

DECLARATION OF
COVENANTS, CONDITIONS AND RESTRICTIONS
OF
NORTH STAR ESTATES

THIS DECLARATION OF COVENANTS, CONDITIONS AND RESTRICTIONS OF THE NORTH STAR ESTATES is made on the date hereinafter set forth by TITLE GUARANTY AGENCY OF ARIZONA, INC., an Arizona corporation, as Trustee under Trust No. T-1263, hereinafter referred to as "Declarant".

W I T N E S S E T H :

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

North Star Estates Lots 1 through 108 and Common Areas "A", "B", "C" and "D", a subdivision of Pima County, Arizona, as recorded in Book 46 of Maps and Plats at page 19 in the Office of the Pima County Recorder's Office, Pima County, Arizona.

which real property shall hereinafter be referred to as the "Property"; and

WHEREAS, Declarant proposes to construct individual residential units upon the Property, and to sell and convey the same, subject to the covenants, restrictions, uses, limitations, obligations, easements, equitable servitudes, charges and liens hereinafter set forth, each of which is for the benefit of the Property and the subsequent owners thereof.

NOW, THEREFORE, Declarant hereby declares that the Property is and shall be held, conveyed, encumbered, leased and used subject to the following covenants, conditions, restrictions, uses, limitations, obligations, easements, equitable servitudes, charges and liens, all of which are for the purpose of enhancing and protecting the value, desirability and attractiveness of the Property. The covenants, conditions, restrictions, uses, limitations, obligations, easements and equitable servitudes, charges and liens, set forth herein shall run with the Property; shall be binding upon all persons having or acquiring any interest in the Property or any part thereof; shall inure to the benefit of, be binding upon, and enforceable by all Owners, Declarant, the Association and their successors in interest.

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

ARTICLE I DEFINITIONS

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

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

Section 1.02 "Association" shall mean and refer to NORTH STAR ESTATES HOMEOWNERS ASSOCIATION, an Arizona non-profit corporation, which shall be formed prior to the conveyance of the first Lot, its successors and assigns.

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

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

Section 1.05 "Common Area(s)" or "Common Property" shall mean all real property designated as Common Area "A" (DRAINAGE FACILITIES), Common Area "B" (BUFFERYARDS), Common Area "C" (PRIVATE RESOURCE CONSERVATION AREA) and Common Area "D" (PRIVATE INGRESS/EGRESS ESM'T) on the Plat as defined in Section 1.17 hereof, whether improved or unimproved, owned by the Association for the common use and enjoyment of the Owners. Common Property shall also include any real or personal property now or hereinafter owned by or leased by the Association.

Section 1.06 "Declarant" means TITLE GUARANTY AGENCY OF ARIZONA, INC., an Arizona corporation, as Trustee under Trust No. T-1263, its nominees, successors or assigns while title holder of any Lot either as the original Owner or Owner by reacquisition.

Section 1.07 "Declaration" or "Restrictions" shall mean this instrument and any amendment hereto or restatement hereof.

Section 1.08 "Developer" shall mean R. B. PRICE & COMPANY, INC., an Arizona corporation, its nominees, successors or assigns.

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

Section 1.10 "Eligible Mortgage Holder" shall mean a holder of a First Mortgage on a Lot who has requested notice of certain actions in accordance with Section 8.11 I.

Section 1.11 "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.

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

Section 1.13 "Member" shall mean and refer to every person and/or entity who holds membership in the Association.

Section 1.14 "Mortgage" shall mean any mortgage, deed of trust or other security instrument by which a Lot or any part thereof is encumbered.

Section 1.15 "Owner(s)" or "Homeowner(s)" shall mean a record holder of beneficial or equitable title, and legal title if legal title has merged with the beneficial or equitable title, to the fee simple interest in any Lot. Owner shall not include: (a) persons having an interest in a Lot merely as security for the performance of an obligation; or (b) a Tenant of a Lot. Owner shall include a purchaser under a contract for the conveyance of real property, a contract for deed, a contract to convey, an agreement for sale, or any similar contract through which a seller has conveyed to a purchaser equitable title in a Lot under which the seller is obligated to convey to the purchaser the remainder of the seller's title in the Lot, whether legal or equitable, upon payment in full of all monies under the contract. Owner shall not include a purchaser under a purchase contract and receipt, escrow instructions, or similar executory contract that is intended to control the rights and obligations of the parties to executory contracts pending the closing of a sale and purchase transaction. In the case of Lots, the fee simple title to which is vested in a trustee pursuant to a subdivision trust agreement or similar agreement, the beneficiary of any

such trust who is entitled to possession of the Lot shall be deemed to be the Owner. If fee simple title to a Lot is vested in a trustee pursuant to A.R.S. §§ 33-801 et. seq., for purposes of this Declaration legal title shall be deemed to be held by the trustor or the trustor's successor of record, and not by the trustee. An Owner shall include any person who holds record title to a Lot in joint ownership or as an undivided fee interest:

Section 1.16 "Person" shall mean a natural individual or any other entity with the legal right to hold title to real property.

Section 1.17 "Plat" shall mean, collectively, the subdivision plat recorded in Book ____ of Maps and Plats at Page ____, in the office of the County Recorder of Pima County, Arizona, under the name "North Star Estates".

Section 1.18 "Private Resource Conservation Area" shall mean a land area, unimproved and not occupied by any structures or manmade elements, set aside for the conservation of permanent, undisturbed open space, for the exclusive use and enjoyment of the Owners.

Section 1.19 "Property" or "Subdivision" shall mean all that real property identified in the Plat.

Section 1.20 "Rules" shall mean the rules adopted by the Board pursuant to the By-Laws.

ARTICLE II

USES AND RESTRICTIONS

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

Section 2.01 Private Residential Purposes. Dwelling Units shall be occupied and used by the respective Owners solely for private single family residential use of the Owner, his/her family, tenants and social guests and for no other purpose. No gainful occupation, profession, trade or other non-residential use shall be conducted on the Property, except that Declarant or Developer may maintain sales offices, construction offices and sales models on the Property. Sales offices, sales models and construction offices utilized by the Declarant or Developer on the Property need not be owned by either Declarant or Developer, and further, may be utilized as sales models for the benefit of other subdivisions of either Declarant or Developer.

Section 2.02 Renting. Each Owner shall have the right to lease or rent his/her 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.

Section 2.03 Antennas and Exterior Additions. No exterior antennas or other devices for the transmission or reception of radio and television signals shall be erected or maintained on the Property without prior written authorization of the Board or the Architectural Control Committee. The Developer shall determine standards for exterior television antennas. Further, no exterior devices, additions, structures or accessory buildings other than initially installed by Developer shall be constructed on the exterior of a Dwelling Unit (including the roof) without the written authorization of the Board or the Architectural Control Committee.

Section 2.04 Solar Devices. No solar devices, of any type, shall be erected or installed on any Lot without the prior review and written approval of the Board or the Architectural Control Committee as set forth in Section 4.02 herein. The Board or the Architectural Control Committee shall not prohibit the installation of solar devices on any Lot, however, it may require reasonable screening and maintain control of all color selections except for solar collection surfaces.

Section 2.05 Animals. No animals of any kind shall be raised, bred, or kept on the Property, 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 animals shall be allowed to become a nuisance. A "reasonable number" as used in this Section shall ordinarily mean no more than two pets per Dwelling Unit; provided, however, the Board may determine that a reasonable number in any instance may be more or less. Upon the written request of any Owner, the Board shall conclusively determine, in its sole and absolute discretion, whether, for the purposes of this Section, a particular animal is a generally recognized house or yard pet or a nuisance, or whether the number of animals is reasonable.

Section 2.06 Nuisances. After completion of construction of all Dwelling Units and landscaping of Lots by Developer, no rubbish or debris of any kind shall be placed or permitted to accumulate upon the Property, and no odors shall be permitted to arise therefrom so as to

render any portion of the Property unsanitary, unsightly, offensive or detrimental to any other property in the vicinity thereof or to its occupants. Without limiting the generality of any of the foregoing provisions, no exterior speakers, horns, whistles, bells or other sound devices, except security devices used exclusively for security purposes, shall be located, used or placed on the Property without the prior written approval of the Board. The Board in its sole discretion shall have the right to determine the existence of any such nuisance.

Section 2.07 Growth and Planting. All landscaping on the Property shall consist of low water use and low pollen producing vegetation. No planting of any type (including grass) that will require irrigation shall be placed within one (1') foot of any portion of a Dwelling Unit or within five (5') feet of any portion of any building or patio wall which comprises all, or a portion of, a common wall.

Section 2.08 Drainage. There shall be no interference with the established drainage pattern over any Property, except by Declarant in the course of development, unless adequate provision is made for proper drainage conforming to Pima County regulations, ordinances and drainage criteria and is approved by the applicable governing body or its duly appointed representative. For purposes hereof, "established drainage" is defined as the drainage which exists at the time the overall grading of the Property is completed, or which is shown on the Plat or on any plans conforming to applicable rules, regulations, ordinances and drainage criteria approved by the applicable governing body or its duly appointed representative.

Section 2.09 Unsightly Articles. No unsightly articles shall be permitted to remain so as to be visible from adjoining Dwelling Units or from the street or public way. Grass, shrub or tree clippings and all machinery, storage piles, wood piles, garbage or trash containers shall be kept within an enclosed structure or appropriately screened from view of adjoining property or from streets or public way except when necessary to effect such collection; provided, however, any such structure or screen shall be subject to the Board's or the Architectural Control Committee's review and prior written approval pursuant to Section 4.02. The Board or the Architectural Control Committee shall have sole discretion in determining if any activity by an Owner is in violation of this Section.

Section 2.10 Trash Containers. No garbage or trash shall be placed or kept on any Property within the subdivision, except in covered containers of a type, size and style which have been installed by Developer or have been approved in writing by the Board or the

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

Section 2.11 Clothes Lines. No exterior clothes lines shall be erected or maintained, and there shall be no outside laundering or drying of clothes.

Section 2.12 Diseases and Insects. No Owner shall permit anything or any condition to exist upon the Property which shall induce, breed or harbor infectious plant diseases or noxious insects.

Section 2.13 Mail Boxes. Developer or Board shall determine the location, color, size, design, lettering, and all other particulars of all mail and paper delivery boxes, and standards and brackets and name signs for same in order that the area be strictly uniform in appearance with respect thereto.

Section 2.14 Vehicles/Carports/Garages. The use of all vehicles, including but not limited to trucks, automobiles, bicycles and motorcycles shall be subject to the Rules, which may prohibit or limit the use thereof, provide parking regulations, or generally regulate same. Any and all items stored in a carport/garage area shall be stored so as to conceal same from view from adjoining property, or from the streets or public way, and further, in the case of a garage, garage doors shall be kept closed at all times, except as may be reasonably necessary for ingress, egress and normal day-to-day activities which require the utilization of the garage. The carport/garage area of each Dwelling Unit is for the sole purpose of parking vehicles and storage as herein provided, and the enclosure of any carport/garage area for utilization as living area within a Dwelling Unit is prohibited. 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. Further, the storage or parking of any recreational vehicle, commercial vehicle or boat, other than completely within Owner's carport/garage is prohibited.

Section 2.15 Insurance Rates. Nothing shall be done or kept on any Lot or Common Area which will result in the cancellation of insurance on any such property or which would be in violation of any law.

Section 2.16 Signs. No signs of any kind shall be displayed which are visible from neighboring property without the prior written approval of the Board or the Architectural Control Committee except:

- A. Such signs as may be required by legal proceedings;
- B. Such signs as may be used by Developer or Declarant in connection with the development of the subdivision and sale of Dwelling Units; and
- C. Such signs as may be approved by the Board or the Architectural Control Committee indicating a Dwelling Unit is for sale or lease.

Where the Board's approval is required, it shall approve the nature, composition, number, size and location of all signs, unless excepted hereunder.

Section 2.17 Fences and Walls. Any walls or fences constructed on the lot line shall be a minimum of five (5) feet in height and constructed of wood or masonry.

Section 2.18 Driveway Surface. All driveways and roads shall be concrete or bituminous surfaces.

Section 2.19 Subdividing. None of the Lots shall be resubdivided into smaller Lots or conveyed or encumbered in less than the full original dimensions as shown on the Plat of this development. Nothing contained in this Section shall prevent the dedication, conveyance or granting of use of any of the easements set forth in Article III below, or of any easements over, across and under portions of lots for public or quasi-public use for purposes which benefit any lot owners.

Section 2.20 Sight Triangle at Intersections. No fence, wall, hedge or shrub planting which obstructs sight lines at elevations between three (3) and eight (8) feet above the roadway shall be placed or permitted to remain on any corner lot within the triangular area formed by the street property lines and a line connecting them at point thirty (30) feet from the intersection of said street property lines, or if the property corners are rounded, from the intersection of the street property within such distances of such intersections unless the foliage line is maintained at sufficient height to prevent obstruction of lines of visibility.

Section 2.21 Right of Inspection. During reasonable hours, any member of the Board, or any authorized representative of any of them shall have the right upon reasonable notice to

the Owner of a Dwelling Unit to enter upon and inspect any Property within the subdivision (except the interior of Dwelling Units), for the purpose of ascertaining whether or not the provisions of this Declaration have been or are being complied with, and such persons shall not be deemed guilty of trespass by reason of such entry.

Section 2.22 Exemption of Developer. Nothing in this Declaration shall limit the right of Developer or Declarant to complete excavation, grading and construction of improvements to any Property within the subdivision, or to alter the foregoing or to construct such additional improvements as Developer deems advisable in the course of development of the Property so long as any Lot therein remains unsold. Further, nothing in this Declaration shall limit the right of Developer or Declarant to use any structure as a sales model, sales office or construction office or parking area and to place any sign, banner, flag or similar method of advertisement to promote sales within the Property or other property or subdivisions of Declarant or Developer. Developer need not seek or obtain the Board's approval of any improvement including landscaping constructed or placed by Developer on any Property in the subdivision. The rights of Declarant or Developer hereunder or elsewhere in this Declaration may be assigned by Declarant or Developer.

ARTICLE III

EASEMENTS, COMMON AREAS

Section 3.01 Easement for Encroachments. Each Dwelling Unit and the Common Areas shall be subject to an easement for encroachments created by construction, settling and overhangs, as designed or constructed by the Developer, including footings and walls thereon. A valid easement for said encroachments and for the maintenance of same, so long as it stands, shall and does exist. In the event Dwelling Units are partially or totally destroyed, and then rebuilt, the Owners agree that minor encroachments on parts of the adjacent Dwelling Unit or Common Area due to construction shall be permitted and that a valid easement for said encroachments and the maintenance thereof shall exist.

Section 3.02 Utility Easements. Shown on the plat as defined in Section 1.17 are TEP Esm'ts and US West Esm'ts, 20' Public Sewer & Utility Esm'ts and 6' Public Strip Utility Esm'ts which encumber portions of various lots. The 6' Public Strip Utility Esm'ts shall be utilized for utility purposes and installation and collection of the U.S. Mail. The Owners of Lots

15, 16, 23, 24 and 43 shall keep the area within the sewer easement free from any obstruction or encroachment, including walls or fences.

Section 3.03 Common Areas and Easements (Association Maintained). Shown on the Plat as defined in Section 1.17 are Common Area "A" (10' Private Drainage Esm't and Private Detention Basin/Drainage Esm't), Common Area "B" (10' Bufferyards), Common Area "C" (Private Resource Conservation Area), and Common Area "D" (30' Private Ingress/Egress Esm't). Also shown on the Plat is a 1' Private No Access Esm't. All maintenance of said Common Areas/Easements, with the exception of Common Area "D", shall be performed by the Association, and in furtherance thereof, the Association shall have the right to enter upon said Common Areas/Easements for the purpose of performing such maintenance. Common Area "D" shall be maintained by the beneficiaries of the existing easement (Blk 5496, Pg 981).

Section 3.04 Private Drainage Easements (Owner Maintained). Private drainage easements may be established as shown on the Plat or by separate instrument duly recorded over and across certain Lots for the exclusive use and benefit of other Lot Owners. Each Owner of a Lot on which a private drainage easement is established and which is not maintained by the Association as provided for in Section 3.03 above shall be responsible for maintaining that easement and keeping it free and clear from all debris, refuse and any other foreign matter which shall in any way interfere with or hinder the free flow of water in the easement as originally constructed. In the event of the failure of any Lot Owner to so maintain an easement, other Lot Owners benefitted by such easements shall have no cause of action against the Association, but shall proceed solely against that Lot Owner.

Section 3.05 Common Area Blanket Utility Easement. In addition to those specific easements shown on the Plat, there is hereby created a blanket easement upon, across, over and under the Common Areas 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 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 Areas. 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 Property except as initially designed and installed by Developer or thereafter approved by the Board. This easement shall in no way affect

any other recorded easements on the Property. 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 or other utilities under any permanent building structure constructed on the Property. This easement shall be limited to improvements as originally constructed. There shall be an access easement for the delivery and collection of the U.S. Mail.

Section 3.06 Easement for Perimeter Walls and Other Improvements. Developer may construct perimeter 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 Owners should make demand upon the Association to maintain any Common Area within the confines of such perimeter wall, or to maintain and keep in repair any improvements encroaching upon the Common Area or adjacent lots which is the responsibility of the Owner to repair as set forth in Section 4.01 A of this Declaration, then the Association or adjacent lot Owner, as the case may be, shall have the absolute right, and may cause the Owner making such demand to remove at his/her expense, any improvement, including the perimeter wall, encroaching upon the Common Area or adjacent lot, and to replace and rebuild such improvement or perimeter wall as to be within such Owner's Lot. Declarant hereby acknowledges that the right granted Owners under this Section is a property right of the Owner, and such property right may not be revoked or rescinded by Declarant, its successors or assigns, or by the Association, once such right has vested in an Owner, except upon an Owner's breach of the conditions set forth in the preceding sentence.

Section 3.07 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 incidental to construction.

Section 3.08 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 or over the dividing line between separate Dwelling Units, shall constitute a common wall. With respect to any such wall, each of the adjoining Unit Owners shall assume the burden and be entitled to the benefits recited in this Section 3.08 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 3.08 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/her guests or agents or members of his/her 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/ her 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 without prior consent of the Board. In addition to meeting the other requirements of these Restrictions and of any building code or similar regulations or ordinances, any Owner proposing to modify, make additions to or rebuild his/her Dwelling Unit in any manner which requires the extension or other alteration

standard to determine whether such maintenance, repair and upkeep is required so that the Lots as a whole will reflect a high pride of ownership. Each Owner or his/her authorized agent or the Association, as the case may be, in order to conduct such maintenance, repair or repainting, shall have the right of entry at reasonable times upon Lots adjacent to such Owner's Lot, provided reasonable notice of such entry is first given by such Owner to the Owner of the involved adjacent Lot.

B. The Association shall be responsible for maintenance, repair and upkeep of any Common Area improvements including, but not limited to, maintenance, repair and upkeep of Common Areas "A", "B" and "C" for the benefit of all Owners and the public. Common Area "D" shall be maintained by the beneficiaries of the existing easement (Bk 5496, Pg 981). Additionally, the Association shall be responsible for the maintenance, repair and upkeep any improvements constructed on the Common Areas and Easements set forth in Section 3.03 above. In addition, the Association shall be responsible for maintaining and repainting any perimeter walls or fences constructed along the boundaries of the Common Areas.

Section 4.02 Architectural Control. Subsequent to the closing of the sale of a Lot by Declarant to an Owner, no building, fence, wall, or other structure shall be commenced, created, erected or maintained upon said Owner's Lot, nor shall any exterior addition to, or change in, or alteration of, said Owner's Dwelling Unit, any perimeter wall, or any common wall, or the exterior color scheme thereof, be made until the plans and specifications showing the nature, kind, shape, height, materials, color, and location shall have been submitted to and approved in writing as to harmony of external design and location in relation to surrounding structures and topography by the Board, or by an Architectural Committee composed of three (3) or more representatives appointed by the Board. In the event the Board or its designated 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 will not be required and this Section will be deemed to have been fully complied with. Notwithstanding anything contained to the contrary in the Section, no additions or modifications to any improvement or structure shall be made by an Owner subsequent to the closing of a sale of a Lot to an Owner unless such addition or modification has been first reviewed and approved by the applicable governing body.

ARTICLE V ASSOCIATION

Section 5.01 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 attempted transfer of membership separate from the appurtenant Lot or Lots shall be void. Any transfer of ownership of a Lot shall operate automatically to transfer said membership to the new Owner thereof.

Section 5.02 Voting Rights and Classes of Membership. The Association shall have two classes of voting membership.

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

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

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

If any lender to whom Declarant has assigned, or hereafter assigns, as security all or substantially all of its rights under this Declaration should succeed to the interest of the Declarant by virtue of said assignment, the absolute voting rights of the Declarant as provided herein shall not be terminated thereby, and such lender, or successor to such lender by

assignment or foreclosure or acceptance of a deed in lieu thereof, shall hold Declarant's memberships and voting rights on the same terms as they were held by Declarant.

Section 5.03 Purpose of Association. The Association is a nonprofit corporation which will serve as the governing body for all Owners and Members for the protection, improvement, alteration, maintenance, repair, replacement, administration and operation of the Common Area, the assessment of expenses, payment of losses, disposition of casualty insurance proceeds, and other matters as provided in this Declaration, the Articles, the By-Laws, and the Rules. The Association shall be legally constituted and in existence prior to the conveyance of the first Lot to an Owner other than Declarant. The Association shall not be deemed to be conducting a business of any kind. All funds received by the Association shall be held and applied by it for the Owners and Members in accordance with the provisions of this Declaration, the Articles and the By-Laws. The Association shall, so long as this Declaration is in full force and effect, take all necessary and proper action to maintain its status as an Arizona non-profit corporation.

Section 5.04 Rights and Responsibilities of Association. The Association, through the Board of Directors, unless specifically provided otherwise, shall have the right of enforcement of all of the provisions hereof. The Association shall be responsible for the proper and efficient:

- A. Paying real estate taxes, assessments, and other charges on the Common Areas;
- B. Insuring, if deemed necessary and proper by the Board, improvements originally constructed by Declarant or Developer or later constructed by the Association on or about the Common Areas and Easements which are maintained by the Association;
- C. Hiring, firing, supervising and paying employees and independent contractors including, but not limited to, workmen, landscapers, attorneys, accountants, architects, and contractors to carry out the obligations set forth herein;
- D. Maintaining such liability insurance as the Association deems necessary, if any, 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 Areas and Easements which are maintained by the Association;
- E. Maintaining workmen's compensation insurance for the employees of the Association;

- F. Purchasing all goods, supplies, labor, and services reasonably necessary for the performance of the obligations set forth herein;
- G. 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. In this regard, due to the type and nature of the improvements to be constructed on the Common Areas and Easements which are maintained by the Association, a reserve fund is not anticipated to be necessary for same, and any repair or replacement of same will be accomplished by special assessment.
- H. Providing for and payment of any utility services for Common Areas;
- I. 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 Property as a first-class, single family residential development;
- J. Granting licenses, easements, and other agreements for the use of Common Areas;
- K. Such other matters as are provided for in this Declaration, the Articles of Incorporation, and the By-Laws.

Section 5.05 Articles and By-Laws. The manner in which the Association holds meetings and attends to other corporate formalities shall be controlled by the provisions of the By-Laws, the Articles, and this Declaration, which Declaration shall control in the event of conflict. The Board of Directors of the Association shall be elected by majority vote of the total votes cast by both classes of the membership at a meeting attended by a quorum as called for by the Bylaws.

Section 5.06 Transition to Board. Prior to the time that the operations of the Association are turned over to the Members by the Declarant, the Members shall be required by February 15 of each year to report and submit to the Association, in writing, any claims or disputes with regard to the operations of the Association by the Developer or Declarant, during the immediately preceding calendar year, including the 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 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. Any valid and timely written claims or disputes presented to the Declarant shall be resolved promptly between the Members and Declarant.

Section 5.07 Authority of Board to Adopt Rules. 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 Property. The Rules may also include the establishment of a system of fines and penalties. The Rules shall govern such matters as the Board deems to be in furtherance of the purposes of the Association, including, without limitation, the use of the Common Areas and Easements which are maintained by the Association. The Rules may be amended at any special or regular meeting of the Board. The Rules, if and when adopted, shall be 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 on all persons having any interest in, or making any use of, any part of the Property, whether or not copies of the Rules are actually received by such persons. The Rules, as adopted, amended, or repealed, shall be available for review at the principal office of the Association to each person reasonably entitled thereto. It shall be the responsibility of each person subject to the Rules to review, and keep abreast of any changes in, the provisions thereof. In the event of any conflict between any provision of the Rules and any provisions of this Declaration, or the Articles or By-Laws, the provisions of the Rules shall be deemed to be superseded by the provisions of this Declaration, the Articles or By-Laws to the extent of any such conflict.

Section 5.08 Non-Liability of Officials and Indemnification. To the fullest extent permitted by law, neither Declarant, the Board, nor any other committees of the Association nor any member thereof, nor any officers, directors, or employees of the Declarant or of the Association, shall be liable to any Owner or to the Association or any other person for any damage, loss, or prejudice suffered or claimed on account of any decision, course of action, act,

inaction, omission, error, negligence, or the like made in good faith and which Declarant, the Board, or such committees or officers reasonably believed to be within the scope of their respective duties. To the fullest extent permitted by law Declarant, and every director, officer, or committee member of the Association and of the Declarant (to the extent a claim may be brought by reason of Declarant's appointment, removal, or control over members of the Board or its control over the Association or any committee thereof) shall be indemnified by the Association. Every other person serving as an employee or direct agent of the Association, or otherwise acting on behalf of, and at the request of, the Association, may, in the discretion of the Board, be indemnified by the Association. Any such indemnification shall be limited to all expenses and liabilities, including attorneys' fees, reasonably incurred by or imposed upon such person in connection with any proceeding to which he/she may be a party or in which he/she may become involved, by reason of his/her 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/she is a director, officer or member of a committee or serving in such other specified capacity at the time such expenses are incurred.

Section 5.09 Managing Agent. All powers, duties and rights of the Association or the Board, as provided by law and herein, may be delegated to a managing agent under a management agreement; provided, however, that no such delegation shall relieve the Association of its obligation to perform any such delegated duty. Any agreement for professional management shall not exceed a term of one year, which term may be renewed by agreement of the parties for successive one-year periods. Any such agreement shall provide for termination by either party with or without cause and without payment of a termination fee upon 90 days' written notice; provided, however, that the Association may terminate the agreement for cause upon 30 days' written notice. The Association is expressly authorized to contract with Declarant, or an affiliate of Declarant, to provide management services or to perform other duties of the Association or the Board; provided, however, that the compensation to be paid to Declarant or its affiliate, under such contract shall not exceed a reasonable amount consistent with compensation paid to professional managers performing similar services in accordance with the standards of the industry.

Section 5.10 Disputes. In the event of any dispute or disagreement between any Owners or any other persons subject to this Declaration relating to the Property or any question of interpretation or application of the provisions of this Declaration, the Articles, By-Laws, or Rules, this Declaration shall control. If the subject is not governed by this Declaration, a determination thereof by the Board shall be final and binding on each and all of such persons, subject to the right of any party to seek declaratory relief. The Board may, at its election, delegate the resolution of such dispute or disagreement to a committee appointed by the Board.

Section 5.11 Records and Accounting. The Association shall keep, or cause to be kept, true and correct books and records of account at the sole cost and expense of the Association in accordance with generally accepted accounting principles. Such books and records, together with current copies of this Declaration, the Articles, By-Laws, and Rules shall be available for inspection by all Owners and First Mortgagees of record at reasonable times during regular business hours, and shall specify reasonable detail all expenses incurred and funds accumulated. Such records, books, and accounts shall be kept for a period of at least two years after preparation.

ARTICLE VI INSURANCE

Section 6.01 Insurance Requirements. The Association shall purchase and maintain the following types of insurance:

A. Commercial General Liability and Property Insurance. Commercial general liability insurance covering bodily injury and property damage liability insurance covering all Common Areas and all other areas under the jurisdiction or control of the Association. Such insurance policy or policies shall contain, if available, a "severability of interest" clause or endorsement which shall preclude the insurer from denying the claim of an Owner because of negligent 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 Property. Coverage shall be for at least one million dollars (\$1,000,000.00) combined single limit. Such coverage shall include, without limitation, legal liability of the insureds for property damage, bodily injuries, and deaths of

persons in connection with the operation, maintenance, or use of the Common Areas and Easements which are maintained by the Association, as well as such other coverage as may be deemed necessary and proper by the Board.

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

Section 6.02 Waiver of Subrogation; Claims Against Declarant, etc. Every policy of insurance obtained by the Association shall contain an express waiver, if available, of any and all rights of subrogation against Declarant, Developer, the Board, and such other persons or entities affiliated with the Association such as a manager and their 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 and their First Mortgagees, if known, servicing Mortgages with the Federal National Mortgage Association.

Liability insurance hereinabove specified shall name as separately protected insureds Declarant, Developer, the Association, the Board, and such other persons or entities affiliated with the Association such as a manager and their 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, the Developer and such other persons or entities named in said insurance policies, and against agents and employees of each of the foregoing, with respect to any loss covered by such insurance, whether or not caused by negligence of or breach of any agreement by said persons, but only to the extent that insurance proceeds are received in compensation for such loss.

Section 6.03 Insurance Premiums. Premiums for insurance purchased or obtained by the Association shall be a common expense payable through assessments of Lots and all such insurance coverage obtained by the Board shall be written in the name of the Association.

Section 6.04 Additional Optional Insurance by Owner. In addition to the aforesaid insurance required to be carried by the Association, each Owner shall, at his/her own expense, carry any and all other insurance deemed advisable; however, if available, said policy or policies shall provide that there shall be no contribution or offset between policies of the Association and policies an individual Owner may have in effect. The Association shall have no duty whatsoever

to insure, protect or maintain real or personal property located upon any Lot. It shall be the individual responsibility of each Owner at his/her own expense, to provide as he/she sees fit, Owner's liability insurance, theft and other insurance covering personal and real property of the Owner.

Section 6.05 Condemnation/Destruction.

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 delegate to represent all of the Members in connection with the taking. The Board shall act in its sole discretion with respect to any awards being made in connection with the taking and shall be entitled to make a voluntary sale to the condemnor in lieu of engaging in a condemnation action.

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

(4) **Distribution of Proceeds.** Any awards received on account of the taking shall be paid to the Association. In the event of a total taking, the Board shall retain any award in the general funds of the Association. 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, Common Property or improvements thereon, it shall be the duty of the Association to restore and repair the same to their former condition as promptly as is practicable, and in a lawful and workmanlike manner. 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. A Reconstruction Assessment, with each Owner contributing a like sum, 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. In the event any excess insurance proceeds remain, the Board shall retain such sums in the general funds of the Association. Notwithstanding anything to the contrary contained in this Section 6.05, the distribution of any insurance proceeds for any damage or destruction to the Common Area shall be subject to the prior rights of Mortgagees whose interest may be protected by said policies.

ARTICLE VII OWNERSHIP, USE AND MANAGEMENT OF THE COMMON PROPERTY

Section 7.01 Owner's Easements of Enjoyment. Every Owner shall have a right and easement of enjoyment in and to the Common Areas which shall be appurtenant to and shall pass with title to every Lot subject to the provisions hereof.

Section 7.02 Conveyance of Common Areas. Declarant shall grant and convey to the Association, and the Association shall receive ownership of, the Common Areas prior to the closing of sale of a Lot by Declarant to an Owner. Upon such conveyance and grant, the Association shall succeed to all rights, duties and powers with respect to the Common Areas as prescribed by law, and set forth in the Articles, By-Laws and this Declaration.

Section 7.03 Damage or Destruction of Property. In the event any Common Area is damaged or destroyed by an Owner or any of his/her guests, tenants, licensees, agents, or members of his/her 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 a good workmanlike manner. The Owner shall then repay the Association in the amount actually expended for such repairs. Each Owner further agrees that these charges for repairs, if not paid within ten (10) days after completion of the work, shall be delinquent and shall become a lien upon Owner's Lot and shall continue to be a lien until fully paid. The lien shall be subordinate to any First Mortgage or encumbrance on the subject property. Said charges shall bear interest from the date of delinquency at the rate of twelve percent (12%) per annum. The amount of principal and interest owed by the Owner to the Association shall be a debt, and shall be collectible by any lawful procedure allowed by the laws of the State of Arizona.

Section 7.04 Restriction on Conveyance Or Common Areas and Facilities. The Common Areas and facilities owned by the Association, may not, by act or omission, be abandoned, partitioned, subdivided, encumbered, sold or transferred without the prior written approval of two-thirds (2/3) of the Eligible Mortgage Holders (based upon one vote for each mortgage owned) or of the Owners (other than Developer or Declarant) except that: (1) the Association shall at all times have the right to grant and convey to any person or entity easements, or rights of way, in, on, over, or under any Common Areas for the purpose of constructing, erecting, operating or maintaining thereon, therein and thereunder (a) temporary overhead or permanent underground lines, cables, wires, conduits, or other devices for the transmission of electricity for lighting, heating, power, telephone, cable T.V., and other purposes; (b) sewers, storm drains and pipes, drainage easements, water systems, water, heating and gas lines or pipes; and (c) such improvements as may be permitted under of this Declaration, and (2) Declarant shall have the right during the pendency of Class B membership to grant reasonable easements over, across, or under Common Areas consistent with the purposes hereof.

Section 7.05 Restriction on Further Subdividing or Resubdividing. Declarant shall not cause any further subdividing or resubdividing of the Property without furnishing prior written notice to the Owners and obtaining the prior written approval of the Pima County Board of Supervisors.

Section 7.06 Payment of Taxes or Insurance by Mortgagees. The First Mortgagees of Lots shall have the right, jointly or singly, to pay taxes or other charges or assessments which are in default and which may or have become a lien against the Common Areas and may pay overdue premiums on hazard insurance policies or secure new hazard insurance coverage on the lapse of a policy for the Common Areas, and any First Mortgagee making any such payment shall be owed immediate reimbursement therefor from the Association.

ARTICLE VIII

COVENANTS FOR MAINTENANCE ASSESSMENTS

Section 8.01 Creation of the Lien and Personal Obligation to Pay Assessments. Each Owner, by acceptance of a deed to any Lot, whether or not it shall be so expressed in such deed is deemed to covenant and agree to pay to the Association: (1) annual assessments or charges, and (2) special assessments for improvements, such assessments to be established and collected

as hereinafter provided. The annual and special assessments, together with interest, costs, and reasonable attorneys' fees, shall be a charge on the Lot and shall be a contingent upon the Lot against which each assessment is made. Delinquent assessments, together with interest, costs, and reasonable attorneys' 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.

Section 8.02 Purpose of Assessments. The assessments levied by the Association shall be used exclusively to promote (i) the recreation, health, safety, and welfare of the Members and their guests; (ii) the improvement and maintenance of the Common Areas and Easements which are maintained by the Association; (iii) insuring the Common Areas and Easements which are maintained by the Association; and (iv) all purposes set forth in the Articles, By-Laws and this Declaration.

Section 8.03 Maximum Annual Assessment.

A. Until January 1 of the year immediately following the conveyance of the first Lot by Declarant to an Owner, the maximum annual assessment for each Lot shall be FIFTY AND NO/100 (\$50.00) DOLLARS. Within thirty (30) days prior to the end of each calendar year (January 1 through December 31) and subject to the provisions of Section 8.03 B hereof, the Board of Directors shall estimate the total expenses anticipated for the coming year and shall determine the annual assessment necessary to generate the required revenues.

B. Subject to Section 8.03 C hereof, the Board of Directors shall not increase the annual assessment by an amount greater than either (i) six percent (6%) of the amount of the preceding annual assessment; or (ii) the percentage increase in the cost of living index for "All Items, All Cities" as reflected by the Consumer Price Index published by the Bureau of Labor Statistics of the United States Department of Labor for all Urban Consumers (hereinafter called the "Cost of Living Index Number"), whichever is greater. In the event that the Bureau of Labor Statistics shall fail to publish a comparable Cost of Living Index Number during any such years, but a comparable Cost of Living Index Number shall be published by any governmental agency of the United States in place thereof, then such comparable index number shall be used for the purpose of adjusting the annual assessment under the provisions of this Section 8.03 with the same force and effect as the Cost of Living Index Number of the Bureau of Labor Statistics.

C. Any increase by the Board of Directors in the annual assessment which is greater than the amount permitted under Section 8.03 B hereof must be first approved by a two-thirds (2/3) vote of each Class of Members who are voting in person or by proxy at a meeting duly called for this purpose.

Section 8.04 Special Assessment for Improvements. In addition to the annual assessments authorized above, the Association may levy, in any assessment year, a special assessment applicable to that year only for the purpose of defraying, in whole or in part, the cost of any construction, reconstruction, repair or replacement of an improvement of the Common Areas and Easements which are maintained by the Association, including fixtures and personal property related thereto, provided that any such assessment shall have the assent of two-thirds (2/3) of the votes of each Class of Members who are voting in person or by proxy at a meeting duly called for this purpose.

Section 8.05 Notice and Quorum for an Action Authorized Under Section 8.03 C and Section 8.04. Written notice of any meeting called for the purpose of taking action authorized under Section 8.03 C and Section 8.04 shall be sent to all Members not less than thirty (30) days nor more than sixty (60) days in advance of the meeting. At the first such meeting called, the presence of Members or of proxies entitled to cast sixty percent (60%) of all the votes of each class of membership shall constitute a quorum. If the required quorum is not present, another meeting may be called subject to the same notice requirement, and the required quorum at the subsequent meeting shall be one-half (1/2) of the required quorum at the preceding meeting. No such subsequent meeting shall be held more than sixty (60) days following the preceding meeting.

Section 8.06 Uniform Rate of Assessment. Both annual and special assessments must be fixed at a uniform rate for all Lots. However, and subject to the limitations set forth in Section 8.03 B hereof, said uniform rate may be revised periodically to reflect revisions in the annual assessments based on actual operating cost of the Association. Notwithstanding the above, the amount required to be paid toward regular annual and special assessments for the Lots owned by Declarant which are neither leased, nor rented, nor otherwise occupied as a Dwelling Unit shall be fixed at twenty-five percent (25%) of the assessment rate for the other Lots; and further provided, however, that in the event all assessments, and all other income, from whatever source, due to the Association fail to equal or exceed the actual expenses incurred by the

Association during any particular twenty-five (25%) percent annual assessment period because of such partial Declarant assessment, then Declarant shall, upon written notice from the Association, pay a sufficient amount, up to the amount of full parity on such assessment based on the level of assessments for that year, to the Association to meet any such shortfall so long as (a) such notice must be given within 90 days after the end of each annual assessment period and is waived if not made in such timely manner (such final 90 day period to terminate 90 days from the date of closing of the last Lot conveyed by Declarant), and notwithstanding any contrary provision of this Declaration (b) Declarant shall have no obligation for any such shortfall caused by any decrease in assessments, including without limitation the levying of any assessment in an amount less than the maximum for that annual assessment period, or by expenditures for capital improvements, unless the same has previously been approved in writing by Declarant; and further provided, that at the time any Lot owned by Declarant is leased, rented, or residentially occupied, that Lot shall thereafter, in subsequent periods, be assessed at the uniform rate of assessment for privately owned Lots.

Section 8.07 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 a Lot to an Owner. The first annual assessment shall be adjusted according to the number of months remaining in the calendar year. The Board of Directors 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 of Directors. 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 8.08 Effect of Non-Payment of Assessments; Remedies of the Association. Each Owner shall be deemed to covenant and agree to pay to the Association the assessment provided for herein, and agrees to the enforcement of the assessment in the manner herein specified. All delinquent assessments shall bear interest at an interest rate not to exceed fifteen percent (15%) per annum, and 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 attorneys' fees and costs thereby incurred, in addition to any other amounts due or any other relief or remedy obtained against said Owner. In the event of a default in payment of any such assessment when due, in which case the assessment shall be deemed delinquent, and in addition 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.

- A. **Enforcement by Suit.** The Board may cause a suit at law to be commenced and maintained in the name of the Association against an Owner to enforce each such assessment obligation. Any judgment rendered in any such action shall include the amount of the delinquency, together with interest thereon from the date of delinquency until paid, court costs, and reasonable attorneys' fees in such amount as the Court may adjudge against the delinquent Owner or Member.
- B. **Enforcement by Lien.** There is hereby created a right to record a claim of lien on each and every Lot to secure payment to the Association of any and all assessments levied against any and all Owners together with interest thereon from the date of delinquency until paid, and all costs of collection which may be paid or incurred by the Association in connection therewith, including reasonable attorneys fees and costs. 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 to the defaulting Owner. Said demand shall state the date and amount of delinquency. Each default shall constitute a separate basis for demand but any number of defaults may be included within a single demand or claim of lien. If such delinquency is not paid within ten (10) days after delivery of such demand, or, even without such a written demand being made, the Association may elect to file and record a claim of lien on behalf of the Association against the Lot of the defaulting Owner. Such a claim of lien shall be executed and acknowledged by any officer of the Association, recorded in the office of the County Recorder for Pima County, Arizona, 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 attorneys' fees and costs (with any proper offset allowed);
- (4) A statement that the claim of lien is made by the Association pursuant to this Declaration;
- (5) A statement that a lien is claimed against said Lot in an amount equal to the amount stated;
- (6) A statement that the claim of lien will also extend to all assessments which became due but are not paid from the date of the recording of the claim of lien to the date of payment of all amounts set forth therein (including interest thereon, reasonable attorneys' fees, costs and collection), and that the claim of lien will only be deemed satisfied and released when the Owner is current in the payment of all such amounts.

Upon recordation of a duly executed original or copy of such a claim of lien, and the mailing of a copy thereof to said Owner, the lien claimed therein shall immediately attach and become effective in favor of the Association as a lien upon the Lot. Such a lien shall have priority over all claims of lien created subsequent to the recordation of the claim of lien thereof, except only tax liens for real property taxes on any Lot, assessments on any Lot in favor of any municipal or other governmental assessing unit, and the lien of any First Mortgage.

Any such lien may be foreclosed by appropriate action in court or in the manner provided by law for the foreclosure of a realty mortgage or trust deed as set forth by the laws of the State of Arizona, as the same may be changed or amended. The lien provided for herein shall be in favor of the Association and shall be for the benefit of all other Owners. The Association shall have the power to bid in at any foreclosure sale and to purchase, acquire, hold lease, mortgage, and convey any Lot. In the event such foreclosure is by action in court, reasonable attorneys' 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 in this manner.

Section 8.09 No Exemption of Owner. No Owner is exempt from liability for payment of assessments by waiver of the use of enjoyment of the Common Areas, or by abandonment of a Lot.

Section 8.10 Subordination of the Lien to Mortgages. 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

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

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

Section 9.03 Enforcement and Non-Waiver.

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

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

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

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

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

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

Section 9.04 Construction.

A. Interpretation. The provisions of this Declaration shall be liberally construed to effectuate the purpose of creating a uniform plan for the development and operation of the Property. This Declaration shall be construed and governed by the laws of the State of Arizona.

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 of enforceability of any other provision.

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

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

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

Section 9.05 Delivery of Notices and Documents. Any written notice or other documents relating to or required by this Declaration may be delivered either personally or by mail. If by mail, it shall be deemed to have been delivered seventy-two (72) hours after a copy of same has been deposited in the United States mail, postage prepaid, addressed as follows: If to the Association, at 145 S. Sixth Avenue, Tucson, Arizona, 85701; if to an Owner, to the address of the Owner within the Property; if to Developer, at 145 S. Sixth Avenue, Tucson, Arizona, 85701, with a copy to Declarant; and if to the Declarant, 101 North Wilmot Road, Tucson, Arizona, 85711, with a copy to the Association; provided, however, that any such

address 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 9.06 Binding Effect. By acceptance of a deed or acquiring any ownership interest in any of the Property included within this Declaration, each person or entity, for himself/ herself, or itself, his/her heirs, personal representatives, successors, transferees and assigns, binds himself/herself, his/her heirs, personal representatives, successors, transferees and assigns to all of the provisions, restrictions, covenants, conditions, rules and regulations now or hereafter imposed by this Declaration and any amendments thereof. In addition, each such person by so doing thereby acknowledges that this Declaration sets forth a general scheme for the Property and hereby evidences his/ her intent that all the restrictions, conditions, covenants, rules and regulations contained herein shall run with the land and be binding on all subsequent and future owners, grantees, purchasers, assignees, and transferees thereof. Furthermore, each such person fully understands and acknowledges that this Declaration shall be mutually beneficial, prohibitive and enforceable by the various subsequent and future owners.

Section 9.07 Annexation. Additional property and Common Area may be annexed by the Declarant to the Property with the consent of two-thirds (2/3rds) of each Class of Members and the recordation of a Declaration of Annexation.

Section 9.08 FHA/VA Approval. As long as there is a Class B membership, the following actions will require the prior approval of the Federal Housing Administration or the Veterans Administration: annexation of additional properties, mergers and consolidations, mortgaging of Common Area, public dedication of Common Area, and amendment of this Declaration of Covenants, Conditions and Restrictions.