

F. ANN RODRIGUEZ, RECORDER
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TUCSON AZ 85705



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AMENDMENT TO THE
DECLARATION OF COVENANTS, CONDITIONS AND RESTRICTIONS
FOR
DAY STAR ESTATES

A Declaration of Covenants, Conditions and Restrictions ("Declaration")
was recorded on June 28, 2001 in Docket 11580 at Page 2523 in the Office of the Pima
County Recorder;

The Declarant, FIRST AMERICAN TITLE INSURANCE COMPANY, INC.,
a California Corporation, as Trustee under Trust Number 4911 is the owner of all of the
real property described as:

Lot 1 through 26 and Common Area "A" of Day Star
Estates, as shown on the plat of record in Book 54 of
Maps and Plats at Page 88, Pima County Recorder.

Declarant, as the owner of all of the lots and Common Area "A" desires to
amend this Declaration as follows:

Section 1.18 of the Declaration shall be amended in its entirety to stated:

"Common Area" refers to the real property which is
designated as Common Areas on the Plat; owned by the
Association for the common use and enjoyment of the
Owners; and which shall remain natural open space
areas.

Section 4.1.3. shall be amended to provide:

The right of the Association to mortgage the Common
Area or to dedicate or transfer all or any part of the
Common Area for such purposes and subject to such
conditions as may be agreed to by the Members;

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provided, however, that Common Area which is located between Lot 20 and 21 shall not be developed in any way. "Developed" as used in this Article IV includes the installation of any structure or improvement or the grading of that area. No dedication or transfer of the Common Area is effective unless approved by the Owners of at least two-thirds (2/3) of the Lots.

Section 4.3 of the Declaration shall be amended, in its entirety as follows:

Common Area. Ownership of the Common Area is vested in the Association, subject to the easements created in Article V. The Common Area shall be deeded to the Association by the Declarant on or before the date the first Lot is conveyed to an Owner. The Common Area shall be conveyed to the Association free and clear of all liens and encumbrances. The Common Area is for the common use and enjoyment of the Members of the Association. Common Area "A" which is located between Lots 20 and 21 may not be developed in any manner.

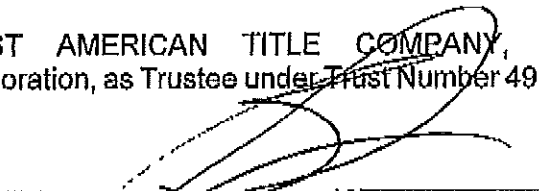
Section 10.2.1 shall be amended in its entirety as follows:

10.2.1. Maintaining the Common Area and ensuring that Common Area "A" located between Lots 20 and 21 is not developed in any manner, including the installation of any improvements thereon or the grading of such area.

In all other respects all of the other terms in the Declaration shall remain in full force and effect.

IN WITNESS WHEREOF, the Declarant executes this Amendment to the Declaration on the 31st day of October, 2002.

FIRST AMERICAN TITLE COMPANY, a California Corporation, as Trustee under Trust Number 4911, Declarant.

By: 
Trust Officer

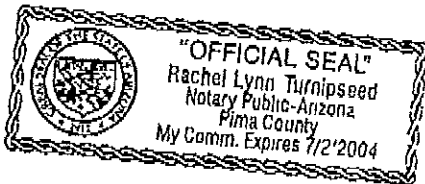
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State of Arizona)
) ss:
County of Pima)

This instrument was subscribed and sworn before me on this 31st day of October, 2002 by Brigitte Echave of FIRST AMERICAN TITLE INSURANCE COMPANY, a California Corporation, as Trustee under Trust Number 4911, Declarant.

Rachel Lynn Turnipseed
Notary Public

My commission expires:



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March 29, 2002
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F. ANN RODRIGUEZ, RECORDER
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DEPUTY RECORDER
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DECLARATION OF COVENANTS, CONDITIONS AND RESTRICTIONS
FOR
DAY STAR ESTATES

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ARTICLE I

DEFINITIONS

Section 1.1. "Annual Assessments" are those assessments which are levied by the Association and used to promote the recreation, health, safety and welfare of the Members, their families and guests, for the improvement of the Common Area and for all other purposes set forth in the Articles, Bylaws, this Declaration and all applicable laws.

Section 1.2. "Architectural Review Committee" refers to the Committee established by the Board of Directors pursuant to Article VII of this Declaration.

Section 1.3. "Articles" refers to the Articles of Incorporation of the Association and any amendments which have been filed in the Office of the Arizona Corporation Commission.

Section 1.4. "Assessment Lien" means a lien against any Lot arising out of the non-payment of Annual Assessments, or any other sums due to the Association, including late fees, interest, fines, attorney fees and any other collection costs.

Section 1.5. "Association" means DAY STAR ESTATES HOMEOWNERS ASSOCIATION INC., its successors and assigns.

Section 1.6. "Board" means the Board of Directors of the Association.

Section 1.7. "Bylaws" refer to the Bylaws of the Association, as may be amended from time to time.

Section 1.8. "Common Area" refers to the real property which is designated as Common Areas on the Plat and owned by the Association for the common use and enjoyment of the Owners.

1 Section 1.9. "Declarant" refers to FIRST AMERICAN TITLE/INSURANCE COMPANY, INC., a
2 California Corporation, as Trustee under Trust Number 4911 i t s
3 successors and assigns and including the beneficiary of such subdivision
4 trust.

5 Section 1.10. "Development Period" refers to the period of time that it takes for the
6 Declarant to sell all of the Lots to a consumer.

7 Section 1.11. "Governing Documents" refers to this Declaration, the Articles of
8 Incorporation, the Bylaws of the Association and any Rules and
9 Regulations promulgated by the Board of Directors.

10 Section 1.12. "Guidelines" means those rules and regulations adopted, amended and
11 supplemented by the Review Committee pursuant to Article VII of this
12 Declaration.

13 Section 1.13. "Lot" refers to the plot of land shown upon the recorded Plat of the
14 subdivision and all improvements located on the Lot. A Lot does not
15 include the Common Area.

16 Section 1.14. "Member" means the Owner of a Lot who is entitled to membership in the
17 Association, who has the privilege of using and enjoying the Common
18 Area, and who has a duty to pay assessments for these privileges, as
19 further set forth in this Declaration.

20 Section 1.15. "Mortgage" refers to any mortgage, deed of trust or other security
21 instrument by which a Lot or any part of a Lot is encumbered.

22 Section 1.16. "Owner" means the record owner, whether one or more persons, of the
23 fee simple title to any Lot which is part of DAY STAR ESTATES including
24 a buyer under a contract for the sale of real estate, but excluding any

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1 person who holds an interest merely as security for the performance of an
2 obligation.

3 Section 1.17. "Person" includes a corporation, company, partnership, firm, association
4 or society, as well as a natural person.

5 Section 1.18. "Plat" refers to the map of record in the Office of the Pima County
6 Recorder in Book 54 at Page 88 and designated as DAY
7 STAR ESTATES, Lots 1 through 25 and Common Area A.

8 Section 1.19. "Properties" and "Project" mean the real property described in the Plat and
9 also known as the "subdivision".

10 Section 1.20. "Rules and Regulations" means those policies and procedures adopted
11 by the Board of Directors which govern the conduct and actions of
12 owners, tenants, visitors, and guests on Lots and the Common Area not
13 otherwise covered in this Declaration. Rules and Regulations, when
14 adopted by the Board of Directors, have the same force and effect as the
15 Restrictions set forth in this Declaration.

16 Section 1.21. "Visible from Adjacent Lots" means, with respect to any given object that
17 such object is or would be visible to a person six feet tall, standing at
18 ground level on any part of an adjacent lot; provided, however, that an
19 object is not considered as being Visible from Adjacent Lots if the object
20 is visible to a person six feet (6') tall, standing at ground level on any part
21 of the adjacent Lot only because the object is seen through a wrought iron
22 fence and would not be visible if the fence were solid, rather than wrought
23 iron.

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ARTICLE II

MEMBERSHIP

Section 2.1. Every person who is an Owner of a Lot is a Member of the Association and is subject to assessment by the Association. Membership is appurtenant to and may not be separated from ownership of a Lot. Only persons who own Lots are Members of the Association.

Section 2.2. Membership shall not be transferred, pledged, or alienated in any way except upon the transfer of ownership of any Lot and then Membership shall only be transferred to the transferee. Any attempt to make a prohibited transfer shall be void. Any transfer of ownership of a Lot shall operate to automatically transfer the membership in the Association to the new Owner.

ARTICLE III

VOTING RIGHTS

Section 3.1. Declarant. Declarant is a Member of the Association for so long as it holds a Class A or Class B Membership.

Section 3.2. Voting Classes. The Association has two classes of voting Members:

3.2.1. Class A. Class A Members are all of the Owners except the Declarant (until the conversion of Declarant's Class B Membership to Class A Membership as provided below). Subject to the authority of the Board to suspend an Owner's voting rights in accordance with the provisions of this Declaration, a Class A Member has one vote for each Lot owned. The vote for each Lot shall be exercised as the

Owners agree, but in no event may there be more than one (1) vote cast for any one (1) Lot owned.

3.2.2. Class B. The Class B Member is the Declarant. The Class B Member is entitled to three (3) votes for each Lot it owns until all of the Lots are sold, at which time it will be entitled to one (1) vote for each Lot it owns. The Class B Membership terminates upon the happening of the first of the following events:

- a. the date which is one hundred twenty (120) days after the date that all of the Lots have been sold and closed escrow; or
- b. the date which is seven (7) years after the date this Declaration is recorded; or
- c. 120 days after the Declarant relinquishes its Class B votes by providing written notice to the Association.

Section 3.3. Right to Vote. No change in the ownership of a Lot is effective for voting purposes until the Board receives written notice of such change together with satisfactory evidence of the transfer. The vote for each Member must be cast as a single unit. Fractional votes are not allowed. In the event that a Lot is owned by more than one (1) Person and such Owners are unable to agree on how their vote or votes shall be cast, they shall not be entitled to vote on the matter in question. If any Owner exercises his/her vote on any matter, it will be conclusively presumed that the Owner is acting with the authority and consent of the all other Owners of the Lot unless an objection is made to the Board, in writing, at or prior to the time

the vote is cast. If more than one Person votes or attempts to exercise the vote for a particular Lot all of those votes shall be void.

Section 3.4. Members' Rights. Each Member has all of the rights, duties and obligations set forth in this Declaration, the Articles, the Bylaws and the Association Rules.

Section 3.5. Suspension of Voting Rights. The right of any Member to vote is automatically suspended during any period where any assessment, or other sum due to the Association [including any attorney fees or other costs incurred by the Association which is attributable to the Lot or the Owner thereof] is unpaid and delinquent. The Association may suspend the voting rights of any Member for a period specified by the Board when, in the Board's discretion, such Member is in violation of the Governing Documents.

ARTICLE IV

PROPERTY RIGHTS

Section 4.1. Member's Easements of Enjoyment. Every Owner has the right and an easement to enjoy the Common Area and such easement shall be appurtenant to and is conveyed with the title to each Lot. Such right and easement of enjoyment is subject to the following provisions:

4.1.1. The right of the Association to adopt Bylaws and reasonable Rules and Regulations governing the use of the Lots and the Common Area, as well as the Owners' conduct on the Lots or Common Area, and governing the payment and collection of

assessments from the Owners and penalties for failure to pay these assessments.

4.1.2. The right of the Association to borrow money for the purpose of improving and maintaining the Common Area and, if necessary, to mortgage the Property, but the rights of any mortgagee in the Properties shall be subordinate to the rights of the Owners.

4.1.3. The right of the Association to mortgage the Common Area or to dedicate or transfer all or any part of the Common Area for such purposes and subject to such conditions as may be agreed to by the Members. No dedication or transfer of the Common Area is effective unless approved by at least two-thirds (2/3) of the Owners [with one (1) vote per Lot].

4.1.4. The right of the Association to enter into such agreements and take any action which is reasonably necessary and convenient to accomplish the Association's obligations and to operate and maintain the Common Area.

Section 4.2. Delegation of Use. Any Owner may delegate his/her right to use the Common Area to the members of his/her family, his/her tenants or contract purchasers who reside on a Lot, provided that such delegation is made in accordance with the Governing Documents.

Section 4.3. Common Area. Ownership of the Common Area is vested in the Association, subject to the easements created in Article V. The Common Area shall be deeded to the Association by the Declarant on or before the

date the first Lot is conveyed to an Owner. The Common Area shall be conveyed to the Association free and clear of all liens and encumbrances. The Common Area is for the common use and enjoyment of the Members of the Association.

ARTICLE V

EASEMENTS AND LICENSES

Section 5.1. Easements for Encroachments. Each Lot and the Common Area is subject to an easement for encroachments created by the original construction of the improvements on any Lot, settling and overhangs, which are part of the original construction. A valid easement for those encroachments and for the maintenance of such shall continue for so long as the encroachments exist. This easement does not cover any improvements constructed by a Lot Owner after the original sale of that Lot by the Declarant.

Section 5.2. Easement Over Common Area. A blanket easement is created upon, across, over and under the Common Area for the use and enjoyment of all the Members, their guests, invitees, licensees and tenants, subject to reasonable regulations of the Association, and for ingress, egress, installation, replacing, repairing and maintaining all utilities, including, but not limited to, water, sewer, gas, telephones and electricity. Any conveyance or encumbrance of any of the Common Area shall be subject to an Owner's easement for ingress or egress to his/her Lot.

1 Section 5.3. Easement for Maintenance of the Perimeter Walls. The Association in
2 entitled to an easement over each Lot for the purpose of maintaining,
3 repairing and painting the perimeter walls.

4 Section 5.4. Drainage Easement. A drainage easement is created upon, across, over
5 and under each Lot for the benefit of all other Lots.

6 Section 5.5. Utility Easements. The Association has an easement over any Lot on
7 which a utility easement is located [as reflected on the Plat] for the
8 purpose of performing any of its obligations required by the Governing
9 Documents.

10 Section 5.6. Declarant's Easements.

11 5.6.1. The Declarant has an easement on and over the Common
12 Area to construct all improvements which the Declarant may
13 deem necessary and to use the Common Area and any Lots
14 owned by the Declarant for construction purposes, including
15 the storage of tools, machinery, equipment, building materials,
16 and supplies.

17 5.6.2. The Declarant has the right and an easement to maintain sales
18 or leasing offices, management offices and models throughout
19 the Project, to maintain one or more advertising signs on the
20 Common Area and on the Lots owned by the Declarant while
21 it is selling the Lots.
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the dispute and the decision of the Board shall be final and binding on the parties.

Section 6.6. Private Agreements. Private Agreements between Owners may not modify the provisions of this Article.

Section 6.7. Architectural Control Committee Approval. In the event that the Owners desire to modify any party wall, they must first obtain the written approval of the Architectural Committee. In addition to the provisions of this Declaration pertaining to the approval of the Architectural Committee, the Owners acknowledge that the Committee may rely upon the opinions of the Owners of any party wall in determining whether any proposed alteration is be permitted.

ARTICLE VII

ASSESSMENTS

Section 7.1. Creation of the Lien and Personal Obligation to Pay Assessments. Each Owner, including the Declarant, upon the recordation of a deed to any Lot, whether or not it is stated in the deed, covenants and agrees to pay to the Association: (1) Annual Assessments or charges, (2) Reimbursement Assessments and (3) Special Assessments. These assessments shall be established and collected as provided in this Article. All assessments, together with interest, late fees, costs, and reasonable attorney fees, shall be charged against the Lot and shall be a continuing lien upon the Lot. Delinquent assessments, together with interest, late fees, costs, and reasonable attorney fees, shall also be the personal obligation of the

or on any other periodic basis. In the event that the Board determines that the annual assessment shall be payable in installments, at such time as any owner is delinquent in the payment of such installments, the Board has the right to accelerate the balance of the year's assessment, all of which shall be due within fifteen days of written notice thereof by the Board.

7.3.3. Special Assessments. In addition to the Regular Assessments the Board may levy Special Assessments for any of the following purposes: (1) constructing capital improvements; (2) correcting an inadequacy in the current operating account; (3) defraying, in whole or in part, the cost of any construction, reconstruction, unexpected repair or replacement of improvements in the Common Area; or (4) paying for such other matters as the Board may deem appropriate. The Board shall determine the due date of any Special Assessment.

7.3.4. Uniform Rate of Assessment.

7.3.4.1. Except as otherwise provided in this Declaration, all Assessments must be set at a uniform rate for all Lots [regardless of whether the Lot is improved or not improved].

7.3.4.2. For so long as the Declarant is a Class B Member, it shall pay assessments equal to 25% of the regular Annual Assessment on all Lots on which a home has

not been fully constructed. Declarant's assessment obligation shall increase to 100% of the Annual Assessment at such time as the Certificate of Occupancy is issued by the governmental authority having jurisdiction over the construction or when the home becomes occupied, whichever occurs first.

7.3.5. Due Dates for Annual Assessments. Each Owner shall begin making his/her payment of the Annual Assessments on the first day of the month following the conveyance of a Lot to that Owner. This amount shall be adjusted according to the number of months remaining in the calendar year.

7.3.6. Reimbursement Assessments. The Association shall levy a Reimbursement Assessment against any Owner if a failure to comply with the Governing Documents has (1) necessitated an expenditure of money by the Association to bring the Owner or his/her Lot into compliance, including any attorney fees which were incurred by the Association; or (2) resulted in the imposition of a fine or penalty by the Board, after notice of the violation and an opportunity for a hearing has been given to the Owner. Reimbursement Assessments may be collected in the same manner as Annual Assessments.

7.3.7. Effect of Nonpayment of Assessments; Remedies of the Association. In addition to all other remedies provided by law, the Association, or its authorized representative, may enforce

1 the obligations of any Owner to pay the Assessments in any
2 manner provided by law or by either or both of the following
3 procedures:

4 a. By Suit. The Association may file a lawsuit against any Owner
5 who is personally obligated to pay delinquent assessments. Any
6 judgment obtained in the Association's favor shall include the amount
7 of the delinquent assessments, any additional charges incurred by the
8 Association, attorney fees and court costs and any other amounts
9 which the court may award. A proceeding to obtain a judgment for
10 unpaid assessments may be maintained without the necessity of
11 foreclosing or waiving the Association's lien.

12 b. By Lien. The Association's lien for any unpaid assessment
13 arises when any assessment is not paid within fifteen days of its due
14 date. As more fully provided for in A.R.S. §33-1807, the recording of
15 this Declaration constitutes record notice and perfection of the
16 Association's lien. The Association is not required to record a lien,
17 but may do so to provide notice to third parties of its interest in the
18 Lot. Except for the transfer of a Lot pursuant to a foreclosure
19 proceeding, the sale or transfer of a Lot does not affect the
20 Association's lien. The Association may commence and maintain
21 proceedings to foreclose its lien in the same manner as the
22 foreclosure of mortgages. The lien for assessments is prior and
23 superior to all other liens, except (1) all taxes, bonds, assessments
24 and other levies which, by law, would be superior thereto; and (2) the

lien of any mortgage or deed of trust which is recorded before the date this Declaration was recorded.

7.3.8. Additional Charges. In addition to any other amounts due or any other relief or remedy obtained against an Owner who is delinquent in the payment of any assessments, each Owner agrees to pay such additional costs, fees, charges and expenditures ("Additional Charges") as the Association may incur in the process of collecting funds from any Owner. All additional charges shall be included in any judgment in any suit to collect delinquent assessments or may be levied against a Lot as a reimbursement assessment. Additional charges shall include, but not be limited to, the following:

a. Attorney Fees. Reasonable attorney fees and costs incurred in the event an attorney is employed to collect any assessment or sum due, including the placement of the lien, or the filing of a suit or otherwise;

b. Late Charges. A late charge, in an amount to be determined by the Board. An assessment is deemed to be delinquent if it is not paid within fifteen days from the date it is due.

c. Costs of Suit. Litigation expenses and court costs incurred;

d. Interest. Interest on all sums due from the Owner, including delinquent assessments, costs of collection, attorney fees and late charges, at an annual percentage rate to be established by the Board; and

1 e. Other. Any other additional costs which the Association may incur
2 in the process of collecting delinquent assessments or other sums
3 due to the Association.

4 7.3.9. Application of Payments. All payments received by the
5 Association shall be applied first to the principal amount due
6 which includes the late charges and any collection costs and
7 attorney fees incurred by the Association, and then to any
8 interest which has accrued on these sums.

9 7.3.10. Statement of Assessment Lien. Upon written request from any
10 Owner, the Owner's agent, or the lienholder, the Association
11 shall furnish the person who made the request with a written
12 certificate, in a recordable form, signed by an officer or
13 authorized agent of the Association stating the amount of any
14 assessment which is due and any additional charges secured
15 by the lien upon his/her Lot. The Board of Directors may
16 impose a reasonable charge for the issuance of that certificate.

17 7.3.11. No Exemption of Owner. No Owner is exempt from liability for
18 the payment of assessments because he/she does not use or
19 enjoy the Common Area, or has abandoned his/her Lot, or for
20 any other reason, including any allegation that the Board is not
21 performing its obligations under the Governing Documents.

22 7.3.12. Subordination of the Lien to Mortgages. The lien for
23 assessments is subordinate to the lien of any first mortgage or
24 deed of trust recorded against the Lot. The sale or transfer of

any Lot does not affect the assessment lien. However, the sale or transfer of any Lot pursuant to a mortgage foreclosure, or any proceeding in lieu thereof, extinguishes the lien for such assessments but only as to those payments which became due prior to such sale or transfer. No sale or transfer of any Lot shall relieve the Lot from liability for any assessments which become due before the sale or transfer, or from the lien for assessments.

7.3.13. Mortgage Protection and Additional Assessment as Common Expense. Notwithstanding and prevailing over any other provision of the Governing Documents, the following provisions shall apply to and benefit each First Mortgagee:

a. The Mortgagee shall not be personally liable for the payment of any assessment, nor for the observation or performance of any provision of the Governing Documents, except for those matters which are enforceable by injunctive or other equitable actions, and which do not require the payment of money.

b. During the pendency of any proceeding to foreclose any mortgage, including any period of redemption, the mortgagee may, but is not required to, exercise any or all of the rights and privileges of the Owner of the mortgaged Lot, including but not limited to the exclusion of the Owner's exercise of such rights and privileges.

c. At such time as the mortgagee becomes the record Owner of a Lot, it shall be subject to all of the terms and conditions of the

Governing Documents, including but not limited to the obligation to pay all assessments and charges accruing thereafter, in the same manner as any Owner.

d. The First Mortgagee, or any other party acquiring title to a mortgaged Lot through foreclosure suit or through any equivalent proceeding arising from the mortgage, such as, but not limited to, the taking of a deed in lieu of foreclosure, shall acquire title to the mortgaged Lot free and clear of any lien authorized by or arising out of any of the provisions of the Declaration or Bylaws which secured the payment of any assessment for charges accrued prior to the final conclusion of any such foreclosure suit or equivalent proceeding, including the expiration date of any period of redemption.

e. Mortgagees are entitled to 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 mortgagees may 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 payment may be owed immediate reimbursement from the Association.

f. Nothing in this Declaration shall in any manner be deemed to give an Owner priority over any rights of a mortgagee of a Lot pursuant to the terms of such mortgagee's mortgage in the case of a distribution to an Owner of insurance proceeds or condemnation awards for losses or to a taking of any Lot or any part of the Common Area

owned by the Association. Each mortgagee shall be entitled to timely written notice of such loss or taking.

7.3.14. Reserves.

7.3.14.1. To insure that the Association has adequate funds to pay the Common Expenses, each Purchaser of a Lot shall pay the Association, immediately upon becoming the Owner of the Lot, a sum equal to twenty-five percent (25%) of the Annual Assessment on the Lot. Funds paid to the Association pursuant to this Section may be used by the Association for the payment of operating expenses or any other purpose permitted under the Governing Documents. Payments made pursuant to this Section shall be non-refundable and shall not be considered as an advance payment of any Assessments levied by the Association pursuant to this Declaration.

7.3.14.2. The reserves which are collected as part of the Regular Assessments shall be deposited by the Association in a separate bank account to be held for the purposes for which they are collected. Such reserves shall be deemed a contribution to the capital account of the Association by the Owners and once paid, no Owner shall be entitled to any reimbursement of those funds. The Board is only responsible for providing for such

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1 reserves as the Board in good faith deems reasonable,
2 and no Member of the Board is liable to any Owner or
3 to the Association if the amount in the reserve account
4 proves to be inadequate.

5 7.3.15. Fines and Penalties. If any Owner, his/her family or any
6 licensee, invitee, tenant or lessee violates the Governing
7 Documents, the Board may levy a fine upon the Owner of the
8 Lot for each violation. However, for each day that a violation
9 continues after written notice to cease has been mailed, it shall
10 be considered a separate violation and subject to the
11 imposition of the fine.

12 7.3.15.1. Procedures for Imposing Fines. The Board shall
13 establish a procedure by which it imposes such
14 penalties, including notice of the violation and the right
15 to a hearing if requested by an Owner. Any fines
16 imposed by the Board which are not paid within fifteen
17 (15) days after notice shall become a lien on the
18 Owner's Lot. Any fine which is not timely paid will be
19 collected in the same manner as delinquent
20 assessments, including the imposition of late fees and
21 interest.

22 7.3.15.2. Enforcement Procedures

23 7.3.15.2.1. Demand. Written demand to cease and desist
24 from an alleged violation shall be served upon

1 the alleged violator specifying: (a) the alleged
2 violation; (b) the action required to abate the
3 violation and either a time period, of not less
4 than ten (10) days, during which the violation is
5 a continuing one, or a statement that any further
6 violation of the same rule may result in the
7 imposition of sanctions after notice and hearing
8 if the violation is not continuing.

9 7.3.15.2.2. Continuing Violations. For the purposes of this
10 Section, each day a violation continues after
11 notice to cease has been given by the Board to
12 the Owner shall constitute a separate violation.

13 7.3.15.2.3. Notice. Within one (1) month of such notice, if
14 the violations continue past the period allowed in
15 the notice for abatement without penalty, or if the
16 same rule is subsequently violated, the Board
17 shall serve the violator with written notice of a
18 hearing to be held by the Board in executive
19 session. The notice shall contain: (a) the nature
20 of the alleged violation; (b) the time and place of
21 the hearing, which time shall be not less than ten
22 (10) days from the giving of notice; (c) an
23 invitation to attend the hearing and produce any
24 statement, evidence, and witnesses on his or her

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behalf; and (d) the proposed sanction to be imposed, which may include the imposition of a fine of not more than One Hundred Fifty and No/100 Dollars (\$150.00) for any one violation.

7.3.15.2.4. Hearing. The hearing shall be held in executive session pursuant to this notice thereby affording the Member a reasonable opportunity to be heard. Prior to the effectiveness of any sanction hereunder, proof of notice and the invitation to be heard shall be placed in the minutes of the meeting. Such proof shall be deemed adequate if a copy of the notice together with a statement of the date and manner of delivery is entered into the minutes by the officer or director who delivered such notice.

ARTICLE VIII

ARCHITECTURAL REVIEW COMMITTEE

Section 8.1. Landscaping.

8.1.1. General Requirements. Except as expressly provided for in this Declaration or as approved by the Architectural Review Committee, landscaping on the Lots shall comply with the provisions of Architectural Guidelines developed by the Architectural Review Committee. All plants on the Lots and in

the Common Area shall be indigenous to Arizona or shall be drought resistant. No grass shall be permitted on any Lot.

8.1.2. Approval by the Architectural Review Committee. No exterior trees, bushes, shrubs, plants or other landscaping shall be planted or placed upon any Lot except as originally installed by the Declarant unless such landscaping is in compliance with plans and specifications which have been submitted to and approved by the Architectural Review Committee in accordance with the Guidelines.

8.1.3. Restrictions Applicable to All Lots. All Lots shall be landscaped in a manner and using plants and soil which have been approved by the Architectural Review Committee.

Section 8.2. Power and Duties. The Architectural Review Committee has all of the powers, authority and duties conferred upon it by the Governing Documents. It is the duty of the Architectural Review Committee to consider and act upon all proposals or plans submitted to it, to adopt the Guidelines, to perform any other duties delegated to it by the Board, and to carry out all other duties imposed upon it by this Declaration and/or any Rules adopted by the Board.

Section 8.3. Organization of the Architectural Review Committee. The Architectural Review Committee shall be organized as follows:

8.3.1. Committee Composition. The Architectural Review Committee shall consist of three (3) regular members and one (1) alternate member. The Board may, in its discretion, increase

or decrease the number of Members on the Architectural Review Committee. All Members of the Architectural Review Committee shall be Members of the Association, or an officer, agent or employee of Declarant; provided, however, that the committee may hire an approving architect to assist it with its approval process.

8.3.2. Alternate Members. If any Member of the Architectural Review Committee is absent or unable to serve on this Committee, the remaining regular Members may designate an alternate Member to act as a substitute for the regular Member of the Architectural Review Committee who is unable to attend.

8.3.3. Term of Office. Unless a Member of the Architectural Review Committee has resigned or been removed, his/her term on the Committee shall be for a period of one (1) year, or until the appointment of his/her respective successor. Any new Member appointed to replace a Member who has resigned or has been removed shall serve for the remainder of that Member's unexpired term. Members of the Architectural Review Committee who have resigned, been removed or whose terms have expired may be reappointed.

8.3.4. Appointment and Removal. For so long as there is a Class B Member of the Association, the Declarant shall act as the Architectural Review Committee and may, if it desires, appoint a committee to assist it during the period of Declarant control.

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1 Upon the expiration of Class B membership, the Board shall
2 appoint and remove, at any time, and without cause, all regular
3 and alternate Members of the Architectural Review Committee.

4 8.3.5. Resignations. Any regular or alternate Member of the
5 Architectural Review Committee may at any time, resign from
6 the Architectural Review Committee by giving written notice to
7 the Board.

8 8.3.6. Vacancies. The Board shall fill any vacancies on the
9 Architectural Review Committee. A vacancy on the
10 Architectural Review Committee occurs upon the death,
11 resignation or removal of any regular or alternate Member.

12 8.3.7. Meetings and Compensation of the Architectural Review
13 Committee. The Architectural Review Committee shall meet,
14 when necessary, to perform its duties. The vote or written
15 consent of a majority of the regular Members (including any
16 Alternate Member) shall constitute the act of the Architectural
17 Review Committee. The Architectural Review Committee shall
18 keep and maintain a written record of all actions which it takes.
19 Although Members of the Architectural Review Committee
20 shall not be entitled to compensation for their services,
21 consultants hired by the Architectural Review Committee, as
22 authorized by the Board, may be entitled to compensation at
23 the discretion of the Board.

1 Section 8.4. Guidelines. Subject to the written approval of the Board, the Architectural
2 Review Committee shall adopt, and may from time to time amend,
3 supplement and repeal, the Guidelines. The Guidelines shall interpret,
4 implement, and supplement this Declaration, and shall set forth
5 procedures for the review of modifications to improvements, construction,
6 and installation of improvements on any Lot, and the standards for
7 development within the Property. The Guidelines have the same force
8 and effect as the Association Rules.

9 Section 8.5. Obligation to Obtain Approval.

10 8.5.1. Except as otherwise expressly provided in this Declaration or
11 the Guidelines, the following actions require the Architectural
12 Review Committee to approve, in writing, all plans and
13 specifications prepared and submitted to it in accordance with
14 the provisions of this Declaration and the Guidelines:

15 8.5.1.1. The installation of improvements, alterations, repairs,
16 excavation, grading, landscaping or other work which in
17 any way alters the exterior appearance of any Lot from
18 its improved state existing on the date the Lot is
19 conveyed by the Declarant; and,

20 8.5.1.2. The construction, installation, modification or addition of
21 or to any building, fence, exterior wall, driveway or other
22 structure, improvement or grading on any Lot at any
23 time;

1 8.5.1.3. No material changes or deviations in or from the plans
2 and specifications for any work to be done on any Lot,
3 once approved by the Architectural Review Committee,
4 is permitted unless the change or deviation is approved
5 by the Architectural Review Committee.

6 Section 8.6. Standard of Review. In reviewing the requests for the installation,
7 addition, alteration, repair, change or replacement of any improvement,
8 the Architectural Review Committee shall consider whether the proposed
9 Improvement will be consistent with the requirements of this Declaration
10 and the Guidelines and any other factors which the Architectural Review
11 Committee deems appropriate.

12 Section 8.7. Waiver. Approval by the Architectural Review Committee of any plans,
13 drawings or specifications for any work done or proposed, or for any other
14 matter requiring approval of the Architectural Review Committee, is not a
15 waiver of any right to withhold approval of any similar plan, drawing,
16 specification or matter subsequently submitted for approval.

17 Section 8.8. Liability. Neither the Declarant, the Association, the Board or the
18 Architectural Review Committee (or any Member thereof) is liable to the
19 Association, any Owner or any other party for any damage, loss or
20 prejudice suffered or claimed arising out of:

21 8.8.1. The approval or disapproval of any plans, drawings or
22 specifications, whether or not defective;

23 8.8.2. The construction or performance of any work, whether or not
24 pursuant to approved plans, drawings and specifications;

1 Section 8.9. Appeal to Board. Except as provided in this Section, any Owner who has
2 submitted plans and is not satisfied by a decision of the Architectural
3 Review Committee may appeal the decision to the Board in accordance
4 with the procedures established in the Guidelines. The Board shall review
5 the decision of the Architectural Review Committee and either approve it,
6 reject it, or modify it. The decision of the Board is final and binding and
7 shall modify the Architectural Review Committee's decision to the extent
8 specified by the Board.

9 Section 8.10. Fee. The Board may establish a reasonable processing fee to defer the
10 costs of the Architectural Review Committee in considering any requests
11 for approvals submitted to the Architectural Review Committee or for
12 appeals to the Board, which fee shall be paid at the time the request for
13 approval or review is submitted. Such fee shall be paid by the Owner on
14 the terms and within the time established by the Board. Any fee not paid
15 when required may become a lien against the Lot and collected in the
16 same manner as assessments.

17 Section 8.11. Inspection. Any Member of the Architectural Review Committee, or any
18 authorized officer, director, employee or agent of the Association, may at
19 any reasonable time and without being deemed guilty of trespass, enter
20 on any Lot, after reasonable notice to the Owner of such Lot, in order to
21 inspect the improvements constructed or being constructed on such Lot
22 to ascertain that such improvements have been, or are being built in
23 compliance with the Guidelines, plans and specifications approved in
24 accordance with the Governing Documents.

1 Section 8.12. Compliance with Native Plant Preservation Ordinance. After the sale of
2 any Lot, the Owner is required to preserve all native plants located on the
3 Lot and the Association is required to preserve all native plants located in
4 the Common Areas. An individual who is qualified in arid lands native
5 plant resource identification and protection shall assess the condition of
6 the plants on the Lot and the Common Area within one year after the
7 completion of the Development Period. Such person shall survey the
8 project and prepare a report on the plant status, including general plant
9 condition, the identification of plants under stress and the appropriate
10 method to relieve such stress and shall make recommendations to the
11 Association for the replacement of plants that are dead or dying in the
12 Common Areas and to the Owners of the Lots, for plants which are
13 located on the Lots. Dead or dying plants shall be replaced with the same
14 plants at a one to one ratio of like genus and species. Copies of such
15 report shall be furnished to the City of Tucson and to the Declarant. The
16 Owners of Lots or the Association, as applicable, shall respond to the
17 plant needs within six months of the date of the report, or within such
18 shorter period if the report indicates that such shorter period is necessary
19 to improve the health of stressed plants and prevent plant loss. The costs
20 of obtaining the services of the person who monitors the condition of the
21 plants shall be borne by the Association and shall be part of the operating
22 expenses of the Association.

23 Section 8.13. Exemption of Declarant. Nothing contained in this Declaration shall limit
24 the right of the Declarant to complete excavation, grading and

1 construction of improvements to any property owned by the Declarant
2 within the subdivision; or to construct any additional improvements which
3 the Declarant deems necessary in the course of developing the
4 subdivision, including the use of any improvement as a model home or
5 real estate sales or leasing office.

6 ARTICLE IX

7 OWNERS' MAINTENANCE RESPONSIBILITIES

8 Section 9.1. Each Owner is responsible for the payment of his/her Lot's utility costs,
9 property taxes, insurance, and the repair of all appliances and equipment
10 located on the Lot. Each Owner is responsible for the maintaining,
11 repairing and replacing any water or sewer line which is located under the
12 Lot from the point that it leaves the main water or sewer line to service
13 that Lot.

14 Section 9.2. Each Owner is responsible for the upkeep and maintenance of the
15 exterior and the interior portions of the improvements on the Lot and for
16 the maintenance of all other portions of the Lot, except for the front yard
17 landscaping the maintenance of which shall be performed by the
18 Association.

19 Section 9.3. Each Owner is responsible for providing termite control and other pest
20 control on the Lot.

21 Section 9.4. No Owner make take any action which may cause any damage to any
22 other Lot.

23 Section 9.5. No Owner may allow any condition to exist on his/her Lot which adversely
24 affects the other Lots or other Owners, nor may an Owner engage in any

conduct which causes the premiums for any insurance which is provided by the Association to increase.

Section 9.6. Each Owner is responsible for assuring that all construction, alterations, modifications or additions to buildings, walls, fences, driveways or other structures on the Lot conform to the Use Restrictions set forth in this Declaration. If, after written notice from the Association, an Owner fails to comply with the Association's request to conform to such Use Restrictions, the Association may, in its sole discretion, take whatever action is appropriate to bring the Lot into compliance, including entering upon the Lot and making such corrections [as more fully provided for below]. The cost of such action shall be charged to the Owner and collected in the same manner as the Assessments.

Section 9.7. Utility Service. Electric power, sewers, and water are available to the Lots through private utility companies authorized by the State of Arizona. Neither the Declarant, the Board nor the Architectural Review Committee assumes any responsibility for and does not guaranty the quality or quantity of the water and electric power to be furnished to the Lot and shall not, in any way, be liable for any shortage of water or electricity.

Section 9.8. Dereliction of Maintenance by Owners.

9.8.1. Each Owner is responsible for the payment of all damages caused by the Owner, his guest, family, lessees, pets or employees to his or any other Owner's property or to the Common Area. If any Owner fails to maintain the Lot in a manner satisfactory to the Board, the Board, through its agents

and employees, after giving ten (10) days written notice to the Owner, is entitled to enter on the Lot and to make any necessary repairs, maintenance, rehabilitation or restoration of the Lot, including the exterior of any improvements. The Association shall provide the Owner with an invoice for the work performed. In the event such invoice is not paid within ten (10) days of the date of such invoice, the Association may collect the amount due in the same manner as the Assessments.

9.8.2. Nothing contained in this Declaration requires the Association to charge for, or to collect, assessments for damage caused by an Owner, his guest, family, lessees, pets or employees to any other Owner's property or to the Common Area. Any party whose property is damaged by another Owner's negligence or willful conduct, may not require the Association to make such repairs, to charge the offending party or collect such necessary amounts from him/her.

ARTICLE X

ASSOCIATION'S RESPONSIBILITIES

Section 10.1. Association's Responsibilities. The Association is responsible for the proper and efficient management of the Association and the Common Area.

Section 10.2. Specific Responsibilities of the Association. In addition to any other responsibilities which the Association may have, it is specifically responsible for the following:

10.2.1. Maintaining the Common Area;

10.2.2. Maintaining the perimeter walls located on the outside boundary of the project;

10.2.3. Maintaining the landscaping in the front yards of the Lots, which shall be initially installed by the Declarant;

10.2.4. Providing for the proper maintenance of the 30 foot wide buffer area in the right-of-way as shown on the Plat, all in accordance with the requirements set forth in the City of Tucson Land Use Code.

10.2.5. Providing for such additional services as the Board, from time to time, determines to be in the best interests of the Association;

10.2.6. Paying real estate taxes, assessments and other charges on the Common Area;

10.2.7. Insuring all improvements which the Association is obligated to maintain, with companies and with such limits as the Association deems appropriate;

10.2.8. Hiring, firing, supervising, and paying employees and independent contractors providing services to the Association;

10.2.9. Maintaining insurance to protect the Members, the Board, and the Association from any liability for anything which occurs in

the Common Area. The insurance maintained by the Association shall also include Director's and Officer's Liability Insurance;

10.2.10. Maintaining worker's compensation insurance for any employees of the Association, or requiring the use of licensed contractors if required by law;

10.2.11. Purchasing all goods, supplies, labor, and services reasonably necessary for the performance of the obligations set forth in this Declaration;

10.2.12. Establishing and maintaining reasonable reserves for the maintenance, repair, and replacement of the improvements for which the Association is responsible and for unforeseen contingencies;

10.2.13. Providing for the payment for any utility services which service the Common Area;

10.2.14. 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 Common Area.

Section 10.3. Drainage and Detention Facilities.

10.3.1. The Association shall maintain all drainage and detention facilities in the Common Area. It shall have an Arizona Registered Professional Civil Engineer prepare a certified Inspection report for the Drainage and Detention Facilities at least once each year. Such inspection report shall be retained in the Association's books and records and shall be subject to review by the governmental agency having jurisdiction over the Project, upon its written request.

10.3.2. Such governmental agency has the right to inspect the private drainage and detention facilities to verify that any scheduled and unscheduled maintenance activities are being adequately performed by the Association.

10.3.3. The Association is obligated to reimburse such governmental agency for any costs associated with maintaining the private drainage and detention facilities in the event that it determines that the Association has been deficient in its obligation to adequately maintain such facilities.

Section 10.4. Compliance with City of Tucson Land Use Code - Native Plant Preservation. An individual who is qualified in arid lands native plant resource identification and protection as specified in Section 3.8.4. of the City of Tucson Land Use Code - Native Plant Preservation, as amended from time to time, shall provide an assessment of the condition of the plants in the development site one year after final inspection by

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Development Services Department. Such person shall prepare a report on plant status, including general plant conditions, the identification of plants under stress and the appropriate method to relieve the stress, and recommendations for replacement of plants that are dead or dying. Such report shall be provided to the Developer, during the development period or to the Association, after the development period has expired, and to the Development Services Department and the Developer or Association, as the case may be, shall respond to the plant needs as outlined in the status report within six months of the date the report is submitted or within any shorter period if required to improve the health of stressed plants and prevent plant loss.

Section 10.5. Operation of Association. The manner in which the Association carries out its responsibilities shall be controlled by the Governing Documents and any applicable Arizona law. The payment of assessments to the Association is not contingent on the performance by the Association of any of its obligations.

ARTICLE XI

INSURANCE

Section 11.1. The Association shall obtain and maintain in force the insurance set forth in Article IX, subject to the following:

- a. All such insurance shall be written in the name of the Association.
- b. The insurance coverage obtained and maintained by the Association shall not be brought into contribution with

insurance purchased by Individual Owners or their mortgagees.

- c. The Board may obtain such other insurance which it determines is necessary or expedient to carry out the Association's functions as set forth in this Declaration.

Section 11.2. Individual Insurance.

11.2.1. Each Owner agrees with all other Owners and with the Association that he/she shall carry insurance in an amount which is sufficient to fully cover the replacement of any of the improvements on the Lot. Upon the written request of the Board, the Owner shall furnish proof of such insurance to the Association in writing. If the Owner does not purchase adequate insurance, the Association is entitled to insure the improvements on the Lot and bill the Owner for the cost of such insurance.

11.2.2. Each individual Owner agrees that in the event of a partial loss or damage and destruction to the improvements on a Lot which results in less than total destruction, the Owner shall promptly repair or reconstruct the damaged structure in a manner consistent with the original construction.

11.2.3. Every policy of insurance obtained by the Owner shall provide, if available, for the payment of that Lot's share of the assessments to the Association during the time that the

1 damage for which there are insurance proceeds is being
2 repaired.

3 ARTICLE XII

4 USE RESTRICTIONS

5 Section 12.1. Residential Use. All Lots shall be used for single-family residential
6 purposes only, and no other structures except single-family residences
7 shall be placed or maintained thereon.

8 Section 12.2. Business Activities. No trade or business may be conducted in or from
9 any Lot except that an Owner or occupant residing in any Lot may conduct
10 business activities so long as (a) the existence or operation of the
11 business activity is not apparent or detectable by sight, sound or smell
12 from outside the Lot; (b) the business activity conforms to all zoning
13 requirements for the Properties; (c) the business activity does not involve
14 any person conducting such business who does not reside on the
15 Properties or door-to-door solicitation of residents of the Properties; (d)
16 the existence or operation of the business does not increase that Lot's
17 use of Common Area over that which is standard for a single family
18 residence; (e) the existence or operation of the business does not require
19 customers or delivery trucks to visit the residence; and (f) the business
20 activity does not constitute a nuisance, or a hazardous or offensive use,
21 or cause the owners to violate any other provisions of this Declaration, or
22 threaten the security or safety of other residents of the Properties, as may
23 be determined in the sole discretion of the Board.

24 Section 12.3. Leases

- 12.3.1. An Owner may lease his/her Lot for single-family residential purposes only.
- 12.3.2. All provisions of the Governing Documents which govern the conduct of Owners and which provide for sanctions against Owners shall also apply to all occupants of any Lot. The Owner shall provide the tenant with copies of the Governing Documents. If the Owner fails to do so, the Association shall provide copies to the tenant and charge the Owner for the cost of doing so.
- 12.3.3. All leases and subleases shall be in writing and shall specifically provide:
- a. The lease is subject in all respects to the provisions of the Governing Documents.
 - b. The failure of the lessee to comply with the terms and conditions of the Governing Documents is a material default of the lease.
- 12.3.4. Information to be Provided to the Association. If the Owner leases his/her Lot, the Owner shall give the Board, in writing, the name of the lessee and such other information as the Board may reasonably require.
- 12.3.5. Voidable Leases. All leases which do not contain these provisions shall be deemed null and void at the option of the Board.

Common Area to properly direct interested parties to the subject property, but only during those hours in which such property is open for inspection.

d. Any signs used by the Declarant in the sale and marketing of the Lots in the subdivision, provided that the signs are approved by the Architectural Review Committee.

Section 12.8. Rubbish, Garbage, Wood Storage, Unsightly Articles or Nuisances.

12.8.1. No Lot shall be used in whole or part for the storage of rubbish, garbage or wood of any character whatsoever nor for the storage of anything which will cause such Lot to appear in any unclean or untidy condition or that will be otherwise obnoxious. No storage of any material is permitted outside the walls of a Lot. Wood storage is allowed only so long as wood piles are fully screened from adjoining Lots, or the Common Area. No unsightly articles shall be visible from adjoining Lots or from the street. No Owner shall cause any condition on the Lot which might, in the sole discretion of the Board, be a nuisance to the other Owners or their tenants, guests or visitors.

12.8.2. The Association has the right to adopt rules and regulations concerning refuse collection in accordance with the requirements of the City of Tucson. Such rules and regulations shall be binding on each Owner of a Lot and enforced in the same manner as the provisions of the Declaration.

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1 traffic hazard. All vegetation on the Lots shall consist of low
2 water use and low pollen producing vegetation.

3 12.11.2. Planting in the Common Area and Front Yards. The planting
4 and landscaping in the Common Area and in the Front Yards
5 shall not be destroyed or removed without the consent of the
6 Architectural Review Committee. If natural growth is removed
7 without such consent, the Board may require the replanting or
8 replacement of same, the cost of which shall be borne by the
9 Owner responsible for such removal.

10 Section 12.12. Antennas and Exterior Additions. Subject to the Telecommunications Act
11 of 1996, no exterior antennas or other devices for the transmission or
12 reception of television or radio signals, including satellite dishes, shall be
13 erected or maintained if they are Visible to Adjoining Lots or from the
14 Common Area. No exterior devices or additions, other than initially
15 installed by the Declarant, including solar energy devices, shall be
16 constructed on the exterior of a Lot (including the roof) without the written
17 authorization of the Architectural Review Committee.

18 Section 12.13. Clotheslines. Clotheslines are permitted on the Lot, provided that they are
19 not Visible from Adjoining Lots or from the Common Area.

20 Section 12.14. Common Area.

21 12.14.1. No plants or other materials shall be placed or permitted to
22 remain which may change the direction of flow or which may
23 obstruct or retard the flow of water.

12.14.2. All Common Area shall be managed in compliance with all City
of Tucson Ordinances.

Section 12.15. Vehicle Parking and/or Storage.

12.15.1. There is no on-street parking except for an Owner's guests
who may park their vehicles on the streets.

12.15.2. Parking or storage of recreational vehicles (including, but not
limited to, trailers, campers, motor homes, mobile homes, van
conversions and boats) is prohibited on all portions of the
Property, unless parked in the enclosed garage on the Lot.

12.15.3. No commercial, construction or like vehicles (including, but not
limited to, pickup-type vehicles in excess of one ton capacity),
and vehicles bearing commercial licenses or commercial
insignia shall be parked or stored on any Lot other than inside
the enclosed garage.

12.15.4. The Board may establish parking regulations if it determines
such are necessary, including, but not limited to, parking
regulations which restrict the number of vehicles which may be
parked on the driveway or on the lot.

12.15.5. Except for emergency vehicle repairs, no automobile or other
motor vehicle shall be constructed, reconstructed or repaired
on any Lot, and no inoperable vehicle [including an unlicensed
vehicle] may be stored or parked on any Lot if it is Visible from
Adjoining Lots or is visible from the Common Area.

1 12.15.6. The Board has the right to have any vehicle, including, but not
2 limited to recreational vehicles, automobiles, motorcycles, etc.,
3 which is parked in violation of the Governing Documents towed
4 away at the sole cost and expense of the Owner of the vehicle.
5 Any expenses incurred by the Association in connection with
6 the towing of any vehicle shall be paid to the Association by
7 the Owner, within ten days from the date of demand by the
8 Association and if not paid, shall be collected in the same
9 manner as assessments.

10 Section 12.16. Right of Inspection. Upon notice to the Owner and during reasonable
11 hours, any Member of the Board of Directors of the Association, or any
12 authorized representative, has the right to enter upon and inspect the Lot,
13 (except the interior of any Improvements on the Lot) for the purpose of
14 ascertaining whether or not the provisions of the Governing Documents
15 have been or are being complied with, and such persons shall not be
16 deemed guilty to trespass by reason of such entry.

17 Section 12.17. Drainage. No person shall interfere with the established drainage pattern
18 over any Lot or the Common Area, unless adequate provision is made so
19 that the drainage conforms, in all respects, to the Pima County and City
20 of Tucson rules and regulations and any drainage criteria promulgated by
21 the Architectural Review Committee. "Established drainage" is defined as
22 the drainage which exists at the time the overall grading of the Property
23 is completed, or which is shown on any grading plans approved by Pima
24 County or the City of Tucson. No fence, wall or any other structure or

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Improvement may be constructed along any lot line in such a manner as to obstruct the natural flow of drainage across the lots and over the common area and the plans for all such improvements must be approved, in writing by the Architectural Review Committee.

Section 12.18. Subdividing of Lots. No Lot may be subdivided or split into two or more Lots.

Section 12.19. Rules and Regulations. The Board of Directors may adopt, amend and repeal Rules and Regulations pertaining to (1) the management, operation and use of the Common Area; (2) minimum standards of maintenance of the Lots; (3) any other subject within the jurisdiction of the Association; (4) the conduct and actions of Owners, tenants, guests, visitors on the Lots and Common Area when such conduct affects the other Owners or the value, desirability, and aesthetics of the project; (5) traffic and parking restrictions.

ARTICLE XIII

GENERAL PROVISIONS

Section 13.1. Enforcement.

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

13.1.1.1. imposing reasonable monetary penalties after notice and an opportunity to be heard is given to the Owner or other violator. An Owner is responsible for the payment of any penalty which is imposed against a Tenant or

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1 Resident of the Owner's Lot or by any guest or invitee
2 of the Owner, Lessee or Resident;
3 13.1.1.2. suspending an Owner's right to vote;
4 13.1.1.3. suspending any Person's right to use any of the
5 recreational facilities in the Common Area; provided,
6 however, that the Board is not authorized to limit
7 ingress or egress to or from a Lot;
8 13.1.1.4. suspending any services provided by the Association to
9 an Owner or the Owner's Lot if the Owner is more than
10 15 days delinquent in paying any assessment or other
11 charge owed to the Association;
12 13.1.1.5. exercising self-help or taking action to abate any
13 violation of the Governing Documents in a non-
14 emergency situation;
15 13.1.1.6. Requiring an Owner, at the Owner's expense, to
16 remove any structure or Improvement on such Owner's
17 Lot in violation of this Declaration and to restore the Lot
18 to its previous condition. After Notice and a time within
19 which the Owner must perform, if the Owner fails to
20 take action, the Board or its designee has the right to
21 enter the property, remove the structure or other
22 improvement in violation and restore the property to
23 substantially the same condition as previously existed
24 and any such action shall not be deemed a trespass;

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- 1 13.1.1.7. without liability to the Association or any Person,
2 prohibiting any contractor, subcontractor, agent,
3 employee or other invitee of an Owner who fails to
4 comply with the terms and provisions of this Declaration
5 or the Design Guidelines from continuing or performing
6 any further activities in the Properties;
7 13.1.1.8. towing vehicles which are parked in violation of this
8 Declaration or the Rules; and
9 13.1.1.9. filing a suit at law or in equity to enjoin a violation of the
10 Governing Documents, to compel compliance with the
11 Governing Documents, to recover fines or money
12 damages or to obtain such other relief as to which the
13 Association may be entitled.
14 13.1.2. The Association is not obligated to take any enforcement
15 action if the Board determines, in its sole discretion, that
16 because of the strength of the Association's finances, possible
17 defenses, the time and expense of litigation or other
18 enforcement action, the likelihood of a result favorable to the
19 Association, or other facts deemed relevant by the Board,
20 enforcement action would not be appropriate or in the best
21 interests of the Association.
22 13.1.3. All rights and remedies of the Association under the Governing
23 Documents or at law or in equity are cumulative, and the
24 exercise of one right or remedy shall not waive the Association'

s fight to exercise another right or remedy. The failure of the Association or an Owner to take enforcement action with respect to a violation of the Governing Documents shall not constitute or be deemed a waiver of the right of the Association or any Owner to enforce the Governing Documents in the future.

13.1.4. No delay or omission on the part of the Association or any Member in exercising its right to enforcement hereunder shall be construed as a waiver or breach of any of the provisions of the Governing Documents or an acquiescence in any breach of these Governing Documents and no right of action shall accrue against the Board, the Association or any Member for their neglect or refusal to exercise such right of enforcement.

13.1.5. No breach of the foregoing provisions, conditions, restrictions or covenants shall defeat or render invalid the lien of any mortgage or deed of trust made in good faith for value as to any portion of the Properties. Such provisions, conditions, restrictions and covenants shall be enforceable against any portion of the Properties acquired by any person through foreclosure for any breach occurring after such acquisition.

Section 13.2. Severability. Invalidation of any one of these covenants or restrictions by judgment or court order shall not affect any others which shall remain in full force and effect.

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1 Section 13.5. Annexation of Additional Property. The Declarant or the Board, if the
2 Declarant no longer owns any Lots within the Project, has the right to
3 annex additional property into the Properties and make it subject in all
4 respects to the provisions of the Governing Documents.

5 Section 13.6. Compliance. All covenants, conditions, provisions and restrictions
6 contained in this Declaration or any subsequent amendments to this
7 Declaration are subject to any and all applicable federal, state and local
8 governmental rules and regulations.

9 Section 13.7. Interpretation. Except for judicial construction, the Association has the
10 exclusive right to construe and interpret the provisions of this Declaration.
11 In the absence of any adjudication to the contrary by a court of competent
12 jurisdiction, the Association's construction or interpretation of the
13 provisions of the Governing Documents shall be final, conclusive and
14 binding on all Owners.

15 Section 13.8. Binding Effect. By acceptance of a deed or acquiring any ownership
16 interest in any Lot, each person or entity, for himself, or itself, his heirs,
17 personal representatives, successors, transferee and assigns, bind
18 himself and his heirs, personal representatives, successors, transferee
19 and assigns to all of the provisions, restrictions, covenants, conditions,
20 rules and regulations which have been imposed by this Declaration and
21 any amendments thereto. In addition, each such person doing so
22 acknowledges that this Declaration sets forth a general scheme of the
23 Properties and evidences his intent that all restrictions, conditions,
24 covenants, and rules and regulations contained herein or promulgated

1 hereafter by the Association shall run with the land and be binding upon
2 all subsequent and future Owners, grantees, purchasers, assignees and
3 transferee thereof. Furthermore, each such person fully understands and
4 acknowledges that this Declaration shall be mutually beneficial, prohibitive
5 and enforceable by the various subsequent and future Owners.

6 Section 13.9. Indemnification. The Association shall indemnify to the fullest extent
7 allowed by law every officer, director and committee member, against any
8 and all expenses, including attorney fees, reasonably incurred by or
9 imposed upon, any officer, director or committee member, in connection
10 with any action, suit or other proceeding (including settlement of any suit
11 or proceeding if approved by the then Board of Directors) to which he or
12 she may be a party by reason of being or having been an officer or
13 director. This provision shall not be deemed to include travel expenses
14 to attend Association meetings or legal proceedings and shall only include
15 reasonable actual expenses. The officers, directors and committee
16 members, shall not be liable for any mistake of judgment, negligent or
17 otherwise, except for their own individual willful misfeasance,
18 malfeasance, misconduct or bad faith. The officers, directors and
19 committee members shall have no personal liability with respect to any
20 contract or other commitment made by them, in good faith, on behalf of
21 the Association (except to the extent that such officers, directors or
22 committee members may also be members of the Association), and the
23 Association shall indemnify and forever hold each such officer, director
24 and committee member, free and harmless against any and all liability to

others on account of each such contract or commitment. Any right to indemnification provided for herein shall not be exclusive of any other rights to which any officer, director or committee member, or former officer, director or committee member, may be entitled. The Association shall, as a common expense, maintain adequate general liability and Officer's and Director's Liability Insurance to also include committee members, to fund this obligation.

IN WITNESS WHEREOF, the Declarant executes this Declaration on the

22nd day of May, ~~2000~~ 2001

INSURANCE
FIRST AMERICAN TITLE COMPANY, a California
Corporation, as Trustee under Trust Number 4911,
Declarant.

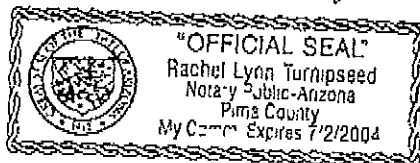
By: [Signature]
Trust Officer
Brigitte Echave, Assistant Vice President

State of Arizona)
County of Pima) ss:

This instrument was subscribed and sworn before me on this 22nd day of May, 2001, ~~2000~~ by Brigitte Echave, of FIRST AMERICAN TITLE COMPANY, a California Corporation, as Trustee under Trust Number 4911, Declarant.

[Signature]
Notary Public

My commission expires:



December 17, 2000
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