

AMENDMENT AND RESTATEMENT OF  
DECLARATION OF COVENANTS, CONDITIONS AND  
RESTRICTIONS FOR WILD HORSE RANCH ESTATES,  
LOTS 1 THROUGH 66 AND COMMON AREAS

The undersigned, hereinafter called Grantor, on the 2nd day of December 1992 established the Declaration of Covenants, Conditions and Restrictions Wild Horse Ranch Estates and caused same to be recorded in Book 9429 at Pages 276-292 of the records of the Pima County Recorder's Office. Pursuant to Article X, Section 3 thereof, Grantor reserved the right to amend said Declaration. Grantor hereby amends said Declaration in its entirety and restates same to read as follows:

Grantor, being the owner of that certain real property described as Lots 1 through 66 as shown on the Plat of Wild Horse Ranch Estates, a subdivision of Pima County, Arizona, as recorded in Book 44 of Maps and Plats at Page 63, in the records of the Pima County Recorder's Office, and all common areas and private streets set forth thereon, does hereby establish this 9th day of April, 1993, a general plan for the improvement and development of said Lots, common areas and private streets, and does hereby declare that the above-described property and each of the lots therein are and will be held, sold and conveyed subject to the following covenants, conditions and restrictions. Lot 63 shall be subject to the covenants, conditions and restrictions except as otherwise specified herein. Each and every one of said covenants, conditions and restrictions is and all are for the benefit of each owner of real property in said subdivision, or any interest therein, and shall inure to and pass with each and every parcel of said subdivision, and shall bind the respective successors in interest of the present owner or owners thereof. Said covenants, conditions and restrictions are and each thereof is imposed upon said lots, all of which are to be construed as restrictive covenants running with the title to said lots and with each and every parcel thereof, to wit:

ARTICLE I CERTAIN DEFINITIONS

Section 1. "Association" shall mean Wild Horse Ranch Estates Homeowners Association, a non-profit corporation of the State of Arizona which has been or shall be formed by the Grantor.

Section 2. "Member" shall mean a person or entity entitled to hold membership in the Association.

Section 3. "Owner" shall mean each person or entity who is or becomes the holder of fee or equitable title to each lot. Such ownership will be deemed to have vested upon delivery of a duly executed deed or contract of sale to the grantee or vendee. The term "Owner" also shall be deemed to include a contract purchaser who is entitled to possession of a lot under the terms of a recorded Contract for Sale of Real Estate and shall exclude

the holder of the vendor's interest in such a contract. The transfer of ownership as above defined (whether by sale, forfeiture, foreclosure, or otherwise) will work as an automatic transfer of ownership to the new owner.

Section 4. "Property" shall mean the real property heretofore described.

Section 5. "Mortgage" shall include mortgages, deeds of trust and Contracts for Sale of Real Estate wherein the purchaser is entitled to possession of the Property, and the term "mortgagee" shall include mortgagees, beneficiaries under deeds of trust and holders of vendors' interests in recorded contracts for sale of real estate wherein the purchaser is entitled to possession of the Property.

Section 6. "Grantor" shall mean Chicago Trust Company, an Arizona Corporation, as Trustee (or a successor trustee) of its trust 12061, and the beneficiaries under said Trust, together with each of their successors or assigns in the ownership of the Property. Grantor herein is synonymous with "Declarant" as used in the Declaration of Covenants, Conditions and Restrictions recorded in Book 9429 at Pages 276-292 of the records of the Pima County Recorder's Office. The term "successors or assigns" as used in this section shall not be deemed to mean individual lot owners who purchased individual lots or an interest therein but only a person or entity that succeeds to substantially all of the ownership of the Grantor. Should Trust 12061 terminate and should legal title to the Property described hereinabove be vested in the beneficiaries of said Trust 12061, reference to "Grantor" herein shall mean the beneficiaries of Trust 12061, together with each of their successors or assigns.

Section 7. "Lot" shall mean any Lot as shown by a number on the recorded plat, a Lot and portions of another contiguous Lot, or two or more contiguous Lots upon which a Detached Single-family Dwelling may be erected in conformance with the requirements of this Declaration; provided, however, an ownership or single holding by any owner comprising parts of two adjoining Lots, or the whole of one Lot and part or parts of one or more adjoining Lots, may, at the option of the Grantor, be deemed to constitute a single Lot. No Lot subject hereto shall be divided or split except as approved by the Grantor.

Section 8. "Detached Single-family Dwelling" or "Single-family Dwelling" shall mean a building and structures customarily appurtenant thereto, erected and maintained in conformance with the requirements of this Declaration for private residential purposes and designed for occupancy by a single family. It shall not mean any professional office, flat, apartment, multi-family dwelling or duplex, lodging house, rooming house, hotel, hospital or sanitorium, even though intended for residential purposes, or

similar dwelling, whether or not a fee is charged for occupying the dwelling. "Detached Single-family Dwelling" or "Single-family Dwelling" shall expressly not include any mobile homes, manufactured homes, multi-sectional manufactured homes, modular homes, factory-built homes, mobile/component housing or similar units, which are manufactured elsewhere, or a single-family dwelling constructed elsewhere and moved to the Lot for attachment to either a permanent or movable foundation.

Section 9. "Improvement" or "Improvements" shall mean any and all alterations of the land, (other than interior modifications of existing structures), including but not limited to the Single-family Dwelling, structures, buildings, outbuildings, sewage disposal systems, ramadas, garages, guest houses, storage sheds, playhouses, servants' quarters, swimming pools, tennis or recreational courts, walls, fencing, landscaping, driveways, and private roads, whether intended to be temporary or permanent. It shall also include all acts done to exteriors of any of the aforementioned, including without limitation, changes in color, whether for maintenance, repair, or alterations.

Section 10. "Building Site" shall mean that portion of each Lot, as designated by Grantor, within which a Single-family Dwelling may be constructed.

Section 11. "Approving Agent" shall mean the Grantor or a person or persons, partnership, corporation or other entity duly appointed by Grantor.

## ARTICLE II - ARCHITECTURAL AND CONSTRUCTION CONTROL

Section 1. Except for Improvements or alterations undertaken by the Grantor, no building, fence, wall or other structure or Improvement shall be commenced, erected or maintained upon the Property, nor shall any exterior addition to or change or alteration thereto be made until detailed plans and specifications showing the color, nature, kind, shape, height, materials and location of the same, grading and site work with resultant cuts and/or fills, degree of slopes and planned landscaping treatments, shall have been submitted to and approved in writing as to compliance with the provisions of this Declaration by the Approving Agent prior to beginning construction.

Section 2. For the purpose of enforcing architectural and construction control, the Approving Agent shall have the exclusive right, exercisable in its sole discretion, to promulgate rules, regulations and restrictions on construction; to waive, amend or modify these restrictions; to amend such rules, regulations or restrictions from time to time; and to waive or modify any such rules, regulations or restrictions, provided that no such waiver shall be deemed a waiver of the right to enforce such rules, regulations or restrictions in the future as to others.


Any waiver granted by the Approving Agent shall be given in exchange for a hold harmless agreement executed by the Owner benefitting from the waiver and running to the benefit of the Grantor or its successors or assigns.

Section 3. Prior to making any Improvements, or undertaking percolation tests for septic systems, soil bearing tests for foundation design or site clearing of any nature, each Owner shall be required to submit to the Approving Agent "Preliminary Plans" comprised of two complete copies of the site plan, floor plan and all exterior elevations of the proposed Improvements. The site plan shall show all Improvements including, without limitation, driveways, parking areas, cut and fill areas, indicating the proposed method of retainage and improvement, the proposed floor elevations for all structures with the existing and proposed finished grading shown and all pool/patio areas and mechanical and pool equipment enclosures. The finished floor elevation shall be the average elevation of the natural grade of the area on which the Single-family Dwelling or Improvement is located. The natural grade shall be determined by the Approving Agent based on the elevations shown on a photographic aerial and boundary survey certified by an engineer licensed in the State of Arizona at a scale of one inch equals 20 feet with topographic contours referenced to site datum and not to exceed scaling of at least one-foot intervals and submitted by the Owner. The Plat and Tentative Plat of the Property may be used for this submittal, if acceptable and approved by the Approving Agent. The exterior elevations shall indicate all proposed materials, textures and colors. The location of all structures, driveways and parking areas shall be staked for inspection. Upon obtaining the Approving Agent's written approval of the Preliminary Plans evidenced by the written endorsement of the Approving Agent made on the site plan, the Owner shall submit to the Approving Agent two complete sets of plans for the proposed Improvements and the specifications therefor and a Building Site grading plan and a landscape plan for all areas outside of the patio walls, if any (the foregoing are hereafter referred to as the "Final Plans"). The landscape plan must include rip-rap, back-planting or other acceptable treatment for all cut and fill areas on the Lot. Approval of the Final Plans shall be evidenced by the written endorsement of the Approving Agent made on the Final Plans. A copy of the endorsed Final Plans shall be obtained by the Owner of the Lot proposed to be improved prior to the beginning of construction. An Owner shall not proceed with Improvements without a copy of the approved Final Plans in his possession. One set of Final Plans shall be retained by the Approving Agent. No changes or deviations in or from the Final Plans, insofar as the exterior of the proposed Improvements is concerned, shall be made without written approval of the Approving Agent. After construction is completed, no changes shall be made including, without limitation, changes of exterior color, without the written permission of the Approving Agent. Approval of Final Plans shall be in the Approving Agent's sole discretion.

Section 4. From and after the date of recordation hereof, the Grantor or the Association, as the case may be, shall collect a preliminary plan review fee of \$450.00 from each Owner at the time the Initial Plans are submitted to the Approving Agent for approval. This fee may be revised from time to time by the party entitled thereto without amendment to the Declaration.

Section 5. Except for improvements or alterations undertaken by the Grantor, all plans must meet the minimum criteria set forth below and such further criteria as the Approving Agent promulgates:

- (a) Be in accordance with the provisions of this Declaration;
- (b) Be of a design, style, architecture, texture and color which is consistent with traditional or contemporary southwest desert residential construction; the exterior color scheme, height, location of exterior lights, selection of building materials and their application to be satisfactory to the Approving Agent;
- (c) Each Single-family Dwelling to be located on a Building Site shall contain not less than 2,500 square feet of living area;
- (d) Be in sufficient detail to permit the Approving Agent to make its determination;
- (e) The roof shall be of the material, design and style satisfactory to the Approving Agent. White reflective roofs shall be unacceptable. The repair or replacement of any roof shall be subject to the same conditions as the original roof. Flat roofs, if approved, must be fully enclosed by parapet walls at heights approved by the Approving Agent and shall be painted desert tan. Type, style and location of skylights on pitched roof surfaces shall be approved by the Approving Agent;
- (f) Include not less than a two-car garage with doors of a style or design approved by the Approving Agent;
- (g) Include adequate utility yards or enclosures in which all ground-mounted exterior heating and cooling apparatus, meters, clothes lines, mechanical equipment, tanks and space for trash or rubbish containers and wood storage shall be located;
- (h) All electrical service and telephone lines from the utility company lines shall be placed underground and no outside electrical and telephone lines shall be placed overhead. This restriction prohibiting overhead lines also applies to cable television lines and security and fire protection system lines, if any;
- (i) Where water, gas or other public utility facilities or private services have been installed to or near the property line of a particular Lot, for the purpose of providing service to



that Lot, the service connection to service an Improvement on that Lot shall be made only to and from the installed facility or point assigned by the Approving Agent;

(j) No Single-family Dwelling or Improvement shall exceed one story in height and no part of the roof ridgeline shall exceed eighteen (18) feet, and no part of a parapet wall shall exceed fifteen (15) feet above finished floor elevation of such dwelling or improvement. Provided, however, the Approving Agent may allow a two-story Single-family Dwelling or one-story and a partial story Single-family Dwelling on certain Lots (the height of which shall not exceed twenty-eight (28) feet above finished floor elevation), provided the topography of the Lot and its relationship to surrounding Lots is such that in the sole judgment of the Approving Agent such exception(s) would not be in conflict with the stated intent of this sub-paragraph (j). The finished floor elevation shall be the average elevation of the natural grade of the area on which the Single-family Dwelling or Improvement is located. The natural grade shall be determined by the Approving Agent based on the topographic elevations shown on the Tentative Plat approved by and on file with Pima County, Arizona, or engineered topographic depiction deemed to be accurate and reliable by Grantor. The Building Site shall be that area designated on each Lot as provided for in Article I, Section 10;

The intent of this sub-paragraph (j) is to provide a means for controlling the position and height of Single-family Dwellings and Improvements relative to surrounding dwellings and Improvements within the Building Sites, so as to provide the greatest protection of views and privacy for the benefit of the largest number of Lot Owners.

(k) All areas of cut and/or fill which result from grading or related site work on any Lot shall be landscaped or improved by the Owner in accordance with plans approved by the Approving Agent. Site preparation shall not be planned which results in a cut and/or fill which covers a vertical distance of more than six (6) feet. All areas of cut and/or fill having a slope not steeper than two to one shall then be replanted with vegetation which, upon maturity, will have a density of at least that existing in the natural landscape of surrounding areas. All areas of cut and/or fill having a slope steeper than two to one and not steeper than one to one shall be resurfaced with natural stones ("rip rap") that blend in with or compliment the natural setting and may be replanted in locations terraced for that purpose. All areas of cut and/or fill having a slope steeper than one to one shall be retained by masonry retaining walls. A two to one slope is herein defined as a slope for which the horizontal distance is twice the corresponding change in vertical elevation. A one to one slope is herein defined as a slope for which the horizontal distance is equal to the corresponding change in vertical elevation. All masonry retaining

walls shall be constructed of such material as shall be satisfactory from an engineering standpoint to serve as a retaining wall, giving due considerations to the height and other physical aspects of such retaining wall. Alternative plans for site preparation and for landscaping, resurfacing or retaining areas of cut and/or fill shall be implemented only if previously approved in writing by the Approving Agent. All landscaping of areas of cut and/or fill, including the planting and establishment of vegetation and the construction of retaining walls, which shall match the construction finish and color of the Single-family Dwelling, shall be completed concurrently with the completion of construction of the Single-family Dwelling upon the Lot, and shall be continuously maintained thereafter by the Owner.

(l) All cooling and heating equipment shall be concealed from view from Property rights-of-way and other Lots. No evaporative cooler, air conditioning equipment, heating equipment, cooling or heating ducts, gas lines, or other equipment, including solar swimming pool heating equipment, shall be placed, installed or maintained on the roof or wall of any building or structure, except that certain solar devices which heat or cool may be placed on roofs which completely conceal the same and are not detrimental to other Owners of Lots within the subdivision. Specific prior written approval by the Approving Agent is required before placement of such solar devices; provided, however, the requirements hereunder shall not effectively prohibit the installation or use of solar energy devices. If such approval is not obtained, said devices shall be immediately removed by the Owner at his expense.

(m) Foundations and floors for all Single-family Dwellings and all other permitted Improvements on each Lot shall be reinforced and shall be constructed in accordance with plans prepared and sealed by a engineer registered in the State of Arizona.

Section 6. All driveways shall be paved with asphalt or concrete.

Section 7. All exterior lights must be located as not to be directed toward or reflect upon surrounding properties.

Section 8. Upon completion of construction of a Single-family Dwelling each Owner shall install an address and property identification sign and light standard which shall be of a uniform shape, size, color, lettering and design as designated by the Approving Agent in order that the Property be strictly uniform in appearance with respect thereto.

Section 9. All grass and other ground covers shall be kept within patio walls and shall be of a variety recognized to be pollen free.

Section 10. No Single-family Dwelling, garage, building, swimming pool, wall, coping, overhang, other structure or Improvement (excluding drainageways, driveways and private roads) shall be erected or placed less than fifty (50) feet from any property line of a Lot for a single-story Single-family Dwelling and not less than sixty (60) feet from a property line for a two-story or a one-story and a partial story Single-family Dwelling. Any wall or coping may not exceed six (6) feet in height. All enclosures for patios or for concealment purposes and all retaining walls shall be constructed of face brick, stucco frame, stucco mud adobe, burnt adobe or stucco masonry and all enclosures for patios or for concealment purposes and all retaining walls shall be constructed and finished to match the Single-family Dwelling in type of material, color and texture. No wooden, wire, chainlink or woven metal fences shall be permitted; provided, however, an Owner may erect and/or maintain a four-strand wire fence along any boundary of Owner's Lot which boundary is also a boundary of the Property. Any plantings used to form a hedge shall be subject to the same setback requirements and height limitations as apply to a wall or coping. In determining the height of such wall, coping or hedge, the average ground level shall be used.

Section 11. The Grantor and the Approving Agent shall not be liable in damages to anyone so submitting plans for approval, or to any Owner or owners of land subject to this Declaration by reason of mistake in judgment, negligence or non-feasance of itself, its agents or employees, arising out of or in connection with the approval, or disapproval, or failure to approve any such plans. Anyone submitting plans to the Grantor or the Approving Agent for approval, by the submitting of such plans, and any owner by acquiring title to any of the Property covered hereby, waives his claim for any such damages.

Section 12. The Grantor or the Approving Agent shall have the right to grant variances as to any of the provisions of this Declaration or to waive any such provisions as the Grantor or the Approving Agent in its sole discretion shall determine and neither the Grantor nor the Approving Agent shall have any liability to any Owner or otherwise in granting, or refusing to grant, any such variance or waiver. Any such variance or waiver so granted shall be in writing and shall be made prior to the time that the subject matter set forth in the written variance or waiver is acted upon or implemented unless otherwise expressly stated in such written variance or waiver. Any such variance or waiver so granted as to any particular subject matter shall not constitute a similar or dissimilar variance or waiver as to any other matter affecting the same Lot or any other Lot, it being deemed that any such variance or waiver so granted shall be limited solely to the variance or waiver set forth in writing by the Grantor or the Approving Agent.



Section 13. No fence, wall, hedge, or shrub planting which obstructs sight lines at elevations between three (3) and eight (8) feet above the roadways shall be placed or permitted to remain on any corner Lot within the triangular area formed by the street property lines and a line connecting them at points twenty-five (25) feet from the intersection of said street property lines, or if the property corners are rounded, from the intersection of the street property lines extended. No tree shall be permitted to remain within such distance of such intersections unless the foliage line is maintained at sufficient height to prevent obstruction of lines of visibility.

Section 14. No pavement cuts may be made on the private streets and roadways within the subdivision without prior written approval from the Approving Agent. All pavement cuts or damage to the subdivision streets or roadways must be repaired to the same standard as required by Pima County (or applicable successor governmental entity), as if such pavement cut or damage were done to a public right-of-way.

The Owner is also responsible for any damage to the subdivision streets or roadways and other land in or adjacent to the subdivision done by any contractor or sub-contractor during the course of construction of Improvements on the Owner's Lot.

If the damage is not adequately repaired, the Grantor or the Association may make such repairs and the cost of such repair shall be a lien on the Lot whose Owner is directly or indirectly responsible for such damage. Such lien shall also include all costs incurred in enforcing and collecting the lien.

Section 15. Adequate provisions or facilities shall be established by each Owner to contain all back-flushing, back-washing and similar drainage within each Lot in a manner such that the water disposal is not discharged onto the streets or roadways or other Lots. Such discharge shall not be allowed to erode the natural landscape of the Lot.

Section 16. Upon the completion of the construction of each Single-family Dwelling, the Owner thereof shall purchase from the Grantor the equipment necessary to operate the entry gates to the Property.

Section 17. At the time Final Plans are submitted to the Approving Agent, the Owner shall deposit the sum of \$2,0000.00 (the "Deposit") with the Approving Agent. The Deposit shall be held by the Approving Agent in a non-interest bearing account, and may be utilized or disbursed by the Approving Agent for:

(a) Repair of any damage caused directly or indirectly by the Owner to roads, vegetation, entry ways, entry facilities or

Improvements constructed or controlled by Grantor or otherwise for the general benefit of the Property;

(b) Completion of any construction, landscaping or revegetation on the Lot of the Owner which was not completed by the Owner in accordance with the approved plans;

(c) Expenses, including legal and consulting fees, incurred in the enforcement of the Declaration with respect to the Owner.

The Deposit, or the undisbursed portion thereof, shall be refunded to the Owner at such time as the Approving Agent has made a final inspection and approved the Improvements.

### ARTICLE III USE RESTRICTIONS

Section 1. Except for Improvements or alterations undertaken by the Grantor, the Property and every portion thereof shall be subject to the use restrictions more particularly set forth in this Article.

Section 2. No structures or Improvements whatsoever, except public utility facilities and common facilities built by Grantor, shall be erected, placed or permitted to remain on any portion of the Property which does not constitute a Lot. Nothing contained herein shall be construed to prevent Grantor from erecting, placing or maintaining signs, structures, and offices as may be deemed necessary for the operation or development of the subdivision.

Section 3. No Structure or Improvements shall be erected, altered, placed or permitted to remain on any Lot other than one Detached Single-family Dwelling for private use, together with other customary Improvements. A minimum two-car garage shall be constructed on every building site before the residence constructed thereon is occupied. All garages shall be maintained as such unless the Grantor approves its use for some other purpose, and Owner constructs a replacement garage contemporaneously with the conversion of the existing garage.

Section 4. The native growth on the Property, including cacti, mesquite and palo verde trees, shall not be destroyed or removed from any of the Lots by any of the Owners, except removal of native growth as may be necessary for permitted and approved Improvements. In the event that growth is removed or destroyed without the approval of the Grantor or the Approving Agent or which is not necessary for the construction of Improvements, Grantor may require the replanting or replacement of the same at the Owner's expense.

Section 5. No Lot or portion thereof shall be used in whole or in part for the storage or dumping of rubbish of any character

whatsoever, nor for the storage of any property or thing that will cause such Lot to appear in an unclean or untidy condition or that will be obnoxious to the eye, nor shall any substance, thing or materials be kept upon any Lot that will emit foul or obnoxious odors, or that will cause any noise that will or might unreasonably disturb the peace, quiet, comfort or serenity of the occupants of surrounding property.

Section 6. No billboards or advertising signs of any character shall be erected, placed, permitted or maintained on any Lot or in any building erected thereon, other than the address and property identification sign referred to in Article II, Section 8. Provided, however, that permission is hereby granted for the erection and maintenance of not more than one signboard on each Lot during the course of construction of a new Single-family Dwelling and upon its completion, during the course of its initial sale, which signboard shall not exceed five square feet. Such sign shall not include any name other than the contractor's name, address and phone number. Notwithstanding the above, the Grantor shall have the right to place any signs on Lots owned by the Grantor considered necessary by Grantor to market the Property by the Grantor.

Section 7. All trees and other vegetation planted on any of said Property shall be kept trimmed to a height which will not materially interfere with the principal views from neighboring Building Sites.

Section 8. No derrick or other structure designed for use in: (i) boring or drilling for oil, natural gas or water; (ii) radio or television transmission towers or radio or television receiving towers or satellite dishes; shall be erected, placed or permitted upon any part of said Property, nor shall any oil, natural gas, petroleum, asphaltum or hydrocarbon product or substance be produced or extracted therefrom. Provided, however, nothing contained herein shall prohibit Grantor from erecting antennae or towers in connection with the installation of a master antenna television system and/or centralized security/fire protection system.

Section 9. No elevated tanks of any kind shall be erected, placed or permitted upon any part of the Property. Any tanks for use in connection with any residence constructed on the Property, including tanks for the storage of gas and fuel oil, gasoline or oil, must be buried or walled in sufficiently to conceal them from the view from other Lots or streets or roadways. All clothes lines, equipment and mechanical equipment shall be walled in, and wood piles, storage piles and construction materials shall be concealed at all times, so that none may be viewed from any point beyond the Building Site on which they are located. If a trash collection service is available that collects from utility yards, trash or rubbish containers shall be concealed from view of

adjoining Lots at all times in a utility yard or garage. If trash, rubbish or garbage is collected from the street, then, in that event, containers may be placed at the street no sooner than 6:00 p.m. on the night prior to pick-up and shall be returned to the utility yard or garage no later than 8:00 p.m. on the evening of the pick-up.

Section 10. The Property and the whole thereof shall be used for Single-family Dwelling purposes only; no business or non-residential activity of any nature, whether conducted for profit or non-profit, nor any so-called home occupations shall be conducted thereon. Rental of any guest house is prohibited; the occupants thereof shall be limited to members of the Owner's family, guests or servants. This shall not be construed as preventing the leasing or renting of a Single-family Dwelling.

Section 11. The Property shall be subjected to any and all rights and privileges which the County of Pima, Arizona (or applicable successor governmental entity), may have acquired through dedication or the filing or recording of maps or plats of said Property, as authorized by law. No condition, restriction or privilege or act performed hereunder shall be in conflict with any Pima County (or applicable successor governmental entity) zoning law. Where the setback or building requirements set forth herein differ from Pima County (or applicable successor governmental entity) setback or building requirements, the more restrictive requirements shall prevail.

Section 12. No garage, building, structure or other Improvement shall be erected or permitted on any Building Site on said Property until the construction and completion of a Single-family Dwelling thereon, except a Single-family Dwelling and the necessary outbuildings, garages or other structures related thereto may be simultaneously constructed; provided, however, that nothing herein contained shall be construed to prevent the incorporation and construction of a garage in and as a part of such Single-family Dwelling.

Section 13. No temporary house, dwelling, garage, outbuilding or other Improvement, or house trailer, commercial vehicle or equipment, construction or like equipment, tent, or other structure shall be placed or erected upon any of said Property. Boats, campers, other trailers, recreational and similar vehicles or equipment shall not be placed upon any of said Property unless stored within an enclosed structure approved by Grantor or the Approving Agent. All vehicles except those of guests, including but not limited to passenger vehicles, pick-up trucks, off-road vehicles and carryalls, shall be placed within an approved enclosed structure. No Single-family Dwelling placed or erected on any Building site shall be occupied in any manner while in the course of construction, nor at any time prior to its being fully completed as herein required, nor shall any Single-family Dwelling when

completed be in any manner occupied until made to comply with the approved plans, and all other conditions and restrictions herein set forth. The work of constructing, altering or remodeling any Single-family Dwelling, garage, building or other Improvement on any part of said Property shall be prosecuted diligently from the commencement thereof until the completion thereof and, in any event, shall be completed not later than twelve (12) months after issuance of building permits . Any Single-family Dwelling, garage, building or other Improvement damaged by fire or other casualty shall be repaired, replaced or removed within six months from the time of such damage; provided, that the Grantor may extend such time when in Grantor's opinion conditions warrant same.

Section 14. No tennis court or other type of recreational court shall be constructed or permitted upon any part of said Property; however, the Approving Agent may waive this restriction when, in its sole judgment, such waiver would not be detrimental to any other Lot.

Section 15. No animals, birds or fowl of any kind other than the customary domesticated household pets belonging to the household of the Lot Owner or occupant shall be kept or maintained on any part of the Property subject to this Declaration. In no event, however, are more than two dogs and/or cats or other domesticated animals more than ten weeks old permitted. All dogs shall at all times be kept and maintained within walled areas except when accompanied by the owner. No horses, mules or donkeys shall be kept on the Property.

Section 16. No unlicensed motor driven vehicles including, but not limited to, motorcycles, motor driven bicycles, go-carts and the like shall be kept or operated on any part of the Property subject to these restrictions if such vehicle or the operation of such vehicle is disturbing to the Owner or Owners of any neighboring or nearby Property for whose benefit these restrictions are created. Grantor shall have the right to order the removal and/or cessation of operation of any such vehicle which is objectionable as provided by the preceding sentence. Upon receipt of a written order to remove and/or cease operation of such vehicle, the Owner of the Lot upon which such vehicle is located or being operated shall promptly comply with such order. Grantor shall have the right to order the removal from the Property of any licensed or unlicensed vehicle which causes a disturbance because of noise, odors or method of operation.

Section 17. If Grantor provides a master antenna television or cable system with related equipment and lines, all Owners shall be required to connect to the system and pay the pro rata operating, maintenance, repair and replacement cost thereof under provisions relating to assessments in Article V hereof. No individual television or radio antennae may be installed without the express approval of the Approving Agent.

Section 18. All Improvements shall be maintained in accordance with the original and subsequent plans submitted by Owner and approved by Grantor.

Section 19. Grantor will cause to be installed natural gas distribution facilities to serve each and every Lot within the subdivision. As a part of the agreement with the utility which will install the facilities, provision will be made to refund to Grantor a refundable advance that Grantor is required to deposit prior to installation of the facilities. Said refund is available to Grantor only in the event a Single-family Dwelling is connected to the gas main where gas is to be utilized for space heating and water heating requirements. Therefore, any Lot Owner who does not use gas in a manner to qualify Grantor for such refund shall pay to Grantor an amount equal to the refund that would have been available under the terms of the agreement with the utility. Said refund shall be due and payable at the time architectural approval of plans is requested and the Approving Agent shall not approve any plans for Improvements until such refund, if due from Owner, has been paid.

Section 20. No Lot, nor any portion of the Property, shall be used for or permitted for use by helicopters, hot\_air balloons, or superlight aircraft.

#### ARTICLE IV EASEMENTS

Section 1. Grantor hereby reserves a perpetual fifteen (15) foot easement running along the property line of each Lot which property line is adjacent to a private street or roadway as shown on the subdivision plat for the purpose of constructing, installing and maintaining landscaping, monuments, street signs and such other improvements as Grantor deems necessary or desirable, provided that nothing herein contained shall obligate Grantor to construct or maintain any such improvements in such easement areas.

#### ARTICLE V HOME OWNERS' ASSOCIATION

Section 1. Grantor has formed, under the laws of the State of Arizona, a non-profit, homeowner's corporation, referred to herein as the Association. Grantor will convey the private streets and roadways located within the subdivision to the Association. Grantor may at Grantor's sole option at anytime hereafter convey or otherwise transfer to the Association all or any part of the Property described in this Declaration and any Improvements situated thereon, and/or assign or otherwise transfer to the Association all or any number of the rights, powers and duties retained by Grantor under this Declaration. Upon such assignment or other transfer, it shall be the responsibility of the Association to exercise said rights and powers and perform said duties to further the purposes for which the Association is

organized. In addition, the Association shall accept the responsibilities set forth in the dedication of the Plat of the Property.

Section 2. Said Association was formed for the general purpose of providing for maintenance, preservation and architectural control of the Property of the Owners and the Association, and promoting the health, safety and welfare of the Owners, and shall be responsible for the:

(a) exercise and performance of the rights, powers, and duties assigned to it by Grantor and granted to it by the Articles of Incorporation of the Association;

(b) maintenance, repair and replacement of all private streets and roadways located within the Property;

(c) operation, maintenance (including landscaping where appropriate), repair and replacement of all entry gates, street signs, monuments, fences and walls and all other improvements, whether constructed by Grantor or the Association, located in or on the road rights-of-way, the easements provided for in the Article IV or on other portions of the Property conveyed to the Association;

(d) operation, maintenance, repair and replacement of a master antenna or cable television system (if any) and/or centralized security/fire protection system (if any) installed on the Property;

(e) acquisition of appropriate amounts and coverage of casualty insurance on property owned or operated by the Association and on structures placed in or on road rights-of-way or the easements provided for in Article IV;

(f) acquisition of such liability insurance as the Association deems necessary to protect the members and the Board of Directors of the Association from any liability from occurrences or happenings on or about those portions of the Property maintained by the Association (including, but not limited to, errors and omissions insurance for the Board of Directors of the Association);

(g) payment for all utilities and all real estate taxes and assessments on property owned or operated by the Association;

(h) hiring, firing, supervising and paying necessary employees and personnel, including but not limited to security guards, workmen, landscapers, attorneys, accountants, architects and contractors to carry out the obligations set forth herein;

(i) assessment and collection of the funds required to accomplish the objectives and perform the duties and obligations of the Association set forth herein;

(j) granting of deeds and/or easements on, over, across or under Common Areas, private streets and roadways and those easements depicted on the Plat or reserved or granted pursuant to Article IV to such persons or entities, public agencies, public authorities and/or public or private utilities for such purposes as Grantor shall deem necessary or prudent.

In carrying out the foregoing, the Association shall have the right and power to adopt reasonable rules and regulations.

Section 3. Each Owner as defined by this Declaration shall automatically become a member of the Association; provided, however, that the Board of Directors of the Association may establish reasonable additional requirements for maintaining such membership. Each Owner shall have the following voting rights:

(a) Each Owner (except the Owner of Lot 63) shall have Class A voting rights and be a Class A member and, as a result, shall have one vote for each Lot owned. Where "Owner" as defined by this Declaration includes more than one person or entity ("Multiple Owners"), such Multiple Owners shall be deemed one member. The Association Board of Directors may require that Multiple Owners provide the Association with a written statement, signed by a majority of such Multiple Owners, designating the person who shall have the right to cast any vote. Further, Grantor shall have no Class A voting rights until the occurrence of the event described in paragraph (b) below. Further, the Owner of Lot 63 shall have no voting rights.

(b) Grantor shall have Class B voting rights and be the Class B member as provided in this paragraph. The Class B member shall be entitled to three (3) votes for each Lot in which it holds a fee interest. The Class B membership shall cease and be converted to Class A membership at such time as the total Class A votes equal or exceed the total Class B votes. On and after such date, Grantor shall have Class A, and only Class A, voting rights.

(c) At any election of the Board of Directors, every Owner entitled to vote (including Grantor) may cumulate his votes and give any one or more candidates a number of votes equal to the number of votes such Owner may have multiplied by the number of Directors to be elected.

Section 4. The Owner of every Lot (except the Owner of Lot 63) within the Property bound by this Declaration covenants and agrees to pay to the Association within twenty (20) days from receipt of an invoice, a sum equal to the total of the following (hereinafter called "assessment"):

(a) the pro rata share of the actual costs and expenses to the Association of performing the responsibilities, duties and obligations set forth in Sections 1 and 2 of this Article V;

(b) the pro rata share of the estimated future costs and expenses to the Association of performing the responsibilities, duties and obligations set forth in Sections 1 and 2 of this Article V which the Association determines shall be necessary to collect in advance and which are not covered by funds theretofore collected and reserved for such purposes;

(c) the proration of the total of such costs and expenses shall be made on the basis that each Lot will bear an equal share of such charges;

(d) invoices for payment of any and all assessments may be submitted monthly or at any other interval as may be fixed by the Association.

The Owner of Lot 63 shall not be obligated to pay any amounts to the Association.



Section 5. Each Lot Owner's share of all assessments, together with interest on each unpaid installment thereof at the rate of twelve percent (12%) per annum and the Association's costs and reasonable attorney's fees, shall be the personal obligation of the Owner (provided that an Owner shall have no personal liability for assessments becoming due before or after his ownership of a Lot) and, regardless of an Owner's personal liability therefor, shall be a continuing lien on each respective Lot until paid.

Section 6. The Association shall have the right to maintain an action at law against any Owner personally liable for payment of an assessment and/or (regardless of an Owner's personal liability therefor) to foreclose its lien in the manner provided for foreclosure of mortgages. No Owner shall have the right to except himself or his property from liability for any assessments by abandonment or non-use of his Lot or any portions of the Property maintained by the Association. In an action by the Association to collect any assessments or to enforce any of the provisions of this Declaration an Owner's dissatisfaction with the management and operation of the Property by the Association shall not constitute a defense to the Association's claim.

Section 7. The lien for such assessments shall be subordinate to the lien of any mortgage or deed of trust made in good faith for value covering the same Property or a portion of the same Property against which said assessment or assessments are made, which mortgage or deed of trust is recorded prior to recordation of the claim for such assessments, but the lien of such assessments shall be binding and effective against any party who owns any such property during the period for which such an assessment is made even though the title of such party is acquired through foreclosure, forfeiture, trustee's sale or otherwise.

Section 9. No member of the Board of Directors of the Association or any committee of the Association, no officer and no manager or employee of the Association shall be personally liable to any Member or to any other person, or to the Association, for any damage or loss suffered or claimed on account of any act, omission, error or negligence of the Association, Board of Directors (or any Director), committee (or member thereof), manager, representative or employee of the Association; provided, however, the limitations set forth in this Section shall not apply to any person who has failed to act in good faith or has engaged in willful or intentional misconduct or any other acts set forth in A.R.S. §10-1029A(8), as amended, or the successor thereto.

#### ARTICLE VI ENFORCEMENT AND AMENDMENT

Section 1. The covenants, conditions, and restrictions shall be covenants running with the land and the breach of any thereof or the continuance of any such breach may be enjoined or remedied by

appropriate proceedings at law or in equity by the Grantor or by any Owner of any Property for whose benefit these restrictions have been established, but by no other person.

Section 2. An Owner of any Lot who permits the breach of any of these covenants, conditions and restrictions by persons over whom he or she exercises either direct or indirect control shall be given written notice, by first class mail sent to his last known address or by personal service, to remedy said breach within ten (10) days from mailing. If such breach is not remedied as provided: (i) a Notice of Violation of Covenants may be recorded in the office of the Pima County Recorder which shall be removed subsequent to compliance; (ii) or the appropriate legal action may be taken. The Notice of Violation, if recorded, may constitute an exception to the title to the Property which may affect an Owner's ability to convey marketable title to said Property. Nothing in this paragraph shall be construed to limit any other remedy available in law or equity for breach of these covenants.

Section 3. Anything in this Declaration to the contrary notwithstanding, Grantor, or its successors or assigns, shall have the right from time to time to amend (amend shall include without limitation, to cancel, terminate, modify, delete or to make additions to) or to make any changes in, this Declaration which the Grantor, or its successors or assigns may deem beneficial in its sole discretion. Any such amendment shall be made by an instrument executed by the Grantor, or its successors or assigns, with like formalities as this Declaration specifically stating the portion of this Declaration being amended or changed. This right shall continue as long as the Grantor, its successors or assigns own fifteen (15) Lots or more. Thereafter, this Declaration may be amended upon the affirmative vote for such an amendment of seventy-five (75%) percent of the votes eligible to be cast at a meeting called for such purpose. Any amendment so made shall specifically state: (a) the portions of this Declaration being amended; (b) the amendment thereto; and (c) that all Owners entitled to vote on the amendment have been given not less than ten (10) days' written notice of the proposed amendment before the vote thereon. Any amendment by the last said procedure shall be executed with the same formalities as this Declaration and shall be executed by the Owners of Lots holding not less than seventy-five (75%) percent of the votes eligible to be cast. The term "successors or assigns" of the Grantor as used in this Declaration shall not be deemed to mean individual Owners who have purchased Lots from the Grantor or those whose predecessors in interest have purchased undeveloped Lots from the Grantor.

#### ARTICLE VII TERMINATION OF DECLARATION

Section 1. All of the covenants, conditions and restrictions contained herein shall continue and remain in full force and effect at all times as against the Owner of any portion of said Property,

however his title thereto may be acquired, until the commencement of the calendar year 2023, and shall be automatically continued thereafter for successive periods of ten (10) years each; provided, the Owners of a majority of the Lots subject to these restrictions may, by executing and acknowledging an appropriate agreement or agreements in writing for such purpose and recording the same at any time at least one year prior to January 1, 2023, release all of the Property so restricted from said restrictions or may release any of the Property subject to these restrictions from these restrictions, said release to be effective January 1, 2023. During each successive ten-year period after January 1, 2023, a majority of the Owners shall have the same power to release said restrictions as to any Property then covered by said restrictions by executing, acknowledging and recording an appropriate agreement or agreements at least one year prior to expiration of said ten-year period, said release to be effective at expiration of said ten-year period.

#### ARTICLE VIII MISCELLANEOUS

Section 1. The breach of any of the foregoing covenants, conditions and restrictions shall not affect or render invalid the lien of any mortgage or deed of trust made in good faith for value as to any Lot or Lots or portions of Lots in said Property, but said covenants, conditions and restrictions shall be binding upon and effective against any party acquiring title to any such Property, whose title thereto or whose grantor's title is or was acquired by foreclosure, trustee's sale or otherwise.

Section 2. In the event Grantor incurs attorney's fees for any reason, court costs or other expenses in enforcing Grantor's rights under this Declaration, said costs and expenses shall be paid by the Owner, trustee or Owner of an interest in any of the Property hereinabove described committing or permitting the breach giving rise to such costs and expenses, and the Grantor shall have a lien upon such Lot or Lots to secure payment of all such amounts.

Section 3. No delay or omission on the part of the Grantor or the Owner of other Lots in said Property in exercising any right, power or remedy herein provided shall be construed as a waiver thereof or acquiescence in any breach hereof; and no right of action shall accrue nor shall any action be brought or maintained by anyone on account of any breach hereof or for imposing restrictions herein which may be unenforceable.

Section 4. Any or all of the covenants, conditions and restrictions herein are subject to waiver by the Grantor and any such waiver may apply at the option of the Grantor to less than all of the Lots without waiver of such covenants, conditions and restrictions as to any other Lot or Lots.

Section 5. Whenever in this Declaration the approval or

Section 6. In the event that any one or more of the covenants, conditions and restrictions herein set forth and contained or any changes made therein shall be declared for any reason, by any court of competent jurisdiction, to be null and void, such judgment or decree shall not in any manner whatsoever affect, modify, change, abrogate or nullify any of said covenants, conditions and restrictions not so expressly held to be void, but all the remaining covenants, conditions and restrictions not so declared to be void shall continue unimpaired and in full force and effect.

CHICAGO TRUST COMPANY, an Arizona corporation, as Trustee under Trust 12061 as Trustee only, and not in its corporate capacity

By: [Signature]  
its: Vice President/District Manager

STATE OF ARIZONA )  
 ) ss  
COUNTY OF PIMA )

This instrument was acknowledged before me this 9th day of April, 1993, by Bruce R. House, Vice President & Trust Officer, Chicago Trust Company, an Arizona corporation, as Trustee under Trust No. 565, as Trustee only, and not in its corporate capacity.

Janice M. Fischer  
Notary Public

