

E
A
S
T
S
I
D
E

F. ANN RODRIGUEZ, RECORDER
RECORDED BY: RLD
DEPUTY RECORDER
3553 ES2



DOCKET: 11887
PAGE: 1425
NO. OF PAGES: 72
SEQUENCE: 20021810357
09/18/2002
ACOV 14:15

TTISE
TITLE SECURITY
6390 E TANQUE VERDE RD
TUCSON AZ 85715

PICKUP

AMOUNT PAID \$ 85.00

E
A
S
T
S
I
D
E

F. ANN RODRIGUEZ, RECORDER
RECORDED BY: HEM
DEPUTY RECORDER
2057 RO2C



DOCKET: 11780
PAGE: 271
NO. OF PAGES: 72
SEQUENCE: 20020740117
04/17/2002
ACOV 11:20

TTISE
HUGH CALDWELL JR
5210 E WILLIAMS CIRCLE 800
TUCSON AZ 85711

MAIL

AMOUNT PAID \$ 86.00

TUCSON, AZ 85711

170331-PE

DOCUMENT TITLE: FOURTH AMENDMENT AND RESTATEMENT OF
DECLARATION OF PROTECTIVE CONVENANTS FOR RIO VERDE VISTA ~~II~~ III
LOTS 115 THROUGH 160

This document, consisting of 72 pages, is being re-recorded to
correct the following two (2) Scrivener's Errors:

- 1) The reference to Rio Verde Vista II above, on this recorded
page 271, should read Rio Verde Vista III; and
- 2) The failure to insert the date of the "Restated Declaration"
on the recorded page 277, which date was April 16, 2002.

1
1
8
8
7

1
4
2
5

**FOURTH AMENDMENT AND RESTATEMENT
OF
DECLARATION OF PROTECTIVE COVENANTS**

FOR

**RIO VERDE VISTA III
LOTS 115 THROUGH 160**

(ALSO KNOWN AS RIVER GATE ESTATES)

1100071426

**FOURTH AMENDMENT AND RESTATEMENT
OF
DECLARATION OF PROTECTIVE COVENANTS**

FOR

**RIO VERDE VISTA III
LOTS 115 THROUGH 160**

TABLE OF CONTENTS

**ARTICLE I
DEFINITIONS**

Section 1.1	"Articles"	3
Section 1.2	"Association"	3
Section 1.3	"Board"	3
Section 1.4	"By-Laws"	3
Section 1.5	"Common Area A"	4
Section 1.6	"Common Area B"	4
Section 1.7	"Common Areas A and B"	4
Section 1.8	"Declarant"	4
Section 1.9	"Developer"	5
Section 1.10	"Dwelling Unit" or "Unit"	5
Section 1.11	"First Mortgagee"	5
Section 1.12	"Lot" or "Lots"	5
Section 1.13	"Member"	5
Section 1.14	"Mortgage"	6
Section 1.15	"Owner(s)" or "Homeowner(s)"	6
Section 1.16	"Person"	6
Section 1.17	"Plat"	7
Section 1.18	"Property" or "Subdivision"	7
Section 1.19	"Restated Declaration"	7
Section 1.20	"Rules"	7

**ARTICLE II
USES AND RESTRICTIONS**

Section 2.1	Private Residential Purposes	7
Section 2.2	Minimum Square Footage of Dwelling Units.	8

Section 2.3	Renting	8
Section 2.4	Antennas/Satellite Dishes	8
Section 2.5	Solar Devices	8
Section 2.6	Mail Boxes	9
Section 2.7	Carpools	9
Section 2.8	Vehicles/Garages	9
Section 2.9	Signs	10
Section 2.10	Animals	10
Section 2.11	Nuisances	10
Section 2.12	Diseases and Insects	11
Section 2.13	Growth and Planting	11
Section 2.14	Unsightly Articles	11
Section 2.15	Trash Containers	11
Section 2.16	Clothes Lines	12
Section 2.17	Swimming Pool/Jacuzzi/Whirlpool	12
Section 2.18	Insurance Rates	12
Section 2.19	Drainage	13
Section 2.20	Temporary Structures, Mobile Homes, etc	13
Section 2.21	Backboards	14

ARTICLE III EASEMENTS, COMMON WALLS

Section 3.1	Easement for Encroachments	14
Section 3.2	Private Drainage Easements	15
Section 3.3	Common Areas A and B Blanket Utility Easements	15
Section 3.4	Perimeter Screen Walls Easement	16
Section 3.5	Easement for Improvements	16
Section 3.6	Electrical Service and Telephone Lines	17
Section 3.7	Plat Notes	17
Section 3.8	Common Walls	17

ARTICLE IV ARCHITECTURAL CONTROL COMMITTEE

Section 4.1	Composition of Committee	19
Section 4.2	Review by Committee	20
Section 4.3	Procedures	20
Section 4.4	Requirements for Architectural Improvements	21
Section 4.5	Color; Building Materials	22
Section 4.6	Vote	22
Section 4.7	Liability	22
Section 4.8	Variance	23
Section 4.9	Nonconforming Architectural Improvements	23

MAY 14 2008

Section 4.10	Broad Discretion of Architectural Control Committee	24
Section 4.11	Fees	25

**ARTICLE V
ASSOCIATION**

Section 5.1	Membership in the Association	25
Section 5.2	Voting Rights and Classes of Membership	25
Section 5.3	Purpose of Association	26
Section 5.4	Rights and Responsibilities of Association	27
Section 5.5	Association Meetings	28
Section 5.6	Board of Directors	29
Section 5.7	Transition to Board	29
Section 5.8	Authority of Board to Adopt Rules	30
Section 5.9	Non-Liability of Officials and Indemnification	31
Section 5.10	Managing Agent	32
Section 5.11	Records and Accounting	32

**ARTICLE VI
MAINTENANCE**

Section 6.1	Exterior Maintenance, Repair, Up-Keep and Repainting	33
-------------	--	----

**ARTICLE VII
OWNERSHIP, USE AND MANAGEMENT
OF THE COMMON AREAS A AND B**

Section 7.1	Owner's Easements of Enjoyment	34
Section 7.2	Conditional Use of Common Area A	34
Section 7.3	Use of Common Area B	35
Section 7.4	Delegation of Use	36
Section 7.5	Damage or Destruction of Property	36
Section 7.6	Restriction on Conveyance of Common Areas A and B	36
Section 7.7	Restriction on Further Subdividing or Re-subdividing	37

**ARTICLE VIII
COVENANTS FOR MAINTENANCE ASSESSMENTS**

Section 8.1	Creation of the Lien and Personal Obligation to Pay Assessments	37
Section 8.2	Purpose of Assessments	38
Section 8.3	Maximum Annual Assessment	38
Section 8.4	Special Assessment for Capital Improvements	39
Section 8.5	Notice and Quorum for an Action Authorized Under Section 8.3 and Section 8.4	39
Section 8.6	Uniform Rate of Assessment	40

11007 1429

Section 8.7	Date of Commencement of Annual Assessments; Payment Dates ...	41
Section 8.8	Effect of Non-Payment of Assessments; Remedies of the Association	41 44
Section 8.9	No Exemption of Owner	44
Section 8.10	Subordination of the Lien to Mortgages	44

**ARTICLE IX
INSURANCE**

Section 9.1	Insurance Requirements	45
Section 9.2	Waiver of Subrogation; Claims Against Declarant, etc	46
Section 9.3	Insurance Premiums	46
Section 9.4	Additional Optional Insurance by Owner	46

**ARTICLE X
DISPUTE RESOLUTION**

Section 10.1	Consensus for Association Action	47
Section 10.2	Alternative Method for Resolving Disputes	47
Section 10.3	Claims	48
Section 10.4	Mandatory Procedures	49
Section 10.5	Amendment of Article	51

**ARTICLE XI
GENERAL PROVISIONS**

Section 11.1	Term	51
Section 11.2	Amendments	52
Section 11.3	Enforcement and Non-Waiver	53
Section 11.4	Construction	54
Section 11.5	Delivery of Notices and Documents	55
Section 11.6	Resale of Lot by Owner	55
Section 11.7	Binding Effect	55
Section 11.7	Annexation	56

1
1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28
29
30
31
32
33
34
35
36
37
38
39
40
41
42
43
44
45
46
47
48
49
50
51
52
53
54
55
56
57
58
59
60
61
62
63
64
65
66
67
68
69
70
71
72

**FOURTH AMENDMENT AND RESTATEMENT
OF
DECLARATION OF PROTECTIVE COVENANTS
FOR**

**RIO VERDE VISTA III
LOTS 115 THROUGH 160**

THIS FOURTH AMENDMENT AND RESTATEMENT OF DECLARATION OF PROTECTIVE COVENANTS FOR RIO VERDE VISTA III, LOTS 115 THROUGH 160 (hereafter referred to as the "Restated Declaration") is made this 16 day of April, 2002, by **BROADWAY MANAGEMENT COMPANY**, an Arizona corporation (as "Approving Agent"), **USH/JRC RIVER GATE LLC**, an Arizona limited liability company, successor to Title Security Agency of Arizona, Inc., an Arizona corporation, as Trustee under Trust No. T-212, as to Lot Numbers 115 through 134, Lots 136 through 141 and 143 through 160 of Rio Verde Vista III, and **JOSEPH R. CESARE**, a married man as his sole and separate property, successor to Title Security Agency of Arizona, Inc., an Arizona corporation, as Trustee under Trust No. T-212, as to Lot Numbers 135 and 142 of Rio Verde Vista III.

RECITALS:

A. On August 24, 1994, a Declaration of Protective Covenants For Rio Verde Vista III, Lots 115-160 (hereafter referred to as "Original Declaration") was recorded in Docket 9863, commencing at Page 747, in the office of the Pima County Recorder, Pima County, Arizona.

1
1
8
3
7
1
4
3
1

1
1
8
3
7
1
4
3
1

B. On January 19, 1996, a First Amendment to Declaration of Protective Covenants For Rio Verde Vista III, Lots 115-160 (hereafter referred to as the "First Amendment") was recorded in Docket 10213, commencing at Page 486, in the office of the Pima County Recorder, Pima County, Arizona.

C. On February 23, 2001, a Second Amendment to Declaration of Protective Covenants For Rio Verde Vista III, Lots 115-160 (hereafter referred to as the "Second Amendment") was recorded in Docket 11492, commencing at Page 0168, in the office of the Pima County Recorder, Pima County, Arizona.

D. On March 6, 2002, a Third Amendment to Declaration of Protective Covenants For Rio Verde Vista III, Lots 115-160 (hereafter referred to as the "Third Amendment") was recorded in Docket 11750, commencing at Page 1350, in the office of the Pima County Recorder, Pima County, Arizona.

E. Article IV, Paragraph 2. of the Original Declaration provides as follows:

"Approving Agent shall have the right, from time to time, to make any modifications or amendments it desires to the provisions, conditions, covenants, restrictions and reservations herein contained. Any such modification or amendment by the Approving Agent shall be effective upon the recording in the office of the Pima County Recorder, Pima County, Arizona, of an Amendment to this Declaration."

F. Approving Agent desires to amend and restate the Original Declaration, as amended, as set forth below.

NOW, THEREFORE, Approving Agent hereby amends the Original Declaration, First Amendment, Second Amendment and Third Amendment by revoking same in their entirety, and declares that this Fourth Amendment and Restatement of the Declaration of Covenants, Conditions

and Restrictions of Rio Verde Vista III, Lots 115 through 160 is substituted therefor, and further declare that the "Property", as hereafter defined, 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 and 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 therein; and shall inure to the benefit of, be binding upon, and enforceable by all Owners (hereafter defined), the Association (hereafter defined), and their successors in interest.

ARTICLE I

DEFINITIONS

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

Section 1.1 "Articles" shall mean the Articles of Incorporation of the Association (hereafter defined) 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 RIVER GATE ESTATES HOMEOWNERS ASSOCIATION, an Arizona non-profit corporation, which shall be formed prior to the conveyance of the first Lot (hereafter defined), its successors and assigns.

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

Section 1.4 "By-Laws" shall mean the By-Laws of the Association, together with any amendments thereto.

Section 1.5 "Common Area A" means:

- A. The dedicated public right-of-way known as Squirrel Hill Place, Coyote Den Place, Owls Nest Place, Roadrunner Haven Place, Hawks Nest Place and Red Cardinal Place of Rio Verde Vista III, Lots 112-160, according to the Plat recorded in Book 46 of Maps and Plats at Page 30, records of Pima County, Arizona (hereafter referred to as the "Plat"), which right-of-way was abandoned by Pima County and conveyed to the Association by Quit-Claim Deed recorded on May 14, 2001, in Docket 11548, commencing on page 3929, a copy of which is attached hereto and made a part hereof as *Schedule "1"*. The right-of-way identified as "Squirrel Hill Place" on the Plat was changed to "River Gate Place", which name change was approved by the Pima County Board of Supervisors on January 15, 2002.
- B. The drainage facilities associated with the above referenced right-of-ways as shown on the Improvement Plans P12-88-031 delineated as "Public Street Dedicated to Pima County by this Plat" on the Plat.
- C. Those portions of Lots 115 and 160 conveyed to the Association by Quit-Claim Deed recorded in the Office of the Pima County Recorder, Pima County, Arizona, in Docket 11548, commencing at page 3929, a copy of which is attached hereto and made a part hereof as *Schedule "2"*.
- D. The entranceway facilities located at the entrance to the Subdivision from River Road including, without limitation, gates, landscaping and irrigation, lighting and electrical associated therewith.
- E. All other landscaping, irrigation, lighting and electrical located within the right-of-way of the Common Area A within the Subdivision.

Section 1.6 "Common Area B" means the permanent non-exclusive easement area and the perimeter screen walls constructed on portions Lots 115, 116, 117, 157, 158, 159 and 160 as set forth in Section 3.4.

Section 1.7 "Common Areas A and B" means collectively Common Area A and Common Area B.

Section 1.8 "Declarant" means collectively USH/JRC RIVER GATE LLC, an Arizona limited liability company (hereafter referred to as "USH/JRC"), and JOSEPH R. CESARE, a married

1
1
0
8
7

1
4
3
4

man as his sole and separate property (hereafter referred to as "Cesare"), their nominees, successors or assigns designated as a Declarant by either USH/JRC or Cesare while title holder of any Lot either as the original Owner or Owner by reacquisition. USH/JRC River Gate LLC is the successor to Title Security Agency of Arizona, Inc., an Arizona corporation, as Trustee under Trust No. T-212, the Grantor under the Original Declaration, First Amendment, Second Amendment and Third Amendment, as to Lots 115 through 134, 136 through 141 and 143 through 160. Cesare is the successor to Title Security Agency of Arizona, Inc., an Arizona corporation, as Trustee under Trust No. T-212, the Grantor under the Original Declaration, First Amendment, Second Amendment and Third Amendment, as to Lots 135 and 142.

Section 1.9 "Developer" means collectively USH/JRC and Cesare. The term "Developer" also includes purchasers of Lots if the purchase is in bulk for purposes of investment or later resale to the public or to other developers.

Section 1.10 "Dwelling Unit" or "Unit" shall mean any improvements placed within the confines of any Lot.

Section 1.11 "First Mortgage" 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.

11887
14001

Section 1.17 "Plat" shall mean the subdivision plat recorded in Book 46 of Maps and Plats at Page 30, in the office of the County Recorder of Pima County, Arizona, under the name "Rio Verde Vista III".

Section 1.18 "Property" or "Subdivision" shall mean all the real property identified in the Plat.

Section 1.19 "Restated Declaration" shall mean this instrument and any amendment hereto or restatement hereof.

Section 1.20 "Rules" shall mean the rules adopted by the Board pursuant to Article V. hereof and 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 2.1 Private Residential Purposes. Lots 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.

11437

Section 2.2 Minimum Square Footage of Dwelling Units. All Dwelling Units must contain at least 2,000 square feet of living area. The term "living area" as used in this Section 2.2 shall not include the carport/garage or any screened porch or storage areas.

Section 2.3 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 Restated 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 shall be delivered to Declarant if requested by Declarant.

Section 2.4 Antennas/Satellite Dishes. Except as may be otherwise provided by federal, state or local law, rule or regulation, no device(s) for the transmission or reception of radio, television and internet/intranet signals, including without limitation antennas, electronic towers, aerials and satellite dishes, shall be erected or maintained on the Property without prior written authorization of the Board or the Architectural Control Committee, which authorization may be subject to the requirement that such device(s) be screened from neighboring Lots or Subdivision streets. The location, design, type of materials and colors utilized for the screening shall be subject to the prior written approval of the Board or the Architectural Control Committee.

Section 2.5 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 Article IV 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 2.6 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. Each Owner who constructs a Dwelling Unit on a Lot shall install a mail box on the Lot at the time the Dwelling Unit is constructed.

Section 2.7 Carports. No carport of any type shall be erected, constructed or installed on any Lot.

Section 2.8 Vehicles/Garages. The use of all vehicles, including but not limited to trucks, automobiles, recreational vehicles, commercial vehicles, motor homes, campers, trailers, boats, bicycles and motorcycles (hereafter collectively referred to as "Vehicles") shall be subject to this Restated Declaration and the Rules, which may prohibit or limit the use thereof, provide parking regulations, or generally regulate same. Any and all items stored in a garage shall be stored so as to conceal same from view from neighboring Lots, or from the streets or public way, and further, 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 garage of each Dwelling Unit is for the sole purpose of parking Vehicles and storage as herein provided, and the enclosure of the garage for utilization as living area within a Dwelling Unit is prohibited. At no time shall there be any outside storage of Vehicles in stages of construction, reconstruction, modification or rebuilding of parts of Vehicles such as frames, bodies, engines or other parts or accessories. Further, the storage or parking of any Vehicle other than completely within Owner's garage is prohibited. Vehicles may be parked on the parking area of an Owner's Lot for short periods of time solely for purposes of loading or unloading.

111887
1439

prior written approval of the Board. The Board in its sole discretion shall have the right to determine whether the existence of any such item is a nuisance.

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 or animal diseases or noxious insects.

Section 2.13 Growth and Planting. The growth and planting in Common Areas A and B shall not be removed or destroyed unless written permission is first obtained from the Board or the Architectural Control Committee. Owners must obtain the Board's or the Architectural Control Committee's written approval before planting in Common Areas A and B. There shall be no landscaping, irrigation or vegetation within four (4') feet of any exterior wall or foundation of a residence built on a Lot. Only indigenous desert plantings with a drip-type minimal water use system shall be used between four (4') feet and eight (8') feet of any exterior wall or foundation of a residence built on a Lot.

Section 2.14 Unsightly Articles. No unsightly articles shall be permitted to remain so as to be visible from neighboring Lots 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 Article IV. 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 2.15 Trash Containers. No garbage or trash shall be placed or kept on the Property except in covered containers of a type, size and style which have been approved in writing

1
1
8
8
7

1
4
1

by the Board or the Architectural Control Committee or are required by governmental authorities. All rubbish, trash or garbage shall be removed from the Lots 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 Lots 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 2.16 Clothes Lines. No exterior clothes lines shall be erected or maintained, and there shall be no outside laundering or drying of clothes.

Section 2.17 Swimming Pool/Jacuzzi/Whirlpool. No Owner of a Lot shall construct a swimming pool, jacuzzi, whirlpool or other like improvement ("Subgrade Improvements") on a Lot without first making, or causing to be made, an independent determination that the soil conditions of the Lot are suitable for such improvements. Neither Declarant nor Developer have made any representations or warranties, express or implied, regarding the suitability of the soil upon any Lot for Subgrade Improvements and, therefore, Owner assumes all liability and risk and shall indemnify, defend and hold Declarant and Developer, jointly and severally, harmless for all liability and risk arising from, directly or indirectly, the construction of Subgrade Improvements on a Lot.

Section 2.18 Insurance Rates. Nothing shall be done or kept on any Lot or Common Areas A and B which will increase the rate of insurance on such property nor shall anything be done or kept on any Dwelling Unit or Common Areas A and B which will result in the cancellation of insurance on any such property or which would be in violation of any law.

1
1
0
8
7

1
4
4
2

1
7
3
3
0
1
5
4

Section 2.19 Drainage. Except as provided by Developer in the course of development of the Property, there shall be no interference with the established drainage pattern over any Property, including any private drainageways or easements within the Property, except by Developer 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 2.20 Temporary Structures, Mobile Homes, etc. No manufactured, prefabricated home or mobile home shall be permitted or placed upon any Lot. Except as hereafter provided, no structure of a temporary character including, without limitation, a house trailer, tent, shack, temporary garage, or outbuilding shall be placed or erected upon any Lot. No residence placed or erected upon any Lot shall be occupied in any manner at any time prior to its being fully completed, nor shall any residence when completed be in any manner occupied until it is in compliance 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/entity 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 or Developer.

11887

1443

11887

Section 2.21 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 Board or Architectural Control Committee.

Section 2.22 Exemption of Developer/Declarant. Nothing in this Restated Declaration shall limit the right of Developer or Declarant to complete excavation, grading and construction of improvements to any of the Property, to resubdivide any Lot or portion of the Property, 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 Restated 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. The rights of Declarant or Developer hereunder or elsewhere in this Restated Declaration may be assigned by Declarant or Developer.

ARTICLE III

EASEMENTS, COMMON WALLS

Section 3.1 Easement for Encroachments. Each Lot 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 Lot due to construction shall be permitted and that a valid easement for said encroachments and the maintenance thereof shall exist.

1
4
4
4

1
4
4
4

Section 3.2 Private Drainage Easements. Private drainage easements may have been 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 located 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 3.3 Common Areas A and B Blanket Utility Easements. In addition to those specific easements shown on the Plat, there is hereby created a blanket easement upon, across, over and under Common Areas A and B 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 Common Areas A and B and to affix and maintain wire, circuits and conduits on, in, and under Common Areas A and B. 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 constructed to authorize the placing or installing of sewers, electrical lines, water lines or other utilities under any permanent building structure constructed on the Property. The blanket easement

110007
1445
11/10/07

created by this Section shall also include an access easement for the delivery and collection of the U.S. Mail.

Section 3.4 Perimeter Screen Walls Easement. Perimeter screen walls have been constructed by Declarant on portions of Lots 115, 116, 117, 157, 158, 159 and 160 and, therefore, a permanent non-exclusive easement is hereby created over, upon, across and under said Lots for the continued placement of the perimeter screen walls where constructed on said Lots and the maintenance, repair and replacement thereof. The Association shall have the right, from time to time, to enter upon said Lots for the maintenance, repair and replacement of the perimeter screen walls. The perimeter screen walls have been constructed along (i) the south westerly boundary of Lot 117; (ii) the southerly boundary of Lot 116; (iii) the southerly and easterly boundary of Lot 115, including the arc at the southeast corner of said Lot 115; (iv) the southerly and easterly boundary of Lot 160, including the arc at the southwest corner of said Lot 160; (v) the southerly boundary of Lot 159; (vi) the southerly boundary of Lot 158; and (vii) the southerly and easterly boundary of Lot 157, however, they may not have been constructed exactly on the boundary lines of such Lots and the distance between the perimeter screen walls and the Lot boundary lines may vary. Notice is hereby given by Declarant that the south westerly boundary of Lot 117 may be modified subsequent to the recording of this Restated Declaration.

Section 3.5 Easement for Improvements. Developer may construct 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 Common Area A or adjacent Lots. Wherever such encroachments on Common Area A or the adjacent Lots should occur, the Owner of the Dwelling

11887
1446

Unit involved shall have, subject to the conditions hereinafter set forth, a perpetual permanent right for such improvements to encroach upon portions of Common Area A or the adjacent Lots.

In consideration thereof, such Owners agree to maintain and keep in repair any improvements encroaching upon Common Area A 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 repair or maintain any improvements encroaching upon Common Area A or an adjacent Lot, 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/her expense, any improvement encroaching upon Common Area A or the adjacent Lot, and to replace and rebuild in accordance with the Board's plans and design specifications, such improvement as to be within such Owner's Lot.

Section 3.6 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 3.7 Plat Notes. In addition to the easements set forth in this Article and the restrictions contained in this Restated Declaration, the Property and all Lots are subject to any restrictions and limitations set forth on the Plat, including, without limitation, any height restrictions, set back restrictions, erosion hazard setbacks, HDZ Natural areas and construction easement areas.

Section 3.8 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

1
8
7
1
4
4
7

the dividing line between separate Dwelling Units, shall constitute a common wall. With respect to any such wall, each of the adjoining Dwelling Unit Owners shall assume the burden 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 its use and enjoyment 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/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 shall, if required under local law, 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 the prior consent of the Board. In addition to meeting the other requirements of this Restated Declaration 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 of any common wall shall first obtain the written consent of the Board which shall consider, in its discretion, the adjoining Owner's preference concerning the proposed modification, extension or alteration of the common wall.

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 neither the Declarant nor the Developer shall be subject to this provision. The Declarant and/or Developer may modify a common wall without any consent or approval whatsoever.

ARTICLE IV

ARCHITECTURAL CONTROL COMMITTEE

Section 4.1 Composition of Committee. The Architectural Control Committee shall consist of three (3) or more persons appointed by the Board; provided, however, for so long as Declarant owns at least one (1) Lot, Declarant shall appoint the Architectural Control Committee without a meeting and without a vote of the Members, and during this period, no election of the Members of the Committee shall be held unless Declarant has in writing relinquished its rights of exclusive appointment. A majority of the Committee may designate a representative to act for it. In the event an Architectural Control Committee is not appointed by the Board, the Board shall act as the Architectural Control Committee, and all references in this Restated Declaration to the Architectural Control Committee shall mean the Board.

11887
1449

Section 4.2 Review by Committee. No structure, improvement, or any attachment to an existing structure shall be made or constructed upon the Property (except by the Association upon Common Areas A and B), and no alteration of the exterior of a structure or improvement shall be made, and no change in the final grade, nor the installation of any landscaping to any part of the Property (except by the Association upon the Common Area and except by Owner's within the Owner's enclosed rear yards provided they do not overhang any yard walls of adjoining Lots, shall be performed, unless complete plans and specifications conforming with all applicable building codes and regulations, including a construction schedule therefor, 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 attachments, improvements, construction, landscaping, and alterations to structures on lands located within the Property (collectively referred to herein as "Architectural Improvements") conform to and harmonize with the existing surroundings and structures. Decisions of the Architectural Control Committee are binding and conclusive.

Section 4.3 Procedures. The Owner shall submit two (2) sets of 24"x30" plans and specifications, including the plot plan, to Declarant for approval. The Architectural Control Committee shall, in writing, approve or disapprove all plans within fifteen (15) days after submission of same by an Owner to Developer and the 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 plans and specifications have been submitted to it, approval shall be deemed denied, except that the party submitting the plans may resubmit the plans for a decision and if no response is given for a period of fifteen (15) days after a written request by certified mail for a decision, approval shall be deemed given.

Typed

36
1414

constructed for the Subdivision. The location and width of driveways must be shown on the plans and specifications and driveways must be surfaced with a minimum of 4" concrete, colored concrete or exposed aggregate or as otherwise approved by the Architectural Control Committee.

- M. Electric wire shall be run to the mail box location to supply power for a mail box standard. All mail boxes and mail box standards and house numbers shall be of uniform shape, size and designed as provided for in Paragraph 2.6. The mail box, mail box standard and house numbers shall be purchased at the closing of each Lot from the Declarant or Developer or their designated representative.
- N. Heating and cooling equipment shall not be located on the roof or exterior walls and shall be concealed so as not to be seen beyond the property line of the Lot.
- O. All trash and other debris must be contained and disposed of properly during construction.
- P. Temporary toilet facilities must be provided on the building site during construction.

Section 4.5 Color; Building Materials. No color schemes, materials, composition or products, whether in original construction or in later changes, shall be used or permitted without the prior written approval of the Architectural Control Committee.

Section 4.6 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 act for it, in which case the decision of the representative shall control.

Section 4.7 Liability. The Architectural Control Committee and the members thereof shall not be liable for 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, or to any Owner regarding any improvements constructed as a result of the plans and specifications approved by the Architectural Control Committee, including, without limitation, the quality of materials and construction, the location of the

11887
1452
10-2-2011

improvements on a Lot, and whether said improvements comply with all applicable building codes and regulations or this Declaration.

Section 4.8 Variance. The Architectural Control Committee may grant reasonable variances or adjustments from any conditions and restrictions imposed by this Article or Article II 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 II hereof. Such variances or adjustments shall be in writing, shall be granted only in case the granting thereof shall not be materially detrimental or injurious to the Property, shall be subject to conformance with applicable building codes and regulations, and shall not militate against the general intent and purpose hereof.

Section 4.9 Nonconforming Architectural Improvements. In the event that the Architectural Improvements do not, upon the proposed date set forth in the construction schedule, conform to the plans submitted to and approved by the Architectural Control Committee, the Architectural Control Committee shall have the right but not the obligation to 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 the Owner shall be entitled to a hearing before the Architectural Control Committee upon written request by the Owner.

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 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

1115 110 1

1115 110 1

plans submitted to and approved by the Architectural Control Committee and/or initiate such legal proceedings as may be deemed appropriate by the Architectural Control Committee.

All costs incurred by the Association in the course of the Architectural Control Committee's efforts to bring nonconforming Architectural Improvements into conformity with the approved plans as provided above, including costs of labor, materials and all associated administrative costs, including attorneys' fees, 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 in Article IX hereof.

Section 4.10 Broad Discretion of Architectural Control Committee. In reviewing plans for alterations, modifications, additions or other changes to a 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 the Property. 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 or inappropriate 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 alteration or modification to be in contrast to or out of harmony with the style of existing structures, or if the physical views of the Property 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.

11887

1414

10888

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, within its own discretion, the Architectural Control Committee may, 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 4.11 Fees. The Board 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. Initially, and until changed by the Board, the processing fee shall be \$250.00, payable at the time the plans and specifications are submitted for review.

ARTICLE V ASSOCIATION

Section 5.1 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 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 the membership to the new Owner.

Section 5.2 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. Five (5) 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 the 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 Restated Declaration should succeed to the interest of the Declarant by virtue of such 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 5.3 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 Common Areas A and

11887
1456

B, the assessment of expenses, payment of losses, disposition of casualty insurance proceeds, and other matters as provided in this Restated 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 Restated Declaration, the Articles and the By-Laws. The Association shall, so long as this Restated Declaration is in full force and effect, take all necessary and proper action to maintain its status as an Arizona non-profit corporation.

Section 5.4 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 Common Areas A and B, including:

- A. Maintaining, operating, and rebuilding improvements thereon.
- B. Maintaining and landscaping property owned or controlled by the Association.
- C. Operating, maintaining, rebuilding, and insuring improvements originally constructed by Declarant or Developer or later constructed by the Association on or about Common Areas A and B.
- D. Paying real estate taxes, assessments, and other charges on Common Area A.
- 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.

11887

14117

11887

- 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 Common Areas A and B.
- H. Maintaining workmen's compensation insurance for the employees of the Association, if any.
- 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 Common Areas A and B.
- 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 Property as a first-class, single family residential development.
- M. Granting licenses, easements, and other agreements for the use of Common Areas A and B.
- N. Repairing, replacing and maintaining any security system which is installed for the benefit of the Property, excluding any individual security system which services a particular Lot or Dwelling Unit.
- O. Maintaining any personal property owned by the Association.
- P. Such other matters as are provided for in this Restated Declaration, the Articles of Incorporation, and the By-Laws.

Section 5.5 Association Meetings. 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 Restated Declaration, which Restated Declaration shall control in the event of conflict.

11/09/2004 10:00 AM

Section 5.6 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 in the By-Laws, except that so long as Declarant owns a single Lot Declarant reserves the exclusive right to appoint the officers and directors of the Association and may do so without calling a meeting of Members. Declarant may at any time in writing waive such reserved right of appointment.

Section 5.7 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 Developer or Declarant, during the immediately preceding calendar year, including the maintenance of any streets, roads, sidewalks, street signs, perimeter screen walls, private drainageways, landscaping, security system, or other improvements which are the responsibility of the Association, as set forth herein, originally constructed by Developer or 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 31st of the preceding year including the maintenance of any streets, roads, sidewalks, street signs, perimeter screen walls, fences, private drainageways, landscaping or any other improvements, to the extent applicable,

originally constructed by Developer or Declarant which are the responsibility of the Association, as set forth herein, 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.

Any valid and timely written claims or disputes presented to the Declarant shall be resolved promptly between the Members and Declarant.

Section 5.8 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 Restated 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. 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 Restated 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 Restated

Declaration, or the Articles or By-Laws, the provisions of the Rules shall be deemed to be superseded by the provisions of this Restated Declaration, the Articles or By-Laws, as applicable, to the extent of any such conflict.

Section 5.9 Non-Liability of Officials and Indemnification. To the fullest extent permitted by law, neither Declarant, the Board, nor any committee 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 include 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.

11887
1461
16887

officer or member of a committee or serving in such other specified capacity at the time such expenses are incurred.

Section 5.10 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; 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 5.11 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 Restated 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 in reasonable detail all expenses incurred and funds accumulated. Such records, books, and accounts shall be kept for a period of at least two (2) years after preparation.

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 Common Areas A and B improvements including, but not limited to, streets, roads, sidewalks, street signs, perimeter screen walls, private drainageways, landscaping, security system, and any other improvements constructed on Common Areas A and B. In this regard, the Association shall have the right through its agents and employees to enter upon an Owner's Lot to perform any maintenance, repair and upkeep of Common Areas A and B.

C. Each Owner shall be responsible for the maintenance and repair, including replacement of light bulbs, of all exterior lighting fixtures located on the Owner's Dwelling Unit, or in Common Areas A and B, provided such lighting in Common Areas A and B is metered to the Owner's Dwelling Unit.

**ARTICLE VII
OWNERSHIP, USE AND MANAGEMENT
OF THE COMMON AREAS A AND B**

Section 7.1 Owner's Easements of Enjoyment. Every Owner shall have a right and easement of enjoyment in and to Common Area A which shall be appurtenant to and shall pass with title to every Lot subject to the provisions hereof.

Section 7.2 Conditional Use of Common Area A. Each Owner, his/her family, licensees, invitees and tenants or lessees, or contract purchasers of a Lot shall be entitled to the enjoyment and use Common Area A subject to:

11807
1464

11807
1464

A. The provisions of the Articles, By-Laws, this Restated Declaration, and the Rules. Each Owner, invitee, licensee and tenant agrees that in using Common Area A he/she will comply with the provisions of such Articles, By-Laws, this Restated Declaration, and the Rules.

B. The right of the Association to take such steps as are reasonably necessary to protect Common Area A against foreclosure, trustee sale or similar proceedings.

C. The right of the Association, in connection with any adopted Rules, to enforce same with respect to the use of Common Area A, including specific provisions relating to the parking of Vehicles.

Section 7.3 Use of Common Area B. Common Area B, consisting of perimeter screen walls and a non-exclusive easement for the placement of such perimeter screen walls, has been established for the purpose of protecting the Subdivision from sound and visual affects of vehicular traffic along River Road. No Owner, except in an Owner's capacity as an officer or representative of the Association, shall have the right to enter upon another Owner's Lot which has constructed thereon a perimeter screen wall without permission of the Owner of the Lot which has a perimeter screen wall constructed thereon. In the event it is determined that an Owner's Lot and Dwelling Unit valuation is increased and therefore the real property taxes for such Lot are also increased due to a portion of the perimeter screen wall being on such Owner's Lot, it shall be such Owner's responsibility to pay such increase unless the Association is able to have Common Area B separately taxed and billed to the Association, in which event the Association shall be responsible for such taxes. In the event an Owner's Lot and Dwelling Unit valuation is increased due to the perimeter screen wall being construction on such Owner's Lot, the Association shall due all things reasonably necessary to have Common Area B separately taxes and billed to the Association.

1
1
B
E
E
7

1
4
0
5

Section 7.4 Delegation of Use. Any Owner may delegate his/her right of enjoyment in Common Areas A and B to the members of his/her family, his/her 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 the Owner of his/her obligations and responsibilities as a Member under the By-Laws, Rules and this Restated Declaration.

Section 7.5 Damage or Destruction of Property. In the event any portion of Common Areas A and B are 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 good workmanlike manner in substantial conformance with the original plans and specifications. 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, 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 7.6 Restriction on Conveyance of Common Areas A and B. Common Areas A and B 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 ($2/3^{rd}$) 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

1187
1466

way, in, on, over, or under Common Areas A and B for the purpose of constructing, erecting, operating or maintaining thereon, therein and thereunder (a) roads, streets, walks, pathways, perimeter screen walls and driveways; (b) 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; (c) sewers, storm drains and pipes, drainage easements, water systems, water, heating and gas lines or pipes; and (d) such improvements as may be permitted under of this Restated Declaration, and (11) Declarant shall have the right during the pendency of Class B membership to grant reasonable easements over, across, or under Common Areas A and B consistent with the purposes hereof. The provisions of this Section 7.6 is not intended to restrict the conveyance of a Lot burdened by a perimeter screen wall; provided, however, any such conveyance shall be subject to the permanent non-exclusive easement for such perimeter wall created in Section 3.4 above.

Section 7.7 Restriction on Further Subdividing or Re-subdividing. Declarant shall not cause any further subdividing or re-subdividing of the Property without furnishing prior written notice to the Owners and obtaining the prior written approval of Pima County.

ARTICLE VIII

COVENANTS FOR MAINTENANCE ASSESSMENTS

Section 8.1 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 is deemed to covenant and agree to pay to the Association: (i) annual assessments or charges, and (ii) special assessments for capital 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 continuing lien 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 8.2 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 Common Areas A and B and for all purposes set forth in the Articles, By-Laws and this Restated Declaration. The Board of Directors of the Association shall provide that Association dues, charges or assessments shall include an adequate reserve fund for maintenance, repairs and replacement of those elements of Common Areas A and B owned by the Association that must be maintained or replaced on a periodic basis.

Section 8.3 Maximum Annual Assessment.

A. Until January 1 of the year immediately following the conveyance of the first Lot by Declarant to an Owner, the estimated annual assessment shall be **One Thousand Two Hundred and No/100 (\$1,200.00) 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 5.03 B. hereof, the Board of Directors shall 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.

110807
1469
110807

B. Subject to Section 8.03 C. hereof, the Board of Directors shall not increase the annual assessment by an amount greater than ten percent (10%) of the amount of the preceding annual assessment.

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 have the assent of two-thirds (2/3rd) of the votes of each Class of Members who are voting in person or by proxy at a meeting duly called for this purpose.

D. At the time of conveyance of a Lot by Declarant to an Owner, the Owner thereof shall pay the equivalent of two months' assessments applicable to that Lot into the working capital fund of the Association. The working capital fund shall be used by the Association to meet unforeseen expenditures, or to acquire additional equipment or services deemed necessary or desirable by the Board. Amounts paid into the working capital fund are not to be considered as advance payment of assessments.

Section 8.4 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 for the purpose of defraying, in whole or in part, the cost of any construction, reconstruction, repair or replacement of a capital improvement of Common Areas A and B, including fixtures and personal property related thereto, provided that any such assessment shall have the assent of two-thirds (2/3rd) 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 8.5 Notice and Quorum for an Action Authorized Under Section 8.3 and Section 8.4. Written notice of any meeting called for the purpose of taking action authorized under Section 8.3 and Section 8.4 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 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 8.6 Uniform Rate of Assessment. Both annual and special assessments must be fixed at a uniform rate for all Lots. Notwithstanding the preceding sentence, 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 (i) such notice must be given within ninety (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 Restated Declaration (ii) 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 8.7 Date of Commencement of Annual Assessments; Payment 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. The annual assessments shall be paid either monthly, quarterly, semi-annually or annually, as determined from time to time by the Board. Initially, and until changed by the Board, the annual assessments shall be paid quarterly. 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 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 8.8 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 twelve percent (12%) 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 Restated Declaration, or for any other purpose in connection with the breach of this Restated 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 the 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 incurred by the Association in such amount as the Court may adjudge.

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. The 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

11057

1472

11057

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 Restated Declaration; and
- (5) A statement that a lien is claimed against the Lot in an amount equal to the amount stated;
- (6) A statement that the claim of lien will also extend to all assessments which become 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, and costs of 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 the 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.

1
1
8
8
7
1
4
7
3

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 they 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 8.9 No Exemption of Owner. No Owner is exempt from liability for payment of assessments by waiver of the use or enjoyment of Common Areas A and B, 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 to the lien of any First Mortgage. Sale or transfer of any Lot shall not affect the assessment lien. However, the sale or transfer of any Lot pursuant to foreclosure of a First Mortgage or a trustee's sale pursuant to power of sale or any proceeding in lieu thereof, including deed in lieu of foreclosure, or cancellation or forfeiture of an executory land sales contract, shall extinguish the lien of such assessment as to payments which become due prior to 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 assessment charges, including interest, late charges, costs, and reasonable attorneys' fees, which are extinguished as provided herein, may

1
1
0
8
0
8
7

1
4
7
4

1
4
7
4

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 assessment 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.

ARTICLE IX
INSURANCE

Section 9.1 Insurance Requirements. The Association may, at its discretion, 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 Common Areas A and B 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.

B. Insurance of Common Areas A and B. Fire and other hazard insurance covering improvements constructed on Common Areas A and B.

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

1
1
8
8
7

1
4
7
5

1
4
7
5

ARTICLE X
DISPUTE RESOLUTION

Section 10.1 Consensus for Association Action.

A. Except as provided in this Article, the Association may not commence a legal proceeding or an action without the approval of at least two-thirds ($2/3^{rds}$) of the votes of the Members eligible to vote. A Member representing Lots owned by Persons other than the Member casting the votes shall not vote in favor of bringing or prosecuting any such proceedings unless authorized to do so by a vote of Owners of two-thirds ($2/3^{rds}$) of the total number of Lots represented by the Member casting the votes. This Article shall not apply, however, to: (i) actions brought by the Association to enforce this Restated Declaration, the Articles, the By-Laws or the Rules (the "Governing Documents") (including, without limitation, the foreclosure of liens); (ii) the imposition and collection of assessments; (iii) proceedings involving challenges to ad valorem taxation; or (iv) counterclaims brought by the Association in proceedings instituted against it.

B. Prior to the Association or any Member commencing any proceeding to which Declarant or Developer is a party, including, without limitation, an alleged defect of any improvement, Declarant and/or Developer shall have the right to be heard by the Members, or the particular Member, and to access, inspect, correct the condition of, or redesign any portion of any improvement as to which a defect is alleged or otherwise correct the alleged dispute.

Section 10.2 Alternative Method for Resolving Disputes. Declarant, its officers, directors, employees and agents; the Association, its officers, directors and committee members; all Persons subject to this Restated Declaration, including all Members of the Association; any Developer, its officers, directors, employees and agents; and any Person not otherwise subject to this Restated Declaration but agrees to submit to this Article, (each such entity being referred to as a

1
1
8
8
7

1
4
7
7

1
8
8
7

Section 10.4 Mandatory Procedures.

A. Notice. Any Bound Party having a Claim ("Claimant") against any other Bound Party ("Respondent") (the Claimant and the Respondent referred to herein being individually, as a "Party" or, collectively, as the "Parties") shall notify each Respondent in writing (the "Notice"), stating plainly and concisely:

- (1) The nature of the Claim, including the Persons involved and Respondent's role in the Claim.
- (2) The legal basis of the Claim (*i.e.*, the specific authority out of which the Claim arises).
- (3) The proposed remedy.
- (4) The fact that Claimant will meet with Respondent to discuss in good faith ways to resolve the Claim.

B. Negotiation and Mediation. The Parties shall make every reasonable effort to meet in person and confer for the purpose of resolving the Claim by good faith negotiation. If requested in writing, accompanied by a copy of the Notice, the Board may appoint a representative to assist the Parties in negotiations.

If the Parties do not resolve the Claim within thirty (30) days after the date of the Notice (or within such other period as may be agreed upon by the Parties) ("Termination of Negotiations"), Claimant shall have thirty (30) days to submit the Claim to mediation under the auspices of the American Arbitration Association ("AAA") in accordance with the AAA's Commercial or Construction Industry Mediation Rules, as appropriate.

If Claimant does not submit the Claim to mediation within such time, or does not appear for mediation, Claimant shall be deemed to have waived the Claim, and Respondent shall be released and discharged from any and all liability to Claimant on account of such Claim; provided,

11000
1479

11000
1479

nothing herein shall release or discharge Respondent from any liability to any Person other than the Claimant.

Any settlement of the Claim through mediation shall be documented in writing by the mediator and signed by the Parties. If the Parties do not settle the Claim within thirty (30) days after submission of the matter to the mediation, or within such other time as determined by the mediator or agreed to by the Parties, the mediator shall, issue a notice of termination of the mediation proceedings ("Termination of Mediation"). The Termination of Mediation notice shall set forth that the Parties are at an impasse and the date that mediation was terminated.

Each Party shall bear its own costs of the mediation, including attorneys' fees, and each Party shall share equally all charges rendered by the mediator. If the Parties agree to a resolution of any Claim through negotiation or mediation in accordance with Section 10.4 and any Party thereafter fails to abide by the terms of such agreement, then any other Party may file suit or initiate arbitration proceedings to enforce such agreement without the need to again comply with the procedures set forth in Section 10.4. In such event the Party taking action to enforce the agreement shall be entitled to recover from the non-complying Party (or if more than one non-complying Party, from all such Parties pro rata) all costs incurred in enforcing such agreement, including without limitation, attorneys' fees and court costs.

C. Binding Arbitration. Upon Termination of Mediation, Claimant shall thereafter be entitled to initiate final, binding arbitration of the Claim under the auspices of the AAA in accordance with the AAA's Commercial or Construction Industry Arbitration Rules, as appropriate. Such claims shall not be decided by or in a court of law. Any judgment upon the award rendered by the arbitrator may be entered in and enforced by any court having jurisdiction over such Claim. If the claimed amount exceeds \$250,000.00, the dispute shall be heard and determined by three arbitrators.

118871450

Otherwise; unless mutually agreed to by the Parties, there shall be one arbitrator. Arbitrators shall have expertise in the area(s) of dispute, which may include legal expertise if legal issues are involved.

Each Party shall bear its own costs and expenses and an equal share of the arbitrator's and administrative fees of arbitration. Notwithstanding the foregoing, if a Party unsuccessfully contests the validity or scope of arbitration in a court of law, the non-contesting party shall be awarded reasonable attorneys' fees and expenses incurred in defending such contest. All decisions respecting the arbitrability of any Claim shall be decided by the arbitrator(s).

The award of the arbitrator(s) shall be accompanied by detailed written findings of fact and conclusions of law. Except as may be required by law or for confirmation of an award, neither a party nor an arbitrator may disclose the existence, content, or results of any arbitration hereunder without the prior written consent of both parties.

Section 10.5 Amendment of Article. Without the express prior written consent of Declarant, this Article may not be amended for a period of twenty (20) years from the effective date of this Restated Declaration.

ARTICLE XI

GENERAL PROVISIONS

Section 11.1 Term. The covenants, conditions and restrictions of this Restated Declaration shall remain in full force and effect for a period of twenty-five (25) years from the date this Restated Declaration is recorded. Thereafter, they shall be deemed to have been renewed and automatically extended for successive periods of ten (10) years each, unless repealed by the written consent of at least seventy-five (75%) percent of the Owners. The effective date of a termination shall be the date the written instrument evidencing same is recorded in the office of the Pima County Recorder.

11887400

11887400

Section 11.3 Enforcement and Non-Waiver.

A. Enforcement. Subject to the provisions of Article X and except as otherwise may be 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 this Restated Declaration.

Further, the Association shall have the authority to bring an action at law or in equity to enforce any of the provisions of this Restated Declaration. Expenses of enforcement, including attorneys' fees and costs, shall be paid to the Association by the Owner against whom an 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 Restated Declaration and all expense incurred in connection therewith shall be paid to the Association by the Owner in violation. 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.

B. Violation of Law. Each and every provision of this Restated 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 this Restated Declaration 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.

111337
1483
111337

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 11.4 Construction.

A. Interpretation. The provisions of this Restated Declaration shall be liberally construed to effectuate the purpose of creating a uniform plan for the development and operation of the Property. This Restated 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 Restated 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 the 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 Restated 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 11.5 Delivery of Notices and Documents. Any written notice or other documents relating to or required by this Restated 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: 4855 East Broadway
Suite 103
Tucson, Arizona 85711

If to an Owner: To the address of the Owner within the Property

If to the Declarant: 4855 East Broadway
Suite 103
Tucson, Arizona 85711

with a copy to the Association and if by mail with a copy to P.O. Box 12863, Tucson, Arizona, 85732

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 11.6 Resale of Lot by Owner. Each Owner (excluding Declarant) shall notify the Association, not less than ten (10) business days prior to the closing of any sale of such Owner's Lot, of the name and address of purchaser thereof, as well as the scheduled closing date for the sale.

Section 11.7 Binding Effect. By acceptance of a deed or acquiring any ownership interest in any of the Property included within this Restated Declaration, each Person, 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 Restated Declaration and any amendments hereto. In addition, each such Person by so doing thereby

acknowledges that this Restated 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 Restated Declaration shall be mutually beneficial, prohibitive and enforceable by the various subsequent and future owners.

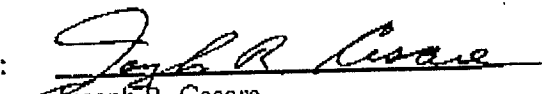
Section 11.7 Annexation. Additional property and common area may be annexed by the Declarant to the Property with the consent of two-thirds (2/3rd) of each Class of Members and the recordation of a Declaration of Annexation.

IN WITNESS WHEREOF, the undersigned have executed this Restated Declaration the day, month and year set forth beneath their signatures below.

DECLARANT:

USH/JRC RIVER GATE LLC, an
Arizona limited liability company

By:

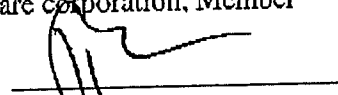

Joseph R. Cesare
Member

Date:

16 April 2002

By: U.S. HOME CORPORATION, a
Delaware corporation, Member

By:


David J. Cada, President
Mountain Operations Land
Division

Date:

4/16.02


JOSEPH R. CESARE

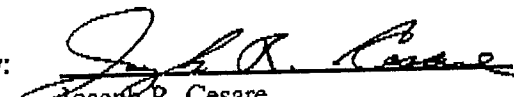
Date:

16 April 2002

APPROVING AGENT:

BROADWAY MANAGEMENT COMPANY,
an Arizona corporation

By:

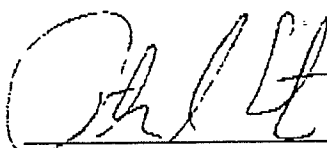

Joseph R. Cesare
President

Date:

16 April 2002

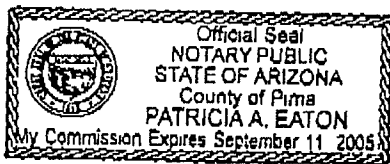
STATE OF ARIZONA)
) ss.
COUNTY OF PIMA)

SUBSCRIBED AND SWORN to before me this 16 day of April, 2002, by JOSEPH R. CESARE, individually and acting in his capacity as a Member of USH/JRC River Gate LLC, an Arizona limited liability company.



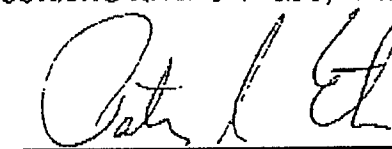
Notary Public

(Seal)



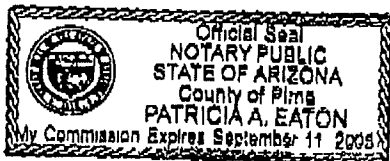
STATE OF ARIZONA)
) ss.
COUNTY OF PIMA)

SUBSCRIBED AND SWORN to before me this 16 day of April, 2002, by DAVID CADA, as President of the Mountain Operations Land Division of U.S. Home Corporation, a Delaware corporation, acting in its capacity as a Member of USH/JRC River Gate LLC, an Arizona limited liability company.



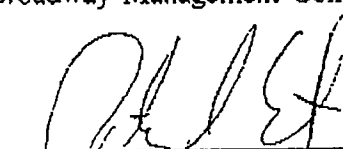
Notary Public

(Seal)



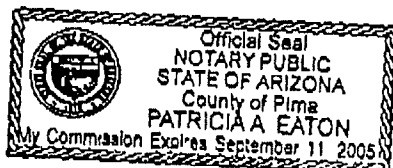
STATE OF ARIZONA)
) ss.
COUNTY OF PIMA)

SUBSCRIBED AND SWORN to before me this 16 day of April, 2002, by JOSEPH R. CESARE, acting in his capacity as President of Broadway Management Company, an Arizona corporation, on behalf of said Corporation.

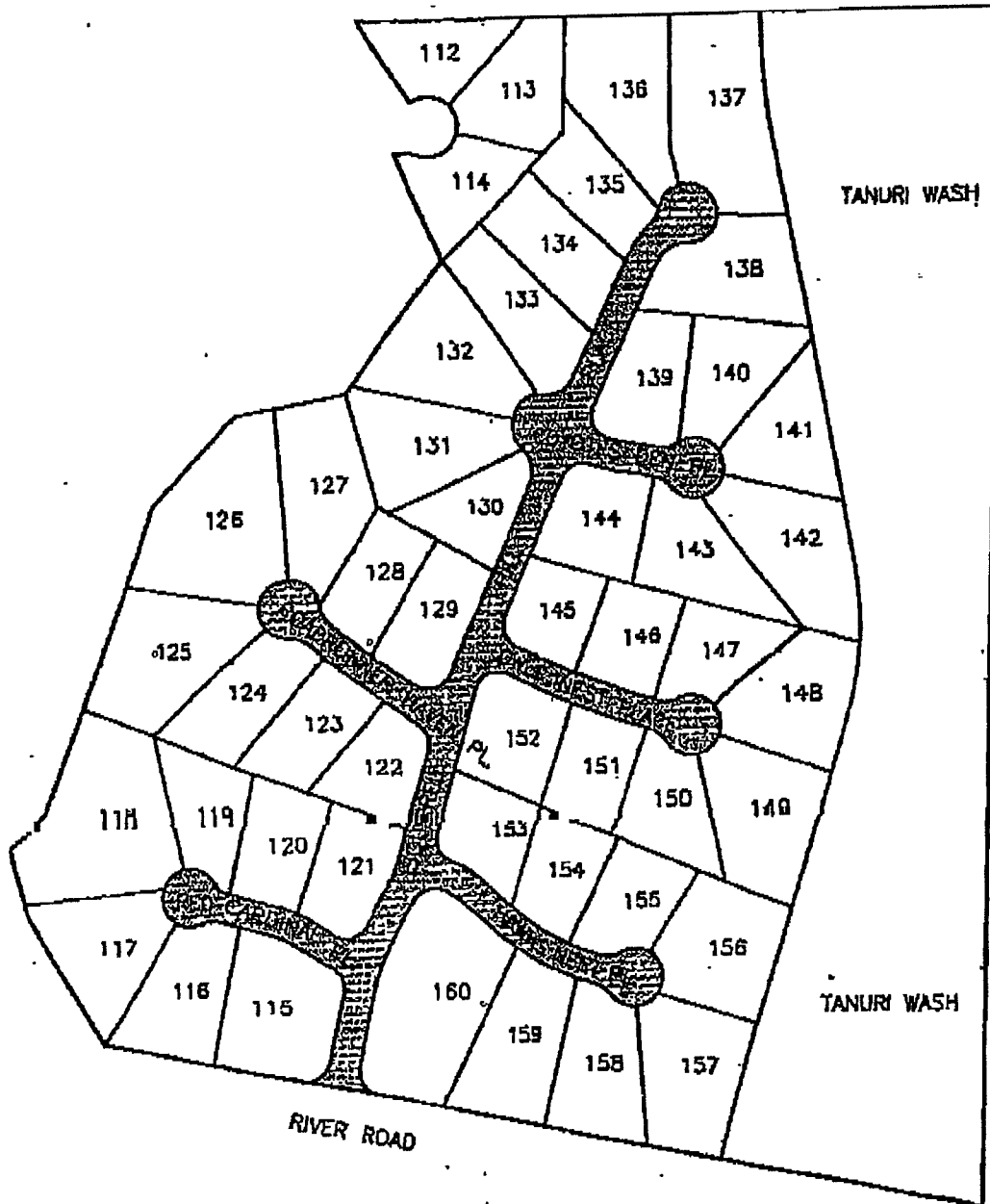


Notary Public

(Seal)



11387
1487



111887
11499
MMLA



E:\88014-01\legal\c-ovabond.dwg

SCALE: 1"= 300'

AREA = N/A

DRAWN BY: MRF

DATE: OCT. 2000

EXHIBIT B

RIO VERDE VISTA III
BOOK 46, MAPS AND PLATS AT PAGE 30
RECORDS OF PIMA COUNTY, ARIZONA



MMLA

Professional Mapping & Land Use, Inc.

1000 West Valley Blvd., Suite 100, Tempe, AZ 85281

Phone: (480) 968-1111 Fax: (480) 968-1112