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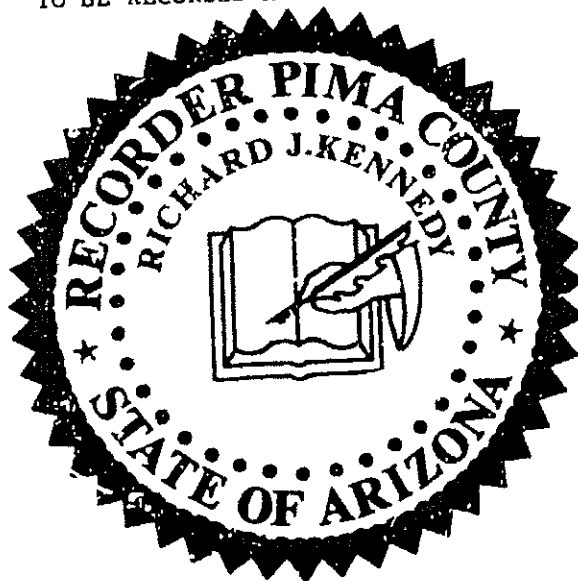
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TRACT DECLARATION OF
COVENANTS, CONDITIONS, RESTRICTIONS AND EASEMENTS
FOR
FAIRWAY VILLAGE

DATED: 6-3-88
Tucson, Pima County, Arizona

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TRACT DECLARATION OF
COVENANTS, CONDITIONS, RESTRICTIONS AND EASEMENTS
FOR
FAIRWAY VILLAGE

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TRACT DECLARATION OF
COVENANTS, CONDITIONS, RESTRICTIONS AND EASEMENTS
FOR
FAIRWAY VILLAGE

THIS DECLARATION made this 24 day of MAY, 198~~7~~⁸, by EXECUTIVE
TITLE COMPANY, an Arizona corporation, as Trustee under Trust No. ~~18,698~~^{10,699}, hereinafter
referred to as "Declarant".

WITNESSETH:

WHEREAS, Declarant is the Owner of certain real property in the County of Pima, State of
Arizona, which is more particularly described as:

Lots 1 - 64 and Common Areas 13 A and 13 B of Fairway Village,
a subdivision in Pima County, Arizona, as recorded in Book 42
of Maps and Plans at Page 22 thereof, in the office of the Pima
County Recorder, Pima County, Arizona

which real property shall hereinafter be referred to as the "Properties".

WHEREAS, Declarant proposes to construct improvements upon the Properties and upon
the Common Area, as defined herein, and to sell and convey the same, subject to the covenants,
restrictions, uses, limitations, obligations, easements, equitable servitudes, charges and liens
hereinafter set forth, each of which is for the benefit of the Properties and the subsequent owner
thereof.

NOW, THEREFORE, Declarant hereby declares that the Properties are and shall be held,
conveyed, encumbered, leased and used subject to the following covenants, conditions,
restrictions, uses, limitations, obligations, easements, equitable servitudes, charges and liens, all of

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which are for the purpose of enhancing and protecting the value, desirability and attractiveness of the Properties. The covenants, conditions, restrictions, uses, limitations, obligations, easements and equitable servitudes, charges and liens, set forth herein shall run with the Properties, shall be binding upon all persons having or acquiring any interest therein, and shall inure to the benefit of, be binding upon and enforceable by all Owners, Declarant, the Association and their successors in interest.

No provision contained herein shall be construed to prevent or limit Developer's right to complete development of the Properties and construction of improvements thereon, nor Developer's right to maintain model homes, construction, sales or leasing offices, nearby parking areas or similar facilities on the Properties, nor Developer's right to post signs incidental to construction, sales or leasing, nor Developer's right to do anything that is reasonably necessary and proper for the full development of the Properties.

ARTICLE I

DEFINITIONS

Unless the context otherwise specifies or requires, the following words and phrases when used herein shall have the meanings hereinafter assigned.

Section 1.01 "Articles" shall mean the Articles of Incorporation of the Association and amendments thereto which are or shall be filed in the Office of the Arizona Corporation Commission.

Section 1.01 "Association" shall mean and refer to Fairway Village Homeowners Association, its successors and assigns.

Section 1.03 "Board" shall mean the Board of Directors of the Association.

Section 1.04 "By-Laws" shall mean the By-Laws of the Association, together with any amendments thereto.

Section 1.05 "Common Area" or "Common Areas" shall mean all real property and improvements thereon designated as Common Area (C.A.) 13 A and Common Area (C.A.) 13B on the Plat as defined herein, whether improved or unimproved, owned by the Association for the common use and enjoyment of the Owners.

Section 1.06 "Declarant" means EXECUTIVE TITLE COMPANY, an Arizona corporation, as Trustee under Trust No. 10,683, and its successors or assigns who have been designated in writing by Declarant as the successor to all or a portion of Declarant's rights hereunder and who own one or more Lots in the Properties.

Section 1.07 "Declaration" shall mean and refer to this instrument and any amendment thereto or restatement thereof. This Declaration constitutes a "Tract Declaration" as defined in the Master Declaration.

Section 1.08 "Developer" shall mean Fairway Village Corporation, an Arizona corporation, its successors or assigns.

Section 1.09 "Dwelling Unit" or "Unit" shall mean any improvements placed within the confines of any Lot.

Section 1.10 "Eligible Mortgage Holder" shall mean a holder of a First Mortgage on a Lot who has in writing requested notice of certain action in accordance with Article X hereof.

Section 1.11 "First Mortgage" shall mean the holder of any Mortgage under which the interest of any Owner of a Lot is encumbered and which mortgage has first and paramount priority (referred to herein as a First Mortgage), subject only to the lien of general or ad valorem taxes and assessments and such other matters as are recognized in such First mortgage as permitted exceptions.

Section 1.12 "Lot" shall mean and refer to any numbered parcel of real property from within the Properties shown on the Plat, together with the Dwelling Unit, if any, thereon.

Section 1.13 "Master Association" shall mean and refer to Canada Hills Community Association, an Arizona nonprofit corporation, created pursuant to the Master Declaration, its successors and assigns.

Section 1.14 "Master Declaration" shall mean the Declaration of Covenants, Conditions, and Restrictions for Canada Hills, recorded in Book 8092 at Page 888 in the office of the County Recorder, Pima County, Arizona.

Section 1.15 "Member" shall mean and refer to every person and/or entity who holds membership in the Association.

Section 1.16 "Mortgage" shall mean any mortgage, deed of trust or other security instrument

by which a Lot or any part thereof is encumbered.

Section 1.17 "Owner(s)" or "Homeowner(s)" shall mean and refer to (1) the record Owner, whether one or more persons or entities, of equitable or beneficial title in fee simple (or legal title if same has merged) of any Lot, or (2) the purchaser of a Lot under a recorded executory contract for the sale of real property as set forth in Arizona Revised Statutes Section 33-702 et seq. The foregoing does not include persons or entities who hold an interest in any Lot merely as security for the performance of an obligation, or a lessee or tenant of an Owner as defined above, or a purchaser or vendee under any executory contract of sale which has not been fully consummated with a deed to the purchaser recorded in the office of the County Recorder of Pima County, Arizona.

Section 1.18 "Person" shall mean a natural individual, corporation or other entity with the legal right to hold title to real property.

Section 1.19 "Plat" shall mean the plat of the real estate subject to the Declaration and recorded in Book _____ of Maps and Plats at Page _____, in the office of the County Recorder of Pima County, Arizona, and any amendment thereto or resubdivision thereof.

Section 1.20 "Properties" shall mean and refer to Lots 1 through 64, and Common Areas 13A and 13B.

Section 1.21 "Rules" shall mean the rules adopted by the Board pursuant to the By-Laws.

ARTICLE II

ASSOCIATION

Section 2.01 Membership in the Association.

A. Membership. Each Owner (including Declarant) of a Lot, by virtue of being an Owner, shall automatically be a Member of the Association. Membership in the Association shall be appurtenant to each Lot owned and shall not be transferred, pledged, or alienated in any way, except upon the transfer of ownership to a Lot, and then only to the transferee thereof. Any transfer of ownership of a Lot shall operate automatically to transfer said membership to the new Owner thereof. Any attempted transfer of membership separate from the appurtenant Lot or Lots shall be void.

Section 2.02 Voting Rights and Classes of Membership. The Association shall have two classes of voting membership.

Class A: Class A Members shall be all Owners, and each such Owner shall be entitled to one vote for each Lot owned. When more than one person holds an interest in any Lot, all such persons shall be Members. The vote for such Lot shall be exercised as the Owners may determine, but in no event shall more than one (1) vote be cast with respect to any Lot owned by a Class A Member.

Class B: The Class B Member shall be Declarant, who shall be entitled to three (3) votes for each Lot owned. The Class B membership shall cease and converted to Class A membership on the happening of either of one of the following events, whichever occurs earlier:

- (a) When the total votes outstanding in the Class A membership equal the total votes outstanding the Class B membership, or
- (b) Three years following the conveyance of the first Lot to an Owner, other than the Declarant.

Any Mortgagee who acquires title to a Lot pursuant to a judgement of foreclosure or a trustee's sale shall automatically become entitled to exercise all voting rights which the Owner of said Lot would otherwise have had.

If any lender to whom Declarant has assigned, or hereafter assigns, as security all or substantially all of its rights under this Declaration should succeed to the interest of the Declarant by virtue of said assignment, the absolute voting rights of the Declarant as provided herein shall not be terminated thereby, and such lender, or successor to such lender by assignment of foreclosure or acceptance of a deed in like therof, shall hold Declarant's membership and voting rights on the same terms as they were held by Declarant.

Section 2.03 Purpose of Association. The Association is a non-profit corporation which will serve as the governing body for all Owners and Members for the protection, improvement, alteration, maintenance, repair, replacement, administration and operation of the Common Area, the assessment of expenses, payment of losses, disposition of casualty insurance proceeds, and other matters as provided in this Declaration, the Articles, the By-Laws, and the Rules. The Association shall not be deemed to be conducting a business of any kind. All funds received by the Association

shall be held and applied by it for the Owners and Members in accordance with the provisions of this Declaration, the Articles and the By-Laws.

Section 2.04 Rights and Responsibilities of Association. The Association, through the Board of Directors, unless specifically provided otherwise, shall have the right of enforcement of all of the provisions hereof. The Association shall be responsible for the proper and efficient management and operation of the Common Area, including:

- (a) maintaining, operating, and rebuilding improvements thereon;
- (b) maintaining and landscaping property owned or controlled by the Association, including private roads, paths and easement rights, if any;
- (c) operating, maintaining, rebuilding and insuring improvements originally constructed by Declarant or Developer or later constructed by the Association on or about the Common Area;
- (d) paying real estate taxes, assessments and other charges on the Common Area;
- (e) insuring all improvements which the Association is obligated to maintain against damage by casualty with such companies and in such limits as provided herein and as the Association deems appropriate;
- (f) hiring, firing, supervising and paying employees and independent contractors including, but limited to, workmen, landscapers, attorneys, accountants, architects, and contractors to carry out the obligations set forth herein;
- (g) maintaining such liability insurance as the Association deems necessary to protect the Members and the Board of Directors of the Association from any liability caused by occurrences or happening on or about the Common Area;
- (h) maintaining workmen's compensation insurance for the employees of the Association;
- (i) purchasing all goods, supplies, labor and services reasonably necessary for the performance of the obligations set forth herein;
- (j) establishing and maintaining such adequate cash reserves as the Association may, in its sole and absolute discretion, deem reasonably necessary for the periodic maintenance, repair and replacement of the improvements which it is

- responsible to maintain;
- (k) providing for and payment of all utility services for the Common Area;
 - (l) entering into such agreements and taking such actions as are reasonably necessary and convenient for the accomplishment of the obligations set forth above and the operation and maintenance of the Properties as a first-class, multi-use development;
 - (m) granting licenses, easements and other agreements for the use of Common Area;
 - (n) maintaining any personal property owned by the Association; and
 - (o) such other matters as are provided for in this Declaration, the Articles of Incorporation, and the By-Laws.

Section 2.05 Articles and By-Laws. The manner in which the Association holds meetings and attends to other corporate formalities shall be controlled by the provisions of the By-Laws, the Articles and this Declaration, which Declaration shall control in the event of conflict. The Board of Directors of the Association shall be elected by majority vote of the total votes cast by both classes of the membership at a meeting attended by a quorum as called for by the By-Laws.

Section 2.06 Transition to Board. Prior to the time that the operations of the Association are turned over to the Members by the Declarant, the Members shall be required by February 15 of each year to report and submit to the Association, in writing, any claims or disputes with regard to the operations of the Association by the Developer or Declarant, during the immediately preceding calendar year, including the maintenance of any streets, roads, sidewalks, street signs, walls, fences, landscape or other improvements originally constructed by Developer or Declarant or the collection of assessments, maintenance and reserve accounts and other matters falling within the realm of responsibility of the Association.

When the operation of the Association are turned over to the Members by the Declarant, the Declarant shall deliver all corporate books and accounting records to the Members at the Association's offices. Upon receipt of the corporate books, accounting records and written notice of Declarant's intent to turn over the operations of the Association, the Members shall notify Declarant in writing within forty-five (45) days of any claims or disputes with regard to the

operations of the Association by the Declarant which have arisen subsequent to December 31 of the preceding year, including the maintenance of any streets, roads, sidewalks, street signs, walls, fences, landscape or any other improvements, to the extent applicable, originally constructed by Developer of Declarant or the collection of assessments, maintenance of reserve accounts and other matters falling within the realm of responsibility of the Association.

In the event that such claim or disputes are not presented in writing to the Declarant within the time periods set forth above, such claims and disputes shall be deemed forever waived, relinquished and abandoned.

Any valid and timely written claims or disputes presented to the Declarant shall be resolved promptly between the Members and Declarant.

Section 2.07 Authority of Board. The Board shall be empowered to adopt, amend or repeal such rules and regulations as it deems reasonable and appropriate (collectively the "Rules"), which shall be binding upon all persons subject to this Declaration and shall govern the use and/or occupancy of the Properties. The Rules may also include the establishment of a system of fines and penalties. The Rules shall govern such matters as the Board deems to be in furtherance of the purposes of the Association, including, without limitation, the use of the Common Area. The Rules may be amended at any special or regular meeting of the Board.

The Rules are deemed incorporated herein by this reference and shall have the same force and effect as if they were set forth in and were part of this Declaration and shall be binding upon all persons having any interest in, or making any use of, any part of the Properties, whether or not copies of the Rules are actually received by such persons. The Rules, as adopted, amended or repealed, shall be available for review at the principal office of the Association to each person reasonably entitled thereto. It shall be the responsibility of each person subject to the Rules to review and keep abreast of any changes in the provisions thereof. In the event of any conflict between any provision of the Rules and any provision of this Declaration, or the Articles or By-Laws, the provision of the Rules shall be deemed to be superseded by the provisions of this Declaration, the Articles or By-Laws to the extent of any such conflict.

Section 2.08 Non-Liability of Officials and Indemnification. To the fullest extent permitted by law, neither Declarant, the Board, nor any committees of the Association nor any member

thereof, nor any officers, directors or employees of the Declarant or of the Association, shall be liable to any Owner or to the Association or any other person for any damage, loss or prejudice suffered or claimed on account of any decision, course of action, act, inaction, omission, error, negligence or the like made in good faith and which Declarant, the Board or such committees or officers reasonably believed to be within the scope of their respective duties.

To the fullest extent permitted by law, Declarant and every director, officer or committee member of the Association and of the Declarant (to the extent a claim may be brought by reason of Declarant's appointment, removal or control over members of the Board or its control over the Association or any committee thereof) shall be indemnified by the Association. Every other person serving as an employee or direct agent of the Association, or otherwise acting on behalf of, and at the request of the Association, may in the discretion of the Board, be indemnified by the Association.

Any such indemnification shall be limited to all expenses and liabilities, including attorney's fees, reasonably incurred by or imposed upon such person in connection with any proceeding to which he may be a party or in which he may become involved, by reason of his being or having served in such capacity on behalf of the Association (or in the case of Declarant by reason of having appointed, removed, controlled or failed to control members of the Board, or controlled or failed to control the Association), or incurred in any settlement thereof, whether or not he is a director, officer or member of a committee or serving in such other specified capacity at the time such expenses are incurred.

Section 2.09 Managing Agent. All powers, duties and rights of the Association or the Board, as provided by law and herein, may be delegated to a managing agent under a management agreement; provided, however, that no such delegation shall relieve the Association of its obligation to perform any such delegated duty. Any agreement for professional management shall not exceed a term of one year, which term may be renewed by agreement of the parties for successive one-year periods. Any such agreement shall provide for termination by either party with or without cause and without payment of a termination fee upon 90 days written notice; provided, however, that the Association may terminate the agreement for cause upon 30 days written notice. The Association is expressly authorized to contract with Declarant, or an affiliate of Declarant, to provide

management services or to perform other duties of the Association or the Board; provided, however, that the compensation paid to professional managers performing similar services is in accordance with the standards of the industry.

Section 2.10 Disputes. In the event of any dispute or disagreement between any Owners or any other persons subject to this Declaration relating to the Properties or any question of interpretation or application of the provisions of this Declaration, the Articles, By-Laws or Rules, this Declaration shall control. If the subject is not governed by this Declaration, a determination thereof by the Board shall be final and binding on each and all of such persons, subject to the right of any party to seek declaratory relief. The Board may, at its election, delegate the resolution of such dispute or disagreement to a committee appointed by the Board.

Section 2.11 Records and Accounting. The Association shall keep, or cause to be kept, true and correct books and records of account at the sole cost and expense of the Association in accordance with generally accepted accounting principles. Such books and records, together with current copies of this Declaration, the Articles, By-Laws and Rules shall be available for inspection by all Owners and First Mortgagees of record at reasonable times during regular business hours, and shall specify in reasonable detail all expenses incurred and funds accumulated. Such records, books, and account shall be kept for a period of at least two (2) years after preparation.

ARTICLE III

OWNER MAINTENANCE

Section 3.01 Exterior Maintenance, Repair, Up-Keep and Repainting.

A. Maintenance, repair upkeep and repainting of Dwelling Units, including all other improvements on a Lot, shall be the sole responsibility of each Owner. Each Owner shall also maintain, repair and repaint (if applicable), the interior and exterior sides of the perimeter yard walls of fences appurtenant to his Lot, except that if such a wall or fence is a common wall or fence, and Owner shall be required to repair and repaint only that portion of the wall or fence exclusively used by that Owner. Further, each Owner shall be responsible for sewer blockage, repair, etc. of all Dwelling Unit plumbing as well as the house connection line from the Dwelling Unit to its connection point in the main collection sewer line in the street. Such maintenance repair and repainting of a Dwelling Unit and other improvements on a Lot shall be undertaken in a manner and

with such frequency as shall keep each Owner's Lot in an attractive, well-kept and maintained condition in conformity with all other Lots. In the event any Owner fails to fulfill his or her obligation under this Section, the Association, after approval of two-thirds (2/3) vote of the Board of Directors, shall have the right through its agent and employees, to enter upon the subject property, and to repair, maintain and restore the Lot, including the perimeter yard walls, or fences and any other improvements. The cost of such exterior maintenance shall be added to and become part of the assessment to which such Lot is subject. The Board shall have the right to determine whether or not a Lot is in need of maintenance, repair and upkeep in order to conform to the standards of the general neighborhood of the Properties and the Board shall use a reasonably high standard to determine whether such maintenance, repair and upkeep is required so that the Lots as a whole will reflect a high pride of ownership. Each Owner or his authorized agent or the Association, as the case may be, in order to conduct such maintenance, repair or repainting, shall have the right of entry at reasonable times upon Lots adjacent to such Owner's Lot, provided reasonable notice of such entry is first given by such Owner to the Owner of the involved adjacent Lot.

B. The Association shall be responsible for maintenance, repair and upkeep of any Common Area improvements including, but not limited to, non-public streets, curb line sidewalks and Common Area sidewalks, recreation facilities, landscaping, common trash/garbage collection areas, and parking areas, if any, constructed on the Common Areas. In addition, the Association shall be responsible for maintaining and repainting perimeter wall or fences constructed along the boundaries of the Property, that are not appurtenant to a Lot.

C. Each Owner shall be responsible for the maintenance and repair, including replacement of light bulbs, of all exterior lighting fixtures located within the Owner's Dwelling Unit, or in the Common Area, provided such lighting in the Common Area is metered to the Owner's Dwelling Unit.

ARTICLE IV

INSURANCE

Section 4.01 Insurance Requirements. The Association shall purchase and maintain at all times the following types of insurance:

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

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

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

B. Insurance of Common Area. Fire and other hazard insurance covering improvements constructed on the Common Area, including but not limited to, ramadas or recreational buildings. Such policy or policies shall consist, at a minimum, of a multi-peril type policy covering the subject improvements, providing, as a minimum, fire and extended coverage and all other coverage in the kinds and amounts commonly required by private institutional mortgage lender in Tucson, Arizona.

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

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

- (1) the maximum coverage available under the National Flood Insurance Program for all buildings and other insurable property located within a designated flood hazard area; or
- (2) one hundred percent (100%) of current replacement cost of all buildings and other insurable property located within a designated flood hazard area.

C. Workmen's Compensation Insurance: Workmen's Compensation insurance to the extent necessary to comply with any applicable laws.

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

Section 4.02 Waiver of Subrogation; Claims Against Declarant, etc. Every policy of insurance obtained by the Association shall contain an express waiver, if available, of any and all rights of subrogation against Declarant, Developer, the Board and such other person or entities affiliated with the Association such as a manager and its representatives, members and employees and a provision, if applicable, preventing any cancellation or modification thereof, except upon at least thirty (30) days' written notice to the insured and First Mortgagees servicing Mortgages with the Federal National Mortgage Association.

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

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

Section 4.03 Insurance Premiums. Premiums for insurance purchased or obtained by the Association shall be a common expense payable through assessments of Lots and all such insurance coverage obtained by the Board shall be written in the name of the Association.

Section 4.04 Additional Optional Insurance by Owner. In addition to the aforesaid insurance required to be carried by the Association, each Owner shall, at his own expense, carry any other insurance deemed advisable; however, if available, said policy or policies shall provide that there shall be no contribution or offset between policies of the Association and policies an individual Owner may have in effect.

The Association shall have no duty whatsoever to insure, protect or maintain real or personal property located upon any Lot.

It shall be the individual responsibility of each Owner, at his own expense, to provide Owner's liability and property damage insurance, theft and other insurance covering personal and real property of the Owner.

Section 4.05 Destruction/Insurance Proceeds. In the event of substantial damage or destruction of any part of the Common Area, and First Mortgagee of a Lot will be entitled to timely written notice of any such damage or destruction and no Owner of a Lot or other party shall have priority over such First Mortgagee with respect to the distribution of any insurance proceeds.

Section 4.06 Condemnation Destruction.

A. Condemnation.

1. Taking. The term "taking", as used in the Section shall mean either (a) condemnation by eminent domain or (b) sale under threat of condemnation.

2. Authority of Board. In the event of a threatened taking of all or any portion of the Common Area, the Members hereby appoint the Board of the Association and such persons as the Board or the Association may designate to represent all of the Owners in connection with the taking. The Board shall act in its sole discretion with respect to any awards being made in connection with the taking and shall be entitled to make a voluntary sale to the condemnor in lieu of engaging in a condemnation action.

3. Partial Taking. In the event of a taking of less than all of the Common Area, the rules as to restoration and replacement of the Common Area and the improvement thereon shall apply as in the case of destruction of improvements upon the Common Area.

4. Distribution of Proceeds. Any awards received on account of the taking shall be paid to the Association and to mortgagees of record, as their interest may appear. In the event of a total taking, the Board may retain any award in the general funds of the Association, and any distribution of the award shall be on a reasonable and equitable basis. Notwithstanding anything to the contrary in this Section, the distribution of any award or awards for a taking of all or any portion of the Common Area shall be subject to the prior rights of mortgagees.

B. Destruction.

1. Duty of Association. In the event of a partial or total destruction of the Common Area or improvements thereon, except as otherwise provided herein, it shall be the duty of the Association to restore and repair the same to its former condition as promptly as is practicable and in a workmanlike manner. The proceeds of any insurance maintained pursuant hereto shall be used for such purpose, subject to the prior rights of mortgagees whose interest may be protected by said policies.

2. Destruction; Proceeds Exceed 80% of Reconstruction Costs. If the amount available from the proceeds of such insurance policies for such restoration and repair is at least eighty percent (80%) of the estimated costs of restoration and repair, a special assessment for

reconstruction with each Owner contributing a like sum for each Lot owned, may be levied by the Association to provide the necessary funds for such reconstruction and repair, over and above the amount of any insurance proceeds available for such purpose, and such assessment shall not require the consent of any specified proportion of the Members.

3. Destruction: Proceeds Less Than 80% of Reconstruction Costs. If the amount available from the proceeds of such insurance policies for such restoration and repair is less than eighty percent (80%) of the estimated cost of restoration and repair, the improvements shall not be replaced or restored through application of a special assessment unless such assessment is approved by the vote or written consent of two-thirds (2/3) of each Class of Members.

a. Use of Hazard Proceeds: First Mortgage Approval. Notwithstanding the foregoing, unless at least two-thirds (2/3) of the Eligible Mortgage Holders (based on one (1) vote for each Mortgage held) or Owners (other than Declarant) have given their prior written approval, the Association shall not be entitled to use hazard proceeds for losses to any Common Area for other than the repair, replacement or reconstruction of such improvements.

b. Common Area: First Mortgage Approval. In the event of a determination not to replace or restore the improvements on the Common Area as set forth in paragraph 3(a) above, the Common Area shall be cleared and landscaped as open space to be used by the Owners pursuant to the provisions hereof, and the cost thereof shall be paid for with the insurance proceeds, and any deficiency may be raised by the levy of uniform special assessment for reconstruction in an amount determined by the Board.

ARTICLE V

OWNERSHIP, USE AND MANAGEMENT OF THE COMMON AREA

Section 5.01 Owner's Easements of Enjoyment. Every Owner shall have a right and easement of enjoyment in and to the Common Area which shall be appurtenant to and shall pass with title to every Lot, subject to the provisions hereof.

Section 5.02 Conditional Use of Common Area. Each Owner, his family, licensees, invitees and tenants or lessees, or contract purchasers of a Lot shall be entitled to use the Common Area subject to:

A. The provisions of the Articles, By-Laws, this Declaration, and the Rules. Each Owner,

invite, licensee and tenant agreed that entering the Common Area he will comply with the provision of such Articles, By-Laws, this Declaration, and the Rules.

D. The right of the Association to charge a reasonable security deposit and clean-up fee for the use of a recreational facility, if any situated upon the Common Area.

C. The right of the Association to suspend the right of an Owner to use recreational facilities, if any, of the Common Area for a period not to exceed sixty (60) days for any infraction of its published Rules.

D. The right of the Association to take such steps as are reasonable to protect the Common Area against foreclosure.

E. The right of the Association, in connection with any adopted Rules, to enforce reasonable rules and regulations with respect to the use of the Common Area, including specific provisions with respect to the parking of vehicles thereon.

Section 5.03 Delegation of Use. Any Owner may delegate his right of enjoyment in the Common Area and facilities to the member of his family, his tenants or lessees or contract purchasers who reside in the Dwelling Unit, subject to such Rules as the Association may, from time to time establish. Such delegation shall not relieve said Owner of his obligations and responsibilities as a Member under the By-Laws, Rules and this Declaration.

Section 5.04 Damage or Destruction of Common Area. In the event any Common Area is damaged or destroyed by an Owner or any of his guests, tenants, licensees, agents, or members of his family, such Owner shall be liable therefor to the extent of liability imposed by local law and such Owner does hereby irrevocably authorize the Association to repair the damaged property, and the Association shall so repair the damaged property in good workmanlike manner in substantial conformance with the original plans and specifications. The Owner shall then repay the Association in the amount actually expended for such repairs. Each Owner further agrees that these charges for repairs if not paid within then (10) days after completion of the work, shall be delinquent and shall become a lien upon Owner's Lot and shall continue to be a lien until fully paid. The lien shall be subordinate to any First Mortgage or encumbrance on the subject property. Said charges shall bear interest from the date of delinquency at the rate of twelve percent (12%) per annum. The amount of principal and interest owed by the Owner to the Association shall be a debt.

and shall be collectible by any lawful procedure allowed by the laws of the State of Arizona.

Section 5.05 Restriction on Conveyance of Common Areas and Facilities. The Common Area and facilities owned by the Association, may not, by act or omission, be abandoned, partitioned, subdivided, encumbered, sold or transferred without the prior written approval of two-thirds (2/3) of the Eligible Mortgage Holders (based upon one vote for each mortgage owned) or of the Owners (other than Developer of Declarant) except that: (1) the Association shall at all times have the right to grant and convey to any person or entity easements, or rights of way, in, on, over, or under any Common Area for the purpose of constructing, erecting, operating or maintaining thereon, therein and thereunder (a) roads, streets, walks, pathways, and driveways; (b) temporary overhead or permanent underground lines, cables, wires, conduits, or other devices for transmission of electricity for lighting, heating, power, telephone, cable T.V., and other purposes; (c) sewers, storm drains and pipes, drainage easements, water systems, water, heating and gas lines or pipes; (d) such improvements as may be permitted under this Declaration, and (2) Declarant shall have the right during the pendency of Class B to grant reasonable easement over, across, or under Common Area consistent with the purposes hereof.

Section 5.06 Payment of Taxes of Insurance by Mortgagees. The First Mortgagees of Lots shall have the right, jointly or singly, to pay taxes or other charges or assessments which are in default and which may or have become a lien against the Common Area and may pay overdue premiums on hazard insurance policies or secure new hazard insurance coverage on the lapse of a policy for the Common Area, and any First Mortgagee making any such payment shall be owed immediate reimbursement therefor from the Association.

ARTICLE VI

COVENANTS FOR MAINTENANCE ASSESSMENT

Section 6.01 Creation of the Lien and Personal Obligation to Pay Assessments. Each Owner, by acceptance of a deed to any Lot, whether or not it shall be so expressed in such deed is deemed to covenant and agree to pay to the Association: (1) annual assessments or charges, and (2) special assessments for capital improvement, such assessments to be established and collected as hereinafter provided. The annual and special assessments, together with interest, cost, and reasonable attorney's fees, shall be a charge on the Lot and shall be a continuing lien upon the Lot

against which each assessment is made.

Delinquent assessments, together with interest, costs, and reasonable attorney's fees, shall also be the personal obligation of the person who was the Owner of such Lot at the time when the assessment was levied. The personal obligation for delinquent assessments shall not pass to successors in title unless expressly assumed by them. The sale or transfer of a Lot shall not relieve the prior Owner thereof from personal liability to pay delinquent assessment, plus interest, costs and attorney's fees. Such obligation shall remain the personal obligation of the defaulting Owner. The new Owner, except a First Mortgagee as set forth herein, shall take title to such Lot subject to the lien of full amount of the delinquent assessment.

Section 6.02 Purpose of Assessments. The assessments levied by the Association shall be used exclusively to promote the recreation, health, safety, and welfare of the Members and their guests, for the improvement and maintenance of the Common Area and for all purposes set forth in the Articles, By-Laws and this Declaration. The Board of the Association shall provide that assessments shall include an adequate reserve fund for maintenance, repairs and replacement of those elements of the Common Area owned by the Association that must be maintained or replaced on a periodic basis.

Section 6.03 Maximum Annual Assessment.

A. Until January 1 of the year immediately following the conveyance of the first Lot to an Owner, the maximum annual assessment shall be ONE HUNDRED TWENTY AND NO/100 DOLLARS (\$120.00). Subject to the provisions of Section 6.03 (B) hereof, the Board shall each year estimate the total expenses anticipated for the coming year and shall determine the necessary level of reserve balances for ordinary and unexpected expenses, and shall determine the annual assessment necessary to generate the required revenues.

B. Subject to Section 6.03 (C) hereof, the Board shall not increase the annual assessment by an amount greater than (i) six percent (6%) of the amount of the preceding annual assessment; or (ii) the percentage increase in the cost of living index for "All Items, All Cities" as reflected by the Consumer Price Index published by the Bureau of Labor Statistics of the United States Department of Labor (hereinafter called the "Cost of Living Index Number") whichever is greater. In the event that the Bureau of Labor Statistics should fail to publish a comparable Cost of Living Index

Number during any such years, but a comparable Cost of Living Index Number shall be published by any governmental agency of the United States in place thereof, then such comparable index number shall be used for the purpose of adjusting the annual assessment under the provisions of this Section 6.03 with the same force and effect as the Cost of Living Index of the Bureau of Labor Statistics.

C. Any increase by the Board in the annual assessment which is greater than the amount permitted under Section 6.03 (B) hereof must be first approved by a two-thirds (2/3) vote of each Class of Members who are voting in person or by proxy at a meeting duly called for this purpose.

D. At the time of conveyance of a Lot by Declarant to an Owner, the Owner thereof shall pay the equivalent of two months' assessments applicable to that Lot into the working capital fund of the Association. Said working capital fund shall be used by the Association to meet unforeseen expenditures, or to acquire additional equipment or services deemed necessary or desirable by the Board. Amounts paid into the working capital fund are not to be considered as advance payment of assessments.

Section 6.04 Special Assessment for Capital Improvements. In addition to the annual assessments authorized above, the Association may levy, in any assessment year, a special assessment applicable to that year only for the purpose of defraying, in whole or in part, the cost of any construction, reconstruction, repair or replacement of a capital improvement of the Common Area, including fixtures and personal property related thereto, 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 at a meeting duly called for this purpose.

Section 6.05 Notice and Quorum for an Action Authorized Under Section 6.03 (C) and Section 6.04. Written notice of any meeting called for the purpose of taking action authorized under Section 6.03(C) and Section 6.04 shall be sent to all Members not 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 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 6.06 Uniform Rate of Assessment. Both annual and special assessments must be fixed at a uniform rate for all Lots and may be collected on a monthly basis. However, and subject to the limitations set forth in Section 6.03 (B) hereof, said uniform rate may be revised periodically to reflect revisions in the annual assessments based on actual operating cost of the Association.

Notwithstanding the above, the amount required to be paid toward regular annual and special assessments for the Lots owned by Declarant which are neither leased, nor rented, nor otherwise occupied as a Dwelling Unit shall be fixed at twenty-five percent (25%) of the assessment rate for the other Lots; and further provided, however, that in the event all assessments, and all other income, from whatever source, due to the Association fail to equal or exceed the actual expenses incurred by the Association during any particular (25%) annual assessment period because of such partial Declarant assessment, then Declarant shall, upon written notice from the Association, pay a sufficient amount, up to the amount of full parity on such assessment based on the level of assessments for that year, to the Association to meet any such shortfall so long as (a) such notice must be given within ninety (90) days after the end of each annual assessment period and is waived if not made in such timely manner (such final ninety (90) day period to terminate ninety (90) days from the date of closing of the last Lot conveyed by Declarant), and notwithstanding any contrary provision of the Declaration (b) Declarant shall have no obligation for any such shortfall caused by any decrease in assessments, including without limitation the levying of any assessment in an amount less than the maximum for that annual assessment period, or by expenditures for capital improvements, unless the same has previously been approved in writing by Declarant; and further provided, that at the time any Lot owned by Declarant is leased, rented, or residentially occupied, that Lot shall thereafter, in subsequent periods, be assessed at the uniform rate of assessment for privately owned Lots.

Section 6.07 Date of Commencement of Annual Assessments; Due Dates. The annual assessment provided for herein shall commence as to all Lots then annexed on the first day of the month following the conveyance of the first Lot to an Owner. The first annual assessment shall be adjusted according to the number of months remaining in the calendar year. The Board shall fix the amount of the annual assessment against each Lot at least thirty (30) days in advance of each annual

assessment period. Written notice of the annual assessment shall be sent to every Owner subject thereto in the event of its increase or decrease from the last annual assessment. The due dates shall be established by the Board.

The Association shall, upon demand, and for a reasonable charge, furnish a certificate signed by an officer of the Association setting forth whether the assessments on a specified Lot have been paid. A properly executed certificate of the Association as to the status of the assessments on a Lot is binding upon the Association as of the date of its issuance.

Section 6.08 Effect of Non-Payment of Assessments; Remedies of the Association. Each Owner shall be deemed to covenant and agree to pay to the Association, the assessment provided for herein, and agrees to the enforcement of the assessment in the manner herein specified. All delinquent assessments shall bear interest at an interest rate not to exceed twelve percent (12%) per annum, and late payments shall first be credited toward interest due, then towards assessment first due. In the event the Association employs an attorney for collection of any assessments, whether by suit or otherwise, or to enforce compliance with or specific performance of the terms and conditions of this Declaration, or for any other purpose in connection with the breach of this Declaration, each Owner agrees to pay reasonable attorney's fees and costs thereby incurred, in addition to any other amounts due or any other relief or remedy obtained against said Owner. In the event of a default in payment of any such assessment when due, in which case the assessment shall be deemed delinquent, and in addition may enforce each such obligation in the manner provided by law or in equity, or without any limitation to the foregoing, by either or both of the following procedures.

A. Enforcement by Suit. The Board may cause a suit at law to be commenced and maintained in the name of the Association against an Owner to enforce each such assessment obligation. Any judgment rendered in any such action shall include the amount of the delinquency, together with interest thereon from the date of delinquency until paid, court costs, and reasonable attorney's fees in such amount as the Court may adjudge against the delinquent Owner or Member.

B. Enforcement by Lien. There is hereby created a right to record a claim of lien on each and every Lot to secure payment to the Association of any and all assessments levied against any and all Owners together with interest thereon from the date of delinquency until paid, and all

costs of collection which may be paid or incurred by the Association in connection herewith, including reasonable attorney's fees. At any time after occurrence of any default in the payment of any such assessment, the Association, or any authorized representative may, but shall not be required to, make a written demand for payment by the defaulting Owner. Said demand shall state the date and amount of delinquency. Each default shall constitute a separate basis for demand, but any number of defaults may be included within a single demand or claim of lien. If such delinquency is not paid within ten (10) days after delivery of such demand, or, even without such a written demand being made, the Association may elect to file and record a claim of lien on behalf of the Association against the Lot of the defaulting Owner. Such a claim of lien shall be executed and acknowledged by any officer of the Association, recorded in the office of the County Recorder of Pima County, and shall contain substantially the following information:

- (1) The name of the delinquent Owner;
- (2) The legal description of the Lot against which claim of lien is made;
- (3) The total amount claimed to be due and owing for the amount of the delinquency, interest thereon, collection costs, and reasonable attorney's fees (with any proper offset allowed);
- (4) A statement that the claim of lien is made by the Association pursuant to this Declaration; and
- (5) A statement that a lien is claimed against said Lot in an amount equal to the amount stated; and
- (6) A statement that the claim of lien will also extend to all assessments which became due but are not paid from the date of the recording of the claim of lien to the date of payment of all amounts set forth therein (including interest thereon, reasonable attorney's fees, cost and collection), and that the claim of lien will only be deemed satisfied and released when the Owner is current in the payment of all such amounts.

Upon recordation of a duly executed original or copy of such a claim of lien, and the mailing of a copy thereof to said Owner, the lien claimed therein shall immediately attach and become effective in favor of the Association as a lien upon the Lot. Such a lien shall be junior to any

assessment lien of the Master Association and to tax liens for real property taxes on the Lot, assessments on any Lot in favor of any municipal or other governmental assessing unit, and the lien of any First Mortgage.

Any such lien may be foreclosed by appropriate action in court or in the manner provided by law for the foreclosure of a realty mortgage or trust deed as set forth by the laws of the State of Arizona, as the same may be changed or amended. The lien provided for herein shall be in favor of the Association and shall be for the benefit of all other Owners. The Association shall have the power to bid in at any foreclosure sale and to purchase, acquire, hold, lease, mortgage, and convey any Lot. In the event such foreclosure is by action in court, reasonable attorney's fees, court costs, title search fees, interest and all other costs and expenses shall be allowed to the extent permitted by law. Each Owner hereby expressly waives any objection to the enforcement and foreclosure of the lien in this matter.

Section 6.09 No Exemption of Owner. No Owner is exempt from liability for payment of assessments by waiver of the use of enjoyment of the Common Area, or by abandonment of a Lot.

Section 6.10 Subordination of the Lien to Mortgages; Sale or Transfer of Lots. The lien of the assessments provided for herein, including without limitation any fees, costs, late charges, or interest, which may be levied by the Association in connection with unpaid assessments, shall be subordinate to the lien of any First Mortgage and to any lien of the Master Association. Sale or transfer of any Lot pursuant to foreclosure of any such First Mortgage or any proceeding in lieu thereof, including deed in lieu of foreclosure, or cancellation or forfeiture of such executory land sales contract, shall extinguish the lien of assessment charges which became due prior to any such sale or transfer, or foreclosure, or any proceeding in lieu thereof, including deed in lieu of foreclosure, or cancellation or forfeiture of any such executory land sales contract; provided, however, that any such delinquent assessment charges, including interest, late charges, costs, and reasonable attorney's fees, which are extinguished as provided herein, may be reallocated and assessed to all Lots as a common expense. No such sale, transfer, foreclosure, or any proceeding in lieu thereof, including deed in lieu of foreclosure, nor cancellation or forfeiture of such executory land sales contract shall relieve any Owner of a Lot from liability for any assessment charges thereafter becoming due, nor from the lien thereof. In the event of foreclosure of a First Mortgage

or the taking of a deed in lieu thereof, such First Mortgagee shall not be liable for unpaid assessments or other charges which accrued prior to the acquisition of title to the Lot in question by such First Mortgagee.

Section 6.11 Mortgage Protection and Additional Assessment as Common Expense.

Notwithstanding and prevailing over any other provision of this Declaration, or the Association's Articles or By-Laws, or the Rules, the following provision shall apply to and benefit each First Mortgagee of a Lot:

A. First Mortgagees shall not in any case or manner prior to acquiring title to a Lot be personally liable for the payment of any assessment or charge, nor for the observance or performance of any covenant, restriction, regulation, Rule, Article or By-Law, except for those matters which are enforceable by injunctive or other equitable actions, not requiring the payment of money, except as hereinafter provided.

B. During the pendency of any proceeding to foreclose the First Mortgage, including any period of redemption, the First Mortgagee (or receiver appointed in such action) may, but need not, exercise any or all of the rights and privileges of the Owner of the mortgaged Lot, including but not limited to, the right to vote as a Member of the Association to the exclusion of the Owner's exercise of such rights and privileges.

C. At such time as the First Mortgagee shall become record Owner of a Lot, said First Mortgagee shall be subject to all of the terms and conditions of this Declaration, including but not limited to the obligation to pay for all assessments and charges accruing thereafter, in the same manner as any Owner.

D. Any provisions contained in this Declaration to the contrary notwithstanding, unless at least two-thirds (2/3) of the Lot Owners (other than the Declarant or Developer) or two-thirds (2/3) of the Eligible Mortgage Holders (based upon one vote for each mortgage held) have given their prior written approval, the Association shall not be empowered or entitled to: (a) change the method of determining the obligations, assessments, dues or other charges which may be levied against a Lot Owner; (b) by act or omission, change, waive or abandon any scheme of regulations, or enforcement thereof, pertaining to the architectural design or the exterior appearance of Dwelling Units the exterior maintenance of Dwelling Units, the maintenance of Common Area, walkways or

perimeter walls and driveways or the upkeep of lawns and planting areas in the Properties; (c) fail to maintain fire and extended coverage insurance on the Common Area on a current replacement cost basis in an amount of not less than one hundred percent (100%) of the insurable value (based on current replacement costs); and (d) use hazard insurance proceeds for losses to any Common Area for other than the repair, replacement or reconstruction of such Common Area.

E. First Mortgagees are hereby granted the right to jointly, or singly pay taxes or other charges which are in default and which may or have become a charge against any Common Area owned by the Association, and such First Mortgagees may, jointly or singly, pay overdue premiums on hazard insurance policies, or secure new hazard insurance coverage on the lapse of a policy for such Common Area and any First Mortgagees making such payments may be owed immediate reimbursement therefor from the Association.

F. Nothing in this Declaration shall in any manner be deemed to give a Lot Owner, or any other party, priority over any rights of a First Mortgagee of a Lot pursuant to the terms of such First Mortgagee's mortgage in the case of a distribution to an Owner of insurance proceeds or condemnation awards for losses to or a taking of any Lot or any part of the Common Area owned by the Association. Each First Mortgagee shall be entitled to timely written notice of such loss or taking.

G. Each First Mortgagee shall, upon notice to the Association, be entitled to a written notification from the Association of any default in the performance by the Owner of a Lot encumbered by the Mortgage in favor of such First Mortgagee of any obligation under this Declaration or under the Articles, By-Laws, or Rules of the Association which is not cured within sixty (60) days.

H. Each First Mortgagee shall, upon written notice to the Association, be entitled to (i) inspect the books and records of the association during normal business hours; (ii) receive an annual financial statement of the Association within ninety (90) days following the end of any fiscal year of the Association; and (iii) receive written notice of all meetings of the Association, and designate a representative to attend such meetings.

I. Upon written request to the Association, identifying the name and address of the holder, insurer or guarantor of a First Mortgage, and the Lot number or address, and Eligible Mortgage

Holder, insurer or guarantor shall be entitled to timely written notice of:

- (1) Any condemnation loss or casualty loss affecting a material portion of the Properties;
- (2) Any sixty (60) day delinquency in the payment of assessments;
- (3) Any lapse, cancellation or material modification of any insurance policy or fidelity bond; and
- (4) Any proposed action that requires the consent of a specified percentage of Eligible Mortgage Holders.

ARTICLE VII

EASEMENTS AND COMMON WALL

Section 7.01 Easement for Encroachments. Each Lot and the Common Area shall be subject to an easement for encroachments created by construction, settling and overhangs, as designed or constructed by the Developer, including fittings and walls thereon. A valid easement for said encroachments and for the maintenance of same, so long as it stands, shall and does exist. In the event Dwelling Units are partially or totally destroyed, and then rebuilt, the Owners agree that minor encroachments on parts of the adjacent Lot or Common Area due to construction shall be permitted and that a valid easement for said encroachments and the maintenance thereof shall exist.

Section 7.02 Private Drainage Easements. Private drainage easements may have been established as shown on the Plat or by separate instrument duly recorded over and across certain Lots for the exclusive use and benefit of other Lot Owners. Each Owner of a Lot on which a private drainage easement is located shall be responsible for maintaining that easement and keeping it free and clear from all debris, refuse and any other foreign matter which shall in any way interfere with or hinder the free flow of water in the easement as originally constructed. In the event of the failure of any Lot Owner to so maintain an easement, other Lot Owners benefitted by such easements shall have no cause of action against the Association, but shall proceed solely against that Lot Owner.

Section 7.03 Utility Easements. In addition to those specific easements shown on the Plat, there is hereby created a blanket easement upon, across, over and under the Common Area for ingress, egress, installation, replacing, repairing and maintaining all utility and service lines and

systems, including but not limited to water, sewer, gas, telephone, electricity, television cable or communications lines and systems, etc. By virtue of this easement, it shall be expressly permissible for the providing utility or service company to install and maintain facilities and equipment on the Common Area and to affix and maintain wire, circuits and conduits on, in, and under the roofs and walls of Common Area. Notwithstanding anything to the contrary in this Section, no sewers, electrical lines, water lines, or other utilities or service lines may be installed or relocated on the Properties, except as initially designed and installed by Developer or thereafter approved by the Board. This easement shall in no way affect any other recorded easements on the Properties. In no event shall any portion of the above mentioned easements for utilities be constructed to authorize the placing or installing of sewers, electrical lines, water lines or other utilities under any permanent building structure constructed on the Properties. There shall be an access easement for the delivery and collection of the U.S. Mail.

Section 7.04 Easement for Perimeter Walls and Other Improvements. Developer may construct perimeter wall and other improvements, including but not limited to driveways, walkways, exterior lighting (metered to a particular Dwelling Unit), drainage structures, etc., as a part of, or for the use of, a particular Dwelling Unit which may encroach upon or encompass portions of the Common Area or adjacent Lots. Wherever such encroachments on the Common Area or adjacent Lots should occur, the Owner of the Dwelling Unit involved shall have, subject to the conditions hereinafter set forth, a perpetual permanent right for such perimeter walls to encompass portions of the Common Area of adjacent Lots and for such other improvements to encroach upon portions of the Common Area or adjacent Lots.

In consideration thereof, such Owner agrees to maintain and keep in repair any improvements encroaching upon the Common Area or adjacent Lots which were constructed for the use of their Lot.

In the event any such Owner should make demand upon the Association or upon the Owners of adjacent Lots to repair or maintain any Common Area which because of incidental encroachment lies within such Owner's yard area enclosed by a perimeter wall, or to maintain and repair any improvements encroaching upon the Common Area or adjacent Lots, then the Association or the Owner of the adjacent Lot upon which the encroachment lies, as the case may be, shall have the

absolute right, and may cause the Owner making such demand, to remove at his expense the perimeter wall or other improvements encroaching upon the Common Area or adjacent lot and to replace and rebuild, in accordance with the Board's plans and design specifications, such perimeter wall as to be within such Owner's Lot.

Section 7.05 Electrical Service and Telephone Lines. All electrical service and telephone lines shall be placed underground and no outside electrical lines shall be placed overhead, except existing overhead lines; provided that no provisions hereof shall prohibit the erection of temporary power or telephone structures incident to construction.

Section 7.06 6' Pedestrian/Utility Easement. Shown on the Plat is a 6-foot wide Pedestrian and Utility Easement which encumbers portions of Lots.

Section 7.07 Common Walls. The rights and duties of Owners with respect to common walls or fences shall be as follows:

A. Each wall, including patio wall and fences, which is constructed as a part of the original construction of the Dwelling Unit, any part of which is placed on, adjacent to, or over the dividing line between separate Dwelling Units, shall constitute a common wall. Each Owner consents to the use and construction of such common walls and acknowledge that portions of the properties shall contain common walls. With respect to any such wall, each of the adjoining Dwelling Unit Owners shall assume the burden of and be entitled to the benefits recited in this Section and to the extent not inconsistent herewith, the general rules of law regarding common walls shall be applied thereto.

B. The Owners of contiguous Dwelling Units who have a common wall shall have reciprocal easements for support and an equal right to use such wall provided that such use by one Owner does not interfere with the use and enjoyment of same by the other Owner.

C. Unless other provisions of this Section are applicable, the costs of reasonable repair and maintenance of a common wall shall be shared equally by the Owners who make use of the common wall in proportion to such use.

D. In the event any common wall is damaged or destroyed through the act of one adjoining Owner, or any of his guests or agent or members of his family so as to deprive the other Owner of the full use and enjoyment of such wall, then the first of such Owners, if required under local law, shall forthwith proceed to rebuild and repair the same to as good condition as formerly without cost

to the other Owner.

E. In the event any common wall is damaged or destroyed by some cause other than the act of one of the adjoining Owners, his agent guests or family (including ordinary wear and tear and deterioration for lapse of time), then in such event, both such adjoining Owners shall, if required under local law, proceed forthwith to rebuild or repair the same to as good condition as formerly at their joint and equal expense.

F. Notwithstanding anything to the contrary herein contained, there shall be no impairment of the structural integrity of any common wall without prior consent to the Board. In addition to meeting the other requirements of the Restrictions and of any building code or similar regulations or ordinances, any Owner proposing to modify, make additions to or rebuild his Dwelling Unit in any manner which requires the extension or other alteration of any common wall shall first obtain the written consent of the Board which shall consider, in its discretion, the adjoining Owner's preference concerning the proposed modification, extension or alteration of the common wall.

G. In the event of a dispute between Owners with respect to the repair or rebuilding of a common wall or with respect to the sharing of cost thereof, then upon written request of one of such Owners delivered to the Association, the matter shall be heard and determined by the Board.

ARTICLE VIII

ARCHITECTURAL CONTROL COMMITTEE

Section 8.01 Composition of Committee. The Architectural Control Committee shall consist of three (3) or more persons appointed by the Board of Directors of the Association; provided, however, that except as otherwise provided, until all Lots have been conveyed to the first Owner thereof (other than Declarant), Declarant shall appoint the Architectural Control Committee without a meeting and without a vote of the Members during said period, no election of the Members of said committee shall be had unless Declarant has in writing relinquished its right of exclusive appointment. A majority of the Committee may designate a representative to act for it.

Section 8.02 Review by Committee. No structure, improvement, or any attachment to an existing structure, shall be made or constructed upon the Properties (except by the Association upon the Common Area), and no alteration of the exterior of a structure or improvement shall be made, and no change in the final grade, nor the installation of any landscaping to any part of the

Properties, except the Common Area, and except enclosed rear yards, shall be performed, unless complete plans and specification, including a construction schedule thereof, shall have first been submitted to and approved in writing by the Architectural Control Committee. The Architectural Control Committee shall exercise its best judgment to the end that all attachments, improvements, construction, landscaping and alterations to structures on lands located within the Properties (collectively referred to herein as "Architectural Improvements") conform to and harmonize with the existing surroundings and structures. Decisions of the Architectural Control Committee are binding and conclusive.

Section 8.03 Procedures. The Architectural Control Committee shall approve or disapprove all plans within thirty (30) days after submission and issuance by the Association of a receipt therefor. In the event the Architectural Control Committee fails to approve or disapprove such design and location within thirty (30) days after said plans and specification have been submitted to it, approval shall be deemed denied, except that the party submitting the plans may resubmit the plans and if no response is given for a period of thirty (30) days after a written request by certified mail for decision, approval shall be deemed given.

Section 8.04 Vote. A majority vote of the Architectural Control Committee is required to approve a proposed change or improvement, unless the Committee has designated a representative to act for it, in which case the decision of the representative shall control.

Section 8.05 Liability. The Architectural Control Committee and the members thereof shall not be liable in damages to any person submitting requests for approval or to any Owner by reason of any action, failure to act, approval, disapproval or failure to approve or disapprove in regard to any matter within its jurisdiction hereunder.

Section 8.06 Variance. The Architectural Control Committee may grant reasonable variances or adjustments from any conditions and restrictions imposed by this Article or Article IX hereof in order to overcome practical difficulties and prevent unnecessary hardships arising by reason of the application of the restrictions contained in this Article or Article IX hereof. Such variances or adjustments shall be granted only in case the granting thereof shall not be materially detrimental or injurious to the Properties and shall not militate against the general intent and purpose hereof.

Section 8.07 Nonconforming Architectural Improvements. In the event that the Architectural Improvements do not, upon the proposed date set forth in the construction schedule, conform to the plans submitted to and approved by the Architectural Control Committee, the Architectural Control Committee shall give written notice to the Owner of the property upon which such Architectural Improvements have been made. Such notice shall specify the nature of the nonconformity of the Architectural Improvements and shall grant the Owner a hearing before the Architectural Control Committee in accordance with the By-Laws.

If an Owner has not, within sixty (60) days of the mailing or delivery of the written notice, corrected the nonconformity of the Architectural Improvement, then the Architectural Control Committee shall have the right and an easement to direct its agent, employees or contractors to enter upon the said Owner's property for the purpose of making any of all of such improvements, alterations or repairs as are necessary to bring the Owner's Architectural Improvements into conformity with the plans submitted to and approved by the Architectural Control Committee.

All costs incurred by the Association in the course of the Architectural Control Committee's efforts to bring the nonconforming Architectural Improvements into conformity with the approved plans as provided above, including costs of labor, materials and all associated administrative costs reasonably incurred by the Association in connection therewith, shall be added to and become part of the assessment to which such Owner's Lot is subject and shall become a lien on such Owner's Lot and the improvements thereon, and shall be enforceable and collected as provided for in Article VI hereof.

Section 8.08 Color and Building Materials. Without limiting the foregoing, no color changes nor any changes in the original building structure, composition or products shall be permitted without approval of the Architectural Control Committee.

Section 8.09 Broad Discretion of Architectural Control Committee. In reviewing plans for alterations, modifications, additions or other changes to a structure upon a Lot, the Architectural Control Committee shall exercise its discretion in deciding whether or not an alteration or modification is in harmony with the overall scheme of subdivision development. The Architectural Control Committee shall have the right to deny alteration or modifications for purely aesthetic reasons if the Architectural Control Committee considers the alteration or modification to be

unattractive on relation of the overall scheme of development, or if the Architectural Control Committee considers the alteration or modification to be a nuisance or upset of design, or if the Architectural Control Committee considers the alteration or modifications to be in contrast to or out of harmony with the style of existing structures, or if the physical views of the Properties will be disrupted by the alteration or modification. The Architectural Control Committee may elicit the opinion of other Owners as to the conformity and harmony of the proposed plan with the overall scheme of development, and the effect that the proposed plan might have on the physical views of other Owner. After eliciting these opinions, the Architectural Control Committee may, but need not, take them into account in making its final decision of approval or disapproval of an alteration or modification to an existing structure. While the opinion of no single Lot Owner will control a decision of the Architectural Control Committee, within its own discretion, the Architectural Control Committee may, but need not, attach whatever significance it deems sufficient to the statements of residents and/or neighbors of the Owner submitting the proposed alteration or modifications to an existing structure.

Section 8.10 Fee. The Association may establish a reasonable processing fee to defer the costs of the Architectural Control Committee in considering any requests for approvals submitted to the Architectural Control Committee.

Section 8.11 Submission to Canada Hills Design Review Committee. All Architectural Improvements shall also be subject to the prior approval of the Canada Hills Design Review Committee as provided in the Master Declaration; provided, however, no Architectural Improvements shall be submitted to the Canada Hills Design Review Committee until same have been approved by the Architectural Control Committee of Fairway Village.

ARTICLE IX

USES AND RESTRICTIONS

All property within the subdivision shall be held, used and enjoyed, subject to the following limitations and restrictions:

Section 9.01 Private Residential Purpose. Dwelling Units and Lots shall be occupied and used by the respective Owners solely for private residential use of the Owner, his family, tenants and social guests and for no other purpose. No gainful occupation, profession, trade or other

8300
1629

non-residential use shall be conducted on the Properties, except that Declarant or Developer may maintain sales offices, construction offices and sales models on the Properties.

Sales offices, sales models and construction offices utilized by the Declarant or Developer on the Properties need not be owned by either Declarant or Developer. Further, sales models and sales offices may be utilized on the Properties as sales models and sales offices for the benefit of other subdivisions of either Declarant or Developer.

Section 9.02 Renting. Each Owner shall have the right to lease or rent his Dwelling Unit; provided, that any lease agreement, including any agreement to lease the Dwelling Unit on a month to month basis, must be in writing and must provide that the failure of any lessee or tenant to comply with the Rules, By-Laws, Articles and provisions of the Declaration or the Master Declaration and the Articles, By-Laws, Development Guidelines and Rules of the Master Association shall be a default under the lease. Any lease agreement shall be for a period of not less than thirty (30) days, and a copy thereof shall be delivered to the Association.

Section 9.03 Antennas and Exterior Additions. No exterior antennas or other devices for the transmission or reception of radio and television signals shall be erected or maintained on the Property without prior written authorization of the Board or the Architectural Control Committee. The Developer shall determine standards for exterior television antennas. Further, no exterior devices, additions, structures or accessory buildings other than initially installed by Developer shall be constructed on the exterior of a Dwelling Unit (including the roof) without the written authorization of the Board or the Architectural Control Committee.

Section 9.04 Solar Device. No solar devices of any type shall be erected or installed on any Lot without the approval of the Board or the Architectural Control Committee as set forth in Article VIII herein.

Section 9.05 Insurance Rates. Nothing shall be done or kept on any Lot or Common Area which will increase the rate of insurance on such property nor shall anything be done or kept on any Dwelling Unit or Common Area which will result in the cancellation of insurance on any such property or which would be in violation of any law.

Section 9.06 Signs. No signs of any kind shall be displayed which are visible from neighboring property without the approval of the Board or the Architectural Control Committee.

except

A. Such signs as may be required by legal proceedings; and

B. Such signs as may be used by Developer or Declarant.

Section 9.07 Animals. No animals of any kind shall be raised, bred, or kept on the Properties, except that a reasonable number of generally recognized house or yard pets may be kept provided that they are not kept, bred or maintained for any commercial purpose. No animal shall be allowed to become a nuisance. A "reasonable number" as used in this Section shall ordinarily mean no more than two pets per Dwelling Unit; provided, however, the Board may determine that a reasonable number in any instance may be more or less. Upon the written request of any Owner, the Board shall conclusively determine, in its sole and absolute discretion, whether for the purpose of this Section, a particular animal is a generally recognized house or yard pet or a nuisance, or whether the number of animals is reasonable.

Section 9.08 Nuisances. After completion of construction of all Dwelling Units and landscaping of Lots by Developer, no rubbish or debris of any kind shall be placed or permitted to accumulate upon any Properties, and no odors shall be permitted to arise therefrom so as to render the Properties or any portion thereof unsanitary, unsightly, 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, bells or other sound devices, except security devices used exclusively for security purposes, shall be located, used or placed on the Properties without the prior written approval of the Board. The Board in its sole discretion shall have the right to determine the existence of any such nuisance.

Section 9.09 Growth and Planting. The growth and planting in the Common Area shall not be removed or destroyed unless written permission is first obtained from the Board or the Architectural Control Committee. Owner must obtain the Board's or the Architectural Control Committee's written approval before planting in the Common Areas. No planting of any type (including grass) that will require irrigation shall be placed within five (5') feet of any portion of any building or patio wall which comprises all, or a portion of a common wall.

Section 9.10 Violation of Rules. If any Owner, his family or any licensee, tenant or lessee or invitee violates the Board's rules, the Board may, in addition to any other enforcement

provisions contained herein, suspend the right of such person to use the Common Areas, under such conditions as the Board may specify, for a period not to exceed sixty (60) days for each violation. Before invoking any such suspension, the Board shall give such person notice of hearing before the Board.

Section 9.11 Exemption of Developer. Nothing in this Declaration shall limit the right of the Developer or Declarant to complete excavation, grading and construction of improvements to any of the Properties, to resubdivide any Lot or portion of the Properties, or to alter the foregoing or to construct such additional improvements as Developer deems advisable in the course of development of the Properties so long as any Lot therein remains unsold. Further, nothing in this Article shall limit the right of a Developer or Declarant to use any structure as a sales model, sales office or construction office or parking area and to place any sign, banner, flag or similar method of advertisement to promote sales within the Properties or subdivisions of Declarant or Developer. The rights of Declarant or Developer hereunder or elsewhere in this Declaration may be assigned by Declarant or Developer.

Section 9.12 Drainage. There shall be no interference with the established drainage pattern over any Properties, including any private drainageways or easements, with the Properties, except by Declarant in the course of development, unless adequate provision is made for proper drainage conforming to Pima County rules, regulations, ordinances and drainage criteria and is approved by the applicable governing body or its duly appointed representative. For purposes hereof, "established drainage" is defined as the drainage which exists at the time the overall grading of the Properties is completed, or which is shown on the Plat or on any plans conforming to applicable rules, regulations, ordinances and drainage criteria approved by the applicable governing body or its duly appointed representative.

Section 9.13 Unightly Articles. No unsightly articles shall be permitted to remain so as to be visible for adjoining Dwelling Units or from the street or public way. Grass, shrub or tree clippings and all machinery, storage piles, wood piles, garbage or trash containers shall be kept within an enclosed structure or appropriately screened from view of adjoining property or from streets or public way except when necessary to effect such collection; provided, however, any such structure or screen shall be subject to the Board's or the Architectural Control Committee's review

and approval pursuant to Article VIII. The Board or the Architectural Control Committee shall have sole discretion in determining if any activity by an Owner is in violation of this Section.

Section 9.14 Trash Containers. No garbage or trash shall be placed or kept on the Properties, except in covered containers of a type, size and style which have been installed by Developer or have been approved by the Board or the Architectural Control Committee or are required by governmental authorities. All rubbish, trash or garbage shall be removed from the Dwelling Units and shall not be allowed to accumulate thereon. No incinerators shall be allowed. Trash/garbage containers shall be placed at curb side only on days of scheduled collection and shall be removed from view on the same day of collection. Owners of Dwelling Units utilizing common trash/garbage collection area shall be jointly and severally responsible for keeping said common collection areas in a clean and sanitary condition. The Board or the Architectural Control Committee shall have sole discretion in determining if any activity by an Owner is a violation of this Section.

Section 9.15 Right of Inspection. During reasonable hours, any member of the Board, or any authorized representative of any of them shall have the right upon reasonable notice to the Owner of a Dwelling Unit to enter upon and inspect the Properties (except the interior of Dwelling Units), 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.

Section 9.16 Mail Boxes. Developer or Board shall determine the location, color, size, design, lettering, and all other particulars of all mail and paper delivery boxes, and standards and brackets and name signs for same in order that the area be strictly uniform in appearance with respect thereto.

Section 9.17 Vehicles/Carports/Garages. The use of all vehicles, including but not limited to trucks, automobiles, bicycles and motorcycles shall be subject to the Rules, which may prohibit or limit use thereof, provide parking regulations, or generally regulate same. Any and all items stored in a carport/garage area shall be stored so as to conceal same from view from adjoining property, or from the streets or public way, and further, in the case of a garage, garage doors shall be kept closed at all times, except as may be reasonably necessary for ingress, egress and normal

day-to-day activities which require the utilization of the garage. At no time shall there be any outside storage of motor vehicles in stages of construction, reconstruction, modification or rebuilding or parts of motor vehicles such as frames, bodies, engines or other parts or accessories. Further, the storage or parking of any recreational vehicle, commercial vehicle or boat, other than completely within Owner's carport/garage is prohibited.

Section 9.18 Clothes Lines. No exterior clothes lines shall be erected or maintained, and there shall be no outside laundering or drying of clothes.

Section 9.19 Diseases and Insects. No Owner shall permit anything or any condition to exist upon the Properties which shall induce, breed or harbor infectious plant diseases or noxious insects.

ARTICLE X

GENERAL PROVISIONS

Section 10.01 Term. The covenants, conditions and restrictions of this Declaration shall remain in full force and effect for a period of twenty (20) years from the date the Master Declaration is recorded. Thereafter, they shall be deemed to have been renewed and automatically extended for successive periods of ten (10) years each, unless then amended or repealed by the written consent of at least seventy-five (75%) percent of the Owners.

Section 10.02 Amendments. This Declaration may be amended by an instrument in writing, signed and acknowledged by the President and Secretary of the Association, certifying that such Amendment has been approved by the vote or written consent of the then Owners, including Declarant, of not less than seventy-five (75%) percent of the Owners, and such amendment shall be effective upon its recordation with the Pima County Recorder, Pima County, Arizona.

In addition to the requirements set forth elsewhere in this Declaration, the consent of fifty-one (51%) percent of the Eligible Mortgage Holders, based on one vote for each mortgage held, shall be required to add or amend any provisions of this Declaration which establish, provide for, govern or regulate any of the following:

- (a) voting rights;
- (b) assessments, assessment liens or subordination of assessment liens;
- (c) reserves for maintenance, repair and replacement of common areas;

- (d) responsibility for maintenance and repairs;
- (e) reallocation of interests in the common areas, or rights to their use;
- (f) boundaries of any Lot;
- (g) convertibility of Lots into common areas or vice versa;
- (h) expansion or contraction of the Properties, or the addition, annexation or withdrawal of property to or from the Properties;
- (i) insurance or fidelity bonds;
- (j) leasing of units;
- (k) imposition of any restriction on a Lot Owner's right to sell or transfer his or her Lot;
- (l) restoration or repair of the Properties (after a hazard damage or partial condemnation) in a manner other than that specified herein;
- (m) any action to terminate the legal status of the Properties after substantial destruction or condemnation occurs; or
- (n) any provisions which are for express benefit of mortgagees, Eligible Mortgage Holders, insurers or guarantors of first mortgages on the Lots.

The consent of sixty-seven (67%) percent of the Eligible Mortgage Holders, based on one vote for each mortgage held, shall be required for the termination of the legal status of the Association for reasons other than the substantial destruction or condemnation of the Properties.

Proposed amendments, other than those set forth above, of an immaterial nature may be made pursuant to the same stipulations set forth above, except that the consent of an Eligible Mortgage Holder who fails to respond to a proposal within thirty (30) days of the proposal being made, shall be deemed given.

Notwithstanding anything to the contrary contained in this Declaration, if Declarant shall determine that any amendments to this Declaration or any amendments to the Articles of Incorporation or By-Laws of the Association shall be necessary in order for existing or future mortgages, deeds of trust, or other security instruments to be acceptable to the Veterans Administration, the Federal Housing Administration of the U.S. Department of Housing and Urban Development, the Federal National Mortgage Association or the Federal Home Loan Mortgage

Corporation, then, subject to Section 10.01 above, Declarant shall have and hereby specifically reserves the right and power to make and execute any such amendments without obtaining the approval of the Owners, Members, or First Mortgagees.

Section 10.03 Enforcement and Non-Waiver.

A. Enforcement. Except as otherwise provided herein, the Association, or any Owner shall have the right to enforce by any proceeding at law or in equity, all restriction, condition, covenants, reservations, liens or charges now or hereafter imposed by provision of this Declaration.

Failure by the Association or any Owner, to enforce any covenant or restriction herein contained shall in no event be deemed a waiver of the right to do so thereafter.

Further, the Association shall have the authority to bring an action at law or in equity to enforce any of the provisions of this Declaration. Expenses of enforcement, in the event the Association is a substantially prevailing party, shall be paid to the Association by the Owner against whom enforcement action was commenced. The Association shall have the right to enter upon the property of any Owner for the purpose of repairing, modifying, or demolishing improvements which are not in conformance with the provisions of this Declaration and all expenses incurred on connection therewith shall be paid to the Association by the Owner in violation.

B. Violation of Law. Each and every provision of this Declaration and any amendment hereto shall be subject to all applicable governmental ordinances and subdivision regulations and any future amendments thereto. Any violation of any state, municipal or local law, ordinance or regulation pertaining to the ownership, occupation or use of any properties is hereby declared to be a violation of this Declaration and subject to any or all of the enforcement procedures set forth herein or in the By-Laws.

C. Remedies Cumulative. Each remedy provided herein is cumulative and not exclusive.

D. Non-Waiver. Failure by the Board, the Association or by any Owner to enforce any of the provisions hereof at any time shall not constitute a waiver of the right thereafter to enforce any of such provisions.

Section 10.04 Construction.

A. Interpretation. The provisions of this Declaration shall be liberally construed to effectuate the purpose of creating a uniform plan for the development and operation of the Properties. This

Declaration shall be construed and governed by the laws of the State of Arizona.

B. Restrictions Severable. Notwithstanding any other provisions hereof, each of the provisions of this Declaration shall be deemed independent and severable, and the invalidity or partial invalidity of any provision or portion thereof shall not affect the validity or enforceability of any other provision.

C. Rule Against Perpetuities. In the event the provisions hereunder are declared void by a Court of competent jurisdiction by reason of the period of time herein stated for which the same shall be effective, then in that event said periods of time shall be reduced to a period of time which shall not violate the rule against perpetuities as set forth in the laws of the State of Arizona.

D. Singular Includes Plural; Gender. Unless the context requires a contrary construction, the singular shall include the plural and the plural the singular; and the masculine, feminine or neuter shall each include the masculine, feminine and neuter.

E. Captions. All captions and titles used in this Declaration are intended solely for convenience or reference purposes only and in no way define, limit or describe the true intent and meaning of the provisions hereof.

Section 10.05 Delivery of Notices and Documents. Any written notice or other documents relating to or required by this Declaration may be delivered either personally or by mail. If by mail, it shall be deemed to have been delivered seventy-two (72) hours after a copy of same has been deposited in the United States mail, postage prepaid, addressed as follows: If to the Association, at 5255 E. Williams Circle, Suite 3000, Tucson, Arizona, 85711; if to an Owner, to the address of the Owner within the subdivision; and if to the Declarant, 5360 N. Academy Boulevard, Colorado Springs, Colorado, 80918, with a copy to the Association; provided, however, that any such address may be changed at anytime by the party concerned by delivering written notice of change of address to the Association. Each Owner of a Lot shall file the correct mailing address of such Owner with the Association, and shall promptly notify the Association in writing of any subsequent change of address.

Section 10.06 Binding Effect. By acceptance of a deed or acquiring any ownership interest in any of the Properties included within this Declaration, each person or entity, for himself, or his heirs, personal representatives, successors, transferees and assigns, binds himself, his heirs,

personal representatives, successors, transferees and assigns to all of the provisions, restrictions, covenants, conditions, rules and regulations now or hereafter imposed by this Declaration and any amendments thereof. In addition, each such person by so doing thereby acknowledges that this Declaration sets forth a general scheme for the Properties and hereby evidences his intent that all the restrictions, conditions, covenants, rules and regulations contained herein shall run with the land and be binding on all subsequent and future owners, grantees, purchasers, assignees, and transferees thereof. Furthermore, each such person fully understands and acknowledges that this Declaration shall be mutually beneficial, prohibitive and enforceable by the various subsequent and future Owners.

Section 10.07 FHA/VA Approval. As long as there is a Class B membership, the following actions will require the prior approval of the Federal Housing Administration or the Veterans Administration: annexation of additional properties, mergers and consolidations, mortgaging of Common Area, public dedication of Common Area, and amendment of this Declaration.

Section 10.08 Declaration of Covenants, Conditions and Restrictions for Canada Hills. This Declaration and all rights of Owners and Members in and to their Lots, as set forth herein, and as provided for in the Articles, By-Laws, and Rules of Fairway Village Homeowners Association are subject to and subordinate to the Master Declaration and the Canada Hills Community Association Development Guidelines, Articles, By-Laws and Rules.

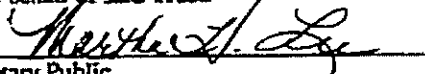
IN WITNESS WHEREOF, Declarant has executed this Declaration the day, month and year first above written.

EXECUTIVE TITLE COMPANY, an Arizona
10,699,
corporation, as Trustee under Trust No. ~~10,683~~
as Trustee only and not in its corporate capacity

By: 

STATE OF ARIZONA)
) ss.
COUNTY OF PIMA)

SUBSCRIBED AND SWORN to before me this 24th day of May, 1988, by
ROSE F. SEPULVEDA as ASST. VICE PRESIDENT
of EXECUTIVE TITLE COMPANY, an Arizona corporation, as Trustee under Trust No. 10,688
as Trustee only and not in its corporate capacity, on behalf of said Trust. 10,699


Notary Public

My Commission Expires:
8/28/89



(SEE PAGES 44 AND 45 FOR APPROVAL BY
DECLARANT OF MASTER DECLARATION)

THE FOREGOING DECLARATION IS APPROVED BY THE UNDERSIGNED, AND FURTHER, THE UNDERSIGNED HEREBY DELEGATES TO THE ASSOCIATION ALL OF DECLARANTS' RIGHTS PURSUANT TO SECTION 5.2.15 OF THE MASTER DECLARATION WITH RESPECT TO PARTY WALLS (AS DEFINED IN THE MASTER DECLARATION) BETWEEN LOTS (AS DEFINED IN THE FOREGOING DECLARATION) THAT DO NOT BORDER ON COMMON AREA (AS DEFINED IN THE MASTER DECLARATION).

By: *U. J. Scott*
U. J. SCOTT

By: *Valerie Scott*
VALERIE SCOTT

8300 1640

MIKE BOYD, RECORDER
PIMA COUNTY, ARIZONA
CERTIFICATE OF RECORDING

03/14/91
09:42:00

W
FAIRWAY VILLAGE HOMEOWNERS

10951 N ST GEORGES LOOP
TUCSON AZ 85737

2 PAGES	AT		\$	5.00
	CONVERSION FEE			3.00
0 AFFIDAVIT	AT	2.00 EACH		.00
0 COPIES	AT	1.00 EACH		.00
1 POSTAGE	AT	1.00 EACH		1.00
0 SEARCHES	AT	10.00 EACH		.00

NO. OF PAGES: 002
SEQUENCE: 91027523
DOCKET: 08995 PAGE: 0774

RECORDING TYPE: RESTRICTION
GRANTOR: FAIRWAY VILLAGE L 1-64
GRANTEE: RESTRICTION

TOTAL 9.00

CEO
DEPUTY RECORDER

AMOUNT PAID \$ 9.00
2005 RD18 AMOUNT DUE \$.00

MAIL

DO NOT DETACH CERTIFICATE FROM DOCUMENT
THIS RECORD IS PART OF DOCUMENT

DO NOT DETACH CERTIFICATE FROM DOCUMENT

8995 774

FAIRWAY VILLAGE
HOMEOWNERS ASSOCIATION, INC.
10951 North St. Georges Loop
Tucson, Arizona 85737

Re: TRACT DECLARATION OF COVENANTS, CONDITIONS, RESTRICTIONS AND EASEMENTS FOR FAIRWAY VILLAGE as recorded by:

PIMA COUNTY RECORDER 06-03-88 10:11:00
NO. OF PAGES: 049
SEQUENCE: 88071450 DOCKET: 08300: PAGE: 1592
RECORDING TYPE: RESTRICTION
GRANTOR: FAIRWAY VILLAGE L 1-64
GRANTEE: RESTRICTION

In accord with Section 10.02 Amendments, we certify that seventy-five (75%) of the Owners, including Declarant, have given their written consent to amending Section 8:01 Composition of Committee Page 30 of the CC&R's, as follows:

Section 8:01 Composition of Committee: To be deleted in its entirety and the following to be substituted:

AMENDMENT:

Section 8:01 Composition of Committee: The Architectural Committee shall consist of three or more persons appointed by the Board of Directors of the Fairway Village Homeowners Association.

Signed: John U. Wallinder Dated: 3/13/91
John U. Wallinder, President
Fairway Village Homeowners Association

Signed: David Stockero Dated: 3-13-91
David Stockero, Secretary
Fairway Village Homeowners Association

F. ANN RODRIGUEZ, RECORDER
RECORDED BY: GMS
DEPUTY RECORDER
1970 RD15



W
JOHN WALLINDER

10935 N BROADSTONE DRIVE
TUCSON AZ 85737

DOCKET: 9898
PAGE: 350
NO. OF PAGES: 3
SEQUENCE: 94192950
10/14/94
ARSTR 10:34:00
MAIL
AMOUNT PAID \$ 10.00

Document Title: AMENDEMENT TO CONDITIONS, RESERVATIONS AND RESTRICTIONS

9898 350

**FAIRWAY VILLAGE
HOMEOWNERS ASSOCIATION, INC.**

10951 North St. Georges Loop
Tucson, Arizona 85737

Re: TRACT DECLARATION OF COVENANTS, CONDITIONS, RESTRICTIONS AND
EASEMENTS FOR FAIRWAY VILLAGE AS RECORDED BY:

PIMA COUNTY RECORDER 06-03-88 10:11:00
NO. OF PAGES: 049
SEQUENCE: 88071450 DOCKET: 08300: PAGE: 1592
RECORDING TYPE: RESTRICTION
GRANTOR: FAIRWAY VILLAGE L 1-64
GRANTEE: RESTRICTION

In accord with Section 10.02 Amendments, we certify that seventy-five (75%) of the Owners have given their written consent to adding the the following to section 8.02 of Article VIII.

ARTICLE VIII

AMENDMENT

Please add the following to Section 8.02 at the end of section.

- o All new structures shall have a minimum of 10-foot side set backs.
- o Shall conform in exterior design with existing homes in the sub-division. Having roof lines matching the others in the Village.
- o Shall not exceed in living space that already existing in the Village for single or double story homes.
- o Will meet the other requirements specified in Section VIII of the CC & R's.

This Amendment applies from date of recording to all plans for construction not formally submitted to the A.C.C. for approval at the date of recording.

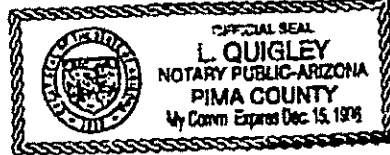
Signed: *Sandy Michaels* Dated 10/14/04
Sandy Michaels, President
Fairway Village Homeowners Association

Signed: *Howard R. Shapiro* Dated 10/14/04
Howard Shapiro, Secretary
Fairway Village Homeowners Association

STATE OF ARIZONA)
COUNTY OF PIMA)

THE FOREGOING INSTRUMENT WAS ACKNOWLEDGED BEFORE ME THIS 14TH DAY
OF OCTOBER, 1994 BY SANDY MICHAEL, PRESIDENT OF FAIRWAY VILLAGE HOMEOWNERS
ASSOCIATION, INC., AN ARIZONA CORPORATION, ON BEHALF OF SAID CORPORATION.
MY COMMISSION EXPIRES:
12/15/96

NOTARY PUBLIC



STATE OF ARIZONA)
COUNTY OF PIMA)

THE FOREGOING INSTRUMENT WAS ACKNOWLEDGED BEFORE ME THIS 14TH DAY
OF OCTOBER, 1994 BY HOWARD SHAPIRO, SECRETARY OF FAIRWAY VILLAGE HOMEOWNERS
ASSOCIATION, INC., AN ARIZONA CORPORATION, ON BEHALF OF SAID CORPORATION.
MY COMMISSION EXPIRES:
12/15/96

