

Declaration of Covenants, Conditions and Restrictions

For

Sombra De Desierto

32nd Street and Emile Zola

BY: Cambridge Homes, L.L.C.

4-1-98

DECLARATION OF COVENANTS, CONDITIONS AND RESTRICTIONS

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When recorded mail to:
Cambridge Homes, L.L.C.
10858 N. 32nd Street
Phoenix, AZ. 85028



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MARICOPA COUNTY RECORDER
HELEN PURCELL

ARIZONA TITLE AGENCY, INC.

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DECLARATION OF COVENANTS, CONDITIONS AND RESTRICTIONS

SOMBRE DE DESIERTO

Phoenix, Arizona

This Declaration of Covenants, Conditions and Restrictions is made and entered into on the date set forth at the end hereof by Cambridge Homes, L.L.C., an Arizona Limited Liability Company. Declarant is the owner of certain real property situated in the City of Phoenix, County of Maricopa, State of Arizona, legally described as follows:

Lots 1 through 28 inclusive and tracts A, B, & C of Sombre De Desierto according to the Plat thereof recorded at Book 462 of Maps page 40 of the official records of Maricopa County, Arizona Recorder.

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

ARTICLE 1

DEFINITIONS

1.1 Assessment shall mean that portion of the cost of maintaining, improving, repairing, operating, insuring and managing, as applicable, the Common Area and operating the Association, which is to be paid by each lot owner as determined by the Association and as further provided herein.

1.2 Architectural Committee means the Committee of the Association that may be created pursuant to Section 12.1 of this Declaration.

1.3 Architectural Committee Rules means the rules and guidelines adopted by the Architectural Committee pursuant to Section 12.1 of this Declaration as they may from time to time be amended or supplemented.

1.4 Area of Association Responsibility means a) all common areas; b) all land and the improvements situated thereon, situated within the boundaries of a Lot which the

Association acknowledged in a recorded document, is land which is to be improved, maintained, repaired and replaced by the Association and c) all real property, and the improvements situated thereon, within the Project located within dedicated rights-of-way with respect to which the State of Arizona or the County or the municipality has not accepted responsibility for the maintenance thereof, but only until such time a the State of Arizona or any County or Municipality has accepted all responsibility for maintenance, repair and replacement of such areas.

1.5 Articles means the Articles of Incorporation of the Association, as they may from time to time be amended.

1.6 Assessment means any Assessment or Special Assessment.

1.7 Assessment Lien means the lien created and imposed by Article 9 of this Declaration.

1.8 Assessment Period means the period set forth in Section 9.5 of this Declaration.

1.9 Association shall mean Sombre De Desierto Homeowners' Association, an Arizona non-profit Corporation and it's successors and assigns. The Association be established by the following of it's Articles of Incorporation, "The Articles" and governed by it's Bylaws (The Bylaws).

1.10 Association Rules means the rules adopted by the Board pursuant to Article 8 of this Declaration, as they may from time to time be amended.

1.11 Board or Board of Directors shall means the Governing body of the Association. Directors shall mean the members of the Board.

1.12 Bylaws shall mean the Bylaws of the Association, as they may from time to time be amended.

1.13 Committee shall mean the Architectural Control Committee for the project, established pursuant to Article 12 of this Declaration.

1.14 Common Area shall mean the landscaped area including tracts A, B, and C located within Sombre De Desierto.

1.14.2 Common Areas shall include all structures, walls, improvements and landscaping thereon and all rights easements and appurtenances relating thereof together with licenses and other real property interests owned or to be owned by the Association for the mutual use, benefit and enjoyment of the Owners together with the improvements, fixtures, equipment and personal property, if any, located on or used in conjunction therewith. The Common Area will be free of all monetary liens and encumbrances for the benefit of all of the owners upon completion of all of the improvements designated thereof and approved by the Federal Housing Administration and the Veterans Administration (if that agency has approved the proposed development plans of the Project) and the City of Phoenix, prior to the conveyance of the first Lot in the Project to an Owner other than the Declarant. The City of

Phoenix is not responsible for and will not accept maintenance of any private facilities, landscaped areas etc., within this Project. The Common Areas shall include, without limitation all of the properties so designated as Common area in the plat and all recorded replats thereof or any Supplemental Declaration, Common Area Walls and trails, drainage courses, natural areas, all utility lines and systems located on the Property but outside of the Exterior Residence Lines, and all of the portions of the Property not constituting Residences or dedicated to the applicable governmental authority.

1.14.3 Each owner shall have a right and easement of ingress and egress and enjoyment in, over and to the Common Area which shall be appurtenant to and shall pass with the Title to every Lot subject to the right of the Association to suspend the Association (with requisite Owner consent) to dedicate or transfer Common Area to any public agency, authority or utility company as provided by the Articles. Any Owner may delegate, in accordance with the Project Documents, his right of enjoyment to the Common Area facilities thereon to members of his family, tenants and contract purchasers who reside on his Lot. No part of the Common Area may be mortgaged, conveyed, encumbered or hypothecated without the consent of at least Seventy Five Percent (75%) of each class of members. If ingress or egress to any Residence is through the Common Area, any mortgage, conveyance or encumbrances of such area shall be subject to the Member's easement.

1.15 Common Area Walls shall mean certain walls and fences along landscaped areas adjacent to and along the subdivision perimeters as a part of the Common Area as further provided in Section 6.5. Following its initial construction, the designation of Common Area Walls may be modified from time to time by the Association following completion of the initial development of the Project.

1.16 Common Expenses shall mean and refer to the actual and estimated cost of: maintenance, management, operation, repair and replacement of the Common Areas, including unpaid Assessments, management and administration of the Association including but not limited to; compensation paid by the Association to managers, employees, accountants, attorneys and other agents; utilities, gardening and landscaping, security services, CATV and other services benefiting the Common Areas; fire, casualty, liability, workers' compensation and other insurance covering Common Areas; reasonable reserves as deemed appropriate by the Board; the cost of bonding of the members of the management body; taxes paid by the Association; amounts paid by the Association for discharge of any lien or encumbrance levied against the Common Areas, or any portion thereof; expenses or charges incurred by the Architectural Control Committee; and any cost or expense imposed upon the Association by the Articles of Incorporation or Bylaws.

1.17 Developer shall mean Cambridge Homes, L.L.C., an Arizona Limited Liability Company and its successors and assigns. Declarant and Developer are identified as the same entity.

1.18 Declarant Shall mean Cambridge Homes, L.L.C., an Arizona Limited Liability Company, its successors and any person or entity to whom it may expressly assign any or all of its rights under this Declaration.

1.19 **First Mortgage** shall mean any mortgage, which includes a recorded Deed of Trust and the recorded contract of sale as well as a recorded mortgage which is a first priority lien on any Lot, that is prior to the lien of any other mortgage company, trust or agreement for sale.

1.20 **First Mortgagee:** The Mortgagee, Beneficiary and/or Vendor of any such mortgage, deed of trust or agreement for sale, respectively, shall be referred to as the "First Mortgagee".

1.21 **Improvements** shall mean any building, garage, fence, wall or other structure, road, driveway, parking area or any trees, plants, shrubs, grass or other landscaping improvements of every type and kind, and any structure or other Improvement of any type or kind.

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

1.23 **Lot** shall mean one of the separately designated Lots in the Project as shown on the Plat together with any improvements thereon. Each numbered and lettered tract in a Project is a separate free hold estate.

1.24 **Member** means any Person or Entity who holds membership in the Association. Each member is subject to the provisions of this Declaration.

1.25 **Owner** shall mean the record Owner of title to a Lot in the Project whether one or more persons, of beneficial or equitable title (and legal title, if the same has merged with the beneficial or equitable title) to the fee simple interest of a Lot. Owner shall not include the following persons: (i) those having an interest in the Lot merely as security for performance of an obligation, or (ii) a Lessee. Further, if a Lot or other property is sold under a recorded contract of sale or subdivision trust to a Purchaser, the Purchaser, rather than the Fee Owner shall be considered the "Owner" as long as he or his successor in interest remains the contract Purchaser or purchasing beneficiary under the recorded contract or subdivision trust. In the case of Lots, the fee simple title to which is vested in a Trustee pursuant to Arizona Revised Statute, Section 33-801, et. seq. the Trustor shall be deemed to be the Owner. In the case of 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 which is entitled to possession of the trust property shall be deemed to be the Owner.

1.26 **Person** means a natural person, a domestic or foreign corporation, business trust, estate, trust, partnership, an association, joint venture, a limited liability company, and any other entity, group of persons or organization.

1.27 **Plat** shall mean the subdivision Plat of Sombre De Desierto as recorded in Book 462 of Maps, page 40, records of Maricopa County, Arizona, as may be amended or supplemented from time to time together with any other Plats of all or any portion of the Project.

1.28 Property or Project means the real property described on Exhibit A attached to this Declaration together with all Improvements located thereon.

1.29 Project Documents mean and include this Declaration as it may be amended from time to time, the Exhibits, if any attached hereto, the Plat, the Articles and Bylaws of the Homeowners' Association, and any rules and regulations adopted from time to time by the Association provided herein, or in the Bylaws, together with any Design Review Guidelines, and Architectural Committee Rules.

1.30 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.

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

1.32 Residence means any building or buildings, including any garage or other accessory building used for residential purposes, constructed on a Lot or a parcel, and any Improvements constructed in connection therewith. Unless otherwise defined, "Residence" shall mean a single-family Residence.

1.33 Resident means an individual or individuals occupying or residing in any residential unit.

1.34 Single-Family means a group of one or more persons each related to the other by blood, marriage or legal adoption, or a group of not more than three (3) persons not all so related, who maintain a common household on a residential unit.

1.35 Special Assessment means any Assessment levied and assessed pursuant to Section 9.4 of this Declaration.

1.36 Supplemental Declaration shall mean any statement which shall be recorded by Declarant so as to amend this Declaration in accordance with the express terms and provisions of this Declaration.

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

ARTICLE 2

PLAN OF DEVELOPMENT

2.1 Property Initially Subject to the Declaration.

2.1.1 This Declaration is being recorded to establish a general plan for the development and use of the Project in order to protect and enhance the value and desirability of the Project. The Declarant declares that all of the property within the Project shall be held, sold and conveyed subject this Declaration. By acceptance of a deed or by acquiring any interest in any of the property subject to this Declaration, each person or entity, 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 regulations now or hereafter imposed by this Declaration or any amendments thereto.

2.1.2 In addition, each such person by so doing, hereby acknowledges that this Declaration sets forth a general scheme for the development and use of the Property and hereby evidences his/her interest that all of 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.

2.1.3 Furthermore, each such person fully understands and acknowledges that this Declaration shall be mutually beneficial, prohibitive and enforceable by the Association and all Owners. Declarant, its successors, assigns and grantees, covenants and agrees that the Lots and the membership in the Association and the other rights created by this Declaration shall not be separated or separately conveyed. Each shall be deemed to be conveyed or encumbered with its respective Lot even though the description in the instrument of conveyance or encumbrance may refer only to the Lot.

2.2 Disclaimer of Representations. Declarant makes no representation or warranties whatsoever that (i) the Project will be completed in accordance with the Plans for the Project as they exist on the date this Declaration is recorded; (ii) any Property subject to this Declaration will be committed to or developed for a particular use; or (iii) the use of any Property subject to this Declaration will not be changed in the future.

ARTICLE 3

USE RESTRICTIONS

3.1 Use of Lots; Leases; No Partition. All Lots within the Project shall be known and described as residential Lots and shall be occupied and used for single-family residential purposes only. Business/trade uses in the Project shall be restricted as provided in Section 3.17 of this Article below.

3.1.1 No owner may rent his/her/their Lot and the single-family house or related Improvements thereon for transient or hotel purpose nor shall enter into any lease for less than the entire Lot. No lease shall be for rental period for less than thirty (30) days. Subject to the foregoing restrictions, Owners of Lots shall have the absolute right to lease their respective Lots provided that the lease is in writing and is specifically made subject to the covenants, conditions, restrictions, limitations and uses contained in this Declaration and Bylaws and resonable rules and regulations adapted by the Association. A copy of any such lease shall be delivered to the Association prior to the commencement of the term of the lease.

3.1.2 No Owner shall bring any action for or cause partition of any Lot. It is agreed that this restriction is necessary in order to preserve the rights of the Owners. Judicial partition by sale of a single Lot owned by two (2) or more persons or entities in the division of the sale proceeds is not prohibited. Partition of title to a single Lot is prohibited. Notwithstanding the foregoing, a vacant Lot may be split by Owners of the Lots adjacent to such Lots so that each portion of such Lot would be held in common ownership with another Lot adjacent to that portion, subject to any further requirements or restrictions imposed by the City of Phoenix. No condominium or time share use shall be created within the Project.

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

3.2.1 No addition, alteration, repair, change or other work which in any way alters the exterior appearance, including but without limitation to, the exterior color scheme of any Lot, or the Improvements located thereon, from their appearance on the date this Declaration is Recorded shall be made or done without the prior written approval of the Architectural Committee.

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

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

construction, installation, addition, alteration, repair, change or other work subsequently submitted for approval by a Lot Owner.

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

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

3.2.6 The Architectural 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. Said fee shall be payable at the time the application for approval is submitted to the Architectural Committee.

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

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

3.2.9 The Architectural Committee may require that an Owner, before commencing construction of any Improvements approved by the Architectural Committee, pay the Association a deposit in an amount determined by the Architectural Committee to be used by the Association to remove any construction debris from a Lot which is permitted to accumulate in violation of Section 3.5 of this Declaration. The Architectural Committee shall also have the right to determine which portion, if any, of the deposit will be non-refundable. Any portion of the deposit which is refundable shall be refunded to the Owner by the Association upon completion of construction of the Improvements and the removal of all construction debris from the Lot. Additionally, shall the Owner fail to conform with written notices regarding maintenance of their construction site or control of the construction debris, the Architectural Control Committee may assess additional charges incurred with the maintaining/cleaning of the construction site and surrounding area. 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 the Declaration for the collection of Assessment(s). Should any construction commence prior to plan approval by the Architectural Control Committee, then in that event, the Committee shall assess, and the Owner shall pay immediately a one-time penalty in the sum of TWO HUNDRED FIFTY DOLLARS (\$250.00) which shall be payable to the (HOA NAME) Homeowners' Association.

3.2.10 In addition to any other rights or remedies which (HOA NAME) Homeowners Association may have under this Declaration or at law or in equity as a result of a violation of the Declaration, the Association shall have the right to levy reasonable fines

against an Owner for any violation of the Declaration by the Owner or any of the Owner's contractors, agents, servants or employees.

3.3 Minimum Square Footages Individual residences will be required to be not less than 1,100 square feet of livable floor area.

3.4 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, type, shape or nature, shall be used at any time for a single-family or multiple-family residence either temporary or permanent. Any temporary buildings, trailers or other structures used during the construction of Improvements shall be removed immediately after the completion of construction and in no event shall any such building, trailer or other structures be maintained or kept on any property for a period in excess of six (6) months without the prior written approval of the Architectural Committee. The provisions of this Section do not apply to the Declarant during the construction of the Declarant's improvements of the property as well as construction of buildings on the improved Lots.

3.5 Landscape, Maintenance of Lawns and Plantings. Each Owner of a Lot shall keep all shrubs, trees, hedges, grass and plantings of every kind located on (i) his Lot, (ii) any public right-of-way or easement area which abuts or adjoins the Owner's Lot and which is located between the boundary line of his Lot and the paved area of any street, sidewalk, bike-path or similar area, and (iii) any non-street, public right-of-way or easement area adjacent to his Lot, neatly trimmed, and shall keep all such areas properly cultivated and free of trash, weeds and other unsightly material. Provided, however, that such Owner shall not be responsible for maintenance of any area over which (i) the Association assumes the responsibility in writing; (ii) the Association has been given such responsibility by this Declaration; or (iii) Maricopa County or the City of Phoenix having jurisdiction over such Property assumes responsibility, for so long as the Association, Maricopa County, City of Phoenix or such municipality assumes or has said responsibility.

3.5.1 The Declarant shall landscape the front yard of each Lot, minimum landscape requirements, and thereafter the Owner shall be responsible for any additional landscaping that is done to the Lot. Minimum requirements for landscape installation are twenty four inch (24") box trees and minimum five (5) gallon size plants. Rock must be of a natural earth tone color. White, green or red rock is prohibited. In no event shall any landscaping done by the Owner change the grade of the Lot, either on the front, side or rear of said Lot. No Owner shall be permitted to change the grading or drainage of any Lot without the prior written approval of the Architectural Committee. In the event of such a grading or drainage change, should there be subsequent damage to an adjoining property Owner or Common Area, then in that event, the Association shall have the right to remedy the changed grading or drainage and then assess to the Owner the cost of said corrections together with reasonable fees. In the event an Owner does not maintain his landscaping in a neat and attractive manner, the Declarant, the Developer of the Lot, or the Committee after giving the Owner fifteen (15) days written notice to cure such default, shall have the right to cause the necessary clean-up/landscaping work or Lot Improvement to be done and the Owner, in default, shall be responsible for the cost thereof. Additionally, the party expending funds for such work shall have a lien on the defaulting Owner's Lot for the funds expended together with interest thereon at the rate of twelve percent (12%) per annum until paid. In addition to the

foregoing, any party may utilize the remedies available under Section 9 of Article 9 below, for such Owner's default.

3.6 Nuisances. No rubbish or debris of any kind shall be placed or permitted to accumulate upon or adjacent to any Lot or other property, and no odors or loud noises shall be permitted to arise or emit therefrom, so as to render any such property or any portion thereof, or activity thereon, unsanitary, unsightly, offensive or detrimental to any other property in the vicinity thereof or to the occupants of such other property. No other nuisance shall be permitted to exist or operate upon any Lot or other property 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 the Lot or other property shall not be considered a nuisance or otherwise prohibited by this Declaration. The provisions of this Section shall not apply to construction activities of the Declarant.

3.7 Diseases and Insects No person shall permit anything or condition to exist upon any Lot or other property which shall induce, breed or harbor infectious plant diseases or noxious insects.

3.8 Repair of Building No residential unit, building or structure or any Lot or other property shall be permitted to fall into disrepair and each such residential unit, building or structure, or any Lot or any other property shall at all times be kept in good condition and repair and adequately painted or otherwise finished. In the event that the Association's Board of Directors determine that any Owner has not properly repaired or kept said residential premises in such condition as reflects the intention of this paragraph, then, in that event, after fifteen (15) days written notice by the Association to said Lot Owner, the Association may perform such necessary maintenance or repairs. The actual costs of such repairs or maintenance, so performed by the Association, shall be charged to the individual Lot Owner as a special assessment, and shall bear interest at twelve percent (12%) per annum until fully paid.

3.9 Solar Collectors/Antennas and Satellite Dishes: Solar collectors and related equipment may not be installed on roofs of houses but may be located elsewhere on the Lots not visible from other Lots, the Common Area or the street. An Owner must obtain the prior written approval from the Committee pursuant to Article 12 prior to installing same. The Association though the Committee may from time to time adopt guidelines concerning the types of solar collectors and related equipment which may be installed in the Project and acceptable means of installation thereof. No antenna or other device for the transmission or reception of television or radio signals or any other form of electromagnetic radiation including, by not limited to, satellite or microwave dishes, radio towers or other such devices shall be erected, used, or maintained on any Lot without the prior written approval of the Architectural Committee. In the event an Owner does receive approval for a satellite dish for the reception of television signals on the individual Lot, the satellite dish shall not be visible from the street, Common Area or from other Lots.

3.10 Windows

3.10.1 Within sixty (60) days after the date of close of escrow, each owner shall install permanent draperies or suitable window coverings on windows facing the street. All such window coverings facing the street must show white, beige, earth tone or pastel colors unless otherwise approved, in writing, by the Committee. No foil, bedding or fabric of any type, no temporary window coverings such as newspaper, bed sheets, etc., shall be permitted except those specifically constructed for use as window treatment and approved the Committee shall be placed on any window.

3.10.2 Prior to installation of any reflective materials on the windows or any portion of the House or any other area on any Lot, approval and consent must be obtained from the Committee pursuant to Article 12 except, such consent shall not be required for any such installations made by the Declarant or the Developer.

3.11 Trash Containers and Collection No garbage or trash shall be placed or kept on any Lot or other property, except in covered containers of a type, size and style which are supplied by the municipality responsible for its collection. In no event shall such containers be maintained so as to be Visible From Neighboring Property except to make the same available for collection and then only for the shortest time reasonably necessary to effect such collection. All rubbish, trash or garbage shall be removed from 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.

3.12 Mineral Exploration No Lot or other property shall be used in any manner to explore or to remove any water, oil or other hydrocarbons, minerals of any kind, gravel, earth or any earth substance of any kind.

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

3.14 Utility Service No lines, wires, or other devices for the communication or transmission of electric current or power, including telephone, television, and radio signal shall be erected, placed or maintained anywhere in or upon any Lot or other property unless the same shall be contained in conduits or cables installed and maintained underground or concealed in, under or on buildings or other structures approved by the Architectural Committee. No provision of this Declaration shall be deemed to forbid the erection of temporary power or telephone structures incidental to the construction of buildings or structures of buildings, in writing, by the Architectural Committee. The restriction shall apply to the service and utility lines for each and every Lot and the Common Areas, as well as the distribution lines located in the streets and elsewhere on the Property. However, the foregoing shall not prohibit service pedestals and above ground switch cabinets and transformers, where required. None of the provisions of this Section shall apply to the Declarant and the construction of dwellings or maintaining any trailers incidental to sales or construction. Street illumination devices and traffic control signals were required by the governing municipality are excepted.

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

3.16 Animals No animals, live stock or poultry, fowl, reptile or other such designations may be kept on any Lot except the customary household pets such as dogs, cats and household birds. Said household pets may only be kept in number and types that will not create a nuisance or disturb the health, safety, welfare or quiet enjoyment of other Lot Owners. All such permitted animals shall be kept under reasonable control at all times and in accordance with the applicable laws and any rules and regulations adopted by the Association. No animals can be kept on a Lot, breed or raised thereon, if for any commercial purpose other than as a simple domestic pet. All animal waste must be promptly and properly disposed of in accordance with applicable city or county regulations. Upon the written request of any Owner, the Board shall conclusively determine at its sole and absolute discretion whether a particular animal or animals constitute a customary household pet or is a nuisance, or the number of animals or birds maintained in any portion of the Project is reasonable. Any decision rendered by the Board shall be final and a failure to comply with the restrictions in this Section will result in a forfeiture of the right to have such household pets on the Lot.

3.17 Machinery and Equipment No machinery or equipment of any kind shall be placed operated or maintained upon or adjacent to any Lot, except; (i) such machinery or equipment as is used in the usual and customary manner in connection with the use, maintenance or construction, during the period of construction of a building, appurtenant structure or other Improvements or (ii) that which the Declarant or the Association may require for the operation and maintenance of the project.

3.18 Residential Use

3.18.1 All residential units shall be used, improved and devoted exclusively to residential use by a single-family. No trade or business will be conducted on any Lot or in or from any residential unit, except that the Owner or other resident of a residential Lot may conduct a business activity within a residential unit so long as (i) the existence or operation of the business is not apparent or detectable by sight, sound or smell from outside the Residential Unit, (ii) the business activity conforms to all applicable zoning ordinance or requirements for the Project, (iii) the business activity does not involve persons coming onto the Lot or the door-to-door solicitation of Owners or other Residents in the Project, (iv) the business activity is consistent with the residential character of the Project and does not constitute a nuisance, hazard 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. Said conduct or business activity within a Residential Unit shall also conform to all zoning requirements for the Project and shall not increase the liability or casualty insurance obligation or premium of the Association. The term "Business" or "Trade" as used in this Section shall be construed to have the ordinary and generally accepted meaning and shall include, without limitation, any occupation, work or activity undertaken on an on-going basis which involves providing goods or services to persons other than the providers family for which the person receives a fee, compensation or other form of consideration regardless of whether such activity is engaged in full or part-time or such activity is intended to or does generate a profit and weather or not a

license is required thereof. The leasing of a Residential Unit by the Owner thereof shall not be considered a Trade or Business within the meaning of this Section.

3.18.2 Notwithstanding any provision contained herein and to the contrary, it shall be expressly permissible for the Declarant and the Builders/Developers to move, locate and maintain during the period of construction and sale of Lots on such portions of the Project owned by that party as the party may from time to time select, such facilities as in the sole opinion of that party will be reasonably required, convenient or incidental to the construction of houses and sale of Lots, including but not limited to business offices, storage areas, trailers, temporary buildings, construction yards, construction materials and equipment of every kind, sign models and sales offices. Except that in the case Developers, the foregoing shall be subject to the prior approval of the Declarant from whom such Developer took title to its Lots.

3.19 Signage

3.19.1 No signs whatsoever including but not limited to commercial, political, subcontractor, "For Sale", "For Rent", and similar signs which are Visible From Neighboring Property shall be erected or maintained on any Lot. However, "For Rent" or "For Sale" signs, one sign per Lot of not more than Five Square Feet (5') shall be allowed in the Project.

3.19.2 This provision shall not apply to signs required by legal proceedings, home security signs of less than One Hundred Square Inches (100") and residential identification signs provided that the size, color, content and location of such signs have been approved, in writing by the Architectural Committee.

3.19.3 One (1) Builder identification sign, One (1) Lender identification sign and One (1) Realtor sign may be displayed on a Lot from time of start of construction of a house on said Lot until the house becomes occupied or sold to another Owner. In no event shall the signage exist on a Lot for a period in excess of six (6) months from date of start of construction.

3.19.4 No institution or other place for the care or treatment of the sick or disabled, physically or mentally, except as provided by the Arizona Developmental Disabilities Act of 1978, number 36-551 et. seq., or other applicable Federal or State law shall be placed or permitted to remain on any of the Lots and no theater, bar, restaurant, saloon or other place of entertainment may ever be erected or permitted on any Lot.

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

3.21 Motor Vehicles

3.21.1 No truck, mobile home, travel trailer, tent trailer, trailer, camper shell, detached camper, recreational vehicle, boat, boat trailer, or other similar equipment or vehicle may be parked, maintained, constructed, reconstructed or repaired on any Lot or Common

Area or on any street so as to be Visible From Neighboring Property without the prior written approval of the Architectural Committee. This provision shall not apply to (i) temporary construction trailers or facilities maintained during and used exclusively in connection with any Improvement for single-family Residential Units, (ii) boats and vehicles parked in garages on Lots along with such vehicles that are in good operating condition and appearance and are not under repair, (iii) motor vehicles not exceeding Seven Feet (7') in height and Eighteen Feet (18') in length which are not used for commercial purposes and which do not display any commercial name, phone number or message of any kind and (iv) a boat and boat trailers which are parked on a Lot for a period of less than thirty six (36) hours within any seven (7) day period.

3.21.2 Except for emergency vehicle repairs, no automobile or other motor vehicle shall be re-constructed or repaired upon a Lot or other Property on the Project and no inoperable vehicle may be stored or parked on any such Lot so as to be Visible From Neighboring Property or to be Visible from any Common Area or street. No vehicle which is abandoned or inoperative shall be stored or kept on any Lot or in front of any Lot in such manner as to be visible from any other Lot or any street or alleyway or adjacent to the Project.

3.21.3 No automobile or other motor vehicle shall be parked in any road or street in the Project, except for automobiles or motor vehicles of guests of Owners which may be parked on a road or street in the Project for not more than forty eight (48) hours.

3.21.4 Motorcycles, motor bikes, all terrain vehicles and off road vehicles must be parked when not in use, within the garages on Lots.

3.22 Towing of Vehicles The Board shall have the right to have any truck, mobile home, travel trailer, tent trailer, trailer, camper shell, detached camper, recreational vehicle, boat, boat trailer or similar equipment or vehicle or any automobile, motorcycle, motor bike or other motor vehicle or all terrain vehicle which is parked, kept, maintained, constructed, reconstructed or repaired in violation of the Project Documents towed away at the sole cost and expense of the owner of the vehicle or equipment. Any expense incurred by the Association in connection with the towing of any vehicle or equipment shall be paid to the Association, upon demand, by the Owner of the vehicle or equipment. If the vehicle or equipment is owned by an Owner, any amounts payable to the Association shall be secured by the Assessment Lien and the Association may enforce collection of suit amounts in the same manner provided for in the Declaration for the collection of Assessment. No vehicle shall be towed, unless a written notice is given to the Owner of the Lot where the vehicle is parked within twenty four (24) hours prior to the time of towing.

3.23 Drainage

3.23.1 No Residential Unit, structure, building, landscaping, fence, wall or other Improvement shall be constructed, installed, placed or maintained in any manner that would obstruct, interfere with or change the direction or flow of water 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 county or municipality in which the Project is located.

3.23.2 Any Lot Owner that changes the variation of Lot so as to create a different drainage or flow of water to, from or across the Lot, and that shall impede, infringe upon, cause flooding or damage to the adjacent property Owner, the Developer or Declarant shall not be responsible thereto or for said damage, and the remedy of any Lot Owner so affected, shall be against the offending Lot Owner. No Lot Owner shall place any landscaping material which shall come within one foot (1') of the adjacent building on either side of the Lot owned. In the event that a Lot Owner shall place any landscape material adjacent to a resident which abuts up to the stucco finish of or comes to the height of or exceeds the height of the slab or otherwise interferes with the drainage, then upon request of said Lot that is so affected, the Committee may take such action as to remedy said situation at the sole cost and expense of the offending Lot Owner.

3.24 Garages and Carports It is the intention of Sombre De Desierto that the impact of garages be minimized and that all residents must provide at least two (2) parking spaces within an enclosed garage. The interior of all garages shall be maintained in a neat, clean and sightly condition. No carports are permitted. No garage shall be converted for living or recreational activities without the prior written approval of the Architectural Control Committee. Any such approval by the Architectural Control Committee is dependant upon said Lot Owner receiving the appropriate permits for conversion from the City of Phoenix.

3.25 Driveways and Walkways Granite, rock, sand and other like materials used for drives and walkways are prohibited. Declarant/Developer shall install driveways with the construction of the residences. Any future change of a driveway done by a Lot Owner which will make use of brick in-lays, exposed aggregate, colored concrete, etc., must be approved, in writing, by the Architectural Control Committee.

3.26 Rooftop Air Conditioners Prohibited No air conditioning units or appurtenant equipment may be mounted, installed or maintained on the roof of any Residential Unit or other building so as to be visible from neighboring property including, but not limited to, HVAC units and Solar units. Skylights are permitted, but there shall be no more than four (4) per dwelling unit and if they are to have a color, then they are subject to approval by the Architectural Control Committee on an individual basis. Said restriction does not apply to the Declarant/Developer upon the initial construction of a single-family residence except that there shall be no more than four (4) skylights.

3.27 Storage Sheds and Swings No storage sheds or similar or related type objects shall be located on any Lot if the height of such object is greater than seven feet (7') in height at the center post. All swings and slides, including those used in connection with a swimming pool, if applicable, shall be at least seven feet (7') from all fences located on or near perimeter Lot lines, subject to any further requirements or restrictions of the City of Phoenix. In no event shall their height exceed seven feet (7'). No more than one (1) swing set or one (1) storage shed shall be permitted per Lot.

3.28 Screening Materials All screening areas, whether fences, hedges or walls shall be maintained and replaced from time to time on the Lots by the Owners thereof in accordance with the original construction of the Improvements by the Declarant when needed or as approved by the Committee pursuant to Article 12.

3.29 Exterior Alterations Except with the approval of the Architectural Control Committee, no change, modification, or addition of any kind whatsoever, including but not limited to, painting, decorating, awnings, and sunshades shall be made or carried out on the Exterior of any House. This restriction shall not apply to the use of sunscreens on any window facing the street so long as the sunscreen material is of the same color as the House on the Lot or the frame of the window to which it is affixed.

3.30 Height Limitations All roof heights shall be measured in accordance with City of Phoenix code, however, roof heights shall not exceed seventeen feet (17') above the finished floor elevation per Lot. Said maximum allowance of seventeen feet (17') is from the engineered pad to the peak of the roof. No two story or split level residences are permitted.

3.31 Flagpoles Flagpoles of any type, size or nature, must be approved, in writing, by the Architectural Control Committee.

3.32 Builder's Use of Premises Notwithstanding any provision herein contained to the contrary, it shall be expressly permissible for a Builder of a House to maintain during the period of construction and sale of the House, upon such Lot such facilities required to facilitate or convenient to facilitate or incidental to the construction and sale of the Houses including, but not limited to, storage areas, construction trailer and portable lavatories. Said storage areas, construction trailer and portable lavatories need not be approved, in writing by the Architectural Control Committee prior to placement when done by the Declarant/Developer.

3.33 Exterior Colors All exterior paint colors and all roofing materials and colors must have prior approval of the Committee with the exception of four (4) exterior colors and two (2) trim colors. The four (4) exterior paint colors are Dunn-Edwards "Sandal" (#SP133), Dunn-Edwards "Cashmere" (#SP152), Dunn-Edwards "Birchwood" (#SP51) and Dunn-Edwards "Tumbleweed" (#DE1057). The two (2) trim colors permitted in the Subdivision are Dunn-Edwards "Barley" (#SP175), and Dunn-Edwards "Capricorn" (#DE1034) The roof tile colors is Lifetile Brown Blend #851. Any changes to the roof tile as to size, type, nature, function, description or material, including color, as well as exterior colors of the House or trim, must be submitted to the Architectural Committee and must be approved in writing by the Architectural Committee.

3.34 No Warranty of Enforceability, Declarants Exception.

3.34.1 While Declarant has no reason to believe that any of the restrictive Covenants contained within this Article, or elsewhere in this Declaration are or may be invalid or unenforceable for any reason or to any extent, Declarant makes no warranty or representation as to the present or future validity or enforceability of any of the restrictive Covenants. **ANY OWNER ACQUIRING A LOT IN THE PROJECT IN RELIANCE OF ONE OR MORE SUCH RESTRICTIVE COVENANTS SHALL ASSUME ALL RISKS AS TO THE VALIDITY AND ENFORCEABILITY THEREOF AND BY ACQUIRING THE LOT AGREES TO HOLD DECLARANT HARMLESS THEREFROM.** Also, with respect to restrictive Covenants as set forth within this Declaration, Declarant shall be exempt from the effect of said restrictions except as otherwise provided by the State of Arizona, or the City of Phoenix.

ARTICLE 4

FENCES AND EASEMENTS

4.1 Owners' Easements of Enjoyment

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

(i) The right of the Association to dedicate, convey, transfer or encumber the Common Areas provided in Section 1.14.3 of this Declaration.

(ii) The right of the Association to regulate the use of the Common Area through the Association Rules and to prohibit access to such portions of the Common Area, such as landscaped areas, not intended for use by the Owners, Lessees of Residents, or their Guests.

(iii) The right of the Association to suspend the right of an Owner and such Owner's family, tenants and guests to use the Common Area if such Owner is more than thirty (30) days delinquent in the payment of Assessments or other amounts due to the Association, or if the Owner has violated any other provisions of the Project Documents and has failed to cure such violation within thirty (30) days after the Association notifies the Owner of the violation.

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

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

4.3 Maintenance Easement There is hereby created an easement upon each Lot, for the purpose of maintenance of the adjacent Lot and Improvements thereon, which will not exceed three feet (3') and shall be appurtenant to the zero lot line of the adjacent Lot in whose favor the easement is created.

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

4.5 Declarant's Easements

4.5.1 Declarant shall have the right and an easement on and over the Areas of Association Responsibility to construct all Improvements the Declarant may deem necessary and to use the Areas of Association Responsibility and any Lots and other property owned by Declarant for the construction or renovation or related purposes including, but not limited to, the storage of tools, machinery, equipment, building materials, appliances, supplies and fixtures, and the performance of work respecting the Project.

4.5.2 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 and exercising the rights granted to or reserved by the Declarant by this Declaration.

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

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

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

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

4.6.3 For correction of emergency conditions in one or more Lots;

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

4.6.5 For inspection of the Lots in order to verify that the provisions of the Project Documents are being complied with by the Owners, their guests, tenants, invitees and the other occupants of the Lot.

4.6.6 Easements for the installation and maintenance of utilities and drainage facilities have been created as shown on the Plat and additional easements may be created by

grant or reservation by the Declarant for a portion of the Project for the foregoing purposes. Except as may be installed by the Declarant, no structure, planting or other materials shall be placed or permitted to remain within these easements which may interfere with the installation or maintenance of utilities or which may change the direction of flow of drainage channels in the easements, if any, or which may restrict or retard the flow of water through the channels in the drainage easements, if any. The easement area of each Lot and all Improvements located thereon shall be maintained continuously by the Owner of the Lot, except for those improvements which a public authority or utility company is responsible and except for any easement area referred to in Section 3 or 4 which may be maintained by the Owner of the Lots who have or has use of the easement.

4.6.7 For the purpose of repairing and maintaining any Party Wall, an easement not to exceed three (3) feet in width is hereby created over the portion of every Lot immediately adjacent to any Party Wall to allow the adjoining Owner access for maintenance purposes and repair as set forth herein. Each Lot within the Project is hereby declared to have an easement over all adjoining Lots and Common Area for the purposes of accommodating any encroachment due to minor engineering errors, errors in either the original construction or reconstruction of the buildings on the Lots or the settlement or shifting of buildings or any other similar cause. These shall be valid easements of the maintenance of said encroachments as long as they exist and the rights and obligations of the Owners shall not be altered in any way by said encroachment, settlement or shifting provided however that in no event shall a valid easement for the encroachment be created in favor of an Owner(s) if said encroachment occurred due to the willful misconduct of said Owner(s).

4.7 Fence Requirements All Lots, when developed, shall be improved with fences as approved by the Committee, subject to Declarant's exemption under Article 12 below. Except as may be installed by Declarant, no view, side or rear fence and no side or rear wall, other than the wall of the house constructed on said Lot, shall be more than six (6) feet in height subject to the variance provisions in sections of Section 4 of Article 7 below. Withstanding the foregoing, prevailing governmental regulations shall take precedence over those restrictions of said regulations if more restrictive. Unless otherwise approved by the Committee, all fencing and any materials used for fencing, dividing or defining of Lots must be of cement block construction and of new materials. The color(s) of the fencing for all Lots will be as selected by the Declarant thereof and the Developer, without a prior approval of the Committee, if required, and shall not be changed without the prior approval of the Committee. All fencing installed shall follow such style and colors scheme unless prior approval of the Committee is received. This restriction shall not apply to the Declarant. All fences shall be maintained in good condition and repair. Any fence originally installed by the Declarant/Developer, that is damaged in whole or in part for any cause, must be promptly restored to its original condition by the Owner(s) of the adjacent Lots.

4.8 Fences Acting As Party Walls

4.8.1 Fences which may be constructed upon the dividing line between Lots, or near or adjacent to said dividing line because or due to minor encroachments due to engineering errors, which are hereby accepted by all Owners in perpetuity, or because existing easements prevent a fence from being located on the dividing line, by the Developer, Declarant, are Party Walls and shall be maintained and repaired at the joint cost and expense of

the adjoining Lot Owner(s). Fences constructed upon the back of any Lot, which do not adjoin any other Lot by the Developer/Declarant shall be maintained and repaired at the cost and expense of the adjoining Owner on whose Lot or immediately adjacent to whose Lot the fence is installed. Such Party Walls And Fences shall not be altered or changed in design, color or material of construction from the original installation made by the Declarant/Developer without the approval of the adjoining Owner(s), if any and the Committee. In the event any Party Wall is destroyed by the act(s) of one of its adjoining Lot Owners, his family, agents, guests or tenants, independent contractors, or others under his direct or indirect control, that Owner shall be responsible for said damage and shall promptly rebuild and repair the Party Walls to its/their prior condition at his/her sole cost and expense. In all other events, when any Party Wall is wholly or partially damaged, in need of maintenance or repair, each of the adjoining Owners shall share equally in the cost or replacement of Party Wall for restoring the same to its original condition. For this purpose, said adjoining Owners have an easement as more fully described in Section 4.6.7 of this Article. All gates shall be as high as the Party Wall or Fence.

4.8.2 In the event of a dispute between the Owners with respect to the repair or rebuilding of a Party Wall then, upon request of one of such Owners addressed to the Committee, the matter shall be submitted to the Committee for arbitration under such rules as are made from time to time and adopted by the Committee. If no such rules have been adopted, the matter shall be submitted to three (3) arbitrators, one chosen by the each of the Owners and a third arbitrator to be chosen within five (5) days by any Judge in the Superior Court of Maricopa County. The determination of the matter, signed by any two (2) of the three (3) arbitrators, shall be binding upon the Owners who shall share the cost of arbitration equally. In the event that one of the Owners fails to chose an arbitrator within ten (10) days of the personal receipt of the request in writing for arbitration from the requesting Owner, than said requesting Owner shall have the right and power to chose both arbitrators.

4.8.3 Wherever the words "Party Walls", "Fence(s)" or "Fencing" appear in this Declaration, they include block walls, view fences, including wrought iron and other materials used as a fence, fencing, fences or walls except a wall which is a PART OF A HOUSE, is not subject to the provisions of Section 1 of this Article requiring cement block construction.

ARTICLE 5

ASSOCIATION, ADMINISTRATION, ORGANIZATION, MEMBERSHIP AND VOTING RIGHTS

5.1 Formation of Association The Association shall be a non-profit Arizona Corporation charged with the duties and invested with the powers prescribed by law and set forth in the Articles, Bylaws and Declaration. In the event of any conflict or inconsistency between this Declaration and the Articles, Bylaws, Association Rules or Architectural Rules, this Declaration shall control.

5.2 Board of Directors and Officers The duties and affairs of the Association shall be conducted by the Board and such officers as the Board may elect or appoint in accordance with the Articles and the Bylaws. Unless the Project Documents specifically require the vote

or written consent of the Members, approvals or actions to be given or taken by the Association shall be valid if given or taken by the Association.

5.3 The Association Rules The Board may, from time to time, and subject to the provisions of this Declaration, adopt, amend, and repeal rules and regulations pertaining to (i) the management operation and use of the Areas of Association Responsibility including, but not limited to, any recreational facility situated in the Area of Association Responsibility, (ii) minimum standards for any maintenance for any Lots, (iii) any other subject within the jurisdiction of the Association, (iv) maintenance of, care and use of common areas, perimeter walls and drainage and retention easements. In the event of any conflict or inconsistency between the provisions of this Declaration and the Association Rules, the provisions of this Declaration shall prevail.

5.4 Personal Liability No member of the Board or of any Committee of the Association, no officer of the Association, and no manager or other employee of the Association shall be personally liable to any Member, or to any other person or entity, including the Association, for any damage, loss or prejudice suffered or claimed on account of any act, omission, error, or negligence of the Association, the Board, the manager, any representative or employee of the Association, or any Committee 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 or any right or privilege given to the Association by the Project Documents or reasonably necessary to effectuate any such right or privilege.

5.6 Membership Membership in the Association shall be limited to Owners of Lots. An Owner of a Lot shall automatically, upon becoming the Owner thereof, be a Member of the Association and shall remain a Member thereof until such time as his Ownership ceases for any reason, at which time his membership in the Association shall automatically cease. Tenants shall not have any voting or membership rights in the Association by virtue of the occupancy of any Lot or house thereon.

5.7 Membership Classes The Association shall have two (2) classes or voting membership established according to the following provisions:

5.7.1 Class A A Class A membership shall be held by each Owner of a Lot other than the Declarant, as long as two (2) classes of membership exist. Each Class A member shall be entitled to one vote for each Lot Owner. If a Lot is owned by more than one person, each such person shall be a member of the Association but there shall be no more than one (1) vote for each Lot.

5.7.2 Class B A Class B membership shall be held by the Declarant, including any successor in interest, the Co-Declarant as provided in Section 5.7.4 and the Declarant shall be entitled to three (3) votes for each Lot owned by the Declarant, provided that Class B membership shall be converted to Class A membership and shall forever cease to exist on the occurrence of whichever of the following is first in time; (i) One hundred twenty (120) days

following the date that Declarant has conveyed by close of escrow, twenty-one (21) Lots in the Project to Owners other than the Declarant, (ii) The third anniversary of the close of escrow for the sale of the first Lot by Declarant to an Owner, (iii) when the Declarant notifies the Association in writing that it relinquishes its Class B membership.

5.7.3 When either of those three (3) events occur, whichever occurs first, at that point and place in time, Class B membership shall cease to exist.

5.7.4 In the event that the Declarant elects to partially assign or convey its Declarant rights reserved hereunder to Developer, the voting rights of all Lots owned by the Declarant and said Developer, as Co-Declarant and/or their successors in interest or assigns, shall be added together solely for the purposes of determining conversion of Class B membership to Class A membership. Notwithstanding the foregoing, Declarant and any Co-Declarant may voluntarily convert their respective Class B membership to Class A membership with the prior consent of the other Declarant(s) at any time by giving written notice to the Association.

5.8 Voting Procedures No change in the Ownership of a Lot shall be effective for voting purposes unless and until the Board is given actual written notice of such change and is provided satisfactory proof thereof. Payment of the transfer fee at close of escrow by title company to the Homeowner's Association shall be presumed sufficient evidence of the satisfactory proof required. The vote 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(s) shall be cast, they shall lose their right to vote on the matter in question. If any Member casts a vote representing a certain Lot, it will thereafter be conclusively presumed for all purposes that he/she was acting with the authority and consent of all other Owners of the same Lot unless objection thereto is made at the time that the vote is cast. In the event that more than one (1) vote is cast by a Class A member for a particular Lot, none of the votes shall be counted and all of the votes shall be deemed void for that Lot.

5.9 Transfer of Membership The rights and obligations of any Member other than the Declarant shall not be assigned, transferred, pledged, hypothecated, conveyed or alienated in any way except upon transfer of ownership of an Owner's Lot, and then only to the transferee of ownership of the Lot. A transfer of ownership to a Lot may be effected by deed, intestate succession, testamentary disposition, foreclosure of a mortgage of record, or any other legal process as now in effect or as any 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. In the event that there are no transfer fees due and owing at time of transfer of Ownership, then in that event, each Purchaser or Lot shall notify the Association of his/her purchase or within ten (10) days after he/she becomes the Owner of a Lot.

5.10 Association Voting Any action by the Association which must have the approval of the Association Membership before being undertaken or shall take effect, shall require; (i) the vote of fifty one percent (51%) of the Membership present and voting at a duly called and held meeting of the Membership or (ii) the written consent of fifty one percent (51%) of the

Membership unless, in either case, another percentage is specifically prescribed by a provision of this Declaration, the Bylaws or the Articles.

5.11 Voting Rights Voting Rights are attributable to all Lots owned by the Declarant shall vest immediately by virtue of Declarant's ownership thereof. Except for the Declarant, no Owner of any Lot shall have any voting rights attributable to that Lot until an Assessment has been levied against that Lot and Owner by the Association pursuant to Article 9 below.

5.12 Suspension of Voting Rights If any Owner fails to pay any Assessment or other amounts due to the Association under the Project Documents within thirty (30) 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 Owners 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.

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

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

ARTICLE 6

DUTIES AND POWERS OF THE ASSOCIATION

6.1 Areas of Association Responsibility and Public Right of Way

6.1.1 The Association shall maintain, paint, repair, replace, restore, operate and keep in good condition all of the Common Area and all facilities, Improvements, walls, equipment and landscaping thereon. The Association shall not maintain areas which any governmental entity is maintaining or is obligated to maintain. In addition, the Association shall not be responsible for maintenance, repair or replacement arising out of or caused by the willful or negligent act or neglect of any Owner or his guests, tenants or invitees. The repair or replacement of a portion of the Common Area or any Lot resulting from such excluded items shall be the responsibility of the violating Owner. Liability herein shall be limited to that provided for or allowed in the Statutory or case load of the state of Arizona.

6.1.2 The Board shall be the sole judge as to the appropriate maintenance of all Areas of Association Responsibility and other properties maintained by the Association.

6.2 Lots Each Owner of a Lot shall be responsible for maintaining, repairing or replacing his Lot, and all buildings, Residential Units, landscaping or other Improvements situate thereon, except for any portion of the Lot which is an Area of Association Responsibility. The front yard landscape, and front yard irrigation, shall be maintained by the Association. The Declarant shall install on each Lot, as and for any other landscaper, an

irrigation system for the front yard as well as one twenty four inch (24") box tree and two (2) five (5) gallon bushes. Thereafter, any Lot Owner can add to the front yard landscape, one (1) additional twenty four inch (24") box tree and two (2) additional five (5) gallon bushes, hedges or plants. No additional landscaping shall be added by the Owner of each Lot, without the prior written approval of the Architectural Committee. All buildings, Residential Units, Landscaping and other Improvements shall at all times be kept in good condition and repair. No yard equipment, wood piles or storage areas are to be maintained so as to be Visible From Neighboring Property or streets.

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

6.4 Improper Maintenance and Use of Lots. In the event any portion of any Lot is so maintained as to present a public or private nuisance, or as to substantially detract from the appearance or quality of surrounding Lots or other Areas of the Project which are substantially effected thereby, related thereto or in the event that any portion a Lot is being used in a manner which violated the Declaration, or the rules, regulations, statutes or ordinances of the state of Arizona, or in the event that the Owner of any Lot is failing to perform any of its 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 to the offending Owner that unless corrective action is taken within thirty (30) days of written notice, the Board may cause such action to be taken at said Owner's cost. If at the expiration of said thirty (30) day period of time the requisite corrective action has not been taken, the Board shall be authorized and empowered to cause such action to be taken and the cost thereof shall be added to and become a part of the Assessment to which the offending Owner and the Owner's Lot is subject and shall be secured by the Assessment Lien.

6.5 Common Walls The rights and duties of Owners of Lots with respect to Common Walls shall be as follows:

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

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

6.5.3 In the event that any such Common Wall is damaged or destroyed by some cause other than the act of one of the adjoining Owners, its agents, tenants, licensees, guests, or family, including ordinary wear and rear and deterioration from lapse of time, then

in that event, both such adjoining Owners shall proceed forthwith to rebuild or repair the same to as good condition as formally existed at their joint and equal expense.

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

6.5.5 The right of any Owner to contribution from any other Owner under this Section shall be appurtenant to the land and shall pass to such Owner's successors in title.

6.5.6 In addition to meeting the other requirements of this Declaration and of any other building code or similar regulations or ordinances, any Owner proposing to modify, make additions to or rebuild a Common Wall shall first obtain the written consent of the adjoining Owner(s) and the Architectural Control Committee.

6.5.7 In the event any Common Wall encroaches upon a Lot or the Common Area, a valid easement for such encroachment and for that maintenance of the Common Wall shall and does exist in favor of the Owners of the Lots which share such Common Wall.

6.6 Maintenance of Walls Other Than Common Walls

6.6.1 Walls, other than Common Walls, located on a Lot shall be maintained, repaired or replaced by the Owner of the Lot, including the front yard wall, with the opening for access to the street, as well as the rear yard wall.

6.6.2 Any wall which is place on the boundary line between a Lot and the Common Area 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 wall which faces the Common Area or any wall which faces a Common Area drainage easement.

6.7 Streets, Curbs and Sidewalks

6.7.1 It shall be the responsibility of the Association to maintain the streets, curbs and sidewalks in the Project. The sidewalks to be maintained shall abut and run more or less parallel to the curbs and streets. Owners of Lots shall maintain the walkways to the premises from the street or driveway. Owners of Lots shall maintain the driveways of their respective Lots.

6.7.2 It shall be the sole determination of the Association as to when these streets, curbs and sidewalks shall be repaired and to what extent and to what not of the shall be repaired. In that effect, the Board of Directors shall have the sole and exclusive authority to order the repair of any street or any potion thereof, curb or any portion thereof, and sidewalk and any portion thereof and shall bid and let the contracts for such repair for the ordinary wear and tear.

6.7.3 In the event any street, curb or sidewalk is damaged by the Owner of the Lot, his guests, invitees, licensees, tenants or others who are invited to or proceed to or from the Lot with the consent of the Owner, expressed or implied, then in that event, the Owner of

said Lot shall be responsible to repair said damage to the sidewalk, curb/street. Upon receipt of notice of repair, the Owner shall have thirty (30) days to effectuate the necessary repairs. In the event the Owner shall fail to repair the street, curb or sidewalk as sited within the thirty (30) day period, then in that event the Association's Board of Directors shall have the repairs made and the cost thereof shall be added to and become a part of the Assessment to which the offending Owner and the Owner's Lot is subject and shall be secured by the Assessment Lien.

6.7.4 In no event, shall the streets within the project be resurfaced less than once every five (5) year period, unless two thirds (2/3) of the Board of Directors shall vote to dispense with resurfacing of the street in that particular five (5) year span. Then in that event, the Board of Directors must vote on such proposal to resurface the streets(s) every year thereafter.

6.8 Repair and Replacement of Damaged Property. Any Common Area Improvements damaged or destroyed shall be repaired or replaced promptly by the Association unless (i) repair or replacement would be illegal under any state or local health or safety statute; (ii) Owner's owning at least eighty percent (80%) of the Lots vote not to rebuild or restore them. The cost of repair or replacement in excess of insurance proceeds, condemnation awards and reserves, shall be paid by the Association as provided herein. The Association may specifically assess the Owners therefore. Any excess or remaining insurance or condemnation proceeds which are not needed to restore the Common Area as provided above shall be distributed to the Owners on the basis of an equal share for each Lot. No provisions of the pre-Project Deed Documents shall give a Lot Owner or any other person priority in the case of payment to the Lot Owner of the insurance proceeds or condemnation awards for losses to Common Area over any rights of First Mortgagees, based upon one (1) vote for each First Mortgage owned or Owners, other than the Declarant of the individual Lots which have given their prior written approval. The Association shall not be entitled to (i) use hazard insurance proceeds for losses to any Common Area other than for the repair, replacement of reconstruction of such Common Area or; (ii) fail to maintain hazard insurance on any insurable item or improvement in the Common Area.

ARTICLE 7

INSURANCE

7.1 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(s):

7.1.1 Comprehensive general liability insurance, including medical payments insurance, in an amount determined by the Board, but not less than One Million Dollars (\$1,000,000.00). Such insurance shall cover all occurrences commonly insured against for death, bodily injury and property damage arising out of or in connection with the use, ownership or maintenance of the Area 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-owned automobile coverage with cross liability endorsements to cover the liabilities of the Owners as group to an Owner. Said comprehensive public liability insurance, insuring the Association, the Declarant, or any other Developer, the agents

and employees of each, and the Owners and their respective family members, guests, and invitees against any liability incident to the ownership or the use of the Common Area, including obtainable a cross liability endorsement insuring each insured against liability to each other insured and a severability of interest endorsement precluding the insurer from denying coverage to one Owner because of the negligence of other Owners or other insurers or the Association.

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

7.1.3 Worker's Compensation Insurance to the extent necessary to meet the requirements of the laws of Arizona.

7.1.4 Such other insurance, including Fidelity Bonds, as the Association shall determine from time to time to be appropriate to protect the Association or the Owners. In the event of a Fidelity Bond, said bond shall cover all persons and entities which handle funds of the Association, including but without limitation any professional manager employed by the Association and any such professional managers and employees in amounts not less than the maximum funds that will at any time be in the possession of the Association or any professional manager employed by the Association but in effect not less than the total of Assessments for a three (3) month period on all Lots and all reserve funds maintained by the Association.

7.1.5 Additional Insurance The Association shall have the power and authority to obtain and maintain other and additional insurance coverage including multi-peril insurance providing minimum fire and extended coverage on a replacement cost basis for the Common Area Improvements, if any, which additional insurance shall meet the insurance requirements established by the Federal National Mortgage Association (FNMA) or the Federal Home Loan Mortgage Corporation (FHLMC), as applicable, so long as neither the FNMA or FHLMC is a Mortgagee or Owner of a Lot except to the extent that such coverage is not available or has been waived in writing by the FNMA or the FHLMC. A first mortgagee may pay overdue premiums on hazard insurance policies or secure new coverage for the Common Area in the case of a lapse of a policy and the Association shall immediately reimburse the First Mortgagee therefore.

7.1.6 Insurance Provisions The insurance policies purchased by the Association shall to the extent reasonably available, contain the following provisions: (i) There shall be no subrogation with respect to the (HOA NAME) Association, its agents, servants and employees with respect to Owners and members of their household; (ii) No act or omission by any Owner, unless acting within the scope of his authority on behalf of the Association, will void the policy or be a condition to recover on the policy; (iii) That the coverage afforded by such policy shall not be brought into contribution or proration with any insurance which may be purchased by Owners or their mortgagees or beneficiaries under deeds of trust; (iv) A

"severability of interest" endorsement which shall preclude the insurer from denying the claim of an Owner because of the negligent acts of the Association or other Owners; (v) Statement of the name of the insured as the Association; (vi) For policies of hazard insurance, a standard mortgagee clause providing that the insurance carrier shall notify the first mortgagee named in the policy at least thirty (30) days in advance of the effective date of any substantial modification, reduction or cancellation of the policy therein.

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

7.3 Payment of Premiums The premiums for any insurance obtained by the Association pursuant to Section 7.1 of this Declaration shall be included in the budget of the Association and shall be paid by the Association.

7.4 Payment of Insurance Proceeds With respect to any loss to any Area of Association Responsibility covered by property insurance obtained by the Association in accordance with this Article, the loss shall be adjusted with the Association, and the insurance proceeds shall be payable to the Association and not to any mortgagee or beneficiary of a deed of trust. Subject to the provisions of Section 7.5 of this Declaration, the proceeds shall be distributed for the repair or restoration of the damage to the Area of Association Responsibility.

7.5 Repair and Replacement of Damaged or Destroyed Property. Any portions of the Areas of Association Responsibility which are damaged or destroyed shall be repaired or replaced promptly by the Association unless (i) repair or replacement would be illegal under any state or local health or safety statute or ordinance, or (ii) Owners representing at least eighty percent (80%) or the total authorized votes in the Association vote not to rebuild. The cost of repair or replacement in excess of insurance proceeds and reserves shall be paid by the Association. If all of the Areas of Association Responsibility are not repaired or replaced, Insurance proceeds attributable to the damaged Areas of Association Responsibility shall be used to restore the damaged area to a condition which is not in violation of any state or local health or safety statute or ordinance and the remainder of the proceeds shall either (i) be retained by the Association as an additional capital reserve, or (ii) be used for payment of operating expenses of the Association if such action is approved by the affirmative vote or written consent, or any combination thereof, of Members representing more than fifty one percent (51%) of the votes of the Association.

ARTICLE 8

RULES, MANAGEMENT, ENFORCEMENT & PENALTIES

8.1 Rules The Association may adopt reasonable rules not inconsistent with this Declaration, the Article or the Bylaws in or relating to the use of the Common Area and all

facilities thereon and the conduct of Owners and their tenant and guests with respect to the Project and other Owners.

8.2 **Enforcement** The Association shall enforce the provisions of this Declaration by appropriate means including without limitation the expenditure of funds of the Association for the employment of legal council and the commencement of legal actions. Each Member is hereby authorized to enforce the terms and provisions of the Declaration.

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

8.4 **Penalties** The Association may adopt a schedule of reasonable monetary penalties for violation by the Owners of the provisions of the Project Documents and impose the same according to procedures in the Bylaws.

ARTICLE 9

COVENANT FOR ASSESSMENTS AND CREATION OF A LIEN

9.1 **Assessment Obligations** Each Owner of any Lot, by acceptance of a deed or recorded contract of sale therefore, weather or not it shall be so expressed in such document, is deemed to covenant and agree to pay to the Association; (i) regular Assessments, (ii) Special Assessments for Improvements and unexpected expenses and, (iii) other charges made or levied by the Association against the Lot and the Owner thereof including, without limitation, interest, late charges, collection costs, costs of reasonable attorney's fees incurred by the Association in enforcing compliance with this Declaration or the Bylaws, whether or not a suit or other legal action is instituted or commenced, which charges are collectively referred to herein as the "Charges". Such Assessment Charges shall be established and collected as provided herein and in the Bylaws. Any part of any Assessment or charge not paid within

thirty (30) days of the due date thereof as established by this Article 9 shall bear interest at a rate of Twelve percent (12%) per annum from the due date until paid and shall be subject to a reasonable late charge of twenty five percent (25%) of the delinquent amount or twenty five dollars (\$25.00), whichever is greater. The Annual and Special Assessments and the Charges made against a Lot and the Owner thereof pursuant to this Declaration or the Bylaws, shall be charged in a continuing Lien upon the Lot, hereinafter referred to as "Assessment Lien". Each such Assessment and Charges shall also be the personal obligation of the person who was the Owner of such a Lot at the time the Assessment or Charge fell due as provided in this Article 9 or elsewhere in this Declaration, but this personal liability shall not pass to successive Owners unless specifically assumed by them by contractual obligation. The Assessment Lien on each Lot shall be prior and superior to all other Liens except (i) all taxes, bonds, Assessments and other levies which, by law, would be superior thereto and; (ii) The Lien or charge of any First Mortgage on that Lot. No Owner of a Lot may exempt himself from liability for Assessments and Charges by waiver of the use or enjoyment of any of the Common Area or by the abandonment of his Lot.

9.2 Purpose of Assessments The Assessments by the Association shall be used exclusively to promote the recreation, health, safety and welfare of all Residents in the Project, for the improvement and maintenance of the Common Area as provided herein, and for the common good of the Project. Annual Assessments shall include an adequate reserve fund for taxes, insurance, maintenance, repairs and replacement of the Common Area as well as the streets, curbs and sidewalks, and other improvements which the Association is responsible for maintaining.

9.3 Annual Assessments.

9.3.1 The maximum Annual Assessment amount in the year the Declarant first closes escrow for the sale of any Lot in the Project to an Owner other than the Declarant shall be three hundred dollars (\$300.00). The Annual Assessment shall be prorated based on the number of months remaining before December 31 of such year as well as any partial months remaining. For the purposes of calculation, the calendar year shall consist of three hundred sixty (360) days and each month shall consist of thirty (30) days. As the Association sees fit, through a vote of the Board of Directors, the maximum annual assessment amount set forth above may be increased each calendar year after the first year during which a Lot in the Project is Assessed, by an amount, which shall not be greater than five percent (5%) of the previous years maximum Annual Assessment. The maximum Annual Assessment may be increased by an amount in excess of the amount stated or decreased by more than ten percent (10%) of the Annual Assessment against Lots for the prior calendar year. Provided such increases or decreases are approved by the affirmative vote of Declarant, while Class A and B Membership exist, and of two thirds (2/3) of the voting power of the Class A members voting in person or by proxy at a meeting duly called for such purpose.

9.3.2 Notwithstanding anything to the contrary stated in this Article, until Class B Membership is terminated in accordance with Section 5.7.2 of Article 5 above, Declarant shall be obligated to pay only twenty five percent (25%) of the Annual Assessment amount fixed on Lots pursuant to this section and shall vary said percentage of the Annual Assessment amount in the same manner established for the payment of the Annual Assessment of other Lot Owners except the Declarant shall pay and be liable for the full Assessment amount owed any

Lot owned by the Declarant after said Lot and the house on the Lot are first rented or leased to or occupied by any person. Declarant is to pay said reduced amount on a monthly basis. In the event said reduced Assessment amount for the Lots owned by the Declarant is insufficient to cover the reasonable share of those Lots for contribution towards insurance costs, appreciation reserves for the Project, and the utility bills as determined by generally accepted cost accounting methods, Declarant shall also pay such amount monthly or quarterly as applicable, in addition to said reduced Assessment amount for the Lots as is necessary to cover those lots contribution towards the insurance costs and appreciation reserves.

9.3.3 Upon termination of the Class B Membership, the Declarant's responsibility and liability for insurance costs and appreciation reserves for the Project, as determined by generally accepted cost accounting methods, shall cease.

9.3.4 Until Class B Membership is terminated pursuant to Section 5.7.2, Article 5 above, Declarant shall be responsible for prompt payment on a current basis of all costs and expenses related to maintenance and repair of the Common Area and other Areas required to be maintained by the Association hereunder, if any, in the event and to the extent that the funds available to the Association are inadequate for payment of such costs and expenses on a current basis. Declarant's failure to perform the requirements contained in this Section shall constitute default under this declaration entitling any Lot Owner or First Mortgagee to record a Notice of Lien against Declarant's property interest in the Project to enforce the provisions of this Section.

9.4 Special Assessments In addition to the regular Annual Assessments authorized above, the Board may levy in any Assessment year against each Lot, which is then subject to the Assessment Lien, a Special Assessment applicable to that year only for the purpose of defraying, in whole or in part, the cost of (i) any construction, reconstruction, repair, replacement of the Improvement upon the common area, or any other improvements the Association is responsible for maintaining, including fixtures or personal property related thereto or; (ii) any unanticipated or underestimated expense normally covered by a regular assessment, and (iii) when necessary, for taxes assessed against the Common Area. Provided however, that in all events, no such Assessment shall be made without the affirmative vote of the Declarant, while Class B Membership exists, and of two thirds (2/3) of the voting power of Class A Members voting in person or by proxy at a meeting duly called for this purpose.

9.5 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 Annual 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.

9.6 Lots Subject to Assessment. All Lots shall be subject to assessment upon the conveyance of the first Lot to a Purchaser.

9.7 Owners Initial Assessment In addition to any other assessment or charge authorized by this article, the association may levy an Owners initial Assessment against any

Owner other than the Declarant payable upon close of escrow or other transfer of title to any Lot or other portion of the assessable property to any Owner. The amount of such Owners Initial Assessment shall not exceed the sum of two (2) months of the Annual Assessment applicable to the Lot or other portion of Assessable property being acquired by Owner, pursuant to Section I Above. Such payment shall be non-refundable and shall not be considered as an advance payment of any Assessments levied by the Association pursuant to this Declaration.

9.8 Procedures For Voting On Assessments. Written notice of any meeting called for the purpose of taking any action authorized under this Article shall be sent to all Owners not less than fifteen (15) days, nor more than forty five (45) days in advance of the meeting. Of the first such meeting called, the presence of member or members or proxies therefore entitled to cast sixty percent (60%) of all the votes of the membership shall constitute a quorum. If the required quorum is not present, another meeting may be called subject to the same notice requirement and the required quorum at the subsequent meeting shall be one-half (1/2) of the required quorum at the preceding meeting. No such meeting shall be called more than sixty (60) days following the preceding meeting. While Class B Membership exists, the quorum requirements described above shall apply to both classes and quorum shall not exist for a meeting unless a quorum of each class of present.

9.9 Allocation of Assessments The Owners of each Lot shall bear an equal share of each Regular and Special Assessment except as otherwise specified in this Article and elsewhere in this Declaration.

9.10 Rules Regarding Billing and Collection Procedures. Annual Assessments shall be collected on a monthly basis or such other intervals 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 billing and collection of the Assessments provided that the procedures are not inconsistent with the provisions of this Declaration. The failure of the Association to send a bill to a Member shall not relieve any Member of his liability for any Assessment or Charge under this Declaration, but the Assessment Lien shall therefore not be foreclosed or otherwise be enforced until the Member has been given not less than thirty (30) days written notice prior to such foreclosure or enforcement of the Assessment or any installment thereof is or will be due and of the amount owing. Such notice may be given 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 the Lot changes during an Assessment Period. Successor Owners of Lots shall be given credit for pre-payments on a pro-rated basis made by prior owners.

9.11 Effective Transfer of Lot by Sale or Foreclosure The sale of any Lot shall not effect the Assessment Lien or liability or Assessments or Charges due and payable except as provided below. No sale or transfer of a Lot shall release such Lot Owner from liability for any Assessments or Charges previously due or release his Lot from the Lien therefore. When however, the First Mortgagee or another person obtains title to a Lot as the result of a Foreclosure, Trustee Sale, or Deed in Lieu thereof of any First Mortgage, such First Mortgage or other person shall not be liable for the Assessments and Charges chargeable to such Lot which became due prior to the acquisition of title to such lot by the First Mortgagee or other person. The Assessment Lien therefore shall be extinguished. Such unpaid Assessments and

Charges shall be deemed to be common expenses collectable from the Owners of all the Lots through regular or special Assessments or a separate Charge against a Lot as provided herein. Any voluntary conveyance of a Lot, the Grantee of the same shall not be personally liable for Assessments or other Charges due to the Association in connection with that Lot which accrued prior to the conveyance unless liability therefore is specifically assumed by the Grantee. Any Grantee, Mortgagee, or other Lien Holder shall be entitled to a statement from the Association setting forth the amount of the unpaid Assessments and Charges due the Association for a reasonable preparation charge. The charge will not exceed ten dollars (\$10.00). The Grantee or other person entitled to receive this statement shall not be liable for nor shall the Lot conveyed be subject to a Lien for any unpaid Assessments or Charges in excess of the amount set forth in the statement provided however the Grantees shall be liable for any such Assessment or Charge becoming due after the date of any such statement.

9.12 **Remedies for Non-Payment of Assessment** Any Assessment or any installment of an Assessment not paid with thirty (30) days after the Assessment or the installment of the Assessment, first become due shall bear interest from the due date at the rate of interest established from time to time by the Board. In addition, the Board of Directors may establish a late fee to be charged to any Owner who has not paid any Assessment or any installment of an Assessment, within thirty (30) days after such payment was due.

9.12.1 The Association shall have a Lien on each lot for (1) all Assessments levied against the Lot, (2) all interest, lien fees, late charges and other fees and charges assessed against the Lot or payable by the Owner of the Lot, (3) all fines levied against the Owner of the Lot, (4) all attorney's fees, court costs, title report fees, cost and fees charged by any collection agency either to the Association or to Owner and any other fees or costs incurred by the Association in attempting to collect Assessments or other amounts due to the Association by the Owner of a Lot. Recording of this Declaration constitutes record notice and the 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 to the date of the recording of the Notice of Lien, including interest, lien recording fees and reasonable attorney's fees. Before recording any Notice of Lien against any Lot, the Association shall make a written demand to the defaulting Owner for the payment of the delinquent Assessments, together with interest, late charges and reasonable attorney's fees, if any. The demand shall state the date and the amount of the delinquency. Each default shall constitute a separate basis for a demand, but any number of defaults may be included within the single demand. If the delinquency is not paid within ten (10) days after delivery of the demand, the Association may proceed with recording a Notice of Lien against the Lot.

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

Assessments and charges against the Lot which accrue prior to such sale or transfer shall remain the obligation of the defaulting Owner of the Lot.

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

9.12.4 The Association have the right, at its option, to enforce collection of any delinquent Assessments together with interest, lien fees, reasonable attorney's fees and any other sums due to the Association in any manner allowed by law including but not limited to (i) bringing an action by foreclosure of the Lien and/or sale of the Lot by the Association, its attorney or other person authorized by this Declaration or by law to make the sale, (ii) bringing an action at law against the Owner personally obligated to pay the delinquent assessments and such action may be brought without waiving the Assessment Lien securing the delinquent Assessments or (iii) any other action at law or equity to enforce the debt, the Assessment Lien against the Lot. Any such enforcement, foreclosure or sale action may be taken without regard to the value of such Lot, the solvency of the Owner or the relative size of the Owners default. The Association shall have the power to bid in at any foreclosure sale and to purchase, acquire, hold, lease, mortgage and convey any and all Lots purchased at such sale. Upon the sale of the Lot pursuant to this section, the purchaser thereof shall be entitled to a deed to the Lot and to immediate possession thereof and said purchaser may apply to a court of competent jurisdiction for a writ of restitution or other relief for the purpose of acquiring such possession, subject to applicable laws. The proceeds of any such sale shall be applied as provided by applicable law but, in the absence of any such law, shall be applied first to discharge at cost thereof, including but not limited to court costs, other litigation costs, costs of attorney's fees incurred by the Association, and the balance thereof, if any, shall be paid to the Owner. It shall be the condition of any such sale, and any judgments or orders shall so provide, that the purchasers shall take the interest of the Lot sold, subject to this Declaration. In the event the Owner of the Lot when the original Assessment or Charge was made, is the purchaser or redemptioner, the Assessment Lien securing that portion of the Assessment or Charge remaining unpaid following the sale shall continue in effect and said Lien may be enforced by the Association or by the Board for the Association as provided herein. Further, not withstanding any foreclosure of the Assessment Lien or the sale of the Lot, any Assessments and Charges due after application of any sale proceeds as provided above, shall continue to exist as a personal obligation of the defaulting Owner of the Lot to the Association and Board may use reasonable effort to collect the same from Owner even after he/she is no longer a Member of the Association.

9.12.5 In addition to all of the remedies provided for this Declaration or at law or at equity, the Board may temporarily suspend the Association voting rights of a Lot Owner who is in default in the payment of any Assessment or any other amount due to the Association as provided in the Bylaws.

ARTICLE 10

USE OF ASSOCIATION FUNDS

10.1 Transfer of Fees and Fines The Association shall apply all funds and property collected and received by it, including assessments, fees, loan proceeds if any, surplus funds and all funds and property received by it or any other source, for the common good and benefit of Project and Owners and 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 of any and all land, properties, improvements, facilities, streets, curbs and sidewalks, services, projects, programs, studies and systems within or without the Project which may be necessary, desirable or beneficial to the general common interest of the Project, Owners and Residents. The following are some, but not all of the areas in which the Association may seek to aid, promote, provide for such common benefit; Social interaction among Members and Residents; Maintenance of landscaping of the common areas including perimeter areas and public right of way; Maintenance of streets, curbs and sidewalks, those sidewalks only being adjacent to the street; Maintenance of drainage areas in the Project; Recreation, irrigation facilities, liability insurance, communications, ownership and operation of vehicle storage areas, if any, education, transportation, health, utilities, public services, safety, indemnification of officers and directors of the Association. The Association may also expend its funds under the Laws of the State of Arizona or any such municipalities charter.

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

10.3 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 the Owner of the Lot, otherwise known as close of escrow, a sum equal to one tenth (1/10th) of the Annual Assessment on the Lot. Funds paid to the Association pursuant to this Section may be used by the Association for payment of operating expenses or for any other purpose permitted under the Project Documents. 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. This section does not relieve the Lot Owner from the provisions of Section 9.6, Owner's Initial Assessment, which may be assessed in addition to the provisions set forth herein.

10.4. Transfer Fee Each Purchaser of a Lot shall pay the Association immediately upon becoming the Owner of the Lot, other than the initial Owner, a transfer fee in such an amount as is established from time to time by the Board. Except that no transfer of fee shall be payable with respect to the purchase of Lot with respect to which a payment would be due and owing the Association pursuant to the previous Section of this Declaration.

10.5 Fines In addition to any of the rights or remedies which the Association may have under this Declaration or at law or equity, as a result of the violation of this Declaration, the Association shall have the right to levy reasonable fines against any Owner for any violation of this Declaration by the Owner, or any other Residents of the Owners Lot or any of

the Owners contractors or agents. The amount of the fine for each violation shall be established by the Board and shall be payable by the Owner within thirty (30) days after notice of the fine is given to the Owner by the Association. Any fine so levied may not exceed the total of one (1) years annual assessment for each occurrence. However, in the event that the Owner of a Lot does not comply with the fine, within the thirty (30) day period so established, then that shall be considered another offense for which a separate fine may be Levied. Any fine levied by the Association shall be secured by the Assessment Lien.

10.6 Evidence of Payment of Assessments Upon receipt of a written request by a Member or any other Person, the Association within a reasonable period of time thereafter shall issue to such Member or other Person a written certificate stating that (i) all Assessments, interest and other fees and charges have been paid with respect to any specified Lot as of the date of such certificate, (ii) if all Assessments have not been paid, the amount of such Assessments, interest if any, fees and charges due and payable as of such date. The Association may make a reasonable charge for the issuance of such certificate, which charges must be paid at the time of the request that any such certificate is made. Said fee shall not exceed a one twelfth (1/12th) of the annual assessment for said Lot. Any such certificate, when duly issued as herein provided, shall be conclusive and binding with respect to any matters therein stated as against any bonafide Purchaser of, or Lender on, the Lot in question.

ARTICLE 11

RIGHTS OF FIRST MORTGAGEES

11.1 Notification First Mortgagees Upon receipt by the Association of a written request from the First Mortgagee or Insurer or Government Guarantor of a First Mortgage, informing the Association of its correct name and mailing address and the Lot number or address to which the request relates, the Association shall provide such eligible mortgage holder or eligible insurer or guarantor with time written notice of the following:

11.1.1 Any condemnation loss or any casualty loss which effects a material portion of the Project or any Lot on which there was a First Mortgage held, insured or guaranteed by such eligible mortgage holder or eligible insurer or guarantor.

11.1.2 Any delinquency in the payment of Assessments or charges owed by an Owner of a Lot subject to a First Mortgage held, insured or guaranteed buy such eligible mortgage holder or eligible insurer or guarantor or any other default in the performance of the Owner of any obligation of the Project Documents which delinquency remains uncured for the period of sixty (60) days.

11.2 Approval Guaranteed to Terminate Project Any termination of the legal status of the Project for reasons other than the substantial destruction or the substantial taking in condemnation of the Project shall not be effective unless approved by eligible mortgage holders holding First Mortgages on Lots, and the Owners of which have at least sixty seven percent (67%) of the votes in the Association allocated to Owners of all Lots subject to the First Mortgages held by eligible mortgage holders.

11.2.1 Any First Mortgagee 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 immediately 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.

11.2.2 No provision of this Declaration gives or shall be construed as giving any Owner or other person priority over any rights of the First Mortgagee of a Lot in the case of the distribution to such Owner of insurance proceeds or condemnation awards or losses or to the taking of the Common Area.

11.2.3 Any First Mortgagee who receives a written request for the Board to respond to or consent to any action requiring the consent of the First Mortgagee shall be deemed to have approved such action if the Association has not received a negative response from such First Mortgagee within thirty (30) days of the date of the Association's request.

11.2.4 In the event of any conflict or inconsistencies between the provision of this Article and any other provision of the Project Documents, the provisions of this Article shall prevail, provided however, as long as there is Class B Membership in the Association, the Declarant, without the consent of any Owner or First Mortgagee being required, shall have the right to amend this Declaration, the Articles or the Bylaws, in order to conform this Declaration, the Articles or Bylaws 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 who's approval of the Project, Plat or the Project Documents is required or requested by the Declarant.

ARTICLE 12

ARCHITECTURAL CONTROL COMMITTEE

12.1 Creation of the Committee The Board shall establish an Architectural Committee consisting of not less than three (3) members appointed by the Board to regulate the external design, appearance and use of the Property and to perform such other functions and duties as may be imposed upon it by this Declaration, the Bylaws or the Board. No improvement of any kind may be made on any Lot without prior approval from the Architectural Committee and no change to an improvement previously approved by the Architectural Committee may be made without prior written approval of the Architectural Committee.

12.1.1 The Architectural Committee shall be a Committee of the Board.

12.1.2 So long as the Declarant owns any Lot, the Declarant shall have the sole right to appoint and remove members of the Architectural Committee. At such time as the Declarant no longer owns any Lot, the members of the Architectural Committee shall be appointed by the Board.

12.1.3 After all of the Lots in the Project have been conveyed to individual home purchasers, as evidenced by recorded deeds or agreements of sale of purchase, the new Committee shall be empowered by the Board of the Association.

12.1.4 The Declarant may at any time voluntarily surrender its right to appoint or remove the members of the Architectural Committee. In that event, the Declarant may require, for so long as the Declarant owns any Lot, that any actions of the Architectural Committee as described in a recorded instrument executed by the Declarant, be approved by the Declarant before they become effective. The Architectural Committee shall promulgate such architectural guidelines and standards to be used in rendering its decisions which shall benefit and enhance the Project. The decision of the Architectural Committee shall be final on all matters submitted to it pursuant to this Declaration. The Architectural Committee may establish a reasonable processing fee to defer the cost of the Association in considering any request for approval submitted to the Architectural Committee, which fee shall be paid at the time the request for approval is submitted.

12.1.5 Members of the Committee appointed by the Board shall serve for a period of not more than three (3) years, or less than one (1) year. The Board shall have the right to stagger the length of time of the three (3) members initially appointed so that the terms of office on the Architectural Committee shall not end all at the specific/or same time for each of the members.

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

12.2 Review by Committee (Non-Developer Improvements) No building or exterior or structural improvements of any kind, fences, walls, Party Walls, solar collectors, antennas (including customary TV antennas), satellite dishes, underground TV apparatuses, broadcasting towers, other structures, Lot Improvement, landscaping or landscaping changes, or changes to the exterior colors or materials of any of the foregoing (collectively, the "Alterations") shall be commenced, erected, made, structurally repaired, replaced or altered (except as set forth below) until the plans and specifications showing the nature, kind, shape, size, height, color, material, floor plan, locations and approximate cost of same shall have been submitted to and approved by the Committee. The Committee shall have the right to refuse to approve any Alteration which is not suitable or desirable in their opinion for aesthetic or other reasons. They shall have the right to take into consideration (i) the suitability of the proposed Alterations (ii) the material (including type and color) of which it is to be built; (iii) the site (including location, topography, finished grade elevation) upon which it is proposed to be erected; (iv) the harmony thereof with the surroundings (including color and quality of materials and workmanship); and (v) the effect of the Alteration as planned on the adjacent or neighboring property (including visibility and view). Failure of the Committee to reject in writing said plans and specifications within forty-five (45) days from the date the same were submitted shall constitute approval of said plans and specifications, provided the design, location, color and kind of materials in the Alteration shall be governed by all of the restrictions herein set forth. With respect to review of an Owner's plans and specifications, the Committee shall have the right to employ professional consultants to review the same to assist it in discharging its duties. In the event the Committee elects to employ such consultant,

the Committee shall first give notice to the Owner of the fee required for purposes of hiring any such consultant and the Owner shall promptly pay said consultant's fee to the Committee prior to the Committee being obligated to proceed further with its review of said Owner's submission. The restrictions and conditions set forth in this paragraph or in Article 12 below shall not be applicable to any original or subsequent construction whatsoever undertaken by Declarant.

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

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

12.3 Review by Committee (Developer Improvements) The plans, specifications and elevations of all houses, buildings or other improvements, landscaping and other structures or other items that a Developer (other than Declarant) intends to construct, install or erect in the Project, whether or not the same is visible from another Lot or public street, shall be subject to the review and approval of the Committee prior to the commencement thereof in accordance with the procedures set forth above. In addition to the foregoing requirements, any changes in such standards adopted by Declarant from time to time for the Project at its sole discretion shall apply provided, that any such Developer may continue construction within the Project in accordance with plans, specifications and elevations consistent with the standards in effect at the time they were submitted, even if the same do not comply with the standards then in effect. Further, the Declarant or the Committee shall have the right from time to time to promulgate and amend reasonable rules and regulations concerning the conduct and operations and building activities of any other Developer (except Declarant) who shall be bound thereby.

12.4 Variances The Committee may (with Board approval in its sole discretion and in extenuating circumstances) grant minor variances from the restrictions set forth in Article 3 and Article 4 of this Declaration and any of the requirements set forth in this Article 12, if the Committee determines that (a) either (i) a restriction would create an unreasonable and substantial hardship or burden on an Owner or (ii) a change of circumstances has rendered a restriction obsolete and (b) the activity permitted under the variance will not have a substantially adverse effect on other Owners and is consistent with the high quality of life intended for the Project.

12.5 Declarant's Exemption; Right to Replat The restrictions and conditions set forth in this Article 12 shall not be applicable to any original construction whatsoever undertaken by the Declarant. In addition to the foregoing, Declarant hereby reserves the right, in its sole discretion, and without the consent of the Committee or any other Owner or lien holder (except as provided herein), to amend the Plat with regard to any Lots which Declarant owns from time to time. Notwithstanding the foregoing, such replatting shall not affect the boundaries of any other Owner's Lot or the Common Area and shall always comply with all zoning and other applicable statutes, rules, ordinances and regulations of any governmental or quasi-governmental agency having jurisdiction over the Project. Subject to satisfaction of the foregoing conditions, any amendment to the Plat prepared and recorded by Declarant may reconfigure Declarant's Lots and/or create additional Lots.

ARTICLE 13

GENERAL PROVISIONS

13.1 Effective Declaration, Remedies Enforcement The declarations, limitations, easements, covenants, conditions and restrictions contained herein shall run with the land and shall be binding on all persons purchasing, or whose title is acquired by foreclosure, deed in lieu thereof, trustee sale or otherwise, or by occupying any Lot in the Project after the date on which this Declaration is recorded. In the event of any violation or attempted violation of these Covenants, Conditions and Restrictions, they may be enforced by an action brought by the Association, one of its committees so empowered, or the Owner or Owner's, not in default of any Lot or Lots in the Project or by Declarant, at law or in equity. The Declarant has no duty to take action to remedy any such default. The failure of the Association or 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. Remedies shall include but shall not be limited to damages, injunctive relief and/or any and all other rights or remedies pursuant to law or equity and the prevailing party shall be entitled to collect all costs incurred and reasonable attorney's fees sustained commencing and/or defending and maintaining such lawsuit. Any breach of these Covenants, Conditions, Reservations, Charges, Servitude, Assessments or any Remedies thereof, shall not defeat nor affect the Lien of any Mortgage or Deed of Trust made in good faith and for value upon the Lot in question and the breach of any of these Covenants, Conditions and Restrictions may be adjoined, abated or remedied by appropriate proceedings, not withstanding the lien or existence of any such Mortgage or Deed of Trust.

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

13.2 Term, Method of Termination This Declaration shall continue in full force and effect for a period of thirty (30) years from the date that this Declaration is recorded.

After which time, this Declaration shall be deemed to automatically extend for a successive periods of ten (10) years each. This Declaration may be terminated at any time if such termination is approved by the affirmative vote or written consent or any combination thereof of Owner's representing seventy-five percent (75%) or more of the votes in each class of membership and by the holders of First Mortgages in Lots, Owner's of which have seventy-five percent (75%) or more of the votes in the Association. If the necessary votes and consents are obtained, the Board shall cause to be recorded with the County Recorder of Maricopa County, Arizona, a Certificate of Termination duly signed by the President or Vice-President and attested by the Secretary or Assistant Secretary of the Association with their signatures acknowledged. Thereupon this Declaration shall have not further force and effect and the Association shall be dissolved pursuant to the terms set forth in its Articles.

13.3 **Plurals, Gender** Whenever the context so requires, the use of the singular shall include and be construed to include the plural and the masculine shall include the feminine and the neuter.

13.4 **Severability** Invalidity of any one or more of these Covenants, Conditions and Restrictions or any portion thereof by judgment or court order shall in no way affect the validity of any of the other provisions and the same shall remain in full force and effect.

13.5 **Transfer by Declarant** Wherever Declarant is granted certain rights and privileges hereunder, Declarant shall have the right to fully or partially assign and transfer any of such rights and privileges as to the Lots which are owned by any other Developer as evidenced by a written instrument recorded in the office of the Maricopa County Recorder which describes in detail the particular Declarant's right or rights being assigned, if less than all of such Declarant's rights, and said instrument shall state that, in such case the assignee is a co-Declarant or if Declarant has assigned all of its rights in said instrument, it shall state that the assignee is a successor Declarant. If the operation of this section results in there being more than one Declarant at any one time, all such Declarant's shall be co-Declarant's holding the rights assigned to them by their original assignor. Upon an assignment by Declarant of its rights hereunder, Declarant shall thereafter have no further liability, responsibility or obligations for future acts or responsibilities of the successor or co-Declarant hereunder and a successor or co-Declarant shall have full responsibility, to the extent of the assignment and all parties shall look to the successor or co-Declarant thereafter. At any time the Declarant may, by a written recorded notice, relinquish any or all or any portion of its rights hereunder and all parties shall be bound thereby. Except, the co-Declarant or its successors or assigns may relinquish its Class B Membership without the consent of any other co-Declarant. Notwithstanding anything provided herein to the contrary, if any lender to whom Declarant has assigned or hereafter assigns all or substantially all of the Project as security succeeds to the interest of Declarant by virtue of said assignment, such lender will automatically be successor Declarant hereunder in the Class B Memberships shall not be terminated thereby.

13.6 **Amendments** Except for amendments made pursuant to sub sections 11.2 and 12.2.2 of this Declaration, the Declaration may only be amended by the written approval or the affirmative vote or any combination thereof, of Owner's of not less than seventy-five percent (75%) of the Lots.

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

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

13.6.3 Any amendment approved pursuant to this section of this Declaration, or by the Board pursuant to this sub section of this Declaration shall be signed by the President or the Vice President of the Association and shall be recorded with the County Recorder of Maricopa County, Arizona. Any such amendments shall certify the amendment as been approved as required by this Section.

13.7 **Interpretation** Except for judicial construction, the Association shall have the exclusive right to construe and interpret the provisions of these Declarations. In the absence of any adjudication to the contrary by a court of competent jurisdiction, the Associations construction interpretation of these provisions shall be final, conclusive and binding as to all persons and the property benefited or bound by this Declaration. In the event of any conflict between this Declaration and the Articles, By Laws, Association, Rules or Architectural Committee Rules, then this Declaration shall control. In the event of any conflict between the Articles and the By Laws, the Articles shall control. In the event of any conflict between the By Laws and the Association Rules or the Architectural Committee Rules. the By Laws shall control.

13.8 **Rule Against Perpetuity** 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 perpetuity starts to run on the challenged interest; or in other words, the rule against perpetuities shall apply. For the purposes of this sub section, the lives "lives in being" shall be the issue of the members of the Board who are living at the time the period of perpetuity starts to run on the challenged interest.

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

13.10 **Laws, Ordinances and Regulations** The covenants, conditions and restrictions set forth in this Declaration and the provisions requiring Owner's and other persons to obtain the approval of the Board or the Architectural Committee with respect to certain actions are independent of the obligation of the Owner's and other persons to comply with all applicable rules, ordinances and regulations and compliance with this Declaration shall not relieve any

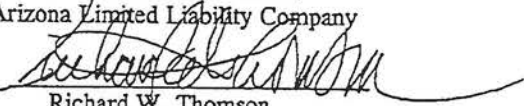
Owner or any other person from the obligation to also comply with all applicable laws, ordinances and regulations.

13.10.1 Any violation of 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 the Declaration subject to any or all of the enforcement procedures set forth herein.

13.11 Notices If notice of any action or proposed action by the Board, or any Committee or notice of any meeting is required by applicable law, the provisions of this Declaration or Resolution of the Board, that such notice is to be given to any Owner, Lessee or Resident, unless otherwise specified herein, or by resolution of the Board, such notice requirement shall be deemed satisfied if notice of such action or meeting is published once in any newspaper in general circulation within Maricopa County, ten (10) days prior to the action or the meeting. This Section shall not be construed to require that any notice must be given if it is not otherwise required, and shall not prohibit satisfaction of any notice requirement in any other manner.

13.12 Condemnation of Common Area If all or any part of the Common Area is taken or condemned, or conveyed by the Association in lieu of or under threat of such condemnation, with the written consent or affirmative vote of the Owner's representing at least seventy five percent (75%) of the votes in the Association, by or to any authority having the power of condemnation or eminent domain, the award or other compensation paid as a result of such taking or conveyance shall be paid to the Association. If the taking involves a portion of the Common Area upon which Improvements have been constructed, then the Association shall construct replacement Improvements on the remaining Common Area to the extent land is available for such construction, unless within sixty (60) days after such taking the Owner's having at least seventy five percent (75%) of the votes in the Association, by written consent or affirmative vote, or any combination thereof, instruct the Board not to build replacement Improvements. If such replacement Improvements are to be constructed then the Association shall be entitled to use the award or other compensation made for such taking solely for the purpose of such construction. If the taking does not involve any Improvements on the Common Area, or if the Owner's representing seventy five percent (75%) of the votes of the Association decide not to construct any replacement Improvements or if there are any net funds remaining after such construction is completed, then such awarded net funds may be disbursed by the Association to the Owner's with an equal share being disbursed to each Lot, or retain such funds as additional operating or capital reserves.

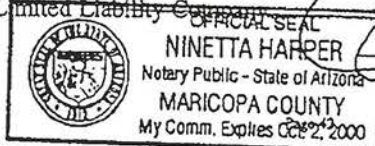
CAMBRIDGE HOMES, L.L.C.,
an Arizona Limited Liability Company

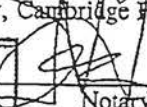
By: 
Richard W. Thomson
Its: Managing Member

State of Arizona)
ss.
County of Maricopa)

Acknowledged before me this 12th day of March, 1998.
by Richard W. Thomson, Managing Member, Cambridge Homes, L.L.C., an
Arizona Limited Liability Company

My Commission Expires:
Oct. 2, 2000




Notary Public

SOMBRA DE DESIERTO

A SUBDIVISION OF A PART OF THE NORTH HALF OF THE
SOUTHEAST QUARTER OF THE NORTHEAST QUARTER OF SECTION 14,
TOWNSHIP 3 NORTH, RANGE 3 EAST OF THE GILA AND SALT
RIVER BASE AND MERIDIAN, MARICOPA COUNTY, ARIZONA

FINAL PLAT

LEGEND

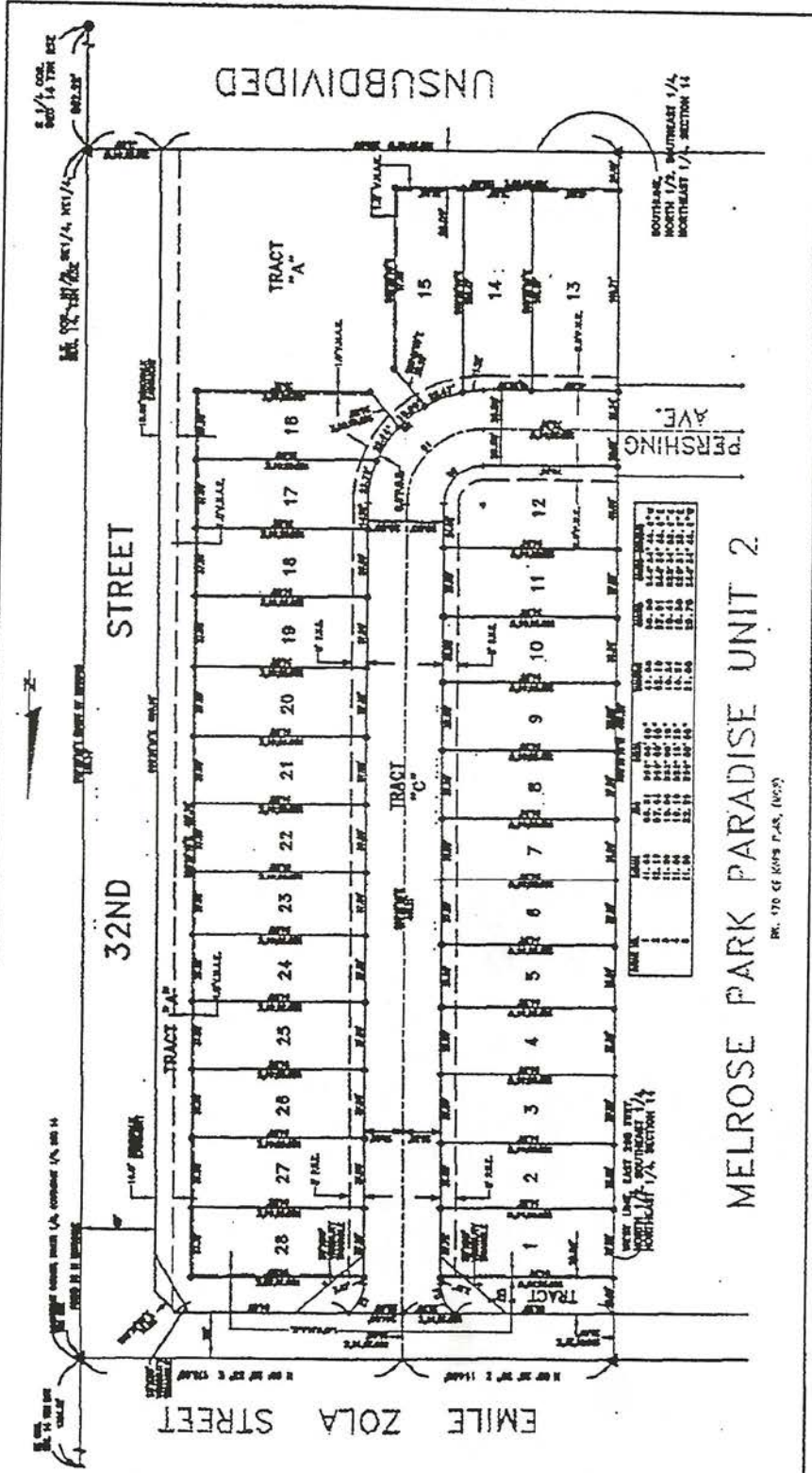
- RIGHT OF WAY LINE
- CONTIGUOUS
- LOT LINE
- VEHICULAR TRAILWAY
- DRIVEWAY AS CALLED OUT

INDICATES LOT CORNER, SET 1/2" BEHIND
UNLESS OTHERWISE NOTED

INDICATES CORNER OF THIS SUBDIVISION
SET WAS FOR SET 120-1 TYPE
E SURVEY INSTRUMENTS USED
AREAS AND WAS SET FOR
120-1 TYPE C SURVEY
INSTRUMENT IN UNPAVED AREAS
UNLESS OTHERWISE NOTED

PUBLIC UTILITY EASEMENT
VEHICULAR HIGH ACCESS EASEMENT
WATER CAP

FALLS
VALLEY
E.C.P.



MELROSE PARK PARADISE UNIT 2

PLAT NO. 170 OF 1908 P.A.S. (1972)

SOMBRA DE DESIERTO
 FINAL PLAT
 MARICOPA COUNTY, ARIZONA
 1972