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

FOR

SPANISH TRAIL ESTATES

THIS DECLARATION of Covenants, Conditions, Restrictions, Assessments, Charges, Servitudes, Liens, Reservations and Easements (hereinafter termed the "Declaration") is made the day of May, 2004, by Fidelity National Title Agency, Inc., an Arizona corporation, under Trust No. 60,041 ("Declarant").

WITNESSETH:

WHEREAS, Declarant is the owner of a fee interest in that certain real property in the County of Pima, State of Arizona, described as follows: Lots 1 through 119 inclusive, Block 1 and the Common Areas "A" and "B" (hereinafter defined) of Spanish Trail Estates, as recorded in the official records of the Pima County Recorder in Book 58 of Maps and Plats at Page 53 thereof (the "Property");

WHEREAS, Declarant desires to develop the Property into a detached, single-family residential community;

WHEREAS, at full development it is intended, without obligation, that such community will collectively have one or more open spaces, drives, landscaped areas, drainage, and entryways;

WHEREAS, Declarant desires to form a non-profit corporation for the maintenance of the Property and for social and recreational purposes benefiting the Property and the Owners thereof (as said terms are defined hereinbelow), which non-profit corporation (hereinafter termed the "Association") will (1) acquire, construct, operate, manage and maintain any Common Areas (as said term is defined below); (2) maintain any Maintenance Areas (defined below); (3) establish, levy, collect and disburse any

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LI. "Visible From Neighboring Property" shall mean, with respect to any given object, that such object is or would be visible to a person six feet tall, standing at ground level on any part of such neighboring property.

(a) The right of the Association to charge reasonable admission fees for the usage of any facility situated upon the Common Areas. Fees shall be uniform among Members.

(b) The right of the Association to suspend the voting rights and right to use the recreational facilities and other Common Areas by any Member (i) for any period during which any Assessment against his Lot remains delinquent; (ii) for a period not to exceed sixty (60) days for any infraction of this Declaration or the Association Rules, and (iii) for successive sixty (60) day periods if any such infraction is not corrected during any prior sixty (60) day suspension period.

(c) The right of the Association to dedicate or transfer all or any part of the Common Areas or any easements or other rights thereon or therein to the County of Pima, or any agency thereof, or to any other public agency or authority, or to any utility company for such purposes and subject to such conditions as may be agreed to by the Association. Unless otherwise required by zoning stipulations or agreements with Pima County effective prior to the date hereof or specified on a recorded subdivision plat, no such dedication or transfer shall be effective except upon the affirmative vote of not less than two-thirds (2/3) of the Owners, excluding the Declarant.

(d) The right of the Association to use the Common Areas as set forth herein.

(e) Any use by the general public to the extent the general public possesses or is granted the right to use the same.

Section 2. Covenants, Conditions, Restrictions and Easements Applicable to Lots Within All Land Use Classifications. The following covenants, conditions, restrictions and reservations of easements and rights shall apply to all Lots and the Owners thereof.

(a) Architectural Control. The Property is subject to architectural control as established hereby. No improvements, alterations, repairs, excavation, grading, landscaping or other work which in any way alters the exterior appearance of any of the Property, or the improvements located thereon, from its natural or improved state existing on the date this Declaration was first recorded shall be made or done without prior written approval of the Architectural Committee, except as otherwise expressly provided in this Declaration or in such design guidelines as the Architectural Committee may adopt and from time to time amend (the "Design Guidelines"). No building, fence, deck, landscaping (other than replacing existing landscaping that was properly approved), wall, residence or other structure shall be commenced, erected, improved, altered, or made without the prior written approval of the Architectural Committee except as may be provided in the Design Guidelines. All subsequent additions to or changes or alterations in any building, fence, wall or other structure, including exterior color scheme, and all changes in the grade of Lots, shall be subject to the prior written approval of the Architectural Committee except as may

be provided in the Design Guidelines. No changes or deviations in or from the plans and specifications once approved by the Architectural Committee shall be made without prior written approval of the Architectural Committee except as may be provided in the Design Guidelines. Any approval given by the Architectural Committee shall be valid for a period of one year, and all approved construction must be completed within such time period.

(b) Animals. No animal, bird, fowl, poultry or livestock, other than a reasonable number of generally recognized house or yard pets, shall be maintained on any Lot and then only if they are kept, bred or raised thereon solely as domestic pets and not for commercial purposes. No animal, bird, fowl, poultry, or livestock shall be allowed to make an unreasonable amount of noise or to become a nuisance. No structure for the care, housing or confinement of any animal, bird, fowl, poultry, or livestock shall be maintained so as to be Visible From Neighboring Property. Upon the written request of any Member, the Board shall conclusively determine, in its sole and absolute discretion, whether, for the purposes of this Section, a particular animal, bird, fowl, poultry, or livestock is a generally recognized house or yard pet, whether such a pet is a nuisance, or whether the number of animals or birds on any such property is reasonable. Any decision rendered by the Board shall be enforceable in the same manner as other restrictions contained herein.

(c) Temporary Occupancy and Temporary Buildings. No trailer, basement of any incomplete building, tent, shack, garage or barn, and no temporary buildings or structures of any kind, shall be used at any time for a residence, either temporary or permanent, except as set forth in subsection 2(y) below. Temporary buildings or structures used during the construction of a dwelling on any property shall be removed immediately after the completion of construction.

(d) Maintenance of Lawns and Plantings. Each Owner of a Lot shall keep all shrubs, trees, hedges, grass, plantings and landscaping of every kind in good condition, properly cultivated, neatly trimmed and free of trash, weeds and other unsightly material, whether located on an Owner's lot or any of the following areas:

(i) planted public right-of-way areas between sidewalks or bike paths, and the street curb in front of an Owner's property, if any;

(ii) any other public right-of-way or easement area which abuts the Owner's Lot and which is located between the boundary line of his Lot and the paved area of any street, sidewalk, bike path, wall or similar area; and

(iii) any non-street public right-of-way or easement area adjacent to his Lot. Such Owner shall not be responsible for maintenance of any area over which (1) the Association assumes the responsibility in writing, (2) the Association has been given such responsibility by a recorded instrument as provided in Article X, Section 1 of this Declaration, or (3) the City of Tucson or Pima County, assumes responsibility, for so long as the Association or Pima County assumes or has responsibility as provided in Subsection (1), (2) or (3).

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(f) Diseases and Insects. No Owner shall permit any thing or condition to exist upon any Lot which shall induce, breed or harbor infectious plant diseases or noxious insects.

(h) Antennas. Subject to applicable federal and state law, no antenna or other device for the transmission or reception of television or radio signals or any other

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(n) Restriction on Further Subdivision, Property Restrictions and Rezoning.

(c) Utility Easements. There is hereby created a blanket easement upon,

(p) Party Walls. Except as hereinafter provided, the rights and duties of respect to party walls between Lots or party fences between Lots shall be as

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pedestrian way or other area from ground level to a height of eight (8) feet without the prior approval of the Architectural Committee.

(s) Trucks, Trailers, Campers and Boats. No motor vehicle classed by manufacturer rating as exceeding one-ton, mobile home, travel trailer, tent trailer, trailer, camper shell, detached camper, boat, boat trailer, or other similar equipment or vehicle may be parked, maintained, constructed, reconstructed or repaired on any Lot or on any street in the Property so as to be Visible From Neighboring Property, the Common Areas or the streets; provided, however, the provisions of this Section shall not apply to pickup trucks of less than one-ton capacity with camper shells not exceeding seven (7) feet in height measured from ground level which are parked as provided in Subsection (u) below and are used on a regular and recurring basis for basic transportation.

(t) Motor Vehicles. No automobile, motorcycle, motorbike or other motor vehicle shall be constructed, reconstructed or repaired upon any Lot or street on the Property, and no inoperable vehicle may be stored or parked on any such Lot or street, so as to be Visible From Neighboring Property or to be visible from Common Areas or streets; provided, however, that the provisions of this Section shall not apply to (i) emergency vehicle repairs or temporary construction equipment maintained during, and used exclusively in connection with, the construction of any improvement approved by the Architectural Committee; or (ii) vehicles parked on Lots so long as such vehicles are in good operating condition and appearance and are not under repair.

(u) Parking. Vehicles of all Owners and of their employees, guests and invitees, are to be kept in garages, carports, residential driveways of the Owner, and other designated parking areas wherever and whenever such facilities are sufficient to accommodate the number of vehicles at a Lot; provided, however, this Section shall not be construed to permit the parking of the above described areas of any vehicle whose parking on the Property is otherwise prohibited or the parking of any inoperable vehicle.

(v) Right of Entry. During reasonable hours and upon reasonable notice to the Owner or other occupant of a Lot, any member of the Architectural Committee, any member of the Board, or any authorized representative of either of them, shall have the right to enter upon and inspect any Lot, and the improvements thereon, except for the interior portions of any completed residence 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.

(w) Developer and Declarant's Exemption. Nothing contained in this Declaration shall be construed to prevent the erection or maintenance by Declarant or Developer, or the duly authorized agents of either of them, of structures, improvements or signs necessary or convenient to the development or sale of any portion of the Property; provided that such improvements, structures and signs shall not obstruct access to any Lot; shall only be placed on Common Areas or Lots owned by Declarant, and shall not be inconsistent with the rights of any Lot purchaser.

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(x) Health, Safety and Welfare. In the event additional uses, activities, and facilities are deemed by the Board to be a nuisance or to adversely affect the health, safety or welfare of Owners, the Board may make rules restricting or regulating their presence on the Property as part of the Association Rules or may direct the Architectural Committee to make rules governing their presence on Lots as part of the architectural guidelines.

(y) Model Homes. The provisions of this Declaration which prohibit non-residential use of Lots and regulate parking of vehicles shall not prohibit the construction and maintenance of model homes by persons engaged in the construction of residential dwellings within the Property and parking incidental to the visiting of such model homes so long as the location of such model homes is approved by the Architectural Committee, and the construction, operation and maintenance of such model homes otherwise comply with all of the provisions of this Declaration. The Architectural Committee may also permit Lots and other areas to be used for parking in connection with the showing of model homes so long as such parking and parking areas are in compliance with the rules and regulations of Pima County or other applicable governmental authority and any rules of the Architectural Committee. Any homes constructed as model homes shall cease to be used as model homes at any time the Owner or builder thereof is not actively engaged in the construction and sale of single family residences within the Property.

(z) Single Family Residential Use. All Lots shall be used, improved, and devoted exclusively to single-family residential use. No gainful occupation, profession, trade or other nonresidential use other than the keeping of an office for private use shall be conducted on any such property on a regular basis and no person shall enter into any Lot for engaging in such uses or for the purpose of receiving products or services arising out of such usage. No structure whatever, other than one private Dwelling Unit, together with a private garage, a guest house or servant quarters, shall be erected, placed or permitted to remain on any Lot and no facilities for the preparation of food shall be provided or permitted in any guest house or servants' quarters erected on said Lot, unless appropriate zoning is obtained from the applicable governmental authority. All buildings constructed on the Property or any Lot, other than the foregoing referenced Dwelling Unit, shall be limited to two stories. The height of any and all residential buildings constructed on the Lots shall not exceed twenty-six (26) feet.

(aa) Drainage Improvements. The drainage from, to, or on any Lot, Common Areas or Maintenance Areas, and all drainage improvements and facilities, as originally constructed by the Developer pursuant to plans approved by the County and/or other applicable governmental authorities, (collectively the "Drainage Improvements") shall not be altered, disturbed or obstructed by any Owner; provided, however, that the Developer may alter or construct any Drainage Improvement to the extent required by the County or any other governmental authority, and the Developer is hereby granted a license to enter upon any Lot, Common Areas or Maintenance Areas to the extent deemed necessary or convenient by Developer for the purpose of accomplishing such alteration or construction.

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ARTICLE IV
TRACT DECLARATIONS

Tract Declarations, if any, designating the purpose for which portions of the Property may be used and all additional covenants, conditions, restrictions, assessments, charges, servitudes, liens, reservations and easements applicable to such portions of the Property shall be subject to approval of Declarant so long as there is a Class B Member, and thereafter shall be subject to the approval of the Board.

ARTICLE V
ORGANIZATION OF ASSOCIATION

Section 1. Formation of Association. The Association shall be a nonprofit Arizona corporation charged with the duties and invested with the powers prescribed by law and set forth in the Articles, Bylaws, and this Declaration. Neither the Articles nor Bylaws shall, for any reason, be amended or otherwise changed or interpreted so as to be inconsistent with this Declaration.

Section 2. Board of Directors and Officers. The affairs of the Association shall be conducted by the Board and such officers as the Board may elect or appoint in accordance with the Articles and the Bylaws as the same may be amended from time to time. The initial Board, and each Board thereafter so long as there is a Class B Member, shall consist of three (3) Members or other persons, designated by Declarant. The Board may also appoint various committees and appoint a Manager who shall, subject to the direction of the Board, be responsible for the day-to-day operation of the Association. The Board shall determine the compensation to be paid to the Manager or any other employee of the Association.

Section 3. The Association Rules. By a majority vote of the Board the Association may, from time to time and subject to the provisions of this Declaration, adopt, amend and repeal rules and regulations to be known as the Association Rules. The Association Rules may restrict and govern the use of any Common Area by any Member or the family and Designees of such Member; provided, however, that the Association Rules shall not discriminate among Members and shall not be inconsistent with this Declaration, the Articles or Bylaws. Upon adoption, the Association Rules shall have the same force and effect as if they were set forth in and were a part of this Declaration.

Section 4. Personal Liability. No member of the Board or of any committee of the Association, no officer of the Association, and no Manager or other employee of the Association shall be personally liable to any Member, or to any other person including the Association, for any damage, loss or prejudice suffered or claimed on account of any act, omission, error, or negligence of the Association, the Board, the Manager, any representative or employee of the Association, or any committee, committee member or

ARTICLE VI

MEMBERSHIPS AND VOTING

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Section 4. Right to Vote. No change in the ownership of a Membership shall be effective for voting purposes unless and until the Board is given actual written notice of such change and is provided satisfactory proof thereof. The vote for each such Membership must be cast as a unit, and fractional votes shall not be allowed. In the event that a Membership is owned by more than one person or entity and such owners are unable to agree among themselves as to how their vote or votes shall be cast, they shall lose their right to vote on the matter in question. If any Member casts a vote representing a certain Membership, it will thereafter be conclusively presumed for all purposes that he was acting with the authority and consent of all other Owners of the same Membership unless objection thereto is made at the time the vote is cast. In the event more than one vote is cast for a particular Membership, none of the said votes shall be counted and all said votes shall be deemed void.

Section 5. Cumulative Voting for Board Members. In any election of the members of the Board, every owner of a Membership entitled to vote at such an election shall have the number of votes for each Membership equal to the number of directors to be elected, except that the Class B Member shall have the number of votes designated in Section 3 above times the number of directors to be elected. Each Member shall have the right to cumulate his votes for one candidate or to divide such votes among any number of the candidates. The candidates receiving the highest number of votes, up to the number of the Board members to be elected, shall be deemed elected.

Section 6. Membership Rights. Each Member shall have the rights, duties and obligations set forth in this Declaration and such other rights, duties and obligations as are set forth in the Articles and Bylaws as the same may be amended from time to time.

Section 7. Transfer of Membership. Except as provided in this Section 7 of this Article VI, the rights and obligations of the owner of a Class A Membership in the Association shall not be assigned, transferred, pledged, conveyed or alienated in any way except upon transfer of ownership to an Owner's Lot. A transfer of ownership to a Lot may be effected by deed, intestate succession, testamentary disposition, foreclosure of a mortgage of record, or such other legal process now in effect or as may hereafter be established under or pursuant to the laws of the State of Arizona. Any attempt to make a prohibited transfer shall be void. Any transfer of ownership to a Lot shall operate to transfer the Memberships appurtenant to said Lot to the new Owner thereof.

Section 8. Use of Membership; Designees. Subject to the Association Rules, all of the owners of a Membership may designate one or more non-Members (herein referred to as a "Designee") to exercise all of the rights of the Member under this Declaration except the Member's voting rights, but such designation shall not relieve the Member of any liabilities or obligation as an Owner or with respect to the Membership. So long as such designation is in effect, the Member shall be permitted to exercise only his voting rights and the Board may, among other things, in its discretion, set maximum or minimum periods for which such designation may be in effect and limit the number of persons who may be so designated by any Member at any one time.

ARTICLE VII

COVENANT FOR ASSESSMENTS AND CREATION OF LIEN

Section 1. (a) Creation of Lien and Personal Obligation of Assessments and

The Board's failure to fix assessment amounts or rates or to deliver to each

No Owner may exempt himself or herself from liability for assessments by

(b) Declarant's Option to Fund Budget Deficits. For so long as there is a

otherwise payable on Lots owned by the Declarant if the Declarant had elected to pay Assessments in the same manner as any other Owner. Unless Declarant otherwise notifies the Board in writing at least 60 days before the beginning of each fiscal year, Declarant shall be deemed to have elected to continue paying on the same basis as during the immediately preceding fiscal year. Regardless of Declarant's election, Declarant's obligations hereunder may be satisfied in the form of cash or by "in kind" contributions of services or materials, or by a combination of these. After termination of the Class B Membership, Declarant shall pay Assessments on its unsold Lots in the same manner as any other Owner.

(c) Sale of Property. If during any assessment period Declarant conveys any real property subject to this Declaration (the "Sale Property") for which Declarant has elected, pursuant to subsection (b), to pay the budget deficit rather than assessments on a per Lot basis, then the Association may require the grantee of the Sale Property to pay to the Association an amount equal to the pro rata portion of the assessments that would have been payable with respect to the Sale Property for the applicable assessment period had Declarant not made such election; provided the grantee shall have no such obligation if the Sale Property is otherwise exempt from assessment pursuant to Section 11. The amount of such pro rata portion shall be based on the number of days remaining in the assessment period in which such conveyance occurs.

Section 2. Annual Assessments. To provide for the uses and purposes specified in Article IX hereof, including the establishment of replacement and maintenance reserves, the Board in each year, commencing with the year in which this Declaration is recorded, shall assess against each Lot an Annual Assessment. The amount of the Annual Assessment, subject to the provisions of Section 4 hereof, shall be in the sole discretion of the Board but shall be determined with the objective of fulfilling the Association's obligations under this Declaration and providing for the uses and purposes specified in Article IX.

Section 3. Uniform Rate of Assessment. The amount of any Annual or Special Assessment against each Lot shall be fixed at a uniform rate per Membership, except that the Owner of a Lot (excluding the Declarant for so long as the Declarant is a Class B Member) shall pay only twenty-five percent (25%) of the Annual Assessment attributable to his Membership (herein, a "Reduced Rate") until the earlier of (i) the completion of a Dwelling Unit on the Lot or (ii) six (6) months from the commencement of construction of a Dwelling Unit on the Lot. For purposes of this Section, a Dwelling Unit or other building shall be deemed completed when the City of Tucson or County of Pima, as applicable, has issued a Certificate of Occupancy in respect of such structure. If the Owner of a Lot ceases to qualify for the Reduced Rate during the period to which an Annual Assessment is attributable, the Assessment attributable to a Membership shall be prorated between the applicable rates on the basis of the number of days in the period that the Owner qualified for each rate. Annual Assessments may be collected on a monthly, quarterly or annual basis and Special Assessments may be collected as specified by the Board unless otherwise determined by the resolution of the Members of the Association approving the Special Assessments. The foregoing notwithstanding, in the event of a Budget Deficit, each

Owner entitled to a Reduced Rate under the foregoing provision shall pay, not less than annually, within ten business days after receipt of written notice from the Association, an amount equal to its pro rata share of the Budget Deficit (which pro rata share shall be a fraction, the numerator of which shall be the number of Lots owned by such Owner which are subject to the Reduced Rate, and the denominator of which shall be the total number of Lots in the Property), provided that in no event shall an Owner be responsible for payments in excess of assessment amounts otherwise payable on Lots owned by such Owner if the Reduced Rate did not apply.

Section 4. Maximum Annual Assessments. The Annual Assessment to be established by the Board may not exceed a certain amount, hereinafter referred to as the "Maximum Annual Assessment," which Maximum Annual Assessment shall be determined and shall vary in accordance with the following provisions:

(a) Until January 1 of the year following the Recording of this Declaration, the Maximum Annual Assessment shall be Four Hundred Dollars (\$400.00) for each Membership.

(b) From and after January 1 of the year immediately following the recording of the Declaration, the Board may, without a vote of the Members, increase the Maximum Annual Assessment during each fiscal year of the Association by the greatest of (i) 10% of the Maximum Annual Assessment for the immediately preceding fiscal year, (ii) the amount permitted by law; or (iii) an amount based upon the percentage increase in the Consumer Price Index for All Urban Consumers (CPI-U) U.S. City Average (1982-84=100), issued by the United States Department of Labor, Bureau of Labor Statistics (the "Consumer Price Index"), which amount shall be computed in the last month of each fiscal year by subtracting X from Y, then dividing the result by X, then multiplying the quotient by the Maximum Annual Assessment for the year immediately preceding the year for which the Maximum Annual Assessment is to be determined where:

X = Consumer Price Index for September of the calendar year immediately preceding the year in which the Annual Assessments commenced.

Y = Consumer Price Index for September of the year immediately preceding the calendar year for which the maximum Per Membership Assessment is to be determined.

If the Consumer Price Index ceases to be published, then the index which shall be used for computing the increase in the Maximum Annual Assessment permitted under this Subsection shall be the substitute recommended by the United States government for the Consumer Price Index or, if no such successor index is recommended by the United States government, the index selected by the Board.

(c) From and after January 1 of the year immediately following the recording of the Declaration, the Maximum Annual Assessment may be increased by an amount greater than the maximum increase allowed pursuant to (b) above, only by a majority vote of Members entitled to be cast by Members who are voting in person or by proxy at a meeting duly called for such purpose.

Section 5. Special Assessments for Capital Improvements and Extraordinary Expenses. In addition to the Annual Assessments authorized above, the Association may levy, in any Assessment Period, one or more Special Assessments applicable to that period only for the purpose of defraying, in whole or in part, the cost of any construction, reconstruction, repair or replacement of a capital improvement upon the Association Land, including fixtures and personal property related thereto, or for the purpose of defraying other extraordinary expenses provided that any such Assessment shall have the assent of two-thirds (2/3) of the votes of each class of Members who are voting in person or by proxy duly called for such purpose. In connection with any such Special Assessment, Owners qualifying for paying only twenty-five percent (25%) of the Annual Assessment attributable to their Memberships pursuant to Section 3 above shall also be required to pay only twenty-five percent (25%) of the Special Assessment otherwise attributable to each such Membership. The provisions of this Section are not intended to preclude or limit the Assessment, collection or use of Annual Assessments for the aforesaid purposes.

Section 6. Notice and Quorum for Any Action Authorized Under Section 4 and 5. Written notice of any meeting called for the purpose of taking any action authorized under Sections 4 or 5 of this Article shall be sent to all Members no less than thirty (30) days nor more than sixty (60) days in advance of the meeting. At the first such meeting called, the presence of Members or of proxies entitled to cast sixty percent (60%) of all the votes (exclusive of suspended voting rights) of each class of Membership shall constitute a quorum. If the required quorum is not present, another meeting may be called subject to the same notice requirement, and the required quorum at the subsequent meeting shall be one-half (1/2) of the required quorum at the preceding meeting. No such subsequent meeting shall be held more than sixty (60) days following the preceding meeting.

Section 7. Establishment of Annual Assessment Period. The period for which the Annual Assessment is to be levied (the "Assessment Period") shall be the calendar year, except that the first Assessment Period shall commence upon the filing of this Declaration and terminate on December 31 of such year. The Board in its sole discretion from time to time may change the Assessment Period by recording with the County Recorder of Pima County, Arizona, an instrument specifying the new Assessment Period.

Section 8. Rules Regarding Billing and Collection Procedures. The Board shall have the right to adopt rules and regulations setting forth procedures for the purpose of making the Assessments provided herein and for the billing and collection of the Annual

Section 9. Collection Costs and Interest on Delinquent Assessments. Any Assessment or installment thereof not paid when due shall be deemed delinquent and shall bear interest from thirty (30) days after the due date until paid at a rate equal to the greater of (a) twelve percent (12%) per annum or (b) the then prevailing interest rate on loans insured by the Federal Housing Association, or (c) the then prevailing interest rate on loans guaranteed by the Veterans Administration, and the Member shall be liable for all costs, including attorney's fees, which may be incurred by the Association in collecting the same. The applicable interest rate on delinquent Assessments shall be determined on a daily basis. The Board may also record a Notice of Delinquent Assessment against any Lot as to which an Assessment is delinquent and constitutes a lien and may establish a fixed fee to reimburse the Association for the Association's cost in recording such Notice, processing the delinquency and recording a notice of payment, which fixed fee shall be treated as a collection cost of the Association secured by the Assessment Lien.

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ARTICLE VIII
ENFORCEMENT OF PAYMENT OF ANNUAL AND SPECIAL ASSESSMENTS
AND MAINTENANCE CHARGES AND OF ASSESSMENT LIEN

Section 2. Association's Remedies to Enforce Payment of Annual and Special Assessments and Maintenance Charges. If any Member fails to pay the Annual or Special Assessments or installments when due, or to pay Maintenance Charges assessed pursuant to Article X, Sections 2 and 3, the Association may enforce the payment of the Annual or Special Assessments, Maintenance Charges and/or the Assessment Lien by taking either or both of the following actions, concurrently or separately and, by exercising either of the remedies hereinafter set forth, the Association does not prejudice or waive its right to exercise the other remedy:

(b) Foreclose the Assessment Lien against the Lot in accordance with the then prevailing Arizona law relating to the foreclosure of realty mortgages (including the right to recover any deficiency), and the Lot may be redeemed after foreclosure sale as provided by law.

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Section 11. Property Exempted from the Annual and Special Assessments and Assessment Lien. Exempt Property shall be exempted from the assessment of the Annual and Special Assessments and, except as provided in Article X, Section 3, from Maintenance Charges and the Assessment Lien; provided, however, that in the event any change of ownership of Exempt Property results in all or any part thereof becoming Assessable Property in any year, the same thereupon shall be subject to the assessment of the Annual and Special Assessments, Maintenance Charges (prorated as of the date it became Assessable Property) and the Assessment Lien.

Section 1. Association as Enforcing Body. The Association, as the agent and representative of the Members, shall have the exclusive right to enforce the provisions of this Declaration. However, if the Association shall fail or refuse to enforce this Declaration or any provision hereof for an unreasonable period of time after written request to do so, then any Member may enforce them on behalf of the Association, but not at the expense of the Association, by any appropriate action whether in law or in equity.

(a) Bring an action at law and recover judgment against the Member personally obligated to pay the Annual or Special Assessments or the Maintenance Charges;

Section 3. Subordination of Assessment Lien to First Mortgage or Deed of Trust; Priority of Lien. The Assessment Lien provided for herein shall be subordinate to

Section 4. Costs to be Borne by Member in Connection with Enforcement of Payment of Annual and Special Assessments and Maintenance Charges. In any action taken pursuant to Section 2 of this Article, the Member shall be personally liable for, and the Assessment Lien shall be deemed to secure the amount of, the Annual and Special Assessment and Maintenance Charges together with interest and the Association's collection costs and attorney's fees, including those costs and fees specified in Article VII, Section 9.

Section 1. Purposes for which Association's Funds may be Used. The Association shall be responsible for the control, maintenance, safety and liability, and payment of ad valorem taxes, relating to the Common Areas, and for maintenance of the Maintenance Areas. The Association shall apply all funds and property collected and received by it (including the Annual and Special Assessments, fees, loan proceeds, surplus funds and all funds and property received by it from any other source, together with interest on any and all such sums) for the common good and benefit of the Property and the Members by devoting said funds and property, among other things, to the acquisition, construction, alteration, maintenance, provision and operation, by any manner or method whatsoever, of any and all land, properties, improvements, facilities, services, projects, programs, studies and systems, within or without the Property, which may be necessary, desirable or beneficial to the general common interests of the Property and the Members. The following are some, but not all, of the areas in which the Association may seek to aid,

promote and provide for such common benefit: social interaction among Members, maintenance of landscaping on Common Areas and public right of way and drainage areas within the Property, maintenance of the Maintenance Areas and recreation (including liability insurance, communications, transportation, health, utilities, public services, safety and indemnification of officers and directors of the Association). The Association also may expend its funds for any purposes which any municipality may expend its funds under the laws of the State of Arizona or such municipality's charter.

Section 2. Borrowing Power. The Association may borrow money in such amounts, at such rates, upon such terms and security, and for such period of time as is necessary or appropriate; provided, however, that the Common Areas or any part thereof may not be mortgaged without the consent of at least two-thirds (2/3) of the Owners, excluding the Declarant, and further provided that if ingress or egress to any residence is through a Common Area, any conveyances or encumbrances of such area shall be subject to the benefiting Owners' easement.

Section 3. Association's Rights in Spending Funds From Year to Year. The Association shall not be obligated to spend in any year all the sums received by it in such year (whether by way of Annual or Special Assessments, fees or otherwise), and may carry forward as surplus any balances remaining. The Association shall not be obligated to reduce the amount of the Annual Assessment in the succeeding year if a surplus exists from a prior year and the Association may carry forward from year to year such surplus as the Board in its discretion may determine to be desirable for the greater financial security of the Association and the accomplishment of its purposes.

Section 4. Administration of Special Use Fees. The Association is authorized to bill for, sue for, collect, administer and disburse all Special Use Fees and the payment thereof shall be secured by the Assessment Lien; provided, however, that all Special Use Fees collected shall, if imposed in connection with a particular improvement, be separately accounted for as to each separate improvement pertaining to which they are collected and shall be expended on the particular improvements in which they pertain.

Section 5. Insurance. The Association shall maintain insurance against liability incurred as a result of death or injury to persons or damage to property on the Common Areas.

ARTICLE X MAINTENANCE

Section 1. Common Areas, Maintenance Areas and Public Rights of Way. The Association, or its duly delegated representative, shall maintain and otherwise manage all Common Areas and Maintenance Areas, including, but not limited to, the landscaping, walkways, detention and retention areas, paths, parking areas, drives, roadways, and recreational facilities; provided, however, the Association shall not be responsible for

Notwithstanding anything herein to the contrary, until such time as the City of Tucson, Pima County or other applicable governmental authority directs otherwise, the Association shall have an Arizona Registered Professional Civil Engineer prepare a certified inspection report for the Drainage and Detention/Retention Facilities at least once each year. Such inspection report shall be retained in the Association's books and records and shall be subject to review by the staff of Pima County, the City of Tucson and any other applicable governmental authority, upon written request. The staff of Pima County, the City of Tucson and any other applicable governmental authority has the right to inspect the private Drainage and Detention/Retention Facilities to verify that any scheduled and unscheduled maintenance activities are being adequately performed by the Association. The Association shall be obligated to reimburse Pima County, the City of Tucson and any other applicable governmental authority for any costs associated with maintaining the private Drainage and Detention/Retention Facilities in the event that it determines that the Association has been deficient in its obligation to adequately maintain such facilities.

Section 2. Assessment of Certain Costs of Maintenance and Repair of Common Areas and Maintenance Areas. In the event that the need for maintenance or repair of Common Areas, Maintenance Areas or other areas maintained by the Association is caused through the willful or negligent act of any Member, his family, guests, invitees or Designees, the cost of such maintenance or repairs shall be added to and become a part of the Assessment to which such Member and the Member's Lot is subject and shall be secured by the Assessment Lien. Any charges or fee to be paid by the Owner of a Lot pursuant to Section 1 of this Article X in connection with a contract entered into by the Association with an Owner for the performance of an Owner's maintenance responsibilities shall also become a part of such Assessment and shall be secured by the Assessment Lien.

Section 3. Improper Maintenance and Use of Lots. In the event any portion of any Lot is so maintained as to present a public or private nuisance, or as to substantially detract from the appearance or quality of the surrounding Lots or other areas of the Property which are substantially affected thereby or related thereto, or in the event any portion of a Lot is being used in a manner which violates this Declaration, or in the event the Owner of any Lot is failing to perform any of its obligations under this Declaration, or the architectural guidelines and standards of the Architectural Committee, the Board may by resolution make a finding to such effect, specifying the particular condition or conditions which exist, and pursuant thereto give notice thereof to the offending Owner that unless corrective action is taken within fourteen (14) days the Board may cause such action to be taken at said Owner's cost. If at the expiration of said fourteen (14) day period of time the requisite corrective action has not been taken, the Board shall be authorized and empowered to cause such action to be taken and the cost thereof shall be added to and become a part of the Assessment to which the offending Owner and the Owner's Lot is subject and shall be secured by the Assessment Lien.

ARTICLE XI

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Appointees need not be architects or Owners and do not need to possess any special qualifications of any type except such as the Declarant may, in its discretion, require. The Architectural Committee shall hold regular meetings as needed, a quorum for such meeting shall consist of a quorum of the regular members, and the concurrence of a majority of the regular members shall be necessary for any decision of the Architectural Committee. An alternate member, approved by the Declarant, may participate at any meeting at which there is not a quorum of regular members present, may constitute a quorum by his presence and shall have all of the authority of a regular member while so participating. The Architectural Committee may promulgate architectural guidelines and standards to be used in rendering its decisions (the "Architectural Guidelines"). Subject to the provisions of Section 2 of this Article, the decision of the Architectural Committee shall be final on all matters submitted to it pursuant to this Declaration.

Section 3. Fee. The Board may establish a reasonable processing fee to defer the costs of the Association in considering any requests for approvals submitted to it, which fee shall be paid at the time the request for approval is submitted.

Section 5. Limited Liability of Committee Approval. Approval by the Committee shall relate only to the conformity of plans and specifications to general

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Section 1. Association's Rights and Powers as Set-Forth in Articles and

Such rights and powers, subject to the approval thereof by any agencies or institutions deemed necessary by Declarant, may encompass any and all things which a natural person could do or which now or hereafter may be authorized by law, provided such Articles and Bylaws are not inconsistent with the provisions of this Declaration and are necessary, desirable or convenient for effectuating the purposes set forth in this Declaration. After incorporation of the Association, a copy of the Articles and Bylaws of the Association shall be available for inspection at the office of the Association during reasonable business hours.

Section 3. Contracts with Others for Performance of Association's Duties.

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authorize any such contract, transaction or approval with like force and effect as if he were not so interested.

Section 4. Change of Use of Common Areas and Maintenance Areas and Procedure Therefor. Upon (a) adoption of a resolution by the Board stating that in the Board's Opinion the then present use of a designated part of a Common Area or Maintenance Area or of the Association's interest in other Common Areas is no longer in the best interests of the Owners and residents and (b) the approval of such resolution by a majority of the votes of Members who are voting in person or by proxy at a meeting duly called for such purpose, the Board shall have the power and right to change the use thereof (and in connection therewith, construct, reconstruct, alter or change the improvements thereon in any manner deemed necessary by the Board to accommodate the new use), provided such new use (i) shall be for the benefit of the Owners, and (ii) shall be consistent with any deed restrictions (or zoning regulations) restricting or limiting the use of the Common Area or Maintenance Area.

ARTICLE XIII

TERM; AMENDMENTS; TERMINATION

Section 1. Term; Method of Termination. This Declaration shall be effective upon the date of its Recording hereof and, as amended from time to time, shall continue in full force and effect for a term of twenty (20) years from the date this Declaration is Recorded. From and after said date, this Declaration, as amended, shall be automatically extended for successive periods of ten (10) years each, unless there is an affirmative vote to terminate this Declaration by the then Members casting ninety percent (90%) of the total votes cast at an election held for such purpose within six (6) months prior to the expiration of the initial effective period hereof or any ten (10) year extension. The Declaration may be terminated at any time if ninety percent (90%) of the votes cast by each class of Members shall be cast in favor of termination at an election held for such purpose. Anything in the foregoing to the contrary notwithstanding, no vote to terminate this Declaration shall be effective unless and until the written consent to such termination has been obtained, within a period from six (6) months prior to such vote to six (6) months after such vote, from the holders of Recorded first mortgages or deeds of trust to which the Assessment Lien is subordinate pursuant to Article VIII, Section 3 above, on seventy-five percent (75%) of the Lots upon which there are such Recorded first mortgages and deeds of trust. If the necessary votes and consents are obtained, the Board shall cause to be recorded with the County Recorder of Pima County, Arizona, a Certificate of Termination, duly signed by the President or Vice President and attested by the Secretary or Assistant Secretary of the Association, with their signatures acknowledged. Thereupon these Covenants shall have no further force and effect, and the Association shall be dissolved pursuant to the terms set forth in its Articles.

Section 2. Amendments. This Declaration may be amended by recording with the County Recorder of Pima County, Arizona, a Certificate of Amendment, duly

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out of or related in any way to the planning, design, engineering, grading, construction or development of the Property, including, without limitation; any claim or cause of action that the Property or any improvements thereon are defective or that the Declarant, its agents, contractors, employees, subcontractors, architects, engineers or consultants were negligent in the planning, design, engineering, grading, construction or development thereof; or (b) any claim or cause of action against the Declarant or any employee, agent, director, member or officer of Declarant arising out of or in any way related to the development of the Property or the management or operation of the Association, including, without limitation, any claim for negligence, fraud, intentional misconduct or breach of fiduciary duty. The Association, the Declarant, all Owners, lessees, occupants and other Persons bound by this Declaration, all Declarant's agents, contractors, employees, subcontractors, architects, engineers or consultants and any Person not otherwise bound by this Declaration who agrees to submit to this Article XIV (collectively, the "Bound Parties") agree that the dispute resolution procedures set forth in this Article XIV shall apply to all Claims.

14.2 Notice of Claim. Any Bound Party who contends or alleges to have a Claim (a "Claimant") against any other Bound Party (a "Respondent") shall notify each Respondent in writing of the Claim (the "Claim Notice"), stating plainly and concisely: (a) the nature of the Claim, including, date, time, location, Persons involved, and Respondent's role in the Claim; (b) the factual and legal basis of the Claim; (c) what Claimant wants Respondent to do or not do to resolve the Claim; and (d) a certified statement indicating whether expert testimony will be required to prove any of the allegations contained in the Claim. In the event the Claimant is the Association and the Claim involves an Alleged Defect (as defined in Section 14.5), the Association must provide written notice to all Members prior to delivering a Claim Notice to a Bound Party or initiating any legal action, cause of action, proceeding, or arbitration against any Bound Party which notice shall (at a minimum) include: (a) a description of the Claim; (b) a description of the attempts of Declarant or any other Bound Party to correct such Alleged Defect and the opportunities provided to Declarant or any other Bound Party to correct such Alleged Defect; and (c) an affirmative statement from the Board of Directors that the action is in the best interests of the Association and its Members. The Bound Parties further agree and acknowledge that any action brought by a Claimant against a Respondent shall be brought by independent action and that no Claimant shall either serve as a class representative or become a class member to pursue such action.

14.3 Mediation. The Claimant and the Respondent shall negotiate in good faith in an attempt to resolve the claim. If the Parties do not resolve the Claim through negotiation within thirty (30) days after the date of the Claim Notice or within such longer period as may be agreed upon by the Parties ("Termination of Negotiations"), Claimant shall have thirty (30) additional days within which to submit the Claim to mediation under the auspices of an independent mediation service agreed to by Claimant and Respondent. If Claimant does not submit the Claim to mediation within

14.4.6 Compensation. The Arbitrator shall be fully compensated for all time spent in connection with the arbitration proceedings in accordance with the Arbitrator's usual hourly rate unless otherwise agreed to by the parties, for all time spent by the Arbitrator in connection with the arbitration proceeding. Pending the final award, the Arbitrator's compensation and expenses shall be advanced equally by the parties.

14.4.7 Preliminary Hearing. Within thirty (30) days after the Arbitrator has been appointed, the Arbitrator and counsel for the parties shall meet for the purpose of developing a plan for the management of the arbitration, which shall then be memorialized in an appropriate writing. The matters which may be addressed include, in addition to those set forth in the AAA Rules, the following: (i) definition of issues; (ii) scope; timing and types of discovery, if any; (iii) schedule and place(s) of hearings; (iv) setting of other timetables; (v) submission of motions and briefs; (vi) whether and to what extent expert testimony will be required, whether the Arbitrator should engage one or more neutral experts, and whether, if this is done, engagement of experts by the parties can be obviated or minimized; (vii) whether and to what extent the direct testimony of witnesses will be received by affidavit or written witness statement; and (viii) any other matters which may promote the efficient, expeditious, and cost-effective conduct of the proceeding.

14.4.8 Management of the Arbitration. The Arbitrator shall actively manage the proceedings as the Arbitrator deems best so as to make the proceedings expeditious, economical and less burdensome than litigation.

14.4.9 Confidentiality. All papers, documents, briefs, written communication, testimony and transcripts as well as any and all arbitration decisions shall be confidential and not disclosed to anyone other than the Arbitrator, the parties or the parties' attorneys and expert witnesses (where applicable to their testimony), except that upon prior written consent of all parties, such information may be divulged to additional third parties. All third parties shall agree in writing to keep such information confidential.

14.4.10 Hearings. Hearings may be held at any place within the State of Arizona designated by the Arbitrator and, in the case of particular witnesses

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not subject to subpoena at the usual hearing site, at a place where such witnesses can be compelled to attend.

14.4.11 Final Award. The Arbitrator shall promptly (but, in no event later than sixty (60) days following the conclusion of the proceedings or such longer period as the parties mutually agree) determine the claims of the parties and render a final award in writing. The Arbitrator may award the prevailing party in the proceeding all or a part of such party's reasonable attorneys' fees and expert witness fees, taking into account the final result of arbitration, the conduct of the parties and their counsel in the course of the arbitration, and other relevant factors. The Arbitrator shall not award any punitive damages. The Arbitrator shall not award indirect, consequential or special damages regardless of whether the possibility of such damage or loss was disclosed to, or reasonably foreseen by the party against whom the claim is made. The Arbitrator shall assess the costs of the proceedings (including, without limitation, the fees of the Arbitrator) against the non-prevailing party.

14.5. Right to Enter, Inspect, Repair and/or Replace. Following the receipt by a Bound Party of a Claim Notice with respect to an alleged defect or deficiency in the planning, design, engineering, grading, construction or development of the Property or any improvements thereon (the "Alleged Defect"), the Respondent and its employees, agents, contractors and consultants shall have the right, upon reasonable notice to Claimant and during normal business hours, to enter onto or into, as applicable, the Property and any improvements thereon, for the purposes of inspecting and/or conducting testing to determine the validity of the Claim and, if deemed necessary by the Respondent, to correct, repair and/or replace the Alleged Defect. In conducting such inspection, testing, repairs and/or replacement, the Respondent shall be entitled to take any actions as it shall deem reasonable and necessary under the circumstances. Nothing set forth in this Section 14.5 shall be construed to impose any obligation on any Respondent to inspect, test, repair, or replace any item or Alleged Defect for which the Respondent is not otherwise obligated under applicable law or any warranty provided by Declarant or any other Bound Party in connection with the sale of the Lots or Dwelling Units. The right of a Respondent and its employees, agents, contractors and consultants to enter, inspect, test, repair and/or replace reserved hereby shall be irrevocable and may not be waived or otherwise terminated except by a writing, in recordable form, executed and Recorded by the Respondent. In no event shall any statutes of limitations be tolled during the period in which a Respondent conducts any inspection, testing, repair or replacement of any Alleged Defects.

14.6 Use of Funds. Any judgment, award or settlement received by a Claimant in connection with a Claim involving an Alleged Defect shall first be used to correct and or repair such Alleged Defect or to reimburse the Claimant for any costs actually incurred by such Claimant in correcting and/or repairing the Alleged Defect. Any excess funds remaining after repair of such Alleged Defect shall be paid to the

Claimant, and if the Claimant is the Association, any excess funds shall be paid into the Association's reserve fund.

14.7 Approval of Litigation. The Association shall not deliver a Claim Notice to any Bound Party or commence any legal action or arbitration proceeding or incur legal expenses, including without limitation, attorneys' fees, in connection with any Claim without the written approval of Members entitled to cast more than sixty-seven percent (67%) of each class of the total votes in the Association, excluding the votes of any Member who would be a defendant in such proceedings. The Association must pay for any such legal action or mediation or arbitration proceeding with monies that are specifically collected for such purposes and may not borrow money or use reserve funds or other monies collected for specific Association obligations other than legal fees. In the event that the Association commences any legal action or arbitration proceeding involving a Claim, all Members must notify prospective purchasers of their Lot of such legal action or arbitration proceeding and must provide such prospective purchasers with a copy of the notice received from the Association in accordance with Section 14.6.

14.8 Statute of Limitations. All statutes of limitations applicable to Claims shall apply to the commencement of arbitration proceedings under Section 14.4. If the arbitration proceedings are not initiated within the time period provided by Arizona law for the filing of a legal action with respect to the Claim, the Claim shall forever be barred.

14.9 Conflicts. In the event of any conflict between this Article XIV and any other provision of the Project Documents, this Article XIV shall control.

14.10 Severability. If any provision of this Article XIV is found by a court or arbitrator to be invalid or unenforceable for any reason, such provision shall be severed from this Article XIV, and the remaining provisions of this Article XIV shall remain unaffected and in full force and effect.

BY ACCEPTANCE OF A DEED OR BY ACQUIRING A LOT, EACH PERSON, FOR HIMSELF, HIS HEIRS, PERSONAL REPRESENTATIVES, SUCCESSORS, TRANSFEREES AND ASSIGNS, AGREES TO HAVE ANY CLAIM RESOLVED ACCORDING TO THE PROVISIONS OF THIS ARTICLE XIV AND WAIVES THE RIGHT TO PURSUE ANY DECLARANT OR OTHER BOUND PARTY IN ANY MANNER OTHER THAN AS PROVIDED IN ARTICLE XIV. THE ASSOCIATION, EACH UNIT OWNER AND DECLARANT ACKNOWLEDGE THAT BY AGREEING TO RESOLVE ALL CLAIMS AS PROVIDED IN THIS ARTICLE XIV, THEY ARE GIVING UP THEIR RESPECTIVE RIGHTS TO HAVE SUCH CLAIM TRIED BEFORE A JURY. THE ASSOCIATION, EACH OWNER AND DECLARANT FURTHER WAIVE THEIR RESPECTIVE RIGHTS TO AN AWARD OF PUNITIVE AND

