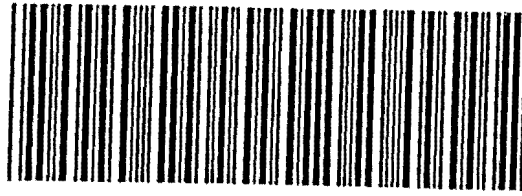


then recorded mail to:

WENMORE CRAIG

: Lesa Storey, Esq.
N. Central Ave., Ste 2200
Phoenix, AZ 85004



OFFICIAL RECORDS OF
MARICOPA COUNTY RECORDER
HELEN PURCELL

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GRACE 48 OF 81

Escrow 249,484 LP 5 of 2

LAWYERS TITLE OF ARIZONA, INC.

CAPTION HEADING: DECLARATION OF
COVENANTS, CONDITIONS AND RESTRICTIONS

WYNSTONE

DECLARATION OF COVENANTS, CONDITIONS AND RESTRICTIONS

WYNSTONE

MARICOPA COUNTY, ARIZONA

THIS DECLARATION, made on the date hereinafter set forth, DELMAR DEVELOPMENT, INC., an Arizona corporation ("Declarant;"), is made with reference to the following facts:

A. DMB Property Ventures Limited Partnership, a Delaware limited partnership ("DMB") is the owner of a certain tract of land located in the State of Arizona, County of Maricopa, more particularly described in Exhibit "A" attached hereto and incorporated by reference. The property described in Exhibit "A," together with any property annexed thereto under this Declaration, shall be referred to herein as the "Property." The Property has been subdivided into residential lots with related streets and other common areas pursuant to a final subdivision plat for the Property.

B. Declarant had entered into an Option Agreement with DMB to acquire Lots upon which Declarant plans to cause the construction of residences to be sold by Declarant to the general public.

C. Declarant intends by this document to impose upon the Property mutually beneficial restrictions under a general plan of improvement for the benefit of all of the Lots in the Project and the Owners thereof.

NOW, THEREFORE, subject to all provisions of this Declaration, Declarant hereby declares that the Property shall be held, conveyed, mortgaged, encumbered, leased, rented, used, occupied, sold and improved subject to the following declarations, limitations, covenants, conditions, restrictions and easements, all of which are for the purpose of enhancing and protecting the value and attractiveness of the Property, the Project and every part thereof, in accordance with the plan for the improvement of the Property and the division of the Property into Lots and Common Areas. All of the limitations, covenants, conditions, restrictions and easements shall constitute covenants which shall run with the land and shall be binding upon Declarant, its successors and assigns and all parties having or acquiring any right, title or interest in or to any part of the Property or the Project.

ARTICLE 1

Definitions

1.1 "Articles" shall mean and refer to the Articles of Incorporation of the Association as amended from time to time.

1.2 "Assessment" shall mean that portion of the cost of maintaining, improving, repairing, operating and managing the Property which is to be paid by each Lot Owner as determined by the Association and as provided herein.

1.3 "Association" shall mean and refer to the WYNSTONE HOMEOWNERS ASSOCIATION, an Arizona nonprofit corporation, the Members of which shall be the Owners of Lots in the Project.

1.4 "Board" or "Board of Directors" shall mean and refer to the governing body of the Association.

1.5 "Bylaws" shall mean and refer to the Bylaws of the Association as amended from time to time.

1.6 "Common Area" shall mean and refer to Tracts or Parcels A through F as described and set forth on the Map, including all landscaping, improvements, utility and plumbing wires, pipes and other installations thereon. Additional Tracts or Parcels of Common Area may be annexed into the Project pursuant to the provisions of Subarticle 2.5 hereof.

1.7 "Common Expenses" means and includes the actual and estimated expenses of operating the Project and the Association and any reasonable reserve for such purpose as found and determined by the Board and all sums designated Common Expenses by or pursuant to the Project Documents.

1.8 "Common Interest" means the beneficial interest in the Common Area which is appurtenant to each Lot as set forth in this Declaration.

1.9 "Declarant" shall mean and refer to DELMAR DEVELOPMENT, INC., an Arizona corporation and (subject to the limitations in Article XII below), its successors and assigns, but shall not include members of the public purchasing Lots. Any assignment of the Declarant's rights shall be effective only if evidenced by duly recorded instrument.

1.10 "Declaration" shall mean and refer to this enabling Declaration.

1.11 "DMB" shall mean DMB Property Ventures Limited Partnership, a Delaware limited partnership, its successors and assigns.

1.12 "First Mortgage" shall mean any Mortgage which is a first priority lien on any Lot.

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

1.14 "Lot" shall mean and refer to any numbered or lettered plat of land shown on the Map, together with the Unit and any other improvements constructed thereon, with the exception of the Common Area. Each Lot shall be a separate freehold estate.

1.15 "Map" shall mean and refer to that subdivision Map recorded MAR 14 15, 1995, in Book 373, Page 18, of the Official Records of Maricopa County, Arizona, and any subsequently recorded subdivision Map and all amendments thereto which cover the Property or a portion thereof. The Map is hereby made a part hereof with the same force and effect as if incorporated herein at length.

1.16 "Member" shall mean and refer to a Person entitled to membership in the Association as provided herein.

1.17 "Mortgage" shall include a recorded deed of trust as well as a recorded mortgage.

1.18 "Mortgagee" shall include the beneficiary or a holder of a deed of trust as well as a mortgagee.

1.19 "Mortgagor" shall include the trustor of a deed of trust as well as a mortgagor.

1.20 "Owner" shall mean and refer to the record holder of title to a Lot in the Project. This shall include any Person having a fee simple title to any Lot, but shall exclude Persons or entities having any interest merely as security for the performance of any obligation. Further, if a Lot is sold under a recorded contract of sale to a purchaser, the purchaser, rather than the fee owner, shall be considered the "Owner" as long as he or a successor in interest remains the contract purchaser under the recorded contract.

1.21 "Retail Sale" shall mean the sale, conveyance or other transfer of a Lot containing a completed residence to a member of the homebuying public. The term "Retail Sale" shall not include or refer to the sale, conveyance or other transfer of a Lot to Declarant, DMB, or any Person engaged in the residential homebuilding or development business. Any sale and simultaneous leaseback of a Lot containing a model residence for use in marketing shall not constitute a "Retail Sale" of the Lot for so long as the model continues to be used for marketing rather than residential purposes.

1.22 "Person" means a natural person, a corporation, a limited liability company, a partnership, a trustee or other legal entity.

1.23 "Phase" shall mean and refer to a particular parcel of Property which is part of the Project or which becomes part of the Project pursuant to the recordation of an appropriate Declaration of Annexation.

1.24 "Project" shall mean and refer to the entire Property, together with all buildings, structures and improvements erected or to be erected thereon.

1.25 "Project Documents" means and includes this Declaration as it may be amended from time to time, the exhibits, if any, attached hereto, the Map, the Articles and Bylaws of the Association and the rules and regulations for the Members as established from time to time.

1.26 "Property" means and includes the real property covered by this Declaration (including property annexed pursuant to this Declaration, if any).

1.27 "Recreational Common Area" shall mean and refer to the area or areas intended for common recreational purposes, and all improvements erected thereon. The Recreational Common Area shall be part of the Common Area, and as such shall be owned by the Association.

1.28 "Unit" shall mean and refer to any buildings and improvements constructed upon a Lot intended for residential purposes.

End of Article 1 Entitled
Definitions

ARTICLE 2

Description of Project, Division of Property and Creation of Property Rights

2.1 Description of Project

The Project consists of the underlying Property, together with the Units and all other improvements located or to be located thereon.

2.2 Division of Property

The Property is hereby divided into the following freehold estates and areas:

2.2.1 Lots

Each of the Lots is separately shown, numbered and designated on the Map and excludes the Common Area.

2.2.2 Common Area

The remaining portion of the Property, referred to herein as "Common Area," shall include all of the elements set forth in Subarticle 1.6. Each Lot Owner shall have, as appurtenant to his Lot, a membership in the Association which shall hold title to the Common Area. The Common Interest appurtenant to each lot is declared to be permanent in character and cannot be altered without the consent of all the Lot Owners and the First Mortgagees of such Lot Owners, as expressed in an amended Declaration. Such Common Interest cannot be separated from the Lot to which it is appurtenant. Each Lot Owner shall have a nonexclusive right to use the Common Area in accordance with the purposes for which it is intended without hindering the exercise of or encroaching upon the rights of any other Lot Owners. Notwithstanding the transfer of the Common Area to the Association, the Declarant shall reserve and hereby reserves in itself and its successors and assigns an easement over and onto the Common Area for common driveway purposes, for drainage and for encroachment purposes, for ingress to and egress from the Common Area for the purpose of completing improvements thereon or for the performance of necessary repair work and for the development of additional Phases of the Project.

2.2.3 Recreational Common Area

That portion of the Common Area intended for common recreational purposes and designated by the Board from time to time as "Recreational Common Area", shall be owned by the Association. The Recreational Common Area shall be operated and maintained by the Association for the use and benefit of Owners of Lots in the Project, subject to reasonable rules and regulations enacted according to the Bylaws.

2.3 No Separate Conveyance of Interests and Easements

The interests (including the Common Interest) and easements described in this Article 2 or elsewhere in this Declaration as being part of or appurtenant to each respective Lot are to be conveyed only with the respective Lot and cannot be changed except as set forth herein. Declarant, its successors, assigns and grantees covenant and agree that the fee title to each Lot conveyed shall include the Unit and all of the interests and easements referred to in the preceding sentence, all of which shall be deemed to be conveyed or encumbered with the Lot even though the description in the instrument of conveyance or encumbrance may refer only to the fee title to the Lot.

2.4 Partition Prohibited

The Common Area shall remain undivided as set forth above. Except as provided by law, no Owner shall bring any action for partition, it being agreed that this restriction is necessary in order to preserve the rights of the Owners with respect

to the operation and management of the Project. Judicial partition by sale of a single Lot owned by two or more Persons and division of the sale proceeds is not prohibited hereby (but partition of title to a single Lot is prohibited).

2.5 Annexation of Additional Parcels

Additional parcels may be annexed to the Property and become subject to this Declaration by the following method:

2.5.1.1 Any annexation pursuant to this subarticle shall be made no later than seven (7) years from the date of the recording of this Declaration.

2.5.1.2 A Declaration of Annexation shall be recorded by Declarant covering the applicable portion of the property to be annexed. Said Declaration shall incorporate this Declaration by reference and may contain such complementary additions and modifications of the covenants, conditions and restrictions contained in this Declaration as may be necessary to reflect the different character, if any, of the added property and are not inconsistent with the scheme of this Declaration. Said Declaration may provide for the conveyance of additional Common Area to the Association.

2.5.1.3 All intended and planned improvements located or to be located on the Common Area thereof, if any, must be substantially completed prior to the annexation thereof and all such improvements must be consistent with the improvements built in the Project as originally constituted under this Declaration in terms of quality of construction. All taxes and other assessments, liens and charges relating to the Common Area of the property to be annexed for any period prior to annexation must be paid or otherwise satisfactorily provided for by Declarant or its successor or assign annexing said property in a manner acceptable to the Federal Housing Administration or Veterans Administration prior to annexation so that any liens arising in connection therewith will not adversely affect the rights of existing Owners or the priority of First Mortgages on Lots in the existing Phase or Phases.

2.5.2 Consequences of Annexation

Upon annexation of a new Phase, the annexed parcel shall become subject to this Declaration without the necessity of amending individual articles hereof. The Association will thereafter own all Common Area in the pre-existing Phase or Phases and the new Phase, and all Owners of Lots within such Phases shall be entitled to use all of the Common Area as provided herein or in the Declaration of Annexation.

End of Article 2 Entitled
Description of Project, Division of Property
and Creation of Property Rights

ARTICLE 3

Association, Administration, Membership and Voting Rights

3.1 Association to Manage Common Area and Other Improvements

The management of the Common Area and other improvements which the Association is responsible for maintaining pursuant to this Declaration shall be vested in the Association in accordance with the Bylaws. The Owners of all the Lots covenant and agree that the administration of the Project shall be in accordance with the provisions of this Declaration, the Articles and the Bylaws of the Association, subject to the standards set forth in this Declaration and all applicable laws, regulations and ordinances of any governmental or quasi-governmental body or agency having jurisdiction over the project.

3.2 Membership

The Owner of a Lot shall automatically, upon becoming the Owner of same, be a Member of the Association and shall remain a Member thereof until such time as his ownership ceases for any reason, at which time his membership in the Association shall automatically cease. Membership shall be in accordance with the Articles and the Bylaws of the Association.

3.3 Transferred Membership

Membership in the Association shall not be transferred, pledged or alienated in any way, except upon the transfer of ownership of the Lot to which it is appurtenant, and then automatically to the new Owner as provided in Subarticle 3.2 above. Any attempt to make a prohibited transfer is void. Upon the transfer of an ownership interest in a Lot, the Association shall record the transfer upon its books, causing an automatic transfer of membership as provided in Subarticle 3.2 above.

3.4 Classes of Membership

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

3.4.1 Class A Membership

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

3.4.2 Class B Membership

Class B Membership shall be that held by Declarant (or its successor) which shall be entitled to three (3) votes for each Lot owned by Declarant or DMB, 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:

3.4.2.1 Four months after the date when the total outstanding votes held by Class A Members equals the total outstanding votes (tripled as above) held by the Class B Member;

3.4.2.2 The date which is five (5) years after the date of the close of escrow on the first Retail Sale ; or

3.4.2.3. When the Declarant notifies the Association in writing that it relinquishes its Class B membership, which relinquishment shall require the written consent of DMB in order to be effective if DMB then owns any Lot.

For purposes of determining the above conversion of Class B Membership to Class A Membership, the votes of the Members shall be calculated as though there were one hundred seventy one (171) Lots in the Project, said one hundred seventy one (171) Lots being the planned total of the Project described on the Map, with the voting rights of one hundred seventy one (171) Lots allocated to Declarant except for voting rights for Lots which vest or have vested in other Owners.

3.5 Voting Requirements

Any action by the Association which must have the approval of the Association membership before being undertaken shall require (a) the vote of fifty-one Percent (51%) of the total votes permitted to be cast by Members (either in person or by proxy) at a duly called and held meeting of the membership at which a quorum as prescribed herein or in the Bylaws has been constituted, or (b) the written assent of Owners holding fifty-one percent (51%) of the total votes permitted to be cast by Members, unless another percentage is specifically prescribed by a provision within this Declaration, the Bylaws or the Articles of the Association.

3.6 Voting Rights

Voting rights attributable to all Lots owned by Declarant shall vest immediately by virtue of Declarant's ownership thereof. Except for Declarant, no Owner of any Lot shall have any voting rights attributable to that Lot until an Assessment has been levied against that Lot and Owner by the Association pursuant to Article 4 below.

3.7 Membership Meetings

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

3.8 Board of Directors

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

End of Article 3 Entitled
Association, Administration, Membership and Voting Rights

ARTICLE 4

Assessments and Charges

4.1 Creation of the Lien and Personal Obligations for Assessments and Charges

Each Owner of any Lot, by acceptance of a deed or recorded contract of sale therefor, whether or not it shall be so expressed in such document, is deemed to covenant and agree to pay to the Association (a) regular annual Assessments, (b) special Assessments for capital improvements and unexpected expenses and (c) other charges made or levied by the Association against the Owner or Lot pursuant to this Declaration or the Bylaws, including, but not limited to, late charges for delinquent assessments, such Assessments and charges to be established and collected as provided herein and in the Bylaws of the Association. A late charge of \$15.00 shall be assessed to the Owner in the event any Assessment is not paid within ten (10) days after the due date. Any part of any Assessment (or other amount due from the Owner to the Association, including interest and/or late charges) not paid within thirty (30) days after the due date for the Assessment established in this Article 4, Subarticle 11.15 or elsewhere in this Declaration shall bear interest at the rate of twelve percent (12%) per annum from the due date until paid. The annual and special Assessments and any other charge made against an Owner or a Lot pursuant to this Declaration or the Bylaws, together with interest, costs and reasonable attorneys' fees incurred by the Association in enforcing compliance with this Declaration (whether or not a lawsuit or other legal action is instituted or commenced) as provided in Subarticle 11.15.2, shall be a charge and a continuing lien upon the Lot (hereinafter "Assessment Lien"). Each such Assessment and charge, together with interest, costs and reasonable attorneys' fees as provided above, shall also be the personal obligation of the Person who was the Owner of such Lot at the time the Assessment or other

charge fell due as provided in this Article 4, Subarticle 11.15 or elsewhere in this Declaration, but this personal liability shall not pass to successor Owners unless specifically assumed by them. The Assessment Lien on each Lot shall be prior and superior to all other liens except (a) all taxes, bonds, assessments and other levies which, by law, would be superior thereto and (b) the lien or charge of an First Mortgage on that Lot. No Owner of a Lot may exempt himself from liability for his contribution toward the Common Expenses by waiver of the use or enjoyment of any of the Common Area or by the abandonment of his Lot.

4.2 Purpose of Assessments

The Assessments by the Association shall be used exclusively to promote the recreation, health, safety and welfare of all the residents in the Project, for the improvement and maintenance of the Project 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 and other improvements which the Association is responsible for maintaining.

4.3 Annual Assessments

The Board shall annually determine and fix the amount of the annual (calendar year) Assessment against each Lot, including those owned by Declarant at an amount not exceeding the maximum annual Assessment for the year in question as described below, and shall notify the Owner of each Lot in writing as to the amount of such annual Assessment not less than forty-five (45) days prior to the date that such Assessment is to commence. The annual Assessment against each Lot as fixed by the Board shall not exceed the maximum annual Assessment amount then in effect and shall not be decreased by more than twenty percent (20%) of the annual Assessment against the Lot for the prior calendar year without the affirmative vote of 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. Except as to the maximum annual Assessment amount for the first Year as set forth below, the maximum annual Assessment amount shall be increased each year by a percentage equal to the percentage increase, if any, in the Consumer Price Index - United States City Average for Urban Wage Earners and Clerical Workers - All Items (published by the Department of Labor, Washington, D.C.) for the year ending with the preceding July (or a similar index chosen by the Board if the above described Index is no longer published) without the vote or approval of the Members of the Association, however, the maximum annual Assessment amount may be increased by an amount in excess of the amount produced by the foregoing formula only if such increase is approved by the affirmative vote of 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. All annual Assessments shall be payable in twelve (12) equal monthly installments. In the year prior to January 1 of the year immediately following the close of escrow on

the Retail Sale of the first Lot in the Project, the maximum annual Assessment amount per Lot shall be Three Hundred Sixty Dollars (\$360). The annual Assessment shall be prorated based on the number of months remaining before January 1 of such year as well as any partial months remaining and said sum shall be payable in equal monthly installments.

Notwithstanding anything to the contrary stated in this Article, until Class B Membership is terminated pursuant to Subarticle 3.4.2 above, Declarant shall be obligated to pay only twenty-five percent (25%) of the annual Assessment amount fixed for Lots pursuant to this Subarticle 4.3 with respect to Lots owned by Declarant or DMB, and shall pay said percentage of the annual Assessment amount in twelve (12) equal monthly installments in the same manner established for payment of the annual Assessment amount by other Lot Owners, except that the Owner of any such Lot shall pay and be liable for the full Assessment amount from after the Retail Sale of said Lot. In the event said reduced Assessment amount for Lots owned by Declarant and/or DMB is insufficient to cover the reasonable share of those Lots' contribution toward insurance costs and depreciation reserves for the Project, as determined by generally accepted cost accounting methods, Declarant may elect to pay the full Assessment or the reduced Assessment amount increased by such amount monthly, in addition to said reduced Assessment amount for the Lots, as is necessary to cover those Lots' contribution toward the insurance cost and depreciation reserves.

Until Class B Membership is terminated pursuant to Subarticle 3.4.2 above or until Declarant elects to pay full Assessments as provided above, Declarant shall be responsible for the 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 as required in Subarticles 5.1 and 5.2 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 Subarticle 4.3 shall constitute a 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 subarticle.

4.4 Special Assessments

In addition to the regular annual Assessments authorized above, the Board may levy, in any Assessment year, a special Assessment applicable to that year only for the purpose of defraying, in whole or in part, the cost of any construction, reconstruction, repair or replacement of a capital improvement upon the Common Area or other improvements the Association is responsible for maintaining, including fixtures and personal property related thereto, or to defray any unanticipated or underestimated expense normally covered by a regular Assessment and, where necessary, for taxes assessed against the Common Area, and for any deficiency caused

in whole or in part by delinquent assessments; provided however, that no such special Assessment shall be made without the affirmative vote of 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.

4.5 Notice and Quorum for any Action Authorized Under Articles 4.3 and 4.4

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

4.6 Allocation of Assessments

The Owners of each Lot shall bear an equal share of each regular and special Assessments (except as provided in Subarticle 4.3).

4.7 Date of Commencement of Annual Assessment; Due Dates

The regular annual Assessments provided for herein shall commence as to each Lot in the Project on the first day of the month following the close of escrow on the Retail Sale of the first Lot in the Project by Declarant. Regular annual Assessments shall commence as to all Lots in any Phase which becomes subject to this Declaration under Subarticle 2.5 on the first day of the month following the effective date that Phase becomes subject to this Declaration. Due dates of Assessments shall be established by the Board and notice shall be given to each Lot Owner at least forty-five (45) days prior to any due date, provided that if Assessments are to be due on a monthly basis, no notice shall be required other than an annual notice setting forth the amount of the monthly Assessment and the day of each month on which each Assessment is due.

4.8 Transfer of Lot by Sale or Foreclosure

The sale or transfer of any Lot shall not affect the Assessment lien or liability for Assessments due and payable except as provided below. No sale or transfer of a Lot shall relieve such Lot from liability for any Assessments thereafter becoming due or from the lien therefor. Where, however, the First Mortgagee of a First Mortgage of

record or another Person obtains title to a Lot as a result of foreclosure, trustee's sale or deed in lieu thereof of any such First Mortgage, such First Mortgagee or other Person shall not be liable for the share of the Common Expenses or Assessments by the Association chargeable to such Lot which became due prior to the acquisition of title to such Lot by such First Mortgagee or other Person, and the Assessment lien therefor on such Lot shall be extinguished. Such unpaid share of Common Expenses or Assessments shall be deemed to be Common Expenses collectible from all of the Lots which may be collected through a Special Assessment. In a voluntary conveyance of a Lot, the grantee of the same shall not be personally liable for Assessments or any other charges due to the Association in connection with that Lot which accrued prior to the conveyance unless liability therefor is specifically assumed by the grantee. Any such grantee shall be entitled to a statement from the Association setting forth the amount of the unpaid Assessments due the Association, and such grantee shall not be liable for nor shall the Lot conveyed be subject to a lien for any unpaid Assessments made by the Association against the grantor in excess of the amount set forth in the statement, provided however, the grantee shall be liable for any such Assessment becoming due after the date of any such statement.

4.9 Enforcement of Assessment and Other Monetary Obligations; Discipline; Remedies Cumulative

4.9.1 Enforcement and Foreclosure of Lien

When any Assessment or other amount due from an Owner to the Association on behalf of any Lot is not paid within thirty (30) days after the due date, the lien therefor may be enforced by foreclosure of the lien and/or sale of the Lot by the Association, its attorney or other Person authorized by this Declaration or by law to make the sale or as provided herein. The lien may be foreclosed and the Lot sold in the same manner as a realty mortgage and property mortgaged thereunder, the Lot may be sold pursuant to the statutory or customary procedures for sales of trust property under deeds of trust pursuant to this power of sale granted under A.R.S. §33-807 (with the Association acting as beneficiary and a title company or attorney of the association's choice acting as trustee) or the lien may be enforced or foreclosed in any other manner permitted by law for the enforcement or foreclosure of liens against real property or the sale of property subject to such a lien. Any such enforcement, foreclosure or sale action may be taken without regard to the value of such Lot, the solvency of the Owner thereof or the relative size of the Owner's default. Upon the sale of a Lot pursuant to this subarticle, 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. The proceeds of any such sale shall be applied as provided by applicable law but, in the absence of any such law, shall be applied first to discharge costs thereof, including but not limited to court costs, other litigation costs, costs and attorneys' fees incurred by the Association, all other expenses of the proceedings, interest, late charges, unpaid Assessments and other

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

4.9.2 Suspension of Rights

In addition to all other remedies provided for in this Declaration or at law or in equity, the Board may temporarily suspend the Association voting rights and/or rights to use the Recreational Common Area 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.

4.9.3 Other Remedies

The rights, remedies and powers created and described in Subarticles 4.9.1, 4.9.2, 11.15 and elsewhere in this Declaration, the Articles or the Bylaws are cumulative and may be used or employed by the Association in any order or combination, except as specifically provided to the contrary herein. Without limiting the foregoing sentence, suit to recover a money judgment for unpaid Assessments, interest, rent, costs, attorneys' fees and/or other amounts due hereunder, to obtain specific performance of obligations imposed hereunder and/or to obtain injunctive relief may be maintained without foreclosing, waiving, releasing or satisfying the liens created for Assessments or other amounts due hereunder.

4.10 Unallocated Taxes

In the event that any taxes are assessed against the Common Area or the personal property of the Association, rather than against the Lots, said taxes shall be included in the Assessments made under the provisions of this article, and, if necessary, a special Assessment may be levied against all of the Lots in an amount equal to said taxes on a pro rata basis equal to the Common Interest appurtenant to each Lot.

End of Article 4 Entitled
Assessments and Charges

ARTICLE 5

Duties and Powers of the Association

5.1 Duties and Powers

In addition to the duties and powers enumerated in the Bylaws and the Articles, or elsewhere provided for herein, and without limiting the generality thereof, the Association shall:

5.1.1 Except as provided in Subarticle 5.2 and Subarticle 11.6, maintain, paint, repair, replace, restore, operate, manage and keep in good condition all of the Common Area and all facilities, improvements, furnishings, equipment and landscaping thereon. The Association's obligations under this subarticle shall not extend to the maintenance of any portion or facility of the Common Area or Lot required to be maintained by an individual Owner under this Declaration.

5.1.2 Enforce the provisions of this Declaration by appropriate means including without limitation the expenditure of funds of the Association, the employment of legal counsel and the commencement of legal actions.

5.1.3 Maintain such policy or policies of insurance as are required by this Declaration or as the Board deems necessary or desirable in furthering the purposes of and protecting the interests of the Association and its Members.

5.1.4 Grant and reserve easements where necessary for utilities and sewer facilities over the Common Area to serve the Common Area and the Lots.

5.1.5 Have the authority to employ a manager or other Persons and to contract with independent contractors or managing agents to perform all or any part of the duties and responsibilities of the Association, subject to the Bylaws and restrictions imposed by any governmental or quasi-governmental body or agency having jurisdiction over the Project.

5.1.6 Adopt reasonable rules not inconsistent with this Declaration, the Articles or the Bylaws relating to the use of the Common Area and all facilities thereon and the conduct of Owners and their tenants and guests with respect to the Project and other Owners. Without limiting the generality of the foregoing, the Association may adopt a schedule of fines for the violation of any provision of the

Project Documents by any Owner or other Person and may impose the same pursuant to procedures adopted in the Bylaws.

5.2 Maintenance of Project by Association

The Association shall provide maintenance of the Common Area as provided in this Declaration. The Association shall not be responsible for maintaining and repairing Lots or Units or any improvements, equipment or other items thereon or therein. The responsibility of the Association for maintenance and repair shall not extend to repairs or replacements arising out of or caused by the willful or negligent act or neglect of an Owner or his guests, tenants or invitees. The repair or replacement of any portion of the Common Area or any Lot resulting from such excluded items shall be the responsibility of each Owner. The Association shall be entitled to commence an action at law or in equity to enforce this responsibility and duty and/or recover damages for the breach thereof.

5.3 Association Easements and Access to Lots

For the purpose of performing the maintenance authorized by this article, or for any other purpose reasonably related to the performance by the Board of its responsibilities under this Declaration, the Association (and its agents and employees) shall have the right, after reasonable notice to the Owner and at reasonable hours, to enter upon any Lot. The Association shall have the right to grant permits, licenses, and easements over the Common Area for utilities, roads and other purposes reasonably necessary or useful for the proper maintenance or operation of the Project.

5.4 Indemnification.

The Association shall indemnify any and all of its directors and officers, all present and former directors and officers, and all present and former members of the Architectural Control Committee (hereinafter an "Indemnified Party"), against expenses incurred by the Indemnified Party, including legal fees, or judgments or penalties rendered or levied against any Indemnified Party in a legal action brought against such Indemnified Party for acts or omissions alleged to have been committed by any such Indemnified Party while acting within the scope of his or its authority as a director or officer of the Association (or as a member of the Architectural Control committee, as applicable) or while exercising the powers of the Board, provided that the Board shall determine in good faith that such Indemnified Party did not act, fail to act, or refuse to act with gross negligence or with wrongful, fraudulent or criminal intent in regard to the matter involved in the action. Notwithstanding anything to the contrary expressed herein, the Board shall have the right to refuse indemnification as to expenses in any instance in which the person or entity to who indemnification would otherwise have been applicable shall have incurred expenses without approval by the Board which are excessive and unreasonable in the

circumstances and are so determined by the Board, and as to expenses, judgments, or penalties in any instance in which such person or entity shall have refused unreasonably to permit the Association, at its own expense and through counsel of its own choosing, to defend him or it in the action or to compromise and settle the action. The Association shall also indemnify the employees and direct agents of the Association in the same manner and with the same limitations as provided above with respect to directors and officers. The foregoing rights of indemnification shall be in addition to and not exclusive of all other rights to which such directors, officers, Architectural Control Committee members, or agents may be entitled.

End of Article 5 Entitled
Duties and Powers of the Association

ARTICLE 6

Utilities

6.1 Owners' Rights and Duties

The rights and duties of the Owners of Lots within the Project with respect to utilities shall be as follows:

6.1.1 Whenever sanitary sewer, water, electric, gas, television receiving, telephone lines or connections, heating or air-conditioning conduits, ducts or flues are located or installed within the Project, which connections serve more than one Lot, the Owner of each Lot served by said connections shall be entitled to the full use and enjoyment of such portions of said connections as service his Lot.

6.1.2 In the event of a dispute between Owners with respect to the repair or rebuilding of said connections or with respect to the sharing of the cost thereof, then, upon written request of one of such Owners addressed to the Association, the matter shall be submitted to the Board which shall decide the dispute, and the decision of the Board shall be final and conclusive on the parties.

6.2 Easements for Utilities and Maintenance

Easements over and under the Common Area for the installation, repair and maintenance of sanitary sewer, water, electric, gas, telephone lines and facilities, heating and air conditioning facilities, cable or master television antenna lines, drainage facilities, walkways and landscaping, as shown on the Map of the Property and as hereafter may be required to service the Property, are hereby reserved by Declarant and its successors and assigns, including the Association, together with the right to grant and transfer the same.

6.3 Association's Duties

The Association shall maintain all utility installations located in the Common Area, except for those installations maintained by utility companies, public, private or municipal. The Association shall pay all charges for utilities supplied to the Project except those metered or charged separately to the Lots, which shall be paid by the respective Owners of those Lots.

End of Article 6 Entitled
Utilities

ARTICLE 7

Use Restrictions

In addition to all of the covenants contained herein, the use of the Property and Project and each Lot therein is subject to the following:

7.1 Use of Individual Lots

No Lot shall be occupied and used except for single family residential purposes by the Owners, their tenants and social guests, and no trade or business shall be conducted thereon, except that Declarant, its successors or assigns may use any Lot or Lots in the Project owned by Declarant for a model home site or sites and display and sales office.

7.2 Nuisances

No noxious, illegal or offensive activities shall be conducted on any Lot or on any part of the Property, nor shall anything be done thereon which may be or may become an annoyance or a nuisance to, or which may in any way interfere with, the quiet enjoyment of each Owner of his respective Lot or which shall in any way increase the rate of insurance for the Project or cause any insurance policy to be cancelled or cause a refusal to renew the same or which will impair the structural integrity of any improvement on the Property. Any increase in the insurance premiums for the Common Area caused by an Owner shall be paid for by such Owner.

7.3 Vehicle Restrictions

No trailer, camper, mobile home, recreational vehicle, commercial vehicle, truck (other than standard size pick-up truck), inoperable automobile, boat or similar equipment shall be permitted to remain upon any area within the Project other than

temporarily (for purposes of loading and unloading of passengers or personal property), unless placed or maintained within an enclosed garage or carport or in an area specifically designated for such purpose by the Board. Commercial vehicles shall not include sedans or standard size pick-up trucks which are used both for business and personal use, provided that any signs or markings of a commercial nature on such vehicles shall be unobtrusive and inoffensive as determined by the Board. No noisy or smoky vehicles shall be operated on the Property. No off-road, licensed or unlicensed, motor vehicles shall be maintained or operated upon the Property except as reasonably necessary for the performance of the rights or duties of the Association under this Declaration.

Owners shall keep their Lot (including, but not limited to, garages/carports and driveway) neat, clean and free from clutter, debris or unsightly objects, and shall comply with all rules adopted by the Association in connection therewith.

7.4 Signs

Subject to the exemption of Declarant under Subarticle 11.10 below and except as otherwise required by applicable law, no signs advertising Lots for sale or rent may be displayed on any Lot or elsewhere within the Project without the prior written approval of the Board. Without limiting the generality of the foregoing, the Board may designate a bulletin board located on the Common Area to which signs advertising Lots for sale or rent may be attached (see Subarticle 10.3 for further discussion on signs).

7.5 Animals

No animals or birds of any kind shall be raised, bred or kept on any Lot or on any portion of the Property, except that usual and ordinary household pets such as dogs, cats or birds may be kept, provided that they are kept under reasonable control at all times. Without limiting the foregoing, all cat and dogs shall be on leashes under control of the Owner or other Person while such animal(s) is (are) on the Project outside of the Owner's Unit. The Board may enact reasonable rules respecting the keeping of such animals within the Project and may designate certain areas in which such animals may be taken. In no event shall any pet be permitted within any portion of the Project constituting Recreational Common Area. The Association, by and through the Board, reserves the right to have such pets removed if the pets' behavior becomes objectionable to the Members of the Association, which right shall not be unreasonably applied.

7.6 Garbage and Refuse Disposal

All rubbish, trash and garbage shall be regularly removed from the Property and shall not be allowed to accumulate thereon. Trash, garbage and other waste shall not be kept except in sanitary containers. All equipment, garbage cans (other than

those provided by the Association); woodpiles or storage piles shall be kept screened and concealed from view of the other Lots, streets and the Common Area.

7.7 Radio and Television Antennas

No alteration to or modification of a central radio or television antenna system or cable television system, whichever is applicable, if any, shall be permitted, and no Owner may be permitted to construct, use or operate his own external radio or television antenna without the consent of the Board. Any such permitted antenna shall not exceed seventy-five feet (75') in height.

7.8 Right to Lease

The respective Lots shall not be rented by the Owners thereof for transient or hotel purposes which shall be defined as (a) rental for any period less than thirty (30) days or (b) any rental if the occupants of the Lot are provided customary hotel service such as room service for food and beverages, maid service, laundry and linen service and bellboy service. Subject to the foregoing restrictions, the Owners of the respective Lots shall have the absolute right to lease the Lots, provided that the lease is in writing and is specifically made subject to the covenants, conditions, restrictions, limitations and uses contained in this Declaration and the Bylaws and any reasonable rules and regulations published by the Association. Any Owner who leases his/her Lot shall provide a copy of the lease to the Association within ten (10) days of its execution.

7.9 Clothes Lines; Window Coverings

No exterior clothes lines shall be erected or maintained and there shall be no outside laundering or drying of clothes. Furthermore, no clothing, laundry or other personal items are to be hung out on the patios or yard areas of the Units or Lots. No kind of foil shall be placed upon the windows of the Units, nor shall the patios or yard areas of the Units and Lots be used for storage purposes.

7.10 Power Equipment and Car Maintenance

No power equipment, work shops or car maintenance (other than emergency work or minor repairs requiring less than one (1) day's work) shall be permitted on the Project except with prior written approval of the Board. Approval shall not be unreasonably withheld and in deciding whether to grant approval the Board shall consider the effects of noise, air pollution, dirt or grease, fire hazard, interference with radio or television reception and similar objections.

7.11 Lights

Except as may be initially installed by Declarant, no spotlights, flood lights or other external lighting shall be placed upon any Unit without the prior written consent of the Board.

7.12 Liability of Owners for Damage to Common Area

The Owner of each Lot shall be liable to the Association for all damages to the Common Area or improvements thereon caused by such Owner or any occupant, guest or invitee of or to his Lot. The Association shall be entitled to commence an action law or in equity under Arizona law to enforce this obligation and/or recover damages for the breach thereof. In addition to the foregoing, damage to party walls is subject to the provisions of Article 9.

7.13 No Warranty of Enforceability

While Declarant has no reason to believe that any of the restrictive covenants contained in this Article 7 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 such restrictive covenant. Any Owner acquiring a Lot in the Project in reliance on one or more of such restrictive covenants shall assume all risks of the validity and enforceability thereof and by acquiring the Lot agrees to hold Declarant harmless therefrom.

End of Article 7 Entitled
Use Restrictions

ARTICLE 8

Architectural Control

8.1 Prohibition of Alteration and Improvement

Subject to the exemption of Declarant under Subarticle 11.10 below, no building, fence, wall, obstruction, balcony, screen, patio, patio cover, solar collector, antenna, tent, awning, carport, carport cover, improvement or structure of any kind shall be commenced, erected, painted or maintained upon the Project, nor shall any alteration or improvement of any kind be made thereto until the same has been approved in writing by an Architectural Control Committee (the "Committee") appointed by Declarant or elected by the Board as provided in this article. There shall be no construction, alteration or removal of any structure or improvement in the Project which would impair or affect the integrity or stability of any existing

structure and no changes to exterior color schemes in the Project shall be permitted without the prior written consent of the Committee as provided below. No Owner shall install an air conditioner or other heating/cooling appliance/device so as to be seen from the street. Roof mounted devices of any kind are expressly prohibited.

8.2 Plans and Approval

Plans and specifications showing the nature, kind, shape, color, size, materials and location of such improvements or alterations shall be submitted to the Committee for approval as to design and harmony of external design with existing structures and as to location in relation to surrounding structures, topography and finished grade elevation. No permission or approval shall be required to rebuild in accordance with plans and specifications previously approved by the Committee. Subject to the exemption of Declarant under 11.10, no landscaping of patios or yards visible from the street or from the Common Area shall be undertaken by any Owner until plans and specifications showing the nature, kind, shape and location of the materials shall have been submitted to and approved in writing by the Committee. In the event the Committee fails to approve or disapprove such plans, specifications and proposed improvement or alteration within forty-five (45) days after said plans and specifications have been submitted to it, written approval by the Committee will not be required and this article will be deemed to have been fully complied with. The restrictions contained in this paragraph shall not apply to the Declarant in any manner. Approval by the Architectural Control Committee shall not be deemed or interpreted to be a warranty or confirmation of any kind concerning the engineering or structural integrity, quality or safety of construction of the proposed improvements or modifications and the person proposing same and his agents and contractors shall be solely responsible therefor.

8.3 Architectural Control Committee

The number, appointment and term of members of the committee shall be as follows:

8.3.1 There shall be three (3) members on the Committee.

8.3.2 Declarant may appoint all of the original members of the Committee for so long as the Class B Membership exists. Thereafter, members of the Committee shall be appointed by the Board, and at any time the Board shall have the power to appoint replacements for or remove and replace any or all of the members of the Committee. Subject to the right and power of the Board to remove and replace, at any time, any member of the Committee, Committee members or replacements appointed by the Board shall serve one (1) year terms.

8.3.3 Committee members appointed by Declarant need not be Members of the Association. Committee members appointed by the Board shall be Members of

the Association. Officers and Directors of the Association can be members of the Committee.

8.4 Other Approvals; Liability.

No approval by the Architectural Control Committee of any proposed construction, installation, modification, addition or alteration shall be deemed to replace or be substituted for any building permit or similar approval required by applicable governmental authority, nor shall any such approval be deemed to make the Architectural Control Committee (or the Board or the Association) liable or responsible for any damage or injury resulting or arising from any such construction, modification, addition or alteration. Approval by the Architectural Control Committee shall not be deemed or interpreted to be a warranty or confirmation of any kind concerning the engineering or structural integrity, quality or safety of construction of the proposed installation, modification, addition or alteration and the Person proposing the same and his agents and contractors shall be solely responsible therefor. Neither Declarant, the Association, the Board nor the Architectural Control Committee (nor any member thereof) shall be liable to the Association, any owner or any other party for any damage, loss or prejudice suffered or claimed on account of:

8.4.1 the approval or disapproval of any plans, drawings or specifications, whether or not defective;

8.4.2 the construction or performance of any work, whether or not pursuant to approved plans, drawings and specifications; or

8.4.3 the development of any Lot.

8.5 Fee.

The Board may establish a reasonable processing fee to defer costs of the Architectural Control Committee in considering any request for approvals submitted to the Architectural Control Committee or for appeals to the Board, which fee shall be paid at the time the request for approval or review is submitted.

8.6 Inspection.

Any member or authorized consultant of the Architectural Control Committee, or any authorized officer, director, employee or agent of the Association, may at any reasonable time and without being deemed guilty of trespass enter upon any Lot, after reasonable notice to the Owner or Occupant of such Lot, in order to inspect the improvements constructed on such Lot to ascertain that such improvements have been, or are being, built in compliance with this Declaration, the standards and procedures adopted by the Architectural Control Committee and any approved plans, drawings or specifications.

End of Article 8 Entitled
Architectural Control

ARTICLE 9

Party Walls

9.1 Creation of Party Wall Rights and Duties

Each wall, including patio walls, which is constructed as part of the original construction of the Project or as part of any reconstruction thereof, any part of which is placed on the dividing line between separate Lots, shall constitute a party wall. With respect to any such wall, each of the adjoining Owners shall assume the burdens and be entitled to the benefits of these restrictive covenants and, to the extent not inconsistent herewith, the general rules of law regarding party walls shall be applied thereto. Without limiting the generality of the foregoing, in the event any party wall is wholly or partially damaged or in need of maintenance (exclusive of painting which shall be governed as below) or repair, (other than as a result of any actions of the Owners, or their guests, tenants, agents or members of their family, which shall be subject to the provisions of Subarticle 9.2), then, each of the adjoining Owners shall share equally in the cost of replacing the party wall or restoring the same to its original condition for the purpose of repairing or maintaining any fence or wall located upon or adjacent to the dividing line between Lots, an easement not to exceed five (5) feet in width is hereby created over the portion of every Lot immediately adjacent to any perimeter fence or wall to allow the adjoining Owner access for maintenance purposes set forth herein and no other purpose. Notwithstanding the foregoing, each Owner shall be solely responsible for painting and maintaining the exterior appearance of any party wall adjacent to his/her Unit, as may be necessary from time to time in accordance with approved color schemes for the Project adopted by the Committee. In the event any Owner fails to maintain the exterior appearance of said party wall, the Association shall have the right to paint and otherwise maintain the same and charge the responsible owner for all costs incurred thereby which shall be secured by an Assessment lien as set forth in Article 4 hereof.

9.2 Damage by Act of Owner

In the event any such party wall is damaged or destroyed through the act of one adjoining Owner or any of his guests, tenants, licensees, agents or members of his family (whether or not such act is negligent or otherwise culpable) so as to deprive the other adjoining Owner of the full use and enjoyment of such wall then the first of such Owners shall be liable and responsible thereof and shall forthwith proceed to rebuild and repair the same to as good a condition as formerly existed without cost to the adjoining Owner. The adjoining Owner shall be entitled to commence an action at

law or in equity under Arizona law to enforce this responsibility and duty and/or recover damages therefore.

9.3 Negligence

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

9.4 Alterations or Modifications

In addition to meeting the other requirements of these restrictive covenants and of any building code or similar regulations or ordinances, any Owner proposing to modify, make additions to or rebuild his Lot or Unit in any manner which requires the extension or other alteration of any party wall shall first obtain the written consent of the adjoining Owner.

9.5 Disputes

In the event of a dispute between Owners with respect to the repair or rebuilding of a party wall, then, upon written request of one of such Owners addressed to the Association, the matter shall be submitted to arbitration under such rules as may from time to time be adopted by the Association and the final decision resulting from such arbitration shall be binding upon the Owners. If no such rules have been adopted, the matter shall be submitted to three arbitrators, one chosen by each of the Owners and the third arbitrator to be chosen within five (5) days by any judge of the Superior Court of Maricopa County, Arizona. A determination of the matter signed by any two of the three arbitrators shall be binding upon the Owners who shall share the cost of arbitration equally. In the event one Owner fails to choose an arbitrator within ten (10) days after personal receipt of a request in writing for arbitration from the other owner, then said requesting Owner shall have the right and power to choose both arbitrators. Arbitration decisions shall be fully enforceable and may be lodged with the Maricopa County Superior Court under prevailing rules for purposes of obtaining a judgment therefor.

End of Article 9 Entitled
Party Walls

ARTICLE 10

Accessories, Utilities, Signs, Maintenance, Mining, Animals

10.1 Accessories. All evaporative coolers, pre-coolers and the like which are visible from neighboring property shall be prohibited. No clotheslines, service yards, wood piles, basketball apparatus, free-standing mailboxes or newspaper receptacles, exterior storage areas, sheds or structure, heating or air conditioning equipment or other exterior fixtures, machinery or equipment shall be permitted except with the prior written approval of the Architectural Committee. Any such use or equipment as is approved and authorized shall be attractively screened or concealed (subject to all required approvals as to architectural control) so as not to be visible from neighboring property. No automobile, truck or other vehicle, regardless of ownership, age, condition or appearance, shall remain on any Unit in any manner which could be construed as being stored, neglected, abandoned or otherwise not in active use.

10.2 Utilities. All gas, electric, power, telephone, water, sewer, television and other utility and service connections conduits and lines shall be located either underground or concealed within or under buildings or other structure except when prohibited by law. Service pedestals, transformers, switch cabinets and similar installations may be located above ground. Radio, television and other receivers, transmitters, and antennae which are visible from neighboring property are prohibited. No outside speakers or amplifiers shall be permitted except with the prior approval of the Architectural Committee. All speakers, amplifiers, radios and other means of emitting sound, whether located inside or outside of a Unit, shall be subject to regulation by the Board as to noise levels and time of use. All outside lighting, except porch lights and other customary, indirect noncolored lighting shall be subject to prior approval by the Architectural Committee.

10.3 Signs. No advertising "For Sale", "For Rent", "For Lease", or other sign, billboard or display of any kind shall be permitted unless approved, in advance, by the Architectural Committee or unless permitted by law. Street and residents' names and numbers, mailing address and other identifications and directory designations, markings and insignia shall be permissible only as installed by the Declarant or as approved by the Architectural Committee.

10.4 Maintenance. No Unit shall be permitted to fall into disrepair. All Units shall be kept in good, clean condition and repair with surfaces adequately painted and with windows, doors, screens, awnings and the like properly cleaned and maintained. Awnings shall be cleaned and treated with Armour All or similar preservative at least semi-annually. Landscaping shall be maintained and if any shrub or other component perishes, it shall be replaced immediately with an identical component of equal or greater size. Lawns and shrubs shall be mowed and trimmed

to eliminate all dried fronds. Outdoor grills and barbecues shall be the only outdoor burning permitted. No garbage, rubbish, trash or debris shall be placed or allowed to accumulate on the Property except on the days of scheduled removal (pick-up) and then only within sealed, disposable heavy-duty garbage bags or other disposable containers complying with City of Mesa standards. The placement and maintenance of such bags and containers shall be subject to regulation by the Association and the Architectural Committee. Any and all residual remaining after removal of such bags and containers shall be eliminated promptly by the Owner. Each Unit must include an automatic garbage disposer in operating condition. Natural areas and drainage courses within the Common Area shall not be used for dumping or vehicular traffic and shall be maintained fully open, unobstructed and watered by the sprinkling system where installed by Declarant. No Unit shall be allowed to present an unsightly appearance, endanger the health of Owners, emanate or nuisance. No furniture or equipment either portable or permanent shall be placed on or within the front yard, balconies or other areas visible from neighboring property without the prior written approval of the Board. The interiors of all carports and garages shall be maintained in a neat, clean and sightly condition. Motor vehicles shall be parked and kept only in carports, garages, designated parking areas or the streets. On-street parking shall be restricted to deliveries and short-term guests. Boats shall not be parked in the streets at any time for any reason.

10.5 Mining. No exploration or mining operations of any kind shall be permitted whether involving discovery, exploration, location, removal, milling or refining and whether relating to water, oil, gas, hydrocarbons, gravel, uranium, geothermal steam or otherwise.

End of Article 10 Entitled
Accessories, Utilities, Signs, Maintenance, Mining, Animals

ARTICLE 11

General Provisions

11.1 Benefit and Binding Effect

These covenants shall be binding upon the heirs and assigns of every Owner but no Person shall be liable for any act or omission respecting any party wall except such as took place while said Person was an Owner.

11.2 Invalidity of Any Provision

Should any provision of this Declaration be declared invalid or in conflict with any law of the jurisdiction where the Project is situated, the validity of all other provisions shall remain unaffected and in full force and effect.

11.3 Amendments

Subject to the standards set forth in any applicable laws, regulations or ordinances of any governmental or quasigovernmental body or agency having jurisdiction over the Project and the rights of the Owners and First Mortgagee provided herein, this Declaration and/or the Map may be amended only by the vote or written assent of the Owner(s) of seventy-five percent (75%) or more of the Lots (with one vote per Lot whether or not Class B Membership has terminated under Subarticle 3.4), provided however, that the percentage of the voting power necessary to amend a specific clause or provision shall not be less than the prescribed percentage of affirmative votes required for action to be taken under that clause. The requirements of Subarticle 11.3.1 for the amendment of certain provisions of the Project Documents shall be in addition to the requirements set forth in this Subarticle 11.3.

Declarant may alter the size of and boundaries between Lots at any time so long as (a) such altered Lots are owned by Declarant, (b) all First Mortgagees then encumbering such altered Lots agree in writing to such alterations and (c) such alterations do not modify or change the size or the boundaries of any Lots not owned by Declarant. Notwithstanding any contrary provision of this Declaration, any amendment of this Declaration shall require DMB's consent (as evidenced by recorded instrument) in order to be effective if, at the time of such amendment, DMB owns any Lot or any other portion of the Project. Any attempted amendment in violation of the foregoing consent requirement shall be null and void and of no force or effect. DMB shall not unreasonably withhold its consent to any amendment.

11.3.1 Additional Requirements for Amendment of Certain Provisions

The following subarticles do not apply to amendments to the Project Documents or termination of the Project made as a result of destruction, damage or condemnation:

11.3.1.1 The consent of Owners of Lots to which at least seventy-five percent (75%) of the votes in the Association are allocated and the approval of Eligible First Mortgagees (as defined in Subarticle 11.5.3.1.4) holding First Mortgages on Lots which have at least sixty-seven percent (67%) of the votes of Lots subject to First Mortgages held by Eligible First Mortgagees shall be required to terminate the legal status of the Project as a subdivision under Arizona law; and

11.3.1.2 The consent of Owners of Lots to which at least seventy-five percent (75%) of the votes in the Association are allocated and the

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

11.3.1.2.1 Voting;

11.3.1 2.2 Assessments, Assessment liens or subordination of such liens;

11.3.1.2.3 Reserves for maintenance, repair and replacement of the Common Area and other areas of the Project for which Association has maintenance and repair responsibility hereunder; fidelity bonds;

11.3.1.2.4 Insurance or

11.3.1.2.5 Rights to use of the Common Area;

11.3.1.2.6 Responsibility for maintenance and repair of the various portions of the Project;

11.3.1.2.7 Expansion or contraction of the Project or the addition, annexation or withdrawal of property to or from the Project;

11.3.1.2.8 Boundaries of any Lot;

11.3.1.2.9 Common Interests of the Lots;

11.3.1.2.10 Convertibility of Lots into Common Area or of Common Area into Lots;

11.3.1.2.11 Leasing of Lots;

11.3.1.2.12 Imposition of any right of first refusal or similar restriction on the right of a Lot Owner to sell, transfer or otherwise convey his/her Lot;
and

11.3.1.2.13 Any provisions which are for the express benefit of Mortgagees, Eligible First Mortgagees or Eligible Insurers or Eligible Guarantors (as defined in Subarticle 11.5.3.2) of First Mortgages on Lots.

11.3.1.3 An addition or amendment to the Project Documents shall not be considered "material" if it is for the purpose of correcting technical errors or for

clarification only. An Eligible First Mortgagee which receives a written request to approve additions or amendments under Subarticle 11.3.1.1 or 11.3.1.2 and which does not deliver or post to the requesting party a negative response within thirty (30) days shall be deemed to have approved such request.

11.4 Encroachment Easements

Each Unit and Lot within the Project is hereby declared to have an easement over all adjoining Units and Lots and the Common Area for the purpose of accommodating any encroachment due to engineering errors, errors in original construction, settlement or shifting of buildings or any other similar cause. There shall be valid easements for the maintenance of said encroachments as long as they shall exist, and the rights and obligations of Owners shall not be altered in any way by said encroachment, settlement or shifting, provided however, that in no event shall a valid easement for encroachment be created in favor of an Owner or Owners if said encroachment occurred due to the willful misconduct of said Owner or Owners. In the event a Unit is partially or totally destroyed and then repaired or rebuilt, the Owners of all Lots agree that minor encroachments over adjoining Units or Lots or the Common Area shall be permitted and that there shall be a valid easement for the maintenance of said encroachments so long as they shall exist.

11.5 Mortgagee Protection Clause

11.5.1 Rights of First Mortgagees

11.5.1.1 No breach of any of the covenants, conditions and restrictions contained in this Declaration, nor the enforcement of any lien provisions herein, shall render invalid the lien of any First Mortgage on any Lot, but all of said covenants, conditions and restrictions shall be binding upon and effective against any Owner whose title is derived through foreclosure, trustee's sale or otherwise.

11.5.1.2 An action to abate the breach of any of these covenants, conditions, restrictions and reservations may be brought against the purchaser who has acquired title through foreclosure of a First Mortgage and the subsequent sheriff's sale (or through any equivalent proceedings) and the successor in interest to said purchaser, if the breach continues to exist after the time said purchaser acquired an interest in such Lot.

11.5.1.3 During the pendency (including any period for redemption) of any proceedings to foreclose a First Mortgage (or from the time a trustee under a first deed of trust has given notice of sale pursuant to the power of sale conferred under the deed of trust and pursuant to law), the first Mortgagee, or a receiver appointed in any such action, may but need not exercise any or all of the rights and privileges of the Owner of the Lot in default, including but not limited to

the right to vote as a Member of the Association in the place and stead of the defaulting Owner.

11.5.1.4 Notwithstanding anything contained herein to the contrary, at such time as the First Mortgagee shall become record Owner of a Lot, the First Mortgagee shall be subject to all of the terms and conditions of this Declaration, including but not limited to the obligations to pay all Assessments and charges accruing thereafter in the same manner as any other Lot Owner.

11.5.2 Changes Requiring Approval of Mortgagees

Notwithstanding anything to the contrary contained in this Declaration, without the prior written approval of Declarant (while Declarant is an Owner of any Lots) and of at least two-thirds (2/3) of the First Mortgagees (based upon one (1) vote for each First Mortgage held) or of the Owners other than Declarant (except as provided by statute in case of condemnation or substantial loss to the Units, Lots and/or Common Area of the Project), the Association or Owners shall not be entitled to and no provision of this Declaration shall be applied, effective, interpreted or construed to (or entitle the Association or Owners to):

11.5.2.1 Change the Common Interests of the Lots, the share of Assessments charged to any Lot or the method of determining such Assessments (except as provided in Subarticle 2.5);

11.5.2.2 By act or omission, seek to terminate or abandon the status of the Project as a subdivision under Arizona law (this requirement is expressly additional to all requirements of Subarticle 11.3.1.1);

11.5.2.3 Allow partition or subdivision of any Lot except as provided in Subarticle 2.4;

11.5.2.4 Change the interest of any Lot in the allocation or distribution of hazard insurance proceeds or condemnation awards (except as provided in Subarticle 2.5);

11.5.2.5 By act or omission, seek to abandon, partition, subdivide, encumber, sell or transfer any portion or element of the Common Area (the granting of easements for public utilities or for other public purposes consistent with the intended use of such Property shall not be deemed a transfer within the meaning of this clause);

11.5.2.6 Use hazard insurance proceeds for losses or damages to any portion of the Project for other than the repair, replacement or reconstruction thereof;

11.5.2.7 Fail to maintain fire and extended coverage on the Common Area on a current replacement cost basis in an amount equal to not less than one hundred percent (100) of the insurable value (based on current replacement cost); or

11.5.2.8 By act or omission, change, waive, or abandon any scheme of regulations or their enforcement pertaining to the architectural design or the exterior appearance of the Units, the exterior maintenance of the Units, or the maintenance of the Common Area.

The foregoing requirements are in addition to the requirements set forth in Article XI.

11.5.3 Rights of First Mortgagees and Insurers or Guarantors of First Mortgages

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

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

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

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

11.5.3.1.4 Any proposed action which would require the consent of a specified percentage of "Eligible First Mortgagees" (meaning First Mortgagees who have filed a written request as described above in this Subarticle 11.5.3.1) as specified in Subarticle 11.5.3.2 or in Subarticle 11.3.

11.5.3.2 When professional management previously has been required by an Eligible First Mortgagee or any "Eligible Insurer or Guarantor" (meaning an insurer or governmental guarantor of a First Mortgage which has requested notice of certain matters in accordance with Subarticle 11.5.3.1 above), whether such entity became an Eligible First Mortgagee or Eligible Insurer or

Guarantor at that time or later, any decision to establish self-management by the Association shall require the prior consent of Owners of Lots to which at least sixty-seven percent (67%) of the votes in the Association are allocated and the approval of Eligible First Mortgagees of Lots which have at least fifty-one percent (51%) of the votes of Lots subject to First Mortgages held by Eligible First Mortgagees.

11.5.4 Mortgage Priority

Notwithstanding any language contained in this Declaration to the contrary, no Lot Owner and no other party shall have priority over any rights of First Mortgagees pursuant to their Mortgages in the case of a distribution to Lot Owners of insurance proceeds or condemnation awards for losses to or taking of Lots and/or any portion or element of the Common Area and no changes to this Declaration providing for priority over such rights of First Mortgagees shall be made without the prior written consent of all First Mortgagees.

11.5.5 Compliance with FHLMC and FNMA Regulations

The Declarant intends that the Project shall comply with all requirements of the Federal Home Loan Mortgage Corporation (FHLMC) and the Federal National Mortgage Association (FNMA) pertaining to the purchase by the FHLMC and FNMA or conventional home loans. Declarant and all Lot Owners therefore agree that, in the event the Project or any of the Project Documents do not comply with the FHLMC and FNMA requirements, the Board shall have the power (on behalf of the Association) to enter into any agreement with the FHLMC or FNMA (or its designee) reasonably required by the FHLMC or FNMA to allow the Project to comply with such requirements and make such changes in the Project Documents to effectuate the same.

11.5.6 Payment of Taxes and Insurance Premiums by Mortgagees

First Mortgagees may, jointly or singly, pay any taxes, Assessments or other charges which are in default and which may or have become a lien or charge against the Common Area and may pay overdue premiums on hazard insurance policies (or secure new hazard insurance coverage on the lapse of a policy) for the Common Area. Any First Mortgagee making such payments shall be entitled to immediate reimbursement therefore from the Association.

11.5.7 Owner's Right to Sell Lot

The right of any Owner to sell, transfer or otherwise convey his Lot shall not be subject to any right of first refusal or any similar restriction in favor of the Association.

11.5.8 Right to Inspect Documents; Audited Financial Statements

The Association shall make available to Owners, Mortgagees and insurers or guarantors of First Mortgages current copies of the Declaration, Articles, Bylaws, rules of the Association and the books, records and financial statements of the Association. "Available" means available for inspection (and copying at the expense of the requesting party), upon request, during normal business hours or under other reasonable circumstances. In addition, First Mortgagees holding fifty-one percent (51) or more of First Mortgages shall be entitled to have prepared, at their expense, an audited financial statement of the Association for the immediately preceding fiscal year if one is not otherwise available, and the Association shall have prepared and distributed such statement to the First Mortgagees requesting it within a reasonable time following receipt by the Association of the required requests.

Notwithstanding the foregoing paragraph, at any time when there are fifty (50) or more Retail Sales in the Project, any First Mortgagee or any holder or insurer of any First Mortgage shall be entitled, upon written request, to receive an audited financial statement for the immediately preceding fiscal year without charge to the party so requesting. Any financial statement requested pursuant to the foregoing provision shall be furnished within a reasonable time following receipt by the Association of the request.

11.6 Owner's Right and Obligation to Maintain and Repair

Except for those portions of the Project which the Association is required to maintain and repair, each Lot Owner shall, at his sole cost and expense, maintain and repair his Unit and Lot, keeping the same in good condition. Any glass surfaces of a Unit which are damaged shall be repaired by the Owner within seven (7) days of such damage. Each Owner shall have the exclusive right to paint, plaster, panel, tile, wax, paper or otherwise refinish and decorate the exterior and inner surfaces of the walls, ceilings, floors, windows and doors bounding his Unit. Owners shall maintain their front yard landscaping in a neat, attractive, well tended and weed free manner and condition and in accordance with the original plans for such landscaping as installed by Declarant, unless an Owner applies to the Committee to change or vary from such original plans and the Committee approves the change or variance as provided in Article 8. Without limiting the foregoing, Owners are required to replace dead or dying plants, trees or grass to maintain their front yards in a neat, attractive and well tended condition. In the event an Owner fails to maintain his Unit or Lot (including the front yard) as provided herein in a manner which the Board deems necessary to preserve the appearance and value of the Property, the Board shall have the right to notify such Owner of the work required and request that it be done within thirty (30) days from the giving of such notice. In the event an Owner fails to carry out such maintenance within said period, the Board shall have the right to cause such work to be done and may specially assess the cost thereof to such Owner and collect and enforce said Assessment as provided in Article 4.4 above.

11.7 Entry for Repairs

The Board or its agents may enter any Lot when necessary in connection with any repairs, maintenance, landscaping or construction for which the Association is responsible. Such entry shall be made upon reasonable notice, unless it would be impractical to give notice in an emergency, and with as little inconvenience to the Owner as practicable, and any damage caused thereby shall be repaired by the Board at the expense of the Association. No Owner shall do any act or create any obstruction which would unreasonably interfere with the right or ability of the Association to perform any of its obligations or exercise any of its rights under this Declaration.

11.8 Insurance; Damage or Destruction

11.8.1 Reconstruction by Lot Owners

Subject to other provisions of this Declaration, in the event of damage to or destruction of any part of a Unit or Lot, the Owner shall reconstruct the same as soon as reasonably practicable and substantially in accordance with the original plans and specifications therefor or shall remove all debris from the Lot such that the Lot does not have an unsightly appearance or otherwise constitute a nuisance to neighboring Lots. Each Owner shall have an easement of reasonable access into any adjacent Lot for purposes of repair or reconstruction of his Unit as provided in this subarticle.

11.8.2 Association Liability Insurance

The Association shall obtain and continue in effect comprehensive public liability insurance insuring the Association, the Declarant, the agents and employees of each and the Owners and their respective family members, guests and invitees against any liability incident to the ownership or use of the Common Area and facilities in the Recreational Common Area and areas within Lots which the Association is responsible for maintaining, including, if obtainable, a cross-liability endorsement insuring each insured against liability to each other insured and a "severability of interest" endorsement precluding the insurer from denying coverage to one Owner because of the negligence of other Owners or the Association. Such insurance shall be in amounts deemed appropriate by the Board but, in any event, shall be in amounts which satisfy FHLMC and FNMA requirements as amended from time to time.

11.8.3 Master Hazard Insurance

Additionally, the Association shall obtain and continue in effect a master or blanket policy of multi-peril insurance on the Common Area, providing at a minimum fire and extended coverage and all other coverage in the kinds and

amounts required by FHLMC and FNMA regulations as amended from time to time, said coverage to be obtained on a replacement cost basis in an amount not less than one hundred percent (100%) of the insurable value (based upon replacement cost) of all Common Area improvements in the Project. Such policy shall contain extended coverage and replacement cost endorsements (providing for replacement of insured improvements from insurance loss proceeds) and may also contain vandalism and malicious mischief coverage, stipulated amount clause and a determinable cash adjustment clause or a similar clause to permit cash settlement covering the full value of the Common Area improvements in the event of destruction and a decision not to rebuild pursuant to this Declaration. If the Project is located in an area identified by the Secretary of Housing and Urban Development as an area having special flood hazards, a "blanket" policy of flood insurance on the Common Area in the Project shall be maintained in an amount equal to the maximum limit of coverage available under the National Flood Insurance Act of 1968, as amended, whichever is less. Such policies shall be in form and amount as determined by the Board but, in any event, shall always satisfy FHLMC's and FNMA's requirements as amended from time to time, shall name as insured the Association, and shall provide that any proceeds be paid to the Association for the use and benefit of the Owners and Mortgagees as their interests may appear. Such policy shall not be required to insure individual Lots or Units or the personal property within any individual Lot, which insurance shall be the responsibility and risk of the Lot Owners.

11.8.4 Additional Association Insurance

The Association may purchase such other Insurance as it may deem necessary, including without limitation plate glass, workmen's compensation, directors liability and errors and omissions insurance, and shall purchase fidelity coverage against dishonest acts by any directors, managers, trustees, employees or volunteers of the Association who are responsible for handling funds belonging to or administered by the Association. The fidelity insurance shall name the Association as the insured and shall provide coverage in an amount not less than one and one-half (1-1/2) times the Association's estimated annual operating expenses and reserves.

11.8.5 Choice of Carriers: Insurance Premiums

The insurance policies required under this Subarticle 11.7 shall be acquired from carriers meeting the qualifications specified by the FHLMC and FNMA from time to time. Insurance premiums shall be a Common Expense to be included in the Assessments levied by the Association, provided that the Association shall have the right, but not the obligation, to specially assess each Lot and the Owner thereof for all premiums for policies paid for by the Association attributable to custom-built items, additions or improvements in or to the Unit or Lot or any part thereof. The acquisition of insurance by the Association shall be without prejudice to the right of any Lot Owner to obtain additional individual insurance.

Neither the Declarant, the Association nor any officer or director thereof shall be liable to any Owner or other party if any risk or hazard is not covered by insurance or the amount is inadequate. Each Owner is responsible for ascertaining the Association's coverage and for procuring such additional coverage as such Owner deems necessary. First Mortgagees may pay overdue premiums and may secure new insurance coverage upon the lapse of any policy with respect to any insurance required to be maintained by the Association or by any Owner under this Declaration, and any First Mortgagee making such an expenditure shall be entitled to immediate reimbursement from the Association or Owner on whose behalf the expenditure was made.

11.8.6 Proceeds from Insurance

Any insurance proceeds payable from policies procured by the Association on account of any loss or damage shall be used to defray such loss or damage. With respect to the damage or destruction of any Common Area or improvements thereon, the Association, acting through its Board shall promptly repair, replace and rehabilitate all structures and things damaged or destroyed. Construction and design of any improvements shall be substantially similar to the prior condition of the Common Area and improvements thereon. Should insurance proceeds not be sufficient or should the damage not be covered by insurance, repairs or replacements shall be effected and paid for by levying a special Assessment on all Lot Owners to restore or rebuild said improvements. The Association's use of funds from its general account or levy of a special Assessment shall not constitute a waiver of the Association's or any Owners right to institute any legal proceeding or suit against the Person or Persons responsible, purposely or negligently, for the damage.

11.8.7 Total Destruction

In the event the improvements in the Common Area are totally or substantially damaged or destroyed, the First Mortgagees shall receive timely notice thereof. The repair, reconstruction or disposition of the Common Area and insurance proceeds shall be as provided by an agreement approved by not less than fifty-one percent (51%) of the votes of each class of membership and not less than seventy-five percent (75%) of all First Mortgagees based on one (1) vote for each Mortgage held.

11.8.8 Waiver of Subrogation; Notice of Cancellation

All property and liability insurance carried by the Association or the Owners shall contain provisions whereby the insurer waives rights of subrogation as to the Association, officers, directors, Members and their guests, agents and employees. All insurance carried by the Association shall contain a provision requiring the insurer to notify First Mortgagees requesting notice of cancellation at least thirty (30) days in advance of the effective date of any reduction in or cancellation of the policy.

11.8.9 Additional Insurance Requirements

It is the intent of Subarticle 11.8 of this Declaration to generally set forth the insurance requirements for the Project which are, at all times, to comply with FHLMC and FNMA requirements. Because FHLMC and FNMA Project insurance requirements are very lengthy and subject to change from time to time, it is impractical to set forth all of those requirements herein. Therefore, the Association, Board and Owners shall at all times carry, maintain in good standing and pay for all hazard, liability, fidelity and other insurance policies, binders and bonds required by the FHLMC and FNMA, and FHLMC and FNMA regulations or guidelines as such requirements change from time to time, and shall provide satisfactory evidence thereof promptly to any First Mortgagee or insurer or guarantor of any First Mortgage which requests such evidence. All such policies, binders and bonds shall comply with and be consistent in form and substance with all such FHLMC and FNMA requirements as they change from time to time, and shall include all mortgage clauses and endorsements of any kind or nature required by the FHLMC and FNMA, and FHLMC and FNMA regulations or guidelines as such requirements change from time to time.

11.9 Condemnation

Upon receipt of notice of intention or notice of proceedings whereby all or any part of the Project is to be taken by any governmental body by exercise of the power of condemnation or eminent domain, all Owners and First Mortgagees shall be immediately notified by the Association thereof. The Association shall represent the Owners in any condemnation or eminent domain proceedings or in negotiations, settlements and agreements with the condemning authority for acquisition of any part of the Common Area of the Project, and every Owner appoints the Association his/her attorney-in-fact for this purpose. The entire award made as compensation for such taking of Common Area, including but not limited to any amount awarded as severance damages, or the entire amount received and paid in anticipation and settlement for such taking, after deducting therefrom, in each case, reasonable and necessary costs and expenses, including but not limited to attorneys' fees, appraisers' fees and court costs (which net amount shall hereinafter be referred to as the "Award"), shall be paid to the Association as trustee for the use and benefit of the Owners and their First Mortgagees as their interests may appear. The Association shall, as it is practicable, cause the Award to be utilized for the purpose of repairing and restoring the Project, including, if the Association deems it necessary or desirable, the replacement of any improvements so taken or conveyed.

In the event of any taking of any Lot in the Project by eminent domain, the Owner of such Lot shall be entitled to receive the award for such taking, and after acceptance thereof he and all of his Mortgagees shall be divested of all interest in the

Project if such Owner shall vacate his Lot as a result of such taking. The remaining Owners shall decide by majority vote whether to rebuild or repair the Project or take other action. The remaining portion of the Project shall be resurveyed, if necessary, and the Declaration shall be amended to reflect such taking. In the event of a taking by eminent domain of more than one Lot at the same time, the Association shall participate in the negotiations and shall propose the method of division of the proceeds of condemnation where Lots are not value separately by the condemning authority or by the court.

11.10 Limitation of Restrictions on Declarant; Additional Restrictions on Declarant

Declarant is undertaking the work of construction of the Units and incidental improvements upon the Property. The completion of that work and the sale, rental and other disposal of the Lots are essential to the establishment and welfare of the Project as a residential community. In order that said work may be completed and said Project be established as a fully occupied residential community as rapidly as possible, nothing in this Declaration shall be understood or construed to:

11.10.1 Prevent Declarant, its contractors or subcontractors from doing on the Project or any Lot whatever is reasonably necessary or advisable in connection with the completion of the work;

11.10.2 Prevent Declarant or its representatives from erecting, constructing and maintaining on any part or parts of the Project such structures as may be reasonable and necessary for the conduct of its business of completing said work and establishing said Project as a residential community and disposing of the same in parcels by sale, lease or otherwise;

11.10.3 Prevent Declarant from conducting on any part of the Project its business of completing the work and of establishing a plan of Lot ownership and of disposing of said Project in Lots by sale, lease or otherwise; or

11.10.4 Prevent Declarant from maintaining such sign or signs on any portion of the Project as may be necessary for the sale, lease or disposition thereof. Notwithstanding anything mentioned to the contrary herein, Declarant shall be exempt from the requirements of Article VIII. So long as Declarant or DMB owns one or more of the Lots established and described in this Declaration and, except as otherwise specifically provided herein, Declarant and its successors or assigns shall be subject to the provisions of this Declaration. Declarant shall not, and shall not have authority or power to, bind the Association prior to termination of Class B Membership, either directly or indirectly, to contracts or leases (including management contracts) unless the Association is provided with a right of termination of any such contract or lease, without cause, which is exercisable without penalty at

any time after such termination upon not more than ninety (90) days' notice to the other party thereto.

11.11 Termination of Any Responsibility of Declarant

In the event Declarant shall assign (subject to compliance with Article XII below) all of its right, title and interest as Declarant to any Person then and in such event, Declarant shall be relieved of the performance of any further duty or obligation hereunder which accrues or relates to circumstances occurring after the date of such conveyance, and such Person shall be obligated to perform all such duties and obligations of the Declarant, to the extent accruing or relating to circumstances occurring from and after the date of such conveyance.

11.12 Owner's Compliance

Each Owner, tenant or occupant of a Lot shall comply with the provisions of the Project Documents and all decisions and resolutions of the Association or its duly authorized representative(s), and failure to comply with any such provisions, decisions or resolutions shall be grounds for an action to recover sums due, for damages (including costs and attorneys' fees) and/or for injunctive relief. All agreements and determinations lawfully made by the Association in accordance with the voting percentages established in this Declaration or in the Bylaws shall be deemed to be binding on all Lot Owners, their successors and assigns.

11.13 Conflict of Project Documents

If there is any conflict among or between the Project Documents, the provisions of this Declaration shall prevail. Thereafter, priority shall be given to Project Documents in the following order: Map, Articles, Bylaws and rules and regulations of the Association.

11.14 Persons Entitled to Enforce Declaration

The Association, any Owner and any governmental or quasigovernmental agency or municipality having jurisdiction over the Project shall have the right to enforce, by any proceeding at law or in equity, all covenants, conditions, restrictions, reservations, liens and charges now or hereafter imposed by this Declaration, and in such action shall be entitled to recover costs and reasonable attorneys' fees as are ordered by the Court, provided however, that an individual Owner shall have no right to enforce the collection of any Assessment levied against any other Owner under Article 4 above. Failure by any such Person to enforce any such provision shall in no event be deemed a waiver of the right to do so thereafter.

11.15 Remedies for Violation of Declaration

The following provisions are in addition to and not in lieu of any other terms and conditions contained in the Declaration relating to remedies, including but not limited to those contained in Subarticle 4.9.

11.15.1 Violation of any of the covenants, conditions or restrictions, the breach of any of the covenants or agreements contained herein or the breach of any rules and regulations promulgated by the Board, whether by an Owner or occupant of any Lot, shall enable the Association, acting through the Board or an authorized agent, to enter the Lot as to which said violation or breach may exist and summarily enforce such covenants, conditions, restrictions, agreements, rules and regulations and to abate and remove the thing or condition which may exist thereon contrary to the provisions hereof, at the sole expense of the Owner of said Lot, without being deemed guilty of having trespassed in any manner, provided however, that an appropriate court order shall be required before any items of construction can be removed or altered.

11.15.2 In the event of any default by an Owner or occupant under the provisions of this Declaration, the Articles, the Bylaws or the rules and regulations of the Association, the Association, its successors and assigns, acting through the Board or an authorized agent, shall have each and all of the rights and remedies which may be provided for in this Declaration, the Articles, the Bylaws and said rules and regulations or which may be available at law or in equity, including but not limited to an action for the appointment of a receiver for the Lot without regard to the value of such Lot or the solvency of such Owner, or for damages, injunction, specific performance or for a judgment for payment of money and collection thereof.

Nothing contained in this Declaration shall preclude the Association, its agents, the Board, Declarant, an aggrieved Owner, a First Mortgagee or other Person having an interest in the Project from exercising any available remedy at law or in equity. All cost and attorneys fees incurred by the Association in enforcing compliance with this Declaration (whether or not a lawsuit or other legal action is instituted or commenced) or in connection with any legal action or proceedings in connection with any default under this Declaration by an Owner or an occupant of any Lot and all damages, liquidated or otherwise, together with interest as provided in Subarticle 4.1, shall be charged to and paid by such defaulting Owner as provided in Subarticle 4.1. The Association, acting through the Board or its authorized agent, shall have the authority to correct any default and to do whatever may be necessary for such purpose, and all expenses in connection therewith shall be charged to and paid by such defaulting Owner, and such charges shall be part of and be secured by the lien against the defaulting Owner's Lot as provided in Subarticle 4.1. Any amounts charged to an Owner of a Lot pursuant to this Subarticle 11.15 or Subarticle

4.1 or 4.9 shall be immediately due and payable upon notice to the Owner unless a specific due date is established thereof pursuant to this Declaration.

11.15.3 Anything to the contrary herein notwithstanding, any breach of any of the covenants, conditions, restrictions, reservations and servitudes provided for in this Declaration shall not defeat or adversely affect the lien of any First Mortgagee upon any Lot but, except as herein specifically provided, each and all of said covenants, conditions, restrictions, reservations and servitudes shall be binding upon and effective against any lessee or Owner of a Lot whose title thereto is acquired by foreclosure, trustee's sale, sale, deed in lieu of foreclosure or otherwise.

11.16 Waiver; Remedies Cumulative

No failure or delay on the part of any Person in exercising any right, power or privilege hereunder and no course of dealing between or among the Persons subject hereto shall operate as a waiver of any provision hereof, nor shall any single or partial exercise of any right, power or privilege hereunder preclude any other or further exercise thereof or the exercise of any other right, power or privilege. The rights and remedies herein expressly provided are cumulative and not exclusive of any rights or remedies which any Person subject hereto would otherwise have. No notice to or demand upon any Person in any case shall entitle such Person to any other or further notice or demand in similar or other circumstances or constitute a waiver of rights to any other or further action in any circumstances.

11.17 Judicial Proceedings

All Owners agree that any matter arising under this Declaration may be finally adjudged or determined in any court or courts of the State of Arizona or of the United States of America having jurisdiction in the State of Arizona, and such Owners hereby submit generally and unconditionally to the jurisdiction of such courts and of any of them in respect to any such matter, provided however, as to those matters to be submitted to arbitration pursuant to any provision hereof, such arbitration provisions shall be controlling and prevail. For the purpose of instituting or defending any action with respect to the Common Area, or with respect to any matter affecting the Owners with respect to the Common Area, and further in connection with enforcing this Declaration, the Articles, the Bylaws and any rules and regulations adopted pursuant to this Declaration, the Articles or the Bylaws, or in any other instance where the Board and/or the members of the Association deem it is necessary for the best interest of the Project as a whole, the Association, acting by and through its Board, shall be deemed the real party in interest and is hereby authorized to commence and prosecute any such proceedings or to defend any such action. Nothing contained in this Subarticle 11.16 shall be deemed or construed to impose upon the Association, its Members or the Board any liabilities or obligations nor grant to any third party or parties any rights that any of said above-named parties would not otherwise have if this article were not contained herein.

11.18 Governing Law

This Declaration and the rights and obligations of the parties hereunder shall be construed in accordance with and be governed by the laws of the State of Arizona.

11.19 FHA/VA

As long as there is Class B Membership, the following actions will require the prior approval of the Federal Housing Administration or the Veterans Administration (only if FHA or VA then has any interest in the Project): Annexation of additional properties, dedication of the Common Area, amendment of this Declaration and withdrawal or de-annexation of any Property from this Declaration.

End of Article 11 Entitled
General Provisions

ARTICLE XII

Assignment

12.1 No Assignment.

Declarant shall not transfer, assign, encumber or otherwise convey (whether by succession, merger, reorganization or otherwise) all or any part of its rights as Declarant hereunder so long as DMB owns any Lot or other portion of the Project, except with the express written consent of DMB, which consent must be evidenced by recorded instrument executed by DMB. Any attempted transfer, assignment, encumbrance or other conveyance by Declarant in violation of the consent requirements of this Section shall be null and void and of no force or effect.

IN WITNESS Whereof, the undersigned, being the Declarant herein, has executed this Declaration this 16 day of MARCH, 1995.

"DECLARANT"

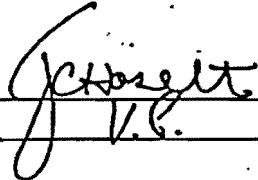
DELMAR DEVELOPMENT, INC.,
an Arizona corporation

By *Delmar*
Its President

This Declaration is hereby consented to by DMB in its capacity as owner of the property described in Exhibit "A":

DMB PROPERTY VENTURES
LIMITED PARTNERSHIP, a
Delaware limited partnership

DMB GP, INC., an Arizona corporation
Its General Partner

By 
Its V.P.

STATE OF ARIZONA

) ss.

County of Maricopa

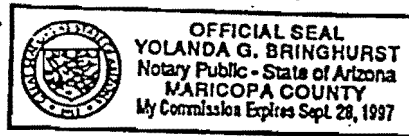
On March 16, 1995, before me, the undersigned Notary Public in and for said state and county, personally appeared RODNEY L. MICHAEL, known to me to be the President of DELMAR DEVELOPMENT, INC., an Arizona corporation, whose name is subscribed to the within Declaration of Covenants, Conditions and Restrictions and known to me to be the person who executed the within instrument on behalf of said corporation, and he acknowledged a resolution of its Board of Directors.

Witness my hand and official seal.

My Commission Expires: Sept. 28, 1997

Yolanda G. Bringhurst

Notary Public



STATE OF ARIZONA

) ss.

County of Maricopa

On March 16, 1995, before me, the undersigned Notary Public in and for said state and county, personally appeared JAMES C. HOSELTON, known to me to be the ^{Vice} President of DMB GP, INC., the general partner of DMB Property Ventures Limited Partnership a Delaware limited partnership, whose name is subscribed to the within Declaration of Covenants, Conditions and Restrictions and known to me to be the person who executed the within instrument on behalf of said corporation, and he acknowledged a resolution of its Board of Directors.

Witness my hand and official seal.

My Commission Expires:

L. Peoples

Notary Public

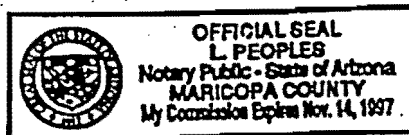


EXHIBIT A

LEGAL DESCRIPTION

Lots 1 to 171, inclusive, and Tracts A to F, inclusive, WYNSTONE, according to the plat of record in the office of the County Recorder of Maricopa County, Arizona, in Book 393 of Maps, page 18.

EXHIBIT "A"
TO
DECLARATION OF HOMEOWNERS BENEFITS
AND
COVENANTS, CONDITIONS, AND RESTRICTIONS
FOR
WYNSTONE II
(legal description)

Lots 1 through 126, inclusive, and Tracts "A" through "D", inclusive, Wynstone II, according to the plat of record as shown in Book 435 of Maps, Page 09, Official Records of Maricopa County, Arizona.