Knox Place C. C. & R

Table of Contents

Article I Section 1.1 Definitions page 1
Section 1.2 Association 2
Section 1.3 Board or Board of Directors 2
1.4 Committee 2
1.5 Common Area 2
1.6 Maintenance Areas 2
1.7 Developer 2
1.8 First Mortgage 2 & 3
1.9 First Mortgagee 3
1.10 Lot 3
1.11 Member 3
1.12 Owner 3
1.13 Plat 3
1.14 Project 3
1.15 Project Documents 3
Article II Administration, Membership and Voting Rights of the Association
Section 2.1 Basic Duties of the Association 4
2.2 Membership 4
2.3 Transfer of Membership 4
2.4 Membership Classes 4
2.5 Association Voting Requirements 5
2.6 Vesting of Voting Rights 5
2.7 Meetings of the Association 5
2.8 Board of Directors 5
Article III Duties and Powers of the Association
Section 3.1 Maintenance 5 & 6
3.2 Insurance 6
3.3 Enforcement, Penalties, and Remedies 7
3.4 (Intentionally left blank) 7
3.5 Management and other Contracts 7 & 8
3.6 Rules and Regulations 8
Article IV Assessments and Charges
Section 4.1 Assessment Obligations 8
4.2 Purpose of Assessments 9
4.3 Annual Assessments 9
4.4 Special Assessments 10
4.5 Reserves and Working Capital 11
4.6 Procedures for Voting on Assessments 11
4.7 Allocation of Assessments 11
4.8 Commencement of Assessments 11
4.9 Effect of Transfer of lot by Sale or Foreclosure 12
4.10 Remedies for Nonpayment 12
4.11 Suspension of Rights 13
4.12 Other Remedies 13
4.13 Unallocated Taxes / Payment by First Mortgagees 13
Article V Use Restrictions
Section 5.1 Use of Lots as a Single Family Subdivision:
Leases: No Partition 14

5.2 Nature of Buildings / Structures 14
5.3 Animals 14
5.4 Signs: Restrictions on Commercial Uses 15
5.5 Use of Garages 15 & 16
5.6 Size of Houses; Distribution of House Design 16
5.7 Solar Collectors / Antennas / Satellite Dishes 16
5.8 Storage Sheds, Swings, Sliders, Basketball Hoops, Recreational and Other Equipment and Toys 16
5.9 Screening Materials 17
5.10 Lot Maintenance Requirements: Nuisances: Garbage and Rubbish: Storage Areas 17
5.11 Vehicles 17
5.12 Lights: Radios and Other Speakers 18
5.13 Window Cover Materials 18
5.14 Drilling and Mining 18
5.15 Landscaping 19
5.16 No Warranty of Enforceability 19

Article VI Fences, Party Walls, and Easements

Section 6.1 Fence Requirements 19
6.2 Fences as Party Walls 20
6.3 Easements 21

Article VII Architectural Control

Section 7.1 Creation of Committee 23
7.2 Review by Committee 23
7.3 Variances 24
7.4 Declarant's Right to Replat 25

Article VIII General

Section 8.1 Effect of declaration and Remedy 25
8.2 Plurals: Gender 26
8.3 Severability 26
8.4 Transfer By Declarant 26
8.5 Rights of First Mortgagees and Insurers or Guarantors Of First Mortgages 26
8.6 Miscellaneous 27
8.7 Amendments 27

OFFICIAL RECORDS OF
MARICOPA COUNTY RECORDER
HELEN PURCELL
97-0869461 12/11/97 01:53
IRENE 1 OF 1

WHEN RECORDED, MAIL TO:

Jon C. Conner
RISING STAR, INC.
5727 N. 7th Street, Suite 208
Phoenix, Arizona 85014

DECLARATION OF COVENANTS, CONDITIONS AND RESTRICTIONS
KNOX PLACE
MARICOPA COUNTY, ARIZONA

THIS DECLARATION is made and entered into on the date set forth at the end hereof by **Rising Star, Inc. , an Arizona Corporation** , (the **"Declarant"**). Declarant is the owner of certain real property situated in the City of Chandler, County of Maricopa, State of Arizona legally described as follows:

> Lots 1 (one) through 39 (thirty-nine), and Tracts A, B, C, and E, inclusive, Knox Place, according to the plat of record in the office of the County Recorder of Maricopa County, Arizona in Book 455 of Maps Page 49.

Declarant hereby declares that the Project, and all Lots and the Common Area therein, shall be held, conveyed, mortgaged, encumbered, leased, rented, used, occupied, sold and improved subject to the following declarations, limitations, easements, covenants, conditions and restrictions, all of which are and shall be interpreted to be for the purpose of enhancing and protecting the value and attractiveness of the Project and all Lots therein. All of the limitations, covenants, conditions and restrictions shall constitute covenants which shall run with the land and shall be binding upon Declarant, its successors and assigns and all parties having or acquiring any right, title or interest in or to any part of the Project.

ARTICLE I

Definitions

SECTION 1.1

"Assessment" shall mean that portion of the cost of maintaining, improving, repairing, operating, insuring and managing, as applicable, the Common Area Association - Maintenance Areas, and operating the Association, which is to be paid by each Lot Owner as determined by the Association and as provided herein. **"Charges"** are defined in Section 4.1. **"Assessment Lien"** is defined in Section 4.1.

SECTION 1.2

"**Association**" shall mean the **KNOX PLACE HOMEOWNERS ASSOCIATION**, an Arizona nonprofit corporation. The Association shall be established by the filing of its Articles of Incorporation (the "**Articles**") and governed by its Bylaws (the "**Bylaws**").

SECTION 1.3

"**Board**" or "**Board of Directors**" shall mean the governing body of the Association.

SECTION 1.4

"**Committee**" shall mean the Architectural Control Committee for the Project established pursuant to Article VII of this Declaration.

SECTION 1.5

"**Common Area**" shall mean Tract(s) A, B, C and E, inclusive as shown on the Plat including all structures, facilities, improvements and landscaping thereon and all rights, easements and appurtenances relating thereto. Title to the Common Area shall be conveyed to the Association by Declarant free and clear of all monetary liens and encumbrances for the benefit of all of the Lot Owners upon the completion of all of the improvements designed therefore and approved by the Veterans Administration or the Federal Housing Administration (if either agency has approved the proposed development plan of the Project) and the City of Chandler, and prior to the conveyance of the first Lot to an Owner other than Declarant or a Developer. Every Owner shall have a right and easement of ingress and egress and enjoyment in, over and to the Common Area which shall be appurtenant to and shall pass with the title to every Lot, subject to the right of the Association to suspend Common Area use rights as provided in the Bylaws and the right of the Association (with requisite Owner consent) to dedicate or transfer Common Area to any public agency, authority or utility company as provided in the Articles. Any owner may delegate, in accordance with the Project Documents, his right of enjoyment to the Common Area and facilities thereon to members of his family, tenants and contract purchaser who reside on his Lot.

SECTION 1.6

"**Association - Maintenance Areas**" shall mean any improvements within the easements identified on the final plat and used for the benefit of the Common Areas.

SECTION 1.7

"**Developer**" shall mean Declarant and/or **RISING STAR, INC.**, an Arizona corporation, and any other party acquiring two (2) or more undeveloped Lots from the Declarant or a Developer for the purpose of development. Except for the original Declarant identified herein, no Developer shall be a Declarant or may exercise any of Declarant's rights until the provisions of Section 8.4 below are satisfied.

SECTION 1.8

"**First Mortgage**" shall mean any mortgage (which includes a recorded deed of trust and a recorded contract of sale as well as a recorded mortgage) which is a first priority lien on any Lot.

SECTION 1.9

"**First Mortgagee**" shall mean the holder of a First Mortgage.

SECTION 1.10

"**Lot**" shall mean one of the separately designated Lots in the Project as shown on the Plat, together with any improvements thereon. Each numbered and lettered parcel in the Project is a separate freehold estate.

SECTION 1.11

"**Member**" shall mean those persons entitled to Membership in the Association as provided herein.

SECTION 1.12

"**Owner**" shall mean the record holder of title to a Lot in the Project. This shall include any person having fee simple title to any Lot in the Project, but shall exclude persons or entities having any interest merely as security for the performance of any obligation. Further, if a Lot or other property is sold under a recorded contract of sale or subdivision trust to a purchaser, the purchaser, rather than the fee owner, shall be considered the "**Owner**" as long as he or a successor in interest remains the contract purchaser or purchasing beneficiary under the recorded contract or subdivision trust.

SECTION 1.13

"**Plat**" shall mean that certain plat of **KNOX PLACE** recorded in Book ___ of Maps, Page ___ of the Official Records of the Maricopa County, Arizona Recorder, together with any other plat of all or any portion of the Project, as the same are amended from time to time.

SECTION 1.14

"**Project**" shall mean only that certain real property shown on the Plat.

SECTION 1.15

"**Project Documents**" shall mean and include this Declaration, as it may be amended from time to time, the exhibits, if any, attached hereto, the Plat, the Articles and Bylaws and any "**Rules and Regulations**" adopted from time to time by the Association as provided herein or in the Bylaws.

ARTICLE II

Administration, Membership and Voting Rights of the Association

SECTION 2.1: BASIC DUTIES OF THE ASSOCIATION

The management of the Common Area shall be vested in the Association in accordance with this Declaration and the Articles and Bylaws. The Owners covenant and agree that the administration of the Project shall be in accordance with the provisions of the Project Documents, subject to the standards set forth in all applicable laws, regulations and ordinances of any governmental or quasi-governmental body or agency having jurisdiction over the Project. In addition to the duties and powers enumerated in the Bylaws and the Articles, and without limiting the generality thereof, the Association shall have the duties and powers as set forth in Article III below and elsewhere in this Declaration.

SECTION 2.2: MEMBERSHIP

The Owner of a Lot shall automatically, upon becoming the Owner of same, be a Member of the Association and shall remain a Member thereof until such time as his ownership ceases for any reason, at which time his Membership in the Association shall automatically cease. Tenants shall not have any voting or Member-ship rights in the Association by virtue of their occupancy of any Lot or house thereon.

SECTION 2.3: TRANSFER OF MEMBERSHIP

Membership in the Association shall not be transferred, pledged or alienated in any way, except upon the transfer of owner-ship of the Lot to which it is appurtenant, and then automatically to the new Owner as provided in Section 2.2. Any attempt to make a prohibited transfer is void. Upon the transfer of an ownership interest in a Lot, the Association shall record the transfer upon its books, causing an automatic transfer of Membership as provided in Section 2.2.

SECTION 2.4: MEMBERSHIP CLASSES

The Association shall have two (2) classes of voting Membership established according to the following provisions:

A. Class A Membership shall be that held by each Owner of a Lot other than Declarant or a Developer (while two classes of Membership exist), and each Class A Member shall be entitled to one (1) vote for each Lot owned. If a Lot is owned by more than one (1) person, each such person shall be a Member of the Association but there shall be no more than one (1) vote for each Lot.

B. Class B Membership shall be that held by Declarant (including any successor or co-Declarant as provided in Section 8.4) or a Developer, which shall be entitled to three (3) votes for each Lot owned, provided that Class B Membership shall be converted to Class A Membership and shall forever cease to exist on the occurrence of whichever of the following is first in time:

(1) When Declarant and/or Developers have conveyed all of the Lots in the Project to Owners other than Declarant or a Developer; or

(2) The fifth anniversary of the close of escrow for the sale of the first Lot by Declarant or a Developer to an Owner other than Declarant or a Developer.

Notwithstanding the foregoing, Declarant, any co-Declarant and/or any Developer may voluntarily convert its respective Class B Membership to Class A Membership without the prior consent of any other party at any time by giving written notice to the Association.

SECTION 2.5: ASSOCIATION VOTING REQUIREMENTS

Any action by the Association which must have the approval of the Association Membership before being undertaken shall require (i) the vote of fifty-one percent (51%) of the Membership present and voting at a duly called and held meeting of the Member-ship present and voting at a duly called and held meeting of the Membership; or (ii) the written assent of fifty-one percent (51%) of the Membership unless, in either case, another percentage is specifically prescribed by a provision within this Declaration, the Bylaws or the Articles.

SECTION 2.6: VESTING OF VOTING RIGHTS

Voting rights attributable to all Lots owned by Declarant shall vest immediately by virtue of Declarant's ownership thereof. Except for Declarant, no Owner of any Lot shall have any voting rights attributable to that Lot until an Assessment has been levied against that Lot and Owner by the Association pursuant to Article IV below.

SECTION 2.7: MEETINGS OF THE ASSOCIATION

Regular and special meetings of Members of the Association shall be held with the frequency, at the time and place and in accordance with the provisions of the Bylaws.

SECTION 2.8: BOARD OF DIRECTORS

The affairs of the Association shall be managed by a Board of Directors which shall be established and which shall conduct regular and special meetings according to the provisions of the Bylaws.

ARTICLE III

Duties and Powers of the Association

SECTION 3.1: MAINTENANCE

The Association shall maintain, paint, repair, replace, restore, operate and keep in good condition all the Common Areas and all facilities, improvements, furnishings, equipment and landscaping thereon. The Association will also maintain, repair and replace as necessary, as a common

expense of the Association, any drainage channel and/or conduit, pipe, and drains ("drop inlet") to be located within any drainage easements shown on the Plat, (**"Association Maintenance Areas"**). The Owners of the Lots containing any such Association Maintenance Areas shall make no changes, alterations or improvements to, or use of the Association Maintenance Areas that will interfere with or damage any improvements within such area. The responsibility of the Association for maintenance and repair shall not extend to repairs or replacements arising out of or caused by the willful or negligent act or neglect of an Owner or his guests, tenants or invitees. The repair or replacement or maintenance of any landscaped portion of the Common Area or any Lot resulting from any such conduct shall be the responsibility of each Owner. The Association shall be entitled to commence an action at law or in equity to enforce this responsibility and duty and/or recover damages for the breach thereof. Liability hereunder shall be limited to that provided for or allowed in the statutory or case law of the State of Arizona.

SECTION 3.2: INSURANCE

A. Public Liability Insurance. The Association shall obtain and continue in effect comprehensive public liability insurance insuring the Association, the Declarant (while it owns any Lots), any other Developers which own Lots, the agents and employees of each and the Owners and their respective family members, guests and invitees against any liability incident to the ownership or use of the Maintained Area, including, if obtainable, a cross-liability endorsement insuring each insured against liability to each other insured and a "severability of interest" endorsement precluding the insurer from denying coverage to one Owner because of the negligence of other Owners, other insureds or the Association. Such insurance shall be in amounts deemed appropriate by the Board but in no event shall the limits of liability for such coverage be less than $1,000,000 for each occurrence with respect to bodily injury and property damage. In the event insurance proceeds are inadequate therefor, then the Association may levy a special Assessment on Lot Owners therefor as provided in Article IV. The Association's use of funds from its general account or levy of a special Assessment shall not constitute a waiver of the Association's or any Owner's right to institute any legal proceeding or suit against the person or persons responsible, purposely or negligently, for the damage.

B. Fidelity Bonds and Other Insurance. The Association shall obtain and maintain (and/or cause a professional manager employed by the Association to obtain and continually maintain) bonds covering all persons or entities which handle funds of the Association, including without limitation, any such professional manager employed by the Association and any of such professional manager's employees, in amounts not less than the maximum funds that will at any time be in the possession of the Association or any professional manager employed by the Association but in no event less than the total of Assessments for a three (3) month period on all Lots and all reserve funds maintained by the Association. With the exception of a fidelity bond obtained by a professional manager covering such professional manager's employees, all fidelity bonds shall name the Association as an obligee. In addition, all such bonds shall provide that the same shall not be terminated, canceled or substantially modified without at least thirty (30) days' prior written notice to the Association. The Association shall also obtain and maintain any insurance which may be required by law, including, without limitation, workmen's compensation insurance and director's and officer's liability insurance. Further,

unless at least two-thirds (2/3) of the First Mortgagees (based upon one vote for each First Mortgage owned) or Owners (other than the Declarant and Developers) of the individual Lots have given their prior written approval, the Association shall not be entitled to (i) use hazard insurance proceeds for losses to any Maintained Area other than the repair, replacement or reconstruction of such Maintained Area; or (ii) fail to maintain hazard insurance on any insurable amenities, if any, on the Maintained Area. The Association shall have the power and authority to obtain and maintain other and additional insurance coverage, including multi-peril insurance providing at a minimum fire and extended coverage on a replacement cost basis for the Maintained Area improvements, if any, which additional insurance meet the insurance requirements established by the Federal National Mortgage Association (**"FNMA"**) or the Federal Home Loan Mortgage Corporation (**"FHLMC"**), as applicable, so long as either FNMA or FHLMC is a Mortgagee or Owner of a Lot, except to the extent that such coverage is not available or has been waived in writing by FNMA or FHLMC. A First Mortgagee may pay overdue premiums on hazard insurance policies or secure new coverage for the Maintained Area in case of lapse of a policy, and the Association shall immediately reimburse the First Mortgagee therefor.

C. Repair and Replacement of Damage or Destroyed Property. Any Maintained Area improvements damaged or destroyed shall be repaired or replaced promptly by the Association unless repair or replacement would be illegal under any state or local health or safety statute or ordinance. The cost of repair or replacement in excess of insurance proceeds or condemnation awards and reserves shall be paid by the Association and, as provided above, the Association may specially assess the Owners therefor. Any excess or remaining insurance or condemnation proceeds which are not needed to restore the Maintained Area as provided above shall be distributed to the Owners on the basis of an equal share for each Lot. No provisions of the Project Documents shall give a Lot Owner or any other person priority in the case of payment to the Lot Owner of insurance proceeds or condemnation awards for losses to the Maintained Area over any rights of a First Mortgagee.

SECTION 3.3: ENFORCEMENT, PENALTIES AND REMEDIES

The Association shall enforce the provisions of this Declaration and the other Project Documents by appropriate means, including without limitation the expenditure of funds of the Association, the employment of legal counsel and the commencement of legal actions. The Association may adopt a schedule of reasonable monetary penalties for violation by Owners (and others for whom Owners are responsible as provided herein) of the provisions of the Project Documents and impose the same according to procedures in the Bylaws. The Association shall have the additional rights and remedies set forth in Section 8.1, and in Article IV with respect to delinquent Assessments and Charges.

SECTION 3.4: (Intentionally left blank)

SECTION 3.5: MANAGEMENT AND OTHER CONTRACTS

The Association shall have the authority to employ a manager or other persons and to

contract with independent contractors or managing agents to perform all or any part of the duties and responsibilities of the Association, subject to the Bylaws and restrictions imposed by any governmental or quasi-governmental body or agency having jurisdiction over the Project. Any agreement for professional management of the Project or any agreement providing for services by Declarant (or any affiliate of Declarant) shall provide for termination by either party without cause or payment of a termination fee upon ninety (90) days' or less written notice or for cause upon thirty (30) days' or less written notice and without payment of a termination fee. Such agreement shall further provide for a reasonable contract term of from one (1) to three (3) years and be renewable only by consent of the Association and the other party. In addition to the foregoing provisions regarding Association management contracts and contracts with Declarant and its affiliates, Declarant shall not, and shall not have the authority or power to, bind the Association prior to termination of Class B Membership, either directly or indirectly, to contracts or leases unless the Association is provided with a right of termination-nation of any such contract or lease, without cause, which is exercisable without penalty or the payment of a termination fee at any time after the first Board of Directors elected after Class B Membership expires takes office upon not more than ninety (90) days' notice. The foregoing shall not apply to or limit the Declarant's right to enter into (or the terms of) contracts or leases with providers of cable TV or satellite communications services for the benefit of the Project provided that such entities are not affiliates of the Declarant.

SECTION 3.6: RULES AND REGULATIONS

The Association may adopt reasonable Rules and Regulations not inconsistent with this Declaration,the Articles or the Bylaws relating to the conduct of Owners and their tenant and their respective family members, guests and invitees with respect to the Project and other Owners.

ARTICLE IV

Assessments and Charges

SECTION 4.1: ASSESSMENT OBLIGATIONS

Each Owner of any Lot, by acceptance of a deed or recorded contract of sale or beneficial interest in a subdivision trust therefor, whether or not it shall be so expressed in such document, is deemed to covenant and agree to pay to the Association (a) regular annual Assessments, (b) special Assessments for capital improvements and unexpected expenses and (c) other charges made or levied by the Association against the Lot and the Owner thereof including, without limitation, interest, late charges, collection costs, costs and reasonable attorneys' fees incurred by the Association in enforcing compliance with this Declaration or any other Project Documents (whether or not a lawsuit or other legal action is instituted or commenced) which charges are collectively referred to herein as the **"Charges"**. Such Assessments and Charges shall be established and collected as provided herein and in the Bylaws. Any part of any Assessment or Charge not paid within thirty (30) days of the due date therefor as established in this Article IV shall bear interest at the rate of twelve percent (12%) per annum from the due date until paid and shall be subject to a reasonable late charge of $25.00. The

annual and special Assessments and any Charges made against a Lot and the Owner thereof pursuant to this Declaration or the Bylaws shall be a charge and a continuing lien upon the Lot (hereinafter "**Assessment Lien**"). Each such Assessment and Charge shall also be the personal obligation of the person who was the Owner of such Lot at the time the Assessment or other Charge fell due as provided in this Article IV or elsewhere in this Declaration, but this personal liability shall not pass to successor Owners unless specifically assumed by them. The Assessment Lien on each Lot shall be prior and superior to all other liens except (a) all taxes, bonds, Assessments and other levies which, by law, would be superior thereto and (b) the lien or charge of any First Mortgage on that Lot. No Owner of a Lot may exempt himself from liability for Assessments and Charges by the abandonment of his Lot.

SECTION 4.2: PURPOSE OF ASSESSMENTS

The Assessments by the Association shall be used exclusively to promote the recreation, health, safety and welfare of all the residents in the Project, for the improvement and main-tenance of the Maintained Area as provided herein and for the common good of the Project. Annual Assessments shall include an adequate reserve fund for taxes, insurance, maintenance, repairs and replacement of the Maintained Area and other improvements which the Association is responsible for maintaining.

SECTION 4.3: ANNUAL ASSESSMENTS

The Board shall annually determine and fix the amount of the annual (calendar year) Assessment against each Lot, including those owned by Declarant and Developers; provided, however, that the annual Assessment may not exceed the "Maximum Annual Assessment Amount" (as defined below) then in effect unless approved by the Owners as provided below. The annual Assessment shall be prorated based on the number of months remaining before December 31 of such year as well as any partial months remaining.

The Maximum Annual Assessment Amount in the year that Declarant first closes escrow for the sale of any Lot in the Project to an Owner other than Declarant shall be $360.00. Without the vote or approval of the Members of the Association, the Maximum Annual Assessment Amount set forth above may be increased by The Board in each calendar year after the first year during which a Lot in the Project is assessed by the greater of ten percent (10%) of the previous year's maximum annual Assessment or a percentage equal to the percentage increase, if any, in the Consumer Price Index - United States City Average for Urban Wage Earners and Clerical workers - All Items (published by the Department of Labor, Washington, D.C.) for the year ending with the preceding July (or a similar index chosen by the Board if the above-described Index is no longer published). The Maximum Annual Assessment Amount may be increased by an amount in excess of the amount produced by the foregoing formula only if such increase or decrease is approved by the affirmative vote of two-thirds (2/3) of the voting power of each class of Members voting in person or by proxy at a meeting duly called for this purpose, under Section 4.6 below.

Notwithstanding anything to the contrary stated in this article, until Class B Membership is

terminated pursuant to Section 2.4B above, Declarant and any Developers shall be obligated to pay only twenty-five per cent (25%) of the annual Assessment amount fixed for Lots pursuant to this section, and shall pay said percentage of the annual Assessment amount in the same manner established for payment of the annual Assessment amount by other Lot Owners, except that Declarant or any Developer shall pay and be liable for the full Assessment amount for any Lot owned by Declarant or the Developer after said Lot and the house on the Lot are first rented or leased to or occupied by another person. In the event said reduced Assessment amount for Lots owned by Declarant and Developers is insufficient to cover the reasonable share of those Lots' contribution toward insurance costs and depreciation reserves for the Project, as determined by generally accepted cost accounting methods, Declarant and Developer shall also pay such amount monthly or quarterly, as applicable, in addition to said reduced Assessment amount for the Lots, as is necessary to cover those Lots' contribution toward the insurance cost and depreciation reserves, which amount shall be allocated between Declarant and any Developers in proportion to the number of Lots owned by any such party. If Declarant and/or any Developer voluntarily relinquishes its Class B Membership right under Section 2.4B, that party shall pay full Assessments thereafter for all Lots owned by such party, even though other parties retain Class B Membership rights, and the preceding sentence shall thereafter be inapplicable to such Lots.

Until Class B Membership is terminated pursuant to Section 2.4B above, Declarant and/or any Developers, in proportion to the number of Lots owned thereby benefited by reduced Assess-Assessments under the preceding paragraph, shall be responsible for the prompt payment on a current basis of all costs and expenses of areas required to be maintained by the Association hereunder, if any, and all costs incurred by the Association in the performance of its duties, in the event and to the extent that the funds available to the Association are inadequate for payment of such costs and expenses on a current basis. Declarant's or any Developer's failure to perform the requirements contained in this section shall constitute a default under this Declaration entitling any Lot Owner or First Mortgagee to record a notice of lien against the defaulting party's property interest in the Project to enforce the provisions of this section. If Declarant or any Developer relinquishes its Class B Membership rights under Section 2.4B and is therefore paying full Assessments, such party shall have no responsibility under this paragraph for shortfalls/deficits accruing thereafter.

SECTION 4.4: SPECIAL ASSESSMENTS

In addition to the regular annual Assessments authorized above, the Board may levy in any Assessment year a special Assessment applicable to that year only for the purpose of defraying, in whole or in part, the cost of (i) any construction, reconstruction, repair or replacement of a capital improvement upon the Maintained Area or other improvements the Association is responsible for maintaining (including fixtures and personal property related thereto); (ii) any unanticipated or underestimated expense normally covered by a regular Assessment; and (iii) where necessary, for taxes assessed, provided however, that in all events, no such special Assessment shall be made without the affirmative vote of two-thirds (2/3) of the voting power of each class of Members voting in person or by proxy at a meeting duly called for this purpose.

SECTION 4.5: RESERVES AND WORKING CAPITAL

Annual Assessments shall include an adequate reserve fund for taxes, insurance, maintenance, repairs and replacement of the Maintained Area and other improvements which the Association is responsible for maintaining. Declarant shall establish a working capital fund for the Association, for the initial months of Project operations, equal to $60.00 for each Lot in the Project and each Lot's share shall be collected and paid to the Association at the time that the sale of that Lot is closed to an individual purchaser by Declarant or a Developer. Such payment shall be non-refundable and shall not be considered as an advance payment of any Assessments levied by the Association pursuant to this Declaration. The Association may not use any of the working capital funds to defray its expenses, reserve contributions, or construction costs, or make up any budget deficits while Class B Membership exists.

SECTION 4.6: PROCEDURES FOR VOTING ON ASSESSMENTS

Written notice of any meeting called for the purpose of taking any action authorized under Section 4.3 or 4.4 shall be sent to all Owners not less than thirty (30) days nor more than sixty (60) days in advance of the meeting. At the first such meeting called, the presence of Members or proxies therefor entitled to cast sixty percent (60%) of all of the votes of the Membership shall constitute a quorum. If the required quorum is not present, another meeting may be called subject to the same notice requirement and the required quorum a the subsequent meeting shall be one-half (1/2) of the required quorum at the preceding meeting. No such subsequent meeting shall be held more than sixty (60) days following the preceding meeting. While Class B Membership exists, the quorum requirements described above shall apply to both classes and a quorum shall not exist for a meeting unless a quorum of each class is present.

SECTION 4.7: ALLOCATION OF ASSESSMENTS

The Owners of each Lot shall bear an equal share of each regular and special Assessment except as otherwise specified else-where in this Declaration.

SECTION 4.8: COMMENCEMENT OF ASSESSMENTS

The regular annual Assessments provided for herein shall commence as to each Lot in the Project on the first day of the month following the close of escrow of the sale of the first Lot in the Project by Declarant to a Developer or another person. Due dates of Assessments shall be established by the Board and notice shall be given to each Lot Owner at least forty-five (45) days prior to any due date; provided, however, that Owners shall continue to pay Assessments at the last established rate until the Board gives notification of any change in accordance with this Section 4.8. At the option of the Board, all annual Assessments shall be payable in twelve (12) equal monthly installments or four (4) equal quarterly installments and if Assessments are to be due on a monthly basis, no notice of such Assessments shall be required other than an annual notice setting forth the amount of the monthly Assessment and the day of each month on which each Assessment is due.

SECTION 4.9: EFFECT OF TRANSFER OF LOT BY SALE OR FORECLOSURE

The sale or transfer of any Lot shall not affect the Assessment Lien or liability of the former Owner for Assessments or Charges due and payable except as provided below. No sale or transfer of a Lot shall relieve the new Lot Owner from liability for any Assessments or Charges thereafter becoming due or release his Lot from the Lien therefor.

If the First Mortgagee or another person obtains title to a Lot as s result of the foreclosure, trustee's sale or deed in lieu thereof of any First Mortgage, such First Mortgagee or other person shall not be liable for the Assessments and Charges chargeable to such Lot which became due prior to the acquisition of title to such Lot by the First Mortgagee or other person, and the Assessment Lien therefor shall be extinguished. Such unpaid Assessments and Charges shall be deemed to be common expenses collectible from the Owners of all of the Lots through regular annual or special Assessments, subject to the continuing liability of the transferring or foreclosed Owner. In a voluntary conveyance of a Lot, the grantee of the same shall not be personally liable for Assessments or other Charges due to the Association in connection with that Lot which accrued prior to the conveyance unless liability therefor is specifically assumed by the grantee, but the Lot shall remain encumbered by the Assessment Lien therefor. Any grantee, mortgagee or other lienholder shall be entitled to a statement from the Association setting forth the amount of the unpaid Assessments and Charges due the Association for a reasonable preparation charge. The grantee or other person entitled to receive the statement shall not be liable for, nor shall the Lot conveyed be subject to, a Lien for any unpaid Assessments or Charges in excess of the amount set forth in the statement, provided however, the grantee shall be liable for any such Assessment or Charge becoming due after the date of such statement.

SECTION 4.10: REMEDIES FOR NONPAYMENT

When any Assessment or Charge due from an Owner to the Association on behalf of any Lot is not paid within thirty (30) days after the due date, the Assessment Lien therefor may be enforced by foreclosure of the Lien and/or sale of the Lot by the Association, its attorney or other person authorized by this Declaration or by law to make the sale. The Assessment Lien may be foreclosed and the Lot sold in the same manner as a realty mortgage and property mortgaged thereunder, or the Lien may be enforced or foreclosed in any other manner permitted by law for the enforcement or foreclosure of liens against real property or the sale of property subject to such a lien. Any such enforcement, foreclosure or sale action may be taken without regard to the value of such Lot, the solvency of the Owner thereof or the relative size of the Owner's default. Upon the sale of a Lot pursuant to this section, the purchaser thereof shall be entitled to a deed to the Lot and to immediate possession thereof, and said purchaser may apply to a court of competent jurisdiction for a writ of restitution or other relief for the purpose of acquiring such possession, subject to applicable laws. The proceeds of any such sale shall be applied as provided by applicable law but, in the absence of any such law, shall be applied first to discharge costs thereof, including but not limited to court costs, other litigation costs, costs and attorneys' fees incurred by the Association, all other expenses of the proceedings, interest, late charges, unpaid Assessments and other Charges due to the Association,

and the balance thereof shall be paid to the Owner. It shall be a condition of any such sale, and any judgments or orders shall so provide, that the purchaser shall take the interest in the Lot sold subject to this Declaration. The Association, acting on behalf of the Lot Owners, shall have the power to bid for the Lot at any sale and to acquire and hold, lease, mortgage or convey the same. In the event the Owner against whom the original Assessment or Charge was made is the purchaser or redemptioner, the Assessment Lien securing that portion of the Assessment or Charge remaining unpaid following the sale shall continue in effect and said Lien may be enforced by the Association or by the Board for the Association as provided herein. Further, notwithstanding any foreclosure of the Assessment Lien or sale of the Lot, any Assessments and Charges due after application of any sale proceeds as provided above shall continue to exist as personal obligations of the defaulting Owner of the Lot to the Association, and the Board may use reasonable efforts to collect the same from said Owner even after he is no longer a Member of the Association.

SECTION 4.11: SUSPENSION OF RIGHTS

In addition to all other remedies provided for in this Declaration or at law or in equity, the Board may temporarily suspend the Association voting rights of a Lot Owner who is in default in the payment of any Assessment or any other amount due to the Association, as provided in the Bylaws, with such suspension to end upon the Owner's full cure of the default.

SECTION 4.12: OTHER REMEDIES

The rights, remedies and powers created and described in Section 4.10 and 4.11 and elsewhere in the Project Documents are cumulative and may be used or employed by the Association in any order or combination. Without limiting the foregoing sentence, the Association may bring suit to recover a money judgment for unpaid Assessments and Charges, to obtain specific performance of obligations imposed hereunder and/or obtain injunctive relief may be maintained without foreclosing, waiving, releasing or satisfying the Liens created for Assessments or Charges due hereunder.

SECTION 4.13: UNALLOCATED TAXES/PAYMENT BY FIRST MORTGAGEES

In the event that any taxes are assessed against the personal property of the Association, rather than against the Lots, said taxes shall be included in the Assessments made under the provisions of this article, and, if necessary, a special Assessment may be levied equally against all of the Lots in an amount equal to said taxes, as provided in Section 4.4. First Mortgagees may pay taxes or other charges that are in default and that may or have become charges against the Maintained Area and shall be entitled to immediate reimbursement therefor from the Association.

ARTICLE V

Use Restrictions

SECTION 5.1: USE OF LOTS AS A SINGLE FAMILY SUBDIVISION; LEASES; NO PARTITION

(a) Single Family Subdivisions. All Lots within the Project shall be known and described as residential Lots and shall be occupied and used for single family residential purposes only. Business and/or trade uses in the Project shall be restricted as provided in Section 5.4.

(b) Leases. No Owner may rent his/her Lot and the single family house and related improvements thereon for transient or hotel purposes or shall enter into any lease for less than the entire Lot. No lease shall be for a rental period of less than thirty (30) days. Subject to the foregoing restrictions, the Owners of Lots shall have the absolute right to lease their respective Lots provided that the lease is in writing and is specifically made subject to the covenants, conditions, restrictions, limitations, and uses contained in this Declaration and the Bylaws and any reasonable Rules and Regulations adopted by the Association. A copy of any such lease shall be delivered to the Association prior to the commencement of the term of the lease. The Owner is fully responsible for the conduct and actions of his tenants, and his tenant's family members, guests and other invitees.

(c) No Partition. No Owner shall bring any action for or cause partition of any Lot, it being agreed that this restriction is necessary in order to preserve the rights of the Owners. Judicial partition by sale of a single Lot owned by two or more persons or entities and the division of the sale proceeds is not prohibited (but partition of title to a single Lot is prohibited). Notwithstanding the foregoing, a vacant Lot may be split between the Owners of the Lots adjacent to such Lot so that each portion of such Lot would be held in common ownership with another Lot adjacent to that portion, subject to any further requirements or restrictions imposed by the City of Scottsdale. No condominium or time share use shall be created within the Project.

SECTION 5.2: NATURE OF BUILDINGS/STRUCTURES

No buildings or structures shall be moved from other locations onto any Lot, and all improvements erected on a Lot shall be of new construction. No structure of a temporary character and no trailer, shack, garage, barn or other out-building shall be used on any Lot at any time as a residence, either temporarily or permanently. No unsightly structure, object or nuisance shall be erected, placed or permitted on any Lot.

SECTION 5.3: ANIMALS

No livestock, poultry or other animals shall be raised, bred or kept on any Lot except that customary household pets such as dogs, cats and household birds may be kept, but only such number and types shall be allowed which will not create a nuisance or disturb the health, safety, welfare or quiet enjoyment of other Lot Owners. All animals shall be kept under reasonable control at all times and in accordance with applicable laws and any Rules and Regulations adopted by the Association, and shall be restrained by fence or leash from roaming in or through other Owners' Lots. All animal wastes must be promptly disposed of in accordance with applicable city or county regulations, and

must be immediately removed by the animal's owner from any other Owner's Lot. Upon the written request of any Owner, the Board shall conclusively determine, in its sole and absolute discretion, whether a particular animal constitutes a customary household pet or is a nuisance (because of noise or otherwise), or whether the number of animals or birds maintained on any portion of the Project is reasonable, and may require the immediate permanent removal of any animal which it determines is violating these provisions. Any decision rendered by the Board shall be final. Owners shall be liable for any and all damage to property and injury to persons and other animals caused by their household pets and the household pets of their tenants and other occupants.

SECTION 5.4: SIGNS: RESTRICTIONS ON COMMERCIAL USES

No sign of a commercial nature shall be allowed in the Project, except for one "For Rent" or one "For Sale" sign per Lot of no more than five (5) square feet. No institution or other place for the care or treatment of the sick or disabled, physically or mentally (except as provided by the Arizona Developmental Disabilities Act of 1978 § 36-581 et seq., or other applicable federal or state law) shall be placed or permitted to remain on any of the Lots and no theater, bar, restaurant, saloon, or other place of entertainment may ever be erected or permitted on any Lot.

Further, no trade or business of any kind may be conducted in or from any Lot except that an Owner may conduct a business activity within a single-family house located on a Lot so long as the existence or operation of the business activity (a) is not apparent or detectable by sight, sound, or smell from the exterior of the single-family house; (b) conforms to all zoning requirements for the Project; (c) does not increase the liability or casualty insurance obligation or premium of the Association; and (d) is consistent with the residential character of the Project and does not constitute a nuisance or a hazardous or offensive use including, without limitation, excessive or unusual traffic or parking of vehicles in the vicinity of any Lot or the Common Area as may be determined in the sole discretion of the Board. The terms "business" and "trade", as used in the previous sentence, shall be construed to have their ordinary and generally accepted meanings and shall include, without limitation, any occupation, work or activity undertaken on an ongoing basis which involves providing 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 (a) such activity is engaged in full or part-time; (b) such activity is intended to or does generate a profit; (c) a license is required therefor.

Notwithstanding any provision contained herein to the contrary, it shall be expressly permissible for Declarant and any other Developers to move, locate and maintain, during the period of construction and sale of Lots, on such portions of the Project owned by that party as that party may from time to time select, such facilities as in the sole opinion of that party shall be reasonably required, convenient or incidental to the construction of houses and sale of Lots, including but not limited to business offices, storage areas, trailers, temporary buildings, construction yards, construction materials and equipment of every kind, signs, models, and sales offices, except that in the case of Developers, the fore-going shall be subject to the prior reasonable approval of the Declarant.

SECTION 5.5: USE OF GARAGES

No garage may be converted to living space without the prior written approval of the Committee and provided that the exterior appearance shall at all times remain a garage, and except that Declarant and/or Developers may use a garage area in a model home or models for a sales office. Owners shall keep their garages neat, clean and free from clutter, debris or unsightly objects and shall at all times keep garage doors closed except as reasonably necessary for ingress and egress.

SECTION 5.6: SIZE OF HOUSES; DISTRIBUTION OF HOUSE DESIGN

Unless approved in writing by the Committee, no house having less than 1,400 total livable square feet, exclusive of open porches, ramadas, patios, balconies, pergolas, carports, detached garage or attached garage, if any, shall be erected, permitted or maintained on any Lot in the Project. Declarant intends that several basis model plans, perhaps with different exterior elevations, will be utilized in the Project. To ensure acceptable variety of streetscapes within the Project, no more than two (2) houses using the same model plan, the same elevation and the same garage orientation shall be constructed in a row, except in cul de sacs, on curved streets or involving irregular shaped Lots as determined by the Developer.

SECTION 5.7: SOLAR COLLECTORS/ANTENNAS/SATELLITE DISHES

Solar collectors and related equipment may not be installed on roofs of houses but may be located elsewhere on the Lots not visible from other Lots, or adjacent streets with the prior written approval from the Committee pursuant to Article VII prior to installing the same. The Association, through the Committee, may from time to time adopt guidelines con-concerning the types of solar collectors and related equipment which may be installed in the Project and acceptable means of installation therefor. No antenna may be installed on any roof or exceed six (6) feet in height, and the installation of any antenna shall be subject to Committee approval, which may include screening requirements so that no antenna is visible from other Lots, the Common Area or adjacent streets. Satellite dishes for the reception of television signals are permitted on individual Lots, if the plans for the same are reviewed in advance by the Committee and such proposed installation is determined to be predominantly unobtrusive by the Committee. The Committee shall have the right to require the installation of landscaping or other screening around the satellite dish.

SECTION 5.8: STORAGE SHEDS, SWINGS, SLIDERS, BASKETBALL HOOPS, RECREATIONAL AND OTHER EQUIPMENT AND TOYS

No storage and recreational and other equipment and toys sheds or similar or related type objects shall be located on any Lot if the height of such object is greater than the height of the fence on or adjoining said Lot or if such object is visible from the front of the Lot. All swings and slides (including those used in connection with a swimming pool) shall be at least seven (7) feet from all fences located on or near perimeter Lot lines, subject to any further requirements or restrictions of the City of Chandler. The foregoing improvements shall also be subject to the prior approval of the Committee. No outdoor basketball backboard and/or hoops, whether freestanding or attached to any

building, shall be installed on any Lot. Subject to the following subparagraph portable basketball backboards and hoops (i.e., on movable stands) are permitted.

All portable basketball backboards, hoops and stands; other recreational equipment; barbecue; tools; equipment; bicycles and skateboards; and all other items of personal property, when not in actual use, shall be fully removed from the front yard area of the Lot and, if placed in the rear yard of the Lot, shall not be visible above the rear yard fence line.

SECTION 5.9: SCREENING MATERIALS

All screening areas, whether fences, hedges or walls, shall be maintained and replaced from time to time on the Lots by the Owners thereof in accordance with the original construction of the improvements by the Declarant, or as approved by the Committee pursuant to Article VII.

SECTION 5.10: LOT MAINTENANCE REQUIREMENTS; NUISANCES; GARBAGE AND RUBBISH; STORAGE AREAS

Each Owner shall maintain, repair, replace, restore and reconstruct his Lot and the improvements constructed thereon (including the house) so as to keep the same in a good, neat and safe order, condition and repair, in full compliance with all applicable laws and legal requirements and in full compliance with this Declaration and the original plans therefor prepared by Declarant and/or Developer and/or approved by the Committee under Article VII below. Without limiting the generality of the foregoing, the Owner shall keep the roof, exterior walls, doors and windows and other improvements visible from other Lots in good condition by promptly replacing broken roof tiles or windows, periodically repairing stucco cracks and painting, and similar matters. In the event a house is totally or sub-substantially destroyed, the house need not be rebuilt but the Owner shall, within three (3) months, remove all destroyed or damaged improvements and restore the Lot to its condition prior to construction of the house.

No unsightly objects or nuisance shall be erected, placed or permitted on any Lot, nor shall any use, activity or thing be permitted which may endanger the health or unreasonable disturb the Owner or occupant of any Lot. No noxious, illegal or offensive activities shall be conducted on any Lot. Each Lot shall be main-maintained free of rubbish, trash, garbage or other unsightly items and the same shall be promptly removed from each Lot and not allowed to accumulate thereon and further, no garbage, trash or other waste materials shall be burned on any Lot. Garbage cans, clotheslines, woodpiles and areas for the storage of equipment and unsightly items shall be kept screened by adequate fencing or other aesthetically pleasing materials acceptable to the Committee so as to conceal same from the view of adjacent Lots and streets. Garbage cans may be in view only on collection days and thereafter they must be promptly stored out of sight as provided herein.

SECTION 5.11: VEHICLES

No commercial vehicles or "Recreational Vehicles" (including, without limitation, campers,

boats, trailers, mobile homes or similar type vehicles) shall be parked in a front driveway or otherwise on a Lot where it can be seen from any other Lot or any street except for temporary parking only not exceeding twenty-four (24) consecutive hours. Commercial vehicles shall not include sedans or standard size pickup trucks which are used both for business and personal use, provided that any signs or markings of a commercial nature on such vehicles shall be unobtrusive and inoffensive as determined by the Committee. No vehicles (including commercial vehicles and Recreational Vehicles) shall be parked on any street within the Project for more than twenty-four (24) consecutive hours. The Association may prescribe and enforce reasonable safety and other rules and regulations relating to the operation and parking of vehicles on any street within the Project and no vehicles shall be parked in a manner that blocks, hinders or endangers vehicular or pedestrian traffic. No vehicles, or other mechanical equipment may be dismantled or repaired (except for ordinary maintenance and repair of such vehicles, and equipment inside an enclosed garage, and emergency repairs elsewhere for a time period not exceeding forty-eight (48) hours or allowed to accumulate on any Lot or in front of any Lot. No vehicle which is abandoned or inoperative shall be stored or kept on any Lot or in front of any Lot in such manner as to be visible from any other Lot or any street or alleyway within or adjacent to the Project.

SECTION 5.12: LIGHTS; RADIOS AND OTHER SPEAKERS

No spotlights, flood lights or other high intensity lighting shall be placed or utilized upon any lot or any structure erected thereon which in any manner will unreasonably disturb any other Owner's use or enjoyment of his/her Lot or constitute a nuisance and all such lights shall require approval of the Committee. No radio, television or other speakers or amplifiers shall be installed or operated on any Lot so as to be audible from other Lots or the Common Area.

SECTION 5.13: WINDOW COVER MATERIALS

Within sixty (60) days after the date of close of escrow, each Owner shall install permanent draperies or suitable window coverings on windows, and the window portions of any doors facing the street, exclusive of garage windows. No front door screen doors shall be installed on any Lot.

Prior to installation of any reflective materials on the windows or any portion of the house or any other area on any Lot, approval and consent must be obtained from the Committee pursuant to Article VII, except such consent shall not be required for any such installations made by the Declarant or any Developer.

SECTION 5.14: DRILLING AND MINING

No oil drilling, oil development operations, oil refining, quarrying, or mining operations of any kind shall be permitted upon or in any Lot, nor shall oil or water wells, tanks, tunnels, mineral extractions, or shafts be permitted upon or in any Lot. No derrick or other structure designed for use in boring for oil or natural gas shall be erected, maintained or permitted upon any Lot.

SECTION 5.15: LANDSCAPING

Subject to the variance provisions of Section 7.3 below, unless installed by the Developer of a Lot, the front yard land-landscaping on each Lot must be installed and substantially completed in an attractive manner by the Owner within three (3) months from the date of close of escrow, based upon plans therefor approved in advance by the Committee pursuant to Article VII below. The landscape plans submitted to the Committee must include proposed changes in grade to be accomplished as part of the landscaping development.

All landscaping, at all times, must be maintained by each Owner in a neat and attractive manner and any alterations or modifications made to the original front yard landscaping of a Lot as originally installed shall be approved in advance by the Committee. Further, each Owner must maintain, repair and restore any and all grades, slopes, retaining walls and drainage structures other than in the Maintained Area (collectively **"Lot Improvements"**) as installed by Declarant or a Developer on a Lot on which has been approved by the Committee. If any Owner does not (i) install and complete approved front yard landscaping within the three (3) month period described above, (ii) maintain his landscaping in a neat and attractive manner, or (iii) maintain all Lot Improvements on a Lot, the Declarant, the Developer of the Lot or the Association (by action of the Board), after giving the Owner fifteen (15) days' written notice to cure any such default, shall have the right to cause the necessary landscaping work or Lot Improvement to be done and the Owner in default shall be responsible for the cost thereof. Additionally, the party expending funds for such work shall have a lien on the defaulting Owner's Lot for the funds expended together with interest thereon at the rate of fifteen percent (15%) per annum until paid. In addition to the foregoing, any party may utilize remedies available under Section 8.1 for such Owner's default.

SECTION 5.16: NO WARRANTY OF ENFORCEABILITY

While Declarant has no reason to believe that any of the restrictive covenants contained in this Article V or elsewhere 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 of the restrictive covenants. Any Owner acquiring a Lot in the Project in reliance on one or more of such restrictive covenants shall assume all risks of the validity and enforceability thereof and by acquiring the Lot agrees to hold Declarant harmless there-from.

ARTICLE VI

Fences, Party Walls and Easements

SECTION 6.1: FENCE REQUIREMENTS

All Lots, when developed, shall be improved with fences as approved by the Committee, under Article VII below. No side or rear fence and no side or rear wall, other than the wall of the house constructed on said Lot, shall be more than six (6) feet eight (8) inches in height, subject to the

variance provisions of Section 7.3 below, except as installed by Declarant or a Developer in conjunction with retaining or similar walls. Notwithstanding the foregoing, prevailing governmental regulations shall take precedence over these restrictions if said regulations are more restrictive. Unless otherwise approved by the Committee, all fencing and any materials used for fencing, dividing or defining the Lots must be of cement block construction and of new materials, and erected in a good and workmanlike manner. The color(s) of the fencing for all Lots will be as selected by the Developer thereof with the prior approval of the Committee and shall not be changed without the prior approval of the Committee. All fences shall be maintained in good condition and repair, and fences, upon being started, must be completed within a reasonable time not exceeding three (3) months from commencement of construction. If any fence originally installed by an Owner is wholly or partially damaged by any cause, it shall be removed in its entirety or returned to its original condition within three (3) months from the date of damage; any fences originally installed by any Developer, or in a location in which a Developer-installed fence was originally erected, must be promptly restored to their original condition by such Owner, or the Owner(s) of the adjacent Lots if the same is Party Wall under Section 6.2.

Wherever the works **"Party Wall"**, **"Fence"**, **"Fences"** or **"Fencing"** appears in this Declaration, they include block walls, wood fences and other materials used as a fence, fences, wall or walls (except a wall which is part of a house) subject to the provisions of this Section 6.1 requiring cement block construction.

SECTION 6.2: FENCES AS PARTY WALLS

A. Fences which may be constructed by a Developer upon the dividing line between Lots or near or adjacent to said dividing line because of minor encroachments due to engineering errors (which are hereby accepted by all Owners and the Association in perpetuity) or because existing easements prevent a fence from being located on the dividing line, or along the boundary between a Lot and an Association Maintenance Area under Section 3.1, are "Party Walls" and shall be maintained and repaired at the joint cost and expense of the adjoining Lot Owners. Paint and/or stucco surfaces shall be maintained and repainted as necessary by the party whose property is enclosed by the painted and/or stuccoed surface. Fences constructed upon the back of any Lot (which do not adjoin any other Lot or Common Area) by the Developer shall be maintained and repaired at the cost and expense of the Lot Owner on whose Lot (or immediately adjacent to whose Lot) the fence is installed. Such Party Walls and fences shall not be altered, or changed in design, color, material or construction from the original installation made by the Developer without the approval of the adjoining Owner(s), if any, and the Committee. In the event any Party Wall is damaged or destroyed by the act or acts of one of the adjoining Lot Owners, his family, agents, guests or tenants (or by any employee, agent or contractor of the Association), that Owner or the Association shall be responsible for said damage and shall promptly rebuild and repair the Party Wall(s) to its/their prior condition, at his or its sole cost and expense. In all other events when any Party Wall is wholly or partially damaged or in need of maintenance or repair, each of the adjoining Owners (or the adjoining Owner and the Association, if applicable) shall share equally in the cost of replacing the Party Wall or restoring the same to its original condition. For this purpose, said adjoining Owners (or the adjoining Owner and the

Association, if applicable) shall have an easement as more fully described in Section 6.3(A) (2). All gates shall be no higher than the adjacent Party Wall or fence.

B. In the event of a dispute between Owners with respect to the repair or rebuilding of a Party Wall, then, upon written request of one of such Owners addressed to the Committee, the matter shall be submitted to the Committee for arbitration under such rules as may from time to time be adopted by the Committee. If no such rules have been adopted, the matter shall be submitted to three arbitrators, one chosen by each of the Owners and the third arbitrator to be chosen within five (5) days by any judge of the Superior Court of Maricopa County. A determination of the matter signed by any two of the three arbitrators shall be binding upon the Owners who shall share the cost of arbitration equally. In the event one Owner fails to choose an arbitrator within ten (10) days after personal receipt of a request in writing for arbitration from the other Owner, then said requesting Owner shall have the right and power to choose both arbitrators.

SECTION 6.3: EASEMENTS

A. General Easements.

(1) Easements for installation and maintenance of utilities and drainage facilities have been created as shown on the Plat, and additional easements may be created by grant or reservation by the Developer of a portion of the Project for the foregoing purposes. Except as may be installed by any Developer, no structure, planting or other materials shall be placed or permitted to remain within these easements which may interfere with the installation and maintenance of utilities, or which may change the direction or flow of drainage channels in the easements, if any, or which may obstruct or retard the flow of water through the channels in the drainage easements, if any. The easement areas of each Lot and all improvements located thereon shall be maintained continuously by the Owner of the Lot, except for those improvements for which a public authority or utility company or the association is responsible, and except for any easement area referred to in Subsection 6.3(A) below, which will be maintained by the Owner of the Lot who has use of the easement.

(2) For the purpose of repairing and maintaining any Party Wall, an easement not to exceed five (5) feet in width is hereby created over the portion of every Lot immediately adjacent to any Party Wall to allow the adjoining Owner access for maintenance purposes as set forth herein and no other purpose.

(3) In addition to the foregoing, if a Party Wall is not located between Lots, an easement is hereby created for six (6) months after a house is constructed on any Lot for the purpose of constructing and maintaining said Party Wall. With respect to any Party Wall not located on a dividing line between Lots but located near or adjacent to such dividing line, an Owner of a Lot shall have and is hereby granted a permanent easement over any property immediately adjoining said Owner's Lot up to the middle of said Party Wall for

the use and enjoyment of the same.

(4) Each Lot within the Project is hereby declared to have an easement over all adjoining Lots for the purpose of accommodating any encroachment due to minor engineering errors, errors in either the original construction or reconstruction of the buildings on the Lots, or the settlement or shifting of buildings or any other similar cause. There shall be valid easements for the maintenance of said encroachments as long as they shall exist, and the rights and obligations of Owners shall not be altered in any way by said encroachment, settlement or shifting, provided however, that in no event shall a valid easement for encroachment be created in favor of an Owner or Owners if said encroachment occurred due to the willful misconduct of said Owner or Owners.

B. Declarant and Developer Easements.

(1) Declarant and Developers shall have the right and an easement to maintain sales or leasing offices, management offices and models throughout the Project on Lots owned by such party, and to maintain one or more advertising signs while the Declarant or Developer sells Lots in the Project.

(2) Declarant and Developers shall have the right and an easement on and over the Maintained Area to construct thereon all buildings and improvements consistent with the approved plans therefor.

(3) The Declarant and/or Developer shall have an easement on, over and through the Lots (but not through any houses thereon) for any access necessary to complete any renovations, warranty work or modifications to be performed by Declarant or Developer.

C. Association Easements. Declarant hereby creates the following easements in favor of the Association and its directors, officers, agents, employees and independent contractors over the Lots (but not the houses thereon):

(1) For inspection of Lots in order to verify the performance of all Owners of all items of maintenance and repair for which they are responsible;

(2) For inspection, maintenance, repair and replacement of the Maintained Area accessible from the Lots;

(3) For the purpose of enabling the Association, the Board, the Committee or any other committee appointed by the Board, to exercise and discharge their respective rights, powers and duties under the Project Documents. No Owner shall do any act or create any obstruction which would unreasonably interfere with the right or ability of the Association to perform any of its obligations or exercise any of its rights under the powers or easements reserved under this Declaration; and

(4) For maintenance, repair and replacement of drainage channels and other facilities, and landscaping and landscaping water systems, if any, within the Association Maintenance Areas described in Section 3.1 above.

ARTICLE VII

Architectural Control

SECTION 7.1: CREATION OF COMMITTEE

For the purpose of maintaining the architectural and aesthetic integrity and consistency within the Project, an Architectural Control Committee (the "**Committee**") consisting of three (3) members is hereby established, except that the Committee need have only one member while Declarant has the right to appoint the Committee as provided below. The first member of said Committee is R. Barry Tull, who shall serve until his resignation or removal by Declarant, whereupon Declarant, and its successors and assigns to who rights are specifically assigned in writing under Section 8.4, may appoint replacement(s) who need not be Lot Owners. Declarant may waive its right to appoint some or all Committee members at any time by recording an instrument in the office of the Maricopa County Recorder giving notice of the same.

After Class B Membership has terminated, a new Committee may be appointed by the Board of the Association. If no such Committee is appointed, then and in such event, the members of the Committee appointed by the Declarant, and/or its successors and assigns, may, but are not obligated to, continue to act until such time as the Board appoints a new Committee. Members of the Committee appointed by the Board shall serve for a period of one (1) year or until their successors are duly appointed, whichever is later or until they are removed by action of the Board.

A majority of the Committee shall be entitled to take action and make decisions for the Committee. Except for Committee members appointed by the Declarant, all Committee members shall be Owners or representatives of Developers.

SECTION 7.2: REVIEW BY COMMITTEE

No buildings or exterior or structural improvements of any kind, fences, walls, Party Walls, solar collectors, antennas (including customary TV antennas), satellite dishes, underground TV apparatuses, broadcasting towers, other structures, Lot Improvements, landscaping or landscaping changes, or changes to the exterior colors of any of the foregoing (collectively, the "**Alterations**") shall be commenced, erected, made, structurally repaired, replaced or altered (except as set forth below) until the plans and specifications showing the nature, kind, shape, size, height, color, material, floor plan, location and approximate cost of same shall have been submitted to and approved by the Committee. The Committee shall have the right to refuse to approve any Alteration which is not

suitable or desirable in their opinion for aesthetic or other reasons, and they shall have the right to take into consideration (i) the suitability of the proposed Alteration; (ii) the material (including type and color) of which it is to be built; (iii) the site (including location, topography, finished grade elevation) upon which it is proposed to be erected; (iv) the harmony thereof with the surroundings (including color and quality of materials and workmanship); and (v) the effect of the Alteration as planned on the adjacent or neighboring property (including visibility and view). It is Declarant's specific intent that the Committee will require uniform roof, paint and fence materials and colors throughout the Project. Failure of the Committee to reject in writing said plans and specifications within forty-five (45) days from the date the same were submitted shall constitute approval of said plans and specifications, provided the design, location, color and kind of materials in the Alteration shall be governed by all of the restrictions herein set forth. With respect to reviewing an Owner's plans and specifications, the Committee shall have the right to employ professional consultants to review the same to assist it in discharging its duties. In the event the Committed elects to employ such consultant, the Committee shall first give notice to the Owner of the fee required for purposes of hiring any such consultant and the Owner shall promptly pay said consultant's fee to the Committee prior to the Committee being obligated to proceed further with its review of said Owner's submission.

The Committee's approval of Alterations shall not be interpreted or deemed to be an endorsement or verification of the safety, structural integrity or compliance with applicable laws or building ordinances of the Alterations and the Owner and/or its agents shall be solely responsible therefor. The Committee and its members shall have no liability for any lack of safety, integrity or compliance thereof. The Committee and its members shall have no personal liability for judicial challenges to its decisions and the sole remedy for a successful challenge to a decision of the Committee shall be an order overturning the same without creating a right, claim or remedy for damages. The Committee may adopt and amend, from time to time , architectural control guidelines consistent with this section and the Project Documents.

Unless at least two-thirds (2/3) of the First Mortgagees (based upon one (1) vote for each First Mortgage owned) or Owners (other than Declarant) of the individual Lots have given their prior written approval, the Association shall not by act or omission, change, waive or abandon any scheme or regulations, or enforcement thereof, pertaining to the architectural design or the exterior appearance of Lots, Party Walls, fences and driveways, or the upkeep of landscaping in the Project.

SECTION 7.3: VARIANCES

The Committee may (with Board approval in its sole discretion and in extenuating circumstances) grant minor variances from the restrictions set forth in Article V and Article VI of this Declaration and any of the requirements set forth in this Article VII if the Committee determines that (a) either (i) a restriction would create an unreasonable and substantial hardship or burden on an Owner or (ii) a change of circumstances has rendered a restriction obsolete and (b) the activity permitted under the variance will not have a substantially adverse effect on other Owners and its consistent with the high quality of life intended for the Project.

SECTION 7.4: DECLARANT'S RIGHT TO REPLAT

Declarant hereby reserves the right, in its sole discretion, and without the consent of the Committee or any other Owner or lienholder (except as provided herein), to amend the Plat with regard to any Lots which Declarant owns from time to time. Notwithstanding the foregoing, such replatting shall not affect the boundaries of any other Owner's Lot and shall always comply with all zoning and other applicable statutes, rules, ordinances and regulations of any governmental or quasi-governmental agency having jurisdiction over the Project. Subject to satisfaction of the foregoing conditions, any amendment to the Plat prepared and recorded by Declarant may reconfigure Declarant's Lots.

ARTICLE VIII

General

SECTION 8.1: EFFECT OF DECLARATION AND REMEDIES

The declarations, limitations, easements, covenants, conditions and restrictions contained herein shall run with the land and shall be binding on all persons purchasing (or whose title is acquired by foreclosure, deed in lieu thereof, trustee's sale or otherwise) or occupying any Lot in the Project after the date on which this Declaration is recorded. In the event of any violation or attempted violation of these covenants, conditions, and restrictions, they may be enforced by an action brought by the Association, the Committee or by the Owner or Owners (not in default) of any Lot or Lots in the Project, at law or in equity, in addition to the Association's remedies in Section 3.3 and 4.10. Declarant has no duty to take action to remedy any such default. Remedies shall include but not be limited to damages, injunctive relief and/or any and all other rights or remedies pursuant to law or equity and the prevailing party shall be entitled to collect all costs incurred and reasonable attorneys' fees sustained in commencing and/or defending and maintaining such lawsuit. Not with-standing the foregoing, an Owner's liability for damage to the Maintained Area or Lots (including improvements thereon) of other Owners by reason of the acts of the Owner, the Owner's tenants, and their respective family members, guests, invitees or licensees shall be limited to that imposed under applicable Arizona statutory, case and other law. Any breach of these covenants, conditions and restrictions, or any remedy by reason thereof, shall not defeat nor affect the lien of any mortgage or deed of trust made in good faith and for value upon the Lot in question and the breach of any of these covenants, conditions and restrictions may be enjoined, abated or remedied by appropriate proceedings, notwithstanding the lien or existence of any such mortgage or deed of trust.

All instruments of conveyance of any interest in any Lot shall contain (and if not, shall be deemed to contain) a reference to this Declaration and shall be subject to the declarations, limitations, easements, covenants, conditions and restrictions herein as fully as though the terms and conditions of this Declaration were therein set forth in full; provided, however, that the terms and conditions of this Declaration shall be binding upon all persons affected by its terms, whether express reference is made to this Declaration or not in any instrument of conveyance. No private agreement of any adjoining property owners shall modify or abrogate any of these restrictive covenants, conditions and restrictions.

SECTION 8.2: PLURALS: GENDER

Whenever the context so requires, the use of the singular shall include and be construed as including the plural and the masculine shall include the feminine and neuter.

SECTION 8.3: SEVERABILITY

Invalidity of any one or more of these covenants, conditions and restrictions or any portion thereof by judgment or court order shall in no way affect the validity of any of the other provisions and the same shall remain in full force and effect.

SECTION 8.4: TRANSFER BY DECLARANT

Wherever Declarant is granted certain rights and privileges hereunder, Declarant shall have the right to fully or partially assign and transfer any of such rights and privileges as to the Lots which it owns to any other Developer as evidenced by a written instrument recorded in the office of the Maricopa County Recorder which describes in detail the particular Declarant's right or rights being assigned (if less than all such Declarant rights) and said instrument shall state that, in such case, the assignee is a co-Declarant or if Declarant has assigned all its rights in said instrument, it shall state that the assignee is a successor Declarant. If the operation of this Section 8.4 results in there being more than one Declarant at any one time, all such Declarants shall be co-Declarants holding the rights assigned to them by their original assignor. Upon an assignment by Declarant of its rights hereunder, Declarant shall thereafter have no further liability, responsibility or obligations for future acts or responsibilities of the successor or co-Declarant hereunder and the successor or co-Declarant shall be solely responsible therefor (to the extent of the assignment) and all parties shall look to the successor or co-Declarant therefor. At any time, Declarant or a co-Declarant may, by a written, recorded notice, relinquish all or any portion of its rights hereunder and all parties shall be bound thereby, except that no Declarant or co-Declarant, nor its successors or assigns, may relinquish the rights of any other Declarant. Declarant (or a successor) may collaterally assign all of its rights and privileges to act as Declarant for the Project to a lender as additional security for any loan from the lender encumbering all or substantially all of the Lots in the Project owned by such Declarant, with such assignment to become absolute and final in favor of such lender or a purchaser at a foreclosure or trustee's sale upon that party's acquisition of fee title to the encumbered Lots, unless such party otherwise specifies in a recorded instrument.

SECTION 8.5: RIGHTS OF FIRST MORTGAGEES AND INSURERS OR GUARANTORS OF FIRST MORTGAGES

Upon written request to the Association identifying the name and address of the First Mortgagee for any Lot or the insurer or guarantor of any such First Mortgage and the Lot number or address, any such First Mortgagee or insurer or guarantor of such First Mortgage will be entitled to timely written notice of:

(a) Any condemnation loss or any casualty loss which affects a material portion of the Project or any Lot on which there is a First Mortgage held, insured or guaranteed by such First Mortgagee or insurer or guarantor, as applicable;

(b) Any delinquency in the payment of Assessments or Charges owed or other default in the performance of obligations under the Project Documents by an Owner of a Lot subject to a First Mortgage held, insured or guaranteed by such First Mortgagee or insurer or guarantor which remains uncured for a period of sixty (60) days;

(c) Any lapse, cancellation or material modification of any insurance policy or fidelity bond maintained by the Association; and

(d) Any proposed action which would require the consent of a specified percentage of Eligible First Mortgagees as described in this Declaration.

SECTION 8.6: MISCELLANEOUS

This Declaration shall remain and be in full force and effect for an initial term of thirty-five (35) years from the date this Declaration is recorded. Thereafter, this Declaration shall be deemed to have been renewed for successive terms of ten (10) years, unless revoked by an instrument in writing, executed and acknowledged by the then Owners of not less than seventy-five percent (75%) of the Lots in the Project, and by "Eligible First Mortgagees" (those First Mortgagees who have filed a written request with the Association requesting notice of certain matters set forth in Section 8.5 of this Declaration) holding First Mortgages on Lots which have at least sixty-seven percent (67%) of the votes of Lots subject to First Mortgages held by Eligible First Mortgagees, which said instrument shall be recorded in the office of the Maricopa County Recorder's Office, Arizona, not earlier than ninety (90) days prior to the expiration of the initial effective period hereof, or any ten (10) year extension. If there is any conflict between any of the Project Documents, the provisions of this Declaration shall prevail. Thereafter, priority shall be given to the Project Documents in the following order: the Plat, Articles, Bylaws and Rules and Regulations of the Association. As long as there is Class B Membership, the following actions require the prior approval of the Federal Housing Administration or the Veterans Administration if either of those agencies has approved the development plan of the Project: annexation of additional properties, and withdrawal or deannexation of any property from this Declaration.

SECTION 8.7: AMENDMENTS

At any time, this Declaration may be amended by an instrument in writing, executed and acknowledged by the then Owners of not less than sixty-seven percent (67%) of the Lots in the Project; provided however, that the Declarant, while Class B Membership exists, may amend this Declaration to comply with the guidelines or regulations of any governmental or quasi-governmental agency insuring, guaranteeing or purchasing loans in the Project, without the consent of any other

Owner or lienholder including First Mortgagees. The approval of Eligible First Mortgagees holding First Mortgages on Lots which have at least fifty-one percent (51%) of the votes of Lots subject to First Mortgages held by Eligible First Mortgagees shall be required to add to or amend any "material" provisions of the Project Documents which establish, provide for, govern and regulate any of the following:

(a) voting;

(b) Assessments, Assessment Liens or subordination of such Liens;

(c) reserves for maintenance, repair and replacement of the Common Area;

(d) insurance or fidelity bonds;

(e) rights to use of or reallocation of interests in the Common Area;

(f) responsibility for maintenance and repair of the various portions of the Project;

(g) expansion or contraction of the Project or the addition, annexation or withdrawal of property to or from the Project;

(h) convertibility of Lots into Common Area;

(i) leasing of Lots;

(j) imposition of any right of first refusal or similar restriction on the right of a Lot Owner to sell, transfer or otherwise convey his Lot;

(k) any provisions which are for the express benefit of First Mortgagees, Eligible First Mortgagees or Insurers or Guarantors of First Mortgages on Lots held by Eligible First Mortgagees;

(l) boundaries of any Lot except as expressly provided in Section 7.4 above;

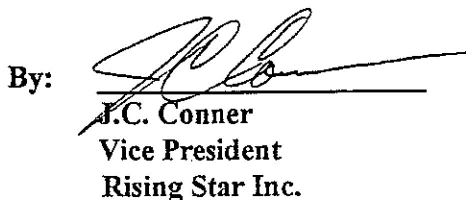
(m) a decision by the Association to establish self-management when professional management had been required previously by the Project Documents or an Eligible First Mortgagee;

(n) restoration or repair of the Project (after hazard damage or partial condemnation) in a manner other than as specified in the Project Documents; and

(o) any action to terminate the legal status of the Project after substantial destruction or condemnation occurs.

An addition or amendment to the Project Documents shall not be considered "material" if it is for the purpose of correcting technical errors or for clarification only. An Eligible First Mortgagee which receives a written request to approve additions or amendments pursuant to this paragraph and which does not deliver or post to the requesting party a negative response within thirty (30) days after such notice was delivered thereto by certified or registered mail, return receipt requested, shall be deemed to have approved such request. The consents required under this Section 8.7 shall not apply to amendments recorded by Declarant to comply with governmental or quasi-governmental agency regulations as described above.

DATED this 10th day of December, 1997.



By: ______________________
J.C. Conner
Vice President
Rising Star Inc.

STATE OF ARIZONA)
) ss.
County of Maricopa)

On this 10th day of December, 1997, personally appeared before me, a Notary Public in and for the above county and state, Jon C. Conner, Vice President of Rising Star Inc., personally known to me to be the person whose name is subscribed to the above instrument and who acknowledged that he freely and voluntarily executed the foregoing instrument for the purposes therein contained.

Notary Public

My Commission Expires: