters submitted to it pursuant to this Declaration.

Section 2. Reconsideration. Any Owner aggrieved by a decision of the Architectural Committee may request that the Committee reconsider its decision. Such procedures would include the requirement that the Owner has modified the requested action or has new information which would in the Committee's opinion warrant a reconsideration. If the Committee fails to allow reconsideration or if the Committee, after reconsideration, again rules in a manner aggrieving the Owner, the decision of the Committee is final.

Section 3. Fee. The Board may establish a reasonable processing fee to defer the costs of the Association in considering any requests for approvals submitted to it, which fee shall be paid at the time the request for approval is submitted.

Section 4. Appointment of Architectural Committee Members. Architectural Committee members are appointed by the Declarant and may be replaced at the discretion of the Declarant. Declarant's right to appoint Architectural Committee members shall cease and the Board shall be vested with that right and all other rights of the Declarant pertaining to the Architectural Committee as stated in this Article XI, at such time Declarant no longer owns any Property, or when such right is expressly relinquished by Declarant to the Board in writing, whichever condition occurs first.

Section 5. Limited Liability of Committee Approval. Approval by the Committee shall relate only to the conformity of plans and specifications to general architectural and

landscaping plans for the area covered by this Declaration, and such plans, drawings, and specifications are not approved as to adequacy of engineering design or architectural competence. By approving such plans, drawings, and specifications, the Committee does not assume liability or responsibility therefor, or for any defect in any structure constructed from such plans, drawings and specification. Members of the Board shall have absolutely no personal responsibility to any person with regard to any actions taken by them in their capacity as such members.

## ARTICLE XII RIGHTS AND POWERS OF ASSOCIATION

Section 1. Association's Rights and Powers as Set Forth in Articles and Bylaws. In addition to the rights and powers of the Association set forth in this Declaration, the Association shall have such rights and powers as are set forth in its Articles and Bylaws. Such rights and powers, subject to the approval thereof by any agencies or institutions deemed necessary by Declarant, may encompass any and all things which a natural person could do or which now or hereafter may be authorized by law, provided such Articles and Bylaws are not inconsistent with the provisions of this Declaration and are necessary, desirable or convenient for effectuating the purposes set forth in this Declaration. After incorporation of the Association, a copy of the Articles and Bylaws of the Association shall be available for inspection at the office of the Association during reasonable business hours. This Association will accept the responsibility for control maintenance, safety, liability, and payment of ad valorem taxes for *Common Area A* within the Subdivision.

Section 2. Association's Rights of Enforcement of Provisions of this and Other Instruments. The Association, as the agent and representative of the Owners, shall have the right to enforce the Covenants set forth in this Declaration and/or any and all covenants, restrictions, reservations, charges, servitudes, assessments, conditions, liens or easements provided for in any contract, Deed, declaration or other instrument which (a) shall have been executed pursuant to, or subject to, the provisions of this Declaration, or (b) otherwise shall indicate that the provisions of such instrument were intended to be enforced by the Association or by Declarant.

Section 3. Contracts with Others for Performance of Association's Duties. Subject to the restrictions and limitations contained herein, the Association may enter into contracts and transactions with others, including Declarant and its affiliated companies, and such contracts or transactions shall not be invalidated or in any way affected by the fact that one or more directors or officers of the Association or members of any committee is employed by or otherwise connected with Declarant or its affiliates, provided that the fact of such interest shall be disclosed or known to the other directors acting upon such contract or transaction, and provided further that the transaction or contract is fair and reasonable. Any such director, officer or committee member may be counted in determining the existence of a quorum at any meeting of the Board or committee of which he is a member which shall authorize any contract or transaction described above or grant or deny any approval sought by the Declarant, its affiliated companies or any competitor thereof and may vote

thereat to authorize any such contract, transaction or approval with like force and effect as if he were not so interested.

Section 4. Change of Use of Association Land and Procedure Therefor. Upon (a) adoption of a resolution by the Board stating that in the Board's Opinion the then present use of a designated part of the Association Land or of the Association's interest in other Common Areas is no longer in the best interests of the Owners and residents and (b) the approval of such resolution by a majority of the votes of Members who are voting in person or by proxy at a meeting duly called for such purpose, the Board shall have the power and right to change the use thereof (and in connection therewith, construct, reconstruct, alter or change the improvements thereon in any manner deemed necessary by the Board to accommodate the new use), provided such new use (i) shall be for the benefit of the Owners, and (ii) shall be consistent with any deed restrictions (or zoning regulations) restricting or limiting the use of the Association Land.

#### ARTICLE XIII TERM; AMENDMENTS; TERMINATION

Section 1. Term; Method of Termination. This Declaration shall be effective upon the date of its Recording hereof and, as amended from time to time, shall continue in full force and effect for a term of twenty (20) years from the date this Declaration is Recorded. From and after said date, this Declaration, as amended, shall be automatically extended for successive periods of ten (10) years each, unless there is an affirmative vote to terminate this Declaration by the then Members casting ninety percent (90%) of the total votes cast at an election held for such purpose within six (6) months prior to the expiration of the initial effective period hereof or any ten (10) year extension. The Declaration may be terminated at any time if ninety percent (90%) of the votes cast by each class of Members shall be cast in favor of termination at an election held for such purpose. Anything in the foregoing to the contrary notwithstanding, no vote to terminate this Declaration shall be effective unless and until the written consent to such termination has been obtained, within a period from six (6) months prior to such vote to six (6) months after such vote, from the holders of Recorded first mortgages or deeds of trust to which the Assessment Lien is subordinate pursuant to Article VIII, Section 3 above, on seventy-five percent (75%) of the Lots upon which there are such Recorded first mortgages and deeds of trust. If the necessary votes and consents are obtained, the Board shall cause to be recorded with the County Recorder of Pima 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 these Covenants shall have no further force and effect, and the Association shall be dissolved pursuant to the terms set forth in its Articles.

Section 2. Amendments. This Declaration may be amended by recording with the County Recorder of Pima County, Arizona, a Certificate of Amendment, duly signed and acknowledged as required for a Certificate of Termination in Section 1 of this Article. The Certificate of Amendment shall set forth in full the amendment adopted, and, except as provided in

Section 3 of this Article, shall certify that at an election duly called and held pursuant to the provisions of the Articles and Bylaws the Members casting seven-five percent (75%) of the votes in each Membership class at the election voted affirmatively for the adoption of the amendment. Anything in this Article to the contrary notwithstanding, so long as there is no Class A Member, this Declaration may be amended by Declarant any time by a recording with the County Recorder of Pima County, Arizona a Certificate of Amendment signed by Declarant with its signature acknowledged.

Section 3. Right of Amendment if Requested by Governmental Agency or Federally Chartered Lending Institutions. Anything in this Article to the contrary notwithstanding, Declarant reserves the right to amend all or any part of this Declaration, the Association Articles of Incorporation, the Association Bylaws, and/or the Plat without obtaining the approval or consent of any Owner or mortgagee, to the extent required to correct clerical errors or to such an extent and with such language as may be requested by, or necessary to comply with the requirements of, the Federal Housing Administration ("FHA") or the Veterans Administration ("VA"), or any other federal, state municipal, or other local authority with jurisdiction over the Property or any portion thereof, and, further, to amend to the extent requested by any other federal, state or local governmental agency which requests such an amendment as a condition precedent to such agency's approval of this Declaration, or by any federally chartered lending institution as a condition precedent to lending funds upon the security of any Lot(s) or any portions thereof. Any such amendment shall be effected by the Recording, by Declarant, of a Certificate of Amendment duly signed by or on behalf of the partners, authorized agents, or authorized officers of Declarant, as applicable, with their signature acknowledged, specifying the federal, state or local governmental agency or the federally chartered lending institution requesting the amendment and setting forth the amendatory language requested by such agency or institution. The Recording of such a Certificate shall be deemed conclusive proof of the agency's or institution's request for such an amendment, and such Certificate, when recorded, shall be binding upon all of the Property and all persons having an interest therein. It is the desire of Declarant to retain control of the Association and its activities during the anticipated period of planning and development. If any amendment requested pursuant to the provisions of this Section deletes, diminishes or alters such control, Declarant shall have the right to prepare, provide for and adopt as an amendment hereto, other and different control provisions. Except as provided in this Section 3 and in Section 2, above, Declarant shall not have any right to amend this Declaration otherwise than in accordance with and pursuant to the provisions of Sections 2 and 3 of this Article.

#### ARTICLE XIV ALTERNATIVE DISPUTE RESOLUTION PROVISIONS

Section 14.1 Agreement to Resolve Certain Disputes Without Litigation. As used in this Article 14, the term "Claim" shall mean: (a) any claim or cause of action, including but not limited to a Dwelling Action or a Multiunit Dwelling Action, arising out of or related in any way to the planning, design, engineering, grading, construction or development of the Lots, the

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Dwelling Units or any other part of the Property, including, without limitation, any claim or cause of action that the Lots, the Dwelling Units or any other part of the Property are defective or that the Declarant, its agents, contractors, employees, subcontractors, architects, engineers or consultants were negligent in the planning, design, engineering, grading, construction or development thereof; or (b) any claim or cause of action against the Declarant or any employee, agent, director, member or officer of Declarant arising out of or in any way related to the development of the Property, including, without limitation, any claim for negligence, fraud, intentional misconduct or breach of fiduciary duty. The Declarant, all Owners, lessees, occupants and other Persons bound by this Declaration, any Declarant's agents, contractors, employees, subcontractors, architects, engineers or consultants and any Person not otherwise bound by this Declaration who agrees to submit to this Article XIV (collectively, the "Bound Parties") agree that the dispute resolution procedures set forth in this Article XIV shall apply to all Claims.

Section 14.2 Notice of Claim. Any Bound Party who contends or alleges to have a Claim (a "Claimant") against any other Bound Party (a "Respondent") shall notify each Respondent in writing of the Claim (the "Claim Notice"), stating plainly and concisely: (a) the nature of Claim, including, date, time, location, Persons involved, and Respondent's role in the Claim; (b) the factual and legal basis of the Claim; (c) what Claimant wants Respondent to do or not do to resolve the Claim; and (d) a certified statement indicating whether expert testimony will be required to prove any of the allegations contained in the Claim.

Section 14.3 Mediation. The Claimant and the Respondent shall negotiate in good faith in an attempt to resolve the claim. If the Parties do not resolve the Claim through negotiation within thirty (30) days after the date of the Claim Notice or within such longer period as may be agreed upon by the Parties ("Termination of Negotiations"), Claimant shall have thirty (30) additional days within which to submit the Claim to mediation under the auspices of an independent mediation service designated by the Declarant. If Claimant does not submit the Claim to mediation within thirty (30) days after Termination of Negotiations, Claimant shall be deemed to have waived the Claim, and Respondent shall be released and discharged from any and all liability to Claimant on account of such Claim. If the Parties do not settle the Claim within thirty (30) days after submission of the matter to the mediation process, or within such time as determined reasonable or appropriate by the mediator, the mediator shall issue a notice of termination of the mediation proceedings ("Termination of Mediation Notice"). The Termination of Mediation Notice shall set forth when and where the Parties met, that the Parties are at an impasse, and the date that mediation was terminated.

Section 14.4 Binding Arbitration. In the event a Claim is not resolved by mediation, the Claimant shall have thirty (30) days after the date of the Termination of Mediation Notice to submit the Claim to binding arbitration in accordance with this Section 6.4. If the Claimant fails to timely submit the Claim to arbitration, then the Claim shall be deemed waived and abandoned and the Respondent shall be relieved of any and all liability to Claimant arising out of the Claim.

The parties shall cooperate in good faith to assure that all necessary and appropriate persons and entities are included in the arbitration proceedings. No party shall be required to participate in the arbitration proceeding if all persons and entities against whom the party would have necessary or permissive crossclaims, counterclaims or third party claims are not or cannot be joined in the arbitration proceeding. If the Claimant submits the Claim to binding arbitration in accordance with this Section 6.4, the arbitration shall be conducted in accordance with the following rules:

14.4.1 Initiation of Arbitration. 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").

14.4.2 Governing Procedures. 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 XIV, the provisions of this Article XIV shall govern.

14.4.3 Appointment of Arbitrator. The parties shall appoint a single Arbitrator by mutual agreement. 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 willing to serve, the AAA shall appoint a qualified Arbitrator to serve. Any arbitrator chosen in accordance with this Subsection 14.4.3 is referred to in this Section 14.4 as the "Arbitrator."

1 14.4.4 Qualifications of 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 from acting as the Arbitrator.

14.4.5 Disclosure. Any candidate for the role of Arbitrator shall promptly disclose to the parties all actual or perceived conflicts of interest involving the dispute or the parties. No Arbitrator may serve if such person has a conflict 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 Subsection 14.4.3.

14.4.6 Compensation. The Arbitrator shall be fully compensated for all time spent in connection with the arbitration proceedings in accordance with the Arbitrator's usual hourly rate 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.

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14.4.7 Preliminary Hearing. 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 proceeding.

14.4.8 Management of the Arbitration. 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.

14.4.9 Confidentiality. All papers, documents, briefs, written communication, testimony and transcripts as well as any and all 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.

14.4.10 Hearings. 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.

14.4.11 Final Award. The Arbitrator shall promptly (but, in no event later than sixty (60) days following 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 a part of such party's reasonable attorneys' fees and expert witness fees, taking into account the final result of arbitration, 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. The Arbitrator shall not award indirect, consequential or special damages regardless of whether the possibility of such damage or loss was disclosed to, or reasonably foreseen by the party against whom the claim is made. The Arbitrator shall assess the costs of the proceedings (including, without limitation, the fees of the Arbitrator) against the non-prevailing party.

Section 14.5 Right to Enter, Inspect, Repair and/or Replace. Following the receipt by a Bound Party of a Claim Notice with respect to an alleged defect or deficiency in the planning,

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design, engineering, grading, construction or development of any Lot, any Dwelling Unit, any other part of the Property or any improvements thereon (the "Alleged Defect"), the Bound Party and its employees, agents, contractors and consultants shall have the right, upon reasonable notice to Claimant and during normal business hours, to enter onto or into, as applicable, the Lot and any Dwelling Unit for the purposes of inspecting and/or conducting testing to determine the validity of the Claim and, if deemed necessary by the Bound Party, to correct, repair and/or replace the Alleged Defect. In conducting such inspection, testing, repairs and/or replacement, the Bound Party shall be entitled to take any actions as it shall deem reasonable and necessary under the circumstances. Nothing set forth in this Section 14.5 shall be construed to impose any obligation on any Bound Party to inspect, test, repair, or replace any item or Alleged Defect for which the Bound Party is not otherwise obligated under applicable law or any warranty provided by Declarant or any other Bound Party in connection with the sale of the Lots or Dwelling Units. The right of a Bound Party and its employees, agents, contractors and consultants 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 the Bound Party. In no event shall any statutes of limitations be tolled during the period in which a Bound Party conducts any inspection, testing, repair or replacement of any Alleged Defects.

Section 14.6 Use of Funds. Any judgment, award or settlement received by a Claimant in connection with a Claim involving an Alleged Defect 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.

Section 14.7 Statute of Limitations. All statutes of limitations applicable to Claims shall apply to the commencement of arbitration proceedings under Section 14.4. If the arbitration proceedings are not initiated within the time period provided by Arizona law for the filing of a legal action with respect to the Claim, the Claim shall forever be barred.

Section 14.8 Conflicts. In the event of any conflict between this Article XIV and any other provision herein, this Article XIV shall control.

Section 14.9 Severability. If any provision of this Article XIV is found by a court or arbitrator to be invalid or unenforceable for any reason, such provision shall be severed from this Article XIV, and the remaining provisions of this Article XIV shall remain unaffected and in full force and effect.

**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 RESOLVED ACCORDING TO THE PROVISIONS OF THIS ARTICLE XIV AND WAIVES THE RIGHT TO PURSUE ANY DECLARANT OR OTHER BOUND PARTY IN ANY MANNER OTHER THAN AS PROVIDED IN ARTICLE XIV. EACH OWNER AND**

DECLARANT ACKNOWLEDGE THAT BY AGREEING TO RESOLVE ALL CLAIMS AS PROVIDED IN THIS ARTICLE XIV, THEY ARE GIVING UP THEIR RESPECTIVE RIGHTS TO HAVE SUCH CLAIM TRIED BEFORE A JURY. EACH OWNER AND DECLARANT FURTHER WAIVE THEIR RESPECTIVE RIGHTS TO AN AWARD OF PUNITIVE AND CONSEQUENTIAL DAMAGES RELATING TO A CLAIM. 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 TO A CLAIM.

#### ARTICLE XV MISCELLANEOUS

Section 1. Interpretation of the Covenants. Except for judicial construction, the Association, by its Board, shall have the exclusive right to construe and interpret the provisions of this Declaration. In the absence of any adjudication to the contrary by a court of competent jurisdiction, the Association's construction or interpretation of the provisions hereof shall be final, conclusive and binding as to all persons and property benefited or bound by the Covenants and provisions hereof.

Section 2. Severability. Any determination by any court of competent jurisdiction that any provision of this Declaration is invalid or unenforceable shall not affect the validity or enforceability of any of the other provisions hereof.

Section 3. Rule Against Perpetuities. If any interest purported to be created by this Declaration would otherwise be unlawful, void or voidable under the Rule against Perpetuities or any related rule, the interest shall be construed as becoming void and of no effect as of the end of the applicable period of perpetuities computed from the date when the period of perpetuities starts to run on the challenged interest; the "lives in being" for computing the period of perpetuities shall be (a) those which would be used in determining the validity of the challenged interest; plus (b) those of the issue of the Board who are living at the time the period of perpetuities starts to run on the challenged interest.

Section 4. Rules and Regulations. In addition to the right to adopt rules and regulations on the matters expressly mentioned elsewhere in this Declaration, the Association shall have the right, activities and duties, provided said rules and regulations are not inconsistent with the provisions of this Declaration.

Section 5. Declarant's Disclaimer of Representations. Anything to the contrary in this Declaration notwithstanding, and except as otherwise may be expressly set forth on a recorded plat or other instrument recorded in the office of the County Recorder of Pima County, Arizona, Declarant makes no warranties or representations whatsoever that the plans presently envisioned for

the complete development of the Property can or will be carried out, or that any land now owned or hereafter acquired by it is or will be subjected to this Declaration, or that any such land (whether or not it has been subjected to this Declaration) is or will be committed to or developed for a particular (or any) use, or that if such land is once used for a particular use, such use will continue in effect.

Section 6. References to the Covenants in Deeds. Deeds to and instruments affecting any Lot or any part of the Property may contain the Covenants 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 Covenants shall be binding upon the grantee-Owner or other person claiming through any instrument and his heirs, executors administrators, successors and assigns.

Section 7. Successors and Assigns of Declarant. Any reference in this Declaration to Declarant shall include any successors or assignees of Declarant's rights and powers hereunder provided that Declarant's rights and powers may only be assigned by a written, recorded instrument expressly assigning such rights and powers.

Section 8. Gender and Number. Wherever the context of this Declarant so requires, words used in the masculine gender shall include the feminine and neuter genders; words used in the neuter gender shall include the masculine and feminine genders; words in the singular shall include the plural and words in the plural shall include the singular.

Section 9. 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 or context thereof.

Section 10. Notices. If notice of any action or proposed action by the Board or any committee or of any meeting is required by applicable law, this Declaration or resolution of the Board to be given to any Owner then, unless otherwise specified herein or in the resolution of the Board, such notice requirement shall be deemed satisfied if notice of such action or meeting is published once in any newspaper of general circulation within the County of Pima or the Property. This Section shall not be construed to require that any notice be given if not otherwise required and shall not prohibit satisfaction of any notice requirement in any other manner.

Section 11. FHA/VA Approval/Amendment to Comply With Certain Requirements.

a. If this Declaration is approved by the FHA or the VA in connection with any loan programs made available by FHA or VA and any loans have been made which are insured or guaranteed by FHA or VA, then as long as there is a Class B Membership, the following actions will require the prior approval of the FHA or the VA, as applicable, unless the need for such

approval has been waived by FHA or VA: Dedications of Common Areas; amendment of this Declaration; and annexation of additional properties.

b. Anything in this Declaration or the Association Articles or Bylaws to the contrary notwithstanding, the Board may amend this Declaration, the Association Articles of Incorporation, or Bylaws or the Plat, without obtaining the approval or consent of any Owner or mortgagee, in order to conform this Declaration or the Plat to the requirements or guidelines of the Federal National Mortgage Association, the Federal Home Loan Mortgage Corporation, the Federal Housing Administration, the Veterans Administration or any federal, state or local governmental agency whose approval of the project in which the Property is located.

IN WITNESS WHEREOF, the undersigned, as Declarant, has hereunto caused its name to be signed by the signatures of its duly authorized officials as of the day and year first above written.

For: Fidelity National Title Agency, Inc., an  
Arizona corporation, as Trustee under Trust  
NO. 80,060, only and not in its corporate  
capacity

By

Martha L. Hill

(Trust Officer)

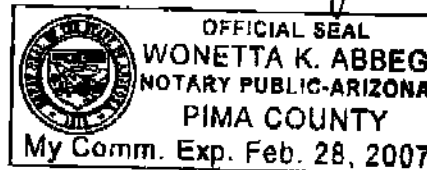
STATE OF ARIZONA       )  
                                  ) ss.  
County of Pima        )

On this 4th day of November, 2003, before me, the undersigned Notary Public, personally appeared MARTHA L. HILL, as being authorized so to do, executed the foregoing instrument for the purposes therein contained.

WONETTA K. ABBEG  
Notary Public

My Commission Expires:

2/28/07



RE: P1203-058