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TUCSON, AZ 85701-1215

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AMENDED AND RESTATED DECLARATION OF COVENANTS, CONDITIONS,
RESTRICTIONS AND EASEMENTS FOR DE ANZA.

CONTRACT
NO. <u>CTN-PW-18-011</u>
AMENDMENT NO. _____
<small>This number must appear on all invoices, correspondence and documents pertaining to this contract.</small>

**AMENDED AND RESTATED
DECLARATION
OF COVENANTS, CONDITIONS, RESTRICTIONS AND EASEMENTS,
FOR DE ANZA**

This Declaration is made this 14th day of AUGUST, 2017 by Fidelity National Title Agency, Inc., an Arizona corporation as Trustee under Trust Numbers. 30,199, 60,104 and 60,461, hereinafter collectively referred to as "Declarant".

RECITALS:

A. Except for that certain real property described in Recital "B" below, Declarant is the owner of certain real property in the County of Pima, State of Arizona, which is more particularly described as:

Lots 1 thru 265 and Common Areas "A" (Natural undisturbed Open Space), "B" (Interceptor Channel), "C" (Private Common On-Site Active Recreation Area), "D" (Private Common On-Site Passive Recreation Area), "E" (Open Space/Public Utilities and Drainage) and "F" (Coved Lot Natural Undisturbed Open Space) of **DE ANZA**, as recorded in Sequence No. 20170060460 thereof, Pima County Records, Pima County, Arizona ("De Anza").

B. Declarant conveyed to Pima County Flood Control District, a political taxing subdivision of the State of Arizona (the "District"), the portions of Common Areas "A" and "E" of De Anza more particularly described on Exhibit "A" and depicted on Exhibit "A-1" attached hereto by deed recorded on July 31, 2017, in Sequence No. 20172120798, Pima County Records (the "District Property"). De Anza, including the District Property, is hereinafter referred to as the "Properties".

C. The Properties are currently subject to that certain "Declaration of Establishment of Covenants, Reservations and Easements for De Anza, recorded on January 6, 2017, in Sequence 20170060462, Pima County Records (the "Original Declaration").

D. Declarant, with the consent and agreement of the District and, together with the District, owning all the real property subject to the Original Declaration, desires to amend and restate the Original Declaration in its entirety by this document and to submit the Properties, together with all buildings, improvements and other permanent fixtures of whatever kind now or

hereafter located thereon, and all easements, rights, appurtenances and privileges belonging or in any way pertaining thereto (all of which comprise a part of the Properties), to the covenants, conditions, restrictions, liens, assessments, easements, privileges and rights contained herein.

E. Declarant deems it desirable to establish covenants, conditions and restrictions upon the Properties and each and every portion thereof and certain mutually beneficial restrictions and obligations with respect to the proper use, occupancy and enjoyment thereof, all for the purpose of enhancing and protecting the value, desirability and attractiveness of the Properties and enhancing the quality of life in the Properties.

F. It is desirable for the efficient management of the Properties to create a homeowner's association to which should be delegated and assigned the powers of managing, maintaining and administering the common areas within the Properties and administering and enforcing these covenants, conditions and restrictions and collecting and dispersing funds pursuant to the assessments and charges hereinafter created and to perform such other acts as are herein provided or which generally benefit its members, the Properties, and the owners of any interest therein.

G. The De Anza Community Association, a nonprofit corporation, shall be incorporated under the laws of the State of Arizona for the purpose of exercising such powers and functions as provided herein.

H. Declarant desires and intends that the owners, mortgagees, beneficiaries and trustees, occupants and all other persons hereinafter acquiring any interest in the Properties shall at all times enjoy the benefits of, and shall hold their interest subject to, the covenants, conditions, restrictions, liens, assessments, easements, privileges and rights hereinafter set forth, all of which are declared to be in furtherance of a plan to promote and protect the Properties.

WITNESSETH:

NOW, THEREFORE, Declarant hereby declares: (i) that this Declaration amends and restates the Original Declaration in its entirety; and (ii) that the Properties shall be held, sold, conveyed, encumbered, and used subject to the following covenants, conditions, restrictions, uses, limitations, obligations, easements, equitable servitude's, charges and liens (hereinafter collectively referred to as the "Restrictions"), all of which are for the purpose of enhancing and protecting the value, desirability and attractiveness of the Properties. The Restrictions 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.

ARTICLE I

DEFINITIONS

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

1.1 "**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.

1.2 "**Association**" shall mean and refer to De Anza Community Association, its successors and assigns.

1.3 "**Board**" shall mean the Board of Directors of the Association.

1.4 "**Bylaws**" shall mean the Bylaws of the Association, together with any amendments thereto.

1.5 "**Common Area**" shall mean all real property referred to as common area on the Plat, and all improvements constructed thereon, for the common use and enjoyment of the Owners.

1.6 "**Declarant**" shall collectively mean Fidelity National Title Agency, Inc., as Trustee under Trust Numbers 30,199, 60,104 and 60,461, 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.

1.7 "**Declaration**" shall mean and refer to this instrument and any amendment thereto or restatement thereof.

1.8 "**Dwelling Unit**" or "**Unit**" shall mean any improvements placed within the confines of any Lot.

1.9 "**First Mortgagee**" 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.

1.10 "**Lot**", unless otherwise indicated by the context, shall first mean and refer to any numbered parcel of real property within the Properties shown on the Plat, as may be amended, together with the Dwelling Unit, if any, thereon. The term Lot shall also include any Lots combined to become a single lot, in which case the Lots so combined shall be considered one lot for all purposes, including voting and assessments.

1.11 "**Member**" shall mean and refer to every person and/or entity who holds membership in the Association ("Membership") pursuant to Section 2.1 hereof.

1.12 "**Mortgage**" shall mean any mortgage, deed of trust or other security instrument by which a Lot or any part thereof is encumbered.

1.13 "**Owner**" 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 contract for the sale of real property as set forth in Arizona Revised Statutes Section 33-741 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 tenant of an owner as defined above, or a purchaser or vend 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.

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

1.15 "Plat" shall mean the plat of the real estate that is subject to this Declaration recorded in the office of the County Recorder of Pima County, Arizona, and any amendment thereto or resubdivision thereof.

1.16 "Properties" shall mean and refer to that certain real property described in Recital A above.

1.17 "Restrictions" shall mean the covenants, conditions, restrictions, uses, limitations, obligations, easements, equitable servitudes, charges and liens set forth in this Declaration.

1.18 "Rules" shall mean any and all rules adopted by the Board pursuant to the Bylaws and this Declaration.

1.19 "Single Family" shall mean a group of one (1) or more persons each related to the other by blood, marriage, or legal adoption; or a group of person not all so related, not to exceed three (3) in number, who maintain a common household in a dwelling.

1.20 "Single Family Residential Use" shall mean the occupation or use of a residence by a Single Family in conformity with this Declaration and the requirements imposed by applicable zoning laws or other state, county or municipal rules and regulations.

1.21 "Visible From Neighboring Property" shall mean with respect to any given object, that such object is, or would be, visible to a person six (6) feet tall, standing on any part of such neighboring property at an elevation no greater than the elevation of the base of the object being viewed.

ARTICLE II

ASSOCIATION

2.1 Membership in the Association. 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. Transfer of ownership of a Lot shall operate automatically to transfer the appurtenant membership to the new Owner thereof. Any attempted transfer of membership separate from the appurtenant Lot or Lots shall be void.

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

(a) **Class A.** Class A Members shall be all Owners except the Class B Members 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.

(b) **Class B.** Class B Members shall be Declarant, 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. Class B Members shall be entitled to three (3) votes for each Lot owned. Class B membership shall cease and be converted to Class A membership on the happening of the earliest of the following events:

(i) One Hundred Twenty (120) days after Declarant and/or its successors or assigns no longer own any Lots; and

(ii) The date on which all Class B Members have relinquished their Class B Memberships by written notice to the Association.

2.3 Purpose of Association. The Association is a non-profit corporation which will serve as the governing body for all Owners and Members for the assessment of expenses, administration of the architectural matters within the Association, and other matters as provided in this Declaration, the Articles, the Bylaws, and the Rules, as any may be amended from time to time. However, the Articles, Bylaws and Rules may not be amended or interpreted so as to be contrary to or inconsistent with this Declaration.

2.4 Rights and Responsibilities of Association. The Association, through the Board, 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 of the Association and any other areas for which it is responsible under the terms of this Declaration, or as stated on the Plat, or for which it has assumed responsibility (which shall be carried out in its sole and absolute discretion), including:

(a) Maintaining and landscaping the Common Area and property controlled by the Association, or for which it is to be responsible, including landscape easements and other easement rights and related obligations, if any, except that the landscaping in any public sewer easements for which the Association has maintenance and landscape responsibility shall be subject to the criteria set forth by the Pima County Regional Wastewater Reclamation Department and, when determined by the Board to benefit the Members, Owners and the Properties, maintaining and landscaping the public rights-of-way shown on the Plat;

(b) Entering into a joint maintenance agreement with the Cortaro Ranch Homeowners' Association ("Cortaro Ranch HOA") for the maintenance of the drainage control swales located on Cortaro Ranch HOA common area which is adjacent to the Properties;

(c) Hiring, firing, supervising and paying employees and independent contractors including, but not limited to, workmen, landscapers, attorneys, accountants, architects and contractors to carry out the obligations set forth herein;

(c) Maintaining such liability insurance as the Association deems necessary from time to time to protect the Members and the Board of the Association from any liability caused by occurrences or happenings within the Association;

(d) Maintaining workmen's compensation insurance for the employees of the Association, if any;

(e) Purchasing all goods, supplies, labor and services reasonably necessary for the performance of the obligations set forth herein;

(f) 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, residential development;

(g) Maintaining any personal property owned by the Association; and

(h) Such other matters as are provided for in this Declaration, the Articles of Incorporation, and the Bylaws.

2.5 Articles and Bylaws. The manner in which the Association holds meetings and attends to other corporate formalities shall be controlled by the provisions of the Bylaws, the Articles and this Declaration, which Declaration shall control in the event of conflict.

2.6 Board of Directors. The affairs of the Association shall be conducted by the Board, comprised of not less than three (3) nor more than seven (7) directors, as herein provided and in accordance with the Articles and the Bylaws. While there is a Class B Member, directors need not be Members. Thereafter, all directors shall be Members. The Board shall have all of the powers and duties necessary for the administration of the affairs of the Association and may do all such acts and things except those that are by law or this Declaration required to be exercised and done by the Members or Declarant.

2.7 Rules and Regulations of the Association. The Board shall be empowered to adopt, amend or repeal from time to time 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 occupancy of the Properties. The Rules shall govern such matters as the Board deems to be in furtherance of the purposes of the Association. The Rules may be amended at any special or regular meeting of the Board. The Rules, as adopted from time to time, 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. References to the covenants and restrictions contained herein shall be deemed to refer also to the Rules (except to the extent the rules are in conflict herewith). 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 provisions of this Declaration, or the Articles or Bylaws, the provisions of the Rules shall be deemed to be superseded by the provisions of this Declaration, the Articles or Bylaws to the extent of any such conflict.

2.8 Non-Liability of Officials. 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 or rights.

2.9 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 thirty (30) days' written notice.

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, Bylaws or Rules, this Declaration shall govern and control.

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, Bylaws and Rules, shall be available for inspection by all Owners and First Mortgagees of record. If copies are requested the Association reserves the right to charge for those copies and other related costs.

ARTICLE III

COMMON AREA; RIGHTS OF ENJOYMENT

3.1 Easements and Rights of Enjoyment. Each Owner shall have a nonexclusive easement for use and enjoyment in and to the Common Area, which nonexclusive easement shall be appurtenant to and shall pass with the title to each Owner's Lot. All occupants shall have a nonexclusive, nontransferable temporary license to use and enjoy the Common Area so long as they remain occupants. The foregoing grants and rights are subject to the following limitations, in addition to all other limitations and reserved powers set forth in this Declaration:

(a) **Right to Modify and Change.** The rights, duties and obligations of the Association, and the reserved right of Declarant and the Board, to modify the use of Common Area, or to convey same free of claims or rights of the owners or Members;

(b) **Suspension of Rights.** The right of the Association, after such notice and hearing as may be required by law, to suspend the voting rights and the rights to use the and enjoy the recreational components of the Common Area of any Owner or occupant, as the case may be, for any period during which an Assessment remains delinquent, or for a period not to exceed 60 days for any single infraction of this Declaration, the Rules, or the guidelines of the "Architectural Review Committee", as defined in Article XIII (provided such suspension shall not be limited if the infraction remains uncured);

(c) **Limitation of Guests.** The right of the Association to limit the number of guests of an Owner or occupant who may use the Common Area;

(d) **Regulation, Mortgages and Conveyances; Power of Association.** The right of the Association to regulate use of the Common Area in accordance with this Declaration, and, in addition to Declarant's reserved rights, to mortgage or convey portions of Common Area with the affirmative vote or written consent, with or without a meeting, of Declarant and Owners representing at least two-thirds (2/3rds) of the total votes held by Class A Members; and

(e) **Broad Reserved Powers of Declarant.** Notwithstanding the foregoing, the Association may at any time convey, and the Declarant may cause the Association to convey, minor, insignificant, or immaterial portions of Common Area (such as those caused by encroachment areas, boundary line discrepancies, survey errors and other such matters), and portions of Common Area determined to by Declarant to be more burdensome or costly to own than the concomitant benefit to the Association would warrant, and such conveyance may be made without the consent or vote of any other Person or Member, should Declarant or the Board determine that such conveyance or transfer is in the best interests of the Association or Properties. Furthermore, Declarant may at any time resubdivide Common Area into Lots or other Common Area or dedicated land, and may cause the Board or Association to execute such instruments as may be necessary to cause such resubdivision or dedication, and no consent or approval shall be required of any other Members nor shall a meeting of Members be required. Any sale, disposition or resubdivision of the Common Area shall serve to extinguish any interests therein of Owners pursuant to the provisions hereof.

3.2 Delegation of Use. Any Owner or occupant, in accordance with the Association Rules and this Declaration, may delegate his or her rights of use and enjoyment in the Common Area to the members of his or her family or his or her occupants, employees, customers or guests subject to the limitations set forth herein and in the Association Rules, and in the event of such delegation, including any lease of a Lot, the Owner shall be deemed to have relinquished his or her right of use and enjoyment for the period of such lease or delegation. Without limitation, the Rules may limit the number of guests, prescribe restrictions on certain types of gatherings or events.

3.3 Waiver of Use. No Owner shall be exempt from personal liability for Assessments, nor shall any Owner have any right to release a Lot from the liens or charges arising under this Declaration by waiver of the right of use and enjoyment of Common Area or for any other reason, and no Owner shall in any fashion or by any means have a right of set-off of claims against any sum owed to the Association.

3.4 Acceptance of Certain Common Area and Other Areas. Declarant shall have the absolute right to require that the Association accept title to future Common Area, open spaces and facilities whether or not shown upon the Plat for the Properties. Such right of Declarant shall, without limitation, extend to all areas of the annexable property that Declarant determines are appropriate for Common Area designation or otherwise appropriate for Association control and maintenance.

3.5 Restrictions Regarding Certain Common Area. Notwithstanding the rights of enjoyment to the Common Area granted herein, the Common Areas identified in this Section 3.5 shall be restricted as follows:

(a) **Common Areas "A" and "F" (Natural Undisturbed Open Space).** Common Areas "A" and "F" shall remain in their natural undisturbed state except for necessary utility installations, provided, however, that any such disturbance shall be revegetated with native species. The Association acknowledges that the District will incur certain ongoing expenses in connection with the ownership and maintenance of the District Property, which includes Common Area "A", and which would otherwise be an Association expense and the Association agrees to contribute to those expenses by payment to the District of an annual endowment of four hundred dollars (\$400.00), increased from time to time as provided herein (the "Endowment"). The Association shall pay the Endowment to the District commencing on July 31, 2018, and on the same date each year thereafter. Commencing on July 31, 2018, and on each anniversary thereafter, the Endowment shall increase by a percentage equal to the percentage increase, if any, in the Bureau of Labor Statistics Consumer Price Index-Urban for the Tucson metropolitan region (the "Index") published closest but prior to each anniversary, over the Index published on the same or substantially the same date one year prior. If on any anniversary the Index no longer exists in the form described above, the District may substitute any substantially equivalent official index published by the Bureau of Labor Statistics or its successor and the substitute index shall then become the "Index" hereunder. Additionally, and any term or condition of this Declaration to the contrary notwithstanding, for so long as the District owns Common Area "A", this Declaration shall not be amended or superseded such that Common Area "A" is subject to assessment or dues under this Declaration without the express written consent of the District and the Association shall release and hold the District harmless from any loss, cost or expense resulting from any attempted imposition of or collection of any assessment or dues under this Declaration, as same may be amended or superseded; and

(b) **Common Area "B" (Interceptor Channel).** The Association is required to maintain at its expense the interceptor channel constructed for regulatory purposes of the Federal Emergency Management Agency (FEMA) Letter of Map Revision (LOMR) that removes properties south of the channel from the flood plain that would otherwise be required to purchase flood insurance. The Association shall maintain the channel free of

vegetation and excessive debris that would otherwise affect the capacity of the channel to handle any designed flows of water. Maintenance of the channel includes repairing or proper replacement of cracked, crumbling or displaced concrete areas or any other items that affect the appearance and the ability of the channel to convey flows as designed, approved and constructed. The Association shall file an annual report by June 1st of each year stating the condition of the channel on the date of the report and what maintenance was completed during the year. The annual report shall be filed with the Town of Marana Flood Plain Management Department (the "Town"). The Town is required to perform periodic and random inspection(s) of the channel. If the Town determines the channel is not adequately maintained, it will notify the Association of correction items in writing and allow 30 days from the date of the notice for completion of the items. Should the correction items not be completed in the required time period, the Town shall have the right to proceed with repairs and/or maintenance and bill the cost of the work to the Association. All billing and payment requirements of the Town will apply and include if necessary late fees, interest, re-inspection costs, and/or penalty charges.

ARTICLE IV

INSURANCE

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

(a) **Commercial General Liability.** Commercial general liability insurance covering bodily injury and property damage liability insurance covering all property maintained by the Association, if any, and all other areas under the jurisdiction or control of the Association, excluding the Lots. The scope of coverage of such policy or policies shall 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 any property maintained by the Association; legal liability arising out of lawsuits related to employment contracts of the Association; and protection against liability for non-owned and hired automobiles; such coverage may also include, if applicable, garagekeeper's liability, liability for property of others, host liquor liability, water damage liability, contractual 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) **Worker's Compensation Insurance.** Worker's Compensation insurance to the extent necessary to comply with any applicable laws;

(c) **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, as determined appropriate by the Board. 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 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; and

(d) **Exceptions.** Notwithstanding the above requirements, the foregoing insurance and endorsements shall be maintained only to the extent available and reasonably priced and, without limitation, the Board may elect to dispense with certain endorsements if, in the discretion of the Board, it is determined that the cost of such endorsements is excessive or the coverage not reasonably available.

4.2 Waiver of Subrogation; Named Insureds; Waiver of Claims Against Declarant and Others.

(a) Every policy of insurance obtained by the Association shall contain an express waiver, if available, of any and all rights of subrogation against Declarant, the Board and such other persons or entities affiliated with the Association, such as a manager and its representatives, members and employees, and a provision, if available, preventing any cancellation or modification thereof, except upon at least thirty (30) days' written notice to the insureds.

(b) Liability insurance hereinabove specified shall name as separately protected insureds Declarant, 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.

(c) To the extent that each such policy will not be voided or impaired thereby, the Association hereby waives and releases all claims against Declarant, the Board and such other persons or entities named in said insurance policies, and against the agents, members, beneficiaries, officers, directors 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.

4.3 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.

4.4 Additional Optional Insurance by Owner. In addition to the aforesaid insurance required to be carried by the Association, each Owner shall, at his or her 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. Further, the Association shall have no duty whatsoever to insure, protect or maintain real or personal property located upon any Lot and it shall be the individual responsibility of each Owner, at his or her own expense, to provide

Owner's liability and property damage insurance, theft and other insurance covering personal and real property of the Owner.

ARTICLE V

USES, OBLIGATIONS AND RESTRICTIONS

The Properties shall be held, used and enjoyed, subject to the following limitations, obligations and restrictions (in addition to all other provisions hereof):

5.1 Private Residential Purposes. Dwelling Units and Lots shall be occupied and used by the respective Owners solely for private single family residential use of the Owner, his or her family, tenants and social guests and for no other purpose. Notwithstanding this restriction, sales offices, sales models and construction offices utilized by the Declarant on the Properties shall be permissible and need not be owned by either Declarant. 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.

5.2 Animals. No animals of any kind shall be raised, bred, or kept, 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 household; provided, however, that the Architectural Review Committee may determine, in its sole and absolute discretion, whether a particular animal is a generally recognized house or yard pet or a nuisance, or whether the number of animals is reasonable.

5.3 Trash Containers. No garbage or trash shall be placed or kept on any Lot within the Properties, except in covered containers of a type, size, and style which have been approved by the Architectural Review Committee, and containers shall at all times be hidden from view except on days of trash pick-up. All rubbish, trash or garbage shall be removed from the Lots and shall not be allowed to accumulate thereon. No incinerators shall be allowed. In the event the municipality within which the Properties is located does not provide residential trash service to the Owners through a municipal contract, the Association, through the Board, shall have the authority to identify a single source refuse service provider for the entire Properties and all of the Owners. Upon notice from time to time from the Board to the Owners, the Owners shall only utilize the refuse service provider identified by the Board and each Owner shall pay for the services therefrom directly to said service provider and be responsible for all charges relating thereto; and no other refuse service provider shall be allowed onto the Properties in such event.

5.4 Backboards. No basketball backboards of any kind shall be placed or erected on any Lot or attached, by either a permanent or temporary method to any Dwelling Unit, unless approved by the Architectural Review Committee.

5.5 Aerials. No aerial, antenna or satellite dish for use of television, radio (including amateur or ham radio) signals or other form of communication reception of any kind (collectively referred to herein as "antennas"), of a temporary or permanent character, shall be erected on any Lot or attached to the principal residence located upon any Lot unless reasonably screened from view and approved by the Architectural Review Committee. Those antennas

whose installation and use is protected under federal law or regulations will be approved only if the antenna is designed to assure the most minimal visual intrusion possible, complies with the Design Guidelines and within the confines of applicable federal regulations. In all events, all wires on the exterior of the Dwelling Unit must be securely attached to the Dwelling Unit and painted to match where attached or exposed. Additionally, any transmission cable from a receiver to the house must be underground. Upon written request of an Owner when submitting an application, the Committee shall consider such application on an expedited basis and shall strive to render a decision with fifteen (15) days, but in no event later than thirty (30) days, from the date the completed application was submitted. Should applicable law prohibit the Architectural Review Committee from requiring approval for the installation of certain antennas, the preferred locations, in descending order of preference are as follows:

- (a) A location in the back yard of the property where the antenna will be screened from view by wall or fencing, landscaping or other improvements;
- (b) A unscreened location in the backyard of the Lot;
- (c) On the roof, but below the roof line;
- (d) A location in the side yard of the property where the antenna and any pole or mast will be screened from view by landscaping or other improvements;
- (e) On the roof above the roofline;
- (f) An unscreened location in the side yard; and
- (g) A location in the front yard of the Lot where the antenna will be screened from view by landscaping or other improvements.

5.6 Outdoor Storage. No yard equipment, wood piles or storage areas may be maintained so as to be Visible From Neighboring Property or streets.

5.7 Nuisances. After completion of construction of any dwelling units and landscaping of Lots, no rubbish or debris of any kind shall be placed or permitted thereon so as to render any such property or any portion thereof unsanitary, unsightly, offensive or detrimental to any other property in the vicinity thereof or to its occupants. No loud or offensive noise, excessively glaring or bright lights, foul odors or other nuisance shall be permitted to exist or operate upon the Properties so as to be offensive or detrimental 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 any such property without the prior written approval of the Architectural Review Committee. The Architectural Review Committee, in its sole discretion, shall have the right to determine the existence of any such nuisance.

5.8 Parking and Storage of Vehicles.

(a) **General Rule.** Any and all motor vehicles not prohibited by the provisions hereof shall be stored in a garage so as to conceal the same from view from

adjoining property or from the street or public way, except that vehicles (other than recreational vehicles, commercial vehicles, motorhomes, campers, trailers, boats and similar vehicles, as provided below) may be parked upon the paved driveway surfaces of each Lot when there is insufficient room within an enclosed garage.

(b) Recreational Vehicles. Parking and/or storing of recreational vehicles, commercial vehicles, motorhomes, campers, trailers, boats and similar vehicles is prohibited on all portions of the Properties, except within the confines of an enclosed structure which has been first approved by the Architectural Review Committee, in its sole and absolute discretion. Such vehicles may be parked on the parking area of an Owner's Lot, but only for short periods of time (not to exceed 24 hours) solely for purposes of loading or unloading. The foregoing prohibition shall not apply to: (i) trucks with no more than a 3/4 ton capacity with camper shells attached that are no more than eight feet in height as measured from ground level, (ii) small motorhomes that are no more than eight feet in height and no more than eighteen feet in length, or (iii) non-commercial pick-up trucks larger than 3/4 ton capacity that the Architectural Review Committee finds to be substantially similar in size and appearance to smaller vehicles; so long as any such vehicles are used on a regular and recurring basis for regular transportation and are parked in accordance with the provisions of Section 9.7(a).

(c) Use of Recreational Vehicle as Living Quarters and Storage of Motor Vehicles. The use or occupancy of a recreational vehicle, motorhome, van, camper, trailer, or boat as living quarters on either a temporary or permanent basis is strictly prohibited on any portion of the Properties. At no time shall there be any outside storage of motor vehicles in stages of construction, reconstruction, modification or rebuilding of parts of motor vehicles such as frames, bodies, engines or other parts or accessories. Nor shall there be any outside storage of vehicles that are inoperable or not currently registered with the Arizona Department of Motor Vehicles.

5.9 Diseases and Insects. No owner shall permit anything or condition to exist upon any property which shall induce, breed or harbor infectious plant diseases or noxious insects.

5.10 Drainage and Detention/Retention Basin. There shall be no interference with the established drainage pattern over any property unless approved by the Architectural Review Committee or unless adequate provision is made for proper drainage conforming to applicable city and county rules, regulations, ordinances and drainage criteria. For purposes hereof, "established drainage" is defined as the drainage including the detention/retention basin which exists at the time the overall grading of the Properties is completed, or which is shown on any plans conforming to applicable rules, regulations, ordinances, and applicable drainage criteria.

5.11 Modification of Exterior Wall. Unless approved by the Architectural Review Committee, no Owner shall alter or modify the exterior wall of a Dwelling Unit by cutting any opening in or placing any window of any kind in said exterior wall.

5.12 Electrical Service and Telephone Lines. All electrical service and telephone lines shall be placed underground and no outside electrical lines shall be placed overhead; provided, however, that the Declarant shall not be prohibited from erecting temporary power or telephone structures incident to construction.

5.13 Mailboxes. If the Architectural Review Committee has provided uniform mailbox designs in the course of original construction, then such designs, colors, lettering, and other features shall be maintained by the Owner at all times.

5.14 Temporary Structures, Mobile Homes. No manufactured, prefabricated home or mobile home shall be permitted or placed upon any Lot or anywhere else in the Properties. Except as hereinafter provided, no structure of a temporary character, including, but not limited to, a house trailer, tent, shack, temporary garage, or outbuilding shall be placed or erected upon any Lot, and no residence placed or erected upon any Lot shall be occupied in any manner at any time prior to its being fully completed, nor shall any residence when completed be in any manner occupied until it complies with all requirements, conditions, and restrictions herein set forth; provided, however, that during the actual construction or alteration of a structure on any Lot, necessary temporary structures for storage of materials may be erected and maintained by the person doing such work. The work of constructing, altering, or remodeling any structure on any part of any Lot shall be prosecuted diligently from the commencement thereof until the completion thereof. The provisions of this Section shall not apply to Declarant.

5.15 Lots to be Maintained. Each Lot shall at all times be kept by the owner in a clean, sightly, and wholesome condition. The maintenance responsibility of the Owner includes the area between the sidewalk and the curb (courtstrip area). No trash, litter, junk, boxes, containers, bottles, cans, implements, machinery, lumber, or other building materials shall be permitted to remain exposed upon any Lot so that the same are Visible From Neighboring Property or street, except as necessary during the period of construction.

5.16 Lots Not to be Subdivided. No Lot shall be subdivided or resubdivided, except by Declarant, or except for the purpose of combining portions of a Lot with an adjoining Lot, provided that no additional building site is created thereby. Resubdivision by Declarant may result in additional Lots at its discretion.

5.17 No Hazardous Activities. No activities shall be conducted on the Properties and on improvements constructed on the Properties which are or might be unsafe or hazardous to any person or property. Without limiting the generality of the foregoing, no firearms shall be discharged upon the Properties and no open fires shall be lighted or permitted on the Properties, except in a contained barbecue unit while attended and in use for cooking purposes, or within a safe and well-designed interior fireplace or firepit, or except such campfires or picnic fires on property designated for such use by Declarant.

5.18 Tanks. No tanks of any kind, either elevated or buried, shall be erected, placed, or permitted upon any Lot, except for (a) portable compressed gas tanks for outdoor barbecue cooking purposes only, and (b) water softener tanks, the location of which is approved in advance in writing by the Architectural Review Committee.

5.19 Signs. No billboards or advertising signs of any character shall be erected, placed, permitted or maintained on any Lot or improvement thereon of this subdivision, except that in the course of selling a Dwelling Unit, one sign not to exceed five square feet in size shall be permitted in the front yard area of a Lot. The Declarant is exempt from the provisions of this Section.

5.22 Derricks; Boring. No derrick or other structure designed for use in boring for oil or natural gas shall be erected, placed or permitted upon any part of the Properties, nor shall any oil, natural gas, petroleum, asphaltum or hydrocarbon products or minerals of any kind be produced or extracted therefrom.

5.23 Landscaping. All front and side yard landscaping shall conform to and be compatible with the theme of the original landscaping installed by Declarant. Further, all original landscaping must be replaced with original plant material if removed or dies. Landscaping shall not be permitted to cause a nuisance nor shall landscaping be placed near foundations so as to require watering which may undermine the integrity of such foundations. All front or side yard landscaping shall require the prior approval of Architectural Review Committee, except for small ornamental shrubs and replacement of original landscaping installed by Declarant.

5.24 Minimum Driveway Requirements. Installation or change of driveways on all Lots shall be approved by the Architectural Review Committee.

5.25 Renting. Each Owner shall have the right to lease or rent his Dwelling Unit; provided, however, 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 tenant to comply with the Rules, Bylaws, Articles and provisions of this Declaration 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.

5.26 Solar Devices. No solar devices, of any type, shall be placed, erected or installed on any Lot without the approval of the Architectural Review Committee.

5.27 Right of Inspection. During reasonable hours, any member of the Board, or any authorized representative of the Board shall have the right upon reasonable notice to the Owner to enter upon and inspect the Lot (except the interior of Dwelling Unit), 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.

5.28 Exemption of Declarant. Nothing in these restrictions shall limit the right of Declarant to complete excavation, grading, and construction of improvements to any property owned by Declarant, or to alter the foregoing, including alterations of design or materials or both, or to construct such additional improvements as Declarant deems advisable in the course of development so long as any Lot remains unsold, or to use any structure as a model home or real estate sales or leasing office.

ARTICLE VI

COVENANTS FOR ASSESSMENTS AND CREATION OF LIEN

6.1 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, agrees and is deemed to covenant and agree to pay to the Association: (1) annual assessments or charges, (2) special assessments for capital improvements, and (3) individual repair and maintenance assessments, such assessments to be established and collected as hereinafter

provided. Any and all assessments levied against a Lot, together with interest thereon from the date of delinquency until paid and any late fees, and all costs of collection which may be paid or incurred by the Association in connection therewith, including reasonable attorneys' fees, shall be a continuing lien upon the Lot. Delinquent assessments, together with interest, late fees, 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 assessments, plus interest, late fees, 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 the full amount of the delinquent assessment.

6.2 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 and for all purposes set forth in the Articles, Bylaws and this Declaration.

6.3 Maximum Annual Assessment.

(a) Establishment of Annual Assessment. The Association by and through the Board shall determine and levy the annual assessments for the purposes set forth herein. The annual assessments levied by the Association shall be used to accomplish the duties and purposes of the association within the Properties, to pay the costs of administration of the Association and the maintenance of the Common Area, to establish reasonable reserves, and to otherwise further the interests of the Association as the Board deems appropriate.

The amount of the annual assessment shall be established by the Board in its sole discretion. In establishing its budget and creating its plan for Assessment each year, the Board shall establish an annual assessment per Lot. The Board shall at any time have the right to adjust the Assessment made, and issue invoices for any additional sums due, subject to such limitations as exist by law.

(b) Increases in Annual Assessment. The Board shall not, in any given year, increase the annual assessment by an amount greater than twenty percent (20.00%) of the amount of the preceding year's annual assessment.

(c) Approval of Membership. Any increase by the Board in the annual assessment which is greater than the amount permitted under Section 6.3(b) hereof, must first be approved the holders of two-thirds (2/3) of the votes of the Membership who vote in person, by proxy, or by absentee ballot at a meeting called for this purpose in accordance with the Bylaws.

6.4 Special Assessments. In addition to the annual assessments authorized above, special assessments may be levied by the Board from time to time for: (a) correcting an inadequacy in the current operating account; and (b) paying for such other matters as the Board may deem appropriate by a vote of a majority of the Members who are voting in person or by proxy at a meeting duly called for this purpose.

6.5 Individual Assessments. The Association may also levy and collect from each Owner individual assessments against specific Lots, and shall have a lien therefor, should the special circumstances of any Lot or Lots require special maintenance, expense or costs to be incurred by the Association for the protection of any of the Properties or Lots, or should the Association be required to perform maintenance or repair upon a Lot or take enforcement action hereunder. Such individual assessments may be levied by action of the Board.

6.6 Notice and Quorum for an Action Authorized Under Section 6.3 and Section 6.4. Written notice of any meeting called for the purpose of taking action authorized under Section 6.3 and Section 6.4 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 two-thirds (2/3) of the votes of the 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.

6.7 Uniform Rate of Assessment; Declarant Exempt. Both annual and special assessments must be fixed at a uniform rate for all Lots and may be collected on a monthly basis, or other assessment period as determined by the Board from time to time. However, and subject to the limitations set forth in Section 6.3.(b) hereof, said uniform rate may be revised periodically to reflect revisions in the annual assessments based on actual operating costs of the Association. Notwithstanding any provision to the contrary contained in this Declaration, the rate of annual and special assessments set for the Lots owned by Declarant which are neither leased, rented, nor otherwise occupied as a residence shall be zero during the Class B period, and shall be fixed at one-quarter (1/4) of the assessment rate for Lots owned by Declarant after the termination of the Class B period. Declarant shall not be liable for any individual assessments provided for herein. During the Class B period, when Declarant is paying no assessments, Declarant shall be responsible for regular operating shortfalls and related reserves.

6.8 Date of Commencement of Annual Assessments; Due Dates. The annual assessments provided for herein shall commence immediately upon becoming an Owner. The first annual assessment shall be in an amount equal to or less than the maximum annual assessment as determined by the Board, and shall be adjusted according to the number of months remaining in the calendar year. The Board thereafter 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 from time to time. However, until otherwise established, the annual assessments shall be paid quarterly on the first day of each January, April, July, and October. 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.

6.9 Effect of Non-Payment of Assessments; Remedies of the Association. Each Owner agrees to the payment of interest and costs and to the collection and enforcement of the assessments in the manner herein specified.

(a) **Interest, Late Fees, Costs and Attorneys' Fees.** All delinquent assessments shall bear interest at ten percent (10%) per annum (but not to exceed the maximum rate permitted by Arizona law) from the date due. In addition, the Board may impose a reasonable late fee. Late payments shall first be credited toward interest due, then towards assessments 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.

(b) **Enforcement.** 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 to any other rights and remedies herein or by law provided, the Association 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.

(i) **Enforcement of Personal Obligation.** 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.

(ii) **Enforcement of Lien.** As provided in Section 6.1 above, all assessments, plus interest and costs connected therewith, shall be a continuing lien upon the Lot assessed. Such lien shall be deemed to have attached as of the date of recordation hereof and shall be senior to all matters other than tax liens for real property taxes on the Lot, assessments on the Lot in favor of any municipal or other governmental assessing unit, reservations in patents, and the lien of any First Mortgage.

(c) **Notice and Claim of Lien.** 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. The Association may, whether or not such a written demand is first made, 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:

- (i) The name of the delinquent Owner;
- (ii) The legal description of the Lot against which claim of lien is made;

(iii) 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);

(iv) A statement that the claim of lien is made by the Association pursuant to this Declaration; and

(v) A statement that a lien is claimed against said Lot in an amount equal to the amount stated; and

(vi) 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, costs 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 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.

(d) **Foreclosure of Lien.** 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 this lien.

6.10 No Exemption of Owner. No Owner is exempt from liability for payment of assessments by abandonment of a Lot.

6.11 Subordination of the Lien to First 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. 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 assessments or 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 assessments or charges, including interest, late charges, costs, and reasonable attorneys' 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 assessments or 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.

6.12 Mortgage Protection and Additional Assessment as Common Expense. Notwithstanding and prevailing over any other provisions of this Declaration, or the Association's Articles or Bylaws, or the Rules, the following provisions shall apply to and benefit each First Mortgagee of a Lot:

(a) Liability for Assessments and Other Charges.

(i) 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 Bylaw, except for those matters which are enforceable by injunctive or other equitable actions, not requiring the payment of money, nor shall a First Mortgagee be liable for any violation of the Restrictions that occurred prior to such First Mortgagee acquiring title.

(ii) 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, conditions and Restrictions 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.

(b) Right to Exercise Rights of Owner. 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) Priority. 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.

(d) Other Rights. Each First Mortgagee shall, upon written notice to the Association identifying the name and address of the holder, and the Lot number or address of the Lot encumbered by its mortgage, be entitled to:

(i) Inspect the books and records of the Association by appointment during normal business hours;

(ii) Receive an annual financial statement of the Association within one hundred and eighty (180) days following the end of any fiscal year of the Association;

(iii) Receive written notice of all meetings of Members;

(iv) Receive written notice of any condemnation loss or casualty loss affecting a material portion of the Properties; and

(v) Receive written notice of any lapse, cancellation or material modification of any insurance policy or fidelity bond.

6.13 Working Capital Funds. To insure that the Association shall have adequate funds to meet its expenses or to purchase necessary equipment or services, each purchaser of a Lot from the Declarant, and each subsequent Owner thereof, shall pay to the Association immediately upon becoming the Owner of the Lot a sum equal to one-fourth (1/4th) of the Annual Assessment for the Lot as of the closing thereof, which Annual Assessment shall be based upon the Lot being owned by the purchaser and not by the Declarant. Funds paid to the Association pursuant to this Section may be used by the Association for payment of operating expenses or any other purpose permitted hereunder or pursuant to the Articles or Bylaws. 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.

6.14 Disclosure Fee. Subject to applicable laws, each purchaser of a Lot with a Dwelling Unit (except for the Estate Lots, which shall not require a Dwelling Unit) shall pay to the Association, or party designated by the Association, at closing of the Lot purchase, a disclosure fee in such amount as is established from time to time by the Board.

6.15 Reserve Contribution. To insure that the Association shall have adequate funds to meet its expenses or to purchase necessary equipment or services, each purchaser of a Lot with a Dwelling Unit (except for the Estate Lots, which shall not require a Dwelling Unit) shall pay to the Association at closing of the Lot purchase, a sum equal to one-fourth (1/4th) of the Annual Assessment for the Lot. All amounts paid pursuant to this Section shall be paid by the Association into a reserve account established by the Association (the "Reserve Account") to fund future major repair and replacements of property owned by the Association. Funds shall be drawn from the Reserve Account at the direction of the Board and used for the aforementioned purpose. Declarant and the Association may take such payments into account when determining the amounts to be funded to Reserves from other Association funds. Nothing in this section shall be construed as prohibiting or mandating the Association to make additional payments into the Reserve Account from other Association funds. The reserve contributions shall be in addition to, and shall not be offset against or considered as an advance payment of, any Assessments levied by the Association pursuant to this Declaration.

ARTICLE VII

EASEMENTS

7.1 Utility Easements. There is hereby created a blanket easement upon, across, over and under the Properties for ingress, egress, installation, replacing, repairing and

maintaining all utility and service lines and systems, including but not limited to water, sewers, gas, telephones, electricity, television cable or communication lines and systems. 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 Properties and to affix and maintain wires, circuits and conduits on, in, and under the roofs and exterior walls of dwelling units. Notwithstanding anything to the contrary contained 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 or thereafter approved by the Architectural Review Committee. 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 construed to authorize the placing or installing of sewers, electrical lines, water lines and other utilities under any permanent building structure constructed on the Properties. This easement shall be limited to improvements as originally constructed.

7.2 Easements for Ingress and Egress. Easements for ingress and egress are hereby reserved to the Declarant, the Owners, and their family, guests, tenants and invitees for pedestrian traffic over, through, and across sidewalks, paths, walks and lanes as the same from time to time may exist on the Common Area; and for vehicular traffic over, through, and across such portions of the Common Area as from time to time may be paved and intended for such purposes; and for such other purposes reasonably necessary to the use and enjoyment of a Lot or the Common Area.

7.3 Association's Right of Entry. During reasonable hours, the Association, any member of the Architectural Review Committee, any member of the Board or any authorized representative of them, shall have the right to enter upon and inspect any Lot, excluding the interior of any residence located thereon, for the purpose of making inspections to determine whether the provisions of this Declaration, the Association Rules and the Architectural Committee Rules are being complied with by the Owner of said Lot.

7.4 Association's Easement for Performing Maintenance Responsibilities. The Association shall have an easement upon, across, over and under the Common Area and the Lots for the purpose of repairing, maintaining and replacing the Common Area.

ARTICLE VIII

ARCHITECTURAL REVIEW COMMITTEE

8.1 Composition of Committee. The Board shall establish an Architectural Review Committee shall consist of three (3) or more persons appointed by the Board of the Association provided that, until Declarant no longer owns any Lots, Declarant shall appoint the Architectural Review Committee unless Declarant has in writing relinquished its rights of exclusive appointment. Except as provided herein, the members of the Architectural Review Committee need not be Members. A majority of the Architectural Review Committee may designate a representative to act for it. Upon termination of the Declarant's right to appoint the members of the Architectural Review Committee, the Chairperson of the Architectural Review Committee shall be a member of the Board. In the absence of appointment of others, the Board shall serve as the Architectural Review Committee.

8.2 Review by Committee. No Dwelling Unit, structure, improvement, (including but not limited to any building, fence, wall, driveway or other surfaced area), or any attachment to an existing structure, shall be made, placed or constructed upon any Lot or the Properties; no change of the exterior of a Dwelling Unit, structure, or improvement shall be made; no change in the final grade of any Lot shall be made; and no landscaping shall be installed or changed (except in enclosed rear yards), unless complete plans and specifications (including a construction schedule) showing the nature, design, kind, quality, shape, height, materials, color scheme and location of any such Dwelling Unit, improvement, structure, attachment, or landscaping, shall have first been submitted to and approved in writing by the Architectural Review Committee. The Architectural Review Committee shall exercise its best judgment to the end that all Dwelling Units, 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 Review Committee shall be binding and conclusive. Notwithstanding the foregoing and any other provision hereof, all improvements to any portion of the Properties, including any Lot, shall be subject to the restrictions and limitations, if any, set forth on the Plat and the tentative or preliminary plat for the Properties. Notwithstanding the foregoing, Declarant shall not be required to submit any plans or specifications whatsoever to the Architectural Review Committee, nor shall any consent or approval of the Architectural Review Committee be required for the construction of any improvements by the Declarant.

8.3 Design Guidelines. The Architectural Review Committee may adopt, amend and repeal Design Guidelines, standards, construction guidelines and procedures in rendering its decisions. Such guidelines, standards, construction guidelines and procedures ("Design Guidelines") may include, without limitation, provisions regarding (i) architectural design, with particular regard to the harmony of the design with the surrounding structures and topography, (ii) placement of the Dwelling Units and other buildings, (iii) landscape design, content and conformance with the character of the Property and permitted and prohibited plants, (iv) requirements concerning exterior color schemes, exterior finishes, and materials, (v) signage, (vi) perimeter and screen wall design and appearance, and (vii) such other limitations and restrictions as the Architectural Review Committee, in its reasonable discretion, may adopt. Notwithstanding anything herein to the contrary, the Design Guidelines may not conflict with this Declaration and this Declaration will prevail in the case of any conflict with the Design Guidelines.

8.4 Estate Lots; Residential Development Area. As shown on the Plat, Lots 252 through 265, inclusive (each an "Estate Lot", and collectively, the "Estate Lots"), are divided into two areas: (i) the area within which improvements may be constructed (each a "Residential Development Area"); and (ii) the remaining portion of each of the Estate Lot which shall be maintained as natural undisturbed open space. Alterations to the existing landscape on an Estate Lot shall be permitted only within the Residential Development Area. In reviewing the proposed plans for improvements to a Residential Development Area on an Estate Lot, the Architectural Review Committee shall consider the natural features of the Estate Lot, views, the relationship of the Estate Lot to adjacent Estate Lots and the topography of the proposed site. Approval of modifications to the Residential Development Area may only be made by the Architectural Review Committee in accordance with the Design Guidelines upon application by an Owner as part of the architectural review process. The Board or the Architectural Review Committee may enforce this restriction by injunction, whether mandatory or prohibitory, or by the exercise of

any other right or remedy available under this Declaration, or at law or in equity. The Architectural Review Committee may require, prior to clearing or grading, that the Residential Development Area be clearly staked and temporarily fenced with two-strand smooth wire so that the natural undisturbed open space can be monitored. In such event, said fence shall remain standing through final inspection approval by the Architectural Review Committee.

8.5 Review Procedure. The Architectural Review Committee shall approve or disapprove all plans and specifications for Architectural Improvements within sixty (60) days after submission and issuance by the Association of a receipt therefor. In the event the Architectural Review Committee fails to approve or disapprove the design, location or any other aspect of the proposed Architectural Improvements within sixty (60) days after said plans and specifications have been submitted to it, approval shall be deemed denied. The Architectural Review Committee may establish its own rules amplifying or supplementing the foregoing procedures. The Architectural Review Committee may from time to time, without notice, establish, add to, delete or amend separate standards, rules and procedures, which shall not be contrary to or inconsistent with these Restrictions, providing for or otherwise relating to the submission, processing, review and approval of plans and specifications for Architectural Improvements or various portions or stages thereof. The Architectural Review Committee shall not be bound by previous standards or interpretations of its standards; and any consent or approval of a prior set of plans and specifications shall not preclude disapproval of a subsequent identical or similar set of plans and specifications.

8.6 Vote. Except as otherwise provided herein, a majority vote of the Architectural Review 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.

8.7 Liability. The Architectural Review 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.

8.8 Variance. The Architectural Review 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.

8.9 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 Review Committee, the Architectural Review 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 Review Committee in accordance with the Bylaws. 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 Review Committee shall have the right and an easement to direct its agents, employees or contractors to enter upon the said Owner's property for the purpose of making any or 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 Review Committee. All costs incurred by the Association in the course of the Architectural Review 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, including reasonable fees and legal costs, 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 herein.

8.10 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 Review Committee.

8.11 Fee. The Association may establish a reasonable processing fee to defer the costs of the Architectural Review Committee in considering any requests for approvals submitted to the Architectural Review Committee. If necessary the Association may charge a fee for the initial submission and processing of plans and specifications for new construction. The Association also may establish a fee schedule and amend such schedule from time to time, with respect to all or any portion or stage of the processing of plans and specifications as provided for in this Article XIII.

ARTICLE IX

GENERAL PROVISIONS

9.1 Term. The Restrictions and provisions of this Declaration run with the land and will continue and remain in full force and effect at all times and against all persons.

9.2 Amendments.

(a) 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 of (i) not less than seventy-five percent (75%) of the Lots within the Properties including Lots owned by the Declarant, and (ii) not less than a majority of the Lots within the Properties which are not owned by the Declarant. Such amendment shall be effective upon its recordation with the Pima County Recorder, Pima County, Arizona.

(b) Anything in this Article to the contrary notwithstanding, Declarant reserves the right to amend this Declaration without obtaining the approval of any other Owners, Members, or First Mortgagees as may be requested or required by the FHA, VA or any other agency with whom Declarant elects to do business as a condition precedent to such agency's approval of this Declaration, or by any federally chartered lending institution as a condition precedent to lending funds upon the security of any Lot or

purchasing loans secured thereby. Any such amendment shall be effected by Declarant Recording a Certificate of Amendment duly executed and acknowledged by Declarant specifying the agency or the lending institution requesting the amendment and setting forth the requested or required amendment(s). Recordation of such a certificate shall be deemed conclusive proof of the agency's or institution's request or requirement and such certificate, when recorded, shall be binding upon all of the Properties and all persons having an interest therein. It is the desire of Declarant to retain control of the Association and the Association's activities during the period of planning and development of the Properties. If any amendment requested or required pursuant to the provisions of this section deletes, diminishes or alters such control, Declarant shall have the right to prepare, provide for and adopt as an amendment hereto, other and different control provisions which shall be binding upon the Properties and all Owners, Members and First Mortgagees without a vote of the Owners, Members or First Mortgagees.

9.3 Violations, Enforcement and Non-Waiver; Fines and Penalties; Rights and Remedies.

(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 restrictions, conditions, covenants, reservations, liens or charges or Rules now or hereafter imposed by provision of this Declaration. This shall include enforcement of Rules promulgated by the Association to carry out its purposes and duties under this Declaration. The prevailing party in any Court action shall be awarded reasonable attorneys' fees and costs.

(b) **Violation of Rules.** If any Owner, his or her family member, or any licensee, invitee, occupant, tenant or contractor thereof, violates these Restrictions, the Rules or the Bylaws, the Association shall have the authority to bring an action at law or in equity to enforce any of the provisions and Restrictions 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 Lot 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 in connection therewith shall be paid to the Association by the Owner in violation.

(c) **Fines and Penalties.** Each Owner, by acceptance of a deed to any Lot, whether or not it shall be so expressed in such deed, agrees and is deemed to covenant and agree to the provisions of fines and penalties provided for in these Restrictions. If any Owner, his or her family member, or any licensee, invitee, occupant, tenant or contractor thereof, violates these Restrictions, the Rules or the Bylaws, the Board may levy a fine upon the Owner for each violation. However, for each day a violation continues after written notice to cease or comply has been mailed, it shall be considered a separate violation and subject to the imposition of a fine. Any fines which remain unpaid for a period of ten (10) days after notice to pay shall become a lien on the Owner's Lot in the same manner and with the same force and effect, and pursuant to the same procedures as are applicable to the claim, enforcement and foreclosure of assessment liens as provided above. However, all such liens shall be subject and subordinate to all matters

which assessment liens are subject and subordinate as provided herein. Any fine which is not timely paid shall be collected in the same manner as delinquent assessments, including the imposition of late fees and interest; and the lien therefor may be enforced and foreclosed in the same manner as assessment liens as provided above.

(d) Enforcement Procedures. Prior to a fine or penalty being levied, the following procedures shall be followed:

(i) Demand. Written demand to cease and desist from, or comply with, an alleged violation shall be served upon the Owner by the Board specifying: (a) the alleged violation; (b) the action required to abate the violation and, (c) if the violation is of a continuing nature, a time period of not less than ten (10) days from the date of mailing to comply, or if the violation is not of a continuing nature, a statement that any further violation may result in the imposition of sanctions after notice and hearing;

(i) Continuing Violation. For the purposes of this Section, each day a violation continues after notice to cease or comply has been mailed to the Owner shall constitute a separate violation;

(iii) Notice. Within one (1) month after such notice, if the violation continues past the period allowed in the notice for abatement without penalty, or if the same violation subsequently occurs, the Board shall serve the Owner with written notice of a hearing to be held by the Board in executive session. Service may be made personally or by first class mail to the Owner's address of record. The notice shall contain: (a) the nature of the alleged violation; (b) the time and place of the hearing, which time shall be not less than ten (10) days from the mailing of notice; (c) an invitation to attend the hearing and produce any statement, evidence and witnesses on his or her behalf; and (d) the proposed sanctions to be imposed, which may include the imposition of a fine of not more than \$100.00 for any one violation; and

(iv) Hearing. The hearing shall be held in executive session of the Board or a Board appointed committee, pursuant to the aforesaid notice, thereby affording the Owner a reasonable opportunity to be heard. Protocol of the hearing shall be set by the Board. 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 mailing or delivery, is entered into the minutes by the officer or director who mailed or delivered such notice. If the Owner does not appear at the hearing, the Board shall presume the validity of the notice of violation and levy a fine or penalty.

(e) Recorded Notice of Violation. If any Owner, his or her family member, or any licensee, invitee, occupant, tenant or contractor thereof, violates these Restrictions, the Rules or the Bylaws, the Association, after providing notice and an opportunity to cure the violation, has the right to record a "Notice of Violation" with the Pima County Recorder's Office, stating the name of the Owner, the Lot and the nature of

the violation, and the Association's intent not to waive any of its rights of enforcement. Said notice shall remain of record until the violation is cured.

(f) **No Obligation to Enforce.** The Association is not obligated to take any enforcement action if the Board determines, in its sole discretion, that because of the strength of the Association's finances, possible defenses, the time and expense of litigation or other enforcement action, the likelihood of a result favorable to the Association, or other facts deemed relevant by the Board, enforcement action would not be appropriate or in the best interests of the Association.

(g) **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 of the 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 Bylaws.

(h) **Rights and Remedies Cumulative.** Except as otherwise provided herein, all rights and remedies of the Association and Owners under the these Restrictions and at law or in equity are cumulative, and the exercise of one right or remedy shall not waive any right to exercise any other right or remedy.

(i) **Non-Waiver.** Failure by the Declarant, the Board, the Association, the Architectural Review Committee, or by any Owner or Member 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; and no right of action shall accrue against the Declarant, the Board, the Association, the Architectural Review Committee, or any Owner or Member for their neglect or refusal to exercise any right of enforcement.

9.4 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. Except for judicial construction, Declarant shall have the exclusive right to construe and interpret this Declaration and the provisions and Restrictions herein. In the absence of any adjudication to the contrary by a court of competent jurisdiction, Declarant's construction or interpretation of the provisions and Restrictions in this Declaration shall be final, conclusive and binding upon all persons and the Properties.

(b) **References to Restrictions.** Any and all instruments of conveyance or lease of any interest in any Lot or the Properties may contain reference to this Declaration and shall be subject to the Restrictions in this Declaration, the same as if they were therein set forth in full; provided that the Restrictions herein shall be binding upon all persons affected by the same, whether express reference is made to this Declaration or not.

(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.

9.5 Exemption of Declarant. Nothing in this Declaration shall limit the right of Declarant to complete excavation, grading and construction of improvements to any of the Properties or to construct such additional improvements as Declarant 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 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. Without limitation, Declarant may maintain sales, administrative and construction offices on any Lot within the Properties and may maintain parking areas and parking lots on any Lot within the Properties. The rights of Declarant hereunder or elsewhere in this Declaration may be assigned by Declarant.

9.6 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 herself, or his or her heirs, personal representatives, successors, transferees and assigns, binds, his or her 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 or her 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.

9.7 FHA/VA Approval. If this Declaration has been initially approved by the FHA or the VA in connection with any loan programs made available by FHA or VA in regard to the Properties, then for so long as there is a Class B Member of the Association, the following actions will require the prior approval of the FHA or the VA, as applicable, unless the need for such approval has been waived by FHA or VA: annexation of additional property, mortgaging or dedication of Tracts (except where such dedication is required as of the date hereof by the City of Sierra Vista, Arizona, and except for minor or insignificant transfers), and amendments of this Declaration which materially concern or effect the Lots. With respect to any action required by this Declaration to be approved by the FHA or the VA, the proposed action may be submitted to the FHA or the VA for approval, and if the agency whose approval is requested does not approve or disapprove the proposed action by written notice to the Association, Declarant or other Person requesting approval within fifteen (15) days after delivery to that agency of the request for approval, the proposed action in question will be deemed approved by that agency.

9.8 Limitations on Actions. Any action or arbitration brought by any Owner against the Declarant, or any agent, beneficiary, employee, officer, director, member or contractor thereof, or any combination thereof, may be brought by the Owner individually only, and not as part of a group or class. The Declarant and all of such agents, beneficiaries, employees, officers, directors, members and contractors, are expressly made a third party beneficiary of this provision.

9.9 Arbitration Disclosures and Agreements. The following terms and conditions shall govern and control in the event of a conflict with any other terms, conditions or provisions of this Declaration.

(a) Any claim or action ("Dispute") by any Owner or the Association against the Declarant or any agent, beneficiary, employee, officer, director, member or contractor thereof, or any combination thereof (all of whom are made a third party beneficiary hereof), including, but not limited to, Disputes arising out of or relating to this Declaration, any Dwelling Unit, any Lot, this arbitration provision ("arbitration clause"), or any related agreements or instruments relating hereto ("Related Agreements"), and including, but not limited to, a Dispute based on or arising from an alleged tort, shall at the request of any party be resolved by binding arbitration in accordance with the applicable arbitration rules of the American Arbitration Association (the "Administrator").

(b) The arbitration proceedings shall be conducted in a city mutually agreed by the parties. Absent such an agreement, arbitration will be conducted in Tucson, Arizona or such other place as may be determined by the Administrator. The Administrator and the arbitrator(s) shall have the authority to the extent practicable to take any action to require the arbitration proceeding to be completed and the arbitrator(s)' award issued within 150 days after the filing of the Dispute with the Administrator. The arbitrator(s) shall have the authority to impose sanctions on any party that fails to comply with time periods imposed by the Administrator or the arbitrator(s), including the sanction of summarily dismissing any Dispute or defense with prejudice. The arbitrator(s) shall have the authority to resolve any Dispute regarding the terms of this Declaration, any Dwelling Unit, any Lot, this arbitration clause, or Related Agreements, including any claim or controversy regarding the arbitrability of any Dispute. All limitations periods applicable to any Dispute or defense, whether by statute or agreement, shall apply to any arbitration proceeding hereunder and the arbitrator(s) shall have the authority to decide whether any Dispute or defense is barred by a limitations period and, if so, to summarily enter an award dismissing any Dispute or defense on that basis. The doctrines of compulsory counterclaim, res judicata, and collateral estoppel shall apply to any arbitration proceeding hereunder so that a party must state as a counterclaim in the arbitration proceeding any claim or controversy which arises out of the transaction or occurrence that is the subject matter of the Dispute. The arbitrator(s) may not consolidate or administer multiple arbitration claims or controversies as a class action.

(c) The arbitrator(s) shall be selected in accordance with the rules of the Administrator from panels maintained by the Administrator. A single arbitrator shall

have expertise in the subject matter of the Dispute. Where three arbitrators conduct an arbitration proceeding, the Dispute shall be decided by a majority vote of the three arbitrators, at least one of whom must have expertise in the subject matter of the Dispute and at least one of whom must be a practicing attorney. The arbitrator(s) shall award to the prevailing party recovery of all costs and fees (including attorneys' fees and costs, expert witness fees and costs, arbitration administration fees and costs, and arbitrator(s) fees).

(d) Judgment upon an arbitration award may be entered in any court having jurisdiction.

(e) Any party may initiate arbitration with the Administrator. If any party desires to arbitrate a Dispute asserted against such party in a complaint, counterclaim, cross-claim, or third-party complaint thereto, or in an answer or other reply to any such pleading, such party must make an appropriate motion to the trial court seeking to compel arbitration, which motion must be filed with the court within 45 days of service of the pleading, or amendment thereto, setting forth such Dispute. If arbitration is compelled after commencement of litigation of a Dispute, the party obtaining an order compelling arbitration shall commence arbitration and pay the Administrator's filing fees and costs within 45 days of entry of such order. Failure to do so shall constitute an agreement to proceed with litigation and waiver of the right to arbitrate.

(f) Notwithstanding the applicability of any other law to this Declaration, this arbitration clause, or Related Agreements between or among the parties, the Federal Arbitration Act, 9 U.S.C. Section 1 et seq., shall apply to the construction and interpretation of this arbitration clause if this Declaration falls within the scope of the coverage of said Act. If any provision of this arbitration clause should be determined to be unenforceable, all other provisions of this arbitration clause shall remain in full force and effect.

ARBITRATION IS FINAL AND BINDING ON THE PARTIES AND SUBJECT TO ONLY VERY LIMITED REVIEW BY A COURT. IN ARBITRATION, THE PARTIES ARE WAIVING THEIR RIGHT TO LITIGATE IN COURT, INCLUDING THEIR RIGHT TO A JURY TRIAL. DISCOVERY IN ARBITRATION IS MORE LIMITED THAN DISCOVERY IN COURT. ARBITRATORS ARE NOT REQUIRED TO INCLUDE FACTUAL FINDINGS OR LEGAL REASONING IN THEIR AWARDS. THE RIGHT TO APPEAL OR SEEK MODIFICATION OF ARBITRATORS' RULINGS IS VERY LIMITED. A PANEL OF ARBITRATORS MIGHT INCLUDE AN ARBITRATOR WHO IS OR WAS AFFILIATED WITH THE HOUSING OR CONSTRUCTION INDUSTRY. ARBITRATION WILL APPLY TO ALL DISPUTES BETWEEN ANY OWNER OR THE ASSOCIATION, OR BOTH, AND the Declarant or any agent, BENEFICIARY, employee, officer, director, member or contractor thereof, or any combination thereof; AND NOT JUST THOSE CONCERNING THIS DECLARATION. IF YOU HAVE QUESTIONS ABOUT ARBITRATION, CONSULT YOUR ATTORNEY OR THE AMERICAN ARBITRATION ASSOCIATION.

IN WITNESS WHEREOF, Declarant has caused this Declaration to be duly executed on the date set forth on page one of this Declaration.

Fidelity National Title Agency, Inc., an Arizona Corporation,
as Trustee Under Trust Numbers 30,199, 60,104 and 60,461
and not in its corporate capacity

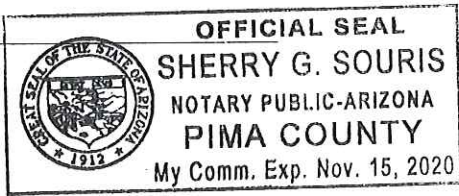
By: *Martha L Hill*
Its: Trust Officer

State of Arizona)
) ss.
County of Pima)

The foregoing instrument was acknowledged before me this *14th* day of *August*, 2017 by *MARLETTA L. HILL*, as Trust Officer of Fidelity National Title Agency, Inc., an Arizona Corporation, and that as such officer, being authorized to do so, execute the foregoing instrument for the purposes contained herein.

[Signature]
Notary Public

My Commission Expires:



**CONSENT AND AGREEMENT
OF THE DISTRICT**

The undersigned, being the record owner of the District Property, hereby consents and agrees to the amendment and restatement of the Original Declaration by this Declaration and that this Declaration and the Restrictions set forth herein shall run with the District Property, shall be binding upon all persons having or acquiring any interest therein, and shall inure to the benefit of the District and its successors in interest.

Pima County Flood Control District, a political taxing subdivision of the State of Arizona:

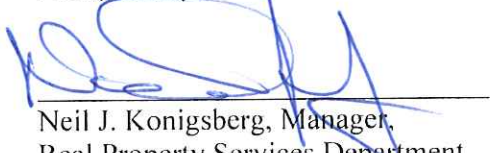

Mary Jo Furphy, Director
Pima County Procurement

Aug 18, 2017
Date

APPROVED AS TO CONTENT:



Eric Shepp for Suzanne Shields, Director,
Pima County Flood Control District

8/17, 2017
Date


Neil J. Konigsberg, Manager,
Real Property Services Department

8/16, 2017
Date


APPROVED AS TO FORM:


Tobin Rosen,
Deputy ~~District~~ County Attorney, Civil Division

State of Arizona)
) ss.
County of Pima)

The foregoing instrument was acknowledged before me this 18th day of August, 2017 by Mary Jo Furphy, Director, Pima County Procurement, and that as such, being authorized to do so, execute the foregoing instrument for the purposes contained herein.

My Commission Expires: 01/06/2019


Notary Public

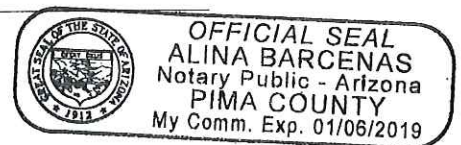


EXHIBIT "A"



July 21, 2017
Red Point Development
ASI No. 11029

LEGAL DESCRIPTION FOR OPEN SPACE AT DeANZA

All the portion of Common Areas "A" and "E" as shown on DeAnza, Lots 1 thru 265 and Common Areas "A", "B", "C", "D", "E" and "F" recorded in Sequence No. 20170060460, Records of Pima County, Arizona, more particularly described as follows:

COMMENCING at the northeast corner of Section 26, Township 12 South, Range 12 East, Gila and Salt River Meridian, Pima County, Arizona;

THENCE S 89°49'41" W along the north line of said Section 26, a distance of 80.00 feet to the west right-of-way of Hartman Lane and the POINT OF BEGINNING;

THENCE S 00°03'50" W along said line common with the east line of said Common Area "A", 264.98 feet;

THENCE leaving said line along the southerly boundary of said Common Area "A", the following courses and distances:

N 89°56'10" W, 79.49 feet to a point of curvature;

Northwesterly along a curve concave to the northeast, having a radius of 5.00 feet and a central angle of 54°53'20", an arc length of 4.79 feet to a point of tangency;

N 35°02'50" W, 109.79 feet to a point of curvature;

Westerly along a curve concave to the south having a radius of 320.00 feet and a central angle of 81°46'08", an arc length of 456.68 feet to a point of reverse curvature;

Westerly along a curve concave to the north having a radius of 562.00 feet and a central angle of 48°33'22", an arc length of 476.27 feet to a point of compound curvature;

Northwesterly along a curve concave to the northeast having a radius of 50.00 feet and a central angle of 14°18'17", an arc length of 12.48 feet to a point of reverse curvature;

Southwesterly along a curve concave to the south having a radius of 320.00 feet and a central angle of 74°55'13", an arc length of 418.43 feet to a point of tangency;

S 51°07'28" W, 120.66 feet to a point of curvature;

Page 1 of 5 Pages

Exhibit "A"



July 21, 2017
Red Point Development
ASI No. 11029

Southwesterly along a curve concave to the northwest having a radius of 800.00 feet and a central angle of 12°24'18", an arc length of 173.20 feet to a point of tangency;

S 63°31'46" W, 19.00 feet to a point of curvature;

Westerly along a curve concave to the north having a radius of 150.00 feet and a central angle of 33°19'41", an arc length of 87.25 feet to a point of tangency;

N 83°08'33" W, 379.34 feet to a point of curvature;

Southwesterly along a curve concave to the southeast having a radius of 600.00 feet and a central angle of 25°19'54", an arc length of 265.27 feet to a point of tangency;

S 71°31'33" W, 298.67 feet to a point of curvature;

Westerly along a curve concave to the north having a radius of 710.00 feet and a central angle of 32°20'58", an arc length of 400.87 feet to a point of tangency;

N 76°07'29" W, 643.59 feet;

S 71°13'47" W, 363.04 feet to the east line of Joplin Lane;

THENCE N 42°03'27" W along said east line, 382.56 feet to a found ½ inch iron rebar tagged LS 36715;

THENCE leaving said line N 89°50'21" E, 1751.43 feet to a found ½ inch iron rebar tagged LS 36715;

THENCE N 00°08'54" W, 45.00 feet to the Quarter corner common to Sections 23 and 26, marked by a found 1 ½ inch aluminum capped pin marked LS 7599;

THENCE N 89°49'41" E along the common line between said Sections 23 and 26, a distance of 1313.33 feet to a found ½ inch rebar tagged LS 36715;

THENCE leaving said line N 00°08'15" E, 817.68 feet;

THENCE N 90°00'00" E, 365.20 feet;

THENCE S 78°41'24" E, 464.01 feet;

THENCE N 83°39'36" E, 416.56 feet to the west right-of-way of Hartman Lane;

Page 2 of 5 Pages



July 21, 2017
Red Point Development
ASI No. 11029

THENCE S 00°12'45" W, 768.98 feet to the POINT OF BEGINNING.

CONTAINING 41.421 acres of land, more or less.

The Basis of Bearing for this survey or LEGAL DESCRIPTION? Is the east line of the southeast Quarter of the northeast Quarter of Section 26, Township 12 South, Range 12 East, recorded in Book 51 of Map and Plats at Page 6, Records of Pima County, Arizona, and as shown on said DeAnza recorded Plat, bearing being N 00°04'06" E.

Prepared by:
AMERSON SURVEYING, INC.

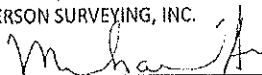
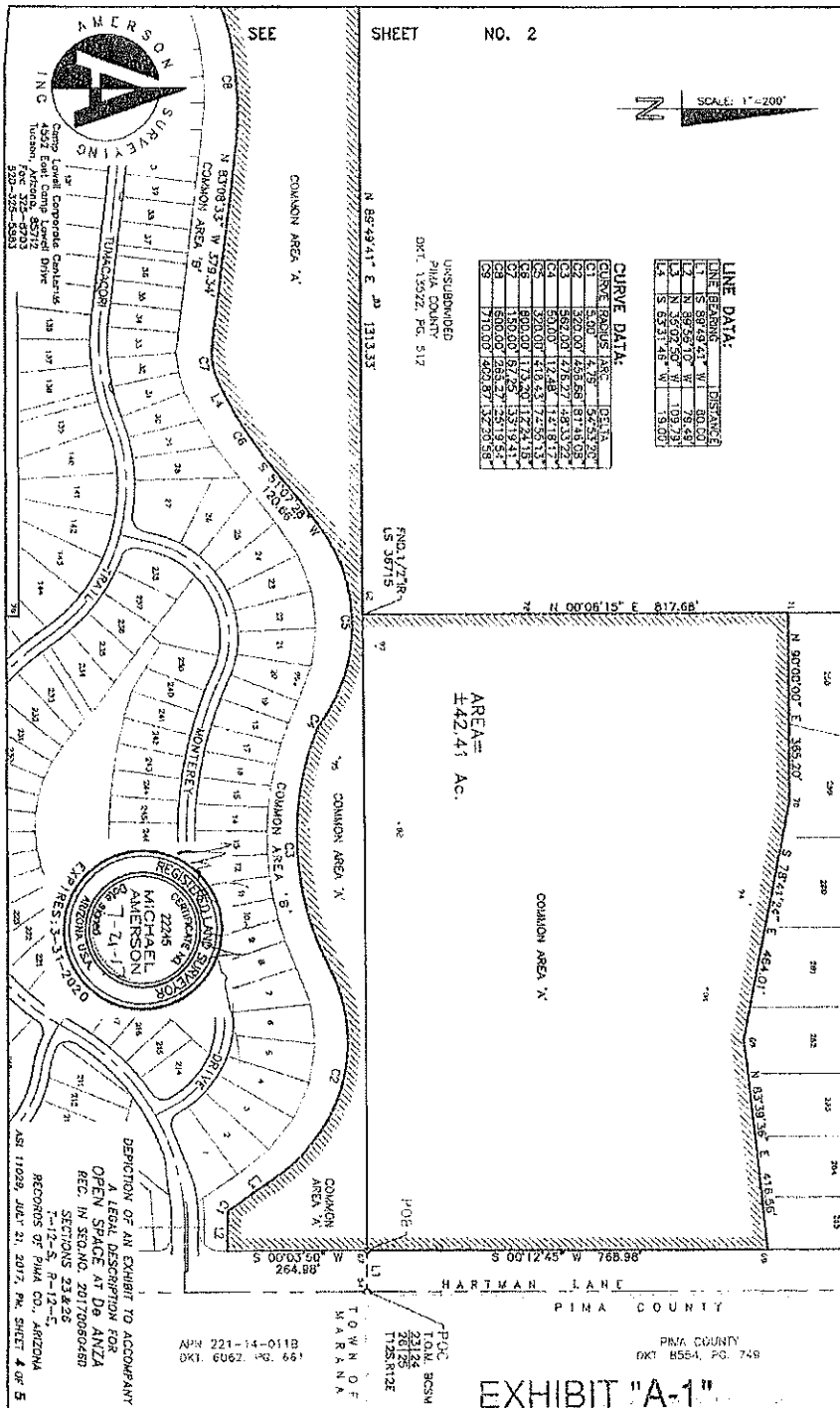
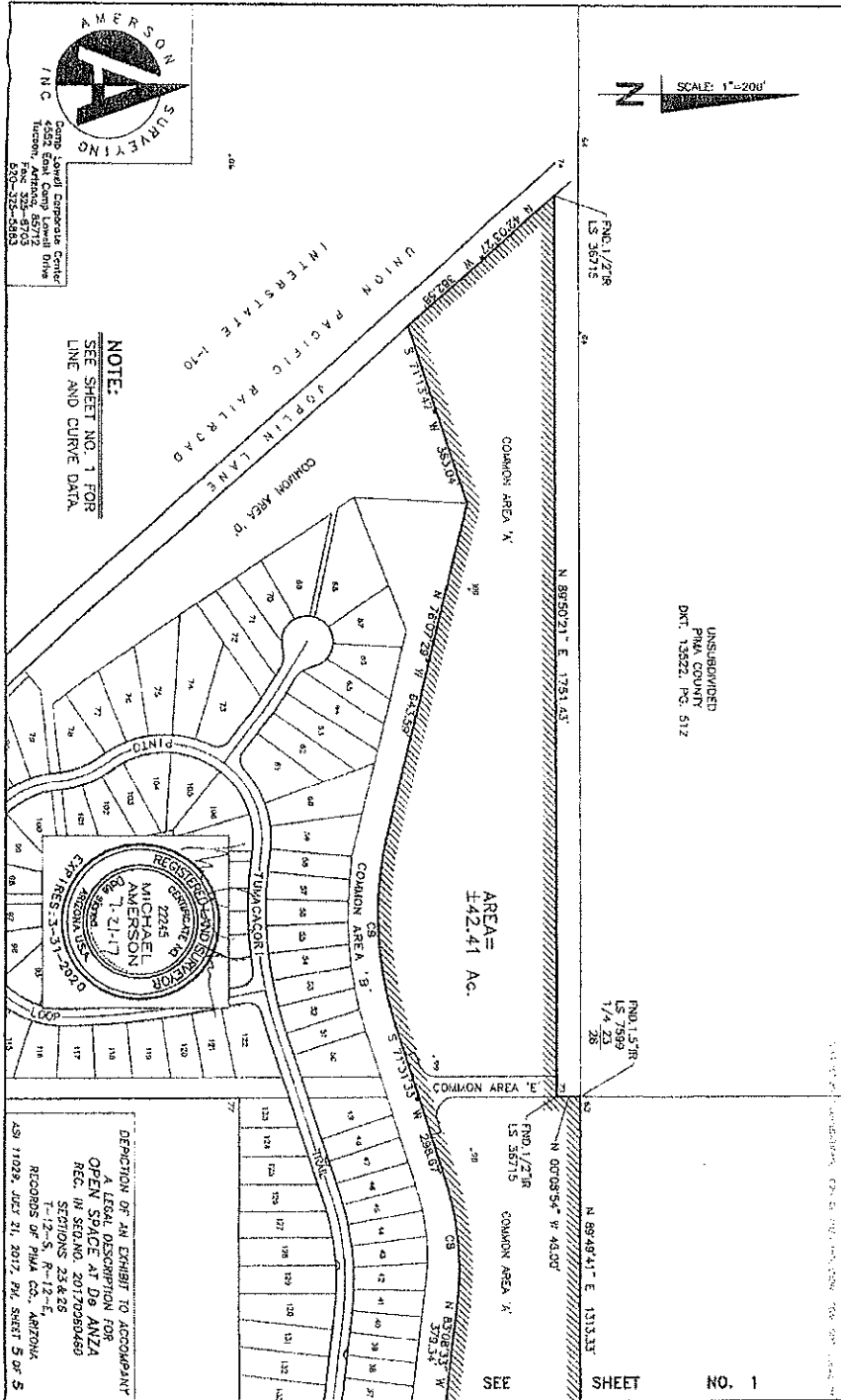

MICHAEL K. AMERSON



EXHIBIT "A-1"





AMERSON SURVEYING INC.
 Corp. Level Control Center
 4582 66th Camp Lowell Drive
 Tucson, Arizona, 85712
 520-325-5700
 520-325-5703

NOTE:
 SEE SHEET NO. 1 FOR
 LINE AND CURVE DATA.

SCALE: 1"=200'

UNSUBDIVIDED
 PIMA COUNTY
 DKT. 13522, PG. 51Z

AREA =
 ±42.41 Ac.

DEFINITION OF AN EXHIBIT TO ACCOMPANY
 A LEGAL DESCRIPTION FOR
 OPEN SPACE AT DE ANZA
 REC. IN SEC. NO. 201790469
 SECTIONS 23 & 25
 T-12-S-R-12-E
 RECORDS OF PIMA CO., ARIZONA.
 AS 11028, JULY 21, 2017, PG. SHEET 5 OF 5

SEE SHEET NO. 1