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**DECLARATION  
OF  
COVENANTS, CONDITIONS AND RESTRICTIONS  
OF  
PROMONTORY**

THIS DECLARATION made this 1st day of August, 1991, by FIDELITY NATIONAL TITLE AGENCY, INC., as Trustee under Trust No. 10405 and not in its corporate capacity, as bare legal title owner of all Lots and Common Area in PROMONTORY and SALIDA DEL SOL REAL ESTATE DEVELOPMENT LIMITED PARTNERSHIP, an Arizona limited partnership as sole owner of the beneficial interest in Trust No. 10405 ("Declarant").

**WITNESSETH:**

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

Lots 1 through 42 and Common Areas A, B, & C of PROMONTORY, a subdivision of Pima County, Arizona, according to the map of record in the Pima County Recorder's Office in Book 44 of Maps and Plats at page 60

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

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

NOW THEREFORE, Declarant hereby declares that the Property is and shall be held, conveyed, encumbered, leased and used subject to the following covenants, conditions, restrictions, uses, limitations, obligations, easements, equitable servitudes, charges and liens, set forth herein which shall run with the Property; shall be binding upon all persons having or acquiring any interests in the Property or any part thereof; shall inure to the benefit of and be binding upon Declarant, its successors in interest, each Owner and his/her respective successors in interest, and may be enforced by Declarant or its successors in interest, by any Owner or his/her successors in interest or by any entity having an interest in their enforcement.

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

## ARTICLE I DEFINITIONS

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

Section 1.01 "Annexable Property" shall mean that property described on Exhibit "A", attached hereto, all references to lots, dwelling units, units, common area, common property and mortgages shall be read to be inclusive of those portions of Annexable Property that have been annexed and exclusive of those that have not been annexed.

Section 1.02 "Articles" shall mean the Articles of Incorporation of the Association and amendments thereto which are or shall be filed in the Office of the Arizona Corporation Commission.

Section 1.03 "Association" shall mean and refer to the PROMONTORY HOMEOWNERS ASSOCIATION, INC., an Arizona non-profit corporation, which shall be formed prior to the conveyance of the first Dwelling Unit, its successors and assigns.

Section 1.04 "Board" shall mean the Board of Directors of the Association.

Section 1.05 "By-Laws" shall mean the By-Laws of the Association, together with any amendments thereto.

Section 1.06 "Common Area(s)" or "Common Property" shall mean all real property designated as Common Area on the Plat as defined in Section 1.16 hereof, whether improved or unimproved, owned by the Association for the common use and enjoyment of the Owners. The Common Area includes, but is not limited to, natural open space, revegetated open space, and drainage facilities. Common Property shall also include any real or personal property now or hereinafter owned by or leased by the Association.

Section 1.07 "Declarant" means FIDELITY NATIONAL TITLE AGENCY, INC., as Trustee under Trust No. 10405 and not in its corporate capacity, as bare legal title owner of all Lots and Common Area in PROMONTORY and SALIDA DEL SOL REAL ESTATE DEVELOPMENT LIMITED PARTNERSHIP, an Arizona limited partnership as sole owner of the beneficial interest in Trust No. 10405, but shall not include members of the public purchasing Lots.

Section 1.08 "Declaration" or "Restrictions" shall mean this instrument and any amendments thereto.

Section 1.09 "Developer" shall mean SALIDA DEL SOL REAL ESTATE LIMITED PARTNERSHIP, an Arizona limited partnership, and/or THE DOUCETTE GROUP, an Arizona corporation.

Section 1.10 "Dwelling Unit" or "Unit" shall mean the real property outlined on the Plat and encompassed within the boundary lines surrounding the numbered designation for that Lot as shown on the plat, together with any improvements placed within the confines of said boundary, including a garage or carport.

Section 1.11 "Lot" shall mean and refer to any numbered parcel of real property shown on the plat, together with the Dwelling Unit, if any, thereon.

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

Section 1.13 "Mortgage" shall mean any mortgage, deed of trust or other security instrument by which a Dwelling Unit or any part thereof is encumbered and the term "First Mortgagee" shall mean the holder of any mortgage under which the interest of any Owner of a Dwelling Unit is encumbered and which mortgage has first and paramount priority, subject only to the lien of general or ad valorem taxes and assessments. "Eligible Mortgage Holder" shall mean a holder of a first mortgage on a Dwelling Unit who has requested notice of certain matters in accordance with Section 8.11K.

Section 1.14 "Owner(s)" or "Homeowner(s)" shall mean and refer to (1) the record Owner, whether one or more persons or entities, of equitable or beneficial title in fee simple (or legal title if same has merged) of any Dwelling unit; (2) the purchaser of a Dwelling Unit under a recorded executory contract for the sale of real property. The foregoing does not include persons or entities who hold an interest in any Dwelling Unit merely as security for the performance of an obligation, or a lessee or tenant of an Owner as defined above, or a purchaser or vendee under any executory contract of sale which has not "closed" and/or been recorded in the Office of the County Recorder of Pima County, Arizona.

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

Section 1.16 "Plat" shall mean the subdivision plat covering the Property under the name, "PROMONTORY", Lots 1-42 and Common Areas A, B, & C, a subdivision of Pima County, Arizona, according to the map, recorded in Book 41 of Maps and Plats at Page 6 in the Office of the County Recorder of Pima County, Arizona, and further amendments thereto. The term PROMONTORY shall likewise mean the property covered by the Plat.

Section 1.17 "Property" or "Subdivision" shall mean all that real property identified in the Plat.

Section 1.18 "Rules" shall mean the rules adopted by the Board pursuant to the By-Laws.

**ARTICLE II**

**ANNEXABLE PROPERTY**

"Annexable Property", described on Exhibit "A", attached hereto and made a part hereof, may become irrevocably committed to PROMONTORY in a future Phase or Phases.

Phasing, or a Phase of the project, shall mean a defined portion or phase of the project, including Common Areas, as designated by Declarant.

Additional Phases shall be defined and designated by Declarant, in its sole discretion, recording a Declaration of Annexation in the Office of the Pima County Recorder, which Declaration shall set forth in the lots and Common Area to be incorporated in PROMONTORY.

Each Phase of the Annexable Property which is annexed by recordation of a Declaration of Annexation as provided above, shall not become irrevocably committed to PROMONTORY until the date on which the first lot within such Phase is conveyed to an Owner, other than Declarant; provided, however, that no conveyance of a Lot by Declarant to a grantee in connection with an assignment of Declarant's rights under the Declaration or a sale-leaseback of model homes shall cause the Phase in which such Lot is located to become irrevocably committed to PROMONTORY.

The Declarant shall have the right to amend any Declaration of Annexation recorded to change the description of the phases within the property being annexed; provided, however, that the Declarant may not change any portion of the Annexable Property which has already become irrevocably committed to PROMONTORY. At any time prior to five (5) years following the conveyance of the first Lot to an Owner other than Declarant, the declarant may withdraw from PROMONTORY any part of the Annexable Property which has not been irrevocably committed to PROMONTORY. Any such withdrawal of property from PROMONTORY shall be accomplished by the recording with the County Recorder of Pima County, Arizona, of a Declaration of Withdrawal describing the portion of the property being withdrawn. Upon the recording of any such Declaration of Withdrawal, the portion of the Annexable Property described in the Declaration of Withdrawal shall no longer be part of PROMONTORY or subject to the Declaration.

All improvements to be constructed on any portion of the Annexable Property annexed into PROMONTORY shall be substantially completed prior to the time at which such portion of the Annexable Property is irrevocably committed to PROMONTORY in accordance with the provisions of this Declaration. All taxes and other assessments relating to all or any portion of the Annexable Property which are irrevocably committed to PROMONTORY in accordance with this Declaration shall be the responsibility of and shall be paid for by Declarant.

### ARTICLE III

#### USES AND RESTRICTIONS

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

**Section 3.01 Private Residential Purposes.** Dwelling Units shall be occupied and used by the respective Owners solely for private residential use of the Homeowner, 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 Developer may maintain sales and construction office and sales models on the Property.

**Section 3.02 Renting.** Each owner shall have the right to lease or rent his/her Dwelling Unit; provided, however, that any lease agreement, including any agreement to lease the Unit on a month-to-month basis, must be in writing and must provide that the failure of any lessee or tenant to comply with the Rules, By-Laws, Articles and provisions of this Declaration shall be a default under the lease.

**Section 3.03 Antennas and Exterior Additions.** No exterior antennas or other devices for the transmission or reception of radio and television signals shall be erected or maintained on the Property without prior written authorization of the Board. The Developer shall determine standards for exterior television antennas. Further, no exterior devices, additions, structures or accessory buildings other than initially installed by Developer shall be constructed on the exterior of a Dwelling Unit (including the roof) without the written authorization of the Board.

**Section 3.04 Solar Devices.** No solar devices, of any type shall be erected or installed without the approval of the Architectural Committee as set forth in Section 4.07 herein.

**Section 3.05 Insurance Rates.** Nothing shall be done or kept on any Lot or Common Area which will increase the rate of insurance on such property nor shall anything be done or kept on any Dwelling Unit or Common Area which will result in the cancellation of insurance on any such property or which would be in violation of any law.

**Section 3.06 Signs.** No signs of any kind shall be displayed which are visible from neighboring property without the approval of the Board, except:

- A. Such signs as may be required by legal proceedings; and,
- B. Such signs as may be approved by the Board indicating a Dwelling Unit is for sale or lease.

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

**Section 3.07 Animals.** No animals of any kind shall be raised, bred, or kept on the Property, except that a reasonable number of generally recognized house or yard pets may be kept provided that they are not kept, bred or maintained for any commercial purpose. No animals shall be allowed to become a nuisance. A "reasonable number" as used in this Section shall ordinarily mean no more than two pets per Dwelling Unit; provided, however, the Board may determine that a reasonable number in any instance may be more or less. Upon the written request of the Owner, the Board shall conclusively determine, in its sole and absolute discretion, whether, for the purposes of this Section, a particular animal is a generally recognized house or yard pet or a nuisance, or whether the number of animals is reasonable.

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**Section 3.08 Nuisances.** No rubbish or debris of any kind shall be placed or permitted to accumulate upon any property within the subdivision, and no odors shall be permitted to arise therefrom so as to render any such property or any portion thereof unsanitary, unsightly, offensive or detrimental to any other property in the vicinity thereof or to its occupants. Without limiting the generality of any of the foregoing provisions, no exterior speakers, horns, whistles, bells or other sound devices, except security purposes, shall be located, used or placed on any such property without the prior written approval of the Board. The Board in its sole discretion shall have the right to determine the existence of any such nuisance. Declarant/Developer shall be exempt from this provision until such time as construction of all Dwelling Units is complete.

**Section 3.09 Growth and Planting.** The growth and planting in any area which is not enclosed by a yard wall or fence, whether on a lot or Common Area shall not be removed or destroyed unless written permission is first obtained from the Board. Owners must obtain the Architectural Committee's approval as set forth in Section 4.07 herein before planting in such areas. No planting of any type (including grass) that will require irrigation shall be placed within two (2) feet of any portion of any building. All plantings shall be maintained and trimmed so they do not touch an adjacent Dwelling Unit.

**Section 3.10 Violation of Rules.** If any Owner, his/her family or any licensee, tenant or lessee or invitee violates the Board's rules, the Board may, in addition to any other enforcement provisions contained herein, suspend the right of such person to use the Common Areas, under such conditions as the

Board may specify, for a period not to exceed sixty (60) days for each violation. Before invoking any such suspension, the Board shall give such person notice of hearing before the Board.

**Section 3.11 Exemption of Developer.** As long as the Developer follows the development plan approved by Pima County, and/or the Federal Housing Administration, and/or the Veterans Administration (if such approval has been obtained) nothing in these restrictions shall limit the right of Developer to complete excavation, grading and construction of improvements to any property within the subdivision, or to alter the foregoing or to construct such additional improvements as Developer deems advisable in the course of development of the subdivision so long as any Dwelling Unit therein remains unsold, or to use any structure in the subdivision as a model home or real estate sales or leasing office. Developer need not seek or obtain the Board's approval of any improvement including landscaping constructed or placed by Developer on any property in the subdivision. The rights of Declarant hereunder or elsewhere in these Restrictions may be assigned by Declarant.

**Section 3.12 Drainage.** There shall be no interference with the established drainage pattern over any property, including any private drainage ways or easements, within the subdivision, unless adequate provision is made for proper drainage conforming to all applicable governmental rules, 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. In the event the Developer, as a part of the construction of Dwelling Unit, shall construct "cut outs" in any patio wall or fence, or construct drainage swales or storm drains across any Lot, said cut outs, swales and drains shall be maintained by the Owner of such Lot and kept 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 as originally constructed. In the event of the failure of any Lot Owner to so maintain said cut outs, swales and drains, other Lot Owners benefited by such cut outs, swale and drains shall have no cause of action against the Association, but shall proceed solely against that Lot Owner.

**Section 3.13 Unsightly Articles.** No unsightly articles shall be permitted to remain so as to be visible from adjoining Dwelling Units or from the street or public way. Grass, shrub or tree clippings and all machinery, storage piles, wood piles, garbage or trash containers shall be kept within an enclosed structure or appropriately screened from view of adjoining property or from streets or public way except when necessary to effect such collection. The Board shall have sole discretion in determining if any activity by an Owner is in violation of this Section.

**Section 3.14 Trash Containers.** No garbage or trash shall be placed or kept on any property within the subdivision except in covered containers of a type, size and style which have been installed by Developer or have been approved by the Board. All rubbish, trash or garbage shall be removed from the dwelling Units and shall not be allowed to accumulate thereon. No incinerators shall be allowed. Trash/garbage containers shall be placed at curb side only on days of scheduled collection and shall be removed from view on the same day of collection. Owners of Dwelling Units utilizing common trash/garbage collection areas shall be jointly and severally responsible for keeping said common collection areas in a clean and sanitary condition. The Board shall have sole discretion in determining if any activity by an owner is a violation of this Section 3.14.

**Section 3.15 Blight of Inspection.** During reasonable hours, any member of the Board, or any authorized representative of any of them shall have the right upon reasonable notice to the Owner of a Dwelling Unit to enter upon and inspect any property within the subdivision (except the interior of Dwelling Units), for the purpose of ascertaining whether or not the provisions of this Declaration have been or are being complied with, and such persons shall not be deemed guilty of trespass by reason of such entry.

**Section 3.16 Mail Boxes.** Developer or Board shall determine the location, color, size, design, lettering, and all other particulars of all mail and paper delivery boxes, and standards and brackets and name signs for same in order that the area be strictly uniform in appearance with respect thereto.

**Section 3.17 Vehicles/Garages.** The use of all vehicles, including, but not limited to, trucks, automobiles, bicycles and motorcycles shall be subject to the Rules, which may prohibit or limit the use thereof, provide parking regulations, or generally regulate same. No vehicles shall be parked overnight on any street within the subdivision. Any and all items stored in a garage area shall be stored so as to conceal same from view from adjoining property, 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 activities which require the utilization of the garage. At no time shall there be any outside storage of motor vehicles in stages of construction, reconstruction, modification or rebuilding of parts of motor vehicle such as frames, bodies, engines or other parts or accessories. Further, the storage or parking of any recreational vehicles, commercial vehicle or boat, other than completely within Owner's garage, is prohibited. The association may permit the storage of such units within the Common Area upon adoption of rules governing such.

**Section 3.18 Clothes Lines.** No exterior clothes lines shall be erected, used or maintained, unless they are substantially concealed from view from any other point within PROMONTORY.



**Section 3.19 Diseases and Insects.** No Owner shall permit anything or any condition to exist upon any property within the subdivision which shall induce, breed or harbor infectious plant diseases or noxious insects.

**Section 3.20 Playground Equipment.** Playground equipment, including, but not limited to, swings and teeter-totters, shall not be installed, erected or placed within five (5) feet of any fence within the Subdivision.

#### ARTICLE IV

#### EASEMENTS, ARCHITECTURAL CONTROL, COMMON WALLS

**Section 4.01 Easement Encroachments.** Each Dwelling Unit and the Common Areas shall be subject to an easement for encroachments created by constructor and landscape, as designed or built by the Developer, including footings, walls, and landscape 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 the minor encroachments on parts of the adjacent Dwelling Units or Common Area due to construction shall be permitted and that a valid easement for said encroachments and the maintenance thereof shall exist.

**Section 4.02 Private Drainage Easements.** If necessary, private drainage easements may be established as shown on the Plat or by separate instrument duly recorded over and across certain Lots for the exclusive use and benefit of other lot Owners. Each Owner of a Lot on which a private drainage easement is 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 benefited by such easements shall have no cause of action against the Association, but shall proceed solely against that Lot Owner.

**Section 4.03 Utility Easements.** In addition to those specific easements shown on the Plat, there is hereby created a blanket easement upon, across, over and under the Common Areas for ingress, egress, installation, replacing, repairing and maintaining all utility and service lines and systems, including, but not limited to water, sewers, gas, telephones, electricity, television cable or communications lines and systems, etc. By virtue of this easement, it shall be expressly permissible for the providing utility or service company to install and maintain facilities and equipment on the Common Areas and to affix and maintain wire, circuits and conduits on, in, and under the roofs and walls of Common Areas. Notwithstanding anything to the contrary contained in this Section, no sewers, electrical lines, water lines, or other utilities or service lines may be installed or relocated on the Property except as initially designed and installed by Developer or thereafter approved by the Board. This easement shall in no way affect any other recorded easements on the Property. In no

event shall any portion of the above-mentioned easements for utilities be 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. This easement shall be limited to improvements as originally constructed. There shall be an access easement for the delivery and collection of the U.S. Mail.

**Section 4.04 Easement for Yard Walls and Other Improvements.**

Developer may construct yard walls and other improvements, including, but not limited to, driveways, walkways, exterior lighting (metered to a particular dwelling unit), drainage structures, etc., as a part of, or for the use of, a particular Dwelling Unit which may encroach upon or encompass portions of the Common Area or adjacent lots. Wherever such encroachments on the Common Area or adjacent lots should occur, the Owner of the Dwelling Unit involved shall have, subject to the conditions hereinafter set forth, a perpetual permanent right for such walls to encompass portions of the Common Area or adjacent lots and for such other improvements to encroach upon portions of the Common Area or adjacent lots. In consideration thereof, such Owners agree to maintain and keep in repair any improvements encroaching upon the Common Area or adjacent lots which were constructed for the use of their Dwelling Unit, unless such maintenance and repairs are the responsibility of the Association as set forth in Section 5.04 of this Declaration. In the event any such Owners should make demand upon the Association to maintain any Common Area within the confines of such wall, or to maintain and keep in repair any improvements encroaching upon the Common Area or adjacent lots which is the responsibility of the Owner to repair as set forth in Section 5.04A of the Declaration, then the Association or adjacent lot Owner, as the case may be, shall have the absolute right, and may cause the Owner making such demand to remove at his/her expense, any improvement, including the wall, encroaching upon the Common Area or adjacent lot, and to replace and rebuild such improvement or wall as to be within such Owner's lot. Declarant hereby acknowledges that the right granted Owners under this Section is a property right of the Owner, and such property right may be revoked or rescinded by Declarant, its successors or assigns, or by the Association, once such right has vested in an Owner, except upon an Owner's breach of the conditions set forth in the preceding sentence.

**Section 4.05 Electrical Service and Telephone Lines.** All electrical service and telephone lines shall be placed underground except existing overhead lines; provided that no provisions hereof shall prohibit the erection of temporary power or telephone structures incident to construction.

**Section 4.06 Common Walls.** The rights and duties of Owners with respect of common walls or fences shall be as follows:

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

B. Unless other provisions of this Section 4.06 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.

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

D. 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 as to good condition as formerly at their joint and equal expense.

**Section 4.07 Architectural Control.** Subsequent to the closing of the sale of a Dwelling Unit by Declarant to an Owner, no building, fence, wall, or other structure shall be commenced, created, erected or maintained by owner upon said Owner's Lot, nor shall any exterior addition to, or change in, or alteration of, said Owner's Dwelling Unit, the exterior color scheme thereof, any common wall, or any landscaping or vegetation not enclosed by a yard wall or fence, be made until the plans and specifications showing the nature, kind, shape, height, materials, color, and location shall have been submitted to and approved in writing as to harmony of external design and location in relation to surrounding structures and topography by the Board, or by an Architectural Committee composed of three (3) or more representatives appointed by the Board. In the event the Board or its designated Committee fails to approve or disapprove such design and location within thirty (30) days after said plans and specifications have been submitted to it, approval will not be required and this Section will be deemed to have been fully complied with. Notwithstanding anything contained to the contrary in the Section, no additions or modifications to any improvement or structure shall be made by an Owner subsequent to the closing of a sale of a Dwelling Unit to an Owner unless such addition or modification has been first reviewed and approved by the applicable governing body.

## ARTICLE V

### THE ASSOCIATION, MEMBERSHIP, MAINTENANCE

#### Section 5.01 Organization.

A. Association. The Association is or shall be an Arizona non-profit corporation charged with the duties and invested with the powers prescribed by law and set forth in the Articles, By-Laws this Declaration. The Association shall be legally constituted and in existence prior to the conveyance of the first Dwelling Unit by Declarant.

**B. Board of Directors and Officers.** The affairs of the Association shall be conducted by a Board of Directors and such officers as the Board may elect or appoint, in accordance with the Articles and By-Laws, as the same may be amended from time to time. The composition of the Board shall be defined in the By-Laws.

**C. Personal Property.** No member of the Board or any Committee of the Association or any officer or employee of the Association, the Declarant or Developer shall be personally liable to any Owner, or to any other party, including the Association, for any damage, loss or prejudice suffered or claimed on account of any act, omission, error or negligence of the Association, the Board, or any representative or employee of the Association or any Committee, or any officer of the Association, provided that such person has, upon the basis of such information as may be possessed by him/her, acted in good faith, without willful or intentional misconduct.

#### Section 5.02 Membership.

**A. Qualifications.** Each Owner (including Declarant) of a Dwelling Unit, by virtue of being such an Owner and for so long as he/she is such an Owner shall be deemed a Member of the Association. No Owner shall have more than one membership for each Dwelling Unit owned.

**B. Transfer of Membership.** Membership of each Owner (including Declarant) in the Association shall be appurtenant to the Dwelling Unit owned and shall not be transferred, pledged, or alienated in any way except upon the transfer or ownership to said Dwelling Unit, and then only to the transferee thereof. Any attempt to make a prohibited transfer shall be void. Any transfer of ownership of a Dwelling Unit shall operate automatically to transfer said membership to the new Owner thereof.

**Section 5.03 Voting Rights.** The Association shall have two (2) classes of voting membership.

**Class A:** Class A Members shall be all Owners, with the exception of Declarant, and shall be entitled to one (1) vote for each Dwelling Unit owned. When more than one person holds an interest in any Dwelling Unit, all such persons shall be Members. The vote for such Dwelling Unit shall be exercised as they among themselves determine, but in no event shall more than one (1) vote be cast with respect to any Dwelling Unit.

**Class B:** The Class B Member shall be Declarant, and shall be entitled to three (3) votes for each Dwelling Unit owned. The Class B Membership shall cease and be converted to Class A membership on the happening of either 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) November 1, 2020.

**Section 5.04 Exterior Maintenance, Repair, Upkeep and Repainting.**

A. Maintenance, repair, upkeep and repainting of Dwelling Units, including all improvements on a Lot, shall be the sole responsibility of each Owner. Except to the extent of the Association's obligations under Section 5.04B, each Owner shall also maintain, repair and repaint both sides of the perimeter yard walls or fences appurtenant to his or her Dwelling Unit, except that if such a wall or fence is common with an adjacent lot(s), an Owner shall be required to repair and repaint only that portion of the wall or fence exclusively used by that Owner. Further each Owner shall be responsible for sewer blockage, repair, etc., of all Dwelling Unit plumbing as well as the house connection line from the Dwelling Unit to its connection point in the main collection sewer line in the street, and each Owner shall be responsible for maintenance and repair of the sidewalk located on his/her Lot. Each owner shall also be responsible for the maintenance and repainting as needed of all landscape on his/her lot including landscape not enclosed by a yard wall or fence. Such maintenance, repair, and repainting of a Dwelling Unit and other improvements on a Lot shall be undertaken in a manner and with such frequency as shall keep each Owner's Dwelling Unit in an attractive, well-kept and maintained condition in conformity with all other Dwelling Units in the Subdivision. In the event any Owner fails to fulfill his or her obligations under this Section, the Association, after approval by two-thirds (2/3) vote of the Board of Directors, shall have the right through its agents and employees, to enter upon the subject property, and to repair, maintain, and restore the Dwelling Unit, including the perimeter yard walls or fences, and any other improvements. The cost of such exterior maintenance shall be added to and become part of the assessment to which such Dwelling Unit is subject. The Board shall have the right to determine whether or not a Dwelling Unit is in need of maintenance, repair and upkeep, in order to conform to the standards of the general neighborhood of PROMONTORY, and the Board shall use a reasonably high standard to determine whether such maintenance, repair and upkeep is required so that the Dwelling Units as a whole will reflect a high pride of ownership. Each Owner or his/her authorized agent or the Association, as the case may be, in order to conduct such maintenance, repair or repainting, shall have the right to entry at reasonable time upon Dwelling Units adjacent to such Owner's Dwelling Unit, provided reasonable notice of such entry is first given by such Owner to the Owner of the involved adjacent Dwelling Unit.

B. The Association shall be responsible for maintenance, repair and upkeep of any Common Area Improvements including, but not limited to, Common Area sidewalks, Common Area vegetation, landscape, and signage; Common Area drainage facilities; and the private sewer system (except as set forth under Section 5.04A). In the event the Board of Directors adopts a resolution to that effect, the Association may also install and maintain landscaping or other improvements on individual lots where this would result in a common good to the members.

**Section 5.05 Conveyance of Common Area.** Declarant shall grant and convey to the Association and the Association shall receive ownership of the Common Area prior to the closing of sale of a Dwelling Unit by Declarant to an Owner. Upon such conveyance and grant, the Association shall succeed to all rights, duties and powers with respect to the Common Area as prescribed by law, and set forth in the Articles, By-Laws and this Declaration.

**Section 5.06 By-Laws.** The By-Laws shall, among other things, establish the procedure for electing members of the Board and officers of the Association, the duties of the Association, the procedure for regular and special meetings, the disposition of hazard insurance proceeds and amendments to the By-Laws.

**ARTICLE VI  
INSURANCE**

**Section 6.01 Insurance Requirements.** The Association shall be responsible and obligated to purchase and maintain at all times the following types of insurance:

**A. Comprehensive General Liability and Property Insurance.** Comprehensive general liability and property damage insurance covering all Common Areas and all other areas under the jurisdiction or control of the Association shall be purchased by the Association and shall be maintained in full force and effect at all times. 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 a Dwelling Unit Owner because of negligent acts of the Association or of any other Dwelling Unit Owners. Coverage shall be for at least one million dollars (\$1,000,000.00) per occurrence for personal and/or property damage.

**B. Fire Hazard Insurance - Common Areas.** Fire and other hazard insurance covering improvements constructed on the Common Areas. Such policy or policies shall consist, at a minimum, of a multiperil type policy covering the subject improvements, providing, as a minimum, fire and extended coverage and all other coverage in the kinds and amounts commonly required by private institutional mortgage lenders in Tucson, Arizona, on a replacement cost basis, in an amount of not less than one hundred percent (100%) of the insurable value (based upon the replacement cost).

In the event any improvement constructed on the Common Area is the subject of a mortgage or deed of trust, then each policy must contain or have attached hereto a standard mortgage or beneficiary clause which provides that all proceeds paid thereunder shall be paid to the Association for the use and benefit of all mortgagees under mortgages or beneficiaries under deeds of trust, encumbering any such improvements, and the Owners, as their interest may appear, and such policy or policies must further provide that the interest of each mortgagee holding a mortgage or beneficiary under a deed of trust on any such

Improvements in insurance proceeds shall not be invalidated by any action, neglect or inaction of the Board of Directors of the Association, Owners of Dwelling Units or their tenants or agents. Such policy or policies shall further provide for waiver by the insurer of any policy provisions which would render the mortgagee or beneficiary clause invalid by reason of the failure of such mortgagee or beneficiary to notify the insurer of any hazardous use of such improvements and any policy requirement that the mortgagee or beneficiary pay the premium thereon.

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

**D. Fidelity Insurance.** The Association shall purchase and maintain in force, if reasonably available, fidelity coverage against dishonest acts on the part of directors, officers, managers, trustees, employees, or volunteers responsible for handling funds belonging to or administered by the Association. Such fidelity bonds or insurance shall name the Association as the named insured and shall be written in an amount sufficient to provide protection, which is, in no event, less than 1-1/2 times the insured's estimated annual operating expenses and reserves, and provide for at least ten (10) days written notice to the Association. In connection with such coverage, an appropriate endorsement to the policy to cover any persons who serve without compensation shall be added, if the policy would not otherwise cover volunteers.

**E. Minimum Financing Rating Carrier.** Each hazard insurance policy obtained by the Association pursuant to the foregoing shall be written by a hazard insurance carrier which has a financial rating by Best's Insurance Reports of Class VI or better and a general policyholder's rating of at least B. Hazard insurance policies shall also be acceptable from an insurance carrier which has a financial rating by Best's Insurance Reports of Class V, provided that such insurance carrier has a general policyholder's rating of at least A. Each such carrier shall be specifically licensed or authorized by law to transact business in the State of Arizona.

Policies shall be unacceptable where:

(1) Under the terms of the carrier's charter, by-laws, or policy, contributions or assessments may be made against a Dwelling Unit Owner or the assignee of the Federal Home Loan Mortgage Corporation, or the Federal Housing Authority or the Veterans Administration; or

(2) By the terms of the carrier's charter, by-laws, or policy, loss payments are contingent upon action by the carrier's board of directors, policy holders or members; or

(3) The policy includes any limiting clauses (other than insurance conditions) which could prevent the Federal Home Loan Mortgage Corporation, Federal Housing Administration or the Veterans Administration or any Dwelling Unit Owner from collecting insurance proceeds.

**F. In General.** Every policy of insurance obtained by the Association shall contain an express waiver, if available, of any and all rights of subrogation against Declarant, Developer, the Board, and such other persons or entities affiliated with the Association such as a manager and their representatives, members and employees and a provision, if available, preventing any cancellation or modification thereof except upon at least ten (10) days written notice to the insureds and their mortgagees. In addition, every policy of insurance obtained by the Association shall provide, if available, for the payment of assessments which the insured property is obligated for under this Declaration until the insured property is repaired and made habitable. The liability insurance hereinabove specified shall name as separately protected insured Declarant, Developer, the Association, the Board and such other persons or entities affiliated with the Association such as a manager and their representatives, members and employees as their interest may appear with respect to any liability arising out of the maintenance or use of any insured property. As to each such policy, which will not be voided or impaired thereby, the Association hereby waives and releases all claims against the Declarant, the Board, the Developer and such other persons or entities named in said insurance, and agents and employees of each of the foregoing, with respect to any loss covered by such insurance, whether or not caused by negligence of or breach of any agreement by said persons, but only to the extent that insurance proceeds are received in compensation for such loss. An "agreed amount and inflation guard endorsement" should be included in the policies, and if the construction or building code may require changes to undamaged portions of the property even when only part of the project is damaged or destroyed, an endorsement covering same must be included in the insurance policies.

**G. Insurance Premiums.** Premiums for insurance purchased or obtained by the Association shall be a common expense payable through assessments of Dwelling Units and all such insurance coverage obtained by the Board shall be written in the name of the Association, as trustee for each of the Owners.

**H. Additional Optional Insurance by Owner.** In addition to the aforesaid insurance required to be carried by the Association, any Owner may, if he/she wishes, at his/her own expense, carry any and all other insurance he/she deems advisable; however, if available, said policy or policies shall provide that there shall be no contribution or offset between policies of the Association and Policies an individual Owner may have in effect. It shall be the individual responsibility of each Owner at his/her own expense to provide as he/she sees fit, Owner's liability insurance, theft and other insurance covering personal and real property damages and loss.

**I. Destruction/Insurance Proceeds.** In the event of substantial damage or destruction of any Dwelling Unit or any part of the Common Area, any first mortgage on a Dwelling Unit will be entitled to timely written notice of any such damage or destruction and no Owner of a Dwelling Unit or other party shall have priority over such first mortgagee with respect to the distribution to such Unit Owner of any insurance proceeds.



**Section 6.02 Condemnation Destruction.**

**A. Condemnation.**

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

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

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

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

**B. Destruction.**

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

2. **Destruction: Proceeds Exceed 80% of Reconstruction Costs.** If the amount available from the proceeds of such insurance policies for such restoration and repair is at least eighty percent (80%) of the estimated costs of restoration and repair, a Reconstruction Assessment, with each Owner contributing a like sum, may be levied by the Association to provide the necessary funds for such reconstruction and repair, over and above the amount of any insurance proceeds available for such purpose.

**3. Destruction: Proceeds Less Than 80% of Reconstruction Costs.**

If the amount available from the proceeds of such insurance policies for such restoration and repair is less than eighty percent (80%) of the estimated cost of restoration and repair, the improvements shall not be replaced or restored unless approved by the vote or written consent of Members entitled to exercise two-thirds (2/3) of the voting power of the membership of the Association.

**(a). Rebuilding Not Authorized: First Mortgagee Approval.**

Notwithstanding the foregoing, unless at least fifty-one percent (51%) of the Eligible Mortgage Holders, based on one (1) vote for each Mortgage held, have given their prior written approval, the Association shall not be entitled to use hazard proceeds for losses to any Common Area for other than the repair, replacement or reconstruction of such improvements.

**(b) Open Common Area: First Mortgagee Approval.**

In the event of a determination not to replace or restore the improvements on the Common Area, and provided that in the event of such determination the Association shall obtain the additional written consent of fifty-one percent (51%) of such Eligible Mortgage Holders, based on one (1) vote for each Mortgage held, the Common Area shall be cleared and landscaped for open Common Area to be used by the Owners pursuant to Article VI hereof, and the costs thereof shall be paid for with the insurance proceeds, and any deficiency may be raised by the levy of uniform Reconstruction Assessments in an amount determined by the Board.

**4. Distribution of Proceeds: Excess Proceeds.** In the event any excess insurance proceeds remain, the Board shall retain such sums in the general funds of the Association. Notwithstanding anything to the contrary contained in this Section 6.02 the distribution of any insurance proceeds for any damage or destruction to the Common Area shall be subject to the prior rights of Mortgagees.

**ARTICLE VII:**

**OWNERSHIP, USE, AND MANAGEMENT OF THE COMMON AREA**

**Section 7.01 Owner's Easements of Enjoyment.** Every Owner shall have a right and easement or enjoyment in and to the Common Area which shall be appurtenant to and shall pass with title to every Dwelling Unit subject to Section 7.02.

**Section 7.02 Conditional Use of Common Area.** Each Owner, his/her family, licensees, invitees and tenants or lessees, or contract purchasers of a Dwelling Unit shall be entitled to use the Common Area subject to:

**A.** The provisions of the Articles, By-Laws, these Restrictions, and the Rules. Each Owner agrees that in using the Common Area he/she will comply with the provisions of such Articles, By-Laws, these Restrictions, and the Rules.

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

C. The right of the Association to suspend the right of an Owner to use recreational facilities of the Common Area for a period not to exceed sixty (60) days for any infraction of its published Rules.

**Section 7.03 Delegation of Use.** Any Owner may delegate his/her right of enjoyment in the Common Area and facilities 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, regulations and limitations as the Association may, from time to time, establish. Such delegation shall not relieve said Owner of his/her obligations and responsibilities as a Member under the By-Laws, Rules and this Declaration.

**Section 7.04 Management.** The Board shall control, maintain, manage and improve the Common Area as provided in this Declaration, the Articles and By-Laws. Such right and power of control and management shall be exclusive. In managing the Common Area, the Association hereby accepts all responsibility for the control, maintenance, safety and liability of such Common Area including, but not limited to, collecting and paying taxes on the Common Area, which shall be approved by the County Assessor. Any agreement for professional management of the subdivision, or any other contract providing for services of the Developer, shall not exceed one (1) year, but may be renewable for successive one (1) year periods upon agreement of the parties. Any such agreement shall provide for termination by either party without cause and without payment of termination fee upon thirty (30) days written notice.

**Section 7.05 Damage or Destruction of Property.** In the event any Common Property or any property within the Subdivision required by the Declaration to be maintained by the Association, is damaged or destroyed by an Owner or any of his guests, tenants, licensees, agents, or members of his family, such Owner shall be liable therefor to the extent of liability imposed by local law and such Owner does hereby irrevocably authorize the Association to repair the damaged property, and the Association shall so repair the damaged property in good workmanlike manner in substantial conformance with the original plans and specifications. The Owner shall then repay the Association in the amount actually expended for such repairs. Each Owner further agrees that these charges for repairs, if not paid within ten (10) days after completion of the work; shall be delinquent and shall become a lien upon Owner's Dwelling Unit and shall continue to be such 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 a lawful procedure allowed by the laws of the State of Arizona.

**Section 7.06 Restrictions on Conveyance of Common Areas and Facilities.** The Common Areas and facilities owned by the Association may not, by act or omission, be abandoned, partitioned, subdivided, encumbered, sold or transferred without the prior written approval of seventy-five percent (75%) of the first mortgagees (based upon one vote for each mortgage owned and at least two-thirds (2/3) vote of the Owners (other than Developer or Declarant) except that the Association shall at all times have the right to grant and convey to any person or entity easements, or rights of way, in on, over, or under any Common Areas for the purpose of constructing, erecting, operating or maintaining thereon, therein and thereunder (1) roads, streets, walks, Pathways, and driveways; (2) temporary overhead or permanent underground lines, cables, wires, conduits, or other devices for the transmission or electricity for lighting, heating, power, telephone cable T.V., and other Purposes; (3) sewers, storm drains and pipes, drainage easements, water systems, water, heating and gas lines or pipes; (4) such improvements as may be Permitted under ARTICLE IV of this Declaration.

## ARTICLE VIII

### COVENANTS FOR MAINTENANCE ASSESSMENTS

**Section 8.01 Creation of the Lien and Personal Obligation to Pay Assessments.** Each Owner, by acceptance of deed to any Dwelling Unit, whether or not it shall be so expressed in such deed is deemed to covenant and agree to pay to the Association: (1) annual assessments or charges, and (2) special assessments for capital improvements, such assessments to be established and collected as hereinafter Provided. The annual and special assessments together with interest, costs and reasonable attorney's fees, shall be a charge on the Dwelling Unit and shall be a continuing lien upon the Property against which each assessment is made. Delinquent assessments, together with interest costs and reasonable attorney's fees, shall also be the personal obligation of the person who was the Owner of such Dwelling Unit at the time when the assessment was levied. The personal obligation for delinquent assessments shall not pass to his/her successors in title unless expressly assumed by them.

**Section 8.02 Purpose of Assessments.** The assessments levied by the Association shall be used exclusively to promote the recreation, health, safety, and welfare of the Members and their Guests, for the improvement and maintenance of the Common Area and for all Purposes set forth in the Articles, By-Laws and this Declaration. The Board of 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 the Common Area owned by the Association that must be replaced on a periodic basis. All such dues, charges and assessments imposed by the Association shall be paid on a periodic basis in regular installments rather than by special assessments, unless so determined by the Board as provided herein.

### Section 8.03 Annual Assessment.

(a) Until January 1 of the year immediately following the conveyance of the first Dwelling Unit to an Owner, the authorized maximum annual assessment shall be Nine Hundred (\$900.00) Dollars. Within thirty (30) days prior to the end of each calendar year (January 1, through December 31) the Board of Directors shall estimate the total charges to be Paid during the forthcoming year to determine the coming year's annual assessment (including a reasonable reserve for contingencies and less any expected surplus from the prior year). The annual assessment may not be greater than the authorized maximum annual assessment.

(b) Except as allowed by Section 8.03(c) hereof, the Board of Directors shall not increase the authorized maximum annual assessment by an amount greater than either (i) five percent (5%) of the amount of the preceding authorized maximum annual assessment; or (ii) the percentage increase in the cost of living as reflected by the column entitled "all items" in the Consumer Price Index on a national basis published by the Bureau of Labor Statistics of the United States Department of Labor (hereinafter called the "Cost of Living Index Number"). In the event that the Bureau of Labor Statistics shall fail to publish a comparable Cost of Living Index Number during any such years, but a comparable Cost of Living Index Number shall be published by any governmental agency of the United States in place thereof, then such comparable index number shall be used for the purpose of adjusting the authorized maximum annual assessment under the provisions of this Section 8.03 with the same force and effect as the Cost of Living Index Number of the Bureau of Labor Statistics.

(c) Any increase by the Board of Directors in the authorized maximum annual assessment which is greater than the amount permitted under Section 8.03 (b) hereof must be first approved by two-thirds (2/3) vote of the Members who are voting in person or by proxy at a meeting duly called for this purpose before such increase may be placed in effect and bind the members of the Association.

Section 8.04 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 the Common Area, including fixtures and personal property related hereto, provided that any such assessment shall have the assent of two-thirds (2/3) of the vote of the Members who are voting in person or by proxy at a meeting duly called for this purpose.

Section 8.05 Notice and Quorum for an Action Authorized Under Section 8.03(c) and Section 8.04. Written notice of any meeting called for the purpose of taking action authorized under Section 8.03(c) and Section 8.04 shall be sent to all Members not less than thirty (30) days nor more than sixty (60) days in

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

**Section 8.06 Uniform Rate of Assessment.** Both annual and special assessments must be fixed at a uniform rate for all Dwelling Units and may be collected on a monthly basis. However, and subject to the limitations set forth in Section 8.03 (b) hereof, said uniform rate may be revised periodically to reflect revisions in the annual assessments based on actual operating cost of the Association.

**Section 8.07 Date of Commencement of Annual Assessments; Due Dates.** The annual assessments provided for herein shall commence as to all Dwelling Units on the month following the conveyance of a Dwelling Unit 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 Dwelling Unit at least thirty (30) days in advance of each annual assessment period. Written notice of the annual assessment shall be sent to every Owner subject thereto in the event of its increase or decrease from the last annual assessment. The due dates shall be established by the Board of Directors. The Association shall, upon demand, and for a reasonable charge, furnish a certificate signed by an officer of the Association setting forth whether the assessments on a specified Dwelling Unit have been paid. A properly executed certificate of the Association as to the status of the assessments on a Dwelling Unit is binding upon the Association as of the date of its issuance.

**Section 8.08 Effect of Non-Payment of Assessments; Remedies of the Association.** Each Owner shall be deemed to covenant and agree to pay to the Association the assessment provided for herein, and agrees to the enforcement of the assessment in the manner herein specified. All assessments not paid within thirty (30) days of the due date shall bear interest at the rate of 12% per annum from the due date. In the event the Association employs an attorney for collection of assessments, whether by suit or otherwise, or to enforce compliance with or specific performance of the terms and conditions of this Declaration, or for any other purpose in connection with the breach of this Declaration, each Owner agrees to pay reasonable attorney's fees and costs thereby incurred, in addition to any other amounts due or any other relief or remedy obtained against said Owner. In the event of a default in payment of any assessment it 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 equity, or without any limitation to the foregoing, be 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 attorney's fees in such amount as the Court may adjudge against the delinquent Owner or Member.

**B. Enforcement by Lien.** There is hereby created a right of claim of lien on each and every Dwelling Unit 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 therewith, including reasonable attorney's fees. At any time within one hundred twenty (120) days 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 any written demand for payment to the defaulting Owner, on behalf of the Association. Said demand shall state the date and amount of delinquency. Each default shall constitute a separate basis for demand or claim of lien but any number of defaults may be included within a single demand or claim of lien. If such delinquency is not paid within ten (10) days after delivery of such demand, or, even without such a written demand being made, the Association may elect to file such claim of lien on behalf of the Association against the Dwelling Unit of the defaulting Owner. Such a claim of lien shall be executed and acknowledged by any officer of the Association, and shall contain substantially the following information:

- (1) The name of the delinquent Owner;
- (2) The legal description of the Dwelling Unit against which claim of lien is made;
- (3) The total amount claimed to be due and owing for the amount of the delinquency, interest, thereon, collection costs, and reasonable attorney's fees (with any proper offset allowed);
- (4) That the claim of lien is made by the Association pursuant to this Declaration;
- (5) That a lien is claimed against said Dwelling Unit in an amount equal to the amount stated; and
- (6) That the claim of lien will also extend to all assessments which become due but are not paid from the date of the filing of the claim of lien to the date of payment of all amounts set forth therein (including interest thereon, reasonable attorney's fees, costs and collection, and that the claim of lien will only be deemed satisfied and released when the Owner is current in the payment of all such amounts.

Upon recordation of a duly executed original or copy of such a claim or lien, and the mailing of a copy thereof to said Owner, the lien claimed therein shall immediately attach and become effective in favor of the Association as a lien upon the Dwelling Unit. 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 Dwelling Unit, assessments on any Dwelling Unit in favor of any municipal or other governmental assessing unit, and the lien of any first mortgage. Any such lien may be foreclosed by appropriate action in Court or in the manner provided by law for the foreclosure of realty mortgage or trust deed as set forth by the laws of the State of Arizona, as the same may be changed or amended. The lien provided for herein shall be in favor of the Association and shall be for the benefit of all other Owners. The Association shall have the power to bid in at any foreclosure sale and to purchase, acquire, hold, lease, mortgage, and convey any Dwelling Unit. In the event such foreclosure is by action in court, reasonable attorneys fees, court costs, title search fees, interest and all other costs and expenses shall be allowed to the extent permitted by law. Each Owner hereby expressly waives any objection to the enforcement and foreclosure of this lien in this manner.

**Section 8.09 No Exemption of Owner.** No Owner is exempt from liability for payment of assessments by waiver of the use or enjoyment of the Common Area, or by abandonment of his/her Dwelling Unit except as specifically provided in Section 9.06.

**Section 8.10 Subordination of the Lien to Mortgages.** The lien of the assessments provided for herein shall be subordinate to the lien of any first mortgage. Sale or transfer of any Dwelling Unit shall not affect the assessment lien. However, the sale or transfer of any Dwelling Unit pursuant to mortgage foreclosure of a first mortgage, or a trustee's sale pursuant to power of sale or a foreclosure of a first deed of trust, or any proceeding in lieu thereof, shall extinguish the lien of such assessment as to payments which become due prior to such sale or transfer. No sale or transfer shall relieve such Dwelling Unit from liability for any assessments thereafter becoming due or from the lien thereof.

**Section 8.11 Mortgage Protection and Additional Assessment as Common Expense.** Notwithstanding and prevailing over any other provisions of this Declaration, or the Association's Articles or By-Laws, or the Rules, the following provisions shall apply to and benefit each holder of a first mortgage upon a Dwelling Unit (called the first mortgage):

A. The first mortgagee shall not in any case or manner be personally liable for the payment of any assessment or charge, nor for the observance or performance of any covenant, restriction, regulation, Rule, Article or By-Law, except for those matters which are enforceable by injunctive or other equitable actions, not requiring the payment of money, except as hereinafter provided.



B. During the pendency of any proceeding to foreclose the first mortgage, including any period of redemption, the first mortgage (or receiver appointed in such action) may, but need not, exercise any or all of the rights and privileges.

C. At such time as the first mortgagee shall become record Owner of the Dwelling Unit, said first mortgagee shall be subject to all of the terms and conditions of these Restrictions, including, but not limited to, the obligation to pay for all assessments and charges accruing thereafter, in the same manner as any Owner.

D. The first mortgagee, or any other party acquiring title to a mortgaged Dwelling Unit through foreclosure suit or through any equivalent proceeding arising from said first mortgage, such as, but not limited to, the taking of a deed in lieu of foreclosure, shall acquire title to the mortgaged Dwelling Unit free and clear of any lien authorized by or arising out of any of the provisions of this Declaration or By-Laws which secured the payment of any assessment or charges accrued prior to the final conclusion of any such foreclosure suit or equivalent proceeding, including the expiration date of any period of redemption.

Any such unpaid assessment shall nevertheless continue to exist as the personal obligation of the defaulting Owner of the respective Dwelling Unit to the Association, and the Board shall use reasonable efforts to collect the same from the Owner even after he/she is no longer a member of the Association. There shall be a lien upon the interest of the first mortgagee or other party which acquired title to a mortgaged Dwelling Unit by foreclosure suit or by equivalent procedures for all assessments authorized by this Declaration or the By-Laws which accrue and are assessed after the date the acquirer has acquired title to the Dwelling Unit free and clear of any right of redemption.

E. Any provisions contained in this Declaration to the contrary notwithstanding, unless at least seventy-five percent (75%) of the first mortgagees (based upon one vote for each mortgage held) have given their prior written approval, the Association shall not be empowered or entitled to: (a) change the method of determining the obligations, assessments, dues or other charges which may be levied against a Dwelling Unit Owner; (b) by act or omission, change, waive or abandon the exterior maintenance of Dwelling Units; the maintenance of Common Property, walkways or perimeter walls and driveways, or the upkeep of lawns and planting areas in the Subdivision; (c) fail to maintain fire and extended coverage insurance on the Common areas and Common Property on a current replacement cost basis in an amount of not less than one hundred percent (100%) of the insurable value (based on current replacement costs); and (d) use hazard insurance proceeds for losses to Common Areas or Common Property for other than the repair, replacement or reconstruction of such Common Property.

F. First mortgagees are hereby granted the right to, jointly or singly, pay taxes or other charges which are in default and which may or have become a charge against any Common Areas or other Common Property owned by the Association, and such first mortgagees may, jointly or singly, pay overdue premiums on hazard insurance policies, or secure new hazard insurance coverage on the lapse of a policy, for such Common Areas or Common Property and any first mortgagees making such payments may be owed immediate reimbursement therefore from the Association.

G. Nothing in this Declaration shall in any manner be deemed to give a Dwelling Unit Owner, or any other party, priority over any rights of a first mortgagee of a Dwelling Unit pursuant to the terms of such first mortgagee's mortgage in the case of a distribution to a Dwelling Unit Owner of insurance proceeds or condemnation awards for losses to or a taking of any Dwelling Unit or any part of the Common Area owned by the Association. Each first mortgagee shall be entitled to timely written notice of such loss or taking.

H. Each first mortgagee shall, upon notice to the Association, be entitled to a written notification from the Association of any default in the performance by the Owner of a Dwelling Unit encumbered by the mortgage in favor of such mortgagee of any obligation under this Declaration or under the Articles of Incorporation, By-Laws, or Rules of the Association which is not cured within sixty (60) days.

I. Each first mortgagee shall, upon written notice to the Association, be entitled to (i) inspect the books and records of the Association during normal business hours; (ii) receive an annual financial statement of the Association within ninety (90) days following the end of any fiscal year of the Association; and, (iii) receive written notice of all meetings of the Association, and designate a representative to attend such meetings.

J. Each first mortgagee shall, upon written notice to the Association, be entitled to written notice from the Association at least thirty (30) days prior to (i) abandonment or termination of the Association; (ii) any material amendment to the Declaration, Articles or By-Laws; and (iii) the effectuation of any decision by the Association to terminate professional management and assume self-management of the Association.

K. Upon written request to the Association, identifying the name and address of the holder, insurer or guarantor of a first mortgage and the Dwelling Unit number or address, an Eligible Mortgage Holder, insurer or guarantor shall be entitled to written notice of any proposed action that requires the consent of a specified percentage of Eligible Mortgage Holders.

**ARTICLE IX****GENERAL PROVISIONS**

**Section 9.01 Term.** The covenants, conditions and restrictions of this Declaration shall remain in full force and effect for a period of thirty (30) years from the date this Declaration is recorded. Thereafter, they shall be deemed to have been renewed and automatically extended for successive periods of ten (10) years each.

**Section 9.02 Amendments.** This Declaration may be amended by an instrument in writing, signed and acknowledged by the President and Secretary of the Association, certifying that such Amendment has been approved by the vote or written consent (with or without an Association meeting) of not less than two-thirds (2/3) of the Membership, and such amendment shall be effective upon its recordation with the Pima County Recorder.

**Section 9.03 Enforcement and Non-Waiver.**

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

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

**C. Remedies Cumulative.** Each remedy provided by these Restrictions is cumulative and not exclusive.

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

**Section 9.04 Mortgage Protection.** Notwithstanding any other provisions of this Declaration, no amendment of this Declaration shall operate to defeat and render invalid the rights of a mortgagee or a beneficiary under a Deed of Trust upon a Dwelling Unit made in good faith and for value, and recorded prior to the recordation of such amendment, provided that after the foreclosure of any such Deed of Trust or mortgage such Dwelling Unit shall remain subject to this Declaration, as amended.

### Section 9.05 Construction

A. Interpretation. The provisions of this Declaration shall be liberally construed to effectuate their purpose of creating a uniform plan for the development and operation of the subdivision. This Declaration shall be construed and governed by the laws of the State of Arizona. If there is any conflict among or between this Declaration, the Articles or Incorporation of the Association, the By-Laws, or the Rules, the provisions of this Declaration shall prevail; thereafter, priority shall be given first to such Articles of Incorporation, then to such By-Laws, and then to such Rules.

B. Restrictions Severable. Notwithstanding the provisions of the foregoing Subsection 9.05(A), each of the provisions of this Declaration shall be deemed independent and severable, and the invalidity or partial invalidity of any provision or portion thereof shall not affect the validity of enforceability of any other provision.

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

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

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

Section 9.06 Savings Clause and Obligation of Declarant to Pay Assessments. Declarant shall be responsible for payment of any assessments established pursuant to this Declaration or the By-Laws Dwelling Units owned by Declarant; subject, however, to the following modifications:

A. A Dwelling Unit owned by Declarant which is still an "Empty Lot" with no construction of any improvements commenced thereon or upon which onsite construction has been commenced, or which is a completed Dwelling Unit shall be assessed ten percent (10%) of the annual assessment established per Section 8.03. For so long as Declarant is paying a reduced assessment under this Subsection, Declarant shall be responsible for payment of funds necessary to cover any deficit in the Association's annual operating budget up to the annual assessment established in Section 8.03, and such funds shall not be reimbursed by the Association. Although Declarant may voluntarily contribute additional funds for the maintenance of the Common Areas, or for the benefit of the Association, it is understood that Declarant is not and shall not be liable for the payment of any contribution or assessment in excess of the annual assessment established per Section 8.03.

B. For purposes of this Section 9.06, "completed Dwelling Unit" shall mean any Dwelling Unit ready for occupancy as a home that is in the condition of any other Dwelling Unit sold to persons living in the Subdivision (e.g., carpet, kitchen countertops and cabinets, plumbing and light fixtures, etc. installed).

C. A Dwelling Unit owned by Declarant which is rented or otherwise occupied shall be liable for the annual assessment established per Section 8.03.

**Section 9.07 Delivery of Notices and Documents.** Any written notice or other documents relating to or required by this Declaration may be delivered either personally or by mail. If by mail, it shall be deemed to have been delivered seventy-two (72) hours after a copy of same has been deposited in the United States mail, postage prepaid, addressed as follows: If to the Association or Declarant, at 4740 N. Oracle Road, Suite 300, Tucson, Arizona 85705; and if to an Owner, to the address of the Owner within the subdivision, with a copy to the Association; provided, however, that any such address may be changed at any time by the party concerned by delivering written notice of change of address to the Association. Each Owner of a Dwelling Unit shall file the correct mailing address of such Owner with the Association, and shall promptly notify the Association in writing of any subsequent change of address.

**Section 9.08 Binding Effect.** By acceptance of a deed or acquiring any ownership interest in any of the Property included within this Declaration, each person or entity for himself/herself, or itself, his/her heirs, personal representatives, successors, transferees and assigns, binds himself/herself, his/her heirs, personal representatives, successors, transferees and assigns to all of the provisions, restrictions, covenants, conditions, rules and regulations now or hereafter imposed by this Declaration and any amendments thereof. In addition, each such person by so doing thereby acknowledges that this Declaration sets forth a general scheme for the Property and hereby evidences his/her interest that all the restrictions, conditions, covenants, rules and regulations contained herein shall run with the land and be binding on all subsequent and future owners, grantees, purchasers, assignees, and transferees thereof. Furthermore, each such person fully understands and acknowledges that this Declaration shall be mutually beneficial, prohibitive and enforceable by the various subsequent and future owners.

**Section 9.09 Annexation.** Additional residential property and Common Area beyond that contemplated as Annexable property described on Exhibit A hereto, may be annexed by the Declarant to the Property with the consent of two-thirds (2/3) of each class of Members and the recording of a Declaration of Annexation.

**Section 9.10 FHA/VA Approval.** As long as there is a Class B membership, the following actions will require the prior approval of the Federal Housing Administration or the Veterans Administration (if subdivision approval by these entities has been obtained previously and is still in force): annexation of additional properties, mergers and consolidations, mortgaging of Common Area, public dedication of Common Area, and amendment of this Declaration of Covenants, Conditions and Restrictions.

**PURSUANT** to the provisions of ARS 33-401 the name and address of the beneficiary is as follows:

**SALIDA DEL SOL REAL ESTATE DEVELOPMENT LIMITED PARTNERSHIP**  
an Arizona limited partnership  
4740 N. Oracle, Suite 300  
Tucson, Arizona 85705

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

SALIDA DEL SOL REAL ESTATE LIMITED PARTNERSHIP  
an Arizona Limited Partnership

FIDELITY NATIONAL TITLE AGENCY, INC.,  
as Trustee under Trust  
No. 10405 only and not otherwise

By: [Signature]  
General Partner

By: [Signature]  
Trust Officer

STATE OF ARIZONA )  
COUNTY OF PIMA ) ss.

On this 1 day of August 1991 before me the undersigned personally appeared [Signature] who acknowledged himself/herself as General Partner of SALIDA DEL SOL REAL ESTATE LIMITED PARTNERSHIP, an Arizona limited partnership and that he/she is authorized to execute the foregoing instrument foregoing for the purposes therein contained.

IN WITNESS WHEREOF I have hereunto set my hand and official seal.

Notary Public  
[Signature]  
My Commission Expires:  
1-95  
PUB. LIC.  
CTY. ARIZ.

On this 2nd day of August 1991, between me the undersigned personally appeared Judith L. Scheidel who acknowledged himself/herself as Trust Officer of FIDELITY NATIONAL AGENCY, INC. and that he/she is authorized to execute the foregoing instrument for the purposes therein contained.

IN WITNESS WHEREOF I have hereunto set my hand and official seal.

Notary Public  
[Signature]  
My Commission Expires:  
12/15/93

## EXHIBIT A

A parcel of land situated in the North one-half of the Northwest one-quarter of Section 14, Township 13 South, Range 14 East, G. & S. R.B. & M., Pima County, Arizona; said parcel being more particularly described as follows:

Commencing at the Northwest corner of said Section 14,  
Run thence N.  $88^{\circ} 33' 42''$  E. along the North line of said Section 14, a distance of 2,712.47 feet to the North 1/4 corner of said Section 14; run thence S.  $2^{\circ} 30' 12''$  W. along the East line of said North one-half of the Northwest one-quarter of Section 14, a distance of 75.18 feet to the South line of Sunrise Drive, being the TRUE POINT OF BEGINNING;

Run Thence S.  $2^{\circ} 30' 58''$  W. a distance of 1,245.41 feet to the S.E. corner of N. 1/2 of N.W. 1/4 of said Section 14;

Run Thence S.  $88^{\circ} 52' 28''$  W. along the South line of the N. 1/2 of N.W. 1/4 of Section 14, a distance of 2,032.53 feet more or less to the Southeastly corner of Tierra Serena Townhouses, a subdivision recorded in the office of the Recorder of Pima County, Arizona in Book 29 of Maps and Plats at page 44 thereof;

Run Thence N.  $14^{\circ} 45' 56''$  E., a distance of 362.60 feet to a point;

Run Thence N.  $88^{\circ} 50' 53''$  E., a distance of 275.00 feet to a point;

Run Thence N.  $51^{\circ} 46' 59''$  E., a distance of 366.49 feet to a point;

Run Thence N.  $8^{\circ} 49' 44''$  E., a distance of 279.33 feet to a point;

Run Thence N.  $61^{\circ} 23' 04''$  E., a distance of 430.49 feet to a point;

Run Thence N.  $21^{\circ} 45' 23''$  E., a distance of 211.71 feet to a point on the South line of Sunrise Drive;

Run Thence N.  $88^{\circ} 33' 42''$  E. along the South line of Sunrise Drive a distance of 932.17 feet, more or less, to the TRUE POINT OF BEGINNING.

EXCEPTING therefrom all of that part lying Westerly of the East line of Salda Del Sol, according to the map thereof of record in the Office of the County Recorder of Pima County, Arizona, in Book 17 of Road Maps at page 82.

Containing 20.631 acres, more or less.



**Policy Resolution #1  
Book of Resolutions  
Salida Del Sol Homeowners Association  
December 2, 1994**

Section 3.14 Trash Containers. No garbage or trash shall be placed or kept on any property within the subdivision except in covered containers of a type, size and style which have been installed by Developer or have been approved by the Board. All rubbish, trash or garbage shall be removed from the dwelling Units and shall not be allowed to accumulate thereon. No incinerators shall be allowed. Trash/garbage containers shall be placed at curb side only on days of scheduled collection and shall be removed from view on the same day of collection. Owners of Dwelling Units utilizing common trash/garbage collection areas shall be jointly and severally responsible for keeping said common collection areas in a clean and sanitary condition. The Board shall have sole discretion in determining if any activity by an owner is a violation of this Section 3.14. **The board of directors will choose one trash collector for the entire community and the cost of this service will become part of the quarterly assessment.**

Thomas L. Doucette  
Tom Doucette, President

12/9/94  
Date

Jane Titley  
Jane Titley, Secretary

12/9/94  
Date

**Salida del Sol Homeowners Association  
Resolution #99-01 – Parking Fining Policy**

**WHEREAS**, the Subject Properties In the Salida del Sol Homeowners Association, are under jurisdiction of the Declaration of Covenants, Conditions, and Restrictions (CC&R's) for the Association; and

**WHEREAS**, Covenants, Conditions and Restrictions (CC&R's) of the Salida del Sol Homeowners Association, recorded at Docket 9118 at Page 887, states that the Board of Directors shall have the power to adopt and publish rules and regulations governing the use of the Common Areas and facilities...; and

**WHEREAS**, the Board of Directors desires to adopt a parking fining policy as it applies to overnight parking; and

**WHEREAS**, the Board of Directors has followed its own standards and procedures, which are both fair and reasonable; and

**WHEREAS**, the Board of Directors rendered this decision in good faith, and in a manner which is neither discriminatory nor capricious.

**THIS RESOLUTION** pertains to the adoption of the parking fine policy for the Association.

**THEREBY, GOOD CAUSE EXISTING, IT IS HEREBY RESOLVED:**

Vehicles may not be parked on the street anytime and more specifically overnight (midnight to 6:00 AM) in such a manner as to block access to garages, fire hydrants, sidewalks running perpendicular to drives, pedestrian crossing areas, designated fire lanes, or clear two lane passage by vehicles on roads and drives. Violating vehicles will be mailed a letter as stated below:

1. When an automobile has been parked overnight (midnight to 6:00 AM) on the Association streets for ten days a letter will be mailed to the homeowner(s) reminding them of the Covenants, Conditions & Restrictions (CC&R's).
2. If no action has occurred in ten (10) more days then a second letter will be mailed to on the twentieth (20th) day.
3. If no action has occurred in twenty (20) days then a letter will be mailed to the homeowner inviting them to come to the next Board of Directors meeting and stating their case, specifically, why they are unable or unwilling to move their vehicle(s).
4. The homeowner, the unit owner, or to whose invitee, the vehicle is registered, following notice and hearing may be levied a \$10.00 per day fine for the period that the vehicle violated these Rules, unless at such hearing good and valid reasons are given for such violation. Costs of the hearing and enforcement may be collected as a special assessment.

Confirmed this 14<sup>TH</sup> day of APRIL at a meeting of the Board of Directors.

Vendela Schmid  
President

4.14.99  
Date