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FIRST AMENDED AND RESTATED  
DECLARATION OF COVENANTS, CONDITIONS  
AND RESTRICTIONS  
FOR  
CRESTVIEW COURT

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**FIRST AMENDED AND RESTATED  
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AND RESTRICTIONS FOR  
CRESTVIEW COURT**

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Unofficial Document

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**FIRST AMENDED AND RESTATED DECLARATION  
OF COVENANTS, CONDITIONS AND RESTRICTIONS  
FOR CRESTVIEW COURT**

THIS FIRST AMENDED AND RESTATED DECLARATION is made on the 5th day of February, 1987, by ESTES HOMES, an Arizona general partnership (the "Declarant"), and by FIRST AMERICAN TITLE INSURANCE COMPANY OF ARIZONA, an Arizona corporation, as Trustee ("First American") and by FIDELITY NATIONAL TITLE AGENCY OF MARICOPA COUNTY, INC., an Arizona corporation, as Trustee ("Fidelity").

**WITNESSETH:**

WHEREAS, the Declarant is the beneficial owner of certain real property located in Chandler, Maricopa County, Arizona, which is more particularly described as follows:

Lots 1 through 176, inclusive, and Tract B of CRESTVIEW COURT, a subdivision per plat recorded in Book 305 of Maps, page 41, Records of Maricopa County, Arizona;

WHEREAS, First American, <sup>Unofficial Document</sup> as Trustee, holds legal title to some of the above described property pursuant to its Trust No. 7374 and Fidelity as Trustee holds legal title to the balance of that property pursuant to its Trust No. 9120;

WHEREAS, Declarant has heretofore recorded on all the above described property a document entitled "DECLARATION OF COVENANTS, CONDITIONS AND RESTRICTIONS FOR CRESTVIEW COURT" (hereinafter the "Original Declaration") which document was dated December 9, 1986 and recorded December 15, 1986 as document recording number 86 689796, Records of Maricopa County, Arizona;

WHEREAS, the Original Declaration, Article 9, section 9.4 states in part as follows:

"(a) Except for amendments which may be executed by the Board or the Declarant pursuant to Subsection (b) of this Section, the Declaration or the Plat may only be amended by the written approval or the affirmative vote of Owners of not less than seventy-five percent (75%) of the Lots.

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

WHEREAS, the Declarant desires to amend and restate the Original Declaration in its entirety in order to provide for the construction of a single family residential development in phases as required by the Veterans Administration;

WHEREAS, the Veterans Administration has approved this Declaration as amended herein;

NOW, THEREFORE, Declarant hereby declares as follows:

1. The Original Declaration is hereby entirely revoked and terminated;

2. This First Amended and Restated Declaration and the covenants and restrictions included herein are hereby recorded and imposed on only the following described Lots (the "Property"):

Lot 85 and Lots 118 through 176, inclusive, of CRESTVIEW COURT, a subdivision per plat recorded in Book 305 of Maps, page 41, Records of Maricopa County, Arizona;

3. The balance of the lots in CRESTVIEW COURT (namely Lots 1 through 84, inclusive, and Lots 86 through 117, inclusive) and Tract B shall not initially be covered by this First Amended and Restated Declaration but shall be Annexable Property as hereinafter defined and may be subsequently included under this Declaration; and

4. The Lots described in subparagraph 2 above and any additional Lots hereafter annexed shall be held, sold and conveyed subject to the following reservations, easements, limitations, restrictions, servitudes, covenants, conditions, charges and liens (hereinafter sometimes collectively termed "covenants and restrictions") which are for the purpose of protecting the value and desirability

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of, and which shall run with, the real property and be binding on all parties having any right, title or interest in the described lots or any part thereof, their heirs, successors and assigns, and shall inure to the benefit of each Owner thereof.

## ARTICLE 1

### DEFINITIONS

1.1. "Annexable Property" means the real property located in Maricopa County, Arizona, which is described as follows:

Lots 1 - 84, inclusive, Lots 86 through 117, inclusive, and Tract B of CRESTVIEW COURT, a subdivision per plat recorded in Book 305 of Maps, page 41, Records of Maricopa County, Arizona;

together with all buildings and other Improvements located thereon and all easements, rights and appurtenances belonging thereto.

1.2. "Architectural Committee" means the committee established by the Board pursuant to Section 2.4 of this Declaration.

1.3. "Architectural Committee Rules" means the rules, if any, adopted by the Architectural Committee.

1.4. "Articles" means the Articles of Incorporation of the Association which will be filed in the Office of the Corporation Commission of the State of Arizona, as said Articles may be amended from time to time.

1.5. "Assessments" means the annual and special assessments levied and assessed against each Lot pursuant to Article 3 of this Declaration.

1.6. "Association" means the Arizona nonprofit corporation to be organized by the Declarant to administer and enforce the Project Documents and to exercise the rights, powers and duties set forth therein, and its successors and assigns. Declarant intends to organize the Association under the name of "Crestview Court Homeowners Association," but if such name is not available, Declarant may organize the Association under such other name as the Declarant deems appropriate.



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1.7. "Association Rules" means the rules and regulations adopted by the Association, as the same may be amended from time to time.

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

1.9. "Bylaws" means the bylaws of the Association, as such bylaws may be amended from time to time.

1.10. "Common Area" means all real property, if any, and all improvements located thereon, owned by the Association for the common use and enjoyment of the Owners.

1.11. "Declarant" means ESTES HOMES, an Arizona general partnership, its successors and any person or entity to whom it may expressly assign any or all of its rights under this Declaration.

1.12. "Declaration" means this First Amended and Restated Declaration of Covenants, Conditions and Restrictions, as it may from time to time be further amended.

1.13. "First Mortgage" means any mortgage or deed of trust with first priority over any other mortgage or deed of trust.

1.14. "Improvement" or "Improvements" means buildings, roads, driveways, parking areas, fences, walls, rocks, hedges, plantings, planted trees and shrubs, and all other structures or landscaping improvements of Unofficial Document and kind.

1.15. "Lot" means any parcel of real property designated as a Lot on the Plat and which is covered by this Declaration.

1.16. "Member" means any person, corporation, partnership, joint venture or other legal entity who owns one or more Lots in the Project and is therefore a member of the Association.

1.17. "Never Occupied Lot" is any Lot which is not a Once Occupied Lot.

1.18. "Once Occupied Lot" is any Lot with a dwelling thereon

(i) which is or has been occupied by someone residing thereon, or

(ii) which has been conveyed by the Declarant to a Purchaser or regarding which a contract for sale to a Purchaser has been recorded in the office of the Maricopa County Recorder.

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1.19. "Owner" means the record owner, whether one or more persons or entities, of beneficial or equitable title (and legal title if the same has merged with the beneficial or equitable title) to the fee simple interest of a Lot. Owner shall not include (i) persons or entities having an interest in a Lot merely as security for the performance of an obligation, or (ii) a lessee or tenant of a Lot. Owner shall include a purchaser under a contract for the conveyance of real property, a contract for deed, a contract to convey, an agreement for sale or any similar contract through which a seller has conveyed to a purchaser equitable title in a Lot under which the seller is obligated to convey to the purchaser the remainder of seller's title in the Lot, whether legal or equitable, on payment in full of all monies due under the contract. Owner shall not include a purchaser under a purchase contract and receipt, escrow instructions or similar executory contracts which are intended to control the rights and obligations of the parties to the executory contracts pending the closing of a sale or purchase transaction. In the case of Lots the fee simple title to which is vested in a trustee pursuant to Arizona Revised Statutes, Section 33-801, et seq., the trustor under the deed of trust shall be deemed to be the Owner. In the case of Lots the fee simple title to which is vested in a trustee pursuant to a subdivision trust agreement or similar agreement, the beneficiary of such trust who is entitled to possession of the trust property shall be deemed to be the Owner.

1.20. "Plat" means the Unofficial Document survey of CRESTVIEW COURT which plat has been recorded with the County Recorder of Maricopa County, Arizona, in Book 305 of Maps, page 41, and all amendments thereto.

1.21. "Project Documents" means this Declaration and the Articles, Bylaws, Association Rules and any Architectural Committee Rules.

1.22. "Property" or "Project" means the real property described on page two of this Declaration and all real property subsequently annexed by the Declarant pursuant to Article 9 of this Declaration together with all buildings and other improvements located thereon, and all easements, rights and appurtenances belonging thereto.

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

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1.24. "Single Family" means an individual living alone, a group of two or more persons each related to the other by blood, marriage or legal adoption, or a group of not more than three persons not all so related, together with their domestic servants, who maintain a common household in a dwelling.

1.25. "Single Family Residential Use" means the occupation or use of a residence by a Single Family in conformity with this Declaration and the requirements imposed by applicable zoning laws or other state, county or municipal rules and regulations.

1.26. "Visible From Neighboring Property" means, with respect to any given object, that such object is or would be visible to a person six feet tall, standing on any part of such neighboring property at an elevation no greater than the elevation of the base of the object being viewed.

## ARTICLE 2

### THE ASSOCIATION; RIGHTS AND DUTIES, MEMBERSHIP AND VOTING RIGHTS

2.1. Rights, Powers and Duties. The Association shall be a nonprofit Arizona corporation charged with the duties and invested with the powers prescribed by law and set forth in the Articles, Bylaws and this Declaration together with such rights, powers and duties as may be reasonably necessary to effectuate the objectives and purposes of the Association as set forth in this Declaration. Unless the <sup>Official Document</sup> project Documents specifically require a vote of the Members, approvals or actions to be given or taken by the Association shall be valid if given or taken by the Board.

2.2. Board of Directors and Officers. The affairs of the Association shall be conducted by a board of directors and such officers and committees as the Board may elect or appoint, in accordance with the Articles and the Bylaws.

2.3. Association Rules. The Board may, from time to time and subject to the provisions of this Declaration, adopt, amend and repeal rules and regulations. The Association Rules may restrict and govern the use of any area by any Owner, by the family of such Owner, or by any invitee, licensee or lessee of such Owner; provided, however, that the Association Rules may not discriminate among Owners and shall not be inconsistent with this Declaration, the Articles or Bylaws. A copy of the Association rules as they may from time to time be adopted, amended or repealed, shall be available for inspection by the Members at reasonable times. Upon adoption, the Association Rules shall have the same force and effect as if they were set forth in and were a part of this Declaration.

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2.4. Architectural Committee. The Board shall establish an Architectural Committee consisting of not less than three (3) members appointed by the Board to regulate the external design, appearance and use of the Property and to perform such other functions and duties as may be imposed upon it by this Declaration, the Bylaws or the Board. The Architectural Committee may promulgate rules concerning the standards and procedures for architectural review.

2.5. Identity of Members. Membership in the Association shall be limited to Owners of Lots. An Owner of a Lot shall automatically, upon becoming the Owner thereof, be a member of the Association and shall remain a member of the Association until such time as his ownership ceases for any reason, at which time his membership in the Association shall automatically cease.

2.6. Transfer of Membership. Membership in the Association shall be appurtenant to each Lot and a membership in the Association shall not be transferred, pledged or alienated in any way, except upon the sale of a Lot and then only to such Purchaser, or by intestate succession, testamentary disposition, foreclosure of mortgage of record or other legal process. Any attempt to make a prohibited transfer shall be void and shall not be reflected upon the books and records of the Association.

2.7. Classes of Members. <sup>Unofficial Document</sup> The Association shall have two classes of voting membership:

Class A. Class A Members shall be all Owners of Lots, with the exception of the Declarant until the termination of the Class B membership. Each Class A Member shall be entitled to one (1) vote for each Lot owned.

Class B. The Class B Member shall be the Declarant. The Class B Member shall be entitled to three (3) votes for each Lot owned. The Class B membership shall cease and be converted to Class A membership on the happening of the earlier to occur of the following events:

(a) One hundred and twenty days after the date on which seventy-five percent (75%) of the Lots have been conveyed to Purchasers; or

(b) Seven (7) years after the conveyance of the first Lot to a Purchaser; or

(c) When the Declarant notifies the Association in writing that it relinquishes its Class B membership.

If the Declarant's Class B membership is converted to Class A and if following that conversion but prior to the dates specified in (b) or (c) above, sufficient Lots owned by the Declarant are

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annexed hereunder so that the Déclarant then owns in excess of 25% of the Lots covered by this Déclaration then Déclarant's Class B membership shall be automatically restored regarding all Lots then owned by Déclarant.

2.8. Joint Ownership. When more than one person is the Owner of any Lot, all such persons shall be Members. The vote for such Lot shall be exercised as they among themselves determine, but in no event shall more than one ballot be cast with respect to any Lot. The vote or votes for each such Lot must be cast as a unit, and fractional votes shall not be allowed. In the event that joint Owners are unable to agree among themselves as to how their vote or votes shall be cast, they shall lose their right to vote on the matter in question. If any Owner casts a ballot representing a certain Lot, it will thereafter be conclusively presumed for all purposes that he was acting with the authority and consent of all other Owners of the same Lot. In the event more than one ballot is cast for a particular Lot, none of said votes shall be counted and said votes shall be deemed void.

2.9. Corporate Ownership. In the event any Lot is owned by a corporation, partnership or other association, the corporation, partnership or association shall be a Member and shall designate in writing at the time of acquisition of the Lot an individual who shall have the power to vote said membership, and in the absence of such designation and until such designation is made, the president, general partner or chief executive officer of such corporation, partnership or association shall have the power to vote the membership.

Unofficial Document

2.10. Suspension of Voting Rights. In the event any Owner is in arrears in the payment of any Assessments or other amounts due under any of the provisions of the Project Documents for a period of ten (10) days, said Owner's right to vote as a Member of the Association shall be automatically suspended and shall remain suspended until all payments, including accrued interest and attorneys' fees, are brought current. In addition, the Board may suspend an Owner's right to vote for a period not to exceed 60 days for any other infractions of the Project Documents.

### ARTICLE 3

#### COVENANT FOR MAINTENANCE ASSESSMENTS

3.1. Creation of the Lien and Personal Obligation of Assessments. The Declarant, for each Lot owned by it, hereby covenants, and each Owner of a Lot, by becoming the Owner thereof, whether or not it is expressed in the deed or other instrument by which the Owner acquired ownership of the Lot, is deemed to covenant and agree to pay to the Association annual assessments, special assessments and other charges as set forth

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herein. The Assessments, together with interest, costs and reasonable attorneys' fees, shall be a charge on the land and shall be a continuing lien upon the Lot against which each such Assessment is made. Each such Assessment, together with interest, costs, and reasonable attorneys' fees, shall also be the personal obligation of the Owner of such Lot at the time when the Assessment became due. The personal obligation for delinquent Assessments shall not pass to the Owner's successors in title unless expressly assumed by them.

3.2. Purpose of the Assessments. The Assessments levied by the Association shall be used exclusively for (a) the upkeep, maintenance and improvement of the Common Area; (b) promoting the recreation, health, safety and welfare of the Owners and residents of Lots within the Property; and (c) the performance and exercise by the Association of its rights, duties and obligations under the Project Documents.

3.3. Annual Assessment.

(a) In order to provide for the operation and management of the Association and to provide funds for the Association to perform its duties and obligations under the Project Documents, including the establishment of replacement and maintenance reserves, the Board, for each fiscal year of the Association commencing with the year in which the first Lot is conveyed to a Purchaser, shall assess against each Lot an annual assessment. The amount of the annual assessment shall be in the sole discretion of the Board except that the annual assessment shall not exceed the maximum annual assessment for the fiscal year as computed pursuant to Subsection (b) of this Section. The Board shall give notice of the annual assessment to each Owner at least thirty (30) days prior to the beginning of each fiscal year of the Association, but the failure to give such notice shall not affect the validity of the annual assessment established by the Board nor relieve any Owner from its obligation to pay the annual assessment. If the Board determines during any fiscal year that its funds budgeted or available for that fiscal year are, or will, become inadequate to meet all expenses of the Association for any reason, including, without limitation, nonpayment of Assessments by Members, it may increase the annual assessment for that fiscal year and the revised annual assessment shall commence on the date designated by the Board except that no increase in the annual assessment for any fiscal year which would result in the annual assessment exceeding the maximum annual assessment for such fiscal year shall become effective until approved by Members entitled to cast at least two-thirds (2/3) of the votes entitled to be cast by each class of Members who are voting in person or by proxy at a meeting duly called for such purpose.

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(b) The maximum annual assessment for each fiscal year of the Association shall be as follows:

(i) Until January 1 of the year immediately following the conveyance of the first Lot to a Purchaser, the maximum annual assessment shall be Six Hundred Dollars (\$600.00) for each Lot, which is equivalent to Fifty Dollars (\$50.00) per month per Lot.

(ii) From and after January 1 of the year immediately following the conveyance of the first Lot to a Purchaser, during each fiscal year of the Association the maximum annual assessment shall be automatically increased (without a vote of the membership) by the greater of (A) 5%, or (B) an amount proportional to the amount of increase during the prior fiscal year in the Consumer Price Index for All Urban Consumers (All Items), U.S. City Average, published by the United States Department of Labor, Bureau of Labor Statistics (1967 = 100), or in the event said index ceases to be published, by any successor index recommended as a substitute therefor by the United States government.

(iii) The maximum annual assessment may be increased by an amount greater than the maximum increase allowed pursuant to (i) and (ii) above, only by a vote of Members entitled to cast at least two-thirds (2/3) of the votes of each class of Members entitled to be cast by Members who are voting in person or by proxy at a meeting duly called for such purpose.

3.4. Special Assessments. In addition to the annual assessments authorized above, the Association may levy, in any fiscal year, a special assessment applicable to that fiscal 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 of the Common Area, including fixtures and personal property related thereto, or for any other lawful Association purpose, provided that any such special assessment shall have the assent of Members having at least two-thirds (2/3) of the votes entitled to be cast by each class of Members who are voting in person or by proxy at a meeting duly called for such purpose.

3.5. Notice and Quorum for Any Action Authorized Under Sections 3.3(a) or 3.4. Written notice of any meeting called for the purpose of taking any action authorized under Section 3.3(a) or 3.4 shall be sent to all Members not less than thirty (30) days nor more than fifty (50) days in advance of the meeting. At the first such meeting called, the presence of Members or of proxies entitled to cast sixty percent (60%) of all the votes of

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each class of Members shall constitute a quorum. If the required quorum is not present, another meeting may be called subject to the same notice requirement, and the required quorum at the subsequent meeting shall be one-half (1/2) of the required quorum at the preceding meeting. No such subsequent meeting shall be held more than sixty (60) days following the preceding meeting.

3.6. Date of Commencement of Annual Assessments, Due Dates. The annual assessments shall commence as to all Lots on the first day of the month following the conveyance of the first Lot to a Purchaser. The first annual assessment shall be adjusted according to the number of months remaining in the fiscal year of the Association. The Board may require that the annual assessment be paid in installments and in such event the Board shall establish the due dates for each installment. Unless otherwise determined by the Board, annual assessments shall be paid in twelve equal monthly installments due on the first day of each month. The Association shall, upon demand, and for a reasonable charge, furnish a certificate signed by an officer of the Association setting forth whether the Assessments on a specified Lot have been paid.

3.7. Rate of Assessment. Both annual and special assessments must be fixed at a uniform rate for all assessable Once Occupied Lots and at a uniform rate for all assessable Never Occupied Lots. The rate for Never Occupied Lots shall be twenty-five percent (25%) of the rate for Once Occupied Lots. The status of a Lot as Never Occupied or Once Occupied shall be determined as of the date an <sup>Unofficial Document</sup> assessment is due. This provision shall not preclude the Association from making a separate or additional charge to an Owner for or on account of special services or benefits rendered to, conferred upon or obtained by or for that Owner or his Lot.

3.8. Assessments on Lots Subsequently Annexed. The annual assessment for Lots annexed by the Declarant pursuant to Article 9 of this Declaration shall commence on the first day of the first month following the month in which the annexed portion of the Annexable Property becomes irrevocably annexed to the Project in accordance with Section 9.1 of this Declaration, and no Assessments may be levied against any such Lot until such time. If any Declaration of Annexation recorded pursuant to Article 9 of this Declaration divides the Annexable Property being annexed into separate phases, then the annual assessments for Lots annexed by the Declarant shall not commence until the first day of the first month following the month in which the phase of the Annexable Property within which such Lot is located is irrevocably annexed in accordance with Section 9.1 of this Declaration, and no Assessments may be levied against any such Lot until such time.



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3.9. Effect of Nonpayment of Assessments; Remedies of the Association. Any Assessment, or any installment of an Assessment, not paid within ten (10) days after the Assessment, or the installment of the Assessment, first became due shall bear interest from the due date at the rate of twelve percent (12%) per annum or the prevailing FHA/VA interest rate for new home loans, whichever is higher, or in the alternative, at such rate as may be set by the Board. Any Assessment, or any installment of an Assessment, which is delinquent shall become a continuing lien on the Lot against which such Assessment was made. The lien shall be perfected by the recordation of a "Notice of Claim of Lien" which shall set forth (1) the name of the delinquent Owner as shown on the records of the Association; (2) the legal description or street address of the Lot against which the claim of lien is made; (3) the amount claimed as of the date of the recording of the notice including interest, lien recording fees and reasonable attorneys' fees; and (4) the name and address of the Association. The Association's lien shall have priority over all liens or claims created subsequent to the recordation of this Declaration except for tax liens for real property taxes on the Lot, assessments on any Lot in favor of any municipal or other governmental body and the liens which are specifically described in Section 3.10 of this Declaration.

Before recording a lien against any Lot the Association shall make a written demand to the defaulting Owner for payment of the delinquent Assessments together with interest and reasonable attorneys' fees, if any. The demand shall state the date and amount of the delinquency. Each default shall constitute a separate basis for a demand or <sup>Unofficial Document</sup> claim of lien, but any number of defaults may be included within a single demand or claim of lien. If such delinquency is not paid within ten (10) days after delivery of such demand, the Association may proceed with recording a Notice of Claim of Lien against the Lot of the defaulting Owner. The Association shall not be obligated to release any lien recorded pursuant to this Section until all delinquent Assessments, interest, lien fees and reasonable attorneys' fees have been paid in full whether or not all of such amounts are set forth in the Notice of Claim of Lien.

The Association shall have the right, at its option, to enforce collection of any delinquent Assessments together with interest, lien fees, reasonable attorneys' fees and any other sums due to the Association in any manner allowed by law including, but not limited to, (a) bringing an action at law against the Owner personally obligated to pay the delinquent Assessments and such action may be brought without waiving any lien securing any such delinquent Assessments or (b) bringing an action to foreclose its lien against the Lot in the manner provided by law for the foreclosure of a realty mortgage. The

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Association shall have the power to bid in at any foreclosure sale and to purchase, acquire, hold, lease, mortgage and convey any and all Lots purchased at such sale.

3.10. Subordination of the Lien to Mortgages. The lien of the Association for delinquent Assessments provided for in this Declaration shall be subordinate to the lien of any First Mortgage. Sale or transfer of any Lot shall not affect the assessment lien. However, the sale or transfer of any Lot pursuant to judicial or nonjudicial foreclosure or any proceeding in lieu thereof, shall extinguish the lien of such Assessment as to payments which become due prior to such sale or transfer. No sale or transfer shall relieve such Lot from liability for any Assessments thereafter becoming due or from the lien thereof.

3.11. Exemption of Owner. No Owner of a Lot may exempt himself from liability for Assessments levied against his Lot or for other amounts which he may owe to the Association under the Project Documents by waiver and non-use of any of the Common Area and facilities or by the abandonment of his Lot.

3.12. Maintenance of Reserve Fund. Out of the annual assessments, the Association shall establish and maintain an adequate reserve fund for the periodic maintenance, repair and replacement of improvements to the Common Area.

3.13. No Offsets. All Assessments shall be payable in accordance with the provisions of this Declaration, and no offsets against such Assessments shall be permitted for any reason, including, without limitation, a claim that the Association is not properly exercising its duties and powers as provided in the Project Documents.

#### ARTICLE 4

##### PERMITTED USES AND RESTRICTIONS

4.1. Residential Use. All Lots shall be used, improved and devoted exclusively to Single Family Residential Use. No gainful occupation, profession, trade or other nonresidential use shall be conducted on any Lot.

4.2. Animals. No animals, birds, fowl, poultry, or livestock, other than a reasonable number of generally recognized house or yard pets, shall be maintained on any Lot and then only if they are kept, bred or raised thereon solely as domestic pets and not for commercial purposes. No animal shall be allowed to make an unreasonable amount of noise, or to become a nuisance. No structure for the care, housing or confinement of any animal shall be maintained so as to be Visible From Neighboring Property. No Owner or any lessee or guest of an Owner shall permit any dog or other pet to relieve itself on another Owners'

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Lot or on any part of the Common Area. It shall be the responsibility of an Owner to remove immediately any droppings from pets. No dog, cat or other pet shall be permitted to run at large, and each dog, cat or other pet shall be confined entirely to an Owner's Lot except that a dog, cat or other pet shall be permitted to leave an Owner's Lot if such dog, cat or other pet is at all times kept on a leash not to exceed six (6) feet in length and is under the direct control of the Owner.

4.3. Antennas. No antenna, satellite television dish antenna or other device for the transmission or reception of television or radio signals or any other form of electromagnetic radiation, including, but without limitation, Citizen's Band or Amateur "Ham" Radio signals shall be erected, used or maintained outdoors on any Lot without the prior written approval of the Architectural Committee. Any satellite dish must be ground mounted and not Visible From Neighboring Property.

4.4. Utility and Drainage Easements. No lines, wires, or other devices for the communication or transmission of electric current or power, including telephone, television, and radio signals, shall be erected, placed or maintained anywhere in or upon any Lot unless the same shall be contained in conduits or cables installed and maintained underground or concealed in, under or on buildings or other structures, unless otherwise approved by the Board or the Declarant. No structure, landscaping or other Improvement shall be placed, erected or maintained upon any area designated on the Plat as a public utility easement which may damage or interfere with the installation and maintenance of <sup>Unofficial Document</sup> utilities or which may change the direction or flow of drainage channels in such easement areas or which may obstruct or retard the flow of water through drainage channels in such easement areas. Such public utility easement areas, and all improvements thereon, shall be maintained by the Owner of the Lot on which the easement area is located unless such easement area is maintained by the utility company or a county, municipality or other public authority.

4.5. Temporary Occupancy. No trailer, basement of any incomplete building, tent, shack, garage or barn, and no temporary buildings or structure of any kind shall be used at any time for a residence on any Lot, either temporary or permanent. Temporary buildings or structures used during the construction of a residence or other structure on a Lot shall be removed immediately after the completion of construction.

4.6. Trucks, Trailers, Campers and Boats. No truck, mobile home, travel trailer, tent trailer, trailer, camper shell, detached camper, recreational vehicle, boat, boat trailer, or other similar equipment or vehicle may be parked, maintained, constructed, reconstructed or repaired on any Lot or on any street so as to be Visible From Neighboring Property or any

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street except for (i) pickup trucks of less than 3/4 ton capacity with camper shells not exceeding seven (7) feet in height measured from ground level or (ii) mini-motor homes not exceeding seven (7) feet in height and eighteen (18) feet in length which are parked as provided in Section 4.8 of this Declaration and are used on a regular and recurring basis for basic transportation.

4.7. Motor Vehicles. No automobile, motorcycle, motorbike or other motor vehicle shall be constructed, reconstructed or repaired upon any Lot or street, and no inoperable vehicle may be stored or parked on any Lot or street, so as to be Visible From Neighboring Property or to be visible from any street; provided, however, that the provisions of this Section shall not apply to emergency vehicle repairs or temporary construction shelters or facilities maintained during, and used exclusively in connection with, the construction of any Improvement approved by the Architectural Committee.

4.8. Parking. All vehicles of Owners and of their lessees, employees, guests and invitees shall be kept in garages, carports or residential driveways of the Owners wherever and whenever such facilities are sufficient to accommodate the number of vehicles on a Lot; provided, however, this Section shall not be construed to permit the parking in the above-described areas of any vehicle whose parking is otherwise prohibited by this Declaration or the parking of any inoperable vehicle.

4.9. Nuisances. No nuisance shall be permitted to exist or operate upon any Lot so as to be offensive or detrimental to any other property in the vicinity thereof or to its occupant or which shall in any way interfere with the quiet enjoyment of each of the Owners of their respective Lots and residences. Without limiting the generality of the foregoing provisions, no exterior speakers, horns, whistles, bells or other sound devices, except fire detection and security devices used exclusively for such purposes, shall be located, used or placed on any property.

4.10. Repair of Buildings. No building, landscaping or other Improvement upon any Lot shall be permitted to fall into disrepair, and each such building, landscaping or other Improvement shall at all times be kept in good condition and repair by the Owner thereof.

4.11. Trash Containers and Collection. No garbage, rubbish or trash shall be placed or kept on any Lot except in covered containers. In no event shall such containers be maintained so as to be Visible From Neighboring Property except to make the same available for collection and then only for the shortest time reasonably necessary to effect such collection. No rubbish or debris of any kind shall be placed or permitted to accumulate upon or adjacent to any Lot, and no odors shall be permitted to arise therefrom so as to render any such property or any portion

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thereof unsanitary, unsightly, offensive or detrimental to any other property in the vicinity thereof or to its occupants. No incinerators shall be kept or maintained on any Lot.

4.12. Screening and Fencing. All clotheslines, woodpiles, storage areas, machinery and equipment shall be prohibited upon any Lot, unless in the rear yard and unless they are erected, placed or maintained in such a manner as to not be Visible From Neighboring Property.

4.13. Encroachments. No tree, shrub, or planting of any kind on any Lot shall be allowed to overhang or otherwise to encroach upon any sidewalk, street, pedestrian way, or other area from ground level to a height of eight (8) feet. The Common Area and all Lots shall be subject to an easement for overhangs and encroachments by walls, fences or other structures upon adjacent Lots and Common Area as constructed by the Declarant or as reconstructed or repaired in accordance with the original plans and specifications or as a result of repair, shifting, settlement or movement of any such structure.

4.14. Machinery and Equipment. No machinery or equipment of any kind shall be placed, operated or maintained upon or adjacent to any Lot except such machinery or equipment as is usual and customary in connection with the use, maintenance or repair of a residence, appurtenant structures, or other Improvements constructed by the Declarant or approved Unofficial Document Architectural Committee.

4.15. Restriction on Further Subdivision. No Lot shall be further subdivided or separated into smaller lots or parcels by any Owner other than the Declarant, and no portion less than all of any such lot or an undivided interest in all of any such Lot shall be conveyed or transferred by any Owner other than the Declarant.

4.16. Signs. Unless otherwise approved by the Architectural Committee, no signs whatsoever (including, but without limitation, commercial, political, "for sale," "for rent" and similar signs) shall be erected or maintained on any Lot except:

- (a) One residential identification sign with a total face area of eighty square inches or less;
- (b) Such signs as may be required by legal proceedings;
- (c) One "for sale" or "for rent" sign with a total face area of five square feet or less; and
- (d) Any signs approved or installed by the Declarant.

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4.17. Declarant's Exemption. Nothing contained in this Declaration shall be construed to prevent or restrict the erection or maintenance by Declarant, or its duly authorized agents, of structures, improvements or signs necessary or convenient to the construction, development, identification, or sale of Lots or other property within the Project. Without limiting the generality of the foregoing, the Declarant shall be exempt from the requirements of all architectural control provisions contained herein or in the Articles or Bylaws.

4.18. Mineral Exploration. No Lot shall be used in any manner to explore for or to remove any water, oil or other hydrocarbons, minerals of any kind, gravel, earth, or any earth substance of any kind and no derrick or other equipment designed or intended for any such activity shall be erected, placed, constructed or maintained on any Lot.

4.19. Diseases and Insects. No Owner shall permit any thing or condition to exist upon any property which could induce, breed or harbor infectious plant diseases or noxious insects.

4.20. Improvements and Alterations. No addition, alteration, repair, change or other work which in any way alters the exterior appearance, including but without limitation, the exterior color scheme, of any Lot, or the improvements located thereon, from their appearance on the date the Lot was conveyed by the Declarant to a Purchaser shall be made or done without the prior written approval of the Architectural Committee.

Any Owner desiring approval of the Architectural Committee for any addition, alteration, repair, change or other work which alters the exterior appearance of his Lot, or the improvements located thereon, shall submit to the Architectural Committee a written request for approval specifying in detail the nature and extent of the addition, alteration, repair, change or other work which the Owner desires to perform. Any Owner requesting the approval of the Architectural Committee shall also submit to the Architectural Committee any additional information, plans and specifications which the Architectural Committee may request. All plans submitted to the Committee shall bear the approval of the City of Chandler, if required by law or ordinance, and shall be sent by certified mail or personal delivery.

In the event that the Architectural Committee fails to approve or disapprove an application for approval within thirty (30) days after the application, together with all supporting information, plans and specifications requested by the Architectural Committee have been received by it, approval will not be required and this Section will be deemed to have been complied with by the Owner who had requested approval of such plans. The approval by the Architectural Committee of any addition, alteration, repair, change or other work pursuant to this Section shall

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not be deemed a waiver of the Architectural Committee's right to withhold approval of any similar addition, alteration, repair, change or other work subsequently submitted for approval. Upon receipt of approval from the Architectural Committee for any addition, alteration, repair, change or other work, the Owner who had requested such approval shall proceed to perform, construct or make the addition, alteration, repair, change or other work approved by the Architectural Committee as soon as practicable and shall diligently pursue such work so that it is completed as soon as reasonably practicable and within such time as may be prescribed by the Architectural Committee.

4.21. Common Walls. Common walls shall be walls constructed on the boundary line between two lots. The rights and duties of Owners of Lots with respect to common walls shall be as follows:

(a) The Owners of contiguous Lots who have a common wall shall both equally have the right to use such wall provided that such use by one Owner does not interfere with the use and enjoyment of same by the other Owner;

(b) In the event that any common wall is damaged or destroyed through the act of an Owner, it shall be the obligation of such Owner to promptly rebuild and repair the common wall without cost to the other Owner or Owners;

(c) In the event any such common wall is damaged or destroyed by some cause other than the act of one of the adjoining Owners, his agents, Unofficial Document tenants, licensees, guests or family (including ordinary wear and tear and deterioration from lapse of time) then, in such event, both such adjoining Owners shall proceed forthwith to rebuild or repair the same to as good a condition as formerly at their joint and equal expense;

(d) Notwithstanding any other provision of this Section, an Owner who, by his negligent or willful act, causes any common wall to be exposed to the elements shall bear the whole cost of furnishing the necessary protection against such elements;

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

(f) In addition to meeting the other requirements of this Declaration and of any other building code or similar regulations or ordinances, any Owner proposing to modify, make additions to or rebuild a common wall shall first obtain the written consent of the adjoining Owners;

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(g) In the event any common wall encroaches upon a Lot or the Common Area, a valid easement for such encroachment and for the maintenance of the common wall shall and does exist in favor of the Owners of the Lots which share such common wall.

4.22. Outdoor Burning. There shall be no outdoor burning of trash or other debris; provided, however, that the foregoing shall not be deemed to prohibit the use of normal residential barbecues or other similar outside cooking grills.

4.23. Fuel Tanks. No fuel tanks of any kind shall be erected, placed or maintained on the Property except for propane or similar fuel tanks permitted under the ordinances of the City of Chandler, Arizona and approved by the Architectural Committee.

4.24. Windows. Within 30 days of occupancy each Owner shall install permanent draperies or suitable window treatments on all windows facing the street. All window treatments which are Visible From Neighboring Property must show white, unless otherwise approved by the Architectural Committee. No reflective materials, including, but without limitation, aluminum foil, reflective screens or glass, mirrors or similar type items, shall be installed or placed upon the outside or inside of any windows.

4.25. HVAC and Solar Panels. Except as initially installed by the Declarant, no heating, air conditioning, evaporative cooling or solar energy collecting <sup>Unofficial Document</sup> unit or panels shall be placed, constructed or maintained upon any Lot without the prior written approval of the Architectural Committee.

4.26. Garages and Driveways. The interior of all garages situated on any Lot shall be maintained in a neat, clean and sightly condition. Garages shall be used only for the parking of vehicles and the storage of normal household supplies and materials and shall not be used or converted for living quarters or recreational activities without the prior written approval of the Architectural Committee. All driveways shall be of concrete construction. Garage doors shall be opened only as needed for ingress and egress.

4.27. Leasing Restrictions. Any lease or rental agreement must be in writing and be subject to the requirements of the Project Documents. All leases must be for an entire residence and Lot and must have a minimum term of thirty days. An Owner must notify the Board of any lease and must provide the Board the following information: (a) name of tenant, (b) date and term of the lease, and (c) current address of the Owner.



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## ARTICLE 5

## EASEMENTS

5.1. Utility Easement. There is hereby created a blanket easement upon, across, over and under the Common Area for ingress, egress, installation, replacing, repairing and maintaining all utilities approved by the Declarant or the Board, including, but not limited to, water, sewer, gas, telephone, electricity and a cable television system. By virtue of this easement, it shall be expressly permissible for the providing utility to erect and maintain any necessary facilities and equipment on the Common Area. This easement shall in no way affect any other recorded easements on the Common Area.

5.2. Easements for Ingress and Egress. Easements for ingress and egress are hereby reserved to the Declarant, the Owners, and their families, guests, tenants and invitees for pedestrian traffic over, through and across sidewalks, paths, walks and lanes as the same from time to time may exist upon the Common Area, and for such other purposes reasonably necessary to the use and enjoyment of a Lot or the Common Area.

5.3. Association's Right of Entry. During reasonable hours, any member of the Architectural Committee, any member of the Board or any authorized representative of the Association or Architectural Committee shall have the right to enter upon and inspect any Lot, excluding the interior of any residence located thereon, for the purpose of making inspections to determine whether the provisions of this Declaration, the Association Rules and the Architectural Committee Rules are being complied with by the Owner of said Lot.

5.4. Association's Easement For Performing Maintenance Responsibilities. The Association shall have an easement upon, across, over and under the Common Area and the Lots for the purpose of repairing, maintaining and replacing the Common Area and for performing all of the Association's other rights, duties and obligations under the Project Documents.

5.5. Declarant's Easement. An easement is hereby reserved by the Declarant over the Lots and Tracts for the purpose of constructing, maintaining, and/or repairing all dwelling units and other improvements.

## ARTICLE 6

## PROPERTY RIGHTS

6.1. Owners' Easement of Enjoyment. Every Owner, and each person residing with such Owner, shall have a right and easement of enjoyment in and to the Common Area. Said easement shall be appurtenant to and shall pass with the title to every Lot subject to the following provisions:

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(a) the right of the Association to adopt reasonable rules and regulations governing the use of the Common Area and facilities located thereon;

(b) the right of the Association to suspend the rights of an Owner (and his family, tenants and guests) to use the recreational facilities located on the Common Area for any period during which any Assessment against his Lot remains unpaid; and for a period not to exceed sixty (60) days for any infraction of the Project Documents;

(c) the right of the Association to dedicate or transfer all or any part of the Common Area to any public agency, authority, or utility for such purposes and subject to such conditions as may be agreed to by the Members; provided, however, that no such dedication or transfer (except utility easements) shall be effective unless evidenced by an instrument signed by at least two-thirds (2/3) of each class of Members;

(d) the right of Declarant and its agents and representatives, in addition to the rights set forth elsewhere in this Declaration, to the non-exclusive use, without charge, of the Common Area for maintenance of sales and leasing facilities, and display and exhibit purposes.

6.2. Lessees. If a Lot is leased or rented by the Owner thereof, the lessee and the <sup>Unofficial Document</sup> members of his family residing with such lessee shall have the right to use the Common Area during the term of the lease, and the Owner of such Lot shall have no right to use the Common Area until the termination or expiration of such lease.

6.3. Guests and Invitees. The Board shall have the right to regulate and limit the use of the Common Area by guests and invitees.

6.4. Limitations. An Owner's right and easement of enjoyment in and to the Common Area shall not be conveyed, transferred, alienated or encumbered separate and apart from an Owner's Lot. Such right and easement of enjoyment in and to the Common Area shall be deemed to be conveyed, transferred, alienated or encumbered upon the sale of any Owner's Lot, notwithstanding that the description in the instrument of conveyance, transfer, alienation or encumbrance may not refer to such right and easement of enjoyment.

## ARTICLE 7

### MAINTENANCE

7.1. Maintenance of Common Area by the Association. The Association shall be responsible for the maintenance, repair and

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replacement of the Common Area and may, without any approval of the Owners being required, do any of the following:

- (a) Reconstruct, repair, replace or refinish any Improvement or portion thereof located on the Common Area;
- (b) Construct, reconstruct, repair, replace or refinish any portion of the Common Area used as a road, street, walk, driveway or parking area;
- (c) Replace injured and diseased trees or other vegetation in the Common Area, and plant trees, shrubs and ground cover to the extent that the Board deems necessary for drainage or the conservation of water and soil and for aesthetic purposes;
- (d) Place and maintain upon any such area such signs as the Board may deem appropriate for the proper identification, use and regulation thereof; and
- (e) Do all such other and further acts which the Board deems necessary to preserve and protect the Common Area and the appearance thereof, in accordance with the general purposes specified in this Declaration.

The Association will also maintain the landscaping outside the perimeter walls on the south and east side of Gila Springs Boulevard (from the northeast corner of Tract A on the Plat to the southwest corner of Tract C on the Plat).

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**7.2. Maintenance by Association of Landscaping on Lots.** The Association shall maintain, repair and replace the grass, plants, trees and other landscaping improvements situated on the portion of each Lot which is between the street and the front exterior wall of the residence (the wall which separates the interior of the residence from the front yard, patios and entryways) and between the street and the wall separating the side or back yard of the Lot from the front yard of the Lot. In the event the need for maintenance, repair or replacement of any portion of the Lots which are being maintained by the Association pursuant to this Section is caused by the willful or negligent act of an Owner, his family, guests, invitees or animals for whom he is legally responsible under Arizona law, the Association shall cause the maintenance or repair to be performed and the cost of the maintenance or repairs shall be paid to the Association by the Owner, upon demand. The cost of the maintenance and repair shall be a lien on the Owner's Lot, and the Association may enforce collection of such costs in the same manner as provided elsewhere in this Declaration for the collection and enforcement of Assessments.

**7.3. Maintenance of Lots by Owners.** Each Owner shall be solely responsible for the maintenance, repair and replacement of his Lot, and the residence and all Improvements located thereon (including, but not limited to, the roofs of the residence and

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other structures situated on his Lot) except for the landscaping improvements to be maintained by the Association pursuant to Section 7.2 of this Declaration.

7.4. Damage or Destruction of Common Area by Owners. No Owner shall in any way damage or destroy any Common Area or interfere with the activities of the Association in connection therewith. Any expenses incurred by the Association by reason of any such act of an Owner shall be paid by said Owner, upon demand, to the Association to the extent that the Owner is liable therefor under Arizona law, and such amounts shall be a lien on any Lots owned by said Owner and the Association may enforce collection of any such amounts in the same manner as provided elsewhere in this Declaration for the collection and enforcement of Assessments.

7.5. Nonperformance by Owners. If any Owner fails to maintain any portion of his Lot, and the Improvements located thereon, the Association shall have the right, but not the obligation, to enter upon such Owner's Lot to perform the maintenance and repairs not performed by the Owner, and the cost of any such work performed by or at the request of the Association shall be paid for by the Owner of the Lot, upon demand from the Association, and such amounts shall be a lien upon the Owner's Lot and the Association may enforce collection of such amounts in the same manner and to the same extent as provided elsewhere in this Declaration for the collection and enforcement of Assessments.

7.6. Payment of Utility Charges. Each Lot shall be separately metered for water, sewer and electrical service and all charges for such services shall be the sole obligation and responsibility of the Owner of each Lot. The cost of water, sewer and electrical service to the Common Area shall be a common expense of the Association and shall be included in the budget of the Association.

## ARTICLE 8

### INSURANCE

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

- (a) Property insurance on the Common Area insuring against all risk of direct physical loss, insured against in an amount equal to the maximum insurable replacement value of the Common Area, as determined by the Board; provided, however, that the total amount of insurance after application of any deductibles shall not be less than one hundred percent

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(100%) of the current replacement cost of the insured property, exclusive of land, excavations, foundations and other items normally excluded from a property policy;

(b) Comprehensive general liability insurance, including medical payments insurance, in an amount determined by the Board, but not less than \$1,000,000. Such insurance shall cover all occurrences commonly insured against for death, bodily injury and property damage arising out of or in connection with the use, ownership or maintenance of the Common Area, and shall also include hired automobile and non-owned automobile coverages with cost liability endorsements to cover liabilities of the Owners as a group to an Owner and provide coverage for any legal liability that results from lawsuits related to employment contracts in which the Association is a party;

(c) Workmen's compensation insurance to the extent necessary to meet the requirements of the laws of Arizona;

(d) Such other insurance as the Association shall determine from time to time to be appropriate to protect the Association, members of the Board and Architectural Committee, or the Owners;

(e) The insurance policies purchased by the Association shall, to the extent reasonably available, contain the following provisions:

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

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

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

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

(5) The Association shall be named as the insured.

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**8.2. Fidelity Bonds.** The Association shall maintain blanket fidelity bonds as it deems appropriate or necessary for officers, directors, trustees and employees of the Association and any other persons handling or responsible for funds of or administered by the Association, whether or not they receive compensation for their services. The total amount of any fidelity bond maintained by the Association shall be based upon the best business judgment of the Board.

**8.3. Payment of Premiums.** The premiums for any insurance obtained by the Association pursuant to this Article shall be included in the budget of the Association and shall be paid by the Association.

**8.4. Insurance Obtained by Owners.** Each Owner shall be responsible for obtaining property insurance for his own benefit and at his own expense covering his Lot, and all improvements and personal property located thereon. Each Owner shall also be responsible for obtaining at his expense personal liability coverage for death, bodily injury or property damage arising out of the use, ownership or maintenance of his Lot.

**8.5. Payment of Insurance Proceeds.** With respect to any loss to the Common Area covered by property insurance obtained by the Association in accordance with this Article, the loss shall be adjusted with the Association and the insurance proceeds shall be payable to the Association Unofficial Document to any mortgagee or beneficiary under a deed of trust. Subject to the provisions of Section 8.6 of this Article, the proceeds shall be disbursed for the repair or restoration of the damage to Common Area.

**8.6. Repair and Replacement of Damaged or Destroyed Property.** Any portion of the Common Area damaged or destroyed shall be repaired or replaced promptly by the Association unless (a) repair or replacement would be illegal under any state or local health or safety statute or ordinance, or (b) Owners owning at least eighty percent (80%) of the Lots vote not to rebuild. The cost of repair or replacement in excess of insurance proceeds and reserves shall be paid by the Association. If the entire Common Area is not repaired or replaced, insurance proceeds attributable to the damaged Common Area shall be used to restore the damaged area to a condition which is not in violation of any state or local health or safety statute or ordinance and the remainder of the proceeds shall be distributed to the Owners on the basis of an equal share for each Lot.

## ARTICLE 9

### ANNEXATION OF ADDITIONAL LAND

**9.1. Right of Annexation.** Declarant hereby expressly reserves the right, until seven (7) years from the date of recording of this Declaration, and without the consent of any

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Owner, to annex and subject to this Declaration all or any portion of the Annexable Property. The annexation of all or any portion of the Annexable Property shall be accomplished by the Declarant recording with the County Recorder of Maricopa County, Arizona, a Declaration of Annexation stating the following:

(a) The legal description of the Annexable Property being annexed;

(b) A description of any portion of the Annexable Property being added which will be Common Area.

Any portion of the Annexable Property annexed pursuant to this Section shall not become irrevocably annexed and subjected to this Declaration until the date on which the first Lot within the annexed portion of the Annexable Property is conveyed to a Purchaser. If any Declaration of Annexation recorded pursuant to this Section divides the portion of the Annexable Property being annexed into separate phases, then each phase of the property being annexed shall not become irrevocably annexed and subjected to this Declaration until the date on which the first Lot within such phase is conveyed to a Purchaser.

The Declarant shall have the right to amend any Declaration of Annexation recorded pursuant to this Section to change the description of phases within the property being annexed; provided, however, that the Declarant may not change any portion of the Annexable Property which has already become irrevocably annexed and subjected to this Declaration. At any time prior to the date which is seven (7) years after the recording of this Declaration, the Declarant may withdraw from the Project any part of the Annexable Property which has not been irrevocably annexed and subjected to this Declaration to the Project pursuant to the provisions of this Section. Any such withdrawal of property from the Project shall be accomplished by the recording with the County Recorder of Maricopa County, Arizona, of a Declaration of Withdrawal describing the portion of the property being withdrawn. Upon the recording of any such Declaration of Withdrawal, that portion of the Annexable Property described in the Declaration of Withdrawal shall no longer be part of the Project or subject to the Declaration.

The voting rights of the Owners of Lots annexed pursuant to this Section shall be effective as of the date the Declaration of Annexation is recorded. The Lot Owners' obligation to pay Assessments shall commence as provided for in Section 3.8 of this Declaration.

9.2. No Assurances. Declarant makes no assurances as to the exact location of buildings and other improvements to be constructed on the Annexable Property. Declarant makes no assurances as to the exact number of Lots which may be added by annexation of all or any portion of the Annexable Property, but

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the total number of Lots covered by this Declaration shall not exceed One Hundred and Seventy-Six (176). Declarant makes no assurances as to what improvements may be constructed on the Annexable Property but if all or any portion of such property is annexed hereunder the improvements on the Annexed Property shall be consistent in quality, material and style with the improvements constructed on the real property initially covered by this Declaration.

#### ARTICLE 10

##### GENERAL PROVISIONS

10.1. Enforcement. The Association, or any Owner, shall have the right to enforce, by any proceeding at law or in equity, all restrictions, conditions, covenants, reservations, liens and charges now or hereafter imposed by the provisions of this Declaration. Failure by the Association or by any Owner to enforce any covenant or restriction herein contained shall in no event be deemed a waiver of the right to do so thereafter.

10.2. Severability. Invalidation of any one of these covenants or restrictions by judgment or court order shall in no way affect any other provisions which shall remain in full force and effect.

10.3. Duration. The covenants and restrictions of this Declaration shall run with and bind the Property for a term of twenty (20) years from the date this Declaration is recorded, after which time they shall be automatically extended for successive periods of ten (10) years. This Declaration may be terminated at any time by the written approval or the affirmative vote of Owners representing not less than seventy-five percent (75%) of the Lots. Any termination of this Declaration shall be evidenced by a Declaration of Termination signed by the President or Vice President of the Association and recorded with the County Recorder of Maricopa County, Arizona.

10.4. Amendment.

(a) Except for amendments which may be executed by the Board or the Declarant pursuant to Subsection (b) of this Section, the Declaration or the Plat may only be amended by the written approval or the affirmative vote of Owners of not less than seventy-five percent (75%) of the Lots.



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

(c) So long as the Declarant owns any Lot, any amendment which would delete or modify any right granted to the Declarant by this Declaration must be approved in writing by the Declarant.

(d) So long as there is a Class B membership in the Association, any amendment to this Declaration or the Plat must have the prior approval of the Veterans Administration or the Federal Housing Authority.

(e) Any amendment approved pursuant to Subsection (a) above or by the Board pursuant to Subsection (b) above shall be signed by either (i) all the approving Owners, or by (ii) the President or Vice President of the Association. Any such amendment shall be recorded with the County Recorder of Maricopa County, Arizona Unofficial Document and shall certify that the amendment has been approved as required by this Section. Any amendment made by the Declarant pursuant to Subsection (b) above shall be executed by the Declarant and shall be recorded with the County Recorder of Maricopa County, Arizona.

**10.5. Violations and Nuisance.** Every act or omission whereby any provision of this Declaration is violated in whole or in part is hereby declared to be a nuisance and may be enjoined or abated, whether or not the relief sought is for negative or affirmative action, by the Declarant, the Association or any Owner.

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

**10.7. Remedies Cumulative.** Each remedy provided herein is cumulative and not exclusive.

**10.8. Delivery of Notices and Documents.** Any written notice or other documents relating to or required by this Declaration may be delivered either personally or by mail. If by mail, it

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shall be deemed to have been delivered twenty-four hours after a copy of same has been deposited in the United States mail, postage prepaid, addressed as follows: If to the Association, the Architectural Committee or the Declarant at 15650 N. Black Canyon Highway, Suite 100, Phoenix, Arizona 85023; if to an Owner, to the address of his Lot or to any other address last furnished by the Owner to the Association; provided, however, that any such address may be changed at any time by the party concerned by recording a written notice of change of address and delivering a copy thereof to the Association. Each Owner of a Lot shall file the correct mailing address of such Owner with the Association, and shall promptly notify the Association in writing of any subsequent change of address. Notwithstanding the foregoing, plans, specifications and other documents shall not be deemed to have been submitted to the Architectural Committee unless actually received by said Committee.

10.9. FHA/VA Approval. As long as there is a Class B membership, the following actions will require the prior approval of the Federal Housing Administration or the Veterans Administration: annexation of additional properties, dedication of Common Areas and amendment of this Declaration.

10.10. Binding Effect. By acceptance of a deed or by acquiring any interest in any of the property subject to this Declaration, each person or entity, for himself or itself, his heirs, personal representatives, successors, transferees and assigns, binds himself, his heirs, personal representatives, successors, transferees and assigns, to all of the provisions, restrictions, covenants, conditions, Unofficial Document rules and regulations now or hereafter imposed by this Declaration and any amendments thereof. In addition, each such person by so doing thereby acknowledges that this Declaration sets forth a general scheme for the improvement and development of the Property and hereby evidences his interest that all the restrictions, conditions, covenants, rules and regulations contained in this Declaration shall run with the land and be binding on all subsequent and future Owners, grantees, purchasers, assignees, lessees and transferees thereof. Furthermore, each such person fully understands and acknowledges that this Declaration shall be mutually beneficial, prohibitive and enforceable by the various subsequent and future Owners. Declarant, its successors, assigns and grantees, covenants and agrees that the Lots and the membership in the Association and the other rights created by this Declaration shall not be separated or separately conveyed, and each shall be deemed to be conveyed or encumbered with its respective Lot even though the description in the instrument of conveyance or encumbrance may refer only to the Lot.

10.11. Management Agreements. Any agreement for professional management of the Association or the Project or any other contract providing for services of the Declarant, or other

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developer, sponsor or builder of the Project shall not exceed one year. Any such agreement must provide for termination by either party without cause and without payment of a termination fee on thirty (30) days or less written notice.

10.12. Gender. The singular, wherever used in this Declaration, shall be construed to mean the plural when applicable, and the necessary grammatical changes required to make the provisions of this Declaration apply either to corporations or individuals, men or women, shall in all cases be assumed as though in each case fully expressed.

10.13. Topic Headings. The marginal or topical headings of the sections contained in this Declaration are for convenience only and do not define, limit or construe the contents of the sections or this Declaration.

10.14. Survival of Liability. The termination of membership in the Association shall not relieve or release any such former Member from any liability or obligation incurred under or in any way connected with the Association during the period of such membership, or impair any rights or remedies which the Association may have against such former Member arising out of, or in any way connected with such membership and the covenants and obligations incident thereto.

10.15. Interpretation. In the event of any discrepancies, inconsistencies or conflicts Unofficial Document between the provisions of this Declaration and the Articles, Bylaws, Association Rules or Architectural Committee Rules, the provisions of this Declaration shall prevail.

10.16. Joint and Several Liability. In the case of joint ownership of a Lot, the liabilities and obligations of each of the joint Owners set forth in or imposed by this Declaration, shall be joint and several.

10.17. Attorneys' Fees. In the event the Association employs an attorney to enforce any lien granted to it under the terms of this Declaration or to collect any Assessments or other amounts due from an Owner or to enforce compliance with or recover damages for any violation or noncompliance with the Project Documents, the prevailing party in any such action shall be entitled to recover from the other party its reasonable attorneys' fees incurred in any such action.

10.18. Declarant's Right To Use Similar Name. The Association hereby irrevocably consents to the use by any other nonprofit corporation which may be formed or incorporated by Declarant of a corporate name which is the same or deceptively similar to the name of the Association provided one or more words are added to the name of such other corporation to make the name

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of the Association distinguishable from the name of such other corporation. Within five (5) days after being requested to do so by the Declarant, the Association shall sign such letters, documents or other writings as may be required by the Arizona Corporation Commission in order for any other corporation formed or incorporated by the Declarant to use a corporate name which is the same or deceptively similar to the name of the Association.

10.19. Right to Replat. Subject to the approval of any and all appropriate governmental agencies having jurisdiction, Declarant hereby reserves the right at any time, without the consent of other Members, to resubdivide and replat any Lot or Lots which the Declarant then owns and has not sold.

IN WITNESS WHEREOF, the undersigned have executed this Declaration on the day and year first above written.

ESTES HOMES, an Arizona general partnership, by its partner THE ESTES CO.

By: *Ross T. Emmett*  
Its: *Planning Director*

Unofficial Document

FIDELITY NATIONAL TITLE AGENCY OF MARICOPA COUNTY, INC., an Arizona corporation, as Trustee

By: *Mary Jane Weir*  
Its: *Assistant Secretary*

FIRST AMERICAN TITLE INSURANCE COMPANY OF ARIZONA, an Arizona corporation, as Trustee

By: *Charles R. Rye*  
Its: *Trust Officer*

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STATE OF ARIZONA )  
County of Maricopa ) ss.

The foregoing instrument was acknowledged before me this 5th day of February, 1987, by Ross F. Emmott, as Planning Director of THE ESTES CO., partner of ESTES HOMES, an Arizona general partnership.

Nancy L. Bruggier  
Notary Public



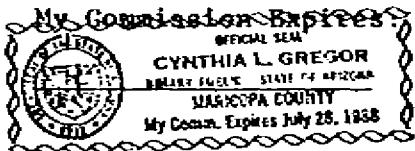
My Commission Expires:  
October 13, 1987

STATE OF ARIZONA )  
County of Maricopa ) ss.

The foregoing instrument was acknowledged before me this 10th day of July, 1987, by PAMELA MEYER, as TRUST OFFICER of FIRST AMERICAN TITLE INSURANCE COMPANY OF ARIZONA, an Arizona corporation, as Trustee.

Unofficial Document

Cynthia L. Gregor  
Notary Public

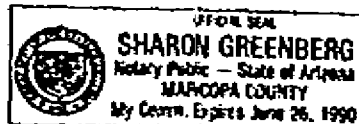


STATE OF ARIZONA )  
County of Maricopa ) ss.

The foregoing instrument was acknowledged before me this 9th day of February, 1987, by Mary Jane Weber, as of FIDELITY NATIONAL TITLE AGENCY OF MARICOPA COUNTY, INC., an Arizona corporation, as Trustee.

Sharon Greenberg  
Notary Public

My Commission Expires:  
\_\_\_\_\_



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When recorded return to:  
Alice Jarvis Jardine  
Jarvis & Owens  
3900 E. Camelback Road  
Suite 304 South  
Phoenix, Arizona 85018

RECORDED IN OFFICIAL RECORDS  
OF MARICOPA COUNTY, ARIZONA  
JUL 13 '87 - 8 00  
KEITH POLETIS, County Recorder  
FEE 10<sup>00</sup> PGS 3 PL

(Estes163G)

MOD RSTR (DF)

AMENDMENT TO FIRST AMENDED AND  
RESTATED DECLARATION OF  
COVENANTS, CONDITIONS AND RESTRICTIONS  
FOR CRESTVIEW COURT

THIS AMENDMENT TO THE FIRST AMENDED AND RESTATED DECLARATION is made on the date hereinafter set forth by ESTES HOMES, an Arizona general partnership (the "Declarant"), as the beneficial owner of Fidelity Trust No. 9120 and by FIDELITY NATIONAL TITLE AGENCY OF MARICOPA COUNTY, INC., an Arizona corporation, as Trustee of that Trust No. 9120 ("Fidelity").

W I T N E S S E T H:

WHEREAS, Declarant heretofore executed and caused to be recorded that certain FIRST AMENDED AND RESTATED DECLARATION OF COVENANTS, CONDITIONS AND RESTRICTIONS dated February 5, 1987 and recorded on February 10, 1987 as document number 87 082064, in the official records of Maricopa County, Arizona (hereinafter referred to as the "Declaration"), which covered the following described property:

Lot 85 and Lots 118 through 176, inclusive, of CRESTVIEW COURT, a subdivision per plat recorded in Book 305 of Maps, Page 41, Records of Maricopa County, Arizona;

WHEREAS, pursuant to a DECLARATION OF ANNEXATION dated June 25, 1987, and recorded on July 10, 1987 as Recording No. 87-440241, Records of Maricopa County, Arizona, the Declarant has annexed the following additional phases under the Declaration:

Phase Two:

Lots 1 through 4, inclusive, Lots 68 through 84, inclusive, and Lots 86 through 95, inclusive, of CRESTVIEW COURT, a subdivision per Plat recorded in Book 305 of Maps, Page 41, Records of Maricopa County, Arizona.

Phase Three:

Lots 5 through 67, inclusive, Lots 96 through 117, inclusive and Tract B of CRESTVIEW COURT, a subdivision per Plat recorded in Book 305 of Maps, Page 41, Records of Maricopa County, Arizona.

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WHEREAS, Fidelity holds legal title to and the Declarant is the beneficial owner of in excess of seventy-five percent (75%) of the Lots which have been covered by the Declaration;

WHEREAS, the Declaration, Section 10.4(a) provides as follows:

"Except for amendments which may be executed by the Board or the Declarant pursuant to Subsection (b) of this Section, the Declaration or the Plat may only be amended by the written approval or the affirmative vote of Owners of not less than seventy-five percent (75%) of the Lots."

NOW, THEREFORE, Declarant hereby amends the Declaration as follows:

1. The first sentence of Section 7.2 is deleted and the following provisions shall replace said deleted sentence:

"The Association shall maintain, repair and replace the grass, plants, trees and other landscaping improvements situated on that portion of the front yard of each Lot which is between the street and the courtyard wall and that portion of the <sup>Unofficial Document</sup> yard on each Lot which adjoins the driveway and is between the street and the front wall of the garage of the dwelling unit constructed on the Lot. The Association shall have no responsibility to maintain the back yard, the semi-enclosed courtyard area, the front walkway, the driveway and the side yard area adjoining the dwelling unit."

2. Except as expressly modified herein, the provisions of the Declaration (including but not limited to all of Section 7.2 except the first sentence thereof) are hereby reaffirmed.

IN WITNESS WHEREOF, the undersigned have hereunto set their hands this 9<sup>th</sup> day of July, 1987.

FIDELITY NATIONAL TITLE AGENCY  
OF MARICOPA COUNTY, INC., an  
Arizona corporation, as Trustee

By: Mary Jane Weir

Its: Trust Officer

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ESTES HOMES, an Arizona general partnership, by its partner, THE ESTES CO.

By: X James Deloitte  
Its: Marketing Director

STATE OF ARIZONA )  
County of Maricopa ) ss.

This instrument was acknowledged before me this 9<sup>th</sup> day of July, 1987 by James Deloitte as Marketing Director of FIDELITY NATIONAL TITLE AGENCY OF MARICOPA COUNTY, INC., an Arizona corporation, as Trustee.

[Signature] (Romero)  
Notary Public

My Commission Expires:  
10-11-87

Unofficial Document

STATE OF ARIZONA )  
County of Maricopa ) ss.

This instrument was acknowledged before me this 6<sup>th</sup> day of July, 1987 by James Deloitte as Marketing Director of THE ESTES CO., a partner of ESTES HOMES, an Arizona general partnership.

[Signature]  
Notary Public

My Commission Expires:  
OFFICIAL SEAL  
R. L. ARMOUR  
Notary Public - State of AZ  
MARICOPA COUNTY  
My Comm. Expires May 14, 1989