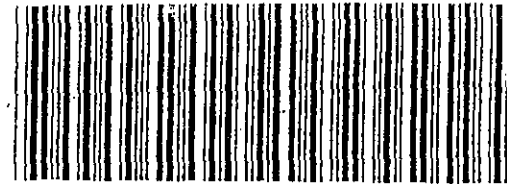


WHEN RECORDED, RETURN TO:

Mr. John Scremin  
John Scremin Development  
407 S. Arizona Ave.  
Chandler, Arizona 85224



OFFICIAL RECORDS OF  
MARICOPA COUNTY RECORDER  
HELEN PURCELL

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(for recording information only)

## DECLARATION OF COVENANTS, CONDITIONS AND RESTRICTIONS

FOR

### LAS CASITAS DEL SUR

This Declaration of Covenants, Conditions, and Restrictions for Las Casitas Del Sur (the "Declaration") is made as of September 30, 1999, by John Scremin Development, Incorporated, an Arizona corporation (the "Declarant").

#### ARTICLE 1

##### DEFINITIONS

1.1 "Ancillary Unit" means all permanent or temporary basements, cellars, guest houses, hobby houses, storage sheds, stables, wood sheds, outbuildings, shacks, barns, garages, living quarters, cabanas, gazebos, carports, covered patios, guest houses, or structures or items of any type similar to any of the foregoing that are not part of the Detached Dwelling Unit.

1.2 "Annual Assessment" means the assessments levied against each Lot, and the Owner thereof, pursuant to Section 6.2 of this Declaration.

1.3 "Architectural Committee" means the committee of the Association appointed pursuant to Section 5.10 of this Declaration.

1.4 "Articles" means the Articles of Incorporation of the Association, as amended from time to time.

1.5 "Assessment" means an Annual Assessment or Special Assessment.

1.6 "Assessment Lien" means the lien created and imposed by Article 6 of this Declaration.

1.7 "Assessment Period" means the period set forth in Section 6.6 of this Declaration.

1.8 "Association" means the Arizona nonprofit corporation to be organized by the Declarant to administer and enforce the Project Documents and to exercise the rights, powers and duties set forth therein, and its successors and assigns. Declarant intends to organize the

Association under the name of "Las Casitas Del Sur Property Owners Association", but Declarant reserves the right to organize the Association under such other name as the Declarant deems appropriate.

1.9 "Association Maintenance Areas" mean (i) all of the Common Area and all improvements situated thereon, (ii) all of the real property and the Improvements situated thereon, within the Project and located within dedicated rights-of-way with respect to which the City has not accepted maintenance responsibility, but only until such time as the City has accepted all responsibility for the maintenance, repair and replacement of such areas (with the understanding that the City may never accept such responsibility), (iii) the public right-of-way to back of curb; and (iv) any other area of the Project not referred to in (i), (ii) or (iii) above for which the Association has responsibility for maintenance and/or repair and/or replacement pursuant to this Declaration.

1.10 "Association Rules" means the rules adopted by the Board pursuant to Section 5.3 of this Declaration, as amended from time to time.

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

1.12 "Bylaws" means the Bylaws of the Association, as amended from time to time.

1.13 "City" means the City of Chandler, or any other municipality in which the Project or any part thereof is from time to time located.

1.14 "Commercial or Recreational Vehicles" means any of the following types of vehicles that are owned, leased, or used by an Owner of a Lot or any Owner Permittees: commercial truck, municipal vehicle, tractor, bulldozer, crane, snowmobile, ambulance, tour jeep, trolley, recreational vehicle, commercial delivery van, commercial pickup truck in excess of one (1) ton capacity, semi, semi-trailer, wagon, freight trailer, flatbed, boat trailer, automobile trailer, camper, camper shell, mobile home, motor home, boat, jet ski, dune buggy, all-terrain vehicle, bus, or similar commercial or recreational vehicles or equipment (whether or not equipped with sleeping quarters). Any commercial pickup truck of a one (1) ton capacity or less that is not equipped with a camper, camper shell, or work equipment in the truck bed will be treated as a "Family Vehicle," as described below:

1.15 "Common Area" means all land, together with all Improvements situated thereon, which the Association at any time owns in fee or in which the Association has a leasehold interest for as long as the Association is the owner of the fee or leasehold interest, including without limitation, Tracts A through T, inclusive, as dedicated to the Association by the Plat, and fences and walls constructed by Declarant along the perimeter of the Project facing McQueen Road and Senate Street. Improvements on the Common Area include, but are not limited to, the entry gates to the Project adjacent to McQueen Road, cluster mail boxes, the private accessways and private drives lying within Tract A (i.e., Jesse Street, Hawken Way, Senate Street and Longhorn Place); landscaping and improvements lying within Tracts B through S, inclusive, landscaping and storm drain facilities lying within Tract T, and the medians shown on the Plat as Tracts D through Q, inclusive.

1.16 "Common Expenses" means expenditures made by or financial liabilities of the Association, together with any allocations to reserves.

1.17 "Construction and Development Guidelines" means the rules and guidelines adopted by the Architectural Committee pursuant to Section 5.10 of this Declaration, as amended or supplemented from time to time.

1.18 "Declarant" means John Scremin Development, Incorporated, an Arizona corporation, its successors and any person or entity to whom it may expressly assign any or all of its rights under this Declaration.

1.19 "Declaration" means this Declaration of Covenants, Conditions and Restrictions, as amended from time to time.

1.20 "Detached Dwelling Unit" means all buildings that are located on a Lot and that are used or are intended to be used for Single Family Residential Use, including the garage, carport, open or closed patios, and attached or unattached guest house.

1.21 "Developer" means any Person who is engaged in bona fide residential land development and the marketing and sale of Lots to the public.

1.22 "Development Plan" means the development plans for the Project approved by the City, as the plan may be amended from time to time.

1.23 "Exempt Property" means (i) all land and improvements owned by, or dedicated to and accepted by, the United States, the State of Arizona, the County of Maricopa, Arizona, or any political subdivision thereof, or the City for as long as such entity or political subdivision is the owner thereof or for as long as such dedication remains effective; and (ii) all Common Area.

1.24 "Family Vehicles" means any domestic or foreign cars, station wagons, sport wagons, pickup trucks, vans, mini-vans, jeeps, sport utility vehicles, motorcycles, and similar non-commercial and non-recreational vehicles that are used by the Owner of the applicable Lot or the Owner's Permittees for family and domestic purposes only and not for any commercial purpose. Notwithstanding the types of vehicles included within the definition of Commercial or Recreational Vehicles, a "Family Vehicle" also includes the following types of vehicles that the Architectural Committee determines, in advance of its use within the Project, to be similar in size and appearance to smaller vehicles so as to be parked and maintained as a Family Vehicle: (i) non-commercial pickup trucks of a one (1) ton capacity or less with attached camper shells; and (ii) motor homes.

1.25 "First Mortgage" means any Mortgage on a Lot with first priority over any other Mortgage.

1.26 "First Mortgagee" means the holder (as mortgagee, beneficiary, secured party or otherwise) of any First Mortgage.

1.27 "Improvement(s)" means any Residential Unit, Ancillary Unit, building, fence, wall, gate, side-walk, swimming pool, spa, or other structure, any road, driveway and parking area, mail boxes (including cluster mailboxes), permanent signage and lighting fixtures, any trees, plants, shrubs, grass and other landscaping of any type and kind whatsoever, and other improvements of every type and kind.

1.28 "Lessee" means the lessee or tenant under a lease, oral or written, of any Lot including an assignee of a lease.

1.29 "Lot" means each area of real property in the Project which is designated as a lot on the Plat and, where the context indicates or requires, shall include any Residential Unit, building, structure or other Improvements situated on the Lot.

1.30 "Maintenance Standard" means the standard of maintenance of Improvements established from time to time by the Board or, in the absence of any standard established by the Board, the standard of maintenance of Improvements generally prevailing throughout the Project.

1.31 "Member" means any Person who is a Member of the Association.

1.32 "Membership" means a membership in the Association.

1.33 "Mortgage" means a mortgage, deed of trust, purchaser under a contract for the conveyance of real property subject to the provisions of A.R.S. §33-741 *et seq.*, or similar security instrument.

1.34 "Non-recurring And Temporary Basis" means the parking of vehicles of any type either: (i) for the sole purpose of loading and unloading non-commercial items for use on the Lot; (ii) for temporary visits by guests or invitees of an Owner that do not involve overnight parking; or (iii) for temporary parking of the Owner's vehicles for cleaning or special events that do not involve overnight parking and that do not occur on a frequent or repetitive basis.

1.35 "Owner" means the record owner, whether one or more Persons, of beneficial or equitable title (and legal title if the same has merged with the beneficial or equitable title) to the fee simple interest of a Parcel. Owner shall not include (i) Persons having an interest in a Parcel merely as security for the performance of an obligation, or (ii) a Lessee. Owner shall include a purchaser under a contract for the conveyance of real property subject to the provisions of A.R.S. § 33-741 *et seq.* Owner shall not include a purchaser under a purchase contract and receipt, escrow instructions or similar executory contracts which are intended to control the rights and obligations of the parties to the executory contracts pending the closing of a sale or purchase transaction. In the case of Parcels the fee simple title to which is vested in a trustee pursuant to Arizona Revised Statutes, Section 33-801, *et seq.*, the trustor (or equivalent beneficial owner) shall be deemed to be the Owner. In the case of Parcels the fee simple title to which is vested in a trustee pursuant to a subdivision trust agreement or similar agreement, the beneficiary of any such trust who is entitled to possession of the trust property shall be deemed to be the Owner.

1.36 "Owner Permittees", "Owner's Permittees" and "Owners' Permittees" means all family members, guests, tenants, licensees, invitees, agents and other Residents that use the Owner's Lot or other portions of the Project (including Common Area) with the implied or express consent of an Owner.

1.37 "Parcel" means each Lot and each Tract.

1.38 "Person" means a natural person, corporation, business trust, estate, trust, partnership, association, limited liability company, joint venture, government, governmental subdivision or agency, or other legal or commercial entity.

1.39 "Plat" means the subdivision plat for the Project, as Recorded at Book 508 of Maps, Page 34, Official Records of Maricopa County, Arizona, and all amendments, supplements and corrections thereto.

1.40 "Project" means the real property from time to time subject to this Declaration, initially consisting of the Parcels, Lots and Tracts and as more particularly described on Exhibit "A" attached hereto and by this reference incorporated herein.

1.41 "Project Documents" means this Declaration, the Articles, the Bylaws, the Association Rules and the Construction and Development Guidelines.

1.42 "Purchaser" means any Person, other than the Declarant, who by means of a voluntary transfer becomes the Owner of a Parcel, except for (i) a Person who purchases a Lot and then leases it to the Declarant for use as a model in connection with the sale or lease of other Lots, or (ii) a Person who, in addition to purchasing a Parcel, is assigned any or all of the Declarant's rights under this Declaration.

1.43 "Recording" means placing an instrument of public record in the office of the County Recorder of Maricopa County, Arizona, and "Recorded" means having been so placed of public record.

1.44 "Recreational Vehicle Parking Area" means that portion of the Enclosed Side Yard of a Lot that has been designated by the Architectural Committee as a place for the parking of Recreational Vehicles or Family Vehicles. The plans and specifications for any Recreational Vehicle Parking Area must be approved in writing by the Architectural Committee prior to its installation or construction. The Recreational Vehicle Parking Area must be Screened From View from neighboring lots.

1.45 "Resident" means each individual residing in any Residential Unit.

1.46 "Residential Unit" means any building, or portion of a building, situated upon a Lot and designed and intended for independent ownership and for use and occupancy as a residence.

1.47 "Screened From View" means that the object in question is appropriately screened from view from abutting Lots, Common Area, and public and private streets by a gate, wall, shrubs, or other approved landscaping or screening devices. The Architectural Committee will be the sole judge as to what constitutes an object being Screened From View or appropriately screened.

1.48 "Single Family" means a group of one or more persons each related to the other by blood, marriage or legal adoption, or a group of not more than two (2) adult persons not all so related, who maintain a common household in a Residential Unit.

1.49 "Single Family Residential Use" means the occupancy or use of a Detached Dwelling Unit and Lot by a Single Family in conformity with the Project Documents and the requirements imposed by applicable zoning laws or other state, county, or municipal rules, ordinances, codes, and regulations.

1.50 "Special Assessment" means any assessment levied and assessed pursuant to Section 6.5 of this Declaration.

1.51 "Tract" shall mean each of Tracts A through T, inclusive, as designated on and dedicated by the Plat.

1.52 "Visible From Neighboring Property" means, with respect to any given object, that such object is or would be visible to a person six feet tall, standing at ground level on any part of such neighboring property; provided, however, that an object shall not be considered as being Visible From Neighboring Property if the object is visible to a person six feet (6') tall, standing at ground level on any part of neighboring property only by such person being able to see the object through a wrought iron fence and such object would not be visible to such person if the wrought iron fence were a solid fence.

1.53 "Yard" (whether capitalized or not) means all portions of the Lot other than the portions of the Lot upon which the Detached Dwelling Unit or an Ancillary Unit is constructed. "Private Yard" means the portion of the yard that is not Visible From Neighboring Property and is shielded or enclosed by walls, fences, hedges, and similar items. "Public Yard" means that portion of the Yard that is Visible From Neighboring Property, whether located in front of, beside, or behind a Detached Dwelling Unit and includes all landscaping that is Visible From Neighboring Property regardless of the fact that the base or ground level of the landscaping is not Visible From Neighboring Property. "Enclosed Side Yard" means the portion of a yard that, when viewed from the street in front of the Detached Dwelling Unit, is located behind any side yard boundary wall located on a Lot. The Enclosed Side Yard can be no deeper (when measured from the street in front of the Detached Dwelling Unit) than the deepest wall of any Detached Dwelling Unit located on a Lot. The Architectural Committee will be the sole judge as to what constitutes an Enclosed Side Yard in accordance with this Declaration.

## ARTICLE 2

### PLAN OF DEVELOPMENT

2.1 Property Initially Subject to the Declaration. This Declaration is being recorded to establish a general plan for the development and use of the Project in order to protect and enhance the value and desirability of the Project. All of the real property within the Project shall be held, sold and conveyed subject to this Declaration. By acceptance of a deed or by acquiring any interest in any of the real property subject to this Declaration, each Person, for itself, its heirs, personal representatives, successors, transferees and assigns, binds itself, its heirs, personal representatives, successors, transferees and assigns, to all of the provisions, restrictions, covenants, conditions, rules, and regulations now or hereafter imposed by this Declaration and any amendments thereof. In addition, each such Person by so doing thereby acknowledges that this Declaration sets forth a general scheme for the development and use of the Project and hereby evidences his interest that all the restrictions, conditions, covenants, rules and regulations contained in this Declaration shall run with the land and be binding on all subsequent and future Owners, Owner Permittees, grantees, purchasers, assignees, Lessees and transferees thereof. Furthermore, each such person fully understands and acknowledges that this Declaration shall be mutually beneficial, prohibitive and enforceable by the Association and all Owners. Declarant, its successors, assigns and grantees, covenants and agrees that the Lots and the Membership in the Association and the other rights created by this Declaration shall not be separated or separately conveyed, and each shall be deemed to be conveyed or encumbered with its respective Lot even though the description in the instrument of conveyance or encumbrance may refer only to the Lot.

2.2 Disclaimer of Representations. Declarant makes no representations or warranties whatsoever that: (i) the Project will be completed in accordance with the Development Plans for the Project as they exist on the date this Declaration is recorded; (ii) any property subject to this Declaration will be committed to or developed for a particular use or for any use; or (iii) the use of any property subject to this Declaration will not be changed in the future. Nothing contained in this Declaration and nothing which may be represented to a purchaser by

real estate brokers or salesmen representing the Declarant or any Developer shall be deemed to create any implied covenants or restrictions with respect to the use of any property subject to this Declaration.

### ARTICLE 3

#### LAND USE CLASSIFICATIONS, PERMITTED USES AND RESTRICTIONS

3.1 Land Use Classifications. All Lots and use thereof, shall be limited to Single Family Residential Use.

3.2 Architectural Control.

3.2.1 All Improvements constructed on Parcels shall be of new construction, and no buildings or other structures shall be removed from other locations on to any Parcel.

3.2.2 No excavation or grading work shall be performed on any Parcel without the prior written approval of the Architectural Committee.

3.2.3 No Improvement shall be constructed or installed on any Parcel without the prior written approval of the Architectural Committee.

3.2.4 No addition, alteration, repair, change or other work which in any way materially alters the exterior appearance of the Improvements located on a Parcel, from their appearance on the date this Declaration is Recorded, shall be made or done without the prior written approval of the Architectural Committee.

3.2.5 Any Owner desiring approval of the Architectural Committee for the construction, installation, addition, alteration, repair, change or replacement of any Improvement which would alter the exterior appearance of the Owner's Parcel, shall submit to the Architectural Committee a written request for approval specifying in detail the nature and extent of the addition, alteration, repair, change or other work which the Owner desires to perform. Any Owner requesting the approval of the Architectural Committee shall also submit to the Architectural Committee any additional information, plans and specifications which the Architectural Committee may request. If the Architectural Committee fails to approve or disapprove an application for approval within thirty (30) days after the application, together with all supporting information, plans and specifications requested by the Architectural Committee have been submitted to it, approval will not be required and this Section will be deemed to have been complied with by the Owner who had requested approval of such plans.

3.2.6 In reviewing requests for the construction, installation, addition, alteration, repair, change or replacement of any Improvement, the Architectural Committee may consider: (i) whether the proposed Improvement would be consistent with the requirements of this Declaration and the Construction and Development Guidelines, (ii) whether the proposed Improvement would be generally consistent with other Improvements already constructed on Parcels, (iii) whether the Improvement would be in conformity with applicable laws, ordinances and regulations of any governmental entity or agency having jurisdiction over the Project, and (iv) any other factors which the Architectural Committee deems appropriate.

3.2.7 The approval by the Architectural Committee of any construction, installation, addition, alteration, repair, change or other work pursuant to this Section shall not be deemed a waiver of the Architectural Committee's right to withhold approval of any similar

construction, installation, addition, alteration, repair, change or other work subsequently submitted for approval.

3.2.8 Upon receipt of approval from the Architectural Committee for any construction, installation, addition, alteration, repair, change or other work, the Owner who had requested such approval shall proceed to perform, construct or make the addition, alteration, repair, change or other work approved by the Architectural Committee as soon as practicable and shall diligently pursue such work so that it is completed as soon as reasonably practicable.

3.2.9 Any change, deletion or addition to the plans and specifications approved by the Architectural Committee must be approved in writing by the Architectural Committee.

3.2.10 The Architectural Committee shall have the right to charge a reasonable fee for reviewing requests for approval of any construction, installation, alteration, addition, repair, change or other work pursuant to this Section, which fee shall be payable at the time the application for approval is submitted to the Architectural Committee.

3.2.11 The provisions of this Section do not apply to, and approval of the Architectural Committee shall not be required for, the construction, erection, installation, addition, alteration, repair, change or replacement of any improvements made by, or on behalf of, the Declarant.

3.2.12 The approval required of the Architectural Committee pursuant to this Section shall be in addition to, and not in lieu of, any approvals or permits which may be required under any federal, state or local law, statute, ordinance, rule or regulation.

3.3 **Temporary Occupancy and Temporary Buildings.** No trailer, basement of any incomplete building, tent, shack, garage or barn, and no temporary buildings or structures of any kind, shall be used at any time for a residence, either temporary or permanent. Temporary buildings, trailers or other structures used during the construction of Improvements approved by the Architectural Committee shall be removed immediately after the completion of construction, and in no event shall any such buildings, trailer or other structures be maintained or kept on any property for a period in excess of twelve months without the prior written approval of the Architectural Committee.

3.4 **Nuisances: Construction Activities.** No rubbish or debris of any kind shall be placed or permitted to accumulate upon or adjacent to any Parcel, and no odors or loud noises shall be permitted to arise or emit therefrom, so as to render any such property or any portion thereof, or activity thereon, unsanitary, unsightly, offensive or detrimental to any other property in the vicinity thereof or to the occupants of such other property. No other nuisance shall be permitted to exist or operate upon any Parcel so as to be offensive or detrimental to any other property in the vicinity thereof or to its occupants. Without limiting the generality of any of the foregoing provisions, no exterior speakers, horns, whistles, firecrackers, bells or other sound devices, except security devices used exclusively for security purposes, shall be located, used or placed on any Parcel.

Construction activity and work (including deliveries of materials, supplies and equipment) in connection with the construction or repair of Improvements on a Parcel shall only be conducted within the Project between the hours of 5:00 a.m. to 6:00 p.m., Monday through Saturday. Normal construction activities and parking in connection with the building of Improvements on a Parcel shall not be considered a nuisance or otherwise prohibited by this Declaration, but Parcels shall be kept in a neat and tidy condition during construction periods, trash and debris shall not be permitted to accumulate, and supplies of brick, block, lumber and



other building materials will be piled only in such areas as may be approved in writing by the Architectural Committee. In addition, any construction equipment and building materials stored or kept on any Parcel during the construction of Improvements may be kept only in areas approved in writing by the Architectural Committee, which may also require screening of the storage areas. The Architectural Committee in its sole discretion shall have the right to determine the existence of any such nuisance. The provisions of this Section shall not apply to construction activities of the Declarant.

3.5 Restricted Residences. Except as originally constructed by the Declarant as part of the original construction of the Detached Dwelling Unit and related Improvements, no Ancillary Units will be constructed or maintained on any Lot at any time, unless the type, size, shape, height, location, style, and use of the Ancillary Unit, including all plans and specifications and materials for the Ancillary Unit, are approved by the Architectural Committee pursuant to Section 3.2 of this Declaration prior to the commencement of construction. All Ancillary Units approved by the Architectural Committee for construction on a Lot must be constructed solely from new materials and must be constructed in compliance with all local and municipal codes, ordinances, and stipulations applicable to the Project and all restrictions contained in the Project Documents. Any Ancillary Unit that has been constructed without the prior approval of the Architectural Committee or in violation of any provision of the Project Documents or any local or municipal codes, ordinances, and stipulations must be removed immediately upon notice from the Association at the sole loss, cost, and expense of the constructing Owner.

3.6 Diseases and Insects. No Person shall permit any thing or condition to exist upon any Parcel which shall induce, breed or harbor infectious plant diseases or noxious insects.

3.7 Antennas. No antenna or other device for the transmission or reception of television or radio signals or any other form of electromagnetic radiation including, without limitation, satellite or microwave dishes, shall be erected, used, or maintained on any Parcel without the prior written approval of the Architectural Committee.

3.8 Mineral Exploration. Subject to any prior recorded mineral patents, no Parcel shall be used in any manner to explore for or to remove any water, oil or other hydrocarbons, minerals of any kind, gravel, earth or any earth substance of any kind.

3.9 Trash Containers and Collection. No garbage or trash shall be placed or kept on any Parcel, except in covered containers of a type, size and style which are approved by the Architectural Committee. In no event shall such containers be maintained so as to be Visible From Neighboring Property except to make the same available for collection and then only for the shortest time reasonably necessary to effect such collection. All rubbish, trash, or garbage shall be removed from Parcels and shall not be allowed to accumulate thereon. No outdoor incinerators shall be kept or maintained on any Parcel.

3.10 Clothes Drving Facilities. No outside clotheslines or other outside facilities for drying or airing clothes shall be erected, placed or maintained on any Parcel so as to be Visible From Neighboring Property.

3.11 Utility Service. No lines, wires, or other devices for the communication or transmission of electric current or power, including telephone, television, and radio signals, shall be erected, placed or maintained anywhere in or upon any Parcel unless the same shall be contained in conduits or cables installed and maintained underground or concealed in, under or

on buildings or other structures approved by the Architectural Committee. No provision of this Declaration shall be deemed to forbid the erection of temporary power or telephone structures incident to the construction of buildings or structures approved by the Architectural Committee.

3.12 Overhead Encroachments. No tree, shrub, or planting of any kind on any Parcel shall be allowed to overhang or otherwise to encroach upon any sidewalk, street, pedestrian way or similar area from ground level to a height of eight (8') feet without the prior approval of the Architectural Committee.

3.13 Residential Use. All Residential Units shall be used, improved and devoted exclusively to residential use by a Single Family. No trade or business may be conducted on any Parcel in or from any Residential Unit, except that an Owner or other Resident of a Residential Unit may conduct a business activity within a Residential Unit so long as: (i) the existence or operation of the business activity is not apparent or detectable by sight, sound or smell from outside the Residential Unit, (ii) the business activity conforms to all applicable zoning ordinances or requirements for the Project, (iii) the business activity does not involve persons coming on to the Lot or the door-to-door solicitation of Owners or other Residents in the Project, and (iv) the business activity is consistent with the residential character of the Project and does not constitute a nuisance or a hazardous or offensive use or threaten security or safety of other Residents in the Project, as may be determined from time to time in the sole discretion of the Board. The terms "business" and "trade" as used in this Section shall be construed to have ordinary, generally accepted meanings, and shall include, without limitation, any occupation, work or activity undertaken on an ongoing basis which involves the provision of goods or services to persons other than the provider's family and for which the provider receives a fee, compensation or other form of consideration, regardless of whether (i) such activity is engaged in full or part time, (ii) such activity is intended or does generate a profit, or (iii) a license is required for such activity. The leasing of a Residential Unit by the Owner thereof for periods of thirty (30) days or more each shall not be considered a trade or business within the meaning of this Section.

3.14 Animals. No animals, livestock, horses or poultry of any kind will be raised, bred, or kept on or within any Lot or structure on a Lot; however, an Owner may keep up to two (2) dogs or two (2) cats or two (2) other common household pets or two (2) of any combination of dogs, cats, or other common household pets in the Detached Dwelling Unit or in an enclosed Private Yard if permitted under local zoning ordinances. Additional pets are prohibited unless approved in advance by the Board. The foregoing restriction will not apply to fish contained in indoor aquariums. These permitted types and numbers of pets will be permitted for only so long as they are not kept, bred, or maintained for any commercial purpose and for only so long as they do not result in an annoyance or nuisance to other Owners. No pets will be permitted to move about unrestrained in any Public Yard of the Owner's Lot or any other Lot, Common Area, or any public or private street or drive within the Project. Each Owner will be responsible for the immediate removal and disposal of the waste or excrement of all the Owner's pets from the Public Yard of the Owner's Lot or any other Lot, Common Area, or public or private streets. Owners will be liable for all damage caused by their pets. The Board may establish a system of fines or charges for any infraction of the foregoing, and the Board will be the sole judge for determining whether a pet is a common household pet or whether any pet is an annoyance or nuisance.

3.15 Machinery and Equipment. No machinery or equipment of any kind shall be placed, operated or maintained upon or adjacent to any Parcel, except (i) such machinery or equipment as is usual and customary in connection with the use, maintenance or construction

(during the period of construction) of a building, appurtenant structures, or other Improvements; or (ii) that which Declarant or the Association may require for the operation and maintenance of the Tracts.

3.16 **Signs.** No signs whatsoever (including, but not limited to, commercial, political, "for sale", "for rent" and similar signs) which are Visible From Neighboring Property shall be erected or maintained on any Parcel except:

3.16.1 Signs required by legal proceedings.

3.16.2 One (1) "For Sale" sign per Lot provided the sign is no larger than two feet (2') by three feet (3').

3.16.3 Residence or business identification signs provided the size, color, content and location of such signs have been approved in writing by the Architectural Committee.

3.16.4 Signs of Developers approved from time to time by the Architectural Committee as to number, size, colors, design, message content, location and type.

3.16.5 Such construction job identification signs, business identification signs and subdivision identification signs which are in conformance with the requirements of the City and which have been approved in writing by the Architectural Committee as to size, colors, design, message content and location.

3.17 **Restriction on Further Subdivision, Property Restrictions and Rezoning.** No Parcel shall be subdivided or separated into smaller lots by any Owner other than Declarant, without the prior written approval of the Architectural Committee. So long as Declarant owns a Parcel, no Plat, or amendment, modification or abandonment of any previously Recorded Plat, shall be Recorded without the prior written approval of Declarant. No further covenants, conditions, restrictions or easements shall be Recorded by any Owner, Lessee, or other Person other than the Declarant against any Parcel without the provisions thereof having been first approved in writing by the Architectural Committee. No application for rezoning, variances or use permits pertaining to any Parcel shall be filed with any governmental authority by any Person other than the Declarant unless the application has been approved by the Architectural Committee and the proposed use otherwise complies with this Declaration.

3.18 **Commercial and Recreational Vehicles.** Except as provided in this paragraph below, no Commercial or Recreational Vehicles may be parked upon a Lot within the Project. Notwithstanding the limitation in the previous sentence, upon a written request by any Owner, the Board may approve the storage or parking of certain limited types of Commercial or Recreational Vehicles within the Project so long as the Board determines, in advance of its use within the Project, the Commercial or Recreational Vehicle to be of a size and type that would be consistent with the residential nature of the Project and so long as the approved Commercial or Recreational Vehicles are parked only: (i) within a fully enclosed garage located on the Owner's Lot; (ii) in a Recreational Vehicle Parking Area; (iii) in the driveway of the Lot on a Non-recurring And Temporary Basis; or (iv) on any public or private street within the Project only on a Non-recurring And Temporary Basis; (v) in a Private Yard and screened from other Lots.

3.19 **Garages and Parking of Family Vehicles.** Each Lot will have at least one (1) garage that will be used by the Owner of the Lot for parking of Family Vehicles or Commercial or Recreational Vehicles and for household storage purposes only. The garage door will be maintained by the Owner in good and functioning order and will remain closed except while the garage is in use for cleaning, entry, and exit. No garage may be used for storage or any other use

that restricts or prevents the garage from being used for parking Family Vehicles or approved Commercial or Recreational Vehicles in a number not less than that contemplated by the garage's initial design (i.e., three (3) vehicles in a 3-car garage). Additional Family Vehicles that can not be parked in the garage located on the Lot may be parked in the driveway so long as the Family Vehicles are operable and are, in fact, operated from time to time. Notwithstanding any less restrictive local or municipal codes, ordinances, or stipulations, Family Vehicles may be parked in any public or private street within the Project only on a Non-recurring And Temporary Basis, and no other on-street parking is permitted within the Project.

3.20 Vehicle Repairs. Routine maintenance and repairs of Family Vehicles or approved Commercial or Recreational Vehicles may be performed within an enclosed garage but not on the driveway located on a Lot, any Recreational Vehicle Parking Area, any public or private streets within the Project, or any other portion of the Owner's Lot. If any maintenance or repair work of the type described above takes or is reasonably expected to take more than twenty-four (24) hours to complete, the repairs or maintenance may be made only within the enclosed garage and not on any driveway. No vehicles of any type may be constructed, reconstructed, or assembled anywhere on any Lot. Without limiting the provisions of Sections 3.18 or 3.19 of this Declaration, no Family Vehicle or approved Commercial or Recreational Vehicle will be permitted to be or remain anywhere on any Lot (including in an enclosed garage) in a state of disrepair or in an inoperable condition.

3.21 Towing of Vehicles. The Board shall have the right to have any truck, mobile home, travel trailer, tent trailer, trailer, camper shell, detached camper, recreational vehicle, boat, boat trailer or similar equipment or vehicle or any automobile, motorcycle, motorbike, or other motor vehicle which is parked, kept, maintained, constructed, reconstructed or repaired in violation of the Project Documents towed away at the sole cost and expense of the owner of the vehicle or equipment. Any expense incurred by the Association in connection with the towing of any vehicle or equipment shall be paid to the Association upon demand by the owner of the vehicle or equipment. If the vehicle or equipment is owned by an Owner, any amounts payable to the Association shall be secured by the Assessment Lien, and the Association may enforce collection of suit amounts in the same manner provided for in their Declaration for the collection of Assessments.

3.22 Variances. The Architectural Committee may, at its option, grant variances from the restrictions set forth in this Article 3 if the Architectural Committee determines in its discretion that (i) a restriction would create an unreasonable hardship or burden on an Owner, Lessee or Resident or a change of circumstances since the recordation of this Declaration has rendered such restriction obsolete and (ii) that the activity permitted under the variance will not have any substantial adverse effect on the Owners and Residents of the Project and is consistent with the high quality of life intended for residents of the Project.

\* 3.23 Change of Use of Common Area. Upon (i) adoption of a resolution by the Board stating that in the Board's opinion the then present use of a designated part of the Common Area is no longer in the best interests of the Owners and (ii) the approval of such resolution by Members casting more than fifty percent (50%) of the votes entitled to be cast by Members who are present in person or by proxy at a meeting duly called for such purpose and who are entitled to use such Common Area under the terms of this Declaration, the Board shall have the power and right to change the use thereof (and in connection therewith, construct, reconstruct, alter or change the buildings, structures and improvements thereon in any manner deemed necessary by the Board to accommodate the new use), provided such new use shall be for the benefit of the Owners and shall be consistent with any zoning regulations restricting or limiting the use of the Common Area.

3.24 Drainage. No Residential Unit, structure, building, landscaping, fence, wall or other Improvement shall be constructed, installed, placed or maintained in any manner that would obstruct, interfere with or change the direction or flow of water or on-site retention requirements in accordance with the drainage plans for the Project, or any part thereof, or for any Parcel as shown on the drainage plans on file with the municipality in which the Project is located.

3.25 Garages and Driveways. Carports, driveways and the interior of all garages to the extent generally visible from neighboring property shall be maintained in a neat, clean and slightly condition. Garages shall not be used or converted for living or recreational activities without the prior written approval of the Architectural Committee.

3.26 Rooftop Air Conditioners and Evaporative Coolers Prohibited No air conditioning units, evaporative coolers or appurtenant equipment may be mounted, installed or maintained on the roof of any Residential Unit or other building situated on a Lot without the prior written approval of the Architectural Committee.

3.27 Conveyance or Encumbrance of Common Area. The Common Area shall not be mortgaged, transferred, dedicated or encumbered without the prior written consent or affirmative vote of the Class B Member of the Association and the affirmative vote or written consent of the Owners representing at least two-thirds (2/3) of the votes entitled to be cast by Class A Members of the Association.

3.28 Appearance and Maintenance of Lots. Each Owner shall keep, or cause to be kept, all of its Lot in a neat, orderly and clean condition, free of all weeds and other debris. During the course of construction on the Lots, the Lot Owner shall cause a temporary construction fence to be installed around the entire Lot during the entire construction period, protect from damage all pavement, curbs, gutters, walks, streets, shoulders and utility structures in the Project, and shall keep all the Lots, all pedestrian, road rights-of-way, and all drives in the Project, reasonably clean and clear of equipment, building materials, dirt, debris and similar materials, caused by the Lot Owner or its agents or contractors (or subcontractors, laborers or materialmen).

If an Owner fails to clean and clear its Lot and pedestrian and road rights-of-way and drives within five (5) days after the Owner's receipt of written request to do so from the Association, the Association may do so, at the Lot Owner's expense, and the Lot Owner shall reimburse the Association for all costs so incurred by the Association within five (5) days following receipt of an invoice relating to all such costs so incurred by the Association. If such sums are not paid within such five (5) day period, the Lot Owner shall pay interest on such sums which shall accrue at the Default Rate from the date of the Lot Owner's receipt of the invoice from the Association until all such sums and all interest accrued thereon is paid to the Association. The Lot Owner further covenants that, during the construction period, the Lot Owner shall comply with all construction and safety requirements reasonably established from time to time by the Association.

If the Lot Owner or any of its employees, agents, contractors, or subcontractors damage any of the pavement, curbs, gutters, walks, streets, shoulders, and utility structures in the Project, the Lot Owner shall, at the Lot Owner's expense, cause such damaged improvements to be repaired or replaced within thirty (30) days after receipt by The Lot Owner of written demand from the Association, failing which the Association may cause such repair work to be done, at

the Lot Owner's expense. The Lot Owner shall reimburse the Association for all costs so incurred by the Association within five (5) days following receipt of an invoice relating to all such costs incurred by the Association. If such sums are not paid within such five (5) day period, the Lot Owner shall pay interest on such sums which shall accrue at the Default Rate from the date of the Lot Owner's receipt of the invoice from the Association until all such sums and all interest accrued thereon is paid to the Association.

The Lot Owner hereby agrees to defend, indemnify, save and hold the Association and its Members, its successors and assigns, harmless from and against any and all liabilities and claims arising from acts or activities caused by the Lot Owner or its employees, contractors, agents or representatives.

The provisions of this Section 3.28 shall survive the termination or cancellation of this Declaration and the closing of any Lot and shall be deemed continuing obligations of the Lot Owner.

3.29 Mailboxes. Except when originally installed by the Declarant no mailboxes, mail posts, or similar items for the receipt of mail will be installed, constructed, or placed on a Lot unless the location, design, height, color, type, and shape are approved by the Architectural Committee.

3.30 Rights of Developers. Notwithstanding any other provision of this Declaration to the contrary, a Developer (only with Board approval) shall have the right to maintain model homes (and sales offices therein) on Lots owned by the Developer and to construct and maintain parking areas for the purpose of accommodating Persons visiting such model homes provided (i) the plans and specifications for the model homes have been approved in writing by the Architectural Committee pursuant to Section 3.2 of this Declaration, (ii) the location and design of the parking areas incidental to such model homes has been approved in writing by the Architectural Committee, (iii) the opening and closing hours for such model homes have been approved in writing by the Architectural Committee, and (iv) the construction, operation and maintenance of such model homes otherwise complies with all provisions of this Declaration. Any homes constructed as a model home shall cease to be used as model homes at any time the Developer is not actually engaged in the construction and sale of Residential Units in the Project, and no Residential Unit shall be used as a model home for the sale of Residential Units not located in the Project. Notwithstanding any other provision of this Declaration to the contrary, a Developer may locate and maintain a construction trailer (otherwise in compliance with applicable law) on a Lot owned by the Developer during the duration of such Developer's development of Lot(s) within the Project, and may store supplies of brick, block, lumber and other building materials (including construction debris in a contained and safe manner with reasonable periodic removal) on any Lot owned by the Developer provided materials are kept in areas approved in writing by the Architectural Committee which may require the screening of such storage areas. In addition, normal construction activities of a Developer in connection with the construction of Improvements shall not be considered a nuisance or otherwise prohibited by this Declaration. A Developer or other Person constructing Improvements on Lots shall keep such Parcels in a clean and neat condition free of weeds, trash and debris.

3.31 Gated Community. The Declarant may install, and if so installed, the Association shall maintain and operate entry or privacy gates at the entrance to the Project adjacent to McQueen Road. Neither the Declarant nor the Association, Architectural Committee or any Member, director, officer, shareholder, employee or agent thereof makes any

representation to any Owner, Resident, Owner Permittee or any other Person as to the security afforded by the existence of such gates, or as to the ease of entry to the Project by fire, police or other emergency personnel. All Owners, Residents and Owner Permittees assume the risk of harm, damage or injury to person or property of any kind from trespassers and agree that no claim or cause of action shall be maintained against Declarant, the Association, the Architectural Committee, or any Member, director, officer, shareholder, employee or agent thereof as a result of any harm resulting to an Owner, Resident, Owner Permittee or any other Person from a trespass through or around a gated area or any delay in entering the Project by emergency personnel.

3.32 Construction of Walls. Unless otherwise approved by the Architectural Committee, all Walls (defined below) shall be of new block construction using the same color block throughout the entire Project, provided, however, the interior side of any Wall enclosing a Private Yard of a Lot may be painted or stuccoed, provided such interior side is Screened From View and is Not Visible From Neighboring Property.

3.33 Declarant's Exemption. Nothing contained in this Declaration shall be construed to prevent the erection or maintenance by Declarant, or its duly authorized agents, of model homes, structures, improvements or signs necessary or convenient to the construction, development, identification or sale or lease of Lots or other property within the Project.

## ARTICLE 4

### EASEMENTS

#### 4.1 Owners' Easements of Enjoyment.

4.1.1 Subject to the rights and easements granted to the Declarant in Sections 4.4 and 4.5 of this Declaration, every Member, and any person residing with such Member, shall have a right and easement of enjoyment in and to the Common Area which right shall be appurtenant to and shall pass with the title to every Lot, subject to the following provisions:

(i) The right of the Association to dedicate or transfer all or any part of the Common Area to any public agency, authority, or utility for such purposes and subject to such conditions as may be agreed to by the Board. Unless otherwise required by any governmental entity or utility company having jurisdiction over the Project, or any part thereof, effective prior to the date hereof or specified on a Recorded subdivision plat, no such dedication or transfer shall be effective unless an instrument signed by the Owners representing three-fourths (3/4) of the total votes in the Association agreeing to such dedication or transfer has been recorded, except that the Board shall have authority to transfer to such public agencies, authorities or utilities, easements and rights-of-way which benefit the Project, do not have any substantial adverse effect on the enjoyment of the Common Area by any Member, and do not violate any applicable law.

(ii) The right of the Association to regulate the use of the Common Area through the Association Rules and to prohibit access to such portions of the Common Area, such as landscaped right-of-ways, not designated on the Plat or otherwise intended for use by the Owners, Lessees or Residents.

(iii) The right of the Association to suspend the right of an Owner and any Resident of such Owner's Lot to use any recreational facility situated upon the Common Area for any period during which an Assessment or other amount due to the Association by such

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Owner remains unpaid or for a period not to exceed sixty (60) days for any other violation of the Project Documents.

(iv) To the extent ingress or egress to any Lot is solely through the Common Area, any conveyance or encumbrance of such Common Area shall be subject to such Lot Owner's easement over the Common Area for such ingress and egress

4.1.2 If a Lot is leased or rented by the Owner thereof, the Lessee and the members of Lessee's family residing with such Lessee shall have the right to use the Common Area during the term of the lease, and the Owner of such Lot shall have no right to use the Common Area until the termination or expiration of such lease.

4.1.3 The Owner Permittees of any Member or other person entitled to use the Common Area pursuant to this Declaration may use any recreational facility located on the Common Area provided they are accompanied by a Member or other person entitled to use the recreational facilities pursuant to this Declaration. The Board shall have the right to reasonably limit the number of guests and invitees who may use the recreational facilities located on the Common Area at any one time and may reasonably restrict the use of the recreational facilities by guests and invitees to certain specified times.

4.2 Utility Easement. There is hereby created an easement upon, across, over and under the Common Area and Parcels for reasonable ingress, egress, installation, replacing, repairing or maintaining of all utilities, including, but not limited to, gas, water, sewer, telephone, cable television and electricity. By virtue of this easement, it shall be expressly permissible for the providing utility company to erect and maintain the necessary equipment on the Common Area and Parcels but no sewers, electrical lines, water lines, or other utility or service lines may be installed or located on the Common Area and other Parcels except as initially designed, approved and constructed by the Declarant or as approved by the Board, subject to applicable law.

4.3 Easements for Ingress and Egress. There is hereby created easements for ingress and egress for pedestrian traffic over, through and across sidewalks, paths, walks, and lanes that from time to time may exist upon the Common Area. There is also created an easement for ingress and egress for pedestrian and vehicular traffic over, through and across such driveways and parking areas as from time to time may be paved and intended for such purposes. Such easements shall run in favor of and be for the benefit and enjoyment of the Owners and occupants of the Lots and their guests, families, tenants and invitees.

4.4 Declarant's Use for Sales and Leasing Purposes. Declarant shall have the right and an easement to maintain sales or leasing offices, management offices and models throughout the Project and to maintain one or more advertising signs on the Common Area while the Declarant is selling Lots in the Project. Declarant reserves the right (and to assign to other Developer(s) the right) to place models, management offices and sales and leasing offices on any Lots owned by Declarant and on any portion of the Common Area in such number, of such size and in such locations as Declarant deems appropriate.

#### 4.5 Declarant's Easements.

4.5.1 Declarant shall have the right and an easement on and over the Common Area to construct all Improvements the Declarant may deem necessary and to use the Common Area and any Parcels owned by Declarant for construction or renovation related purposes including the storage of tools, machinery, equipment, building materials, appliances, supplies and fixtures, and the performance of work respecting the Project.



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4.5.2 The Declarant shall have the right and an easement upon, over, and through the Common Area as may be reasonably necessary for the purpose of discharging its obligations and exercising the rights granted to or reserved by the Declarant by this Declaration.

4.6 Easement in Favor of Association. Each Parcel is hereby made subject to the following easements in favor of the Association and its directors, officers, agents, employees and independent contractors:

4.6.1 For inspection at reasonable times (unless emergency circumstances require otherwise) of the Parcels in order to verify the performance by Owners of all items of maintenance and repair for which they are responsible;

4.6.2 For inspection at reasonable times (unless emergency circumstances require otherwise), maintenance, repair and replacement of the Common Area accessible only from such Parcels;

4.6.3 For correction of emergency conditions in one or more Parcels or casualties to the Common Area;

4.6.4 For the purpose of enabling the Association, the Board, the Architectural Committee or any other committees appointed by the Board to exercise and discharge their respective rights, powers and duties under the Project Documents; and

4.6.5 For inspection at reasonable times (unless emergency circumstances require otherwise) of the Parcels in order to verify that the provisions of the Project Documents are being complied with by the Owners, their guests, tenants, invitees and the other occupants of the Parcel.

4.7 Avigation Easement. As provided on the Plat Declarant grants to the City an easement (the "Avigation Easement") for avigation purposes over and across the Project in connection with flights from three hundred fifty feet (350') above the surface to an infinite height above the same, which easement shall include, but not be limited to, the right of flight of aircraft over the Project, together with its attendant noise, vibration, fumes, dust, fuel and lubrication particles, and all other effects that may be caused by the operation of aircraft landing at, or taking off from, or operating at or on the Chandler Airpark Airport. Each Owner (i) releases and discharges Declarant and the City, for the use and benefit of the public and agencies of the City, of and from any liability for any and all claims for damages of any kind to persons or property that may arise at any time in the future over or in connection with the Owner's Lot above three hundred fifty feet (350') to an infinite height above same, whether such damage shall originate from noise, vibration, fumes, dust, fuel and lubricant particles, and all other effects that may be caused by the operation of aircraft landing at, or taking off from or operating at or on the Chandler Airpark Airport, and (ii) voluntarily accepts any risks of ownership arising out of or relating to the Avigation Easement.

## ARTICLE 5

### THE ASSOCIATION; ORGANIZATION; MEMBERSHIP AND VOTING RIGHTS

5.1 Formation of Association. The Association shall be a nonprofit Arizona corporation charged with the duties and invested with the powers prescribed by law and set forth in the Articles, Bylaws, and this Declaration. In the event of any conflict or inconsistency

between this Declaration and the Articles, Bylaws, Association Rules or the Construction and Development Guidelines, this Declaration shall control.

**5.2 Board of Directors and Owners** The affairs of the Association shall be conducted by the Board and such officers as the Board may elect or appoint in accordance with the Articles and the Bylaws. Unless the Project Documents specifically require, the vote or written consent of the Members, approvals or actions to be given or taken by the Association shall be valid if given or taken by the Association. So long as there is a Class B Membership in the Association, the Declarant shall have the right to appoint and remove the directors and officers of the Association. After the Class B Termination (defined below), the directors of the Association shall be elected by the Members.

**5.3 The Association Rules.** The Board may, from time to time, and subject to the provisions of this Declaration, adopt, amend and repeal rules and regulations pertaining to: (i) the management, operation and use of the Common Area including, but not limited to, any recreational facilities situated upon the Common Area, (ii) traffic and parking restrictions including speed limits on private streets within the Project, (iii) minimum standards (consistent with, and not creating any additional obligations not reasonably contemplated by, this Declaration) for any maintenance of Common Area and Parcels or (iv) any other subject matter within the jurisdiction of the Association. In the event of any conflict or inconsistency between the provisions of this Declaration and the Association Rules, the provisions of this Declaration shall prevail.

**5.4 Personal Liability.** No member of the Board or of any committee of the Association, no officer of the Association, and no manager or other employee of the Association shall be personally liable to any Member, or to any other person or entity, including the Association, for any damage, loss or prejudice suffered or claimed on account of any act, omission, error, or negligence of the Association, the Board, the manager, any representative or employee of the Association, or any committee, committee member or officer of the Association; provided, however, the limitations set forth in this Section shall not apply to any person who has failed to act in good faith or has engaged in willful or intentional misconduct.

**5.5 Implied Rights.** The Association may exercise any right or privilege given to the Association expressly by the Project Documents and every other right or privilege reasonably to be implied from the existence of any right or privilege given to the Association by the Project Documents or reasonably necessary to effectuate any such right or privilege.

**5.6 Membership in the Association.** Every Owner of a Lot shall be a Member of the Association.

**5.7 Votes In The Association.** The Association shall have the following two classes of voting Members:

**Class A:** Class A Members (also referred to herein as the "Class A Membership") shall be all Owners but, so long as the Class B Membership is outstanding, shall not include Declarant.

**Class B:** The Class B Member (also referred to herein as the "Class B Membership") shall be the Declarant. The Class B Membership in the Association shall terminate (the "Class B Termination") and the Membership appurtenant to each Lot then owned by Declarant shall be converted to a Class A Membership, upon the earlier of:

(i) that date upon which the number of votes entitled to be cast by the Class A Members exceeds the number of votes entitled to be cast by the Class B Member; or

(ii) when the Declarant notifies the Association in writing that the Declarant relinquishes the Class B Membership.

No Lot shall at any time have appurtenant to such Lot both a Class A Membership and Class B Membership. Each Class A Membership shall be entitled to one (1) vote for each Lot owned, and the Declarant shall be entitled to three (3) votes for each Lot held by the Declarant; provided that after the Class B Termination, the Declarant shall have one (1) vote for each Class A Membership held by the Declarant.

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

5.9 Transfer of Membership. The rights and obligations of any Member other than the Declarant shall not be assigned, transferred, pledged, conveyed or alienated in any way except upon transfer of ownership of an Owner's Lot, and then only to the transferee of ownership to the Lot. A transfer of ownership to a Lot may be effected by deed, intestate succession, testamentary disposition, foreclosure of a mortgage of record, or such other legal process as now in effect or as may hereafter be established under or pursuant to the laws of the State of Arizona. Any attempt to make a prohibited transfer shall be void. Any transfer of ownership to a Lot shall operate to transfer the Membership appurtenant to such Lot to the new Owner thereof. Each Purchaser of a Lot from a Person other than the Declarant shall notify the Association of the purchase within ten (10) days after the Purchaser becomes the Owner of a Lot.

5.10 Architectural Committee. The Association shall have an Architectural Committee to perform the functions of the Architectural Committee set forth in this Declaration. The Architectural Committee shall consist of such number of regular members and alternate members as may be provided for in the Bylaws. Until the date on which the Declarant ceases to own any Lot in the Project, the Declarant shall have the sole right to appoint and remove the members of the Architectural Committee. At such time as the Declarant no longer owns any Lot in the Project, the members of the Architectural Committee shall be appointed by the Board. The Declarant may at any time voluntarily surrender its right to appoint and remove the members of the Architectural Committee, and in that event the Declarant may require, for so long as the Declarant owns any Lot in the Project, that specified actions of the Architectural Committee, as described in a Recorded instrument executed by the Declarant be approved by the Declarant before they become effective. The Architectural Committee shall adopt Construction and Development Guidelines to be used in rendering its decisions. The decision of the Architectural Committee shall be final on all matters submitted to it pursuant to this Declaration. The Architectural Committee may establish a reasonable processing fee to defer the costs of the Association in considering any requests for approvals submitted to the Architectural Committee, which fee shall be paid at the time the request for approval is submitted.

5.11 Suspension of Voting Rights. If any Owner fails to pay any Assessments or other amounts due to the Association under the Project Documents within fifteen (15) days after such payment is due or if any Owner violates any other provision of the Project Documents and such violation is not cured within fifteen (15) days after the Association notifies the Owner in writing of the violation, the Board of Directors shall have the right to suspend such Owner's right to vote until such time as all payments, including interest and attorneys' fees, are brought current, and until any other infractions or violations of the Project Documents are corrected.

5.12 Third Party Manager. The Association, acting through the Board, shall have the right (but not the obligation) to contract with a third party independent management company (licensed if and to the extent required by Arizona law, with the contract therefor cancellable on not more than thirty (30) days notice) to carry out all or any of its responsibilities under the Project Documents.

## ARTICLE 6

### COVENANT FOR ASSESSMENTS AND CREATION OF LIEN

6.1 Creation of Lien and Personal Obligation of Assessments. The Declarant, for each Lot owned by it, hereby covenants and agrees, and each Owner, other than the Declarant, by becoming the Owner of a Lot, is deemed to covenant and agree, to pay Assessments to the Association in accordance with this Declaration. All Assessments shall be established and collected as provided in this Declaration. The Assessments, together with interest, late charges and all costs, including but not limited to reasonable attorneys' fees, incurred by the Association in collecting or attempting to collect delinquent Assessments, whether or not suit is filed, shall be a charge on the Lot and shall be a continuing lien upon the Lot against which each such Assessment is made. Each Assessment, together with interest and all costs, including but not limited to reasonable attorneys' fees, incurred by the Association in collecting or attempting to collect delinquent Assessments, whether or not suit is filed, shall also be the personal obligation of the person who was the Owner of the Lot at the time when the Assessment became due. The personal obligation for delinquent Assessments shall not pass to the successors in title of the Owner unless expressly assumed by them. Mortgagees are not required to collect Assessments.

#### 6.2 Annual Assessments.

6.2.1 The Association, to provide for the operation and management of the Association and to provide funds for the Association to pay all Common Expenses and to perform its duties and obligations under the Project Documents, including the establishment of replacement and maintenance reserves that the Board may elect to create and maintain prior to Class B Termination or that the Board is required to create and maintain after the Class B Termination, for each Assessment Period, shall assess against each Lot, other than any Exempt Property, an Annual Assessment.

6.2.2 The Board shall give notice of the Annual Assessment to each Owner at least thirty (30) days prior to the beginning of each Assessment Period, but the failure to give such notice shall not affect the validity of the Annual Assessment established by the Board nor relieve any Owner from its obligation to pay the Annual Assessment. If the Board determines during any Assessment Period that the funds budgeted for that Assessment Period are, or will, become inadequate to meet all Common Expenses for any reason, including, without limitation, nonpayment of Assessment by Members, it may increase the Annual Assessment for that Assessment Period and the revised Annual Assessment shall commence on the date designated by the Board.

6.3 **Rate of Assessment.** Annual and Special Assessments shall be fixed at a uniform rate for all Lots. However, as long as there is a Class B Membership, Declarant shall not be subject to Assessment for Lots not sold to individual Purchasers, but instead shall be required to pay the difference between actual operating costs for the Association and all income from Assessments and other sources (excluding application of reserves other than when and for their reasonably intended purposes). Upon the Class B Termination, Declarant shall become a Class A Member and will be subject to Assessment for each Lot owned by Declarant; provided, that Declarant shall pay twenty-five percent (25%) of the full Assessment amount until such time as the Lot is conveyed by Declarant to an individual Owner or is occupied, whichever occurs sooner. The one hundred percent (100%) Assessment permanently attaches upon initial occupancy regardless of its state of occupancy thereafter.

6.4 **Special Assessments.** The Association may levy against each Lot, in any Assessment Period, a Special Assessment for the purpose of defraying, in whole or in part, the cost of any construction, reconstruction, repair or replacement of an Improvement upon the Common Area, including fixtures and personal property related thereto, provided that any Special Assessment shall have the assent of two-thirds (2/3) of the votes entitled to be cast by Members who are voting in person or by proxy at a meeting duly called for such purpose..

6.5 **Notice and Quorum for any Action Authorized under Section 6.3.2(iii) or 6.4.** Written notice of any meeting called for the purpose of obtaining the consent of the Members for any action for which the consent of the Members is required under Section 6.3.2(iii) or 6.4 of this Declaration shall be sent to all Members not less than thirty (30) days and no more than sixty (60) days in advance of the meeting. At the first such meeting called, the presence of Members or of proxies entitled to cast thirty percent (30%) of all of the votes of each class of Members shall constitute a quorum. If the required quorum is not present, another meeting may be called subject to the same notice requirement, and the required quorum at the subsequent meeting shall be one-half (1/2) of the required quorum for the preceding meeting. No such subsequent meeting shall be held more than sixty (60) days following the preceding meeting.

6.6 **Assessment Period.** The period for which the Annual Assessment and Special Assessments are to be levied (the "Assessment Period") shall be the calendar year, except that the first Assessment Period, and the obligation of the Owners to pay Annual Assessments and Special Assessments shall commence upon the conveyance of the first Parcel by the Declarant and terminate on December 31 of such year. The Board in its sole discretion from time to time may change the Assessment Period.

6.7 **Lots Subject to Assessment.** All Lots shall be subject to assessment as provided in the Project Documents; provided, however, that prior to the Class B Termination, the Declarant shall be exempt from assessment except to the extent the Declarant fails to fund to the Association any shortfall between any Association expenses and income.

6.8 **Rules Regarding Billing and Collection Procedures.** Annual and Special Assessments shall be collected on a monthly basis or such other basis as may be selected by the Board. The Board shall have the right to adopt rules and regulations setting forth procedures for the purpose of making Assessments and for the billing and collection of the Assessments provided that the procedures are not inconsistent with the provisions of this Declaration. The failure of the Association to send a bill to a Member shall not relieve any Member of his liability for any Assessment or charge under this Declaration, but the Assessment Lien therefor shall not be foreclosed or otherwise enforced until the Member has been given not less than thirty (30) days written notice prior to commencement of such foreclosure or enforcement proceedings that

the Assessment or any installation thereof is or will be due and of the amount owing. Such notice may be given at any time on or after delinquency of such payment. The Association shall be under no duty to refund any payments received by it even though the ownership of a Lot changes during an Assessment Period; successor Owners of Lots shall be given credit for prepayments, on a prorated basis, made by prior Owners.

**6.9 Effect of Nonpayment of Assessments: Remedies of the Association.**

6.9.1 Any Assessment, or any installment of an Assessment, not paid within five (5) days after the Assessment becomes due shall: (i) bear interest from the due date at the rate of eighteen percent (18%) per annum (the "Default Rate"); and (ii) incur a late charge (as a liquidated payment reasonably estimated to offset costs incurred by the Association as a result of such late payment and not as a penalty) of \$5.00 per month or such other amount as shall be set by the Board in its discretion.

6.9.2 The Association shall have an Assessment Lien on each Lot for (i) all Assessments levied against the Lot, (ii) all interest, lien fees, late charges and other fees and charges assessed against the Lot or payable by the Owner of the Lot, (iii) all fines levied against the Owner of the Lot, and (iv) all attorney fees, court costs, title report fees, costs and fees charged by any collection agency either to the Association or to an Owner and any other fees or costs incurred by the Association in attempting to collect Assessments or other amounts due to the Association by the Owner of a Lot. Recording of this Declaration constitutes record notice and perfection of the Assessment Lien. The Association may, at its option, record a Notice of Lien setting forth the name of the delinquent owner as shown in the records of the Association, the legal description or street address of the Lot against which the Notice of Lien is recorded and the amount claimed to be past due as of the date of the recording of the Notice, including interest, lien recording fees and reasonable attorneys' fees. Before recording any Notice of Lien against a Lot, the Association shall make a written demand to the defaulting Owner for payment of the delinquent Assessments, together with interest, late charges and reasonable attorneys' fees, if any. The demand shall state the date and amount of the delinquency. Each default shall constitute a separate basis for a demand, but any number of defaults may be included within the single demand. If the delinquency is not paid within ten (10) days after delivery of the demand, the Association may proceed with recording a Notice of Lien against the Lot.

6.9.3 The Assessment Lien shall have priority over all liens or claims except for (i) tax liens for real property taxes, (ii) assessments in favor of any municipal or other governmental body, and (iii) the lien of any First Mortgage. Any First Mortgagee or any other Person acquiring title or coming into possession of a Lot through foreclosure of the First Mortgage, purchase at a foreclosure sale or trustee sale, or through any equivalent proceedings, such as, but not limited to, the taking of a deed in lieu of foreclosure shall acquire title free and clear of any claims for unpaid assessments and charges against the Lot which became payable prior to the acquisition of such Lot by the First Mortgagee or other Person. Any Assessments and charges against the Lot which accrue prior to such sale or transfer shall remain the obligation of the defaulting Owner of the Lot.

6.9.4 The Association shall not be obligated to release the Assessment Lien until all delinquent Assessments, interest, lien fees, reasonable attorneys' fees, court costs, collection costs and all other sums payable to the Association by the Owner of the Lot have been paid in full.

6.9.5 The Association shall have the right, at its option, to enforce collection of any delinquent Assessments together with interest, lien fees, reasonable attorneys' fees and any other sums due to the Association in any manner allowed by law including, but not limited to, (i)

bringing an action at law against the Owner personally obligated to pay the delinquent Assessments and such action may be brought without waiving the Assessment Lien securing the delinquent Assessments or (ii) bringing an action to foreclose the Assessment Lien against the Lot in the manner provided by law for the foreclosure of a realty mortgage. The Association shall have the power to bid in at any foreclosure sale and to purchase, acquire, hold, lease, mortgage and convey any and all Lots purchased at such sale.

6.10 Evidence of Payment of Assessments. Upon receipt of a written request by a Member or any other Person, the Association, within a reasonable period of time thereafter, shall issue to such Member or other Person a written certificate stating (i) that all Assessments, interest, and other fees and charges have been paid with respect to any specified Lot as of the date of such certificate, or (ii) if all Assessments have not been paid, the amount of such Assessments, interest, fees and charges due and payable as of such date. The Association may make a reasonable charge for the issuance of such certificates, which charges must be paid at the time the request for any such certificate is made. Any such certificate, when duly issued as herein provided, shall be conclusive and binding with respect to any matters therein stated as against any bona fide Purchaser of, or lender on, the Lot in question.

6.11 Surplus Funds. The Association shall not be obligated to spend in any year all the Assessments and other sums received by it in such year, and may carry forward as surplus any balances remaining. The Association shall not be obligated to reduce the amount of the Annual Assessment in the succeeding year if a surplus exists from a prior year, and the Association may carry forward from year to year such surplus as the Board in its discretion may determine to be desirable for the greater financial security of the Association and the accomplishment of its purposes.

6.12 Transfer Fee. Each Purchaser of a Lot from a Person other than the Declarant shall pay to the Association (or its designated management/agent) immediately upon becoming the Owner of the Lot a transfer fee in such reasonable amount as is established from time to time by the Board to compensate the Association for the administrative costs resulting from the transfer of a Lot; provided, however, no transfer fee shall be payable with respect to the purchase of a Lot for which a payment would be due and owing to the Association pursuant to Section 6.13 of this Declaration.

6.13 Working Capital Fund. To insure that the Association shall have adequate funds to meet its expenses or to purchase necessary equipment or services, each person who is the initial Purchaser of a Lot (other than the Declarant or any Developer) shall pay to the Association immediately upon becoming the Owner of a Lot a sum equal to one-sixth (1/6th) of the current Annual Assessment for the Lot. Funds paid to the Association pursuant to this Section may be used by the Association for payment of operating expenses or any other purpose permitted under this Declaration. Payments made pursuant to this Section shall be nonrefundable and shall not be considered as an advance payment of any Assessments levied by the Association pursuant to this Declaration.

6.14 Enforcement Costs. In addition to any other remedies set forth in this Declaration regarding costs and attorney's fees, in the event the Association employs an attorney to enforce any lien granted to it under the terms of this Declaration or to collect any Assessments or other amounts due from an Owner or to enforce compliance with or recover damages for any violation or noncompliance with this Declaration, the Articles, Bylaws, Association Rules, or Construction and Development Guidelines, the offending Owner or other person or entity shall pay to the Association, upon demand, all reasonable attorney fees and court costs incurred by the Association, whether or not suit is filed, which fees and costs shall be secured by the Assessment Lien. In accordance with the procedures set forth in the Bylaws, or otherwise in its reasonable



discretion, the Board of Directors shall have the right to levy reasonable monetary penalties against an Owner for violations of the Project Documents.

#### 6.15 Preparation of Budget.

6.15.1 At least thirty (30) days before the beginning of each fiscal year of the Association commencing with the fiscal year in which the first Lot is conveyed to a Purchaser other than Declarant, the Board shall adopt a budget for the Association containing an estimate of the total amount of funds which the Board believes will be required during the ensuing fiscal year to pay all Common Expenses, including, but not limited to: (i) the amount required to pay the cost of maintenance, management, operation, repair and replacement of the Common Area which the Association has the responsibility of maintaining, repairing and replacing; (ii) the cost of wages, materials, insurance premiums, services, supplies and other expenses required for the administration, operation, maintenance and repair of the Common Area; (iii) the amount required to render to the Owners all services required to be rendered by the Association under the Project Documents; and (iv) such amounts as the Board may deem necessary to provide general operating reserves and reserves for contingencies and replacements of, among other things, Improvements located on the Common Area. The budget shall separately reflect any Common Expenses to be assessed against less than all of the Lots as provided for hereinafter.

6.15.2 Within thirty (30) days after the adoption of a budget (except for the initial Budget adopted by the Board), the Board shall send to each Owner a summary of the budget and a statement of the amount of the Annual Assessment assessed against the Lot of the Owner in accordance with this Section.

6.15.3 The failure or delay of the Board of Directors to prepare or adopt a budget for any fiscal year and to make any assessment shall not constitute a waiver or release in any manner of a Owner's obligation to pay his allocable share of the Common Expenses as provided in this Article and each Owner shall continue to pay the Annual Assessment against his Lot as established for the previous fiscal year until notice of the Annual Assessment for the new fiscal year has been established by the Board of Directors.

6.15.4 The Board of Directors is expressly authorized to adopt and amend budgets for the Association, and no ratification of any budget by the Owners shall be required.

6.16 Reserves. All amounts collected as reserves, whether pursuant to this Section or otherwise, shall be deposited by the Board in a separate bank account to be held in trust for the purposes for which they are collected and are to be segregated from and not commingled with any other funds of the Association. Such reserves shall be deemed a contribution to the capital account of the Association by the Members. The Board shall not expend funds designated as reserve funds for any purpose other than those purposes for which they were collected. Withdrawal of funds from the Association's reserve account shall require the signatures of either (a) two (2) members of the Board of Directors; or (b) one (1) member of the Board of Directors and an officer of the Association who is not also a member of the Board of Directors. After the Class B Termination, the Board of Directors shall obtain a reserve study at least once every three (3) years, which study shall at a minimum include (a) identification of the major components of the Common Elements which the Association is obligated to repair, replace, restore or maintain which, as of the date of the study, have a remaining useful life of less than thirty (30) years; (b) identification of the probable remaining useful life of the identified major components as of the date of the study; (c) an estimate of the cost of repair, replacement, restoration, or maintenance of the identified major components during and at the end of their useful life; and (d) an estimate of the total annual contribution necessary to defray the cost to repair, replace, restore, or maintain the identified major components during and at the end of their useful life, after subtracting total



reserve funds as of the date of the study. After the Class B Termination, the Board of Directors shall modify the budget for the Association in accordance with the findings of the reserve study.

## ARTICLE 7

### MAINTENANCE

#### 7.1 Common Area and Public Right of Way.

7.1.1 The Association, or its duly delegated representative, shall manage, maintain, repair and replace the Association Maintenance Areas, and all Improvements located thereon, except the Association shall not maintain areas which any governmental entity is maintaining or is obligated to maintain.

7.1.2 The Board shall cause to be effectuated reasonable and the appropriate maintenance of all Association Maintenance Areas and other properties maintained by the Association. Any cooperative action necessary or appropriate to the proper maintenance and upkeep of said properties shall be taken by the Board or by its duly delegated representative.

7.1.3 If any Plat, or this Declaration permits the Board to determine whether or not Owners of certain Lots will be responsible for maintenance of certain Common Areas or public right-of-way areas, the Board shall determine whether or not it would be in the best interest of the Owners and Residents of the Project for the Association or an individual Owner to be responsible for such maintenance, considering cost, uniformity of appearance, location and other factors deemed relevant by the Board. The Board may cause the Association to contract to provide maintenance services to Owners of Lots having such responsibilities in exchange for the payment of such fees as the Association and Owner may agree upon.

7.2 Lots and Parcels. Each Owner of a Lot shall be responsible for maintaining and repairing his Lot, and all buildings, Residential Units; Ancillary Units, landscaping or other Improvements situated thereon, except for any portion of the Parcel which is an Association Maintenance Area. All buildings, Residential Units, Ancillary Units, landscaping and other Improvements shall at all times be kept in good condition and repair. All grass, hedges, shrubs, vines and plants of any type on a Parcel shall be irrigated, mowed, trimmed and cut at regular intervals so as to be maintained in a neat and attractive manner. Trees, shrubs, vines, plants and grass which die shall be promptly removed and replaced with living foliage of like kind, unless different foliage is approved in writing by the Architectural Committee. No yard equipment, wood piles or storage areas may be maintained so as to be Visible From Neighboring Property or streets. All Lots and Parcels upon which no Residential Units, buildings or other structures, landscaping or Improvements have been constructed shall be maintained in a weed free and attractive manner.

7.3 Assessment of Certain Costs of Maintenance and Repair. In the event that the need for maintenance or repair of the Association Maintenance Area is caused through the willful or negligent act of any Member or Owner Permittee, the cost of such maintenance or repairs shall be added to and become a part of the Assessment to which such Member and the Member's Lot is subject and shall be secured by the Assessment Lien. Any charges or fees to be paid by the Owner of a Lot pursuant to this Section in connection with a contract entered into by the Association with an Owner for the performance of an Owner's maintenance responsibilities shall also become a part of such Assessment and shall be secured by the Assessment Lien.

#### 7.4 Walls.

7.4.1 Except to the extent constructed by Declarant or a Developer as a part of original development of the Project (without obligation to do so) or an Owner of an adjoining Lot, each Owner shall construct and install a perimeter fence ("Wall") acceptable to the Architectural Committee and in accordance with Section 3.32 of this Declaration and the Construction and Development Guidelines, along the entire rear yard perimeter of its Lot (the "Rear Yard Wall") necessary to fully enclose the backyard of that Lot and separate the interior of any two (2) Lots upon which Residential Units are constructed. All Rear Yard Walls shall be constructed on the boundary line between Lots. Each Rear Yard Wall, and all other Walls (other than Common Walls) located on a Lot shall be constructed, maintained, repaired and replaced by the Owner of the Lot upon which the Wall is located. All Rear Yard Walls shall be uniform in design, height, texture and color as specified in Section 3.32 of this Declaration and the Construction and Development Guidelines.

7.4.2 Any Wall which is placed on the boundary line between a Lot and the Common Area shall be maintained, repaired and replaced by the Owner of the Lot.

7.4.3 Notwithstanding anything in Subsection 7.4.2 above to the contrary, the exterior portion of the Rear Yard Walls for Lots 22 and 23 that face Jesse Street and for Lots 13 and 32 that face Senate Street shall be maintained, repaired and replaced by the Association. The interior portions of such Rear Yard Walls shall be maintained and repaired by the Owners of such Lots; provided, however, in the event that a Rear Yard Wall for such Lots is damaged or destroyed through the act of an Owner of Lot 22, Lot 23, Lot 13 or Lot 32, it shall be the obligation of such Owner to repair and rebuild the damaged or destroyed Rear Yard Wall at such Owner's cost. The replacement of a Rear Yard Wall referred to in this Section at the end of its useful life shall be the responsibility of the Association.

7.5 Common Walls. Any Wall, any part of which is placed on the boundary line between separate Lots shall constitute a "Common Wall". The rights and duties of Owners of Lots with respect to Common Walls shall be as follows:

7.5.1 The constructing Owner and Architectural Committee shall, in designing, approving and constructing Common Walls, provide for a consistent and non-objectional appearance on all portions thereof Visible From Neighboring Property. Common Walls shall be located to avoid immediately adjacent and parallel Common Walls, such that no more than one Common Wall shall generally be located along any common boundary of adjacent Lots.

7.5.2 Each Owner who constructs a Common Wall (the "Building Owner") shall be entitled to reimbursement from the Owner of the Lot adjoining such Common Wall (the "Owing Owner") of an amount (the "Reimbursement Obligation") equal to one-half (1/2) of the reasonable actual cost (determined at the time of construction) of that portion of the Common Wall located between the adjoining Lots which shares a common property line. The reimbursable cost shall not include any cost associated with stuccoing and painting any portion of the Common Wall. Each Owner shall be responsible for, at its expense, stuccoing and painting his side of the Common Wall. The Reimbursement Obligation shall be paid to the Building Owner by the Owing Owner in cash or cashier's check within ten (10) days following delivery by the Building Owner of a written statement, together with reasonably sufficient supporting documentation of the cost of the Common Wall, if requested by the Owing Owner, specifying the amount of the Reimbursement Obligation, but in no event shall such sums be due prior to the date which is thirty (30) days following the issuance by the City of a certificate of occupancy for

the first Residential Unit located on the Lot owned by the Owing Owner. Except as otherwise stated in this Subsection 7.5.2, no interest or other finance charge shall accrue on the Reimbursement Obligation or be charged against the Owing Owner.

Each Owner understands and acknowledges that neither Declarant, nor the Board, nor the Association shall have any obligation whatsoever to enforce the provisions of this Subsection 7.5.2 or otherwise become involved in resolving any dispute between adjacent Lot Owners pertaining to the Reimbursement Obligation. Each Owner of a Lot hereby releases and holds Declarant, the Association and members of the Board harmless from and against any and all obligations, liabilities, debts, actions and claims, including, without limitation, court costs and attorney's fees, in any matter arising out of, or in any way related to, the Reimbursement Obligation.

If any Owing Owner fails to pay the Reimbursement Obligation within the applicable time period described above in this Subsection 7.5.2, interest shall accrue on the unpaid portion thereof at the Default Rate, commencing from the date such payment was due and continuing until the Reimbursement Obligation and all accrued interest thereon is paid in full to the Building Owner. The Reimbursement Obligation, together with any accrued interest thereon, shall be a charge on the Owing Owner's Lot and shall be a continuing servitude and lien upon such Lot, which lien shall be for the benefit of, and be enforceable by, the Building Owner. If the Owing Owner fails to timely pay the Reimbursement Obligation, the Building Owner may cause to be recorded against the Owing Owner's Lot a notice of lien which sets forth the specific amount of the Reimbursement Obligation, and otherwise act to enforce payment of the Reimbursement Obligation by either: (a) bringing an action at law and recovering judgment against the Owing Owner; or (b) foreclosing the lien provided for herein against the Owing Owner's Lot in accordance with the then prevailing Arizona law relating to the foreclosure of realty mortgages. Upon payment of the Reimbursement Obligation, the Building Owner shall execute, acknowledge and delivery to the Owing Owner a quit-claim deed or other recordable instrument acknowledging the full satisfaction of the Reimbursement Obligation and release of lien provided for herein.

7.5.3 The Owners of contiguous Lots who have a Common Wall shall both equally have the right to use such wall provided that such use by one Owner does not interfere with the use and enjoyment of same by the other Owner.

7.5.4 In the event that any Common Wall is damaged or destroyed through the act of any Owner or an Owner Permittee of such Owner, it shall be the obligation of such Owner to rebuild and repair the Common Wall without cost to the other Owner or Owners.

7.5.5 In the event any Common Wall is damaged or destroyed by some cause other than the act of one of the adjoining Owners or an Owner Permittee of such adjoining Owner (including ordinary wear and tear and deterioration from lapse of time), then, in such event, both such adjoining Owners shall proceed forthwith to rebuild or repair the same to as good condition as formerly at their joint and equal expense.

7.5.6 Notwithstanding any other provision of this Section 7.5, an Owner who, by his negligent or willful act, causes any Common Wall to be exposed to the elements shall bear the whole cost of furnishing the necessary protection against such elements.

7.5.7 In addition to meeting the other requirements of this Declaration and of any other building code or similar regulations or ordinances, any Owner proposing to modify, make additions to or rebuild a Common Wall shall first obtain the written consent of the adjoining Owners.

7.5.8 In the event any Common Wall encroaches upon a Lot or the Common Area subject to approval by the Board, a valid easement for such encroachment and for the maintenance of the Common Wall shall and does exist in favor of the Owners of the Lots which share such Common Wall.

## ARTICLE 8

### INSURANCE

8.1 Scope of Coverage. Commencing not later than the time of the first conveyance of a Lot by the Declarant, the Association shall maintain, to the extent reasonably available, the following insurance coverage:

8.1.1 Property insurance on the Common Area insuring against all risk of direct physical loss, insured against in an amount equal to the maximum insurable replacement value of the Common Area, as determined by the Board; provided, however, that the total amount insurance after application of any deductibles shall not be less than one hundred percent (100%) of the current replacement cost of the insured property, exclusive of land, excavations, foundations and other items normally excluded from a property policy;

8.1.2 Comprehensive general liability insurance, including medical payments insurance, in an amount determined by the Board, but not less than \$1,000,000. Such insurance shall cover all occurrences commonly insured against for death, bodily injury and property damage arising out of or in connection with the use, ownership or maintenance of the Common Area and all other portions of the Project which the Association is obligated to maintain under this Declaration, and shall also include hired automobile and non-owned automobile coverages with cost liability endorsements to cover liabilities of the Owners as a group to an Owner;

8.1.3 Workmen's compensation insurance to the extent necessary to meet the requirements of the laws of Arizona; and

8.1.4 Such other insurance as the Association shall determine from time to time to be appropriate to protect the Association or the Owners;

8.2 Requirements of Insurance Policies. The insurance policies purchased by the Association shall, to the extent reasonably available, contain the following provisions:

(i) That there shall be no subrogation with respect to the Association, its agents, servants, and employees, with respect to Owners and Members of their household;

(ii) No act or omission by any Owner, unless acting within the scope of his authority on behalf of the Association, will void the policy or be a condition to recovery on the policy;

(iii) That the coverage afforded by such policy shall not be brought into contribution or proration with any insurance which may be purchased by Owners or their mortgagees or beneficiaries under deeds of trust;

(iv) A "severability of interest" endorsement which shall preclude the insurer from denying the claim of an Owner because of the negligent acts of the Association or other Owners;

(v) Statement of the name of the insured as the Association; and

(vi) For policies of hazard insurance, a standard mortgagee clause providing that the insurance carrier shall notify the first mortgagee named in the policy at least ten (10) days in advance of the effective date of any substantial modification, reduction or cancellation of the policy.

8.3 Certificates of Insurance. An insurer that has issued an insurance policy under this Article shall issue a certificate or a memorandum of insurance to the Association and, upon request, to any Owner, mortgagee or beneficiary under a deed of trust. Any insurance obtained pursuant to this Article may not be cancelled until thirty (30) days after notice of the proposed cancellation has been mailed to the Association, each Owner and each mortgagee or beneficiary under deed of trust to whom certificates of insurance have been issued.

8.4 Payment of Premiums. The premiums for any insurance obtained by the Association pursuant to Section 8.1 of this Declaration shall be included in the budget of the Association and shall be paid by the Association.

8.5 Payment of Insurance Proceeds. With respect to any loss to the Common Area covered by property insurance obtained by the Association in accordance with this Article, the loss shall be adjusted with the Association, and the insurance proceeds shall be payable to the Association and not to any holder of a Mortgage. Subject to the provisions of Section 8.6 of this Declaration, the proceeds shall be disbursed for the repair or restoration of the damage to the Common Area.

8.6 Repair and Replacement of Damaged or Destroyed Property. Any portion of the Common Area which is damaged or destroyed shall be repaired or replaced promptly by the Association unless (i) repair or replacement would be illegal under any state or local health or safety statute or ordinance, or (ii) Owners representing at least eighty percent (80%) of the total authorized votes in the Association vote not to rebuild. The cost of repair or replacement in excess of insurance proceeds and reserves shall be paid by the Association. If the entire Common Area is not repaired or replaced, insurance proceeds attributable to the damaged Common Area shall be used to restore the damaged area to a condition which is not in violation of any state or local health or safety statute or ordinance and the remainder of the proceeds shall either (i) be retained by the Association as an additional capital reserve, or (ii) be used for payment of operating expenses of the Association if such action is approved by the affirmative vote or written consent, or any combination thereof, of Members representing more than fifty percent (50%) of the votes in the Association.

## ARTICLE 9

### GENERAL PROVISIONS

9.1 Development Rights. Notwithstanding anything to the contrary within the Project Documents, Declarant hereby expressly reserves the right, but not the obligation, to do any of the following ("Development Rights"):

- (A) Add real estate to the Project;
- (B) Create easements and Common Area within the Project;
- (C) Withdraw real estate from the Project;

(D) Make the Project part of a larger condominium or planned community;

(E) Amend the Project Documents to correct any error or inconsistency, or to clarify any provision, in this Declaration, if the amendment does not materially adversely affect the rights of any Owner;

(F) Amend the Project Documents to comply with (a) the rules or guidelines, in effect from time to time, of any governmental agency, (b) the rules or requirements of any federal, state or local governmental entity or agency whose approval of the Project or the Project Documents is required by law or requested by Declarant, or (c) any other applicable law; and

(G) Develop the Project in phases.

9.2 **Special Declarant Rights.** Notwithstanding anything to the contrary within the Project Documents, Declarant hereby expressly reserves the right, but not the obligation, to do any of the following:

(A) Construct Improvements provided for in this Declaration or shown on the Plat;

(B) Exercise any Development Right;

(C) Maintain sales offices, management offices, models and signs advertising the Project and Lots therein as provided in Section 4.4 of this Declaration and as otherwise determined by Declarant in connection with Declarant's sales and leasing purposes;

(D) Use easements through the Common Elements for the purpose of making Improvements within the Project or within real estate that may be added to the Project;

(E) Appoint and remove any officer of the Association and any member of the Board of Directors during the Period of Declarant Control; and

(F) Appoint and remove the members of any Architectural Committee established by the Board of Directors.

9.3 **Term; Method of Termination.** This Declaration shall continue in full force and effect for a term of twenty (20) years from the date this Declaration is recorded, after which time, this Declaration shall be automatically extended for successive periods of ten (10) years each. This Declaration may be terminated at any time if such termination is approved by the affirmative vote or written consent, or any combination thereof, of the Owners representing ninety percent (90%) or more of the votes in each class of Membership and by the holders of First Mortgages on Lots, the Owners of which have seventy-five percent (75%) or more of the votes in the Association. If the necessary votes and consents are obtained, the Board shall cause to be recorded with the County Recorder of Maricopa County, Arizona, a Certificate of Termination, duly signed by the President or Vice President and attested by the Secretary or Assistant Secretary of the Association, with their signatures acknowledged. Thereupon this Declaration shall have no further force and effect, and the Association shall be dissolved pursuant to the terms set forth in its Articles.

#### 9.4 Amendments.

9.4.1 Except for amendments made pursuant to Subsection 9.4.2 of this Declaration, the Declaration may only be amended by written approval or the affirmative vote of the Owners of not less than seventy-five percent (75%) of the votes in the Association.

9.4.2 Either the Board or the Declarant may amend this Declaration or the Project Plat, without obtaining the approval or consent of any Owner or First Mortgagee, in order to conform this Declaration or the Project Plat to the requirements or guidelines of the Federal National Mortgage Association, the Federal Home Loan Mortgage Corporation, the Federal Housing Administration, the Veterans Administration or any federal, state or local governmental agency whose approval of the Project, the Project Plat or the Project Documents is required by law or requested by the Declarant.

9.4.3 So long as the Declarant owns any Lot, any amendment to this Declaration must be approved in writing by the Declarant.

9.4.4 So long as there is a Class B Membership in the Association, and approval of the Project, Project Plat or Project Documents by the Veterans Administration or Federal Housing Administration has been requested, then any amendment to this Declaration must have the prior written approval of the Veterans Administration or the Federal Housing Administration.

9.4.5 Any amendment approved pursuant to Subsection 9.4.1 of this Declaration or by the Board pursuant to Subsection 9.4.2 of this Declaration shall be signed by the President or Vice President of the Association and shall be recorded with the County Recorder Of Maricopa County, Arizona. Any such amendment shall certify that the amendment has been approved as required by this Section. Any amendment made by the Declarant pursuant to Subsection 9.4.2 of this Declaration shall be executed by the Declarant and shall be recorded with the County Recorder of Maricopa County, Arizona.

9.5 Condemnation of Common Area. If all or any part of the Common Area is taken or condemned, or conveyed in lieu of or under threat of such condemnation by the Board with the written consent or affirmative vote of Owners representing at least eighty percent (80%) of the votes in the Association, by any authority having the power of condemnation of eminent domain, the award or other compensation paid as a result of such taking or conveyance shall be paid to the Association. If the taking involves a portion of the Common Area upon which Improvements have been constructed, then the Association shall restore or replace such Improvements so taken on the remaining Common Area to the extent land is available for such construction unless within sixty (60) days after such taking the Owners having at least eighty percent (80%) of the votes in the Association, by written consent or affirmative vote, or a combination thereof, instruct the Board not to rebuild or replace such Improvements. If such Improvements are to be repaired or restored, then the Association shall be entitled to use the award or other compensation made for such taking solely for the purpose of such repair or restoration. If the taking does not involve any Improvements on the Common Area or if the Owners representing more than eighty percent (80%) of the votes in the Association decide not to repair or restore any Improvements taken by condemnation or if there are any net funds remaining after such restoration or replacement is completed, then such awarded net funds may either be disbursed by the Association to the Owners with an equal share being disbursed for each Membership or retain such funds as additional operating or capital reserves.

9.6 Severability. Any determination by any court of competent jurisdiction that any provision of this Declaration is invalid or unenforceable shall not affect the validity or enforceability of any of the other provisions hereof.

9.7 Rule Against Perpetuities. If any interest purported to be created by this Declaration is challenged under the Rule against Perpetuities or any related rule, the interest shall be construed as becoming void and of no effect as of the end of the applicable period of perpetuities computed from the date when the period of perpetuities starts to run on the challenged interest; the "lives in being" for computing the period of perpetuities shall be (i) those which would be used in determining the validity of the challenged interest, plus (ii) those of the issue of the Board who are living at the time the period of perpetuities starts to run on the challenged interest.

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

9.9 Rules and Regulations. In addition to the right to adopt rules and regulations on the matters expressly mentioned elsewhere in this Declaration, the Association shall have the right to adopt rules and regulations with respect to all other aspects of the Association's rights, activities and duties, provided said rules and regulations are not inconsistent with the provisions of this Declaration.

9.10 Laws, Ordinances and Regulations.

9.10.1 The covenants, conditions and restrictions set forth in this Declaration and the provisions requiring Owners and other persons to obtain the approval of the Board or the Architectural Committee with respect to certain actions are independent of the obligation of the Owners and other persons to comply with all applicable laws, ordinances and regulations, and compliance with this Declaration shall not: (i) relieve an Owner or any other person from the obligation to also comply with all applicable laws, ordinances and regulations; or (ii) require any Owner or any other person to violate any applicable law.

9.10.2 Any violation of any state, municipal, or local law, ordinance or regulation pertaining to the ownership, occupation or use of any property within the Property is hereby declared to be a violation of this Declaration and subject to any or all of the enforcement procedures set forth herein.

9.11 References to this Declaration in Deeds. Deeds to and instruments affecting any Lot or any part of the Project may contain the covenants, conditions and restrictions herein set forth by reference to this Declaration; but regardless of whether any such reference is made in any Deed or instrument, each and all of the provisions of this Declaration shall be binding upon the grantee-Owner or other person claiming through any instrument and his heirs, executors, administrators, successors and assignees.

9.12 Gender and Number. Wherever the context of this Declaration so requires, words used in the masculine gender shall include the feminine and neuter genders; words used in the neuter gender shall include the masculine and feminine genders; words in the singular shall include the plural; and words in the plural shall include the singular.

9.13 Captions and Titles. 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 provisions hereof or to be used in determining the intent of context thereof.



9.14 Notices. If notice of any action or proposed action by the Board or any committee or of any meeting is required by applicable law, this Declaration or resolution of the Board to be given to any Owner, Lessee or Resident then, unless otherwise specified herein or in the resolution of the Board, such notice requirement shall be deemed satisfied if notice of such action or meeting is published once in any newspaper in general circulation within Maricopa County. This Section shall not be construed to require that any notice be given if not otherwise required and shall not prohibit satisfaction of any notice requirement in any other manner.

9.15 FHA/VA Approval. So long as there is a Class B Membership in the Association and approval of the Project, Project Plat or Project Documents by the United States Department of Housing and Urban Development/Federal Housing Administration ("FHA") or the Veterans Administration ("VA") has been requested, then the following actions shall require the prior written approval of the FHA and VA (to the extent then required by applicable regulations of the FHA and VA, respectively): annexation of additional properties, mergers and consolidations involving the Association, mortgaging of the Common Area, dedication of the Common Area or any portion thereof, dissolution of the Association or amendment of this Declaration.

9.16 No Absolute Liability. No provision of the Project Documents shall be interpreted or construed as imposing on Owners absolute liability for damage to the Common Area or the Lots. Owners shall only be responsible for damage to the Common Area or the Lots caused by the Owners' negligence or intentional acts.

9.17 Guests and Tenants. Each Owner shall, to the extent permitted by Arizona law, be responsible for compliance by his Owner Permittees and their respective servants, agents, and employees with the provisions of the Project Documents. A Owner's failure to ensure compliance by such persons shall be grounds for the same action available to the Association or any other Owner by reason of such Owner's own noncompliance.

9.18 Attorneys' Fees. In the event Declarant, the Association or any Owner employs an attorney or attorneys to enforce an Assessment Lien or to collect any amounts due from an Owner or to enforce compliance with or recover damages for any violation of or noncompliance with the Project Documents, the prevailing party in any such action shall be entitled to recover from the other party the reasonable attorneys' fees incurred in the action and such fees shall constitute an Assessment Lien on all Lots owned by the Owner or Owners against whom the action is taken (or against whose Owner Permittees the action is taken), which Assessment Lien shall have the priority and may be enforced in the manner described herein.

9.19 Notice of Violation. The Association shall have the right to record a written notice of a violation by any Owner of any restriction or provision of the Project Documents. The notice shall be executed and acknowledged by an officer of the Association and shall contain substantially the following information: (i) the name of the Owner, (ii) the legal description or street address of the Lot against which the notice is being recorded; (iii) a brief description of the nature of the violation; (iv) a statement that the notice is being recorded by the Association pursuant to this Declaration; and (v) a statement of the specific steps which must be taken by the Owner to cure the violation. Recordation of a Notice of Violation shall serve as a notice to the Owner and to any subsequent purchaser of the Lot that there is a violation of the provisions of the Project Documents. If after the recordation of such Notice, it is determined by the Association that the violation referred to in the Notice of Violation does not exist or has been cured, the Association shall record a notice of compliance which shall state the legal description

or street address of the Lot against which the Notice of Violation was recorded, and the recording data of the Notice of Violation, and which shall state that the violation referred to in the Notice of Violation has been cured, or if such be the case, that it did not exist.

9.20 Declarant's Disclaimer of Representations. While Declarant has no reason to believe that any of the provisions 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 provisions of this Declaration. Any Owner acquiring a Lot in reliance on one or more of the provisions in this Declaration shall assume all risks of the validity and enforceability thereof and by acquiring the Lot agrees to hold Declarant harmless therefrom.

9.21 Declarant's Right to Use Similar Name. The Association hereby irrevocably consents to the use by any other nonprofit corporation which may be formed or incorporated by Declarant of a corporate name which is the same or deceptively similar to the name of the Association provided one or more words are added to the name of such other corporation to make the name of the Association distinguishable from the name of such other corporation. Within five (5) days after being requested to do so by the Declarant, the Association shall sign such letters, documents or other writings as may be required by the Arizona Corporation Commission in order for any other nonprofit corporation formed or incorporated by the Declarant to use a corporate name which is the same or deceptively similar to the name of the Association.

9.22 Right to Cure Alleged Defects. It is Declarant's intent that all Improvements constructed as part of the Common Area shall be built in compliance with all applicable building codes and ordinances and that they be of a quality that is consistent with good construction and development practices. Nevertheless, disputes may arise as to whether a defect exists with respect to the Improvements constructed as part of the Common Area and the Declarant's responsibility therefor. It is Declarant's intent to resolve all disputes and claims regarding "Alleged Defects" (as defined below) amicably, and without the necessity of time-consuming and costly litigation. Accordingly, the Association, the Board and all Owners shall be bound by the following claim resolution procedure:

- (i) Right to Cure. In the event that the Association, the Board, or any Owner or Owners (collectively, "Claimant") claim, contend or allege that any portion of the Common Area and/or any Improvements constructed on the Project are defective, or that Declarant, its agents, consultants, contractors or subcontractors (collectively, "Agents") were negligent in the planning, design, engineering, grading, construction or other development thereof (collectively, an "Alleged Defect"), Declarant hereby reserves the right for itself to inspect, repair and/or replace such Alleged Defect as set forth herein.
- (ii) Notice. In the event that a Claimant discovers any Alleged Defect, Claimant shall notify Declarant, in writing, within fifteen (15) days of discovery of the Alleged Defect, of the specific nature of such Alleged Defect ("Notice of Alleged Defect").

- (iii) Right to Enter, Inspect, Repair and/or Replace. Within a reasonable time after the receipt by Declarant of a Notice of Alleged Defect, or the independent discovery of any Alleged Defect by Declarant, Declarant shall have the right, upon reasonable notice to Claimant and during normal business hours, to enter onto or into, as applicable, the Common Area, and/or any Improvements situated thereon for the purposes of inspecting and/or conducting testing and, if deemed necessary by Declarant, repairing and/or replacing such Alleged Defect. In conducting such inspection, testing, repairs and/or replacement, Declarant shall be entitled to take any actions as it shall deem reasonable and necessary under the circumstances.
- (iv) No Additional Obligations; Irrevocability and Waiver of Right. Nothing set forth in this Section shall be construed to impose any obligation on Declarant to inspect, test, repair, or replace any item or Alleged Defect for which Declarant is not otherwise obligated under applicable law. The right of Declarant to enter, inspect, test, repair and/or replace reserved hereby shall be irrevocable and may not be waived or otherwise terminated except by a writing, in recordable form, executed and recorded by Declarant.
- (v) Tolling of Statutes of Limitations. In no event shall any statutes of limitations be tolled during the period in which Declarant conducts any inspection or testing of any Alleged Defects.

9.23 Legal Actions. All legal actions initiated by a Claimant shall be brought in accordance with and subject to Sections 9.24 (Binding Arbitration) and 9.25 (Approval of Litigation) of this Declaration. In the event a Claimant initiates any legal action, cause of action, proceeding, reference or arbitration against Declarant alleging damages (i) for the costs of repairing or the replacement of any defective portion of the Common Area, and/or Improvements constructed thereon, (ii) for the diminution in value of any real or personal property resulting from such Alleged Defect, or (iii) for any consequential damages resulting from such Alleged Defect, any judgment or award in connection therewith shall first be used to correct and or repair such Alleged Defect or to reimburse the Claimant for any costs actually incurred by such Claimant in correcting and/or repairing the Alleged Defect. In the event the Claimant is the Association, the Association must provide written notice to all Members prior to initiation of any legal action, cause of action, proceeding, reference or arbitration against Declarant which notice shall (at a minimum) include (i) a description of the Alleged Defect, (ii) a description of the attempts of Declarant to correct such Alleged Defect and the opportunities provided to Declarant to correct such Alleged Defect, (iii) a certification from an engineer licensed in the State of Arizona that such Alleged Defect exists along with a description of the scope of work necessary to cure such Alleged Defect and a resume of such engineer, (iv) the estimated cost to repair such Alleged Defect, (v) the name and professional background of the attorney retained by the Association to pursue the claim against Declarant and a description of the relationship between such attorney and member(s) of the Board (if any), (vi) a description of the fee arrangement

between such attorney and the Association, (vii) the estimated attorneys' fees and expert fees and costs necessary to pursue the claim against Declarant and the source of the funds which will be used to pay such fees and expenses, (viii) the estimated time necessary to conclude the action against Declarant, and (ix) an affirmative statement from the Board that the action is in the best interests of the Association and its Members. In the event the Association recovers any funds from Declarant (or any other Person) to repair an Alleged Defect, any excess funds remaining after repair of such Alleged Defect shall be paid into the Association's reserve fund.

9.24 **Binding Arbitration.** In the event of a dispute between or among Declarant, its builders, contractors or brokers, or their agents or employees, on the one hand, and any Owner(s) or the Association, on the other hand, regarding any controversy or claim between the parties, including any claim based on contract, tort, or statute, arising out of or relating to the rights or duties of the parties under this Declaration, the design or construction of the Project, or an Alleged Defect, the matter shall be resolved by binding arbitration conducted in accordance with the following rules:

- (i) **Initiation of Arbitration.** The arbitration shall be initiated by either party delivering to the other a Notice of Intention to Arbitrate as provided for in the American Arbitration Association ("AAA") Commercial Arbitration Rules, as amended from time to time (the "AAA Rules").
- (ii) **Governing Procedures.** The arbitration shall be conducted in accordance with the AAA Rules and A.R.S. § 12-1501 et seq. In the event of a conflict between the AAA Rules and this Section, the provisions of this Section shall govern.
- (iii) **Appointment of Arbitrator.** The parties shall appoint a single Arbitrator by mutual agreement. If the parties have not agreed within ten (10) days of the date of the Notice of Intention to Arbitrate on the selection of an arbitrator willing to serve, the AAA shall appoint a qualified Arbitrator to serve. Any arbitrator chosen in accordance with this Subsection (iii) is referred to in this Section as the "Arbitrator".
- (iv) **Qualifications of Arbitrator.** The Arbitrator shall be neutral and impartial. The Arbitrator shall be fully active in such Arbitrator's occupation or profession, knowledgeable as to the subject matter involved in the dispute, and experienced in arbitration proceedings. The foregoing shall not preclude otherwise qualified retired lawyers or judges.
- (v) **Disclosure.** Any candidate for the role of Arbitrator shall promptly disclose to the parties all actual or perceived conflicts of interest involving the dispute or the parties. No Arbitrator may serve if such person has a conflict of interest involving the subject matter of the dispute or the parties. If an Arbitrator resigns or becomes unwilling to continue to serve as an Arbitrator, a replacement shall be selected in accordance with the procedure set forth in subsection (iii) above.

equipment or vehicle may be parked or maintained, constructed, reconstructed or repaired on any Lot so as to be Visible From Neighboring Property, the Common Areas or the streets. Such vehicles may, however, be concealed in attractively screened areas with prior written approval by the Architectural Committee. The provisions of this Section shall not apply to pick-up trucks of less than one ton capacity with camper shells not exceeding seven feet in height measured from ground level. No mobile home, mini-motor home, boat, recreational vehicle, trailer (of any kind), truck, camper, permanent tent or similar structure shall be kept, placed, maintained, constructed, reconstructed or repaired, nor shall any motor vehicle be constructed, reconstructed or repaired upon any Property; provided however that the provisions of this paragraph shall not apply to emergency vehicle repairs or temporary construction shelters or facilities maintained during and used exclusively in connection with the construction of any Improvement approved by the Architectural Committee. Except as provided above only vehicles in operating condition shall be parked in residential driveways. Non-operating vehicles are not permitted in residential driveways unless repairs are imminent."

6. Effective Date. This Amendment shall be effective upon recording in the Records of Maricopa County, Arizona.

7. Effect of Amendment. In the event of any inconsistencies between this Amendment and the Declaration, the terms of this Amendment shall govern. Except as provided for herein, all other terms and conditions of the Declaration shall remain unchanged and the parties hereto reaffirm the terms and conditions of such Declaration. The Amendment may only be varied by a document, in writing, of even or subsequent date hereof, executed by the parties hereto.

IN WITNESS WHEREOF, the Declarant has executed this Amendment as of the date first above written.

**"DECLARANT"**

**MARACAY LAS CASITAS, L.L.C.,  
an Arizona limited liability company**

**By: Maracay Homes Arizona I, L.L.C.,  
An Arizona limited liability company  
It's Sole Member**

By: Jeffrey J. Anderson

Its: Manager

STATE OF ARIZONA            )  
  ) ss.  
County of Maricopa         )

On this the 13<sup>th</sup> day of June, 2001, before me, the undersigned Notary Public, personally appeared Jeffrey S. Anderson who acknowledged himself to be the Manager of Maracay Arizona I, L.L.C., an Arizona limited liability company, and that he, as such officer, being authorized so to do, executed the foregoing instrument for the purposes therein contained.

My Commission Expires:

Teresa Klein  
Notary Public



- (vi) Compensation. The Arbitrator shall be fully compensated for all time spent in connection with the arbitration proceedings in accordance with the Arbitrator's hourly rate not to exceed Three Hundred Dollars (\$300.00) per hour, unless otherwise agreed to by the parties, for all time spent by the Arbitrator in connection with the arbitration proceeding. Pending the final award, the Arbitrator's compensation and expenses shall be advanced equally by the parties.
- (vii) Preliminary Hearing. Within thirty (30) days after the Arbitrator has been appointed, a preliminary hearing among the Arbitrator and counsel for the parties shall be held for the purpose of developing a plan for the management of the arbitration, which shall then be memorialized in an appropriate order. The matters which may be addressed include, in addition to those set forth in the AAA Guidelines, the following: (i) definition of issues; (ii) scope, timing and types of discovery, if any; (iii) schedule and place(s) of hearings; (iv) setting of other timetables; (v) submission of motions and briefs; (vi) whether and to what extent expert testimony will be required, whether the Arbitrator should engage one or more neutral experts, and whether, if this is done, engagement of experts by the Parties can be obviated or minimized; (vii) whether and to what extent the direct testimony of witnesses will be received by affidavit or written witness statement; and (viii) any other matters which may promote the efficient, expeditious, and cost-effective conduct of the proceeding.
- (viii) Management of the Arbitration. The Arbitrator shall actively manage the proceedings as the Arbitrator deems best so as to make the proceedings expeditious, economical and less burdensome than litigation.
- (ix) Confidentiality. All papers, documents, briefs, written communication, testimony and transcripts as well as any and all arbitration decisions shall be confidential and not disclosed to anyone other than the Arbitrator, the parties or the parties' attorneys and expert witnesses (where applicable to their testimony), except that upon prior written consent of all parties, such information may be divulged to additional third parties. All third parties shall agree in writing to keep such information confidential.
- (x) Hearings. Hearings may be held at any place within the State of Arizona designated by the Arbitrator and, in the case of particular witnesses not subject to subpoena at the usual hearing site, at a place where such witnesses can be compelled to attend.
- (xi) Final Award. The Arbitrator shall promptly (within sixty (60) days of the conclusion of the proceedings or such longer period as the parties mutually agree) determine the claims of the parties and render a final award in writing. The Arbitrator may award the prevailing party in the proceeding

all or a part of such party's reasonable attorneys' fees and expert witness fees, taking into account the final result of arbitration, the conduct of the parties and their counsel in the course of the arbitration, and other relevant factors. The Arbitrator shall not award any punitive damages. The Arbitrator shall not award indirect, consequential or special damages regardless of whether the possibility of such damage or loss was disclosed to, or reasonably foreseen by the party against whom the claim is made; provided, however, that such damages may be deemed by the Arbitrator to be direct damages in an award reimbursing payments made by a party therefor to a third party. The Arbitrator shall assess the costs of the proceedings (including, without limitation, the fees of the Arbitrator) against the non-prevailing party.

- (xii) Statute of Limitations. All statutes of limitation applicable to claims which are subject to binding arbitration pursuant to this Section shall apply to the commencement of arbitration proceedings under this Section. If arbitration proceedings are not initiated within the applicable period, the claim shall forever be barred.

9.25 Approval of Litigation. The Association shall not incur attorney fees or other legal expenses in connection with legal proceedings or arbitration proceedings initiated by the Association or in connection with legal proceedings or arbitration proceedings in which the Association is joined as a plaintiff without the written approval of Owners holding more than fifty percent (50%) of the total votes in the Association, excluding the vote of any Owner who would be a defendant in such proceedings. The Association must finance any legal proceeding with monies that are specifically collected for same and may not borrow money or use reserve funds or other monies collected for specific Association obligations other than legal fees. In the event that the Association commences any legal proceedings, all Owners must notify prospective purchasers of such legal proceedings and must provide such prospective purchasers with a copy of the notice received from the Association in accordance with Section 9.23 of this Declaration. This Section shall not apply to legal proceedings initiated by the Association to collect any unpaid Assessments or other sums levied pursuant to this Declaration.

9.26 Repurchase Option for Alleged Defect Claims. Notwithstanding anything in this Declaration to the contrary, in the event any Owner, either directly or through the Association, shall commence an action against Declarant and/or any contractor in connection with any Alleged Defects in such Owner's Lot, Declarant (or any assignee of Declarant) shall have the option (but not the obligation) to purchase such Lot on the following terms and conditions:

(A) The purchase price shall be an amount equal to the sum of the following, less any sums paid to such Owner under any homeowner's warranty in connection with the Alleged Defect:

- (i) The purchase price paid by the original Owner of the Lot when originally purchased from Declarant;



(ii) The value of any Improvements made to the Lot by anyone other than Declarant;

(iii) The Owner's reasonable moving costs; and

(iv) Any closing costs, including loan fees and/or "points" incurred by the Owner in connection with the purchase of another primary residence within ninety (90) days after the closing of the repurchase provided for herein.

(B) Close of escrow shall not occur later than forty-five (45) days after written notice from Declarant to the Owner of Declarant's intent to exercise the option herein.

(C) Title shall be conveyed to Declarant free and clear of all monetary liens and encumbrances other than non-delinquent real estate taxes.

(D) All closing costs in connection with the repurchase shall be paid by Declarant.

(E) Exercise of the repurchase option as provided hereinabove shall constitute full and final satisfaction of all claims, relating to the subject Lot, including claims relating to the Alleged Defect. The Owner (or Association, as applicable) shall promptly execute and deliver any notice of dismissal or other document necessary or appropriate to evidence such satisfaction.

9.27 Termination of Certain Contracts. Notwithstanding anything in this Declaration to the contrary, the Association shall have right of termination exercisable without penalty at any time after the Class B Termination and upon ninety (90) days' notice relating to:

(i) Any management contract, employment contract or lease of recreational or parking areas or facilities; or

(ii) Any contract or lease, including franchises and licenses, to which Declarant or an affiliate of Declarant is a party, if the Association was bound either directly or indirectly to such an agreement by Declarant or an affiliate of the Declarant.

[SIGNATURE PAGE FOLLOWS SEPARATE]

IN WITNESS WHEREOF, the undersigned, being the Declarant hereunder, has hereto set its hand to be effective as of the date first set forth above.

"DECLARANT"

JOHN SCREMIN DEVELOPMENT, INCORPORATED,  
an Arizona corporation

By: \_\_\_\_\_

*John C. Scremin*  
John C. Scremin, President

STATE OF ARIZONA - )  
COUNTY OF MARICOPA ) ss

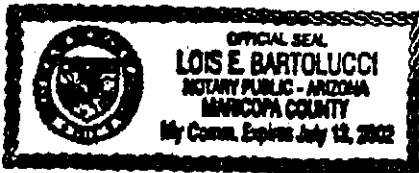
The foregoing instrument was acknowledged before me this 1st day of October, 1999, by John C. Scremin, the President of JOHN SCREMIN DEVELOPMENT, INCORPORATED, an Arizona corporation, for and on behalf of the corporation.

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

*Lois E Bartolucci*  
\_\_\_\_\_  
Notary Public

My Commission Expires:

7-13-02



**EXHIBIT "A"**  
**LEGAL DESCRIPTION**

LOTS 1 THROUGH 45, INCLUSIVE, TRACTS A THROUGH T, INCLUSIVE,  
LAS CASITAS DEL SUR, according to Book 508 of Maps, Page 34, -----  
records of Maricopa County, Arizona.

TRANSNATION TITLE INS. CO.

When recorded, <sup>mail</sup> return to:

Matthew B. Levine, Esq.

Titus, Brueckner & Berry, P.C.

7373 N. Scottsdale Road, Suite B-252

Scottsdale, AZ 85253



OFFICIAL RECORDS OF  
MARICOPA COUNTY RECORDER  
HELEN PURCELL

2001-0309813 04/17/2001 04:57

BRQUEL 8 OF 33

### ASSIGNMENT OF DECLARANT'S RIGHTS

278820  
KNOW ALL MEN BY THESE PRESENTS:

2/3 BY THIS AGREEMENT, the undersigned John Scremin Development Incorporated, an Arizona corporation (hereinafter called "Assignor"), for valuable consideration, the receipt of which is hereby acknowledged, does hereby assign, transfer, convey and set over to Maracay Las Casitas, L.L.C., an Arizona limited liability company (hereinafter called "Assignee"), all of Assignor's right, title and interest as "Owner," "Developer," "Member," and/or "Declarant," or in any other capacity, in and to or arising out of the following documents and instruments:

(a) Declaration of Covenants, Conditions and Restrictions, dated September 30, 1999, and recorded October 1, 1999 at Recorder's No. 99-0916110 in the records of Maricopa County, Arizona (the "Declaration");

(b) The Articles of Incorporation and Bylaws of Las Casitas Del Sur Homeowners Association, an Arizona nonprofit corporation;

(c) The Construction and Development Guidelines of Las Casitas Del Sur Homeowners Association (the "Guidelines"); and,

(d) Any and all other documents and instruments and any amendments relating to or in any way connected with the operation, organization, control or development of the real property described in the documents and instruments referred to above;

(all hereinafter called the "Documents").

NOW THEREFORE, in consideration of the sale of the Property described in Exhibit "A" of the Declaration and other valuable consideration, the parties agree as follows:

1. Assignor represents, warrants and covenants that:

(a) The Documents, as of the date hereof, are valid and in good and current standing, not having been altered, amended, changed, terminated or cancelled in any way, and no breach or default exists therein or thereunder.

(b) Assignor had full power, right and authority to execute and deliver the Documents and has full power, right and authority to execute and deliver this Assignment.

(c) Assignor has not conveyed, transferred, or assigned the Documents or any right or interest therein and has not executed any other document or instrument which might prevent or limit Assignee from operating under the terms, conditions and provisions of this Assignment.

(d) Assignor shall make no other assignment of the Documents or of any right or interest therein.

(e) Assignor shall perform and observe, in timely fashion, all of the covenants, conditions, obligations and agreements of Assignor under the Documents in strict accordance with the terms, conditions and provisions thereof.

2. No change, amendment or modification shall be made to the Documents or to the instructions of Assignor contained herein without the prior written approval of Assignee.

3. Assignor acknowledges and agrees that Assignee shall have the sole and exclusive right to terminate the Guidelines and replace the same in its discretion.

4. Assignor shall promptly notify Assignee of any default or breach of or under the Documents or of any failure of performance or other condition that, after notice or lapse of time, or both, could become a default or breach by any party of or under the Documents.

5. Assignor, immediately upon receipt, shall deliver to Assignee a true and complete copy of any notice of default or breach and all other communications respecting a default or breach, alleged default or breach, failure of performance, or other condition that, with lapse of time or after additional notice, or both, could become a default or breach by Assignor of or under the Documents, or otherwise relating to Assignor's good standing with respect to the Documents.

6. Assignee, by accepting this Assignment, shall not be subject to any obligation or liability under the Documents, including, without limitation, any duty to perform any of the covenants, conditions, provisions or agreements made by Assignor, but all such obligations and liabilities shall continue to rest upon Assignor as though this Assignment had not been made.

7. Assignee shall have the right at any time to appear in and defend and be represented by counsel of its own choice in any action or proceeding purporting to affect Assignor's rights under the Documents.

STATE OF ARIZONA       )  
                                      ) ss.  
County of \_\_\_\_\_ )

The foregoing instrument was acknowledged before me this \_\_\_\_\_ day of \_\_\_\_\_, 2001, by the \_\_\_\_\_ of John Scremin Development Incorporated, an Arizona corporation.

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

\_\_\_\_\_  
Notary Public

My commission expires:  
\_\_\_\_\_

STATE OF ARIZONA       )  
                                      ) ss.  
County of Maricopa )

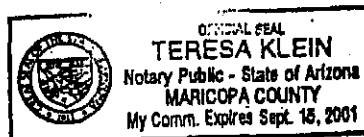
The foregoing instrument was acknowledged before me this 16<sup>th</sup> day of April, 2001, by Jeffrey J. Andersen, the Manager of Maracay Las Casitas, L.L.C., an Arizona limited liability company.

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

Teresa Klein  
\_\_\_\_\_  
Notary Public

My commission expires:

Sept. 15, 2001



8. Assignor shall indemnify, defend and hold Assignee harmless from any and all damages and losses arising as a result of or related to the Documents, this Assignment or the exercise by Assignee of any of its rights under this Assignment, including, without limitation, any judgment, amounts paid in settlement, and all costs and expenses, including reasonable attorneys' fees, incurred in defending or settling any action, suit or proceeding in connection with the foregoing.

9. Assignor, upon request of Assignee, shall execute and deliver such additional documents and do such other acts as may be reasonably necessary to fully implement the intent of this Assignment.

10. Time is of the essence hereof. This Assignment shall be binding upon Assignor and its successors and assigns and shall inure to the benefit of Assignee and its successors and assigns; this Assignment, however, is not intended to confer any right or remedies upon any person other than the parties hereto and their successors and assigns.

11. No failure or delay on the part of Assignee in exercising any right, power or remedy hereunder shall operate as a waiver thereof, nor shall any single or partial exercise of any right, power, or remedy hereunder preclude any other or further exercise thereof or the exercise of any other right, power or remedy. The rights, powers and remedies hereunder are cumulative and may be exercised by Assignee either independently of or concurrently with any other right, power or remedy contained herein or in any document or instrument executed in connection with the Obligation.

IN WITNESS WHEREOF, these presents are executed as of the 16th day of April, 2001.

"ASSIGNOR"	"ASSIGNEE"
JOHN SCREMIN DEVELOPMENT, INC., an Arizona corporation	MARACAY LAS CASITAS, L.L.C., an Arizona limited liability company
By: _____	By: Maracay Homes Arizona I, L.L.C., an Arizona limited liability company, its sole member
Its: _____	By: <u>Jeffrey J. Anderson</u> Its: <u>Manager</u>

2001-04-10


8. Assignor shall indemnify, defend and hold Assignee harmless from any and all damages and losses arising as a result of or related to the Documents, this Assignment or the exercise by Assignee of any of its rights under this Assignment, including, without limitation, any judgment, amounts paid in settlement, and all costs and expenses, including reasonable attorneys' fees, incurred in defending or settling any action, suit or proceeding in connection with the foregoing.

9. Assignor, upon request of Assignee, shall execute and deliver such additional documents and do such other acts as may be reasonably necessary to fully implement the intent of this Assignment.

10. Time is of the essence hereof. This Assignment shall be binding upon Assignor and its successors and assigns and shall inure to the benefit of Assignee and its successors and assigns; this Assignment, however, is not intended to confer any right or remedies upon any person other than the parties hereto and their successors and assigns.

11. No failure or delay on the part of Assignee in exercising any right, power or remedy hereunder shall operate as a waiver thereof, nor shall any single or partial exercise of any right, power, or remedy hereunder preclude any other or further exercise thereof or the exercise of any other right, power or remedy. The rights, powers and remedies hereunder are cumulative and may be exercised by Assignee either independently of or concurrently with any other right, power or remedy contained herein or in any document or instrument executed in connection with the Obligation.

IN WITNESS WHEREOF, these presents are executed as of the 17th day of April, 2001.

"ASSIGNOR"	"ASSIGNEE"
JOHN SCREMIN DEVELOPMENT, INC., an Arizona corporation	MARACAY LAS CASTAS, L.L.C., an Arizona limited liability company
By: 	By: _____
Its: _____	Its: _____



STATE OF Arizona

County of

Maricopa

)

) ss.

)

This instrument was acknowledged before me this 17th day of April, 2001  
by John C. Scremin who acknowledged to be the President of John Scremin Development Inc., and  
signed on behalf of the corporation.

My commission expires:

Susan E. Serrano

Notary Public

STATE OF Arizona

County of

)

) ss.

)

This instrument was acknowledged before me this \_\_\_\_\_ day of \_\_\_\_\_,  
by \_\_\_\_\_

My commission expires:



\_\_\_\_\_  
Notary Public