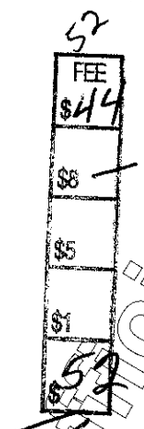

AZTA Folder

Ana Wayman-Trujillo, Recorder
OFFICIAL RECORDS OF YAVAPAI COUNTY
ARIZONA TITLE AGENCY INC RES

B-4352 P-543
01/09/2006 11:06A
52.00 3962931

B-4352 P-543
Page 1 of 44
RES 3962931

DECLARATION OF COVENANTS, CONDITIONS AND RESTRICTIONS

FOR

TIERRA VERDE

UnOfficial Copy

Table of Contents:

Article 1 Definitions

1.1 "Annual Assessment"
1.2 "Architectural Review Committee"
1.3 "Areas of Association Responsibility"
1.4 "Articles"
1.5 "Assessable Property"
1.6 "Assessment"
1.7 "Assessment Lien"
1.8 "Assessment Period"
1.9 "Association"
1.10 "Association Rules"
1.11 "Board"
1.12 "Builder"
1.13 "Bylaws"
1.14 "Common Areas"
1.15 "Common Expenses"
1.16 "Declarant"
1.17 "Declarant Party" or "Declarant Parties"
1.18 "Declaration"
1.19 "Design Guidelines"
1.20 "Exempt Property"
1.21 "First Mortgage"
1.22 "First Mortgagee"
1.23 "Improvement"
1.24 "Include" or "Including"
1.25 "Lessee"
1.26 "Lot"
1.27 "Maintenance Standard"
1.28 "Member"
1.29 "Owner"
1.30 "Person"
1.31 "Plat"
1.32 "Property" or "Project"
1.33 "Project Documents"
1.34 "Purchaser"
1.35 "Recording"
1.36 "Resident"
1.37 "Residential Unit"
1.38 "Special Assessment"
1.39 "Transition Date"

UnOfficial Copy

1.40 **"Visible from Neighboring Property"**

Article 2 Plan of Development; Certain Project Disclosures

2.1 **Property Subject to the Declaration**.
2.2 **Restricted Access Gate: No Liability of Association and Declarant Parties for Certain Matters.**
2.3 **Views Not Guaranteed.**
2.4 **Disclaimer of Implied Covenants.**
2.5 **Disclaimer of Representations.**

Article 3 Use Restrictions

3.1 **Architectural Control.**
3.2 **Temporary Occupancy and Temporary Buildings.**
3.3 **Nuisances: Construction Activities**
3.4 **Minimum and Maximum Building Sizes; Building Height**.
3.5 **Fencing**
3.6 **Antennas:**
3.7 **Mineral Exploration.**
3.8 **Trash Containers and Collection.**
3.9 **Clothes Drying Facilities.**
3.10 **Utility Service.**
3.11 **Overhead Encroachments**
3.12 **Residential Use**.
3.13 **Animals**
3.14 **Machinery and Equipment.**
3.15 **Signs**
3.16 **Trucks, Commercial Vehicles, Campers and Boats.**
3.17 **Motor Vehicles**.
3.18 **All-Terrain Vehicles.**
3.19 **Towing of Vehicles.**
3.20 **Garages and Driveways.**
3.21 **Drainage.**
3.22 **Mechanical Equipment**.
3.23 **Basketball Goals and Backboards, Tennis Courts, Sport Courts.**
3.24 **Violation of Law or Insurance.**
3.25 **Lights and Noise.**
3.26 **Window Coverings.**
3.27 **Fire Pits.**
3.28 **Fire Sprinkler System.**
3.29 **Fire/Building Repair.**

UnOfficial Copy

Article 4 Easements

4.1 **Easement for Use of Tract A and Within the Ingress/Egress, Road, Drainage and Public Utility Easement.**
4.2 **Declarants Use for Sales and Leasing Purposes.**
4.3 **Declarant's Easements.**
4.4 **Easement in Favor of Association.**
4.5 **Easement for Unintended Encroachments.**

Article 5 The Association; Organization; Membership and Voting Rights

5.1 **Formation of Association.**
5.2 **Board of Directors and Officers.**
5.3 **The Association Rules.**
5.4 **Personal Liability.**
5.5 **Implied Rights.**
5.6 **Identity of Members.**
5.7 **Classes of Members and Voting Rights.**
5.8 **Voting Procedures.**
5.9 **Transfer of Membership**
5.10 **Architectural Review Committee**
5.11 **Suspension of Voting Rights.**
5.12 **Contract with Others for Performance of Association's Duties.**

Article 6 Covenant for Assessments and Creation of Lien

6.1 **Creation of Lien and Personal Obligation of Assessments.**
6.2 **Annual Assessments.**
6.3 **Rate of Assessment.**
6.4 **Obligation of Declarant for Deficiencies.**
6.5 **Special Assessments.**
6.6 **Assessment Period.**
6.7 **Commencement Date of Assessment Obligation.**
6.8 **Rules Regarding Billing and Collection Procedures.**
6.9 **Effect of Nonpayment of Assessments: Remedies of the Association.**
6.10 **Evidence of Payment of Assessments.**
6.11 **Purposes for which Association Funds May Be Used.**.
6.12 **Surplus Funds.**
6.13 **Working Capital Fund.**
6.14 **Reserve Fund.**

UnOfficial Copy

6.15 Reserves.
6.16 Transfer Fee.

Article 7 Maintenance

7.1 Areas of Responsibility
7.2 Lots.
7.3 Assessment of Certain Costs for Maintenance and Repair.
7.4 Improper Maintenance and Use of Lots.
7.5 Maintenance of Fences.

Article 8 Insurance

8.1 Scope of Coverage.
8.2 Insurance Obtained by Owners.

Article 9 General Provisions

9.1 Enforcement
9.2 Termination
9.3 Amendments.
9.4 Rights of First Mortgage
9.5 Interpretation
9.6 Severability
9.7 Rule Against Perpetuities
9.8 Change of Circumstances
9.9 Notice of Violation
9.10 Laws, Ordinances and Regulations
9.11 References to this Declaration in Deeds
9.12 Gender and Number.
9.13 Captions and Titles.
9.14 No Absolute Liability
9.15 Dispute Notification and Resolution Procedure
9.16 Required Consent of Owners for Legal Action
9.17 Limitation on Declarant's Liability

UnOfficial Copy

DECLARATION OF COVENANTS, CONDITIONS AND RESTRICTIONS FOR TIERRA VERDE

This Declaration of Covenants, Conditions and Restrictions for Tierra Verde (the "Declaration") is made this 3rd day of January, 2006 by CDR Associates Inc, and Arizona Corporation (the "Declarant")

Article 1
Definitions

Unless otherwise defined, the following words and phrases when used in this Declaration shall have the meanings set forth in this Article.

1.1 **"Annual Assessment"** means the assessments levied against each Lot pursuant to Section Of this Declaration

1.2 **"Architectural Review Committee"** means the committee of the Association to be created pursuant to Section Of this Declaration.

1.3 **"Areas of Association Responsibility"** means all areas contained within tract A and all improvements situated within the ingress/egress, road, drainage and public utility easement as shown on the plat. Also included are improvements constructed within the ten (10) foot monument easement shown on Lot 9 of the Plat, and the Vista Serrena Way Entry Gate System, and the private drainage easement area contained on Lot 176 Sedona Meadows Subdivision Unit #2. In addition, areas of Association Responsibility includes any project boundary fencing installed by Declarant and any project landscaping within the cul-de-sac for Stanley Steamer Drive or other project landscaping installed in the area in the above noted easements and within the sewer easement along east boundary of the project.

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

1.5 **"Assessable Property"** means any Lot, except such Lots or parts thereof that may from time to time be Exempt Property.

UnOfficial Copy

1.6 **"Assessment"** means an Annual Assessment, a Water Company Assessment or a Special Assessment.

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

1.8 **"Assessment Period"** means the period set forth in Section 6.6 Of this Declaration.

1.9 **"Association"** means Tierra Verde Community Association, and Arizona nonprofit corporation, or such other Arizona nonprofit corporation to be organized by Declarant to administer and enforce the Project Documents and to exercise the rights, powers and duties set forth therein, and its successors and assigns.

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

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

1.12 **"Builder"** means any Person purchasing a Lot to construct a Residential Unit thereon for later sale to an Owner.

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

1.14 **"Common Areas"** means all areas contained within tract A and all improvements situated within the ingress/egress, road, drainage and public utility easement as shown on the plat. Also included are improvements constructed within the ten (10) foot monument easement shown on Lot 9 of the Plat, and the Vista Serrena Way Entry Gate System and the private drainage easement area contained on Lot 176 Sedona Meadows Subdivision Unit #2. In addition, areas of Association Responsibility includes any project boundary fencing installed by Declarant and any project landscaping within the cul-de-sac for Stanley Steamer Drive or other project landscaping installed in the area in the noted easements and within the sewer easement along east boundary of the project.

1.15 **"Common Expenses"** means the actual or estimated expenses incurred or anticipated to be incurred by the Association, together with any allocations to reserves.

1.16 **"Declarant"** means CDR Associates Inc., an Arizona Corporation, its

UnOfficial Copy

successors, and any Person to whom it may expressly assign any or all of its rights under this Declaration by a Recorded instrument.

1.17 **"Declarant Party" or "Declarant Parties"** means collectively Declarant, its builders, general contractors or brokers, or their agents or employees.

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

1.19 **"Design Guidelines"** means the rules and guidelines adopted by the Architectural Review Committee pursuant to Section 5.10 of this Declaration, as amended or supplemented from time to time.

1.20 **"Exempt Property"** means (I) all real property and improvements owned by, or dedicated to and accepted by the United States, State of Arizona, the County of Yavapai, or any political subdivision thereof (Including any domestic water entity or sanitary sewer entity serving the Residents and Owners), so long as such entity or political subdivision is the owner thereof or for so long as said dedication remains effective: (ii) all Common Areas; and (iii) all Lots or other real property within the Project owned by Declarant, or any wholly-owned subsidiary of Declarant, except for property owned by Declarant or such a subsidiary that is subject to a contract for the conveyance of real property subject to the provisions of A.R.S. §33-741 et seq.

1.21 **"First Mortgage"** means any mortgage, deed of trust or contract for sale pursuant to the provisions of A.R.S. §33-741 et seq. encumbering a Lot which has priority over all other mortgages, deeds of trust and contracts for sale on the same Lot.

1.22 **"First Mortgagee"** means the holder or beneficiary of any First Mortgage.

1.23 **"Improvement"** means any Residentail Unit, guest house, building, fence, wall or other structure (Including any sheds, basketball poles/hoops, play structures, patio covers, balconies, light fixtures and light poles), and any swimming pool, tennis court, sport court, road, driveway, parking area (paved or unpaved), water well facilities, irrigation facilities, and any plants, trees, shrubs, grass and other landscaping improvements of every type and kind.

1.24 **"Include" or "Including"** means include or including, without limitation.

1.25 **"Lessee"** means the lessee or tenant under a lease, oral or written, of any Lot Including an assignee of a lease.

UnOfficial Copy

1.26 **"Lot"** means a portion of the Project intended for independent ownership and use for residential purposes and designated as a lot on the Plat.

1.27 **"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.

1.28 **"Member"** means any Person who is a Member of the Association that holds a "Membership" created pursuant to Article 5.

1.29 **"Owner"** means the record owner, whether one or more Persons, of beneficial or equitable title (and legal title if the same has merger with the beneficial or equitable title), to the fee simple interest of a Lot. Owner shall not include Persons having an interest in a Lot merely as security for the performance of an obligation or 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 Lots subject to a deed of trust Recorded pursuant to A.R.S. §33-801, et seq., the trustor shall be deemed to be the Owner. In the case of the Lots 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.

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

1.31 **"Plat"** means the final plat of Tierra Verde recorded in Book ___ of Maps and Plats, pages ___ & ___, Official Records of Yavapai County Recorder, Yavapai County Arizona, and all amendments, supplements and corrections thereto.

1.32 **"Property" or "Project"** means the real property reflected on the final Plat of Tierra Verde recorded in Book 55 of Maps and Plats, pages 77 & 79 Official Records of Yavapai County Recorder, Yavapai County Arizona, and all amendments, supplements and corrections thereto.

1.33 **"Project Documents"** means this Declaration, the Articles, the Bylaws, the

UnOfficial Copy

Association Rules and the Design Guidelines.

1.34 **"Purchaser"** means any Person, other than the Declarant, who by means of a voluntary transfer becomes the Owner of a Lot, 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 Lot, is assigned any or all of the Declarant's rights under this Declaration and in such assignment is declared not to be a Purchaser.

1.35 **"Recording"** means placing an instrument of public record in the Official Records of Yavapai County Records, Yavapai County Arizona, and "Recorded" means having been so placed of public record.

1.36 **"Resident"** means each natural person occupying or residing in a Residential Unit within the Project.

1.37 **"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.

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

1.39 **"Transition Date"** means the first to occur of:
(i) the day on which title to the last Lot in the Project owned by the Declarant is conveyed to a third party for value, other than as security for the performance of an obligation, or
(ii) the expiration of any seven (7) year period during which title to no Lot in the Project is conveyed by Declarant to a third party for value, other than as security for the performance of an obligation, or
(iii) the date twenty (20) years after the date this Declaration is Recorded, or
(iv) such earlier date as Declarant declares to be the Transition Date in a Recorded instrument.

1.40 **"Visible from Neighboring Property"** means, with respect to any given object, that such object is or would be visible to a person six (6) feet tall, standing at ground level on any part of an adjoining Lot, Common Area or street.

Article 2
Plan of Development; Certain Project Disclosures

UnOfficial Copy

2.1 **Property Subject to the Declaration.** Declarant intended by this Declaration to impose upon the Property mutually beneficial restrictions under a general plan of improvement and desire to provide a flexible and reasonable procedure for the overall development of the Property and to establish a method for the administration, maintenance, preservation, use and enjoyment of the Property. Declarant hereby declares that all the Property shall be held, sold, used and conveyed subject to the easements, restrictions, conditions and covenants set forth in this Declaration, which are for the purpose of protecting the value and desirability of the Property, and which shall run with the Property. Declarant further declares that this Declaration shall be binding upon all Persons having any right, title or interest in the Property or any part thereof, their successors, successors in title and assigns and shall inure to the benefit of each subject to this Declaration, each Person, for himself or itself, his heirs, personal representatives, successors, transferees and assigns, binds himself, his heirs, personal representatives, successors, transferees and assigns to all of the provisions, restrictions, covenants, conditions, rules and regulation 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, sale, lease and use of the Property 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, 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, covenant and agree 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 **Restricted Access Gate; No Liability of Association and Declarant Parties for Certain Matters.** The Declarant intends to construct a gated entrance into the Project as shown on the Plat, in order to limit vehicular access to the Project and to provide some privacy for the Owners and Residents. Each Owner, Lessee and Resident, on behalf of its family members, invitees and licensees, acknowledges, understands and agrees as follows:

(i) Declarant Parties make to representations or warranties that a gated entrance will provide security and safety to Owners, Lessees, Residents and their families, invitees and licensees.

(ii) The gated entrance may restrict or delay entry into the Project by police, fire department, ambulances and other emergency vehicles or personnel.

UnOfficial Copy

(iii) For as long as Declarant owns any Lot in the Project, Declarant may allow the gated entrance to remain open during business and construction hours for the period of time necessary to sell and/or construct infrastructure to the Project and Improvements upon all Lots and Residential Units owned by Declarant and other subdivision Improvements.

Each Owner, Lessee and Resident, on behalf of its family members, invitees and licensees, assumes the risk that the gated entrance may not provide security and safety any may restrict or delay entry into the Project by police, fire department, ambulances and other emergency vehicles and personnel. Neither the Declarant Parties, the Association, nor any director, officer, agent or employee of any of the foregoing, shall be liable to any Owner, Resident, Lessee or its family, invitees or licensees for any claims or damages resulting, directly or indirectly, from the construction, operation or maintenance of the gated entrance.

2.3 **Views Not Guaranteed.** Although certain Lots in the Project at any point in time may have particular views, no express or implied rights or easements exist for views of for the passage of light and air to any Lot or Residential Unit. Neither Declarant Parties nor Association makes any representation of warranty whatsoever, express or implied, concerning the view which any Lot or Residential Unit will have whether as of the date this Declaration is Recorded or thereafter. Any view which exists at any point in time for a Lot or a Residential Unit may be impaired or obstructed by further construction within or outside the Project, Including by construction of Improvements (Including landscaping) by Declarant, construction by third parties (Including other Owners and Residents) and by the natural growth of landscaping. No third party, Including any broker or salesperson, has any right to bind Declarant or the Association with respect to the preservation of any view from any Lot or Residential Unit constructed thereon or any view of a Lot or Residential Unit constructed thereon from any other property.

2.4 **Disclaimer of Implied Covenants.** Nothing contained in this Declaration and nothing which may be represented to a Purchaser by real estate brokers or salespersons shall be deemed to create any implied covenants, servitudes or restrictions with respect to the use of any Property subject to this Declaration.

2.5 **Disclaimer of Representations.** Declarant makes no representations or warranties whatsoever that: (i) the Project will be completed in accordance with the plans for the Project as they exist on the date of 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 changes in the future.

UnOfficial Copy

Article 3
Use Restrictions

3.1 **Architectural Control.**

3.1.1 No excavation or grading work shall be performed on any Lot without the prior written approval of the Architectural Review Committee.

3.1.2 No Improvements which would be Visible from Neighboring Property at the time it is constructed or would be Visible from Neighboring Property with the passage of time (such as trees or large bushes an shrubs) shall be constructed or installed on any Lot without the prior written approval of the Architecture Review Committee. No addition, alteration, repair, change or other work which in any way alters the exterior appearance, which are Visible from Neighboring Property, from their appearance on the date this Declaration is Recorded shall be made or done without the prior written approval of the Architectural Review Committee. Any Owner desiring approval of the Architectural Review Committee for the construction, installation, addition, alteration, repair, change or other work which the Owner desires to perform, including the distance of such work from neighboring properties, if applicable. Any Owner requesting the approval of the Architectural Review Committee also shall submit to the Architectural Review Committee any additional information, plans and specifications which the Architectural Review Committee may request. In the event that the Architectural Review Committee fails to approve or disapprove an application for approval within sixty (60) days after the application, together with any fee payable pursuance to Section 3.1.6 of this Declaration and all supporting information, plans and specifications requested by the Architectural Review Committee, have been submitted to the Architectural Review Committee, approval will not be required and this Section will be deemed to have been complied with by the Committee of an construction, installation, addition, alteration, repair, change or other work pursuant to this Section shall not be deemed a waiver of the Architectural Review Committee's right to withhold approval of any similar construction, installation, addition, alteration, repair, change or other work subsequently submitted for approval.

3.13 In reviewing plans and specifications for any construction, installation, addition, alteration, repair, change or other work which must be approved by the Architectural Review Committee, the Architectural Review Committee, among other things, may consider the quality of workmanship and design, harmony of external design with the existing structures and location in relation to surrounding structures, topography and finish grade elevation. The Architectural

UnOfficial Copy

Review Committee may disapprove plans and specifications for any constructions, installation, addition, alteration, repair, change or other work which must be approved by the Architectural Review Committee pursuant to this Section 3.1 if the Architectural Review Committee determines , in its sole and absolute discretion that: (I) the proposed construction, installation, addition, alteration, repair, change or other work would violate any provision of this Declaration; (ii) the proposed construction, installation, addition, alteration, repair, change or other work does not comply with any Design Guideline; (iii) the proposed construction, installation, addition, alteration, repair, change or other work is not in harmony with existing Improvements in the Project or with Improvements previously approved by the Architectural Review Committee by not yet constructed; (iv) the proposed construction, installation, addition, alteration, repair, change or other work is not aesthetically acceptable; (v) the proposed construction, installation, addition, alteration, repair, change or other work would be detrimental to or adversely affect another Owner or the appearance of the Project; or (vi) the proposed construction, installation, addition, alteration, repair, change or other work is otherwise not in accord with the general plan of development for the Project.

3.1.4 Upon receipt of the approval from the Architectural Review 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 Review Committee as soon as practicable and shall diligently pursue such work so that it is completed as soon as reasonable practicable and within such time as may be prescribed by the Architectural Review Committee or as set forth in the Design Guidelines.

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

3.1.6 The Architectural Review Committee shall have the right to charge a fee for reviewing requests for approval of any construction, installation, alteration, addition, repair, change or other work pursuant to this Section 3.1, which fee shall be payable at the time the application for approval is submitted to the Architectural Review Committee.

3.1.7 All Improvements constructed on Lots shall be of new construction and no building or other structures shall be removed from other locations to any Lot.

3.1.8 The provisions of this Section do not apply to, and approval of the Architectural Review Committee shall not be required for, the

UnOfficial Copy

construction, erection, installation, addition, alteration, repair, change or replacement of any Improvements made by, or on behalf of, the Declarant, any member of Declarant or any Person affiliated or controlled by Declarant or any member of Declarant.

3.1.9 The approval required of the Architectural Review Committee pursuant to this Section 3.1 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, Including any such approvals and permits as set forth on the Plate. The approval by the Architectural Review Committee of any construction, installation, addition, alteration, change or other work pursuant to this Section 3.1 shall not be deemed a waiver of the Architectural Review Committee's right to withhold approval of any similar constructions, installation, addition, alteration, change or other work subsequently submitted for approval.

3.1.10 The approval by the Architectural Review Committee of any construction, installation, addition, alteration, repair, change or other work pursuant to this Section 3.1 shall not be deemed a warranty or representation by the Architectural Review Committee as to the quality of such construction, installation, addition, alteration, repair, change or other work or that such construction, installation, addition, alteration, repair change or other work conforms to any applicable building codes or other federal, state or local law, statute, ordinance, rule or regulation.

3.1.11 The Architectural Review Committee may condition its approval of plans and specifications upon the agreement by the Owner submitting such plans and specifications (other than the Declarant who shall not be subject to the provisions of this Subsection) to furnish to the Association a bond or other security acceptable to the Architectural Review Committee in an amount determined by the Architectural Review Committee to be reasonably sufficient to: (i) assure the completion of the proposed Improvements or the availability of funds adequate to remedy any nuisance or unsightly conditions occurring as a result of the partial completion of such Improvement, (ii) remove any construction debris from a Lot which is permitted to accumulate in violation of Section 3.3 of this Declaration, and (iii) to repair any damamge which might be caused to any Area of Association Responsibility as a result of such work. Any such bond shall be released or security shall be fully refundable to the Owner upon: (a) the completion of the Improvements in accordance with the plans and specifications approved by the Architectural Review Committee; and (b) the Owner's written requeset to the Architectural Review Committee, provided that the Owner has satisfactorily corrected any condition described in (i), (ii) and (iii) above which may have existed

UnOfficial Copy

during construction.

3.1.12 If the plans and specifications pertain to an Improvement which is within an Area of Association Responsibility so that the Association is responsible for the maintenance, repair and replacement of such Improvement, the Architectural Review Committee may condition its approval of the plans and specifications for the proposed construction, installation, addition, alteration, repair, change or other work with respect to the Improvement on the agreement of the Owner to reimburse the Association for the future cost of the repair, maintenance or replacement of such Improvement.

3.2 **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. No temporary construction buildings or trailers may be installed or kept on any Lot without the prior written approval of the Architectural Review Committee. Any such temporary buildings or trailers approved by the Architectural Review 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 of excess of twelve months without the prior written approval of the Architectural Review Committee.

3.3 **Nuisances: Construction Activities**. No animal wastes, rubbish or debris of any kind shall be placed or permitted to accumulate upon or adjacent to any Lot or Common Area, and no odors, fumes, dust, smoke, glare, heat, vibration, electromechanical disturbances, electromagnetic disturbances, radiation, danger of fire or explosion or loud noises shall be permitted to exist, arise or emit therefrom, so as to render any such property of 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 use of a Lot shall be permitted which will result in the discharge of toxic or hazardous materials into the Sewer System or Water System. No other nuisance shall be permitted to exist or operate upon any Lot so as to be offensive or detrimental to any other property in the vicinity thereof or to its occupants. Normal construction activities and parking in connection with the building of Improvements on a Lot shall not be considered a nuisance or otherwise prohibited by this Declaration, but Lots 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 Review Committee. In addition, any construction equipment and building materials stored or kept on any Lot during the construction of the Improvements may be kept only in areas approved in

UnOfficial Copy

writing by the Architectural Review Committee, which may also require screening of the storage areas. The Architectural Review 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.

3.4 **Minimum and Maximum Building Sizes; Building Height**.

3.4.1 No Residential Unit shall be constructed with a liveable area above grade of less and 1800 square feet, exclusive of any basement, guest house, accessory buildings, breezeways, screened porches, terraces, patios and garages.

3.4.2 Except for a Residential Unit that is approved to be constructed on more than one Lot which an Owner may apply to the Architectural Review Committee for permission to construct a larger Residential Unit, no Residential Unit (including the square footage of any guest house constructed on the Lot, whether attached or detached) shall be constructed with a livable area of more than 5000 square feet, which shall include any accessory building and guest house, but shall exclude breezeways, basements, screened porches, terraces, patios and garages.

3.4.3 No portion of any Residential Unit shall exceed the immediately adjacent natural grade by more than twenty-five (25) feet, as measured to the midpoint of a peaked roof or the parapet of a flat roof.

3.5 **Fencing:** Fencing of Lot Boundaries is not permitted. Fencing or site walls in connection with the Residential Unit for pools, courtyards or similar purposes shall be permitted, subject to approval of the Architectural Review Committee.

3.6 **Antennas:** Except as permitted under the Design Guidelines, no antenna, aerial, satellite television dish or other device for the transmission or reception of televisions or radio signals or any other form of electromagnetic radiation proposed to be erected, used or maintained outdoors on any portion of the Project, whether attached to a Residential Unit or structure or otherwise, shall be erected or installed without the prior written consent of the Architectural Review Committee.

3.7 **Mineral Exploration.** No Lot 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.

3.8 **Trash Containers and Collection.** No garbage or trash shall be placed or kept on any Lot, except in covered containers of a type, size and style which are approved by the Architectural Review Committee. In no event shall such

UnOfficial Copy

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 Lots and other property and shall not be allowed to accumulate thereon. No outdoor incinerators shall be kept or maintained on any Lot or other property. Because of the Entry Gate and Private Road, trash collection shall be established by the Board by contract, Each owner shall be responsible for payment and maintenance of their service account with one collection company for all residential units within the project.

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

3.10 **Utility Service.** No lines, wires, or other devices for the communication or transmission of electric currents or power, Including telephone, television, and radio signals shall be erected, placed or maintained anywhere in or upon any Lot unless the same shall be contained in conduits or cables installed and maintained underground or concealed in, under or on 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 Review Committee or constructed by Declarant, an affiliate of Declarant or an affiliate of a member of Declarant.

3.11 **Overhead Encroachments.** No tree, shrub, or planting of any kind on any Lot shall be allowed to overhang or otherwise to encroach upon any sidewalk, street, pedestrian way or other are from ground level to a height of eight (8) feet.

3.12 **Residential Use**. All Residential Units shall be used, improved and devoted exclusively to residential use. No trade or business may be conducted on any Lot or 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

UnOfficial Copy

be construed to have ordinary, generally accepted meanings, and shall Include any occupation, work or activity undertaken on an ongoing basis which involves the provision of goods or services to persons other than the Residents of a provider's Residential Unit 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 or does generate a profit; or (c) a license is required for such activity. The leasing of a Residential Unit by the Owner thereof shall not be considered a trade or business within the meaning of this Section.

3.13 **Animals** No animal, bird, fowl, poultry, reptile or livestock may be kept on any Lot, except that no more than a reasonable number of generally recognized house or yard pets ("Permitted Pets") may be kept on a Lot if they are kept, bred or raised thereon solely as domestic pets and not for commercial purposes. All Permitted Pets shall be confined to the Owner's Lot except that a dog may be permitted to leave the Owner's Lot if such dog is at all times kept on a leash. No Permitted Pet shall be allowed to make an unreasonable amount of noise or to become a nuisance. No structure for the care, housing or confinement of any Permitted Pet shall be maintained so as to be Visible From Neighboring Property without the prior written consent of the Architectural Review Committee. Upon the written request of any Owner, Lessee or Resident, the Board shall determine, in its sole and absolute discretion, whether, for the purposes of this Section (i) a particular Permitted Pet is a nuisance and making an unreasonable amount of noise, (ii) a particular per is a Permitted Pet, and (iii) the number of Permitted Pets kept on a Lot is a reasonable number. Any decision rendered by the Board shall be enforceable in the same manner as other restrictions set forth in this Declaration. Any Owner, Resident or other person who brings or permits a pet to be on the Common Area or any Lot or street shall be responsible for immediately removing any feces deposited by said pet.

3.14 **Machinery and Equipment.** No machinery or equipment of any kind shall be placed, operated or maintained upon or adjacent to any Lot, except 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 such machinery or equipment which the Declarant or the Association may require for the operation and maintenance of the Project. Special equipment or Machinery for the purposes of solar power generation or related equipment may be permitted subject to the approve of the Architectural Review Committee.

3.15 **Signs** No signs whatsoever (Including commercial, political and similar signs) which are Visible From Neighboring Property shall be erected or maintained on any Lot without the prior written approval of the Architectural Review

UnOfficial Copy

Committee except:
(i) Signs required by legal proceedings
(ii) Residence identification signs provided the size, color, content and location of such signs have been approved in writing by the Architectural Review Committee or are consistent with the provisions set forth in the Design Guidelines.
(iii) One (1) "For Sale" sign placed by a professional residential real estate brokerage company or placed by the Owner of the Lot, provided that the Architectural Review Committee shall reserve the right to prescribe within the Design Guidelines the size, materials, color and format of such signs.

3.16 **Trucks, Commercial Vehicles, Campers and Boats.** No truck, mobile home, travel trailer, tent trailer, trailer, camper shell, detached camper, recreational vehicle, boat, boat trailer, commercial vehicle or other similar equipment or vehicle may be parked, maintained, constructed, reconstructed or repaired on any Lot or Common Area so as to be Visible From Neighboring Property , except for: (I) the temporary parking of a motor home, camper, recreational vehicle or boat and boat trailer on the concrete driveway situated on a Lot for a period for the purpose of loading or unloading such vehicle or equipment; (ii) temporary construction trailers or facilities maintained during, and used exclusively in connection with, the construction of any Improvement approved by the Architectural Review Committee; (iii) boats and motor vehicles parked in garages on Lots so long as such vehicles are in good operating condition and appearance and are not under repair; or (iv) motor vehicles not exceeding seven (7) feet in height and twenty-two (22) feet in length that are not used for commercial purposes and which do not display any commercial name, phone number or message of any kind and that are parked in the garage or on the driveway situated on a Lot, provided that such vehicles shall not be parked in such a manner as to black the sidewalks or impede pedestrian traffic in any way.

3.17 **Motor Vehicles**. Except for emergency vehicle repairs, no automobile or other motor vehicle shall be constructed, reconstructed or repaired upon a Lot or other property in the Project so as to be Visible From Neighboring Property, and no inoperable vehicle may be stored or parked on any such Lot or other property so as to be Visible from Neighboring Property. Parking on streets is prohibited.

3.18 **All-Terrain Vehicles.** All terrain vehicles and motorized scooters are prohibited from operating within the Project.

3.19 **Towing of Vehicles.** The Board shall have the right to have any mobile home, travel trailer, tent trailer, trailer, camper shell, detached camper, recreational vehicle, boat, boat trailer or similar equipment or vehicle or any

UnOfficial Copy

automobile, truck, 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. 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 said amounts in the same manner provided for in this Declaration for the collection of Assessments.

3.20 **Garages and Driveways.** Garages situated on Lots shall be used only for the parking of vehicles and shall not be used or converted for living or recreational activities without the prior written approval of the Architectural Review Committee. Garages may be used for the storage of material so long as the storage of material does not result in inadequate parking for the motor vehicles of the Residents of a Lot.

3.21 **Drainage.** No 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 in accordance with the drainage plans for the Project, or any part thereof, or for any Lot as shown on the drainage plans on file with the municipality in which the Project is located. No Person shall alter the grading of a Lot or alter the natural flow of water over and across a Lot without the prior written approval of the Architectural Review Committee.

3.22 **Mechanical Equipment**. No air conditioning units or appurtenant equipment may be mounted, installed or maintained on the roof of any Residential Unit or other buildings on a Lot so as to be Visible From Neighboring Property, and any such equipment installed on the ground shall be screened from adjacent Lots and streets. Equipment or Machinery installed for the purpose of solar power generation may be installed on roof areas subject to approval from the Architectural Review Committee.

3.23 **Basketball Goals and Backboards, Tennis Courts, Sport Courts.** No basketball hoop, goal or backboard, whether permanent or portable, tennis court or sport court shall be constructed or installed on any Lot without the prior written approval of the Architectural Review Committee.

3.24 **Violation of Law or Insurance.** No Owner shall permit anything to be done or kept in or upon a Lot which will result in the cancellation or increase in premium, or reduction in coverage, or insurance maintained by any Owner or the Association or which would be in violation of any law.

3.25 **Lights and Noise.** Any lights installed on a Lot shall comply with the City

UnOfficial Copy

of Sedona Outdoor Lighting Ordinance. No spotlights, flood lights or other high intensity lighting shall be placed or utilized upon any Lot that in any manner will allow light ot be directed or reflected unreasonably upon any other Lot. No radio, television or other speakers or amplifiers shall be installed or operated on any Lot so as to be audible from other Lots, the Common Area or street.

3.26 **Window Coverings.** No window which would be Visible From Neighboring Property shall at any time be covered with aluminum foil, bed sheets, newspapers or any other like materials. No reflective materials shall be installed or used on any Improvement without the prior written consent of the Architectural Review Committee.

3.27 **Fire Pits.** Outdoor cooking shall be permitted only in cooking devices prescribed in the Design Guidelines.

3.28 **Fire Sprinkler System.** In accordance with the requirements of Sedona Fire District, each Residential Unit will be equipped with a fire sprinkler system and each Owner shall maintain the fire sprinkler system in good working condition.

3.29 **Fire/Building Repair.** In the event that any Improvement is destroyed or partially destroyed by fire, act of God or as the result of any other act or thing, the damage must be repaired and the Improvement reconstructed or razed immediately upon receipt of insurance proceeds but in no event later than twelve (12) months after such damage. Notwithstanding the foregoing, if a dangerous condition shall exist because of such damage, it shall immediately be corrected so as to not cause harm to another Person.

Article 4
Easements

4.1 **Easement for Use of Tract A and Within the Ingress/Egress, Road, Drainage and Public Utility Easement.** Every Owner, Lessee and Resident shall have a non-exclusive right and easement of use and enjoyment in and to Tract A and within the Ingress/Egress, Road, Drainage and Public Utility Easement.

4.2 **Declarants Use for Sales and Leasing Purposes**. Declarant shall have the right and an easement to maintain sales or leasing offices, management offices, models and parking areas for the purpose of accommodating Persons visiting such model homes and sales offices, throughout the Project and to maintain one or more advertising, identification or directional signs on the

UnOfficial Copy

Common Area or on the Lots owned or leased by Declarant while the Declarant is selling Lots and/or constructing Improvements. Declarant reserves the right to place models, management offices, sales and leasing offices and parking lots on any Lots owned or leased by Declarant and on any portion of the Common Area in such number, of such size and in such locations as Declarant deems appropriate. Declarant also shall have the right to assign to a Builder the right and an easement to maintain sales or leasing offices, management offices, models and parking areas within the Project for the same purpose as Declarant, except that any such assignment shall be at th sole and absolute discretion of Declarant and upon terms acceptable to Declarant and shall be evidenced by a Recorded instrument. In the event of any conflict or inconsistency between this Section and any other provision of this Declaration, the Section shall control.

4.3 **Declarant's Easements.** Declarant shall have the right and an easement on and over the Areas of Association Responsibility to construct all Improvements the Declarant may deem necessary and to use the Areas of Association Responsibility and any Lots 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, Including the use of any such areas for temporary construction roadways. The Declarant shall have the right and an easement upon, over and through the Areas of Association Responsibility as may be reasonably necessary for the purpose of discharging its obligations of exercising the right granted to or reserved by the Declarant by this Declaration. In the event of any conflict or inconsistency between this Section and any other provision of this Declaration, this Section shall control.

4.4 **Easement in Favor of Association.** The Lots (except for the interior of the Residential Unit or other buildings) are hereby made subject to the following easements in favor of the Association and its directors, officers, agents, employees and independent contractors:

4.4.1 For inspection of the Lots in order to verify the performance by Owners of all items of maintenance and repair for which they are responsible.

4.4.2 For inspection, maintenance, repair and replacement of the Areas of Association Responsibility accessible only from such Lots.

4.4.3 For correction of emergency conditions in one or more Lots.

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

4.4.5 For inspection of the Lots in order to verify that the provisions of the Project Documents are being complied with by the Owners, their

UnOfficial Copy

guests, Lessees, invitees and the other Residents of a Lot.

4.5 **Easement for Unintended Encroachments.** To the extent that any Improvement upon a Lot or Common Area encroaches on any other Lot or Common Area as a result of the original construction shifting or settling, or alteration or restoration authorized by this Declaration or any other reason other than the intentional encroachment on a Lot or Common Area by an Owner, a valid easement for the encroachment, and for the maintenance thereof, exists.

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.

5.2 **Board of Directors and Officers.** The affairs of the Association shall be conducted by the Board and such officers as the Board may elect or appoint in accordance with the Articles and the Bylaws. Until the Transition Date, the directors of the Association shall be appointed by and may be removed by the Declarant. After the Transition Date, directors shall be elected by the Members in accordance with the Articles and 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 Board. The Board shall have the power to levy reasonable fines against an Owner for a violation of the Project Documents by the Owner, a Lessee of the Owner or by any Resident of the Owner's Lot, and to impose late charges for payment of such fines if such fines remain unpaid fifteen (15) or more days after the due date, provided that the late charge shall not exceed the grater of fifteen dollars ($15.00) or ten percent (10%) of the amount of the unpaid fine, or such greater amount as permitted under applicable law. Notwithstanding the foregoing, to the extent applicable law from time to time (i) provides for any shorter period of time after which fines may or shall become delinquent, such shorted period of time may be established by the Board to apply in lieu of the time period set forth in this Section and (ii) provides for an increased amount to be charged as a late charge for such fines, such amount may be modified by the Board to apply in lieu of the late charge set forth in this Section.

5.3 **The Association Rules.** The Board may, from time to time, adopt, amend and repeal rules and regulations pertaining to: (i) the management, operation and use of the Areas of Association Responsibility. (ii) minimum standards

UnOfficial Copy

for any maintenance of Lots; (iii) the health, safety or welfare of the Owners, Lessees and Residents, or (iv) restrictions on the use of Lots. In the event of any conflict or inconsistency between the provisions of this Declaration and the Associations Rules, the provisions of this Declaration shall prevail. The Association Rules shall be enforceable in the same manner and to the same extent as the covenants, conditions and restrictions set forth in this Declaration.

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, 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 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 **Identity of Members.** Membership in the Association shall be limited to (I) the Declarant and (ii) the Owners of Lots (Including Builders) which are Assessable Property. An Owner of a Lot which is Assessable Property shall automatically, upon becoming the Owner thereof, be a Member of the Association and shall remain a Member of the Association until such time as his ownership ceases for any reason, at which time his Membership in the Association shall automatically cease. Membership in the Association shall be appurtenant to each Lot owned by the Declarant and each Lot which is Assessable Property and may not be separately assigned, transferred or conveyed.

5.7 **Classes of Members and Voting Rights.** No Members other than the Declarant shall have any voting rights until the Transition Date. After the Transition Date, the Association shall have the following two classes of voting Memberships:

(i) Class A. Class A Membership shall be all Memberships except for the Class B Memberships held by the Declarant and each Owner shall be entitled to one vote for each Class A Membership held by such Owner.

(ii) Class B. Class B Memberships shall be all Memberships held by the

UnOfficial Copy

Declarant. The Declarant shall be entitled to two (2) votes for each Membership held by the Declarant. The Class B Memberships shall expire when the Declarant no longer owns any property within the Project.

5.8 **Voting Procedures.** No change in the ownership fo the Lot shall be effective for voting purposes unless and until the Board is given actual written notice of such change and is provided satisfactory proof thereof. The vote or votes for each such 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 or votes representing a certain Lot, it will thereafter be conclusively presumed for all purposes that he was acting with the authority and consent of all other Owners of the same Lot unless objection thereto is made at the time the vote is cast.

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 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 said Lot to the new Owner thereof. Each Purchaser of a Lot shall notify the Association of such purchase within ten (10) days after becoming the Owner of a Lot.

5.10 **Architectural Review Committee.** The Association shall have an Architectural Review Committee to perform the functions of the Architectural Review Committee set forth in this Declaration. The Architectural Review Committee shall consist of such number of regular members and alternate members as may be provided for in the Bylaws. So long as the Declarant is a Member of the Association, the Declarant shall have the sole right to appoint and remove the members of the Architectural Review Committee, and in that event the Declarant may require, for so long as the Declarant is a Member of the Association, that specified actions of the Architectural Review Committee, as described in a recorded instrument executed by them be approved by the Declarant before they become effective. The Architectural Review Committee may adopt, amend and repeal architectural guidelines, standards and procedures to be used in rendering its decisions. Such guidelines, standards and procedures may Include provisions regarding (i) architectural design, with particular regard to the harmony of the design with the surrounding structures and topography; (ii) placement of Residential Units

UnOfficial Copy

and other buildings; (iii) landscaping design, content and conformance with the character of the Property and permitted and prohibited plants; (iv) requirements concerning exterior color schemes, exterior finishes and materials; (v) signage; and (vi) perimeter and screen wall design and appearance. The decision of the Architectural Review Committee shall be final on all matters submitted to it pursuant to this Declaration.

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 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 attorney's fees, are brought current, and until any other infractions or violations of the Project Documents are corrected.

5.12 **Contract with Others for Performance of Association's Duties.** Subject to the restrictions and limitations contained herein, the Association may enter into contracts and transactions with other, Including Declarant and its affiliated companies, and such contracts or transactions shall not be invalidated or in any way affected by the fact that one or more directors or officers of the Association or members of any committee are employed by or otherwise connected with Declarant or its affiliates, provided that the fact of such interest shall be disclosed or known to the other directors acting upon such contract or transaction, and provided further that the transaction or contract is fair and reasonable. Any such director, officer or committee member may be counted in determining the existence of a quorum at any meeting of the Board or committee of which such person is a member which shall authorize any contract or transaction described above or grant or deny any approval sought by Declarant, its affiliated companies or any competitor thereof and may vote at the meeting to authorize any such contract, transaction or approval with like force and effect as if he were not so interested.

Article 6
Covenant for Assessments and Creation of Lien

6.1 **Creation of Lien and Personal Obligation of Assessments.** Each Owner, other than the Declarant (except as provided in Section 6.____ of this Declaration, 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

UnOfficial Copy

in this Declaration. The Assessments, together with interest, late charges and all costs, Including reasonable attorney's 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 reasonable attorney's fees, incurred by the Association in collecting or attempting to collet 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.

6.2 **Annual Assessments.**

6.2.1 In order 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, the Board, for each Assessment Period, shall assess against each Lot which is Assessable Property an Annual Assessment, which shall be allocated to each Lot in accordance with Section 6.__ below. The total amount to be assessed against the Lots as an Annual Assessment shall be the amount which is reasonably estimated by the Board to produce income to the Association equal to the total budgeted Common Expenses taking into account other sources of funds available to the Association.

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 during any Assessment Period that the funds budgeted for that Assessment Period are, or will, become inadequate to meet all Common Exdpenses for any reason, Including nonpayment of law, for that Assessment Period and the revised Annual Assessment to the extent permitted by designated by the Board. Notwithstanding any provision in the Declaration, Bylaws or Association Rules, the Board shall not impose an Annual Assessment in any Assessment Period in excess of that amount permitted by law; however, to the extent that the law shall permit any increase in the Annual Assessment which requires that approval of the majority of the Members, such increase shall be implemented only upon approval of the majority of the Members.

6.3 **Rate of Assessment.** The amount of the Annual Assessment for each Lot owned by Class A Members shall be the amount obtained by dividing that total budget of the Association contemplated upon completion of the Project

UnOfficial Copy

by the total number of Lots in the Project.

6.4 **Obligation of Declarant for Deficiencies.** Until the Transition Date, Declarant shall pay and contribute to the Association, within thirty (30) days after the end of each fiscal year of the Association, or at such other times as may be requested by the Board with reasonable notice, such finds as may be necessary, when added to the Annual Assessments then collected by the Association, to pay all Common Expenses of the Association as they become due. Notwithstanding the foregoing sentence, Declarant shall not be obligated to pay to the Association pursuant to this Section any funds for the establishment of replacement and maintenance reserves. In the event that more than one Declarant owns Lots, the payment of any deficiency shall be divided between each Declarant on a prorate basis according to the number of Lots owned by each Declarant as of the date the request for such deficiency payment is made by the Board.

6.5 **Special Assessments.** The Association may levy against each Lot owned by a Class A Member a Special Assessment for the purpose of defraying, in whole or in part, the cost of any construction, repair or replacement of an Improvement upon an Area of Association Responsibility, Including fixtures and personal property related thereto, provided that any Special Assessment is approved by Members having more than two-thirds (2/3) of the votes in each Class of Membership entitled to be cast by Members present in person or by proxy at a meeting duly called for such purpose.

6.6 **Assessment Period.** The period for which the Annual Assessment is to be levied (the "Assessment Period") shall be the calendar year, except that the first Assessment Period, and the obligation of the Owners to pay Assessments, shall commence upon the conveyance of the first Lot to a Purchaser 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 **Commencement Date of Assessment Obligation.** Each Lot shall be subject to assessment upon the conveyance thereof to a Person other than Declarant.

6.8 **Rules Regarding Billing and Collection Procedures.** Annual Assessments shall be collected on a monthly or quarterly basis or such other basis as may be selected by the Board. Special Assessments may be collected as specified 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 the 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

UnOfficial Copy

Assessment Lien therefor shall not be foreclosed until the Member has been given not less than thirty (30) days written notice prior to such foreclosure 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 prior to 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 but 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 fifteen (15) days after the Assessment or the installment of the Assessment first became due (or such longer period of time as required by applicable law) shall be deemed delinquent and shall bear interest from the date on which such Assessment or installment fo the Assessment became due at the rate of twelve percent (12%) per annum. In addition, the Board may establish a late fee, not to exceed the greater of fifteen dollars ($15.00) or ten percent (10%) of the amount of the unpaid Assessment or installment thereof (but in no event an amount greater than permitted under applicable law), to be charged to any Owner who has not paid any Assessment, or any installment of an Assessment, within fifteen (15) days after such payment was due. Notwithstanding the foregoing, to the extent applicable law from time to time provides for any shorter period of time after which Assessments or any other amounts payable hereunder may or shall become delinquent, such shorter period of time may be established by the Board to apply in lieu of the time period set forth in this Section, and to the extent applicable law from time to time provides for any greater amount of late fee or other amount to be charged to any Owner deemed delinquent in the payment of any Assessment, or any installment of an Assessment, such greater amount may be established by the Board to apply in lieu of the late fee set forth in this Section.

6.9.2 The Association shall have a 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 monetary penalties levied against the Owner of a Lot; (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; (v) any amounts payable to the Association pursuant to Section 7.4 or 7.5 of this Declaration; and (vi) any other amounts payable to the Association pursuant to the Project

UnOfficial Copy

Documents. The 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 attorney's fees. Before recording and Notice of Lien against a Lot, the Association shall make a written demand to the defaulting Owner for payment of the delinquent Assessments and all other amounts due to the Association by such Owner. 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 a Recording of Notice of Lien against a Lot. If the Association records a Notice of Lien, the Association may charge the Owner of the Lot against which the Notice of Lien is recorded a lien fee in an amount to be set from time to time by the Board.

6.9.3 The Assessment Lien shall have priority over all liens or claims except for; (i) liens and encumbrances Recorded before the Recordation of this Declaration; (ii) tax liens for real property taxes; (iii) assessments in favor of any municipal or other governmental body; and (iv) the lien of any First Mortgage on the Lot, or as otherwise provided from time to time under applicable law. Any First Mortgage or any other Person acquiring title or coming into possession of a Lot through foreclosure of First Mortgage, purchase at a foreclosure sales or trustee's 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 a Lot.

6.9.4 The Association shall not be obligated to release the Assessment Lien as to any portion of Assessments past due until all such delinquent Assessments, interest, lien fees, monetary penalties, reasonable attorney's fees, court costs, collection costs and all other sums payable to the Association by the Owner of the Lot have been paid in full. In no event shall such release of past due Assessments release the lien of this Declaration as to all other Assessments to become due hereunder.

6.9.5 The Association shall have the right, at its option, to enforce collection of any delinquent Assessments together with interest, lien

UnOfficial Copy

fees, reasonable attorney's fees and any other sums due to the Association in any manner allowed by law Including; (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 and (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 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 from a lienholder, Member or Person designated by a Member, to the extent required by law, the Association shall issue, or cause to be issued, within the time period required by applicable law, a statement setting forth the amount of any unpaid Assessment or other fee or charge against the Lot. The Association may impose a reasonable charge for the issuance of such statements, which charge shall be payable at the time the request for any such statement is made. Any such statement, when duly issued as herein provided, shall be conclusive and binding on the Association with respect to any matters therein stated as against any bona fide Purchaser of, or lender on, the Lot in question.

6.11 **Purposes for which Association Funds May Be Used.** The Association shall use all funds and property collected and received by it (Including the Assessments, fees, loan proceeds, surplus funds and all funds and property received by it from any other source) solely for the purpose of (I) discharging and performing the Association's duties and obligations under the Project Documents; (ii) exercising the rights and powers granted to the Association by the Project Documents, and (iii) the common good and benefit of the Project and the Owners, Lessees, Residents, by devoting said funds and property, among other things, to the acquisition, construction, alteration, maintenance, provision and operation, by any manner or method whatsoever, or any and all land, properties, improvements, facilities, services, projects, programs, studies and systems, within or without the Project, which may be necessary, desirable or beneficial to the general common interests of the Project, the Owners, Lessees, Residents. Notwithstanding any other provision of this Declaration to the contrary, so long as there is a Class B Membership in the Association, funds of the Association may not be used for the initial construction of improvements.

6.12 **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

UnOfficial Copy

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.

6.13 **Working Capital Fund.** To ensure that the Association shall have adequate funds to meet its expenses or to purchase necessary equipment or services, each Purchaser of a Lot from the Declarant shall pay to the Association immediately upon becoming an Owner of the Lot a sum equal to one sixth (1/6th) of the then current Annual Assessment attributable to the Lot. Funds paid to the Association pursuant to this Section shall be deposited in the Reserve Account established pursuant to Section 6.16. 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 **Reserve Fund.** To ensure that the Association shall have adequate funds reserved for repair and replacement of the Improvements within the Common Areas, each Purchaser of a Lot shall pay to the Association immediately upon becoming an Owner of the Lot a sum equal to one sixth (1/6th) of the then current Annual Assessment attributable to the Lot. Funds paid to the Association pursuant to this Section shall be deposited in the Reserve Account established pursuant to Section 6.16. 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.

6.15 **Reserves.** Each budget adopted by the Board shall include reasonable amounts as determined by the Board to be collected as reserves for the future periodic maintenance, repair or replacement of all or a portion of the Areas and Improvements which are the responsibility of the Association. All amounts collected as reserves shall be deposited by the Board in a separate bank account (the "Reserve Account") to be held 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 and its 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, or (b) one (1) member of the Board and an officer fo the Association who is not also a member of the Board.

6.16 **Transfer Fee.** Each Purchaser of a Lot shall pay to the Association, or to its

UnOfficial Copy

managing agent, if directed to do so by the Board, immediately upon becoming the Owner of the Lot, a transfer fee in such amount as it established from time to time by the Board.

Article 7
Maintenance

7.1 **Areas of Responsibility.** The Association, or its duly delegated representatives, shall manage, maintain, repair and replace the Areas of Association Responsibility, and all Improvements located thereon. These Areas Include Tract A and the Ingress/Egress, Road, Drainage, and Public Utility Easement. They do not include any part of the Areas of Association Responsibility which any governmental entity is maintaining or is obligated to maintain. The Board shall be the sole judge as to the appropriate maintenance, repair or replacement of all Areas of Association Responsibility, but all Areas of Association Responsibility and the Improvements located thereon, shall be maintained in good condition and repair at all times. No Owner, Resident or other Person shall construct or install any Improvements on Tract A or within the Ingress/Egress, Road, Drainage and Public Utility Easement, or alter, modify or remove any Improvements situated on these areas without the approval of the Board. No Owner, Resident or other Person shall remove, add to or modify any plants, trees, granite or other Improvements in the part of their Lot which constitutes an Area of Association Responsibility without the prior written approval of the Board. No Owner, Resident or other Person shall obstruct or interfere with the Association in the performance of the Association's maintenance, repair and replacement of the Areas of Association Responsibility and the Improvements located thereon. The Association shall be responsible for the payment of ad valorem taxes on Tract A and obtain Liability Insurance as necessary for other Areas of Association Responsibility as determined by the Board.

7.2 **Lots.**

7.2.1 Each Owner of a Lot upon which construction of a Residential Unit has begun or is complete shall be responsible for maintaining, repairing or replacing his Lot and the Residential Unit and all other buildings, landscaping or other Improvements situated thereon (Including (I) any landscaping installed within Tract A and the Ingress/Egress, Road, Drainage, and Public Utility Easement contiguous to a Lot, (ii) any utility lines and appurtenance facilities not maintained by the service provider and (iii) any water and sewer lines and appurtenant facilities located within the boundaries of a Lot (except for the water and sewer trunk lines and appurtenant facilities serving more than one Lot), except for any portion of the Lot which is an Area of Association Responsibility. All buildings, Residential Units, landscaping and

UnOfficial Copy

other improvements shall at all times be kept in good condition and repair in accordance with the Maintenance Standard. All grass, hedges, shrubs, vines and plants (to the extent necessary to produce healthy plant material) 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 Review Committee. No yard equipment, wood piles or storage areas may be maintained as so to be Visible From Neighboring Property or streets.

7.2.2 Except for any portion of a Lot that has been designated as an Area of Association Responsibility, all Lots upon which no Residential Units, buildings or other structures, landscaping or Improvements have been constructed by a Lot Owner and upon which no such construction has commenced shall be maintained by the Lot Owner in a natural manner and in accordance with the Maintenance Standard and any other applicable provisions set forth in this Declaration.

7.3 **Assessment of Certain Costs for Maintenance and Repair.** In the event that the need for maintenance or repair of an Area of Association Responsibility, or any Improvement situated thereon, is cause through the willful or negligent act of any Owner, his family, Lessees, guests or invitees, the cost of such maintenance or repairs shall be paid by such Owner to the Association upon demand and payment of such amounts shall be secured by the Assessment Lien.

7.4 **Improper Maintenance and Use of Lots.** In the event any portion of any Lot is so maintained as to not comply with the Maintenance Standard, or as to present a public or private nuisance, or as to substantially detract from the appearance or quality of the surrounding Lots or other areas of the Project which are substantially affected thereby or related thereto, or in the event that any portion of a Lot is being used in a manner which violates this Declaration; or in the event the Owner of any Lot is failing to perform any of his obligations under the Project Documents, the Board may make a finding to such effect, specifying the particular condition or conditions which exist, and pursuant thereto give notice thereof to the offending Owner that unless corrective action is taken within fourteen (14) days, the Board may cause such action to be taken at said Owner's cost. If at the expiration of said fourteen (14) day period of time requisite corrective action has not been taken, the Board shall be authorizes and empowered to cause such action to be taken and the cost thereof shall be paid by such Owner to the Association upon demand and payment of such amounts shall be secure by the Assessment Lien.

7.5 **Maintenance of Fences.**

UnOfficial Copy

7.5.1 Fences located on a lot shall be maintained, repaired and replaced by the Owner of a Lot in strict accordance with the Maintenance Standard and with the architectural standards prescribed by the Design Guidelines.

7.5.2 Any fence which is placed on the boundary line between a Lot and an Area of Association Responsibility shall be maintained, repaired and replaced by the Owner of the Lot, except that the Association shall be responsible for the repair and maintenance of the side of the fence which faces the Area of Association Responsibility. If any such fence or portion thereof is wrought iron, the Association shall be responsible for the maintenance of the entire wrought iron surface, but each Owner shall pay to the Association one half (½) of the cost of such repair and maintenance for the portion of the fence which faces such Owner's Lot. In the event any such fence encroaches upon the Area of Association Responsibility or a Lot, an easement for such encroachment shall exist in favor of the Association or Owner of a Lot, as the case may be.

Article 8
Insurance

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

8.1.1 Commercial general liability insurance, including medical payments insurance, in an amount determined by the Board, but not less than $1,000,000 per occurrence with a $2,000,000 aggregate. Such insurance shall cover all occurrences commonly insured against for death, bodily injury and property damage arising out of on in connection with the use, ownership or maintenance of the Areas of Association Responsibility 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-owner automobile coverages with cost liability endorsements to cover liabilities of the Owner as a group to an Owner;

8.1.2 Directors' and officer' liability insurance in an amount not less than $1,000,000 covering the directors and officers of the Association against claims arising out of or in connection with the administration of the Association;

8.2 **Insurance Obtained by Owners.** The issuance of insurance policies to the Association pursuant to this Article shall not prevent an Owner from obtaining insurance for his own benefit and at his own expense covering his Lot, his personal property and providing that any Owner(s) obtain and carry its own property and liability insurance coverage for such Owner's Lot, Residential Unit and personal property, Including insurance covering

UnOfficial Copy

environmental claims resulting from an Owner's discharge of any unauthorized materials into the Sewer System or Water System or the failure of an Owner to properly maintain the sewer lines for which such Lot Owner is responsible, then such Owner(s) shall comply with said requirements.

Article 9
General Provisions

9.1 **Enforcement.** The Association of any Owner shall have the right to enforce the Project Documents in any manner provided for in the Project Documents or by law or in equity, including an action to obtain an injunction to compel removal of any Improvements constructed in violated of this Declaration or to otherwise compel compliance with the Project Documents. The failure of the Association or an Owner to take enforcement action with respect to a violation of the Project Documents shall not constitute or be deemed a waiver of the right of the Association or any Owner to enforce the Project Documents in the future. If any lawsuit is filed by the Association or any Owner to enforce the provisions of the Project Documents or in any other manner arising out of the Project Documents or the operations of the Association, the prevailing party in such action shall be entitled to recover from the other party all attorney fees incurred by the prevailing party in the action. In addition to any other rights or remedies available to the Association pursuant to the Project Documents or at law or in equity, the Board shall have the power to levy reasonable monetary penalties against an Owner for a violation of the Project Documents by the Owner, a Lessee of the Owner, or by any Resident of the Owner's Lot, provided the Owner is given notice and an opportunity to be heard.

9.2 **Termination.** 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 Owners representing ninety percent (90%) or more of the votes in each class of Membership and by the holders of First Mortgages, 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 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.

9.3 **Amendments.**

9.3.1 Except as provided in Subsection 9.15.8, and except for amendments made pursuant to Subsections 9.3.2 or 9.3.4 of this Declaration, the Declaration may only be amended by the written approval or the affirmative

UnOfficial Copy

vote, or any combination thereof, of Owners representing not less than seventy-five percent (75%) of the votes in the Association.

9.3.2 The Declarant, so lang as the Declarant owns any Lot, and thereafter, the Board, may amend this Declaration, without obtaining the approval or consent of any Owner or First Mortgagee, in order to conform this Declaration 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 of the Project Documents is required by law or requested by the Declarant or the Board.

9.3.3 So long as the Declarant is a Member of the Association, any amendment to this Declaration must be approved in writing by the Declarant.

9.3.4 The Declarant, so long as the Declarant is a Member of the Association and thereafter, the Board, may amend this Declaration without consent of any other Owner to correct any error or inconsistency in the Declaration.

9.3.5 At any time after the Transition Date, any amendment approved pursuant to Subsection 9.3.1 of this Declaration or by the Board pursuant to Subsection 9.3.2 or 9.3.4 of this Declaration shall be signed by the President or Vice President of the Association and shall be Recorded, and any such amendment shall certify that the amendment has been approved as required by this section.

9.4 **Rights of First Mortgage.** Any First Mortgage will, upon written request, be entitled to (I) inspect the books and records of the Association during normal business hours; (ii) receive within ninety (90) days following the end of any fiscal year of the Association, a financial statement of the Association for the immediate preceding fiscal year of the Association, free of charge to the requesting party; and (iii) receive written notice of all meetings of the Members of the Association and be permitted to designate a representative to attend all such meetings.

9.5 **Interpretation.** Except for judicial construction, the Association shall have the exclusive right to construe and interpret the provisions of this Declaration. In the absence of any adjudication to the contrary by a court of competent jurisdiction, the Association's construction of interpretation of the provisions hereof shall be final, conclusive and binding as to all persons and property benefitted or bound by this Declaration. In the event of any conflict between this Declaration and the Articles, Bylaws, Association Rules or Design Guidelines, this Declaration shall control. In the event of any conflict between the Articles and the Bylaws, the Articles shall control. In the event of any conflict between the Bylaws and the Association Rules or Design Guidelines, the Bylaws shall control.

UnOfficial Copy

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 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 **Notice of Violation.** The Association shall have the right to record against a Lot a written notice of a violation with respect to any violation of the Project Documents by the Owner, Lessee or Resident of a Lot. The notice shall be executed by an officer of the Association and shall contain substantially the following information; (i) the name of the Owner, Lessee or Resident violating or responsible for the violation of, the Project Documents; (ii) the legal description 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, Lessee or Resident to cure the violation. Recordation of a notice of violation shall serve as notice to the Owner, Lessee and Resident, and any subsequent purchaser of the Lot, that there is a violation. If after the recordation of such notice, it is determined by the Association that the violation referred to in the notice does not exist or that the violation referred to in the notice has been cured, the Association shall Record a notice of compliance with the recording date of the notice of violation, and shall state that the violation referred to in the notice of violation has been cured or that the violation did not exist. Failure by the Association to Record a notice of violation shall not constitute a waiver of any such violation, constitute any evidence that no violation exists which respect to a particular Lot or constitute a waiver of any right of the Association to enforce the Project Documents.

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

UnOfficial Copy

of the Board or the Architectural Review 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 relieve an Owner of any other person for the obligation to also comply with all applicable laws, ordinances and regulations. 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 Project is hereby declared to be a violation of this Declaration and subject to any or all of the enforcement procedures set forth therein.

9.11 **References to this Declaration in Deeds**. Deeds to and instruments affecting any Lot or any other 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 **No Absolute Liability.** No provision of the Project Documents shall be interpreted or construed as imposing on Owner absolute liability for damage to the Common Areas. Owners shall only be responsible for damage to the Common Area caused by the Owners' negligence or intentional acts.

9.15 **Dispute Notification and Resolution Procedure.** All actions or claims (i) by the Association against any one or more of the Declarant Parties, (ii) by any Owner(s) against any one or more of the Declarant Parties; or (iii) by both the Association and any Owner(s) against any one or more of the Declarant Parties, relating to or arising out of the Project or the design or construction of or any condition on or affecting the Project, Including construction defects, surveys, soil conditions, grading, specifications, installation of Improvements, (Including Residential Units) or disputes which allege negligence or other tortious conduct, fraud, misrepresentation, breach of contract or breach of implied or express warranties as to the condition of the Project of any Improvements (collectively, "Dispute(s)") shall be subject to the provision of

UnOfficial Copy

this Section 9.15. Declarant and each Owner acknowledge that the provisions set forth in this Section 9.15 shall be binding upon current and future Owners of Project and upon the Association, whether acting for itself or on behalf of any Owner(s). Nothing in this Declaration is intended to limit, expand or otherwise modify the terms of any limited warranty provided by Declarant to an Owner pursuant to a purchase agreement.

9.15.1 Notice. Any Person (including the Association) with a Dispute claim shall notify the Declarant in writing of the claim, which writing shall describe the nature of the claim and any proposed remedy (the "Claim Notice").

9.15.2 Right to Inspect and Right to Corrective Action. Within a reasonable period after receipt of the Claim Notice, which period shall not exceed sixty (60) days, Declarant and the claimant shall meet at a mutually acceptable place within the Project to discuss the claim. At such meeting or at such other mutually agreeable time, Declarant and the Declarant's representatives shall have full access to the property that is the subject of the claim and shall have the right to conduct inspections, testing and/or destructive or invasive testing in a manner deemed appropriate by Declarant (provided Declarant shall repair or replace any property damaged or destroyed during such inspection or testing,) which rights shall continue until such time as the Dispute is resolved as provided in this Subsection 9.15.2. The parties shall negotiate in good faith in an attempt to resolve the claim. If the Declarant elects to take any corrective action, Declarant and Declarant's representatives and agents shall be provided full access to the Project and the property which is the subject of the claim to take and complete corrective action.

9.15.3 No Additional Obligations; Irrevocability and Waiver of Right. Nothing set forth in Subsection 9.15.2 shall be construed to impose any obligation on Declarant to inspect, test, repair or replace any item of the Project for which Declarant is not otherwise obligated under applicable law or any limited warranty provided by Declarant to an Owner in connection with the sale of any Lot and/or the Improvements constructed thereon. 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.

9.15.4 Mediation. If the parties to the Dispute cannot resolve the claim pursuant to the procedures described in Subsection 9.15.2 above, the matter shall be submitted to mediation pursuant to the mediation procedures adopted by the American Arbitration Association (except as such procedures are modified by the provisions of this Subsection 9.15.4) or any successor thereto or to any other entity offering mediation serves that is acceptable to the parties. No person shall serve as a mediator in any dispute in which the person has any financial or personal interest in the result of the mediation, except by the written consent of all parties. Prior to accepting any appointment, the prospective mediator shall disclose any circumstances likely to create a presumption of bias or to prevent a prompt commencement of the

UnOfficial Copy

mediation process. No litigation or other action shall be commenced against Declarant or any Declarant Party without complying with the procedures described in this Subsection 9.15.4.

9.15.5 Arbitration. Should mediation pursuant to Subsection 9.15.4 above not be successful in resolving any Dispute, such claim or dispute shall be resolved by binding arbitration in accordance with the Commercial Arbitration Rules of the American Arbitration Association as modified or as otherwise provided in this Subsection 9.15.5. The parties shall cooperate in good faith to attempt to cause all necessary and appropriate parties to be included in the arbitration proceeding. Subcontractors, material suppliers and other parties whose participation is reasonable necessary to afford complete relief in arbitration or who are involved in common questions of law or fact shall be included as parties in the arbitration. Subject to the limitations imposed in this Subsection 9.15.5, the arbitrator shall have the authority to try all issues, whether fact or law.

9.15.6 WAIVERS.

NOTICE: BY ACCEPTANCE OF A DEED OR BY ACQUIRING ANY OWNERSHIP INTEREST IN ANY PORTION OF THE PROPERTY, EACH PERSON, FOR HIMSELF, HIS HEIRS, PERSONAL REPRESENTATIVES, SUCCESSORS, TRANSFEREES AND ASSIGNEES, AGREES TO HAVE ANY DISPUTE RESOLVED ACCORDING TO THE PROVISIONS OF THIS SECTION 9.15 AND WAIVES THE RIGHT TO PURSUE ANY DISPUTE IN ANY MANNER OTHER THAN AS PROVIDED IN THIS SECTION 9.15. THE ASSOCIATION, EACH OWNER AND DECLARANT ACKNOWLEDGE THAT BY AGREEING TO RESOLVE ALL DISPUTES AS PROVIDED IN THIS SECTION 9.15, THEY ARE GIVING UP THEIR RESPECTIVE RIGHTS TO HAVE SUCH DISPUTES TRIED BEFORE A JURY. THE ASSOCIATION, EACH OWNER AND DECLARANT FURTHER WAIVE THEIR RESPECTIVE RIGHTS TO AN AWARD OF PUNITIVE AND CONSEQUENTIAL DAMAGES RELATING TO A DISPUTE. BY ACCEPTANCE OF A DEED OR BY ACQUIRING ANY OWNERSHIP INTEREST IN ANY PORTION OF THE PROJECT, EACH OWNER HAS VOLUNTARILY ACKNOWLEDGED THAT HE IS GIVING UP ANY RIGHTS HE MAY POSSESS TO PUNITIVE AND CONSEQUENTIAL DAMAGES OR THE RIGHT TO A TRIAL BEFORE A JURY RELATING TO A DISPUTE.

9.15.7 Statues of Limitation. Nothing in this Section 9.15 shall be considered to toll, stay, reduce or extend any applicable statute of limitations.

9.16 **Required Consent of Owners for Legal Action**. Any action or claim instituted by the Association (which action or claim shall be subject to the terms of Section 9.15) against any one or more of the Declarant Parties, relating to or arising out of the Project, Including the construction of or any

UnOfficial Copy

condition on or affecting the Project, Including construction defects, surveys, soil conditions, grading, specifications, installation of Improvements (Including Residential Units), or disputes which allege negligence or other tortious conduct, fraud, misrepresentation, breach of contract or breach of implied or express warranties as to the condition of the Project or any Improvements, shall have first been approved by Owners representing seventy-five percent (75%) of the votes in the Association who are voting in person or by proxy at a meeting duly called for such purpose.

9.16.1 Notice of Owners.

(i) Prior to obtaining the consent of the Owners in accordance with Section 9.16, the Association must provide written notice to all Owners which notice shall (at a minimum) include (1) a description of the nature of any action or claim (the "Claim"), (2) a description of the attempts of Declarant to correct such Claim and the opportunities provided to Declarant to correct such Claim, (3) a certification from an engineer licensed in the State of Arizona that such Claim is valid along with a description of the scope of work necessary to cure such Claim and a resume of such engineer, (4) the estimated cost to repair such Claim, (5) the name and professional background of the attorney proposed to be retained by the Association to pursue the Claim against the Declarant and a description of the relationship between such attorney and member(s) fo the Board (if any), (6) a description of the fee arrangement between such attorney and the Association, (7) 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, (8) the estimated time necessary to conclude the action against Declarant and (9) an affirmative statement from the Board that the action is in the best interest of the Association and its Members.

(ii) In the event the Association recovers any funds from Declarant (or any person or entity) to repair a Claim, any excess funds remaining after repair of such Claim shall be paid into the Association's reserve fund.

9.16.2 Notification to Prospective Purchasers. In the event that the Association commences any action or claim, all Owners must notify prospective purchasers of such action or claim and must provide such

UnOfficial Copy

prospective purchasers with a copy of the notice received from the Association in accordance with Subsection 9.16.1.

9.17 **Limitation on Declarant's Liability.** Notwithstanding anything to the contrary in this Declaration, each Owner, by accepting any interest in any portion of the Property and becoming an Owner, acknowledges and agrees that neither Declarant (including any assignee of the interest of Declarant hereunder) nor any affiliate, partner, officer, director or shareholder of Declarant (or any partner of shareholder of any such assignee) shall have any personal liability to the Association, or any Owner, Member or any other Person, arising under, in connection with or resulting from (including resulting from action or failure to act with respect to) this Declaration or the Association except, in the case of Declarant, (or its assignee), to the extent of its interest in the Property and, in the event of a judgement, no execution or other action shall be sought or brought thereon against any other assets or be a lien upon such assets of the judgement debtor.

DECLARANT:

CDR Associates, Inc.
an Arizona Corporation

By: _____
Kevin M Dunlap, President

STATE OF ARIZONA)
) ss.
County of Yavapai)

Acknowledged before me this 3 day of January 2006 by Kevin M Dunlap, the President of CDR Associates, Inc, an Arizona corporation.

OFFICIAL SEAL
EMILY C. BOL
NOTARY PUBLIC-ARIZONA
COCONINO COUNTY
My Comm. Expires Jan. 18, 2006

_____
Notary Public

SEAL

My Commission Expires:

1-18-06

UnOfficial Copy