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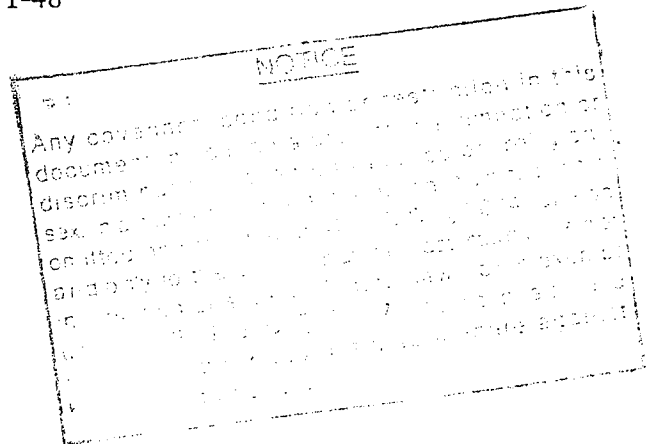


DOCKET: 10945
PAGE: 809
NO. OF PAGES: 46
SEQUENCE: 19982220238
12/17/1998
REST 11:48
MAIL
AMOUNT PAID \$ 28.50

SOROV
TOWN OF ORO VALLEY
11000 N LA CANADA
ORO VALLEY AZ 85737

51/72

DECLARATION OF
COVENANTS, CONDITIONS, RESTRICTIONS AND EASEMENTS
FOR
MOONRIDGE SUBDIVISION
LOTS 1-48



DATED: July 14, 1998

Oro Valley, Arizona

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**DECLARATION OF
COVENANTS, CONDITIONS, RESTRICTIONS AND EASEMENTS
FOR
MOONRIDGE SUBDIVISION**

THIS DECLARATION is made this 14~~th~~ day of July, 1998 by FIDELITY NATIONAL TITLE AGENCY, INC., an Arizona corporation, as Trustee under Trust No. 10,672 hereinafter referred to as "Declarant."

WITNESSETH:

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

Lots 1 through 48, inclusive, and Common Area of Moonridge Subdivision Lots 1-48, a subdivision in Pima County, Arizona, as recorded in Book ___ of Maps and Plats at Page ___ thereof, in the Office of Pima County Recorder, Pima County, Arizona (the "Plat").

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

WHEREAS, Declarant proposes to provide for the construction of improvements upon the Properties (as hereinafter defined), subject to the covenants, restrictions, uses, limitations, obligations, easements, equitable servitudes, charges and liens hereafter set forth, each of which is for the benefit of the Properties and the subsequent owners thereof.

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

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

ARTICLE I
DEFINITIONS

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

Section 1.1 "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.

Section 1.2 "Association" shall mean and refer to Moonridge Homeowners Association, its successors and assigns.

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

Section 1.4 "Building Envelope" shall mean that developable area within the Lot in which all improvements must be built, and the only area in which alterations to the existing landscape may occur. The Building Envelope for each Lot shall be determined by the Architectural Control Committee, and each Owner shall be notified in writing, by delivery of a plot plan, of the precise limits and scope of the Building Envelope for his or her Lot.

Section 1.5 "Bylaws" shall mean the Bylaws of the Association, together with any amendments thereto.

Section 1.6 "Common Area" or "Common Areas" shall mean all real property designated as Common Area on the Plat, and any improvements thereon, and any other property owned and controlled by the Association for the common use and enjoyment of the Owners, including without limitation any park or recreation area..

Section 1.7 "Declarant" shall mean Fidelity National Title Agency, Inc. an Arizona corporation as Trustee under Trust No. 10,672 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. Any rights of the Declarant hereunder may be exercised by the beneficiary of Declarant.

Section 1.8 "Declaration" shall mean and refer to this instrument and any amendment thereto or restatement thereof.

Section 1.9 "Dwelling Unit" or "Unit" shall mean any improvements placed within the confines of any Lot.

Section 1.10 "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.

Section 1.11 "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, and in the event of annexation shall include all additional lots annexed and shown on a plat for the annexed land. 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.

Section 1.12 "Member" shall mean and refer to every person and/or entity who holds membership in the Association pursuant to Section 2.1 hereof.

Section 1.13 "Mortgage" shall mean any mortgage, deed of trust or other security instrument by which a Lot or any part thereof is encumbered.

Section 1.14 "Owner" or "Homeowner" 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 forgoing does not include persons or entities who hold an interest in any Lot merely as security for the performance of an obligation, or a lessee or tenant of an Owner as defined above, or a purchaser or vendee under any executory contract of sale which has not been fully consummated with a deed to the purchaser recorded in the office of the County Recorder of Pima County, Arizona.

Section 1.15 "Person" shall mean a natural individual, corporation or other entity with the legal right to hold title to real property.

Section 1.16 "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.

Section 1.17 "Properties" shall mean and refer to Lots 1 through 48 and Common Area of Moonridge Subdivision Lots 1-48 as described on the Plat.

Section 1-18 "Restrictions" shall mean the covenants, conditions, restrictions, uses, limitations, obligations, easements, equitable servitudes, charges and liens set forth in this Declaration.

Section 1.19 "Rules" shall mean any and all rules adopted by the Board pursuant to the Bylaws.

ARTICLE II
ASSOCIATION

Section 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. Any transfer of ownership of a Lot shall operate automatically to transfer said membership of the new Owner thereof. Any attempted transfer of membership separate from the appurtenant Lot or Lots shall be void.

Section 2.2 Voting Rights and Classes of Membership. The Association shall have two classes of voting memberships.

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

Class B: The Class B Members shall be Declarant, who shall be entitled to five (5) votes for each Lot owned. The Class B membership shall cease and be converted to Class A membership on the happening of the earlier of the following events:

1. Ninety (90) days after such time as the total votes outstanding in the Class A membership equal the total votes outstanding in the Class B membership, or
2. Ten (10) years following the conveyance of the first Lot to an Owner, other than the Declarant.

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

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

Section 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 protection, improvement, alteration, maintenance, repair, replacement, administration and operation of the Common Area and any other areas for which the Association is responsible under the terms of this Declaration or otherwise; the assessment of expenses; payment of losses; disposition of casualty insurance proceeds; and other matters as provided in this Declaration, the Articles, the Bylaws, and the Rules. The Association shall not be deemed to be conducting a business of any kind. All funds received by the Association shall be held and applied by it for the Owners and Members in accordance with the provisions of this Declaration, the Articles and the Bylaws.

Section 2.4 Rights and Responsibilities of Association. The Association, through the Board of Directors, unless specifically provided otherwise, shall have the right of enforcement of all of the provisions hereof. The Association shall be responsible for the proper and efficient management and operation of the Common Area, the drainage and slope easements shown on the Plat, and any other areas for which it is responsible under the terms of this Declaration or for which it has assumed responsibility, including:

- A. maintaining, operating, and rebuilding improvements on the Common Area;
- B. maintaining and landscaping property owned or controlled by the Association, including private roads, paths, drainage and slope easements, and other easement rights, if any;
- C. operating, maintaining, rebuilding and insuring improvements originally constructed by Declarant or later constructed by the Association on the Common Area;
- D. paying real estate taxes, assessments and other charges on the Common Area;
- E. insuring all improvements which the Association is obligated to maintain against damage by casualty with such companies and in such limits as provided herein and as the Association deems appropriate;
- F. hiring, firing, supervising and paying employees and independent contractors including, but not limited to, workmen, landscapers, attorneys, accountants, architects and contractors to carry out the obligations set forth herein;
- G. maintaining such liability insurance as the Association deems necessary to protect the members and the Board of Directors of the Association from any liability caused by occurrences or happenings on or about the Common Area;

H. maintaining workmen's compensation insurance for the employees of the Association;

I. purchasing all goods, supplies, labor and services reasonably necessary for the performance of the obligations set forth herein;

J. establishing and maintaining such adequate cash reserves as the Association may, in its sole and absolute discretion, deem reasonably necessary for the periodic maintenance, repair and replacement of the improvements which it is responsible to maintain;

K. providing for and payment of all utility services for the Common Area if deemed appropriate by the Board;

L. entering into such agreements and taking such actions as are reasonably necessary and convenient for the accomplishment of the obligations set forth above and the operation and maintenance of the Properties as a first-class, residential development;

M. granting licenses, easements and other agreements for the use of Common Area;

N. maintaining any personal property owned by the Association; and

O. such other matters as are provided for in this Declaration, the Articles of Incorporation, and the Bylaws.

Section 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.

Section 2.6 Board of Directors. The Board of Directors of the Association shall be elected by majority vote of the total votes cast by both classes of the membership at a meeting attended by a quorum as called for by the Bylaws, except that until such time as all Lots have been conveyed to the first owner thereof other than Declarant, Declarant reserves the exclusive right, to appoint the officers and directors of the Association and may do so without calling a meeting of members.

Section 2.7 Transition to Board. Prior to the time that the operations of the Association are turned over to the Members by the Declarant, the Members shall be required by February 15 of each year to report and submit to the Association, in writing, any claims or disputes with regard to the operations of the Association by the Declarant, during the immediately preceding calendar year, including the maintenance of any streets, roads, sidewalks, street signs, walls, fences, landscape or other improvements originally constructed by Declarant or the

collection of assessments, maintenance and reserve accounts and other matters falling within the realm of responsibility of the Association.

When the operations of the Association are turned over to the Members by the Declarant, the Declarant shall deliver all corporate books and accounting records to the Members at the Association's offices. Upon receipt of the corporate books, accounting records and written notice of Declarant's intent to turn over the operations of the Association, the Members shall notify Declarant in writing within forty-five (45) days of any claims or disputes with regard to the operations of the Association by the Declarant which have arisen subsequent to December 31 of the preceding year, including the maintenance of any streets, roads, sidewalks, street signs, walls, fences, landscape or any other improvements, to the extent applicable, originally constructed by Declarant or the collection of assessments, maintenance of reserve accounts and other matters falling within the realm of responsibility of the Association.

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

Section 2.8 Rules and Regulations of the Association. The Board shall be empowered to adopt, amend or repeal such rules and regulations as it deems reasonable and appropriate (collectively the "Rules"), which shall be binding upon all persons subject to this Declaration and shall govern the use and/or occupancy of the Properties. The Rules may include the establishment of a system of fines and penalties for violation of the Rules, which shall be levied only after the offending Owner has been given notice and an opportunity to be heard in accordance with the terms of the Bylaws of the Association. The Rules shall govern such matters as the Board deems to be in furtherance of the purposes of the Association, including, without limitation, the use of the Common Area. The Rules may be amended at any special or regular meeting of the Board.

The Rules are deemed incorporated herein by this reference and shall have the same force and effect as if they were set forth in and were part of this Declaration and shall be binding upon all persons having any interest in, or making any use of, any part of the Properties, whether or not copies of the Rules are actually received by such persons. 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.

Section 2.9 Non-Liability of Officials and Indemnification. To the fullest extent permitted by law, neither Declarant, the Board, nor any committees of the Association nor any member thereof, nor any officers, directors or employees of the Declarant, or of the Association, shall be liable to any Owner or to the Association or any other person for any damage, loss or prejudice suffered or claimed on account of any decision, course of action, act, inaction, omission, error, negligence or the like made in good faith and which Declarant, the Board or such committees or officers reasonably believed to be within the scope of their respective duties or rights.

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

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

Section 2.10 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 ninety (90) days' written notice; provided, however, that the Association may terminate the agreement for cause upon thirty (30) days' written notice. The Association is expressly authorized to contract with Declarant or an affiliate of Declarant, to provide management services or to perform other duties of the Association or the Board.

Section 2.11 Disputes. In the event of any dispute or disagreement between any Owners or any other person 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 control.

Section 2.12 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 at reasonable times during regular business hours.

ARTICLE III EXTERIOR MAINTENANCE

Section 3.1 Exterior Maintenance, Repair, Up-Keep and Repainting of Lots.

A. Dwelling Units. Maintenance, repair, upkeep and repainting of Dwelling Units, including all other improvements on a Lot, shall be the sole responsibility of each Owner.

B. Perimeter Walls. Each Owner shall maintain, repair and repaint (if applicable), the interior and exterior sides of the perimeter yard walls or fences appurtenant to his Lot, except that if such a wall or fence is a common wall or fence, an Owner shall be required to repair and repaint only that portion of the wall or fence exclusively used by that Owner.

C. Plumbing. Each Owner shall be responsible for sewer blockage, repair, etc. of all Dwelling Unit plumbing as well as the house connection line from the Dwelling Unit to its connection point in the main collection sewer line in the street.

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

E. Failure to Maintain. Such maintenance, repair and repainting a Dwelling Unit and other improvements on a Lot shall be undertaken in a manner and with such frequency as shall keep each Owner's Lot in an attractive, well-kept and maintained condition in conformity with all other Lots. In the event any Owner fails to fulfill his or her obligation under this Section, the Association, after approval of two-thirds (2/3) vote of the Board of Directors, shall have the right through its agents and employees, to enter upon the subject property, and to repair, maintain and restore the Lot, including the perimeter yard walls, or fences and any other improvements. The cost of such exterior maintenance shall be added to and become part of the assessment to which such Lot is subject. The Board shall have the right to determine whether or not a Lot is in need of maintenance, repair and upkeep in order to conform to the standards of the general neighborhood of the Properties and the Board shall use a reasonably high standard to determine whether such maintenance, repair and upkeep is required to that the Lots as a whole will reflect a high pride of ownership.

F. Easement for Maintenance. Each Owner or his authorized agent, in order to conduct such maintenance, repair or repainting, shall have the right of entry at reasonable times upon Lots adjacent to such Owner's Lot, provided reasonable notice of such entry is first given by such Owner to the Owner of the involved adjacent Lot. The Association shall have a right of entry and an easement upon each Lot for the purpose of fulfilling its responsibilities hereunder.

Section 3.2 Maintenance of Common Area, Slope and Drainage Easements. The Association shall be responsible for maintenance, repair and upkeep of any Common Area improvements including, but not limited to, non-public streets, curb line sidewalks and Common Area sidewalks, landscaping, common trash/garbage collection areas, and parking areas, if any, constructed on the Common Areas. The Association shall further be responsible for maintaining the slope and drainage easements shown on the Plat, whether on Common Area or on a Lot and shall repair and maintain any landscaping and retaining wall or other structure thereon. The Association is hereby granted an easement upon, across, over and under such slope and drainage easements to carry out these maintenance responsibilities.

ARTICLE IV INSURANCE

Section 4.1 Association's Insurance Requirements. The Association shall purchase and maintain at all times the following types of insurance, but only to the extent reasonably available and reasonably priced:

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

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

Such coverage shall include, without limitation, legal liability of the insureds for property damage, bodily injuries, and deaths of persons in connection with the operation, maintenance, or use of the Common Area 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

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liability, workmen's compensation insurance for employees of the Association, and such other risks as shall customarily be covered with respect to projects similar in construction, location and use.

B. Insurance of Common Area. Fire and other hazard insurance covering improvements constructed on the Common Area. Such policy or policies shall consist, at a minimum, of a multi-peril type policy covering the subject improvements, providing, as a minimum, fire and extended coverage and all other coverage in the kinds and amounts commonly required by private institutional mortgage lenders in Tucson, Arizona.

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

1. the maximum coverage available under the National Flood Insurance Program for all buildings and other insurable property located within a designated flood hazard area; or

2. one hundred percent (100%) of current replacement cost of all buildings and other insurable property located within a designated flood hazard area.

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

D. Fidelity Insurance. Fidelity coverage against dishonest acts on the part of directors, officers, managers, trustees, employees, or volunteers responsible for handling funds belonging to or administered by the Association. Such fidelity bonds or insurance shall name the Association as the named insured and shall be written in an amount sufficient to provide protection, that is, in no event, less than one and one-half times the insured's estimated annual operating expenses and reserves, and provide for at least thirty (30) days notice to the Association 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.

E. Exceptions. The foregoing insurance and endorsements shall be maintained only to the extent available and reasonably priced and, without limitation, the Board of Directors may elect to dispense with certain endorsements if, in the discretion of the Board of Directors, it is determined that the cost of such endorsements is excessive or the coverage not reasonably available.

Section 4.2 Waiver of Subrogation; Claims Against Declarant, etc. Every policy of insurance obtained by the Association shall contain an express waiver, if available, of any and all rights of subrogation against Declarant, 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.

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.

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

Section 4.3 Association's Insurance Premiums a Common Expense. Premiums for insurance purchased or obtained by the Association shall be a common expense payable through assessments of Lots and all such insurance coverage obtained by the Board shall be written in the name of the Association.

Section 4.4 Insurance by Owner.

A. Insurance on Common Area. In addition to the aforesaid insurance required to be carried by the Association, each Owner shall, at his own expense, carry any other insurance on the common area deemed advisable, to the extent 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.

B. Insurance for Residences and Lots. All Owners shall at their own expense obtain insurance for their Dwelling Units and Lots, insuring against fire, accident and casualty, which insurance shall be in an amount sufficient to cover the full replacement cost of any repair or reconstruction work in the event of any such loss or losses.

C. Use of Insurance Proceeds. In the event of damage or destruction by fire or other casualty to any Dwelling Unit, Lot or other property covered by insurance written in the name of an individual Owner, said Owner shall use any insurance proceeds for the repair of the damaged property.

Section 4.5 Condemnation or Destruction of the Common Area.

A. Condemnation.

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

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

3. Partial Taking. In the event of a taking of less than all of the Common Area, the rules as to restoration and replacement of the Common Area and the improvements thereon shall apply as in the case of destruction of improvements upon the Common Area as provided in Section 4.5.B.

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

B. Destruction.

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

2. Destruction; Proceeds Exceed 80% of Reconstruction Costs. If the amount available from the proceeds of such insurance policies for such restoration and repair is at least eighty percent (80%) of the estimated costs of restoration and repair, a special assessment for reconstruction with each Owner contributing a like sum for each Lot owned, may be levied by the Association to provide the necessary funds for such reconstruction and repair, over and above the amount of any insurance proceeds available for such purpose, and such assessment shall not require the consent of any specified proportion of the Members.

3. Destruction; Proceeds Less than 80% of Reconstruction Costs. If the amount available from the proceeds of such insurance policies for such restoration and repair is less than eighty percent (80%) of the estimated cost of restoration and repair, the improvements shall not be replaced or restored through application of a special assessment unless such assessment is approved by the vote or written consent of two-thirds (2/3) of each Class of Members. In the event a determination not to replace or restore the improvements on the Common Area, the Common Area shall be cleared and landscaped as open space to be used by the Owners pursuant to the provisions hereof, and the costs thereof shall be paid for with the insurance proceeds, and any deficiency may be raised by the levy of uniform special assessment for reconstruction in an amount determined by the Board.

4. Use of Hazard Proceeds. Notwithstanding the foregoing, unless the Owners of at least two-thirds (2/3) of the Lots other than Declarant, and the holders of two-thirds (2/3) of the First Mortgages, have given their prior written approval, the Association shall not be entitled to use hazard proceeds for losses to any Common Area for other than the repair, replacement or reconstruction of such improvements.

Section 4.6 Mortgagee Priority. In the event of substantial damage or destruction of any part of the Common Area or a Lot, no Owner of a Lot or other party shall have priority over a First Mortgagee with respect to the distribution of any insurance proceeds.

ARTICLE V OWNERSHIP AND USE OF THE COMMON AREA

Section 5.1 Owner's Easements of Enjoyment. Every owner shall have a right and easement of enjoyment in and to the Common Area which shall be appurtenant to and shall pass with title to every Lot, subject to the provisions hereof.

Section 5.2 Conditional Use of Common Area. Each Owner, his family, licensees, invitees and tenants or lessees, or contract purchasers of a Lot shall be entitled to use the Common Area subject to:

A. The provisions of the Articles, Bylaws, this Declaration and the Rules. Each owner, invitee, licensee, and tenant agrees that in using the Common Area he will comply with the provisions of such Articles, Bylaws, this Declaration and the Rules.

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

C. The right of the Association to suspend the right of an Owner to use facilities, if any, of the recreational components of the Common Area for a period not to exceed sixty (60) days for any infraction of this Declaration or the Association's published Rules. Each day an infraction continues to exist is to be deemed a separate infraction.

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

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

F. The right of the Declarant to modify or resubdivide the Common Area. The Common Area and rights therein are subject to all provisions of this Declaration, including rights reserved by the Declarant hereunder.

Section 5.3 Delegation of Use. Any Owner may delegate his right of enjoyment in the Common Area and facilities to the members of his family, his tenants or lessees or contract purchasers who reside in the Dwelling Unit, subject to such Rules as the Association may, from time to time, establish. Such delegation shall not relieve said owner of his obligations and responsibilities as a Member under the Bylaws, Rules and this Declaration.

Section 5.4 Damage or Destruction of Common Area. In the event any Common Area is damaged or destroyed by a willful or grossly negligent act of an Owner or any of his guests, tenants, licensees, agents, or members of his family, such Owner shall be liable therefor to the extent of liability imposed by local law and such Owner does hereby irrevocably authorize the Association to repair the damaged property, and the Association shall so repair the damaged property in good workmanlike manner in substantial conformance with the original plans and specifications. The Owner shall then repay the Association the amount actually expended for such repairs. Each Owner further agrees that these charges for repairs, if not paid within ten (10) days after completion of the work, shall be delinquent and shall become a lien upon such Owner's Lot and shall continue to be a lien until fully paid. The lien shall be subordinate to any First Mortgage or encumbrance on the subject property. Said charges shall bear interest from the date of delinquency at the rate of eighteen percent (18%) per annum (but not to exceed the maximum rate permitted by Arizona law). The amount of principal and interest owed by the Owner to the Association shall be a debt, and shall be collectible by any lawful procedure allowed by the laws of the State of Arizona.

Section 5.5 Restriction on Conveyance of Common Areas and Facilities. The Common Area and facilities owned by the Association may not by act or omission, abandoned, partitioned, subdivided, encumbered, sold or transferred without the prior written approval of two-thirds (2/3) of each Class of voting members of the Association, except that the Declarant may resubdivide the Common Area, and the Association shall have the right at all times to grant easements over the Common Area for the purpose of constructing, erecting, operating or maintaining thereon, therein and thereunder: (a) roads, streets, walks, pathways and driveways: (b) temporary overhead or permanent underground lines, cables, wires, conduits or other devices for the transmission of electricity for lights, heating, power, telephone, cable TV and other purposes: (c) sewers, storm drains and pipes, drainage easements, water systems, water heating

and gas lines or pipes: and (d) such other improvements as may be provided for in this Declaration or be deemed advisable in the sole discretion of the Board of Directors. Further, Common Area may be conveyed by the Association if approved in writing by Declarant, or if in the discretion of the Board such conveyance is necessary to correct errors, avoid boundary line disputes or to avoid undue hardship.

ARTICLE VI COVENANTS FOR MAINTENANCE ASSESSMENTS

Section 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 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, 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, costs and attorney's fees. Such obligation shall remain the personal obligation of the defaulting Owner. The new Owner, except a First Mortgage as set forth herein, shall take title to such Lot subject to the Lien of the full amount of the delinquent assessment.

Section 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, for the improvement and maintenance of the Common Area and for all purposes set forth in the Articles, By-Laws and this Declaration. The Board of the Association may provide that assessments include a reserve fund for maintenance, repairs and replacement of those elements of the Common Area owned by the Association.

Section 6.3 Maximum Annual Assessment.

A. Initial Maximum Annual Assessment. Until January 1 of the year immediately following the conveyance of the first Lot to an Owner, the maximum annual assessment shall be Three Hundred Sixty Dollars (\$360.00). Subject to the provisions of Subsection 6.3.B of this Section, the Board shall each year estimate the total expenses anticipated for the coming year and shall determine the necessary level of reserve balances for ordinary and unexpected expenses, and shall determine the annual assessment necessary to generate the required

revenues. The annual assessment determined to be necessary in any given year may be set at any amount less than or up to the maximum annual assessment permitted for such year.

B. Increases in Maximum Annual Assessment. Subject to Subsection 6.3.C of this Section, the Board shall not, in any given year, increase the maximum annual assessment by an amount greater than (i) ten percent (10%) of the amount of the preceding year's maximum annual assessment or (ii) the percentage increase in the cost of living index for "All Items, All Cities" as reflected by the Consumer Price Index published by the Bureau of Labor Statistics of the United States Department of Labor of the United States Department of Labor all Urban Consumers (hereinafter called the "Cost of Living Index Number"), whichever is greater. In the event that the Bureau of Labor Statistics should fail to publish a comparable Cost of Living Index Number during any such years, but a comparable Cost of Living Index Number shall be published by any governmental agency of the United States in place thereof, then such comparable index number shall be used for the purpose of adjusting the maximum annual assessment under the provisions of this Section 6.03 with the same force and effect as the Cost of Living Index of the Bureau of Labor Statistics.

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

Section 6.4 Special Assessment for Capital Improvements. In addition to the annual assessments authorized above, the Association may levy, in any assessment year, a special assessment applicable to that year only the purpose of defraying, in whole or in part, the cost of any construction, reconstruction, repair or replacement of a capital improvement of the Common Area, including fixtures and personal property related thereto, provided that any such assessment shall have the assent of the holders of two-thirds (2/3) of the votes of each Class of Members who vote in person or by proxy at a meeting called for this purpose.

Section 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, Lots or Common Areas 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.

Section 6.6 Notice and Quorum of 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 sixty percent (60%) of the votes of each Class of Membership shall constitute a quorum. If the required quorum is not present, another meeting

may be called subject to the same notice requirement, and the required quorum at the subsequent meeting shall be one-half (½) of the required quorum at the preceding meeting. No such subsequent meeting shall be held more than sixty (60) days following the preceding meeting.

Section 6.7 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. However, and subject to the limitations set forth in Section 6.3B hereof, said uniform rate may be revised periodically to reflect revisions in the annual assessments based on actual operating costs of the Association.

Notwithstanding anything to the contrary herein, Declarant shall not be responsible for payment of any assessments established pursuant to this Declaration or the Articles of Bylaws, except that Declarant shall pay assessments on Completed Lots owned by Declarant. For purposes of this Section "Completed Lots" shall mean any Lot with a Dwelling Unit thereon ready for occupancy as a home that is in the condition of any other Dwelling Unit sold to persons living in the Properties (e.g., carpet, kitchen countertops and cabinets, plumbing and lighting fixtures, etc., installed), but shall not include any Lots with improvements thereon used by Declarant as models or sales offices.

Although Declarant may contribute to the expenses of the Association and the maintenance of the Common Area, it is understood that Declarant is not and shall not be held liable for the payment of any assessments provided for in this Declaration of Bylaws by virtue of the ownership of Lots within the Properties unless such ownership is of Completed Lots as herein defined, and that the failure to pay said assessments shall not give rise to any right of imposing any lien or encumbrance upon Lots owned by Declarant as security for the payment of said assessment unless Declarant has failed to pay said assessments on Completed Lots as herein defined.

Section 6.8 Date of Commencement of Annual Assessments; Due Dates. The annual assessments provided for herein shall commence as to all Lots on the first day of the month following the conveyance of the first Lot to 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.

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

Section 6.9 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 and Costs. All delinquent assessments shall bear interest at twelve percent (12%) per annum (but not to exceed the maximum rate permitted by Arizona law). 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 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.

1. 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.

2. Enforcement of Lien. As provided in 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 on the Lot in favor of any municipal or other governmental assessing unit, reservations in patents, and the lien of any First Mortgage.

(A) 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.

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

(B) 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 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. Notwithstanding the foregoing, the failure by an Owner to pay assessments provided for herein shall not constitute a default under any federally insured mortgage.

Section 6.10 No Exemption of Owner. No Owner is exempt from liability for payment of assessments by waiver of the use of enjoyment of the Common Area or by abandonment of a Lot.

Section 6.11 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.

Section 6.12 Mortgage Protection. 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 Assessment and Other Charges.

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

2. 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 or the Association to the exclusion of the Owner's exercise of such rights and privileges.

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

D. 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 or condemnation awards for losses to or a taking of any Lot or any part of the Common Area owned by the Association.

E. 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:

1. Receive written notification from the Association of any default in the performance by the Owner of a Lot encumbered by the Mortgage in favor of such First Mortgagee of any obligation under this Declaration or under the Articles, By-Laws, or Rules of the Association which is not cured within sixty (60) days.
2. Inspect the books and records of the Association during normal business hours.
3. Receive an annual financial statement of the Association within ninety (90) days following the end of any fiscal year of the Association.
4. Receive written notice of all meetings of members of the Association.
5. Receive written notice of any condemnation loss or casualty loss affecting a material portion of the Properties.
6. Receive written notice of any lapse, cancellation or material modification of any insurance policy or fidelity bond.
7. Receive written notice of any proposed action that requires the consent of a specified percentage of First Mortgagees.

ARTICLE VII
EASEMENTS AND COMMON WALLS

Section 7.1 Easement for Encroachments. Each Lot and the Common Area shall be subject to an easement for encroachments created by construction, settling and overhangs, as designed or constructed by the Declarant, including footings and walls thereon. A valid easement for said encroachments and for the maintenance of same, so long as any such encroachment stands or its rebuilt to stand, shall and does exist.

Section 7.2 Utility Easements. In addition to those specific easements shown on the Plat, there is hereby created a blanket easement upon, across, over and under the Common Area for ingress, egress, installation, replacing, repairing and maintaining all utility and service lines and systems, including, but not limited to, water, sewer, gas, telephone, electricity, television, cable or communications lines and systems, etc. By virtue of this easement, it shall be expressly permissible for the providing utility or service company to install and maintain facilities and equipment on the Common Area and to affix and maintain wire, circuits and conduits on, in and under the roofs and walls of Common Area. Notwithstanding anything to the contrary 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 by Declarant or thereafter approved by the Board. This easement shall in no way affect any other recorded easements on the Properties. In no event shall any portion of the above mentioned easements for utilities be constructed to authorize the placing or installing of sewers, electrical lines, water lines or other utilities under any permanent building structure constructed on the Properties. There shall be an access easement for the delivery and collection of the U. S. Mail.

Section 7.3 Easement for Walls and Other Improvements. Declarant or its successors may construct walls and other improvements, including but not limited to, driveways, walkways, exterior lighting (metered to a particular Dwelling Unit), drainage structures, etc., as a part of, or for the use of, a particular Dwelling Unit which may encroach upon or encompass portions of the Common Area or adjacent Lots. Wherever such encroachments on the Common Area or adjacent Lots should occur, the Owner of the Dwelling Unit involved shall have, subject to the conditions hereinafter set forth, a perpetual permanent right for such perimeter walls to encompass portions of the Common Area or adjacent Lots and for such other improvements to encroach upon portions of the Common Area or adjacent Lots.

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

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

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

Section 7.4 Electrical Service and Telephone Lines. All electrical service and telephone lines shall be placed underground and no outside electrical lines shall be placed overhead, except existing overhead lines; provided that no provisions hereof shall prohibit the erection of temporary power or telephone structures incident to construction.

Section 7.5 Pedestrian/Utility Easement. If portions of the Lots are encumbered by a pedestrian or utility easement as shown on the Plat for the benefit of pedestrians or for the installation and placement of utilities, then by accepting a deed to any Lot, the Owner acknowledges and consents to such easement.

Section 7.6 Drainage Easements. The Association is hereby granted an easement upon, across, over and under any drainage easements shown on the Plat in order to maintain all such easements, construct, repair or maintain any structure thereon, install, place, replace and maintain landscaping thereon, and control the use thereof, all as the Association may deem appropriate, but without obligation by the Association unless otherwise agreed by it.

Section 7.7 Common Walls. The rights and duties of Owners with respect to common walls or fences shall be as follows:

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

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

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

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

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

F. Notwithstanding anything to the contrary herein contained, there shall be no impairment of the structural integrity of any common wall (other than by Declarant) without prior consent of the adjoining Owner.

G. In the event of a dispute between Owners with respect to the repair or rebuilding of a common wall or with respect to the sharing of cost thereof, then upon written request of one of such Owners delivered to the Association, the matter shall be heard and determined by the Board, except that the Declarant shall not be subject to this provision. The Declarant may modify a common wall without any consent or approval whatsoever.

ARTICLE VIII ARCHITECTURAL CONTROL COMMITTEE

Section 8.1 Building Envelopes. All improvements within a Lot must be constructed within the Building Envelope within that Lot. The location and size of each Building Envelope shall be set or amended from time to time by the Architectural Control Committee in its sole discretion, and each Owner prior to constructing any improvements or structures on the Owner's Lot, must obtain the location and size of the applicable Building Envelope from the Architectural Control Committee. No portions of any Lot outside the designated Building Envelope shall be disturbed without the written approval of the Architectural Control Committee.

As more particularly set out below, the Architectural Control Committee shall have the right to deny approval of any plans or specification which are not, in its opinion, suitable or desirable for aesthetic or any other reasons, and shall have the right to take into consideration the harmony and conformity of the proposed improvements with the surrounding buildings, the materials to be used and the compatibility of the same with the surrounding area, and the effect of such proposed improvements as seen from adjacent or neighboring properties. All decisions of the Architectural Control Committee shall be final, and no Owner or other parties shall have recourse against the Architectural Control Committee for its refusal to approve any such plans and specifications. All structural improvements must also be in conformance with any applicable building code requirements. All construction shall be prosecuted diligently from commencement

until completion. No changes or deviations in or from the plans and specifications shall be made without the written approval of the Architectural Control Committee. After construction is completed, no further change, including any change of exterior color, shall be made without the written permission of the Architectural Control Committee.

Notwithstanding the foregoing, Declarant shall not be required to obtain Architectural Control Committee approval with respect to the building of homes, or any improvements, alterations, repairs, excavations, grading, landscaping, additions or changes installed or made by Declarant with respect to the Properties.

Section 8.2 Composition of Committee. The Architectural Control Committee shall consist of three (3) or more persons appointed by the Board of Directors of the Association; provided, however, that until all Lots have been conveyed to the first Owner thereof other than the Declarant, Declarant shall appoint the Architectural Control Committee without a meeting and without a vote of the Members, and during said period, no election of the Members of said committee shall be had unless Declarant has in writing relinquished its rights of exclusive appointment. A majority of the Committee may designate a representative to act for it.

Section 8.3 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 (except by the Association upon the Common Area); 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 Control Committee. The Architectural Control Committee shall exercise its best judgment to the end that all Dwelling Units, attachments, improvements, construction, landscaping and alterations to structures on land, located within the Properties (collectively referred to herein as "Architectural Improvements") conform to and harmonize with the existing surroundings and structures. Decisions of the Architectural Control Committee shall be binding and conclusive.

Notwithstanding the foregoing, the Declarant shall not be required to submit any plans or specifications whatsoever to the Architectural Control Committee, nor shall any consent or approval of the Architectural Control Committee be required for the construction or alteration of any improvements by the Declarant.

Section 8.4 Procedures. The Architectural Control Committee shall approve or disapprove all plans within thirty (30) days after submission and issuance by the Association of a receipt therefor. In the event the Architectural Control Committee fails to approve or disapprove such design and location within thirty (30) days after said plans and specifications have been

submitted to it, approval shall be deemed denied, except that the party submitting the plans may resubmit the plans and if no response is given for a period of thirty (30) days after a written request by certified mail for a decision, approval shall be deemed given. The Architectural Control Committee may establish its own rules amplifying or supplementing the foregoing procedures. The Architectural Control 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 Control 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.

Section 8.5 Vote. A majority vote of the Architectural Control Committee is required to approve a proposed change or improvement, unless the Committee has designated a representative to set for it, in which case the decision of the representative shall control.

Section 8.6 Liability. The Architectural Control Committee and the members thereof shall not be liable in damages to any person submitting requests for approval or to any Owner by reason of any action, failure to act, approval, disapproval or failure to approve or disapprove in regard to any matter within its jurisdiction hereunder.

Section 8.7 Variance. The Architectural Control Committee may grant reasonable variances or adjustments from any conditions and restrictions imposed by this Article or Article IX hereof in order to overcome practical difficulties and prevent unnecessary hardships arising by reason of the application of the Restrictions contained in this Article or Article IX hereof.

Section 8.8 Nonconforming Architectural Improvements. In the event that the Architectural Improvements do not, upon the proposed date set forth in the construction schedule, conform to the plans submitted to and approved by the Architectural Control Committee, the Architectural Control Committee shall give written notice to the Owner of the property upon which such Architectural Improvements have been made. Such notice shall specify the nature of the nonconformity of the Architectural Improvements and shall grant the Owner a hearing before the Architectural Control Committee in accordance with the 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 Control 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 Control Committee.

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

Section 8.9 Color and Building Materials. Without limiting the foregoing, no color changes nor any changes in the original building structure, composition or products shall be permitted without approval of the Architectural Control Committee.

Section 8.10 Broad Discretion of Architectural Control Committee. In reviewing plans for alterations, modification, additions or other changes to a Dwelling Unit, improvement or structure upon a Lot, the Architectural Control Committee shall exercise its discretion in deciding whether or not an alteration or modification is in harmony with the overall scheme of subdivision development. The Architectural Control Committee shall have the right to deny alterations or modifications for purely aesthetic reasons if the Architectural Control Committee considers the alteration or modification to be unattractive in relation to the overall scheme of development, or if the Architectural Control Committee considers the alteration or modification to be a nuisance or upset of design, or if the Architectural Control Committee considers the alterations or modifications to be in contrast to or out of harmony with the style of existing structures, or if the physical views of the Properties will be disrupted by the alteration or modification. The Architectural Control Committee may elicit the opinion of other Owners, including the neighbors of the Owner submitting the plan for alteration or modification, as to the conformity and harmony of the proposed plan with the overall scheme of development, and the effect that the proposed plan might have on the physical views of other Owners. After eliciting these opinions, the Architectural Control Committee may, but need not, take them into account in making its final decision of approval or disapproval of an alteration or modification to an existing structure. While the opinion of no single Lot Owner will control a decision of the Architectural Control Committee, the Architectural Control Committee may, within its own discretion, but need not, attach whatever significance it deems sufficient to the statements of residents and/or neighbors of the Owner submitting the proposed alteration or Modifications to an existing structure.

Section 8.11 Fee. The Association may establish a reasonable processing Fee to defer the costs of the Architectural Control Committee in considering any requests for approvals submitted to the Architectural Control Committee. The fee for initial submission and processing of plans and specifications shall be \$300.00, provided that such fee may be increased from time to time by the Association as it deems appropriate. 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 Section 8.3.

Section 8.12 Exemption. Notwithstanding the above, Declarant shall not be required to submit any plans to or obtain any consent whatsoever from the Architectural Control Committee for any improvements, structures or landscaping built, constructed, erected, modified or altered by Declarant on the Properties.

ARTICLE IX USES AND RESTRICTIONS

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

Section 9.1 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 family, tenants and social guests and for no other purpose. All Dwelling Units shall be constructed of first class materials, and no manufactured, pre-fabricated or mobile homes shall be permitted. No gainful occupation, profession, trade or other non-residential use shall be conducted on the Properties, except that (a) Declarant may maintain sales offices, construction offices and sales models on the Properties, and (b) an Owner may carry on a "Home Occupation", as provided below.

"Home Occupation" as permitted by this Section means private consultation and advice in trades and professions, and the sales or creation of art work, small wares and miscellaneous goods at a retail level, and includes consultation by professionals such as accountants, lawyers, and doctors, but no portion of the Properties nor any dwelling unit shall be used for the full-time general practice of any profession, nor as a lodge, regular club meeting place, religious institution, revivalist, cult or sect meeting place, nor may the interior of any dwelling unit be used for medical or surgical treatment or procedures.

An Owner or occupant residing in a dwelling unit may conduct a Home Occupation solely within the private confines of a Dwelling Unit so long as: a) the existence or operation of the business activity is not apparent from the outside of the dwelling unit, and no sound or smell from the outside of the dwelling unit indicating the conduct of business is detectable: b) the business activity conforms to all zoning requirements for the Properties: c) the business activity does not involve frequent or annoying traffic by persons coming on the Properties who do not reside in the Properties or door-to-door solicitation of residents of the Properties: and (d) the business activity is consistent with the residential character of the Properties and does not constitute a nuisance or hazardous or offensive use, nor threaten the security or safety of other residents of the Properties.

No Home Occupation may involve heavy equipment or machinery, manufacturing, drilling, burning or conversion of any garage or carport into a business office or room.

No business conducted upon the Properties or in any dwelling unit by persons other than the Declarant or its successors and assigns, may result in any change to the exterior appearance of any dwelling unit or lot, and no business conducted, except by the Declarant, shall involve signs, buildings, or structures in addition to the dwelling unit.

The Board of Directors shall have the discretion to determine whether, in a particular case, the conduct of a Home Occupation violates the provisions hereof. If such determination is made, the Board of Directors shall have the authority to require that the Home Occupation in question cease immediately.

Sales offices, sales models and construction offices utilized by the Declarant on the Properties need not be owned by 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 Declarant.

Section 9.2 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 Control 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.

Section 9.3 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 Control 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.

Section 9.4 Backboards. No basketball backboards of any kind shall be erected or attached, by either a permanent or temporary method, to any dwelling unit unless approved by the Architectural Control Committee.

Section 9.5 Aerials. No aerial, antenna or satellite dish for use of TV, radio or other form of communication reception, 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 Control Committee in accordance with standards adopted by the Architectural Control Committee in its sole and absolute discretion. The Architectural Control Committee may waive the requirement of screening or may consider such equipment adequately screened should it determine, in its sole discretion that the size, location, general appearance and height of the equipment renders the erection of such equipment unobtrusive and not materially damaging to the overall appearance and welfare of the Properties,

and the Architectural Control Committee may adopt written rules, standards or guidelines as all to such matters.

Section 9.6 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 Control Committee. The Architectural Control Committee, in its sole discretion, shall have the right to determine the existence of any such nuisance.

Section 9.7 Parking and Storage of Vehicles.

A. General Rule. Any and all motor vehicles not prohibited by the provisions hereof shall be stored in a carport or 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 and Commercial 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, and on any public streets adjacent thereto, except within the confines of an enclosed structure which has been first approved by the Architectural Control 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 solely for purposes of loading or unloading.

The foregoing prohibition shall not apply to (1) pick-up trucks with no more than a 3/4 ton capacity with camper shells attached that are no more than seven feet in height as measured from ground level; (2) mini-motorhomes that are no more than seven feet in height and no more than eighteen feet in length or (3) non-commercial pick-up trucks larger than 3/4 ton capacity that the Architectural Control Committee finds to be substantially similar in size and appearance to small 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 9.7.A.

C. Use of Recreational Vehicle as Living Quarters; Storage of Vehicle as Under Repair. 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

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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.

Section 9.8 Diseases and Insects. No owner shall permit any thing or condition to exist upon any property which shall induce, breed or harbor infectious plant diseases or noxious insects.

Section 9.9 Drainage. There shall be no interference with the established drainage pattern over any property unless approved by the Architectural Control 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 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.

Section 9.10 Modification of Exterior Wall. Unless approved by the Architectural Control Committee, no dwelling unit 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.

Section 9.11 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, etc. By virtue of this easement, it shall be expressly permissible for the providing utility or service company to install and maintain facilities and equipment on the 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 Control 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.

Section 9.12 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.

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Section 9.13 Mailboxes. If the Architectural Control Committee has provided uniform mailbox designs in the course of original construction, then such designs, colors, lettering, and other features shall be maintained by each at all times.

Section 9.14 Temporary Structures, Mobile Homes, Etc. 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 made to comply 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 the Declarant.

Section 9.15 Lots to be Maintained. Each Lot shall at all times be kept by the owner in a clean, sightly, and wholesome condition. 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 any neighboring Lot or street, except as necessary during the period of construction.

Section 9.16 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.

Section 9.17 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.

Section 9.18 Tanks. No tanks of any kind, either elevated or buried, shall be erected, placed, or permitted upon any Lot.

Section 9.19 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.

Section 9.20 Derricks, Boring, Etc. 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.

Section 9.21 Landscaping. All front and side yard landscaping shall conform to and be compatible with original landscaping installed by Declarant, and 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. Without limitation, no hedges, trees or other landscaping shall be permitted in front or side yards within fifteen feet of any front Lot line or corner Lot line unless installed by Declarant or approved by the Architectural Review Committee, or unless in replacement of similar landscaping installed by Declarant.

Section 9.22 Minimum Driveway Requirements. Driveways on all Lots shall be approved by the Architectural Control Committee.

Section 9.23 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 lessee or tenant to comply with the Rules, By-Laws, 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.

Section 9.24 Solar Devices. No solar devices, of any type, shall be placed, erected or installed on any Lot without the approval of the Board or the Architectural Control Committee.

Section 9.25 Insurance Dates. Nothing shall be done or kept on any Lot or Common Area which will increase the rate of insurance on such property nor shall anything be done or kept on or in any Dwelling Unit or Common Area which will result in the cancellation of insurance on any such property or which would be in violation of any law, unless expressly approved by the Architectural Control Committee.

Section 9.26 Slope and Drainage Easements; 100 Year Flood Prone Areas; Natural Areas. No structures or improvements of any kind shall be made, placed or constructed within the 100 year flood prone areas shown on the Plat without the approval of the Town of Oro Valley.

Section 9.27 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 of a Dwelling Unit 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.

Section 9.28 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 or dwelling unit therein remains unsold, or to use any structure as a model home or real estate sales or leasing office.

Section 9.29 Minimum Square Footage: Each Dwelling Unit shall have a minimum of two thousand (2,000) square feet of inside living area, excluding, basement, attic, storage, patio walkway, garage, carport, garden, and the like.

ARTICLE X GENERAL PROVISIONS

Section 10.1 Term. The Restrictions in this Declaration, as from time to time amended as provided below, shall remain in full force and effect for a period of twenty (20) years from the date of recordation thereof and shall thereafter be deemed to have been renewed and automatically extended for successive periods of ten (10) years each, subject to repeal at any time by the written consent of the Owners of at least seventy-five (75%) percent of the Lots.

Section 10.2 Amendments; Termination.

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

Notwithstanding the foregoing, so long as Declarant owns at least five (5) Lots shown upon the Plat, Declarant shall have the right of its own volition and without any other consent or approval to amend this Declaration.

B. Amendments Necessary for FHA Compliance, Etc. Notwithstanding anything to the contrary contained in this Declaration, if Declarant shall determine that any amendments to this Declaration or any amendments to the Articles of Incorporation or Bylaws of the Association shall be necessary in order for existing or future

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mortgages, deeds of trust, or other security instruments to be acceptable to the Veterans Administration, the Federal Housing Administration of the U.S. Department of Housing and Urban Development, the Federal National Mortgage Association or the Federal Home Loan Mortgage Corporation, then, subject to Section 10.01 above, Declarant shall have and hereby specifically reserves the right and power to unilaterally make and execute any such amendments without obtaining the approval of any other Owners, Members, or First Mortgagees.

C. Declarant Approval. So long as Declarant owns a single Lot, any amendment or termination proposed shall first be submitted to Declarant for approval and, should Declarant refuse to approve such amendment, such amendment or termination shall be null and void, provided that this right of veto shall not endure beyond ten (10) years after recording of this Declaration.

Section 10.3 Enforcement and Non-Waiver.

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

B. Violation of Rules. If any Owner, his family or any licensee, tenant or lessee or invitee violates the restrictions of this Declaration or the Association's Rules, the board may, in addition to any other enforcement provisions contained herein, suspend the right of such person to use the Common Area, under such conditions as the Board may specify, for a period not to exceed sixty (60) days for each violation. Each day an infraction continues is a separate violation. Before invoking any such suspension, the Board shall give such person notice of hearing before the Board.

Further, 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. 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 By-Laws.

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

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

F. Severability. Invalidation of any one of these covenants or restrictions by judgment, court order, or waiver, shall not affect the enforceability of any other provisions which shall remain in full force and effect.

Section 10.4 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. Restrictions Severable. Notwithstanding any other provision hereof, each of the provisions of this Declaration shall be deemed independent and severable, and the invalidity or partial invalidity of any provision or portion thereof shall not affect the validity or enforceability of any other provision.

C. 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 Restriction herein shall be binding upon all persons affected by the same, whether express reference is made to this Declaration or not.

D. 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.

E. 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.

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

Section 10.5 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 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, the 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 or Common Area within the Properties. The rights of Declarant hereunder or elsewhere in this Declaration may be assigned by Declarant.

Section 10.6 Delivery of Notices and Documents. Any written notice or other documents relating to or required by this Declaration may be delivered either personally or by mail. If by mail, it shall be deemed to have been delivered seventy-two (72) hours after a copy of same has been deposited in the United States mail, postage prepaid, addressed as follows:

If to the Association: c/o Moonridge Joint Venture
5000 East 345th Street
Willoughby, Ohio 44094
Attn: Jon Thomas

If to the Declarant: Erieside Construction Co.
5000 East 345th Street
Willoughby, Ohio 44094
Attn: Jon Thomas

If to an Owner, to the address of the Owner within the subdivision. The address of any of the above parties may be changed at any time by the party concerned by delivering written notice of change of address to the Association. Each Owner of a Lot shall file the correct mailing address of such Owner with the Association, and shall promptly notify the Association in writing of any subsequent change of address.

Section 10.7 Binding Effect. By acceptance of a deed or acquiring any ownership interest in any of the properties included within this Declaration, each person or entity, for himself, or his heirs, personal representatives, successors, transferees and assigns, binds himself, his heirs, personal representatives, successors, transferees and assigns to all of the provisions, Restrictions, covenants, conditions, rules and regulations now or hereafter imposed by this Declaration and any amendments thereof. In addition, each such person by so doing thereby

acknowledges that this Declaration sets forth a general scheme for the Properties and hereby evidences his intent that all the Restrictions, conditions, covenants, rules, and regulations contained herein shall run with the land and be binding on all subsequent and future owners, grantees, purchasers, assignees, and transferees thereof. Furthermore, each such person fully understands and acknowledges that this Declaration shall be mutually beneficial, prohibitive and enforceable by the various subsequent and future owners.

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

FIDELITY NATIONAL TITLE AGENCY, INC., an Arizona corporation, as Trustee under Trust No. 10,672 as Trustee only and not in its corporate capacity

By: Martha L. Hill
Name: Martha L. Hill
Title: Trust Officer

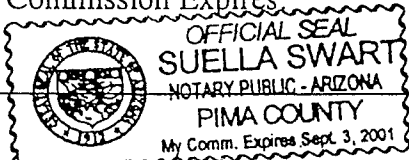
ERIESIDE CONSTRUCTION CO., an Ohio corporation

By: Samuel R. Knezevic
Name: Samuel R. Knezevic
Title: Secretary

STATE OF ARIZONA)
) SS:
COUNTY OF PIMA)

The foregoing instrument was acknowledged before me this 15th day of July, 1998, by Martha L. Hill as Trust Officer of FIDELITY NATIONAL TITLE AGENCY, INC., an Arizona corporation as Trustee under Trust No. 10,672 as Trustee only and not in its corporate capacity, on behalf of said Trust.

Suella Swart
Notary Public

My Commission Expires:

2881

STATE OF OHIO)
) SS:
COUNTY OF CUYAHOGA)

The foregoing instrument was acknowledged before me this 14th day of July, 1998, by Samuel R. Knezevic as Secretary of ERIESIDE CONSTRUCTION CO., an Ohio corporation.

Kathleen G. Kennick
Notary Public

My Commission Expires:

KATHLEEN A. KENNICK
NOTARY PUBLIC, STATE OF OHIO
Recorded in Cuyahoga County
My Comm. Expires May 7, 2003

