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**DECLARATION OF
COVENANTS, CONDITIONS,
AND RESTRICTIONS FOR
TRAILS HEAD AT BARRIO DE
TUBAC
LOTS 1 THROUGH 81
a subdivision of Santa Cruz County,
Arizona**

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This Declaration of Covenants, Conditions and Restrictions ("Declaration") for Trails Head at Barrio de Tubac, Lots 1 through 6 (also known as San Miguel Patio Homes, Phase III) and Trails Head at Barrio de Tubac, Lots 7 through 81 (this "Declaration"), is made on JUNE 22, 2004 by San Miguel Partners, LLC, an Arizona limited liability company ("Declarant").

RECITALS:

A. Declarant is the record owner of certain real property located in Santa Cruz County, Arizona, generally known as Trails Head at Barrio de Tubac, Lots 1 through 6 (also known as San Miguel Patio Homes, Phase III) and Trails Head at Barrio de Tubac, Lots 7 through 81 (the "Property").

B. Declarant desires to subject the Property to this Declaration to assure that the development of the Property occurs in accordance with a plan and general scheme of development consistent with the unique character and natural environment of the Property and the surrounding areas.

C. Declarant, therefore, declares that the Property will be held, sold, and conveyed subject to the following easements, restrictions, covenants, and conditions which are for the purpose of protecting the value and desirability of, and which will run with title to, the Property, and will be binding upon and inure to the benefit of all parties having any right, title or interest in the Property or any part thereof, and their respective heirs, personal representatives, successors, and assigns.

**ARTICLE I
DEFINITIONS**

"Annexable Property" means the real property described on Exhibit B hereto, if any, which Declarant may hereafter determine in writing to be subject to the terms and conditions of this Declaration, together with all

improvements now or hereafter erected or installed thereon and all easements, rights and appurtenances thereto.

"Architectural Control Committee" or "ACC" means the committee appointed by the Board pursuant to Article V.

"Articles" means the Articles of Incorporation for the Association and any amendments or restatements which are filed with the Arizona Corporation Commission.

"Assessments" means all Annual Assessments, Special Assessments and Maintenance Assessments.

"Assessment Lien" means the lien against a Lot securing the payment of Assessments as described in Article III of this Declaration.

"Assessment Period" means each period for which Assessments are levied against a Lot pursuant to this Declaration, as more particularly described in Article III.

"Association" means the Trails Head at Barrio de Tubac Homeowners Association, an Arizona nonprofit corporation.

"Board" means the Board of Directors of the Association.

"Bylaws" means the bylaws adopted by the Board and as amended from time to time.

"Common Property" means any Common Areas designated on the Subdivision Plat and any other property owned or controlled by the Association for the benefit of the Owners, together with all improvements thereon and all related easements, licenses and uses.

"Consulting Architect" means an Arizona licensed architect hired by the Board to assist the ACC in the performance of its duties.

"Declarant" means San Miguel Partners, LLC, an Arizona limited liability company, any one or more successors in interest who have been acquired the Property for the purpose of development and sale.

"Declarant Control" means the period during which the Declarant owns any Lot within the Property.

"Design Guidelines" mean the rules, regulations, restrictions, and architectural standards for the construction, installation and modification of improvements of any nature on the Property.

"Developer Owner" means a Person in the business of developing, leasing and/or selling real property, who has acquired one or more Lots within the Property in connection with, and in the course of, such business, for the purpose of developing, leasing or selling Lots and who is designated in writing by Declarant as a Developer Owner. A Developer Owner includes a land trust, land banker, optionor or a similar entity or nominee developing, owning or selling land for ultimate construction of Dwelling Units.

"Exempt Property" means portions of the Property not subject to Assessments, including any Lots owned by the Declarant for so long as the Declarant is the owner and all of the Common Property.

"Governing Documents" refers to this Declaration, the Bylaws, Articles of Incorporation, Design Guidelines and any Rules adopted by the Board.

"Improvements" means any Residence or other structure, fence, wall, canopy, awning, roof, solar device, exterior lighting facility, antenna, HVAC equipment, athletic facility installed, erected or constructed upon, and any change in the final grade of any Lot, and any vegetation or landscaping features which are Visible from Neighboring Property or from the streets within the Property.

"Lot" means any numbered plot of land on any recorded Subdivision Plat of the Property and intended for development and sale, or any other portion thereof, but not including the Common Property.

"Master Association" means the Barrio De Tubac Owners Association, established pursuant to the terms of the Master Declaration.

"Master Declaration" means the Declaration of Covenants, Conditions, Restrictions and Easements for Barrio de Tubac, as recorded in Instrument No. 9800971, Docket 748, page 206 *et seq.*, Santa Cruz County, Arizona, Recorder's Office, and amended by that certain Amendment and Correction to Declaration of Covenants, Conditions, Restrictions and Easements for Barrio de Tubac recorded at Instrument No. 9804667, Docket 759, page 12, Santa Cruz County, Arizona, Recorder's Office, and as amended from time to time.

"Master Development" means the approximately 50 acre master planned community known as the Barrio de Tubac.

"Non-Developer Owner" means any Owner who is not a Developer Owner.

"Owner" means the record owner, whether one or more persons or entities, of fee simple title to any Lot or other portion of the Property, including contract sellers, developers, and occupiers, but excluding those having such interest merely security for the performance of an obligation.

"Party Walls" refer to the shared walls or fences between contiguous Lots, *whether constructed on the dividing line between the lots*, but excluding any walls or fences on the dividing line between Lots and Common Property.

"Person" includes a corporation, company, partnership, firm, association or society, as well as a natural person

"Property" means the real property subject to this Declaration, as described in Exhibit 1, and any other property which is later subjected to the terms of this Declaration.

"Residence" means the improvements located on the Lot which are intended to be used and occupied as a home by a Single Family.

"Single Family" means one or more Persons related to each other by consanguinity, legal adoption or legally contracted marriage; or (ii) a group of three or fewer unrelated persons who maintain a common household as a single housekeeping unit.

"Subdivision Plat" means the recorded plat which subdivides all or any part of the Property.

"Rules and Regulations" means those policies and procedures adopted by the Board which govern the conduct and actions of owners, tenants, visitors, and guests on Lots and the Common Property not otherwise covered in this Declaration. Rules and Regulations, when adopted by the Board have the same force and effect as the Restrictions set forth in this Declaration.

"Visible From Neighboring Property" means, with respect to any given object, that the object is or would be visible to a Person six feet tall, standing at ground level on a neighboring Lot or from the Common Property, at least six feet back from the property line.

ARTICLE II ASSOCIATION; MASTER ASSOCIATION

Section 2.1 **Organization.**

1. **Association.** The Association will be or is a nonprofit Arizona corporation charged with the duties set forth in the Governing Documents.

2. **Board of Directors and Officers.** The affairs of the Association will be conducted by the Board and such officers and committees as the Board may elect or appoint, in accordance with the Governing Documents. The composition of the Board will be defined in the Bylaws, but so long as Declarant retains its Class B membership, Declarant reserves the right to appoint the members of the Board.

3. **Rules and Regulations.** In addition to the right to adopt, amend and repeal rules and regulations on the matters expressly mentioned elsewhere in this Declaration, the Board, has the right to adopt, amend and repeal rules and regulations regarding all aspects of the Association's rights, activities and duties, provided that such rules and regulations are not inconsistent with the Governing Documents. Upon adoption, the Rules will be enforceable in the same manner as this Declaration and will have the same force and effect as if they were set forth in and were a part of this Declaration.

4. **Personal Liability.** No member of the Board or any Committee of the Association or any officer or employee of the Association, or the Declarant is personally liable to any Owner or to any other Person, including the Association, for any damage or loss caused by 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 that person, acted in good faith, without willful or intentional misconduct.

5. **Board Meetings.** All meetings of the Board will be open to attendance by the Members; provided that any action permitted by

applicable law to be taken in executive session may be taken outside the presence of the Members. Except under emergency situations, the Association will provide reasonable notice to the Members of the time, date, and place of each Board meeting in accordance with all applicable Arizona laws.

Section 2.2. **Membership.**

1. **Qualification.** Each Owner of a Lot is a member of the Association. No Owner has more than one membership for each Lot owned. The Association will maintain records regarding the membership in accordance with applicable law and, except as provided by applicable law, the books and records of the Association will be available for inspection and copying during reasonable business hours by any Member or that Member's attorney or representative.

2. **Transfer of Membership.** The membership of each Owner (including Declarant) in the Association will be appurtenant to the Lot(s) owned and cannot be transferred, pledged or alienated in any way except upon the transfer of ownership of the Lot and then only to the transferee. Any attempt to make a prohibited transfer will be void. Any transfer of ownership of a Lot will automatically transfer the membership to the new Owner.

Section 2.3. **Voting Rights.** The Association will have two classes of voting membership:

Class A: Class A members are all of the Owners, with the exception of Declarant. Each Class A Member is entitled to one vote for each Lot owned by such Owner. When more than one person holds an interest in any Lot, all such persons are members of the Association, but the vote for such Lot can only be exercised as agreed upon by the multiple Owners of a Lot; provided, that there will not be more than one vote cast for each Lot owned.

Class B: The Class B member is the Declarant, which is entitled to three votes for each Lot it owns. The Class B membership terminates and is converted to Class A membership when the first of the following events occur:

a. When the total votes outstanding in the Class A membership equals or exceeds the total votes outstanding

*Class A = 59 lots
Class B = 22 lots*

in the Class B membership; or

b. on January 1, 2014; or

c. if and when the Declarant relinquishes its Class B membership in writing.

Section 2.4. **Membership Meetings.** At a minimum the Association will hold one annual meeting of the Members each year, but special meetings of the Members can be called in accordance with the provisions of the Bylaws.

Section 2.5. **Master Declaration and Master Association.** The Property is included within the Barrio de Tubac Master Community and the use and occupancy of the Property is subject to the terms and conditions of the Governing Documents for the Master Association as well as the Governing Documents for this Association.

ARTICLE III COVENANT FOR ASSESSMENTS

Section 3.1. **Creation of the Lien and Personal Obligation to Pay Assessments.** Each Owner of a Lot (except Exempt Property), upon recordation of the deed to the Lot, whether or not it is stated therein, covenants and agrees to pay (1) Annual Assessments, (2) Reimbursement Assessments and (3) Special Assessments. These assessments will be determined by the Board and collected in the manner set forth in this Article. All assessments, together with interest, late fees, costs, and reasonable attorney fees, will be a lien against the Lot which arises on the date that the Assessment becomes delinquent. Delinquent assessments, together with interest, late fees, costs, and reasonable attorney fees, will also be the personal obligation of the person who was the Owner of the Lot at the time when the assessment was levied.

Section 3.2. **Purpose of Annual Assessments.** The Annual Assessments levied by the Association will be used to promote the health, safety and welfare of the Members and their guests; for the improvement and maintenance of the Common Property, for the payment of all expenses and charges which are the responsibility of the Association; and for all other purposes set forth in the Governing Documents or as determined as being beneficial for a majority of the Owners.

Section 3.3. **Annual Assessment.**

1. **Annual Assessment.** The Board is vested with full authority and absolute discretion to determine the amount of the annual assessment, based upon the operating budget of the Association, including appropriate reserves, provided, however, that the amount of the annual assessment may not increase more than the maximum amount set forth in Planned Communities Act, A.R.S. §33-1801, *et. seq.*, without the approval of a majority of the members of the Association [or in compliance such any other voting requirements set forth in the Act, as amended from time to time].

2. **Notification to Owners of Annual Assessments.** The Board will provide notice to the Owners of any change to the amount of the Annual Assessment at least 30 days prior to January 1 of each year. The Board may determine that the Annual Assessment is payable in equal monthly installments or on any other periodic basis. In the event that the Board determines that the annual assessment will be payable in installments, at such time as any owner is delinquent in the payment of such installments, the Board has the right to accelerate the balance of the year's assessment, all of which will be due within fifteen days of written notice thereof by the Board.

3. **Use of Association Funds.** The Board will apply the Assessments to the performance of the duties and obligations of the Association and the Board under the Governing Documents and toward such other ends and purposes as the Board may reasonably determine. The Assessments may be used, among other things, to insure, acquire, construct, alter, maintain, provide and operate, in any manner whatsoever, any and all land, properties, improvements, services, projects, programs, studies and systems, within the Covered Property and the Common Property, which may be necessary, desirable or beneficial to the interests of the Owners and the Occupants.

a. **Borrowing Power.** The Association may borrow money in such amounts, at such rates, upon such terms and security, and for such periods of time as the Board deems necessary or appropriate.

b. **Association's Rights in Spending Assessments from Year to Year.** The Association is not obligated to spend in any year all Assessments received by it in such year, and the Board may carry forward as surplus any balances remaining. The Association does not have any

obligation to refund any surpluses in the operating account and may transfer such surplus to the reserve account. 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.

Section 3.4. **Special Assessments.** In addition to the Regular Assessments the Board may levy Special Assessments for any of the following purposes: (1) constructing capital improvements; (2) correcting an inadequacy in the current operating account; (3) defraying, in whole or in part, the cost of any construction, reconstruction, unexpected repair or replacement of improvements in the Common Property; or (4) paying for such other matters as the Board may deem appropriate. The Board will determine the due date of any Special Assessment.

Section 3.5. **Uniform Rate of Assessment.** Except as otherwise provided in this Declaration, all Assessments must be set at a uniform rate for all Lots, regardless of the size of the Lot and regardless of whether the Lot is improved or not improved.

Section 3.6. **Declarant's Exemption.** Notwithstanding anything in this Declaration to the contrary, the Declarant is not liable for and is not required to pay any Assessments for any Lots which it owns, unless construction on the Lot has been completed. For purposes of this Section, a "Completed Lot" means any Lot with a Residence ready for occupancy as a home that is in the condition of any other Residence sold to persons living in the Property (e.g., carpet, kitchen countertops and cabinets, plumbing and lighting fixtures, etc., installed). A Completed Lot does not include any Lots with improvements that are used by Declarant as models or sales offices. Declarant is not liable for the payment of any Assessments for any Lot that was previously sold to a purchaser, but was deeded back to the Declarant by foreclosure or a deed in lieu of foreclosure, unless the Lot is a Completed Lot.

1. In lieu of the payment of Annual Assessments, the Declarant will pay any actual deficiency in the operating revenue necessary to pay current ordinary expenses for the operation and maintenance of the Association and Common Property, but only up to the full Annual Assessment for each Lot owned by Declarant. A deficiency exists if current ordinary expenses of the Association are greater than the revenues of the Association from all sources for the Assessment Period in question; provided, however, that Declarant is not be liable for any deficiency created by a reduction in the amount of the

Annual Assessments charged for any prior year, nor for any deficiency arising after the expiration of the Class B Membership. Instead of paying the deficiency, the Declarant may, at any time in its sole discretion, elect to stop paying the deficiency and instead pay up to the full Annual Assessment for each Lot owned by it.

2. In no event is the Declarant required to contribute to any deficiency after the termination of the Class B Membership.

Section 3.7. Due Dates for Annual Assessments. Each Owner will begin making his/her payment of the Annual Assessments on the first day of the month following the conveyance of a Lot to that Owner. This amount will be adjusted according to the number of months remaining in the calendar year.

Section 3.8. Reimbursement Assessments. The Association may levy a Reimbursement Assessment against any Owner if a failure to comply with the Governing Documents has (1) necessitated an expenditure of money by the Association to bring the Owner or his/her Lot into compliance, including any attorney fees which were incurred by the Association; or (2) resulted in the imposition of a fine or penalty by the Board, after notice of the violation and an opportunity for a hearing has been given to the Owner. Reimbursement Assessments will be collected in the same manner as Annual Assessments.

Section 3.9. Effect of Nonpayment of Assessments; Remedies of the Association.

1. In addition to all other remedies provided by law, the Association, or any authorized representative, has the right to enforce the obligations of any Owner to pay the Assessments in any manner provided by law or by either or both of the following procedures:

- a. **Suit.** The Association may file a lawsuit against any Owner who is personally obligated to pay delinquent assessments. Any judgment obtained in the Association's favor will include the amount of the delinquent assessments, any additional charges incurred by the Association in the collection of the amounts due, attorney fees, court costs, litigation expenses and any other amounts which the court may award. A proceeding to obtain a judgment for unpaid assessments may be

maintained without the necessity of foreclosing or waiving the Association's lien.

- b. **Lien.** To the full extent permitted by Arizona law, the Association's lien for any unpaid Assessment arises when the assessment is not paid within fifteen days of its due date. As more fully provided for in A.R.S. §33-1807, the recording of this Declaration constitutes record notice and perfection of the Association's lien. The Association is not required to record a lien, but may do so to provide notice to third parties of its interest in the Lot. Except for the transfer of a Lot pursuant to a foreclosure proceeding, the sale or transfer of a Lot does not affect the Association's lien. The Association may commence and maintain proceedings to foreclose its lien in the same manner as the foreclosure of mortgages. The lien for assessments is prior and superior to all other liens, except (1) all taxes, bonds, assessments and other levies which, by law, are superior to the Association's lien; and (2) the lien of any mortgage or deed of trust which is recorded before the date this Declaration was recorded.

2. **Additional Charges.** In addition to any other amounts due or any other relief or remedy obtained against an Owner who is delinquent in the payment of any Assessments, each Owner agrees to pay such additional costs, fees, charges and expenditures ("Additional Charges") as the Association may incur in the process of collecting funds from any Owner. All additional charges will be included in any judgment in any suit to collect delinquent assessments or may be levied against a Lot as a reimbursement assessment. Additional charges will include, but not be limited to, the following:

- a. **Attorney Fees.** Reasonable attorney fees and costs incurred in the event an attorney is employed to collect any assessment or sum due, including the placement of the lien, or the filing of a suit or otherwise;
- b. **Late Charges.** A late charge, in an amount to be determined by the Board. An assessment is deemed to be delinquent if it is not paid within fifteen days from the date it is due.

c. **Costs of Suit.** Litigation expenses and court costs incurred;

d. **Interest.** Interest on all sums due from the Owner, including delinquent assessments, costs of collection, attorney fees and late charges, at an annual percentage rate to be established by the Board, but not less than 10%;

e. **Other.** Any other additional costs which the Association may incur in the process of collecting delinquent assessments or other sums due to the Association.

3. **Application of Payments.** All payments received by the Association will first be applied to the principal amount due which includes the late charges and any collection costs and attorney fees incurred by the Association, and then to any interest which has accrued on these sums.

4. **Statement of Assessment Lien.** Upon written request from any Owner, the Owner's agent, or any lien holder, the Association will furnish the person who made the request with a written certificate, in a recordable form, signed by an officer or authorized agent of the Association stating the amount of any assessment which is due and any additional charges secured by the lien upon his/her Lot. The Board may impose a reasonable charge for the issuance of that certificate.

5. **Suspension of Voting Rights.** An Owner's right to vote is suspended for so long as the Owner has a delinquent balance on his/her account.

Section 3.10. **No Exemption of Owner.** No Owner is exempt from liability for the payment of Assessments because he/she does not use or enjoy the Common Property, or has abandoned his/her Lot, or for any other reason, including any allegation that the Board is not performing its obligations under the Governing Documents.

Section 3.11. **Subordination of the Lien to Mortgages.** The lien for assessments is subordinate to the lien of any first mortgage or deed of trust recorded against the Lot. The sale or transfer of any Lot does not affect the Assessment Lien. However, the sale or transfer of any Lot pursuant to a mortgage foreclosure, or any proceeding in lieu thereof,

extinguishes the lien for such Assessments but only as to those payments which became due prior to such sale or transfer. No sale or transfer of any Lot will relieve the Lot from liability for any assessments which become due before the sale or transfer, or from the lien for assessments.

Section 3.12. Mortgage Protection and Additional Assessment as Common Expense. Notwithstanding and prevailing over any other provision of the Governing Documents, the following provisions will apply to and benefit each First Mortgagee:

1. The Mortgagee will not be personally liable for the payment of any assessment, nor for the observation or performance of any provision of the Governing Documents, except for those matters which are enforceable by injunctive or other equitable actions, and which do not require the payment of money.
2. During the pendency of any proceeding to foreclose any mortgage, including any period of redemption, the mortgagee may, but is not required to, exercise any or all of the rights and privileges of the Owner of the mortgaged Lot, including but not limited to the exclusion of the Owner's exercise of such rights and privileges.
3. At such time as the mortgagee becomes the record Owner of a Lot, it will be subject to all of the terms and conditions of the Governing Documents, including but not limited to the obligation to pay all assessments and charges accruing thereafter, in the same manner as any Owner.
4. The First Mortgagee, or any other party acquiring title to a mortgaged Lot through foreclosure suit or through any equivalent proceeding arising from the mortgage, such as, but not limited to, the taking of a deed in lieu of foreclosure, will acquire title to the mortgaged Lot free and clear of any lien authorized by or arising out of any of the provisions of the Declaration or Bylaws which secured the payment of any assessment for charges accrued prior to the final conclusion of any such foreclosure suit or equivalent proceeding, including the expiration date of any period of redemption.
5. Mortgagees are entitled to pay taxes or other charges which are in default and which may or have become a charge against any Common Property owned by the Association, and such mortgagees may pay overdue premiums on hazard insurance policies, or secure new hazard insurance coverage on the lapse of a policy, for such Common Property and any first

mortgagees making such payment may be owed immediate reimbursement from the Association.

6. Nothing in this Declaration will in any manner be deemed to give an Owner priority over any rights of a mortgagee of a Lot pursuant to the terms of such mortgagee's mortgage in the case of a distribution to an Owner of insurance proceeds or condemnation awards for losses or to a taking of any Lot or any part of the Common Property owned by the Association. Each mortgagee will be entitled to timely written notice of such loss or taking.

Section 3.13. **Reserves.**

1. To insure that the Association has adequate funds to pay the Common Expenses, each Purchaser of a Lot will pay the Association, immediately upon becoming the Owner of the Lot, a sum equal to 25% of the Annual Assessment on the Lot. Funds paid to the Association pursuant to this Section may be used by the Association for the payment of operating expenses or any other purpose permitted under the Governing Documents. Payments made pursuant to this Section will be non-refundable and will not be considered as an advance payment of any Assessments levied by the Association pursuant to this Declaration.

2. The reserves which are collected as part of the Annual Assessments will be deposited by the Association in a separate bank account to be held for the purposes for which they are collected. Such reserves will be deemed a contribution to the capital account of the Association by the Owners and once paid, no Owner will be entitled to any reimbursement of those funds. The reserves are for the maintenance, repair, and replacement of the Improvements for which the Association is responsible and for unforeseen contingencies. The Board is only responsible for providing for such reserves as the Board in good faith deems reasonable, and no Member of the Board is liable to any Owner or to the Association if the amount in the reserve account proves to be inadequate.

Section 3.14. Fines and Penalties.

1. **Right to Impose Fines.** If any Owner, his/her family or any licensee, invitee, tenant or lessee violates the Governing Documents, after providing the Owner with notice of the violation and an opportunity for a hearing, the Board may levy a fine upon the Owner of the Lot for each violation. However, for each day that a violation continues after written notice to cease has been mailed, it will be considered a separate violation and subject to the imposition of the fine.

2. **Procedures for Imposing Fines.** The Board will establish a procedure by which it imposes such penalties, including notice of the violation and the right to a hearing if requested by an Owner. Any fines imposed by the Board which are not paid within 15 days after notice will become a lien on the Owner's Lot. Any fine which is not timely paid will be collected in the same manner as delinquent assessments, including the imposition of late fees and interest.

ARTICLE IV

EASEMENTS AND RIGHTS OF ENJOYMENT IN COMMON PROPERTY

Section 4.1. Easements and Rights of Enjoyment. Each Owner has a non-exclusive easement to use and enjoy the Common Property. This non-exclusive easement is appurtenant to and passes with the title to each Lot. All Owners, their family, guests, and tenants have a nonexclusive, nontransferable temporary license to use and enjoy the Common Property so long as they occupy a Residence, provided, however, that any portion of the Common Property which is designated on the Subdivision Plat or by the Board as a drainage way, open space, for utilities or as streets will be utilized for the designated purpose and for no other. This grant of easement is subject to the following limitations: (i) any limitations set forth elsewhere in this Declaration or in the Master Declaration; (ii) the right of the Association to suspend an Owner's right to use any recreational facilities in the Common Property during the time an Owner is delinquent in the payment of any Assessment or for any period during which an Owner is in violation of the Governing Documents for this Association and the Master Association or for 60 days whichever is longer; (iii) the right of the Association to reasonably limit the number of guests of an Owner who may use the Common Property; (iv) the right of the Association to charge reasonable fees for the use of facilities located upon in the Common Property; and (v) the right of the Association to regulate the use and operation of the Common Property.

Section 4.2. **Delegation.** Any Owner may, in accordance with the rules and regulations of the Association, delegate his or her rights of use and enjoyment in the Common Property to the members of his or her family or his or her occupants or guests; provided, however, that the Owner remains responsible for all actions of his/her family, guests and tenants.

Section 4.3. **Procedure for Change of Use of Common Property.** Upon adoption of a resolution by the Board stating that the then current use of a specified part of the Common Property is no longer in the best interests of the Owners and the approval of such resolution by not less than 2/3rds of the votes of each class of Members voting in person or by proxy at a meeting called for such purpose, the Board has the power and right to change the use of the Common Property (and to take whatever actions are required to accommodate the new use), provided the new use: (a) is for the common benefit of the Owners and (b) is consistent with any recorded deed, the Master Declaration or any governmental regulations.

Section 4.4. **Procedure for Transfers of Common Property.** The Association has the right to dedicate or transfer all or any part of the Common Property to any public authority or utility provided that:

1. The transfer or dedication does not have a substantial adverse effect on the enjoyment of the Common Property by the Owners or on the easements and licenses on the Common Property granted by this Declaration to the Owners;

2. It is required by a recorded subdivision plat, a zoning stipulation or an agreement with the County; and

3. So long as the Class B Membership has not terminated, the transfer or dedication has been approved by VA or FHA, as applicable, to the extent VA or FHA may be involved in Property.

Except as authorized above, the Association cannot make any such dedication or transfer or change the size, shape or location of the Common Property, exchange the Common Property for other property or interests which become Common Property, or abandon or otherwise transfer Common Property (to a nonpublic authority) unless (a) the Board adopts a resolution stating that ownership and/or use of the relevant Common Property is no longer in the best interests of the Owners and that the change desired is for the Owners' benefit and will not substantially adversely affect them; (b) the

resolution is approved by not less than 2/3rds of the votes of each class of Members voting in Person or by proxy at a meeting called for such purpose; and (c) VA or FHA, as applicable, approve the proposed action, to the extent this Declaration has been approved by VA or FHA.

Section 4.5. Ingress and Egress Over Common Property. The Association may own land or maintain other Common Property which is intended to be used for landscaping adjacent to streets in the Property. To the extent that any such landscaped area separates a Lot from the street nearest the Lot, the Owners of such Lot and their family, guests, tenants and invitees are granted a permanent, nonexclusive easement (an "Access Easement") for pedestrian ingress and egress in, upon, and over and across such landscaped area. At such time, if at all, as the exact location of the Access Easement is determined in relationship to a particular Lot and is approved in writing by the Declarant or the ACC, as applicable, it may be indicated on the Subdivision Plat or on such other recorded instrument acceptable to the Declarant or to the ACC. Nothing contained in this Section 4.3 will interfere with or diminish the rights of the Association to use these landscaped areas for landscaping, drainage, irrigation lines, pedestrian and bicycle paths, and other purposes which do not preclude the uses permitted herein. Each Owner, and that Owner's successors, assigns and grantees, will indemnify and hold the Declarant, its successors and assigns and the Association, harmless from any liability for any and all damages, costs and liabilities, including, without limitation, attorney fees, mechanic's and materialmen's liens, real estate taxes and assessments, arising out of or in connection with the Access Easement which is appurtenant to such Owner's Lot.

Section 4.6. Recorded Easements. The Property is subject to all easements shown on any recorded Subdivision Plat and to any other easements of record as of the date this Declaration is recorded.

Section 4.7. Easements for Encroachments. The Property is subject to an easement of up to 10 feet from the Lot lines or Common Property boundaries for the actual extent of any encroachments created by construction as designed or constructed by the Declarant or any Owner and for settling, shifting, and movement of any portion of the Property or Improvements thereon. Such encroachments will not be considered as encumbrances upon any part of the Property. Such encroachments include, but are not limited to, encroachments caused by error in the original construction of Improvements on any Lot, by settling, rising, or shifting of

the earth, or by changes in position caused by repair or reconstruction of any Improvements on the Property.

Section 4.8. **Reservation of Easements, Exceptions, and Exclusions.** Declarant reserves to itself and grants to the Association the concurrent right to establish from time to time, by declaration or otherwise, utility and other easements, permits, or licenses over the Common Property, for purposes, including but not limited to, streets, paths, walkways, drainage, recreation areas, parking areas, ducts, shafts, flues, conduit installation areas, and to create other reservations, exceptions, and exclusions which are in the best interest of all the Owners and the Association. Declarant further reserves the right to establish from time to time, by dedication or otherwise, utility and other easements, and to create other reservations, exceptions, and exclusions convenient or necessary for the use and operation of any other Property owned by the Declarant, as long as such action does not hamper the Owners' use and enjoyment of the Property.

Section 4.9. **Emergency Easement.** A general easement is granted to all police, sheriff, fire protection, ambulance, and all other similar emergency agencies or persons to enter upon all streets, parking areas, walk-ways, and all other portions of the Property in the proper performance of their duties.

Section 4.10. **Maintenance Easement.** An easement is reserved to the Declarant, and granted to the Association, and any member of the Board and their respective officers, agents, employees, and assigns, upon, across, over, in, and under the Lots and a right to make such use of the Lots as may be necessary or appropriate to make emergency repairs or to perform the duties and functions which the Association is obligated or permitted to perform pursuant to the Governing Documents for the Association and the Master Association. Included within this grant of easement is the right to enter upon any Lot for the purpose of performing maintenance to the landscaping or the exterior of Improvements to such Lot as required by the Governing Documents of the Association and the Master Association, and by entering, such persons will not be guilty of trespass.

Section 4.11. **Drainage Easement.** An easement is reserved to Declarant and granted to the Association, its officers, agents, employees, successors, and assigns to enter upon, across, over, in, and under any portion of the Property for the purpose of changing, grading, or otherwise modifying the grade or drainage channels of the Property so as to improve

or affect the drainage of water upon, from within, and onto the Property. Best efforts will be made to use this easement so as not to disturb the uses of the Owners, the Association and the Declarant, as applicable, and to prosecute such drainage work promptly and expeditiously, and to restore any areas affected by such work to a sightly and usable condition as soon as reasonably possible following such work. Declarant, or its officers, agents, employees, successors, and assigns must inform and obtain the approval of the Board prior to undertaking such drainage work, which approval will not be unreasonably withheld.

Section 4.12. Easements for Utilities. The Declarant reserves for itself and all utility providers, for so long as the Declarant owns any portion of the Property or any portion of the Property, a perpetual non-exclusive easement throughout all of the Property (but not through a structure) to the extent reasonably necessary for the purpose of: (I) installing utilities and infrastructure to serve the Property or property which the Declarant owns or within public rights-of-way or easements reserved for such purpose on recorded Subdivision Plat(s); (ii) inspecting, maintaining, repairing and replacing utilities, cable and other systems and related infrastructure to serve the Property or the Lots thereof; and (iii) access to read utility meters. All work associated with the exercise of the easements described in this Sections will be performed in such a manner as to minimize interference with the use and enjoyment of the Property burdened by the easement. The Association will be responsible for the maintenance and operating costs of the sewer system maintenance, and part of the Assessments will be utilized for that purpose. Upon completion of the work, the Person exercising the easement will restore the property, to the extent reasonably possible, to its condition prior to the commencement of the work. The exercise of these easements will not extend to permitting entry into any Residence, nor will it unreasonably interfere with the use of any Residence and, except in an emergency, entry onto any Lot will be made only after reasonable notice to the Owner or the occupant thereof.

Section 4.13. Dedication of Common Property. Declarant may deed to the Association certain parts of the Property as Common Property intended for common use by the Owners. The designated areas are dedicated to the common use and enjoyment of the Owners, their family, tenants, guests and invitees and not to the use of the general public.

Section 4.14. Maintenance of Natural Landscaping. The Owners agree that the removal of large trees and plants is restricted and such removal must be approved by the Board. All natural landscaping, plants

and trees must be preserved except the Owner may remove shrubs, weeds and dead limbs.

ARTICLE V
ARCHITECTURAL CONTROL COMMITTEE

Section 5.1. Composition and Organization of the Architectural Control Committee.

1. **During Declarant Control.** To enhance the aesthetic and economic value of the Property and to maintain uniformity of architectural and landscaping standards throughout the Property, until the Class B Membership ceases, or for so long as Declarant owns any portion of the Property, whichever is later, Declarant has the right:
 - a. to appoint and remove all regular and alternate members of the ACC;
 - b. supplement and amend the Design Guidelines, as deemed necessary by Declarant; and
 - c. in its sole discretion, to appoint an advisory committee comprised of Members, to the ACC to assist in the review and administration of requests for approvals, the size and composition of which will be determined solely by Declarant.
2. **After Expiration of Class B Membership.** After the expiration of the Class B Membership, the Board will appoint Members to the ACC which will consist of not less than three or more than five persons. The members of the ACC will serve for such terms as the Board will determine. The Board can only appoint Members to the ACC.
3. **Alternate Members.** In the event of the absence or disability of a member of the ACC, the remaining members, even though less than a quorum, may designate an alternate member to act as a substitute member of the Committee so long as the member is absent or disabled.
4. **Term of Office.** Unless a member of the ACC has resigned or been removed, the term of a member of the ACC is for a period of 1 year, or until the appointment of his/her successor. Any new member appointed to replace a member who has resigned or been removed will serve for that

member's unexpired term. Members of the ACC who have resigned, been removed or whose terms have expired may be reappointed.

5. **Resignations.** Any regular or alternate member of the ACC may resign at any time from the Committee by giving written notice to the Board.

6. **Vacancies.** Vacancies on the ACC will be filled by the Declarant during Declarant Control or by the Board thereafter. A vacancy or vacancies on the Architectural and Landscaping Review Committee shall be deemed to exist in case of the death, resignation or removal of any regular or alternate member

Section 5.2. **Consultants.** The Board may hire a licensed and practicing architect as the Consulting Architect to assist the ACC in the performance of its duties. The Consulting Architect will review the plans and specifications and make recommendations to the ACC. The Board may also hire such other consultants, which in its sole discretion, are necessary to assist the ACC in its duties. Consultants hired by the Board are entitled to receive compensation for their services.

Section 5.3. **Obligation to Obtain Approval**

1. No Improvement, change or attachment to an existing Improvement can be installed, constructed, erected, repaired, or maintained on any Lot except in compliance with plans and specifications that have been submitted to and approved by the ACC.

2. No trees, bushes, shrubs, plants or other landscaping can be planted or placed on the Property except in compliance with plans and specifications which have been submitted to and approved by the ACC in accordance with the Governing Documents.

3. No material changes or deviations in or from the plans and specifications for any work to be done on the Property, once approved by the ACC will be permitted without approval of the change or deviation by such Committee.

4. All approvals must be in writing and must be made by action of the ACC. No Owner has the right to rely on oral statements made by any Person and no individual member of the ACC has any apparent authority.

Section 5.4. **Scope of Plans.** Plans and specifications must contain the following: (a) site plan showing the proposed location of the Improvement; (b) exterior design and elevations; (c) orientation, height, materials, color and location on the Lot; (d) setbacks (which will, at a minimum, conform to applicable governmental standards); and (e) any other matters required under the Design Guidelines or otherwise by the ACC.

Section 5.5. **Powers and Duties:** The ACC has all of the powers, authority, and duties conferred upon it by the Governing Documents. Without limiting the powers and duties of the ACC, it is the duty of the ACC to consider and act upon all proposals or plans submitted to it pursuant to the provisions of the Governing Documents. This includes approval of all landscaping to be planted or placed on the Property which could be visible from any portion of the Property, to perform any other duties delegated to it by the Board, and to carry out all other duties imposed upon it by the Governing Documents. In making its decisions, the ACC will determine whether any proposed Improvement will conform to and harmonize with the existing surroundings, other Improvements, and this Declaration. The approval of plans and specifications does not constitute a representation, warranty or guarantee that such plans and specifications were properly engineered or designed or that they comply with zoning or building ordinances, or other governmental regulations or restrictions.

Section 5.6. **Fee.** The Board may establish reasonable processing fees, and classifications of fees, to defer the costs incurred by the ACC in considering any requests for approvals submitted to it, for using the services of the Consulting Architect, for monitoring construction of Improvements, for enforcing the construction standards in the Design Guidelines or for appeals to the Board. These fees must be paid at the time the request for approval is submitted. The Board has the right to adjust the fees from time to time.

Section 5.7. **Meetings and Compensation of ACC.** The ACC will meet from time to time as necessary to perform its duties. The vote of the majority of a quorum of the members or written consent of all of the members constitutes an act of the ACC. The ACC will maintain a written record of all of the actions it takes. Although members of the ACC are not entitled to compensation for their services.

Section 5.8. **Design Guidelines.** Subject to the written approval of the Board, the ACC will adopt, and may from time to time amend, supplement and repeal, the Design Guidelines. The Design Guidelines will interpret, implement and supplement this Declaration, will set forth the

procedures for ACC review and the standards for the development of the Property. The Design Guidelines have the same force and effect as this Declaration. The Design Guidelines will include, without limitation, provisions regarding:

1. the size of the Residences;
2. architectural design, with particular regard to the harmony of the design with surrounding structures and topography;
3. placement of buildings on the Lot;
4. landscaping design, content and conformity with the natural desert character of the Property;
5. requirements concerning exterior color schemes, exterior finishes, and materials, in particular the use of desert tones and muted colors throughout the Property.
6. requirements concerning yard and building ornaments, recreational and air conditioning equipment, exterior lighting and exterior furniture, and other items or improvements on the Lots;
7. signage and mailboxes;
8. perimeter, party, and screen wall design and appearance.
9. other design standards and criteria determined appropriate to the ACC.

Section 5.9. Variances. The ACC may grant reasonable variances or adjustments from any condition and restriction imposed by this Article IV, the Design Guidelines, or any architectural condition or restriction imposed by this Declaration or any supplemental declaration, in order to overcome practical difficulties and prevent unnecessary hardships arising as a result of the conditions and restrictions contained in this Declaration or the Design Guidelines. The power of the ACC to grant variances does not apply to any of the use restrictions contained in Article VI, except for Section 5.3. Such variances or adjustments will be granted only in the case where there is no material detrimental or injury to the other Lots or Improvements in the Property and will not militate against the general intent and purpose of the Governing Documents.

Section 5.10. **Waiver.** The approval by the ACC of any plans, drawings or specifications for any work done or proposed, or for any other matter requiring the approval of the ACC does not constitute a waiver of any right to withhold approval of any similar plan, drawing, specification or matter subsequently submitted for approval

Section 5.11. **Violation of Approved Plans; Nonconforming Items.** If it is determined by the ACC that work completed on any Lot was not in compliance with the plans approved by the ACC, then the Board, upon receipt of a recommendation from the ACC, may notify the Owner in writing of such noncompliance within 45 days of the date of the inspection by the ACC. The notice must specify, in reasonable detail, the particulars of noncompliance and may require the Owner to remedy the nonconforming condition(s). If, the Owner fails to remedy the noncompliance or to commence and continue diligently toward achieving compliance within 30 days from the date the notice was mailed, the Owner will be notified that the Board may take action to remove the noncomplying Improvements, and may seek injunctive relief and recovery of all costs and expenses incurred.

Section 5.12. **Commencement and Completion of Construction.** All construction must commence within 90 days from the date of approval of the plans, unless a different commencement is approved by the ACC. All Improvements, including landscaping, must be completed within one year from the commencement of construction unless a longer construction schedule is approved by the ACC as part of such plan approval. If an Owner fails to comply with this Section 4.11 or fails to fully complete the Improvements, the ACC will notify the Board of such failure and the Board, after notice to the Owner and an opportunity for a hearing before the Board is provided, can, at its option, enter the Lot and complete, or cause to be completed, the exterior in accordance with the approved plans or remove the improvements. The costs of such completion will become a Reimbursement Assessment. The right to complete the Improvements is in addition to any other rights and remedies available to the Association at law or in equity.

Section 5.13. **Occupancy of the Lot.** No Lot can be occupied in any manner at any time prior to the completion of the Residence in accordance with the approved plans and any other conditions required under the Governing Documents. During the construction of Improvements, necessary temporary structures for the storage of materials may be erected and maintained by the person doing such work. The work of constructing,

altering, or remodeling any Lot will be diligently prosecuted from the date of commencement until the date of completion.

Section 5.14. **Liability.** Neither Declarant, the Board, nor the ACC (including any member thereon) are liable to any Owner or any other party for any damage, loss or prejudice as a result of:

1. the approval or disapproval of any plans, drawings or specifications, whether or not defective;
2. the construction or performance of any work, whether or not pursuant to approved plans, drawings and specifications;
3. the development of any Lot; or
4. the execution and filing of any estoppel certificate or statement, whether or not the facts stated therein are correct, provided, however, that with regard to the liability of a member of the ACC, such member acted in good faith on the basis of such information as may be possessed by him/her.

Section 5.15. **Opinions of Members.** The ACC may, but is not required to, consult with or hear the views of the Boar or any Owner (other than the Owner applying for approval, whose views the ACC is required to hear) regarding any plans, drawings, specifications, or any other proposal submitted for review. for any defect in the structure constructed from such plans or specifications. None of the Architectural Control Committee, the Association, nor Declarant will be liable to any developer, Owner, or other person for any damage, loss, or prejudice suffered or claimed on account of (a) the approval or disapproval of any plans, drawings, and specifications, whether or not defective, (b) the construction or performance of any work, whether or not pursuant to the approved plans, drawings, and specifications or (c) the development, or manner of development, of any portion of the Property, provided that such action was taken in good faith.

Section 5.16. **Appeal to Board.** Any Owner whose plans were denied by the ACC may appeal that decision to the Board in accordance with procedures established in the Design Guidelines. In the event the decision of the ACC is overruled by the Board on any issue or question, that decision will be deemed as modified to the extent specified by the Board.

Section 5.17. **Inspection.** Any member or authorized consultant of the ACC or any authorized officer, director, employee or agent of the

Association, may at any reasonable time and without being deemed guilty of trespass enter upon any Lot after reasonable notice is given to the Owner, to inspect the Improvements constructed or being constructed on the Lot, to ascertain that such Improvements have been, or are being, built in compliance with the Governing Documents.

ARTICLE VI USE RESTRICTIONS

Section 6.1. **Residential Use.** Subject to the provisions of this Declaration, all Lots are restricted to private, single family residential purposes only, including uses related to the convenience and enjoyment of such residential use. No other structures except single-family residences can be placed on a Lot.

Section 6.2. **Business Activities.** No trade or business may be conducted in or from any Lot; provided, however, that an Owner residing in any Lot may conduct business activities so long as (a) the existence or operation of the business activity is not apparent or detectable by sight, sound or smell from outside the Lot; (b) the business activity conforms to all zoning requirements for the Properties; (c) the business activity does not involve any person conducting such business who does not reside on the Properties or door-to-door solicitation of residents of the Properties; (d) the existence or operation of the business does not increase that Lot's use of Common Property over that which is standard for a single family residence; (e) the existence or operation of the business does not require customers or delivery trucks to visit the residence; and (f) the business activity does not constitute a nuisance, or a hazardous or offensive use, or cause the owners to violate any other provisions of this Declaration, or threaten the security or safety of other residents of the Properties, as may be determined in the sole discretion of the Board.

Section 6.3. **Conformance to Design Guidelines.** All Residences and other structures will be constructed of approved materials under the Design Guidelines and all exterior surfaces (including roof surfaces) will be non-reflective desert or earth tones. All Residences will be built on site and no mobile homes or manufactured housing units will be located on any Lot of the Property as a Residence.

Section 6.4. **Declarant's Use; Commercial Use; and Zoning Limitation.** Notwithstanding anything to the contrary contained in this Declaration, it is expressly permissible and proper for the Declarant, its

employees, agents, and contractors, and the contractor of any Owner, and any Owner who is a developer or builder and is permitted to do so by Declarant, to perform such reasonable activities, and to maintain upon portions of the Property, including Lots owned by Declarant or such developer and designated as residential, such facilities as the Declarant or such a developer deems reasonably necessary or incidental to the construction of Residences and sale of Lots and the development of the Property, specifically including (without limitation) to maintain business offices, storage areas, construction yards, equipment, signs, model units, sales offices, parking areas, and lighting facilities. Buildings and Lots owned by Declarant and used as models, sales offices, and administrative offices by Declarant, as well as for parking areas, may later be sold to the public.

Section 6.5. Household Pets. An Owner may keep a reasonable number of dogs, cats, fish, or other domestic animals which are bona fide household pets, so long as such pet(s) are not kept for any commercial purpose and are not kept in such number or in such manner as to create a nuisance to any resident of the Property. The Association has the right and authority to determine in its sole discretion that household pets are being kept for commercial purposes or are being kept in such number or in such manner as to be unreasonable or to create a nuisance to any resident of the Property, or that an Owner is otherwise in violation of the provisions of this Section 6.5, and to take such action or actions as it deems reasonably necessary to correct these conditions. Owners keeping dogs on the Property must insure that they do not bark excessively so as to interfere with other Owners' use and enjoyment of their respective Lots. In the event the Board receives one or more complaints by an Owner, it will notify the Owner whose dog(s) is the subject of the complaint and, if the conditions about which the complaint was made are not reasonably resolved within 15 days of the date of the notice, the Board may cause the removal of such dog(s). Each Owner is responsible for paying for any damage caused by such Owner's pet(s). No barnyard animals (including horses) or other animals not kept as pets can be kept upon the Property. Each Owner is responsible for restraining his/her pet and for insuring that no pet is allowed to roam over the Property. All Owners must clean up after their pets.

Section 6.6. Temporary Structures. Except as otherwise provided, no temporary structure, including, but not limited to a house trailer, tent, shack, garage, or outbuilding, can be placed or erected upon any Lot.

Section 6.7. Signs and Advertising. Signs must be in

compliance with all applicable sign ordinances and the Design Guidelines. All signs, advertising, or billboards used by the Declarant are permitted so long as they do not physically interfere with any Owner's use of his/her Lot or interfere with ingress and egress between public ways.

Section 6.8. **Miscellaneous Structures.** All types of refrigeration, cooking, or heating equipment used in connection with the Resident must not be Visible from Neighboring Property. No tanks of any kind other than (I) septic tanks connected to and in actual operation as part of a domestic septic system approved by the relevant governmental authority; and (ii) conventional recreational swimming pools which are installed on any Lot. All outside storage areas, transformers, and meters must be screened and/or landscaped in a first-class manner.

Section 6.9. **Antennas and Dishes; Solar Devices.**

1. **Antenna.** No television, radio, or other electronic towers, aerials, antennae, satellite dishes or device of any type for the reception or transmission of radio or television broadcasts or other means of communication can be erected, constructed, placed or permitted on any Lot or any Improvement on the Lot except for those antennae specifically covered by the Telecommunications Act of 1996, as amended from time to time unless specifically approved in advance by the ACC.

2. **Solar Energy Devices.** Subject to applicable Arizona law, all solar energy devices must be approved by the ACC; provided, however, that the ACC may not effectively prohibit such devices.

Section 6.10. **Vehicular Parking, Storage, and Repairs.**

1. **Parking Restrictions.** Except in parking areas specifically designated on the Subdivision Plat, in the Design Guidelines or by the Board, or as authorized under Arizona law, the following types of vehicles cannot be parked or stored on a Lot, on the streets (whether public or private) or on the Common Property: any trailer, including, but not limited to a house trailer, camping trailer, boat trailer, hauling trailer, fifth-wheel; boat, or any boating accessories or equipment; a truck larger than one ton; or a motorized recreational vehicle, except for loading or unloading, delivery or in the event of an emergency. The time for loading or unloading cannot exceed 24 hours All vehicles, including those vehicles used as ordinary transportation must be stored, parked, or maintained entirely within the garage on the Lot, with the garage door in a closed position. This

restriction, however, does not restrict trucks or other commercial vehicles which are used in the construction or maintenance of the Improvements on the Lot.

2. **Commercial Vehicles.** No commercial, construction or like vehicles (including, but not limited to, pickup vehicles in excess of one ton capacity), and vehicles bearing commercial licenses or commercial insignia can be parked or stored on any Lot other than inside the enclosed garage.

3. **Parking Regulations.** The Board may establish parking regulations if it determines such are necessary.

4. **Vehicle Repairs.** Except for emergency vehicle repairs, no automobile or other motor vehicle can be constructed, reconstructed or repaired on any Lot, and no inoperable vehicle [including an unlicensed vehicle] may be stored or parked on any Lot if it is Visible from Neighboring Lots or the Common Properties

5. **Towing.** The Board has the right to have any vehicle, including, but not limited to recreational vehicles, automobiles, motorcycles, etc., which is parked in violation of the Governing Documents, towed away at the sole cost and expense of the Owner of the vehicle. Any expenses incurred by the Association in connection with the towing of any vehicle become Reimbursement Assessments.

Section 6.11. **Nuisances.** No nuisance is permitted on the Property, nor are actions permitted which are a source of annoyance to residents or which interferes with the peaceful enjoyment or possession and proper use of the Property, by the Owners or other occupants. The term "nuisance" does not include any activities of Declarant or any Developer-Owner which are reasonably necessary to the development of and construction on the Property. The Property must be kept in a clean and sanitary condition, and no rubbish, refuse, litter (including food or drink containers), junk, or garbage will be allowed to accumulate either during or subsequent to any development or construction activities, nor can any fire hazard to exist. No unlawful use of a Lot is permitted. All valid laws, ordinances, and regulations of all governmental bodies having jurisdiction over the Property, must be observed.

Section 6.12. **Underground Utility Lines.** All electric, television, cable television or radio, and telephone transmissions line installations and connections within the Property must be placed underground; provided that,

during the construction of a Residence, the contractor or builder may install a temporary overhead utility line which will be promptly removed upon completion of construction.

Section 6.13. **No Hazardous Activities.** No activities will be conducted on the Property or within a Residence which are or might be unsafe or hazardous to any Person or property. No firearms can be discharged upon any of the Property and open fires are prohibited, except in a contained outdoor fireplace or barbecue while attended or within a safe and properly designed interior fireplace.

Section 6.14. **Annoying Sounds or Odors.** No sound can be emitted from any Lot or Residence (including loud music or barking dogs) which is unreasonably loud or annoying. No odor will be emitted from any Lot or Residence which is noxious or unreasonably offensive to others. Loud music during construction is strictly forbidden. No exterior horns, whistles, bells, or other sound devices, except security devices used exclusively by an Owner to protect the Owner's Lot are permitted.

Section 6.15. **Garbage and Refuse Disposal.** No garbage, refuse, rubbish, or cuttings can be deposited on the Property or any street or Lot unless placed in a proper container suitably located, except for the purpose of garbage or recyclables pickup. The type of garbage disposal, recycling container or decomposition container may be specified by the Design Guidelines. All equipment or containers for the storage or disposal of such materials must not be Visible from Neighboring Property, except temporarily when such materials are being disposed of or collected by a proper disposal or collection agency or being transported away from the Property. All such equipment and containers must be kept in a clean condition.

Section 6.16. **Excavations and Exposed Wires and Pipes.** No excavation is permitted except in connection with construction of Improvements or the installation or repair of utilities. Upon completion of any construction or installation, exposed openings must be backfilled and disturbed ground must be graded and landscaped in accordance with the Design Guidelines. No installations of power, telephone, or other utility line wire, pipe, or conduit can be made anywhere on the Property except where operated by public agencies, duly certified public utility companies, cable television or by an Owner for septic tank purposes, or for the installation of a satellite system in compliance with Section 6.9.

Section 6.17. **No Oil and Gas or Mining Operations.** No rights to water, oil, natural gas, or minerals underlying the Property may be conveyed for the purpose of extraction. No derrick or other structure designed for use in exploring, boring or digging for water, oil, natural gas, or other minerals can be erected, maintained, permitted or operated on any portion of the Property.

Section 6.18. **Drainage.** No Owner may do any work, construct any Improvement, place any landscaping, or take any action which will alter or interfere with the drainage pattern for the Lots, or other portion of the Property as established in connection with the approval of the final Subdivision Plat, unless approved in writing by the ACC. This provision does not apply to alterations necessary and approved for development in accordance with an approved plat or plan.

Section 6.19. **Outside Storage.** No furniture, fixtures, appliances, or other personal property which is not being used can be stored on any portion of the Lot if Visible from Neighboring Property or from any street or road. Construction materials cannot be stored on any Lot for more than 30 days prior to the commencement of construction.

Section 6.20. **Basketball and Other Play Equipment.**

1. Permanent basketball hoops (in ground or attached to the home) are permitted if approved by the ACC. A portable basketball hoop must be stored on the Lot so it is not Visible from Neighboring Property or from any street or road except when being used. The ACC has the right to adopt rules regarding the use of basketball hoops, including the hours of use and the placement on the Lot.
2. All play equipment, including but not limited to trampolines, swing sets, climbing gyms, etc., may only be placed on the Lot in a location where they are not Visible from Neighboring Property or from any street or road, unless approved by the ACC.

Section 6.21 **Party Walls.**

1. **General Rules of Common Law to Apply.** The common law rules regarding party walls and liability for property damage due to negligence or willful acts or omissions apply to the Party Walls

between Lots. Each Owner acknowledges that the Property may be developed with common walls separating the Lots, and each Owner, consents to the placement of such walls on the dividing line.

- a. **Sharing of Repairs and Maintenance.** The Owners of the Lots which are divided by a party wall will share in the costs of ordinary repair and maintenance of a party wall, except that cosmetic repairs to only one side of the wall will be paid by the Owner of the Lot making such repairs.
 - b. **Destruction by Fire or Casualty.** If a party wall is destroyed or damaged by fire or other casualty, an Owner who has used the wall may restore it and is granted a permanent easement over the other Lot for such restoration.
 - c. **Right to Contribution Runs With the Land.** The right of any Owner to contribution from any other Owner under this Article is appurtenant to ownership of the Lot.
 - d. **Arbitration.** If any dispute arises concerning a party wall or under the provisions of this Article, the parties agree that the Board will arbitrate the dispute and the decision of the Board is final and binding on the parties.
2. **Private Agreements.** Private Agreements between Owners cannot modify the provisions of this Article.
3. **Architectural Control Committee Approval.** If the Owners desire to modify any party wall, they must first obtain the written approval of the ACC. In addition to the provisions of this Declaration pertaining to the approval of the ACC, the Owners acknowledge that the ACC may rely upon the opinions of the Owners of any party wall in determining whether any proposed alteration is permitted.
4. **Walls on Common Property.** Notwithstanding the foregoing and unless otherwise expressly agreed in writing by the Association, in the case of walls: (i) between Common Property and Lots; or, (ii) situated on Common Property within or adjacent to a Lot, the Owners of the Lots will be responsible, at their expense, for all maintenance, repair, painting and

replacement of such walls. Further, unless otherwise approved in writing by the Board, any wall which is generally situated between a Lot and Common Property is deemed to be situated entirely on the Lot (and not on the Common Property) even if it is situated immediately adjacent to the boundary line between the Lot and the Common Property.

ARTICLE VII DEVELOPMENT STANDARDS AND RESTRICTIONS

The following standards and restrictions pertain to the development of the Property and all provisions of the Design Guidelines are in addition to and supplement these standards:

Section 7.1. Landscaping: Preservation and Re-vegetation*
Requirement. At the time of or as soon as reasonably possible following construction of a Residence on a Lot, but no later than six months after commencement of construction, the Owner must complete the landscaping of the Lot in accordance with the approved landscaping plan and returned, to the extent possible, to its natural state in accordance with the Design Guidelines by the Owner. Thereafter all vegetation on the Lot will be kept and maintained in an attractive, healthy, live, and growing condition. All dead or diseased vegetation will be promptly removed and suitable replacement landscaping installed.

Section 7.2. Exterior Surface Color, Exposed Materials. All exterior walls, fences, roofs, and other visible portions of the improvements erected on the Property will be painted in low reflective earth or non-reflective earth or desert tones in accordance with the Design Guidelines. White or other highly reflective surfaces are prohibited.

Section 7.3. Lighting. All lighting, including pool lighting, must be screened and deflected or must use low voltage bulbs. Lighting must comply with all relevant provisions of the applicable zoning ordinances, cannot emit light onto neighboring Lots or the Common Property. All lighting must be approved by the ACC and cannot be turned on after 11:00 p.m. No lighting is permitted which causes unreasonable glare or reflection onto neighboring Lots.

Section 7.4. Fences and Walls. All fences and walls must be compatible with the construction and design of the other Improvements on the Property and must be approved by the ACC.

Section 7.5. **Compliance With Local Laws.** All development within the Property must comply with local laws and regulations, including those imposed by Santa Cruz County and the applicable local fire district.

Section 7.6. **Building Heights.** Building heights of all Improvements on the Lot is limited to 27 (twenty-seven) feet from natural grade on the lot.

ARTICLE VIII
OWNERS' MAINTENANCE RESPONSIBILITIES

Section 8.1. **Owner's Responsibilities.** Each Owner is responsible for the payment of his/her Lot's utility costs, property taxes, insurance, and the repair of all appliances and equipment located on the Lot. Each Owner is responsible for maintaining, repairing and replacing any water or sewer line which is located under the Lot from the point that it leaves the main water or sewer line to service that Lot.

Section 8.2. **Other Responsibilities.**

1. Each Owner is responsible for the upkeep and maintenance of the exterior and the interior portions of the Lot and the Improvements on the Lot.
2. Each Owner is responsible for providing termite control and other pest control on the Lot.
3. No Owner can take any action which may cause any damage to any other Lot.
4. No Owner may allow any condition to exist on his/her Lot which adversely affects the other Lots or other Owners, nor may an Owner engage in any conduct which causes the premiums for any insurance which is provided by the Association to increase.
5. Each Owner is responsible for assuring that all construction, alterations, modifications or additions to buildings, walls, fences, driveways or other structures on the Lot conform to the Use Restrictions set forth in this Declaration. If, after written notice from the Association, an Owner fails to comply with the Association's request to conform to such Use Restrictions,

the Association may, in its sole discretion, take whatever action is appropriate to bring the Lot into compliance, including entering upon the Lot and making such corrections. The costs of such action will become a Reimbursement Assessment.

6. Each Owner is responsible for obtaining and maintaining such insurance for him/herself as well as such other insurance as the Owner desires on the Owner's real and personal property on the Lot.

7. Electric power, sewers, and water are available to the Lots through private utility companies authorized by the State of Arizona. Neither the Declarant, the Board nor the ACC assumes any responsibility for and does not guaranty the quality or quantity of the water and electric power to be furnished to the Lot and is not, in any way, liable for any shortage of water or electricity.

8. The Association is not required to charge for, or to collect, assessments for damage caused by an Owner, that Owner's guests, family, or tenants to any other Owner's property or to the Common Property. Any party whose property is damaged by another Owner's negligence or willful conduct, cannot require the Association to make repairs, to charge the offending party or collect any necessary amounts from him/her.

9. All provisions of the Governing Documents apply to each Owner, and to the tenants, guests and contractors of an Owner. Each Owner will be responsible for any violation of the provisions of the Governing Documents, whether by such Owner, or by his tenants, guests and contractors. It will be a material default in any lease if a tenant violates any provision of the Governing Documents, entitling the Association to require the Owner to remove such Persons from the Lot.

ARTICLE IX ASSOCIATION'S RESPONSIBILITIES

Section 9.1. Association's Responsibilities. The Association is responsible for the proper and efficient management of the Association and the Common Property.

Section 9.2. Specific Responsibilities of the Association. In addition to any other responsibilities which the Association may have, it is specifically responsible for the following:

1. Maintaining the Common Property;
2. Providing services as the Board, from time to time, determines to be in the best interests of the Association;
3. Paying real estate taxes, assessments and other charges on the Common Property;
4. Insuring all improvements which the Association is obligated to maintain, with companies and with such limits as the Association deems appropriate;
5. Hiring, firing, supervising, and paying employees and independent contractors providing services to the Association;
6. Maintaining fire and extended liability to protect the Members, the Board, and the Association from any liability for anything which occurs on the Common Property. The insurance maintained by the Association shall also include Director's and Officer's Liability Insurance;
7. Purchasing all goods, supplies, labor, and services reasonably necessary for the performance of the Association's obligations;
8. Providing for the payment for any utility services which service the Common Property;
9. Entering into such agreements and taking such actions as are reasonably necessary and convenient to accomplish the obligations set forth in the Governing Documents.

ARTICLE X
GENERAL PROVISIONS

Section 10.1. Enforcement.

1. Each Owner has the right to enforce the Governing Documents by filing a lawsuit against any other Owner and the successful party is entitled to an award of reasonable attorney fees, litigation expenses and costs incurred.
2. The Association may enforce the Governing Documents in any manner provided for herein, or by filing a lawsuit, including, but not limited to:

- a. Imposing reasonable monetary penalties after notice and an opportunity to be heard is given to the Owner;
- b. Suspending any services provided by the Association to an Owner or the Owner's Lot if the Owner is more than 15 days delinquent in paying any assessment or other charge owed to the Association;
- c. Exercising self-help or taking action to abate any violation of the Governing Documents;
- d. Requiring an Owner, at the Owner's expense, to remove any Improvement on the Owner's Lot in violation of the Governing Documents and to restore the Lot to its previous condition. After Notice stating a time within which the Owner must perform, if the Owner fails to take action, the Board or its designee has the right to enter the Lot, remove the Improvement in violation and restore the Lot to substantially the same condition as previously existed and any such action will not be deemed a trespass;
- e. Without liability to the Association or Board, prohibiting any Person engaged by an Owner who fails to comply with the terms and provisions of the Governing Documents, from continuing or performing any further activities in the Properties;
- f. Towing vehicles which are parked in violation of the Governing Documents; and
- g. Filing a lawsuit to enjoin a violation of the Governing Documents, to compel compliance with the Governing Documents, to recover fines or money damages or to obtain such other relief to which the Association may be entitled.

3. The Association is not obligated to take any enforcement action if the Board determines, in its sole discretion, that by virtue of the Association's finances, possible defenses, the time and expense of litigation or other enforcement action, the likelihood of a result favorable to the Association, or other facts deemed relevant by the Board, enforcement

action would not be appropriate or in the best interests of the Association.

4. All rights and remedies of the Association under the Governing Documents or at law or in equity are cumulative, and the exercise of one right or remedy will not waive the Association's right to exercise another right or remedy.

5. No delay or failure by the Association or any Owner in exercising any right under this Declaration or any of the other Governing Documents will operate as a waiver of such right or any other right, and no single or partial exercise of any such right will preclude any other or further exercise of such right or the exercise of any other right.

6. No claim or cause of action will accrue against the Board, the Association or any Owner for their neglect or refusal to exercise such right of enforcement.

7. Except for judicial construction of the provisions of the Governing Documents, the Association, through its Board, has the exclusive right to construe and interpret the provisions of this Declaration, including without limitation, the use restrictions in Article V. In the absence of any adjudication to the contrary by a court of competent jurisdiction, the Association's construction or interpretation of the provisions of this Declaration is final, conclusive and binding as to all persons and property benefited or bound by this Declaration.

Section 10.2. Attorney Fees. If the Association takes any action is taken to enforce the provisions of the Governing Documents, it has the right to recover any attorney fees, litigation expenses, costs or other expenses incurred as a result of such action. These charges become a Reimbursement Assessment and may be recovered against the Owner personally or against the Lot. The right to recover such charges exists regardless of whether the Association files suit or is successful in compelling compliance without filing suit.

Section 10.3. Dispute Resolution.

1. Consensus for Association Action.

a. Except as provided in Section 10.3., the Association may not commence a legal proceeding or an action without the approval of at least 2/3rds of the votes of the Members

eligible to vote. This Article does not apply to (I) actions brought by the Association to enforce the Governing Documents (including, without limitation, the foreclosure of liens); (ii) the imposition and collection of assessments; (iii) proceedings involving challenges to ad valorem taxation; or (iv) counterclaims brought by the Association in proceedings instituted against it.

- b. Prior to the Association or any Member commencing any proceeding to which Declarant or any Developer Owner is a party, including but not limited to an alleged defect of any Improvement, Declarant or the Developer Owner has the right to be heard by the Members, or any particular Member, and to access, inspect, correct the condition of, or redesign any portion of any Improvement as to which a defect is alleged or otherwise correct the alleged disputed item.

2. **Alternative Method for Resolving Disputes.** Declarant, its officers, directors, employees and agents; the Association, its officers, directors and committee members; all Persons subject to this Declaration, including all Members of the Association; any Developer Owner, its officers, directors employees and agents; and any Person not otherwise subject to this Declaration but who agrees in writing to submit to this Section 10.3 (all of which are collectively referred to as a "Bound Party") agree to encourage the amicable resolution of disputes, without the emotional and financial costs of litigation. Accordingly, each Bound Party covenants and agrees to submit those claims, grievances or disputes described in Section 10.3.3. ("Claim") to the procedures set forth within this Section 10.3.

3. **Claims.**

- a. Unless specifically exempted below, all Claims between any of the Bound Parties regardless of how the Claim may have arisen or on what it might be based including but not limited to, claims (a) arising out of or relating to the interpretation, application or enforcement of the Governing Documents or the rights, obligations and duties of any Bound Party under the Governing Documents, (b) relating to the design or construction of Improvements; or (c) based upon any statements, representations, promises, warranties, or other

communications made by or on behalf of any Bound Party, are subject to the provisions of this Section 10.3.

b. Notwithstanding the above, unless all parties otherwise agree, the following are not Claims and are not subject to the provisions of this Section 10.3:

1) any suit by the Association against any Owner to enforce an Owner's obligation to pay Assessments;

2) any suit by the Association or Declarant to obtain a temporary restraining order or injunction (or equivalent emergency equitable relief) and such other ancillary relief as a court may deem necessary in order to maintain the status quo and preserve the Association's ability to act under and enforce the provisions of the Governing Documents;

3) any suit between or among Owners, which does not include Declarant, a Developer Owner or the Association as a party, if such suit asserts a Claim which would constitute a cause of action independent from the Governing Documents; and

4) any suit in which any indispensable party is not a Bound Party.

c. With the consent of all Parties any of the above matters identified in this Section may be submitted to the alternative dispute resolution procedures set forth herein.

4. **Procedures.** The procedures for resolution of Claims will be set forth in the Bylaws and subject to Paragraph 5, below, may be amended, from time to time, by the Board.
5. **Amendment of this Section 10.3 and the Procedures for Resolution of Claims.** Without the express prior written consent of Declarant, neither this Section, nor the procedures for resolution of Claims contained in the Bylaws may be amended for a period of 20 years from the date of recordation of this Declaration.

Section 10.4. **Severability.** Invalidation of any covenant, restriction, provision or term of this Declaration by judgment or court order will not affect any other covenant, restriction, provision or term in the Declaration, all of which will remain in full force and effect.

Section 10.5. **Conflicts.** If there is a conflict between this Declaration and any of the other Governing Documents, this Declaration will control. If there is a conflict between the Articles of Incorporation and the Bylaws, the Articles will control. If there is a conflict between any provision of the Governing Documents and any provision of the Governing Documents for the Master Association, the Governing Documents for the Master Association will control, provided, however, that all other provisions in the Governing Documents remain in full force and effect.

Section 10.6. **Term and Amendment.**

1. **Term.** The provisions of this Declaration run with the land and continue and remain in full force and effect at all times and against all persons.

2. **Amendment.**

a. Until the first conveyance of a Lot within the Property to a Non-Developer Owner for use and occupancy as a Residence, this Declaration may be amended by a recorded instrument duly executed by Declarant, without calling a meeting of the Owners or obtaining the consent of the Owners.

b. After the sale of the first Lot to a Non-Developer Owner this Declaration may be amended by recording an amendment with the Santa Cruz County Recorder's Office, executed by the President and Secretary of the Association attesting that Owners of 2/3rds of the total votes entitled to be cast by the entire Membership consented to or affirmatively voted in favor of the amendment. The amendment must set forth the text of the amendment, as approved,

c. No amendment can interfere with the plans of a Developer Owner as previously approved by Declarant or

by the ACC. No amendment may discriminate against Declarant or any single Developer Owner without the consent of Declarant and the Developer Owner.

d. Any amendment approved during the time of Declarant Control requires the written approval of the Declarant. After the expiration of Declarant Control, if there is still a Class B Member, by assignment or otherwise, then the consent of the Class B Member is required.

e. In addition, Declarant has the right, so long as it owns any Lot or Annexable Property, to amend this Declaration of its own volition, without the requirement of any further consent or approval, if the amendment is to correct errors or eliminate ambiguities, or to make changes designed to further the intent of this instrument by elaborating on existing powers, privileges and restrictions in cases where correction, clarification or elaboration is warranted.

Section 10.7. Right of Amendment if Requested by Governmental Agency or Federally Chartered Lending Institution. Notwithstanding anything in this Article, the Declarant reserves the right to amend this Declaration in any manner requested or required by the FHA, VA or any other governmental agency with whom Declarant elects to do business as a condition precedent to such Agency's approval of this Declaration or by any federally chartered lending institution as a condition precedent to lending funds secured by any Lot or purchasing loans secured by any portion of the Property. Any such amendment becomes effective when the Declarant records a Certificate of Amendment duly executed and acknowledged by Declarant specifying the agency or the lending institution requesting the amendment and setting forth the requested or required amendment(s). Recordation of such a Certificate is conclusive proof of the agency's or institution's request or requirement and this Certificate, when recorded, will be binding upon all of the Property and all persons having an interest therein. It is the desire of Declarant to retain control of the Association and the Association's activities during the period of Declarant Control. If any amendment requested or required pursuant to the provisions of this Declaration deletes, diminishes or alters such control, Declarant has the right to prepare, provide for and adopt as an amendment any other and different control provisions which will be binding upon the Property and

Owners without a vote of the Owners.

Section 10.8. Declarant's Disclaimer of Representations. Notwithstanding anything to the contrary, Declarant makes no warranties or representations whatsoever that the plans presently envisioned for the complete development of the Property can or will be carried out, or that any real property now owned or later acquired is or will be subjected to this Declaration, or that any real property (whether or not it has been subjected to this Declaration) is or will be committed to or developed for a particular (or any) use, or that if any real property is once used for a particular use, such use will continue in effect. While Declarant has no reason to believe that any of the restrictive covenants contained in this Declaration are or may be invalid or unenforceable for any reason or to any extent, Declarant makes no warranty or representation as to the present or future validity or enforceability of any such restrictive covenant. Any Owner acquiring a Lot in reliance on one or more of such restrictive covenants assumes all risks of the validity and enforceability of the provisions of the Governing Documents and by accepting a deed to the Lot agrees to hold Declarant harmless from any liability.

Section 10.9. Change of Circumstances. Except as otherwise expressly provided in this Declaration, no change of conditions or circumstances will operate to extinguish, terminate or modify any of the provisions of this Declaration.

Section 10.10. Successors and Assigns. Any reference in this Declaration to Declarant includes any successors or assignees of all or a any portion of Declarant's rights and powers arising under the Governing Documents. Such assignment will be evidenced by a recorded instrument executed by Declarant and its successor or assignee with such rights and powers (or any specified portion) are specifically assigned.

Section 10.11 Captions. All captions, titles or headings of the Articles and Sections in this Declaration are for the purpose of reference and convenience only and are not to be deemed to limit, modify or otherwise affect any of the its provisions or to be used in determining the intent or context of such provisions.

Section 10.12. Notices. If notice of any action or proposed action by the Board or any committee or of any meeting is required to be given to any Owner, by applicable law, this Declaration or any resolution of the Board, then such notice must be given to the Owner at the property address

of the Lot, or such other notice as provided by the Owner in writing to the Association. The notice requirement is satisfied if notice of such action or meeting is served upon an Owner by first class mail, postage prepaid, addressed to the Owner at the mailing address set forth in the records of the Association. All notices, demands, or other communications intended to be served upon the Association must be sent by certified mail, postage prepaid, to P.O. Box 4241, Tubac, AZ 85646, until such address is changed by the Association and notice thereof is provided to the Owners.

Dated: June 15, 2004

San Miguel Partners, LLC, an Arizona limited liability company

By: [Signature]
Gary P. Brasher, Manager

By: [Signature]
Carl A. Bosse, Manager

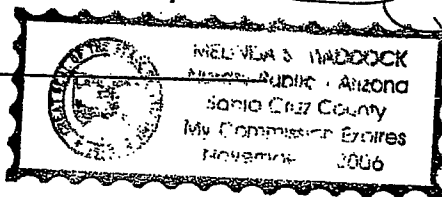
By: [Signature]
J. Zachery Freeland, Manager

STATE OF ARIZONA)
County of Santa Cruz) ss:
)

SUBSCRIBED, SWORN TO AND ACKNOWLEDGED before me on 15th of June, 2004 by Gary P. Brasher, as Manager of San Miguel Partners, LLC, an Arizona limited liability company, for and on behalf of the Company.

[Signature]
Notary Public

My Commission Expires: _____



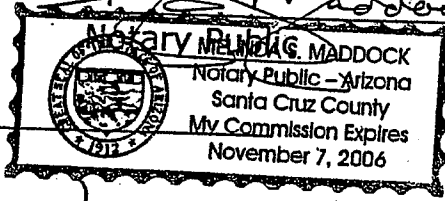
STATE OF ARIZONA

County of Santa Cruz

)
) SS:
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SUBSCRIBED, SWORN TO AND ACKNOWLEDGED before me on June 15, 2004 by Carl A. Bosse, as Manager of San Miguel Partners, LLC, an Arizona limited liability company, for and on behalf of the Company

Melinda S. Maddock



My Commission Expires:

STATE OF ARIZONA

County of Santa Cruz

)
) SS:
)

SUBSCRIBED, SWORN TO AND ACKNOWLEDGED before me on June 15, 2004 by J. Zachery Freeland, as Manager of San Miguel Partners, LLC, an Arizona limited liability company, for and on behalf of the Company.

Melinda S. Maddock

Notary Public

My Commission Expires:

