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SYCAMORE SPRINGS LLC
1600 E HANLEY BLVD STE 124
TUCSON AZ 85737

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SYCAMORE SPRINGS LLC
1600 E. HANLEY BLVD, STE 124
TUCSON, AZ 85737

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

FOR

SYCAMORE CANYON

(Completely Amending and Restating Instrument
Recorded in Docket 12280 at Page 2120)

THIS Amended And Restated Declaration of Covenants, Conditions, Restrictions, Assessments, Charges, Servitudes, Liens, Reservations and Easements (hereinafter termed the "Declaration") is made this 15th day of July, 2004, by Fidelity National Title Agency, Inc., as Trustee under Trust Nos. 60070 and 60071 (hereinafter referred to as the "Declarant").

W I T N E S S E T H:

WHEREAS, Declarant is the developer of approximately one thousand five hundred ninety-eight (1,598) acres of land in Pima County, Arizona; and

WHEREAS, Declarant is the owner in fee of that portion of Sycamore Canyon legally described on Exhibit "A" attached hereto and incorporated herein by this reference (hereinafter referred to as the "Covered Property"); and

WHEREAS, Declarant desires to develop, in phases, the aforesaid properties and any Additional Property which may from time to time be annexed or deannexed pursuant to this Declaration, and become a part of Sycamore Canyon, into planned residential, commercial, and other communities; and

WHEREAS, as part of the various phases of development of the aforesaid lands, Declarant intends, without obligation, to Record various subdivision plats; to dedicate portions of Sycamore Canyon to the public for streets, roadways, drainage, flood control, and general public use; and to Record various Tract Declarations covering portions of Sycamore Canyon, which

RECORDS SECTION

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Tract Declarations will designate the purposes for which such portions of Sycamore Canyon may be used and may set forth additional covenants, conditions, restrictions, assessments, charges, servitudes, liens, reservations and easements applicable to such portions of Sycamore Canyon; and

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

WHEREAS, the Declarant therefore wishes to subject all of the Covered Property to the covenants, conditions, restrictions, assessments, charges, servitudes, liens, reservations and easements (hereinafter collectively called the "Declaration") hereinafter set forth; and

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

Now, therefore, Declarant hereby declares, covenants and agrees as follows:

Article I
Definitions

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

- A. "Additional Property" shall mean real property situated in Pima County, State of Arizona, and the Improvements located thereon, which is contiguous to any real property

previously subjected to this Declaration. For purposes of this Section, property still shall be deemed to be contiguous if only separated by a public street or road. All or part of the Additional Property may be added to the Covered Property in one or more additional phases by Supplemental Declaration pursuant to the provisions of Article XIII hereof.

- B. "Aggregator" shall mean the role the Board of Directors may assume on behalf of the Association to negotiate with utility, cable television and/or trash collection service companies for competitive rates.
- C. "Annual Assessment" shall mean the charge levied and assessed each year against each Lot and Parcel pursuant to Article VII, Section 7.2 hereof.
- D. "Apartment Development" shall mean a Parcel or portion thereof which is described in a Tract Declaration, is limited by the Tract Declaration to residential use, and is comprised of Rental Apartments and surrounding area which are intended, as shown by the site plan therefore approved by the County of Pima and the Design Review Committee or otherwise, as one integrated apartment operation under the same ownership.
- E. "Articles" shall mean the Articles of Incorporation of the Association as the same way from time to time be amended or supplemented.
- F. "Assessable Property" shall mean any Lot or Parcel, except such part or parts thereof as may from time to time constitute Exempt Property.
- G. "Assessment" shall mean an Annual Assessment, Special Assessment, and/or Maintenance Charge.
- H. "Assessment Lien" shall mean the lien created and imposed by Article VII, Section 7.1 hereof.
- I. "Assessment Period" shall mean the time period set forth in Article VII, Section 7.8.
- J. "Association" shall mean the Arizona non-profit corporation to be organized by Declarant to administer and enforce the Declaration and to exercise the rights, powers and duties set forth in this Declaration, its successors and assigns. Declarant hereby reserves the exclusives right to cause such Association to be incorporated and intends to name the Association "The Sycamore Canyon Community Association", and hereby reserves the right to use any similar name if, for any

legal or other reason, "The Sycamore Canyon Community Association" cannot or should not be used.

- K. "Association Land" shall mean such part or parts of the Covered Property, together with the buildings, structures and Improvements thereon, and other real property which the Association may at any time own in fee or in which the Association may at any time have a leasehold interest, for as long as the Association is the owner of the fee or leasehold interest.
- L. "Board" shall mean the Board of Directors of the Association.
- M. "Bylaws" shall mean the Bylaws of the Association as the same may from time to time be amended or supplemented.
- N. "Cluster Residential Development" shall mean Lots with Dwelling Units intended for Single Family occupancy, including, but not limited to, types of residential housing arrangements known as townhouses, clustered housing, zero-lot line housing and similar arrangements, together with related areas intended for the use and enjoyment of the Owners and Residents of the Lots in the Cluster Development.
- O. "Commercial Development" shall mean a Lot or Parcel limited by a Tract Declaration to be used for commercial uses or related uses as approved by the Board and the Design Review Committee and within the restrictions created by the Covenants.
- P. "Common Area and Common Areas" shall mean (a) all Association Land and the Improvements thereon; (b) all land within the Covered Property which the Declarant, by this Declaration or other Recorded instrument, makes available for use by Members of the Association and evidences its intents to convey to the Association at a later date; (c) all land within the Covered Property which the Declarant indicates on a Record subdivision plat or Tract is to be used for landscaping, water retainage, drainage, and/or flood control for the benefit of Sycamore Canyon and/or the general public and is to be dedicated to the public or to Pima County upon the expiration of a fixed period of time, but only until such a land is so dedicated; and/or (d) all land within Sycamore Canyon which is owned privately or by a governmental agency for which the Association has accepted responsibility for maintenance, and for which the Association benefits by limited use, full use, or aesthetic consistency, for the benefit of the Members.

- Q. "Community Center" shall mean the Community Center building, the Parcel on which it is constructed, and other related improvements.
- R. "Condominium Development" shall mean a condominium established under the laws of the State of Arizona which is limited by a Tract Declaration to residential use.
- S. "Condominium Unit" shall mean a unit together with any appurtenant interest in all common elements, within a condominium which is created under Arizona law.
- T. "Conservation Easement" shall mean the affirmative obligations and restrictions on those portions of the Covered Property, the legal descriptions of which shall be determined by the Declarant and established for conservation purposes.
- U. "County" shall mean and refer to the County of Pima, State of Arizona.
- V. "Covenants" shall mean the covenants, conditions, restrictions, assessments, charges, servitudes, liens, reservations, and easements set forth herein.
- W. "Covered Property" shall mean the real property situated in Pima County, Arizona, described on Exhibit A attached hereto, and the Improvements to be completed thereon, and any part of the Additional Property added pursuant to Article XIII hereof.
- X. "Declarant" shall mean not only Fidelity National Title Agency, Inc., as Trustee under Trust Nos. 60070 and 60071, and the successors and assigns of Declarant's rights and powers.
- Y. "Declaration" shall mean this Declaration of Covenants, Conditions, Restrictions, Assessments, Charges, Servitudes, Liens, Reservations, and Easements, as amended or supplemented from time to time.
- Z. "Deed" shall mean a deed or other instrument conveying the fee simple title in a "Lot" or "Parcel".
- AA. "Design Guidelines" shall mean the architectural guidelines and standards promulgated by the Design Review Committee as provided in Article XI, Section 11.1 hereof.
- BB. "Design Review Committee" shall mean the committee of the Association to be created and appointed pursuant to Article XI hereof.

- CC. "Developer" means a person or entity who is engaged in residential or commercial real estate development and who purchases one or more Lots or Parcels from the Declarant for the purpose of constructing improvements thereon for sale or lease.
- DD. "Development" shall mean and refer to the real property described on Exhibit A and any part of the Additional Property added pursuant to Article XIII hereof.
- EE. "Dwelling Unit" shall mean any building or portion of a building situated upon a Lot or Parcel designed and intended for use and occupancy as a residence by a Single Family.
- FF. "Exempt Property" shall mean the following parts of Sycamore Canyon:
- (1) All land and improvements owned by or dedicated to and accepted by the United States, the State of Arizona, Pima County, or any political subdivision is the owner thereof or for so long as said dedication remains effective;
 - (2) All Association Land, for as long as the Association is the owner thereof;
 - (3) The Community Center;
 - (4) All land owned by Declarant.
- GG. "Functional Open Space" shall mean those areas as defined in the Sycamore Canyon Specific Plan.
- HH. "General Commercial Development" shall mean a Parcel limited by a Tract Declaration to be used for various retail or other commercial purposes within the restrictions created by the Declaration.
- II. "Improvement" shall mean buildings, roads, driveways, levees, dams, channels, basins, parking areas, fences, walls, rocks, hedges, plantings, planted trees, trails, trailheads and shrubs, and all other structures or landscaping Improvements of every type and kind.
- JJ. "Land Use Classification" shall mean the classification to be established by the Declarant pursuant to the Article IV, Section 4.1, which designates the type of Improvements which may be constructed on a Lot, Parcel or Association Land and the purposes for which such Improvements and surrounding land may be utilized.

- KK. "Lease" shall mean a lease, whether oral or written and regardless of the term thereof, whereby the owner of a Rental Agreement in a Apartment Development lets such Rental Apartment to a Lessee. A Lease (when the term is so capitalized) shall not, for the purposes of this Declaration, include any subleases or any leasing arrangements involving property other than a Rental Apartment in an Apartment Development.
- LL. "Lessee" shall mean the Lessee under a Lease, including an assignee of a Lease but excluding any person who has assigned all of his interest in a Lease.
- MM. "Lot" shall mean any (a) area of real property within the Covered Property designated as a Lot on any subdivision plat Recorded and approved by the Declarant or Board and (b) and Condominium Unit within the Covered Property.
- NN. "Maintenance Charges" shall mean any and all costs assessed pursuant to Article X, Section 10.2 hereof.
- OO. "Member" shall mean any person or entity holding a Membership in the Association pursuant to this Declaration.
- PP. "Membership" shall mean a Membership in the Association and the corresponding rights, privileges and responsibilities of the Owners and Declarant pursuant to Article VI hereof.
- QQ. "Natural Open Space (NOS)" shall mean those areas designated on a Recorded subdivision plat or Tract Declaration as natural area open space as defined in the Sycamore Canyon Specific Plan.
- RR. "Owner" means the record owner, whether one or more persons, of beneficial or equitable title (and legal title if the same has merged with beneficial or equitable title) to the fee simple interest of a Lot or Parcel. Owner shall not include (i) persons having a interest of as Lot or Parcel merely as security for the performance of an obligation, or (ii) a Lessee or Tenant. Owner shall include a purchaser under a contract for the covenant of real property subject to the provisions of Arizona Revised Statutes, Section 33-741 et. seq. Owner shall not include a purchaser under a purchase contract and receipt, escrow instructions or similar executory contracts which are intended to control the rights and obligations of the parties to the executory contracts pending pending the closing of a

sale or purchase transaction. In the case of Lots or Parcels subject to the lien of a deed of trust pursuant to Arizona Revised Statutes, Section 33-801, et. seq., the Trustor shall be deemed to be the Owner. In the case of Lots or Parcels the fee simple title to which is vested in a trustee pursuant to a subdivision trust agreement or similar agreement the beneficiary of any such trust who is entitled to possession of the trust property shall be deemed to be the Owner.

- SS. "Parcel" shall mean an area of real property within the Covered Property which (i) is not included within the boundaries of any subdivision plat or condominium plat; (ii) is subject to a Tract Declaration; and (iii) is not Association Land.
- TT. "Party Wall" shall mean a wall constructed on or immediately adjacent to the common boundary of Lots or Parcels or the common boundary of Common Areas and a Lot or Parcel.
- UU. "Recording" shall mean placing an instrument of public record in the office of the County Recorder of Pima County, Arizona, and "Recorded" shall mean having been so placed of public record.
- VV. "Resident" shall mean each natural person residing in a Dwelling Unit.
- WW. "Sycamore Canyon" shall mean the Covered Property.
- XX. "Sycamore Canyon Rules" shall mean the rules for Sycamore Canyon adopted by the Board pursuant to Article V, Section 5.3 hereof.
- YY. "Single Family" shall mean a group of one or more persons each related to the other by blood, marriage or legal adoption, or a group of not more than three (3) persons not all so related, who maintain a common household in a Dwelling Unit.
- ZZ. "Single Family Residential Development" shall mean a Parcel limited by a Tract Declaration for use as a development of Single Family detached housing, each intended for use by a Single Family.
- AAA. "Special Assessment" shall mean any assessment levied and assessed pursuant to Article VII, Section 7.5 hereof.
- BBB. "Special Use Fees" shall mean special fees authorized by this Declaration which an Owner, Resident or any other

person is obligated to pay the Association over, above and in addition to any Annual or Special Assessments or Maintenance Charges imposed or payable hereunder.

- CCC. "Specific Plan" shall mean The Sycamore Canyon Specific Plan approved by Pima County as the same may be amended from time to time.
- DDD. "Sub-Association" shall mean an owners association created within Sycamore Canyon other than the Sycamore Canyon Community Association and subject to the Sycamore Canyon Declaration. Each owner who is a member of a Sub-Association shall also hold membership in the Sycamore Canyon Community Association.
- EEE. "Supplemental Declaration" shall mean a written instrument Recorded pursuant to Article XIII.
- FFF. "Tenant" shall mean any person who occupies property located on the Covered Property under any type of rental or letting arrangement but is not included in the definition of a Lessee.
- GGG. "Tract Declaration" shall mean a declaration recorded pursuant to Article IV, Section 4.1, of this Declaration.
- HHH. "Visible From Neighboring Property" shall mean, with respect to any given object, that such object is or would be visible to any person six feet tall, standing at ground level on any part of any on any part of any Lot, Parcel or Common Area which adjoins the Lot or Parcel on which such object is located.

Article II

Property Subject To The Sycamore Canyon Declaration

Section 2.1. General Declaration Creating Sycamore Canyon.
Declarant intends to develop Sycamore Canyon and to sell and Convey Lots and Parcels. As portions of Sycamore Canyon are developed, Declarant intends, with respect to particular property, to record one or more Tract Declarations covering Lots and Parcels and designating Common Areas which will incorporate this Declaration and which will establish such additional covenants, conditions, and restrictions as may be appropriate for that property. Declarant hereby declares that all of the real property within Sycamore Canyon is, and shall be, held, conveyed, hypothecated, encumbered, leased, occupied, built upon or otherwise used, improved or transferred, in whole or in part, subject to this Declaration and any Recorded Tract Declarations applicable thereto, as amended or modified from time to time; provided, however, property which is not part of a Lot or Parcel

and which is dedicated or conveyed to the public or a governmental entity for public purposes shall not be subject to this Declaration and the covenants therein contained while owned by the public or the governmental entity, although restrictions imposed in this Declaration upon the Owners, Lessees and Residents concerning the use and maintenance of such public areas shall at all times apply to the Owners, Lessees and Residents. This Declaration and the Tract Declarations are declared and agreed to be in furtherance of a general plan for the subdivision, improvement and sale of Sycamore Canyon and are established for the purpose of enhancing and perfecting the value, desirability and attractiveness of Sycamore Canyon and every part thereof. All of this Declaration shall run with the Covered Property and with all Lots, Parcels and Association Land for all purposes and shall be binding upon and inure to the benefit of Declarant, the Association, all Owners, Lessees and Residents and their successors in interest. Nothing in this Declaration shall be construed to prevent the Declarant from modifying the Development Master Plan as to any portion of Sycamore Canyon owned by the Declarant or from dedicating or conveying portions of Sycamore Canyon owned by the Declarant, including streets or roadways, for uses other than as a Lot, Parcel or Association Land. Tract Declarations may be amended by approval of the Board and Owners of all Lots and Parcels subject to the Tract Declaration. As long as the Declarant owns any Lot or Parcel, Declarant approval is also required for any amendment to a Tract Declaration.

Section 2.2. Association Bound. Upon issuance of a Certificate of Incorporation by the Arizona Corporation Commission to the Association, the Covenants shall be binding upon and shall benefit the Association.

Article III
Easements And Rights Of Enjoyment In Common Areas

Section 3.1. Easements of Enjoyment. Every Owner and Tenant and other Member of the Association shall have a right and easement of enjoyment in and to the Common Areas which shall be appurtenant to and shall pass with the title to every Lot and Parcel, subject to the following provisions:

- (a) The right of the Association to charge reasonable admission and other Special Use Fees for the use of any recreational or other facility situated upon the Common Areas. Fees shall be uniform among Members.
- (b) The right of the Association to suspend the voting rights and right to use of the recreational facilities and other Common Areas by any Member (i) for any period during which any Assessment against his Lot or Parcel remains delinquent; (ii) for a period not to

exceed 60 days for any infraction of this Declaration or the Sycamore Canyon Rules, and (iii) for successive suspension periods if any such infraction is not corrected during any prior suspension period.

- (c) The right of the Association to dedicate or transfer all or any part of the Common Areas to any public agency, authority, or utility company for such purposes and subject to such conditions as may be agreed to by the Association. Unless otherwise required by zoning stipulations or agreements with Pima County effective unless approved by the Owners representing at least 75% of the votes entitled to be cast by each class of Membership, except that the Board shall have authority to transfer such public agencies, authorities, or utility companies easements and rights-of-way which are intended to benefit Sycamore Canyon and which do not have any substantial adverse affect on the enjoyment of the Common Areas by the Members.
- (d) The right of the Association to regulate the use of the Common Areas through the Sycamore Canyon Rules and to prohibit access to those Common Areas, such as landscape right-of-ways, not intended for use by the Members. The Sycamore Canyon Rules shall be intended, in the absolute discretion of the Board, to enhance the preservation of the Common Areas for the safety and convenience of the users, thereof, or otherwise shall serve to promote the best interests of the Owners and Residents.

Section 3.2. Delegation of Use. Any Member may, in accordance with the Sycamore Canyon Rules and the limitations therein contained and this Declaration (a) delegate his right of enjoyment in the Common Areas and facilities to the members of his family, his lessees, or his guests or invitees; or (b) designate another person to exercise all of his rights (but not liabilities or voting rights), which other person shall, during the period of such designation, have the sole right to delegate rights of enjoyment pursuant to subsection (a) of this Section.

Article IV

Land Use Classifications, Permitted Uses and Restrictions

Section 4.1. Land Use Classification. As portions of Sycamore Canyon are readied for development, the Land Use Classifications, restrictions, easements, rights-of-way, rates and timing of payment of Assessments, and other matters, including new or different uses and restrictions therefor and including any number of subclassifications thereof for any special uses, shall be fixed by Declarant in a Tract Declaration

which may be Recorded for that portion of Sycamore Canyon. Any such Tract Declaration shall be constructed as a supplement to this Declaration and fully a part hereof for all the purposes to the same extent as if all of the provisions thereof were set forth in this Declaration. The Land Use Classifications for Lots, Parcels and Association Land established by a Tract Declaration in the manner set forth in Article XIV, Section 14.2 of this Declaration. Contemplated Land Use Classifications include, but are not limited to, the following Land Use Classifications:

- (a) Single Family Residential Use.
- (b) Apartment Development Use.
- (c) Condominium Development Use.
- (d) Commercial Condominium Development Use, which may include Office Condominium Development Use.
- (e) Commercial Office Use.
- (f) Business Park Use.
- (g) General Commercial Use.
- (h) Research and Development Park Use.
- (i) Association Use, which may include Common Areas.
- (j) Low Intensity Resort Use.
- (k) Cluster Residential Use, which shall consist of Lots with Dwelling Units intended for Single Family occupancy and may include those types of residential housing arrangements known as townhouses, clustered housing, zero-lot line housing and similar arrangements, together with related areas intended for the use and enjoyment of the Owners and Residents of the Lots in the cluster development.
- (l) Community Center Use.
- (m) Telecommunications Site Use.
- (n) School.
- (o) Church.
- (p) Shopping Center.
- (q) Public/Private Recreation.

(r) General Public Use.

(s) Trailhead Use.

(t) Assisted Living Use.

Unless otherwise specifically provided in this Declaration, the definitions and characteristics of such Land Use Classifications, and specific permitted and prohibited uses in such classifications, shall be determined in the Tract Declaration.

Section 4.2. Covenants, Conditions, Restrictions and Easements Applicable to Lots and Parcels Within All Land Use Classifications. The following, covenants, conditions, restrictions and reservations of easements and rights shall apply to all Lots and Parcels, and the Owners, Lessees and Residents thereof, regardless of Land Use Classifications.

- (a) Architectural Control. No excavation or grading work shall be performed on any Lot without the prior written approval of the Design Review Committee. No Improvement which would be Visible From Neighboring Property shall be constructed or installed on any Lot without the prior written approval of the Design Review Committee. No Addition, alteration, repair, change or other work which in any way alters the exterior appearance, including but without limitation, the exterior color scheme, of any part of a Lot or Parcel, or any Improvements located thereon which are Visible From Neighboring Property, from their appearance on the date this Declaration is Recorded shall be made or done without the prior written approval of the Design Review Committee for the construction, installation, addition, alteration, repair, change or replacement of any Improvement which is or would be Visible From Neighboring Property shall submit to the Design Review Committee a written request for approval specifying in detail the nature and extent of the addition, alteration, repair, change or other work which the Owner desires to perform. The Design Review Committee may from time to time adopt submittal requirements including without limitation a standard form of application as may be necessary for the Committee to perform its duties hereunder. Any Owner requesting the approval of the Design Review Committee shall also submit to the Design Review Committee any additional information, plans and specifications which the Design Review Committee may request. The approval by the Design Review Committee for any construction, installation, addition, alteration, repair, change or other work pursuant to this Section shall not be deemed a waiver of the

Design Review Committee's right to withhold any approval of any similar construction, installation, addition, alteration, repair, change or other work subsequently submitted for approval. Upon receipt of approval from the Design Review Committee for any construction, installation, additional, alteration, repair, change or other work, the Owner who had requested such approval shall proceed to perform, construct or make the addition, alteration, repair, change or other work approved by the Design Review Committee as soon as practicable and shall diligently pursue such work so that it is completed within such time period as the Design Review Committee reasonably shall determine after the issuance of such approval or such additional period of time as may be approved by the Committee at the time of issuance or any extension of such time period subsequently granted by the Committee. Any change, deletion or addition to the plans and specifications approved by the Design Review Committee must be approved in writing by the Design Review Committee. The Design Review Committee shall have the right to charge a fee for reviewing requests for approval of any construction, installation, alteration, addition, repair, change or other work pursuant to this Section, which fee shall be payable at the time the application for approval is submitted to the Design Review Committee. The amount of such fees shall be based upon the reasonable costs of the Design Review Committee to perform its design and review duties and may include the fees and costs of any architect, engineer or other consultant employed by the Committee to assist the Committee in performing such duties.

- (b) Animals. A reasonable number of generally recognized house or yard pets, may be maintained on any Lot or Parcel and then only if they are kept or raised thereon solely as domestic pets and not for commercial purposes; provided that no such pets shall be permitted in the Conservation Easement and/or the Natural Open Space areas without being on a leash or other and similar means of restraint, and no such pets shall be permitted to damage or destroy and wildlife species or plants within such areas. Any decision rendered by the Board shall be enforceable, in the same manner as other restrictions contained herein. The Board shall also have the authority to exempt from the foregoing restrictions, or portions thereof, a pet shop or veterinary office in a General Commercial Land Use Classification.

- (c) Temporary Occupancy and Temporary Buildings. No trailer, basement of any incomplete building, tent, shack, garage or barn, and no temporary buildings or temporary structures of any kind, shall be used at any time for a residence. Temporary buildings or temporary structures used during the construction of a dwelling or other structure on any property shall be removed immediately after the completion of the construction.
- (d) Maintenance of Plantings. Each Owner of a Lot or Parcel shall keep all shrubs, trees, hedges, grass and plantings of any kind located on (i) his Lot or Parcel (including Common Areas but excluding Natural Open Space (NOS) and Conservation Easement areas), (ii) planted public right-of-way areas between sidewalks (or bikepaths) and the street curb in front of his property, if any, (iii) any other public right-of-way or easement area which abuts the Owner's Lot or Parcel and which is located between the boundary of his Lot or Parcel and the paved area of any street, sidewalk, bikepath or similar area, and (iv) any non-street public right-of-way or easement area adjacent to his Lot or Parcel, natural, and shall keep all such areas properly cultivated and maintained and free of trash, weeds, and other unsightly material; provided, however, that such Owner shall not be responsible for the maintenance of any area over which (1) the Association assumes the responsibility in writing; (2) the Association has been given such a responsibility by a Recorded instrument as provided in Article X, Section 10.1 of this Declaration; (3) Pima County or other public agency or private person or entity assumes responsibility, for so long as the Association, Pima County or any other public agency assumes or has responsibility as provided in (i), (ii) or (iii) above; or (4) the Association has responsibility under this Declaration.
- (e) Nuisances; Construction Activities. No rubbish, debris, petroleum products or similar product, of any kind shall be placed or permitted to accumulate upon or adjacent to any Lot or Parcel, and no odors shall be permitted to arise or emit therefrom so as to render any such property or any portion thereof, or activity thereon, unsanitary, unsightly, offensive or detrimental to any other property in the vicinity thereof or to the occupants of such other property. No other nuisance shall be permitted to exist or operate upon any Lot or Parcel so as to be offensive or detrimental to any other property in the vicinity thereof or to its occupants. Without limiting the generality of any of the foregoing provisions, no

exterior speakers, horns, whistles, firecrackers, bells or other sound devices, except security devices shall be used or placed on any such property without prior approval of the Design Review Committee. Normal construction activities and parking in connection with the building of Improvements on a Lot or Parcel shall not be considered a nuisance or otherwise prohibited by this Declaration, but Lots and Parcels shall be kept in a neat and tidy condition during construction periods, trash and debris shall not be permitted to accumulate, and supplies of brick, block, lumber and other building materials will be piled only in such areas as may be approved in writing by the Design Review Committee, which may also require screening of the storage areas. The Design Review Committee, in its sole discretion, shall have the right to determine the existence of any such nuisance.

- (f) Diseases and Insects. No Owner shall permit any thing or condition to exist upon any Lot or Parcel which shall induce, breed or harbor infectious plants diseases or noxious insects.
- (g) Repair of Building. No building or structure on any Lot or Parcel shall be permitted to fall into disrepair, and each such building and structure shall at all times be kept in good condition and repair and adequately painted or otherwise finished. In the event any building or structure is damaged or destroyed, then, subject to the approvals required by Subsection (a) above, such building or structure shall be immediately repaired or rebuilt or shall be demolished.
- (h) Antennas. Subject to applicable law, no antenna or other device for the transmission or reception of television or radio signals or any other form of electro-magnetic radiation, including, but not limited to, satellite television or radio discs, antennas or equipment, shall be erected, used or maintained outdoors on any Lot or Parcel, whether attached to a building or structure or otherwise, unless approved in writing by the Design Review Committee. The provisions of this Subsection (h) shall not apply to any telecommunications center which may be constructed and/or operated by the Declarant or any machinery, equipment, satellite disc, wires and other facilities used in connection with the operation of any such telecommunications center.
- (i) Mineral Exploration. No Lot or Parcel shall be used in any manner to explore for or to remove any water, oil

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or other hydrocarbons, minerals of any kind, gravel, earth or any earth substance of any kind, except for grading and excavation work and the removal of fill material including, but without limitation, gravel, rock and sand, in connection with the construction of Dwelling Units, buildings, structures or other Improvements which have been approved in writing by the Design Review Committee or which are being constructed by, or on behalf of, the Declarant.

- (j) Trash Containers and Collection. No garbage or trash shall be placed or kept on any Lot or Parcel, except in covered containers of a type, size and style which are approved in writing by the Design Review Committee. In no event shall such containers be maintained so as to be Visible From Neighboring Property except to make the same available for collection and then only for the shortest time reasonably necessary to affect such collection. All rubbish, trash, or garbage shall be removed from the Lots and Parcels and shall not be allowed to accumulate thereon. No incinerators shall be kept or maintained on any Lot.
- (k) Machinery and Equipment. No machinery or equipment of any kind shall be placed, operated or maintained upon, or adjacent to, any Lot or Parcel except (i) such machinery or equipment as is usual and customary in connection with the use, maintenance or construction (during the period of construction) of a building, appurtenant structures, or other Improvements; (ii) that which the Declarant or the Association may require for the operation and maintenance of Sycamore Canyon; or (iii) that used in connection with any business permitted under a Tract Declaration.
- (l) Signs. No signs whatsoever (including, but not limited to, commercial, political, and similar signs) which are Visible From Neighboring Property shall be erected or maintained on any Lot or Parcel except: (i) signs required by legal proceedings; (ii) no more than two (2) identification signs for individual residents, each what a face area of seventy-two (72) square inches or less; (iii) signs (including "For Sale" and "For Lease" signs) the nature, number, location, size, color, design, message content and type of which have been approved in advance and in writing by the Design Review Committee, (iv) promotional and advertising signs of builders on any Lot or Parcel approved from time to time by Design Review Committee as to number, size, color, design, message content, location and type; and (v) such other signs (including, but not

limited to, construction job identification signs, and subdivision, shopping center, apartment and business identification signs) which are in conformance with the requirements of the Pima County or other governmental agencies and which have been approved in writing by the Design Review Committee as to size, color, design, message content and location.

(m) Restriction on Further Subdivision, Property Restrictions and Rezoning. Unless otherwise provided in the Tract Declaration applicable to such Lot or Parcel, no Lot or Parcel shall be further subdivided or separated into smaller Lots or Parcels by any Owner other than the Declarant, and no portion less than all of any such Lot or Parcel, shall be conveyed or transferred by any Owner other than the Declarant without the prior written approval of the Board. This provision shall not, in any way, limit Declarant from subdividing or separating into Lots or Parcels any property at any time owned by the Declarant. No portion of a Lot but for the entire Lot, together with the Improvements thereon, may be rented, and then only to a Single Family. No further covenants, conditions, restrictions or easements shall be Recorded by Owner, Lessee, or other person other than the Declarant against any Lot or Parcel without the provisions thereof having been first approved in writing by the Board and having been endorsed on such Recorded covenants, conditions, restrictions and easements and any covenants, conditions, restrictions and easements Recorded without such approval being endorsed thereon shall be null and void.

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

service lines may be installed or relocated on any Lot or Parcel except as initially programmed and approved by the Declarant or in writing by the Design Review Committee, or, if installed after the Recording of the Tract Declaration, approved in writing by the Owner and the Design Review Committee.

- (o) Party Walls. Except as hereinafter provided, the rights and duties of Owners with respect to Party walls between Lots and Parcels shall be as follows: (i) the Owners of contiguous Lots or Parcels who have a Party Wall shall both equally have the right to use such wall, provided that such use by one (1) Owner does not interfere with the use and enjoyment of same by the Owner; (ii) in the event that any Party Wall is damaged or destroyed through the act of an Owner or any of his Tenants, Lessees, agents, guests, or members of his family (whether or not such act is negligent or otherwise culpable), it shall be the obligation of such Owner to rebuild and repair the Party Wall without cost to the Owner of the adjoining Lot or Parcel any dispute over an Owner's liability for such damage shall be resolved as provided in Subsection (v) below, but any liability imposed on an Owner hereunder shall not prevent the Owner from seeking reimbursement and indemnity therefore from the persons causing such damage; (iii) in the event any Party Wall is destroyed or damaged (including deterioration from ordinary wear and tear and lapse of time), other than by the act of an adjoining Owner, his Tenants, Lessees, agents, guests or family, it shall be the obligation of all Owners whose Lots or Parcels adjoin such Party Wall to rebuild and repair such wall or fence at their joint expense, such expense to be allocated among the Owners in accordance with the frontage to their Lots or Parcels on the Party Wall; and (iv) notwithstanding anything to the contrary herein contained, there shall be no modification of any Party Wall without the prior consent of all Owners of any interest therein, whether by way of easement or in fee. Anything in the foregoing to the contrary notwithstanding, in the case of Party Walls between Common Area and Lots Parcels, the Association shall be responsible for all maintenance thereof, subject to the provisions of Article X, Sections 10.2 and 10.3, except that each Owner of a Lot or Parcel shall be responsible for painting and maintenance of the portion of the Party Wall facing his Lot or Parcel or the portion thereof which is not a portion of the Common Area. The provisions of this Subsection (o) shall not apply to any Party Wall which separates the interiors of two

(2) Dwelling Units and the rights of the Owners of such Dwelling Units with respect to Party Walls shall be governed by plats and covenants, conditions and restrictions to be Recorded by the developer of the Dwelling Units.

- (p) Utility Service. No lines, wires, or other devices for the communication or transmission of electric current or power, including telephone, television, and radio signals, shall be erected, placed or maintained anywhere in or upon a Lot or Parcel unless the same shall be contained in conduits or cables installed or maintained underground or concealed in, under or on the building or other structures approved in writing by the Design Review Committee except for temporary power or telephone structures incident to the construction of building or structures approved in writing by the Design Review Committee.
- (q) Overhead Encroachments. No tree, shrub, or planting of any kind on any Lot or Parcel shall be allowed to overhang or otherwise to encroach upon any sidewalk, street, pedestrian way or other area from ground level to a height of eight (8) feet without the prior written approval of the Design Review Committee.
- (r) Trucks, Trailers, Campers and Boats. No motor vehicle, mobile home, recreational vehicle, travel trailer, tent trailer, camper shell, detached camper, boat, boat trailer, hang glider, ultra lights, or other similar equipment or vehicle may be parked or maintained on any Lot or Parcel or on any street in Sycamore Canyon so as to be Visible From Neighboring Property, the Common Area or the streets, and may only be parked within an enclosed garage on a Lot or Parcel or within parking areas, if any, designated by the Association for such purposes; provided, however, the provisions of this Section shall not apply to (i) motor vehicles not exceeding seven (7) feet in height measured from ground level and eighteen (18) feet in length which are parked as provided in Subsection (t) below and are used on a regular and recurring basis for basic transportation which are not used for commercial purposes and which do not display any commercial name, telephone number or message of any kind, or (ii) trucks, trailers and campers parked in areas designated for parking in non-residential Land Use Classifications.
- (s) Motor Vehicles. No automobile, motorcycle, motorbike or other motor vehicle shall be constructed, reconstructed or repaired on any Lot, Parcel or street

in Sycamore Canyon, and no inoperable vehicle, including but not limited to vehicles with flat tires, may be stored or parked on any such Lot Parcel or street, so as to be Visible From Property or to be visible from Common Areas or streets; provided, however, that the provisions of this Section shall not apply to (i) emergency vehicle repairs or temporary construction shelters or facilities maintained during, and used exclusively in connection with, the construction of any Improvement approved in writing by the Design Review Committee; (ii) any automobile repair business which may be permitted in any General Commercial Land Use Classification.

- (t) Parking. Vehicles of all Owners, Lessees and Residents, and of their employees, guests and invitees, are to be kept in garages, carports, residential driveways of the Owner, designated spaces in commercial areas, and other designated parking areas; provided, however, this Section shall not be construed to permit the parking in the above described areas of any vehicle whose parking on Sycamore Canyon is otherwise prohibited or the parking of any inoperable vehicle.
- (u) Right of Entry. During reasonable hours and upon reasonable notice to the Owner or other occupant of a Lot or Parcel, any member of the Design Review Committee, and member of the Board, or any authorized representative of any of them, shall have the right and license to enter upon and inspect any Lot or Parcel, and the Improvements thereon, except for the interior portions of any completed Dwelling Unit for the purpose of ascertaining whether or not the provisions of this Declaration, the Design Guidelines, the Association Rules, or the Sycamore Canyon Rules have been or are being complied with and such persons shall not be deemed guilty of trespass by reason of such entry.
- (v) Declarant's Use for Sales and Leasing Purposes. Notwithstanding any other provision of this Declaration, Declarant shall have the right and an easement to maintain sales or leasing offices, management offices and models throughout the Covered Property and to maintain one (1) or more advertising signs on the Common Area while the Declarant is selling Lots, Parcels and other property in the Covered Property. Declarant reserves the right to place models, management, offices and sales and leasing offices on any Lots, Parcels or other property owned by Declarant and on any portion of the Common

Area in such number, of such size and in such locations as Declarant deems appropriate So long as Declarant is marketing Lots, Parcels or other property, Declarant shall have the right to restrict the use of the parking spaces on the Common Area. Such right shall include reserving such spaces for use by prospective purchasers, Declarant's employees and others engaged in sales, leasing, maintenance, construction or management activities.

- (w) Health, Safety and Welfare. In the event additional uses, activities, and facilities are deemed by the Board to be a nuisance or to adversely affect the health, safety or welfare of Owners, Lessees and Residents, the Board may make rules restricting or regulating their presence on Sycamore Canyon as part of Sycamore Canyon as part of Sycamore Canyon Rules or may direct the Design Review Committee to make rules governing their presence on Lots or Parcels as part of the Design Guidelines.

- (x) Model Homes. The provisions of this Declaration and of Tract Declarations which prohibit non-residential use of Lots and Parcels and regulate parking of vehicles shall not prohibit the construction and maintenance of model homes and sales offices by builders or developers engaged in the construction, sale or leasing of Dwelling Units on Sycamore Canyon and parking incidental to the visiting of such model homes or sales offices so long as the location of such model homes are approved in writing by the Design Review Committee, and the construction, operation and maintenance of such model homes and sales offices otherwise comply with all of the provisions of this Declaration. The Design Review Committee may also permit Lots and other areas to be used for parking in connection with the showing of model homes or the visiting of sales offices so long as such parking and parking areas are in compliance with the ordinances of the City or other applicable governmental agencies and any rules of the Design Review Committee. Any homes constructed as model homes at any time the Owner or builder thereof is not actively engaged in the construction and the sale of Single Family residences located in Sycamore Canyon, and no model home or sales office shall be used as a model home or sales office for the sale of Lots and/or homes not located on Sycamore Canyon.

- (y) Incidental Uses. The Board may approve uses of property within a Land Use Classification which are incidental to the full enjoyment by the Owners of the

property within that Land Use Classification. Such approval may be subject to such regulations, limitations and restrictions, including termination of the use, as the Board may wish to impose, in its sole discretion, for the benefit of Sycamore Canyon as a whole. By way of example and not of limitation, the uses of which the Board may permit are private roadways and streets within an area having a Land Use Classification of Cluster Residential Use or Condominium Development Use, recreation facilities intended primarily for the benefit for all or certain Owners and Residents within areas having a Land Use Classification of Cluster Residential Use or Condominium Development Use, and recreational facilities intended for usage by the Residents or Owners of more than a single Lot or Parcel within any area classified for any residential use.

- (z) Natural Open Space (NOS). Except by approval of the Board, the Natural Open Space (NOS) shall remain in its natural state and shall not be used in any manner which will detract from or alter its natural and open desert setting. No fences, signs, buildings, improvements structures or materials of any kind shall be constructed or placed thereon, by anyone other than Declarant except by approval of the Board.
- (aa) Conservation Easement. Except to the extent that a qualified person or entity shall assume such authority and/or obligations, the Board shall have the authority to establish and amend the management functions and rules pertaining to the Conservation Easement areas, and may include all such costs and expenses in connection with such areas in the Association budget for purposes of the Assessment. In addition, the Board may elect, in its sole discretion, to cause the Association to assign or transfer, in whole or in part, any and all management obligations with respect to the Conservation Easement areas it may have to any qualified person or entity. In the event that a qualified person or entity shall assume such authority and/or obligations, the Association shall provide reasonable financial support to such qualified person or entity in connection with the exercise of such authority and the performance of such obligations. The Conservation Easement shall be subject to the following conservation elements ("Conservation Elements") as required by the United States Fish and Wildlife Service ("USFWS"):

(i) Conservation Element 1 - Amendment of Conservation Elements Requires USFWS Approval. Any

changes to the Conservation Elements are subject to approval by the USFWS. Upon written request of the conservation foundation ("Conservation Foundation"), that shall be established to manage the Conservation Easement, the USFWS may approve amendments to the Conservation Elements. The USFWS shall have no authority over elements of this Declaration that are not identified specifically as Conservation Elements, nor shall they have the authority to impose additional restrictions without the unanimous approval of the membership of the Association.

(ii) Conservation Element 2 - Surface Disturbance. The maximum allowable size of areas disturbed within each subdivision, building site, utility, or individual lot, any septic system, or sewer connection, driveway, and other landscape features within the Covered Property will be in accordance with the approved Specific Plan and biological assessment ("BA") prepared by the USFWS and the project description in the biological opinion issued by USFWS as a consequence of this consultation. Appropriate control techniques, such as t-post fencing and the preservation of individual trees, shrubs, and cacti as practical within cleared areas, will be used to minimize surface disturbance.

(iii) Conservation Element 3 - Modifications of Developed Lots within Large Lot Subdivisions. Any proposed modifications of a large single family residential lot that would require the removal of native vegetation within Rural Residential and Village Estate (as those terms are defined by the USFWS) subdivisions that had previously been approved by the Design Review Committee will require additional review and approval of the Design Review Committee to ensure that it is contained within the maximum allowable surface disturbance area for said lot.

(iv) Conservation Element 4 - Allowable Uses of Natural Open Space (NOS) Restricted. Management of the Conservation Easement will specifically exclude the following activities within the Conservation Easement: motorized vehicle use, application of pesticides and rodenticides, artificial lighting (e.g., light poles or other permanent lighting fixtures), organized events that consist of more than twenty (20) individuals, any vegetation salvage or disturbance of native vegetation except as necessary for the construction of trails, use of fires or outdoor cooking, equestrian use by parties of twenty

(20) people or more, boarding of horses, or staging of equestrian events.

(v) Conservation Element 5 - Trails. Pedestrian and equestrian activities within the Conservation Easement shall be allowed on trails established for such purposes within the Conservation Easement system in the Covered Property. Unauthorized pedestrian, equestrian, or bicycle paths through Conservation Easement will be restored by the Conservation Foundation as a part of its ongoing management obligations.

(vi) Conservation Element 6 - Fence Restrictions. To maintain a network of interconnected open space, the construction of fence of any type along the perimeter of any large lot within the Rural Residential or Village Estate subdivisions is prohibited. Fencing within the boundaries of each large lot shall be placed at the perimeter of the clearing limits. No woven-wire or chain-link fencing will be used at the boundaries of or within the Conservation Easement.

(vii) Conservation Element 7 - CFPO Survey and Monitoring Restrictions. CFPO survey in conformance with the applicable USFWS survey recommendations shall be complete prior to the implementation of any vegetation clearing activities associated with any development activities authorized by the BA. In the event that a CFPO is detected during survey effort, the Conservation Foundation and the developer of the lot, parcel, or subdivision shall work with USFWS to determine if the detection represents a CFPO territory as defined in the BA and will implement conservation measures outlined in Section 3.3.3.2 of the BA as applicable.

(viii) Conservation Element 8 - Monitoring and Reporting. The Conservation Foundation will be responsible for all management, monitoring, and reporting to the USFWS in regard to compliance with the Conservation Elements. Through its articles of incorporation, the Conservation Foundation will establish its authority and responsibility for ensuring that the Conservation Easement remain undisturbed, for the benefit of Pima Pineapple cactus and adjacent lot owners.

An annual report will be submitted to the USFWS on or about February 1st of each calendar year. This report will provide a concise summary of Pima Pineapple cactus transplant and monitoring activities required.

by Section 3.3.2 of the BA, CFPO survey efforts that have been completed in the previous calendar year required by Conservation Element 7, and the Conservation Easement management activities, including any necessary restoration efforts, as required by the Conservation Elements. The annual report will provide documentation of compliance with the Conservation Elements and will document signs of trespass into the Conservation Easement and the steps taken to correct any such trespass. Attachments to the report will include copies of all site inspection report forms, maintenance activity reports, Pima Pineapple cactus monitoring field data sheets, and labeled copies of photographs taken from established, permanent photo-points. The annual monitoring report will also provide a cumulative summary of the Covered Property's clearing activities, demonstrating compliance with the overall grading limitations allowed by the BA and the Specific Plan. The annual report will be submitted on a standard form and will include as attachments, all necessary documentation.

- (bb) Towing of Vehicles. The Board shall have the right to have any truck, mobile home, travel trailer, tent trailer, trailer, camper shell, detached camper, recreational vehicle, boat, boat trailer or similar equipment or vehicle or any automobile, motorcycle, motorbike, or other motor vehicle which is parked, kept, maintained, constructed, reconstructed or repaired in violation to this Declaration towed away at the sole cost and expense of the owner of the vehicle or equipment, Any expense incurred by the Association in connection with the towing of any vehicle or equipment shall be paid to the Association upon demand by the Owner, any amounts payable to the Association shall be secured by the Assessment Lien, and the Association may enforce collection of suit amounts in the same manner provided for in this Declaration for the collection of Assessment.

Section 4.3. Covenants, Conditions, Restrictions and Easements Applicable to Lots Within Residential Land Use Classification. The following covenants, conditions, restrictions and reservation of easements and rights shall apply only to Lots and the Owners and Residents thereof restricted by a Tract Declaration to Single Family Residential Use, Condominium Development Use or Cluster Residential Use.

- (a) Residential Use. All Dwelling Units shall be used, improved and devoted exclusively to residential use by a Single Family. No trade or business may be conducted on any Lot or in or from any Dwelling Unit, except

that an Owner or other Resident of a Dwelling Unit may conduct a business activity within a Dwelling Unit so long as; (i) the existence or operation of the business activity is not apparent or detectable by sight, sound or smell from outside the Dwelling Unit; (ii) the business activity conforms to all applicable zoning ordinances or requirements for the Covered Property; and (iii) the business activity does not involve persons coming on to the Lot or the door-to-door solicitation of Owners or other Residents in the Covered Property; and (iv) the business activity does not violate any provision of the Declaration, the Design Guidelines, the Association Rules, or the Sycamore Canyon Rules; and (v) the business activity is consistent with the residential character of the Covered Property and does not constitute a nuisance or a hazardous or offensive use or threaten security or safety of other Residents in the Covered Property, as may be determined from time to time in the sole discretion of the Board. The terms "business" and "trade" as used in this Section shall be construed to have ordinary, generally accepted meanings, and shall include, without limitation, any occupation, work or activity undertaken on an ongoing basis which involves the provision of goods or services to persons other than the provider's family and for which the provider receives a fee, compensation or other form of consideration, regardless of whether; (i) such activity is engaged in full or part time; (ii) such activity is intended or does generate a profit; or (iii) a license is required for such activity. The leasing of an entire Dwelling Unit by the Owner thereof shall not be considered a trade or business within the meaning of this Section.

- (b) Tenants. The entire Dwelling Unit on a Lot may be let to a Single Family Lessee from time to time by the Owner, subject to provisions of this Declaration and the Sycamore Canyon Rules, the Association Rules, and the Design Guidelines.

ARTICLE V
ORGANIZATION OF ASSOCIATION

Section 5.1. Formation of Association. The Association shall be a nonprofit Arizona corporation charged with the duties and invested with the powers prescribed by law and set forth in the Articles nor Bylaws shall, for any reason, be amended or otherwise changed or interpreted so as to be inconsistent with this Declaration.

Section 5.2. Board of Directors and Officers. The affairs of the Association shall be conducted by the Board and such officers as the Board may elect or appoint in accordance with the Articles and the Bylaws as the same may be amended from time to time. The Board may also appoint various committees and appoint a manager who shall, subject to the direction of the Board, be responsible for the day-to-day operation of the Association. The Board shall determine the compensation to be paid to the manager or any other employee of the Association. Unless this Declaration specifically requires a vote of the Members, approvals or actions to be given or taken by the Association shall be valid if given or taken by the Board. The Board members are appointed by the Declarant and may be replaced at the discretion of the Declarant. Declarant's right to appoint Board members shall cease and the Members shall be vested with that right at such time Declarant no longer owns any property at Sycamore Canyon, or when such right is expressly relinquished by Declarant to the Board in writing, whichever condition occurs first.

Section 5.3. The Sycamore Canyon Rules. The Board may, from time to time, and subject to the provisions of this Declaration, adopt, amend and repeal rules and regulations pertaining to: (i) the management, operation and use of the Common Areas including, but not limited to, any recreational facilities situated upon Common Areas; (ii) minimum standards for any maintenance of Lots and Parcels; (iii) the health, safety or welfare of the Owners and Residents. In the event of any conflict or inconsistency between the provisions of this Declaration and Sycamore Canyon Rules, the provisions of this Declaration shall prevail. The Sycamore Canyon Rules shall be enforceable in the same manner and to the same extent as the covenants, conditions and restrictions set forth in this Declaration.

Section 5.4. Personal Liability. No member of the Board or of any committee of the Association, no officer of the Association, and no other employee or representative of the Association shall be personally liable to any Member, or to any other person, including the Association, for any damage, loss or prejudice suffered or claimed on account of any act, omission, error or negligence of the Association, the Board, any representative or employee of the Association, or any committee, committee member or officer of the Association; provided, however, the limitations set forth in this Section 4 shall not apply to any person who has failed to act in good faith or has engaged in willful or intentional misconduct.

Section 5.5. Sub-Association. In the event any homeowners or similar association is to be formed by the developer (other than the Declarant) of a Parcel or subdivision on Sycamore Canyon, the covenants, conditions and restrictions, the articles

of incorporation and bylaws or other governing documents for such association shall not be effective unless the contents thereof have been approved by the Board and the governing documents specify that such association and the rights of its members are subject and subordinate to the provisions of this Declaration, the provisions of the Articles and Bylaws of the Association, and the provisions of the Sycamore Canyon Rules, the Association Rules, and the Design Guidelines.

ARTICLE VI
MEMBERSHIP AND VOTING

Section 6.1. Owners of Lots and Parcels. Every Owner of a Lot or Parcel which is Assessable Property shall be a Member of the Association. For purposes of this Section, Lots and Parcels owned by the Declarant shall not be considered Assessable Property and shall not be subject to any Assessment. Each Owner (including the Declarant) shall have the following number of Memberships:

- (a) One Membership for each Lot owned by the Member;
- (b) In the case of the Owner of a Parcel restricted by a Tract Declaration to Single Family Residential Use or Cluster Residential Development Use, one Membership for each Dwelling Unit permitted upon the Parcel under the Development Master Plan. If a subdivision plat or other instrument creating Lots is Recorded covering all or part of the area within the Parcel, the Parcel shall be reduced in size by the area so platted and the number of Memberships held by the Owner, as Owner of the Parcel, shall be reduced by a number equal to the number Lots in the Recorded subdivision plat. All memberships attributable to the Parcel shall cease when land area ceases to be a Parcel because all of the area in the Parcel has been platted or otherwise dedicated to the public and no unplatted Single Family Residential or Cluster Residential Development area remains within the Parcel.
- (c) One Membership for each subdivided Lot or Condominium Unit which is restricted by a Tract Declaration to commercial or office use.
- (d) In the case of a Parcel restricted by a Tract Declaration to a Land Use Classification other than Single Family Residential Use, Cluster Residential Development Use or Condominium Development Use, the number of Memberships and Assessments shall be determined by Declarant and included in the applicable Tract Declaration. If only part of a Parcel restricted by a Tract Declaration to a Land Use

Classification other than Single Family Residential Use, Cluster Residential Development Use or Condominium Development Use is subdivided into Lots or is subjected to a condominium declaration, then the number of Memberships attributable to the part of the Parcel which is not subdivided or subjected to a condominium plat and condominium declaration shall be the number of Memberships allocated to all of the property subject to such Tract Declaration less the number of subdivided Lots and Condominium Units within such property.

Each such Membership shall be appurtenant to and may not be separated from ownership of the Lot or Parcel to which the Membership is attributable.

Section 6.2. Voting. The Association shall have two classes of voting Memberships:

Class A. Class A Membership shall be all Memberships, except the Class B Membership held by the Declarant, and each Owner shall be entitled to one vote for each Class A Membership held by such Owner and for which such is paying a full Assessment.

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

- a) The first day of January, 2025; or
- b) At any time by written notice to the Association that Declarant wishes to convert all Class B Memberships to Class A Memberships; or
- c) Declarant no longer owns property in Sycamore Canyon.

Section 6.3. Right to Vote. No change in the ownership of a Membership shall be effective for voting purposes unless and until the Board is given actual written notice of such change and is provided satisfactory proof thereof. The vote for each such Membership must be cast as a unit, and fractional votes shall not be allowed. In the event that a Membership is owned by more than one person or entity and such owners are unable to agree among themselves as to how to vote on the matter in question. If any Member casts a vote representing a certain Membership, it will

thereafter be conclusively presumed for all purposes that he was acting with the authority and consent of all other owners of the same Membership unless objection thereto is made at the time the vote is cast. In the event more than one vote is cast for a particular Membership, none of said votes shall be counted and all said votes shall be deemed void.

Section 6.4. Membership Rights. Each Member shall have the rights, duties and obligations set forth in this Declaration and such other rights, duties and obligations as are set forth in the Articles and Bylaws, Sycamore Canyon Rules and Design Guidelines as the same may be amended from time to time.

Section 6.5. Transfer of Class A Membership. The rights and obligations of the owner of a Class A Membership in the Association shall not be assigned, transferred, pledged, conveyed or alienated in any way except upon transfer of ownership to an Owner's Lot or Parcel, as applicable, and then only to the transferee of ownership to the Lot or Parcel. A transfer of ownership to a Lot or Parcel may be effected by deed, intestate succession, testamentary disposition, foreclosure of a mortgage or deed of trust of record, or such other legal process as now in effect or as may hereafter be established under or pursuant to the laws of the State of Arizona. Any attempt to make a prohibited transfer shall be void. Any transfer of ownership to a Lot or Parcel shall operate to transfer the Membership(s) appurtenant to said Lot or Parcel to the new Owner thereof.

Section 6.6. Suspension of Voting Rights. Any Member who fails to pay the Annual Assessments, Special Assessments or Maintenance Charges provided herein within sixty (60) days of the due date thereof, shall have all voting rights as provided herein suspended until such amounts plus any accrued interest, attorney's fees and/or collection costs are paid in full.

ARTICLE VII COVENANT FOR ASSESSMENTS AND CREATION OF LIEN

Section 7.1. Creation of Lien and Personal Obligation of Assessments and Maintenance Charges. Each Owner, but not including the Declarant, by acceptance of a Deed therefor (whether or not it shall be so expressed in such Deed) is deemed to covenant and agree, to pay to the Association the following assessments and charges: (1) Annual Assessments established by this Article VII, (2) Special Assessments for capital improvements or other extraordinary expenses or costs established by this Article VII, (3) Maintenance Charges established by Article X, Sections 10.2 and 10.3, all such Assessments to be established and collected as hereinafter provided. The Annual Assessments, Special Assessments and Maintenance Charges, together with interest, incidental and taxable costs, and

reasonable attorney's fees, and all other sums which may become due and payable to the Association by an Owner shall be a charge on the Lot or Parcel and shall be a continuing servitude and lien upon the Lot or Parcel against which each such Assessment is made. The Annual and Special Assessments against each Lot or Parcel shall be based on the number of Memberships appurtenant to the Lot or Parcel (including, without limitation, Memberships attributable to Dwelling and Condominium Units located on such Lot or Parcel). Each such Annual and Special Assessment and Maintenance Charge, together with interest, costs and reasonable attorney's fees, shall also be the personal obligation of the person who was the Owner of the Lot or Parcel at the time when the Assessment fell due. The personal obligation for delinquent Assessments shall not pass to the successors in title of the Owner unless expressly assumed by them. However, such exemption does not apply to the obligation of the successor in title of the Owner to correct any violation of the Declaration, the Association Rules, the Sycamore Canyon Rules, or the Design Guidelines by the Owner pursuant to Article XV, Section 15.16; however, the transfer of title shall not extinguish any Assessment Lien except a transfer pursuant to foreclosure of a superior lien in which the Assessment Lien has been extinguished by such foreclosure proceeding.

Section 7.2. Annual Assessments. In order to provide for the uses and purposes specified in Article IX hereof, including the establishment of replacement and maintenance reserves, the Board in each year, commencing with the year in which the first Tract Declaration is recorded, shall assess against each Lot and Parcel which is Assessable Property an Annual Assessment. The amount of the Annual Assessment, subject to the provisions of Section 4 hereof, shall be in the sole discretion of the Board but shall be determined with the objective of fulfilling the Association's obligations under this Declaration and providing for the uses and purposes specified in Article IX.

Section 7.3. Determination of Assessment. The amount of any Annual or Special Assessment to be levied against each Lot and Parcel shall be determined as follows:

- (a) For purposes of this Section 7.3, the "Membership Assessment" shall mean the total amount of any Annual Assessment or Special Assessment to be levied against all Lots and Parcels which are Assessable Property divided by the total number of memberships attributable to the Assessable Property.
- (b) Except for Lots and Parcels covered by Subsections (c) and (d) and except for Lots and Parcels owned by the Declarant which are exempt from Assessment under this Declaration, each Lot and Parcel shall be assessed an Annual Assessment or Special Assessment, as the case

may be, in an amount equal to the number of Memberships attributable to such Lot or Parcel pursuant to Section 6.1 of this Declaration.

- (c) The Owner of a Lot shall be assessed 25% of the amount equal to the number of Memberships attributable to his Lot multiplied by the Membership Assessment until the earlier of (i) the completion of the first Dwelling Unit on the Lot, (ii) six months from the commencement of construction of the first Dwelling Unit on the Lot, or (iii) eighteen (18) months from the date the title is first transferred from Declarant to an Owner.
- (d) The Owner of a Parcel restricted under a Tract Declaration to any uses shall be assessed at such rates and at such times as set forth in the Tract Declaration.

For the purposes of this Section 7.3, a Dwelling Unit or other building shall be deemed completed when, in the opinion of the Design Review Committee, the Building is ready for occupancy or, in the case of a commercial rental building, ready for the making of interior Tenant improvements. If the rate of Assessment for a Parcel or Lot increases during the period to which an Annual Assessment or Special Assessment is attributable, the Assessment shall be prorated between the applicable rates on the basis of the number of days in the period that the Owner qualified for each rate. Annual Assessments may be collected on a monthly, quarterly or annual basis, and Special Assessments may be collected as specified by the Board unless otherwise determined by the resolution of the Members of the Association approving the Special Assessment.

Section 7.4. Maximum Annual Assessments. The Annual Assessment to be established by the Board may not exceed a certain amount, hereinafter referred to as the "Maximum Annual Assessment", which Maximum Annual Assessment shall be determined and shall vary in accordance with the following provisions:

- (a) Until January 1 of the year following the recordation of the first Tract Declaration, the Maximum Annual Assessment against each Owner shall be Six Hundred Dollars (\$600.00) per membership.
- (b) Commencing with the year immediately following recordation of this Declaration, and continuing each succeeding year thereafter, the Maximum Annual Assessment shall be increased effective January 1 of each such year without a vote of the Membership by the amount of ten percent (10%) on a cumulative basis.

- (c) From and after January 1 of the year immediately following the recordation of this Declaration, the Maximum Annual Assessment may be increased above the Maximum Annual Assessment otherwise determined under Subsection (b) above by a vote of two-thirds (2/3) of the Members who are voting in person or by proxy at a meeting duly called for such purpose.

Section 7.5 Special Assessment for Capital Improvements and Extraordinary Expenses. In addition to the Annual Assessments authorized above, the Association may levy, in any Assessment Period, a Special Assessment applicable to that period only for the purpose of defraying, in whole or in part, the cost of any construction, reconstruction, repair or replacement of a capital improvement upon the Common Area, including fixtures and personal property related thereto, or for the purpose of defraying other extraordinary expenses, provided that any such assessment shall have the assent of two-thirds (2/3) of the votes of the Members who are voting in person or by proxy at a meeting duly called for such purpose. The provisions of this Section are not intended to preclude or limit the assessment, collection or use of Annual Assessments for the aforesaid purposes.

Section 7.6. Special Use Fee. The Association, as an Aggregator, may enter into one or more agreement with utility service, cable television service and/or trash collection service providers or companies for the purpose of providing service to Sycamore Canyon. The cost of any and all such services shall be a Special Use Fee subject to the provisions of Section 9.4 herein. In the case of Lots with a land use classification of Single Family Residential that are transferred in title from a Developer to an individual Owner when the residence is complete, the Special Use Fee shall commence at close of escrow. Terms of any and all such services to Lots and Parcels with land use classification other than Single Family Residential shall be determined at the discretion of the Board. The Board of Directors shall set the Special Use Fee each year and shall give notice to the Association Members in the same manner as for the Annual Assessment. In the event that there are insufficient funds in the Special Use Fee account to cover costs associated with providing any and all such services for any reason, the Association shall advance the necessary funds to cover such costs and will be reimbursed from the applicable Members within a reasonable period of time as determined by the Board of Directors.

Section 7.7. Notice and Quorum for An Action Authorized Under Sections 7.4 and Section 7.5. Written notice of any meeting called for the purpose of taking any action authorized under Sections 7.4(c) or 7.5 of this Article shall be sent to all Members no less than thirty (30) days nor more than sixty (60)

days in advance of the meeting at the addresses of such Members on the records of the Association. At the first such meeting called, the presence of Members or of proxies entitled to cast sixty percent (60%) of all the votes (exclusive of suspended voting rights) of each class of Membership shall constitute a quorum. If the required quorum is not present, another meeting may be called subject to the same notice requirement, and the required quorum at the subsequent meeting shall be one-half (1/2) of the required quorum at the preceding meeting. No such subsequent meeting shall be held more than sixty (60) days following the initially scheduled meeting.

Section 7.8. Establishment of Annual Assessment Period. The period for which the Annual Assessment is to be levied (the "Assessment Period") shall be the calendar year, except that the first Assessment Period shall commence upon the recordation of this Declaration and terminate on December 31 of such year. The Board in its sole discretion from time to time may change the Assessment Period by giving notice thereof to the Members of the Association.

Section 7.9. Rules Regarding Billing and Collection Procedures. The Board shall have the right to adopt rules and regulations setting forth procedures for the purpose of making the Assessments provided herein and for the billing and collection of the Annual and Special Assessment and the Maintenance Charges imposed pursuant to Article X, Section 10.2 and 10.3, provided that said procedures are not inconsistent with the provisions hereof. The failure of the Association to send a bill to a Member shall not relieve any Member of his liability for any Assessment or charge under this Declaration, but the Assessment Lien therefore shall not be foreclosed or otherwise enforced until the Member has been given not less than thirty (30) days written notice prior to such foreclosure or enforcement, at the address of the Member on the records of the Association, that the Assessment or any installment thereof is or will be due and of the amount owing. Such notice may be given at any time prior to or after delinquency of such payment. The Association shall be under no duty to refund any payments received by it even though the ownership of a Membership changes during an Assessment Period successor Owners of Lots or Parcels shall be given credit for prepayments, on prorated basis, made by prior Owners. In case the owner of a Membership becomes liable for payment of an increased sum pursuant Section 3 of this Article during the Assessment Period, he shall notify the Association but his failure to notify the Association shall not relieve him of the liability for such amounts. The amount of the Annual Assessment against Members who become such during an Assessment Period upon the Recording of a Tract Declaration shall be prorated and such new Members shall be liable for a proportionate share of any previously levied Special Assessment