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FIRST AMENDMENT TO DECLARATION OF COVENANTS, CONDITIONS AND
RESTRICTIONS FOR MILLSTONE

THIS INSTRUMENT IS BEING RE-RECORDED FOR THE SOLE PURPOSE OF
ADDING EXHIBIT "A" AND EXHIBIT "B" TO THE DECLARATION OF
COVENANTS, CONDITIONS AND RESTRICTIONS FOR MILLSTONE:
RECORDED ON MAY 5, 2005 AT INSTRUMENT NO. 2005-0593099 IN THE
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Declaration of Covenants, Conditions and Restrictions

for

Millstone

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DECLARATION OF COVENANTS, CONDITIONS AND RESTRICTIONS**FOR****MILLSTONE**

This Declaration of Covenants, Conditions and Restrictions is made and executed as of the 3 day of MAY, 2005, by Millstone - Barton Homes, L.L.C., an Arizona limited liability company.

ARTICLE 1**DEFINITIONS**

Unless the context clearly indicates otherwise, certain terms as used in this Declaration shall have the meanings set forth in this Article 1.

1.1 "Additional Property" shall mean any real property designated by Declarant, while Declarant owns any Lots (whether construction has commenced or not) within Tempe, Arizona, that is within close enough proximity with the Project to benefit from use of any Common Elements at the Project.

1.2 "Allocated Interest" shall mean Common Expense Liability and the Votes in the Association allocated to each Lot.

1.3 "Amendment" shall mean an amendment to the Declaration recorded with a Supplemental Plat which shall contain a legal description by metes and bounds of the real property added to the Project and shall reallocate Votes in the Association so that the Lots created in the real property added to the Project shall be allocated Votes on the same basis as Lots initially constructed in the Project.

1.4 "Architectural Committee" shall mean the committee of the Association to be created pursuant to Section 8.13 of this Declaration.

1.5 "Articles" shall mean the instrument by which the Association is formed and organized as a nonprofit corporation under the Arizona law.

1.6 "Association" shall mean Millstone Homeowners Association, an Arizona nonprofit corporation, organized to be the Association referred to herein.

1.7 "Auto Court" shall mean Tracts A, and identified and described on the Plat, which Tracts are to be used exclusively as driveways and/or private roads or paths for those Lots in the Buildings immediately adjacent to said Tracts.

1.8 "Board of Directors" shall mean the governing board or management committee of the Association.

1.9 "Building" shall mean a building in the Project containing one or more Lots that have been or will hereafter be constructed on the Project, as such building is shown on the Plat.

1.10 "Bylaws" shall mean the bylaws of the Association.

1.11 "City" shall mean the City of Tempe, Arizona.

1.12 "Common Elements" shall mean all portions of the Project other than the Lots, which specifically include those areas designated on the Plat as Tracts, the real property between Lots 41 and 42 and the real property between Lots 33 and 34, notwithstanding such real property may be owned by the adjacent Lot Owners.

1.13 "Common Expense Fund" shall mean the fund created or to be created pursuant to the provisions of Article 9 of this Declaration and into which all monies of the Association shall be deposited.

1.14 "Common Expense Liability" shall mean the liability for Common Expenses allocated to each Lot pursuant to Article 9.

1.15 "Common Expenses" shall mean expenditures made or financial liabilities of the Association, together with any allocations to reserves.

1.16 "Common Facilities" shall mean all furniture, furnishings, equipment, facilities and other property (real, personal or mixed) and interests therein at any time leased, acquired, owned or held by the Association for the use and benefit of the Owners and all other property (real, personal or mixed) hereafter purchased in accordance with this Declaration with monies from the Common Expense Fund. Common Facilities shall be deemed to be part of the Common Elements, except to the extent otherwise expressly provided in this Declaration.

1.17 "Condemnation Award" shall mean all compensation, damages and other proceeds from any taking or condemnation by a public authority under the power of eminent domain.

1.18 "Declarant" shall mean MILLSTONE - BARTON HOMES, L.L.C., an Arizona limited liability company, and its successors and assigns if such successors and assigns should acquire more than one (1) undeveloped Lot in the Project from Declarant for purposes of development; provided, however, successors and assigns shall not refer to individual lot owners who have not purchased in bulk from Declarant.

1.19 "Declarant Control" shall mean the possession by the Declarant, directly or indirectly, of the power to direct or cause the direction of the management and policies of the

Association, whether through the voting of membership interests in the Association, by contract, or otherwise. There shall be a presumption of Declarant Control if the Declarant holds a majority of the Total Votes of the Association.

1.20 "Declaration" shall mean this Declaration of Covenants, Conditions and Restrictions for Millstone.

1.21 "Development Rights" shall mean any right or combination of rights reserved by or granted to Declarant in this Declaration to do any of the following:

1.21.1 Add real estate to the Project;

1.21.2 Create easements, Lots or Common Elements in the Project;

1.21.3 Subdivide Lots, convert Lots into Common Elements or convert Common Elements into Lots;

1.21.4 Withdraw real estate from the Project;

1.21.5 Make the Project part of another project or planned community;

1.21.6 Amend the Declaration during any period of Declarant Control.

1.22 "Dispute" shall mean any dispute or claim arising under or pertaining to this Declaration or any provision of this Declaration between or among (i) any Owner(s) and any other Owner(s), (ii) any Owner(s) and the Association, or (iii) the Declarant (or their brokers, agents, consultants, contractors, subcontractors or employees) and any Owner(s) or the Association.

1.23 "Eligible First Mortgagee" shall mean any First Mortgagee who has requested notice of those certain matters referred to in Section 13.1.

1.24 "Existing Restrictions" shall mean those restrictions, limitations, covenants, conditions, uses and obligations running with the Land as such restrictions as set forth or referenced in an instrument duly recorded in the records of Maricopa County, Arizona.

1.25 "FHLMC" shall mean the Federal Home Loan Mortgage Corporation.

1.26 "First Mortgagee" shall mean a Mortgagee which has a first mortgage lien on any Lot in the Project.

1.27 "FNMA" shall mean the Federal National Mortgage Association.

1.28 "Identifying Number" shall mean the number, symbol or address that identifies a Lot.

1.29 "Land" shall mean the real property located in the City, Maricopa County, Arizona, which is more particularly described in Exhibit "A" attached hereto.

1.30 "Landscaped Areas" shall mean any unpaved area located upon a Lot that is not physically separated, or enclosed by a Party Fence, Party Wall, Building, or any other structure, or combination of the foregoing, intended to create separation or privacy for a portion of a Lot. Landscaped Areas shall also include any planter areas or flower beds that may be located in a Common Element, including any Auto Court.

1.31 "Lessee" shall mean the lessee or tenant under a lease, oral or written, of any Lot, including an assignee of a lease.

1.32 "Lot" shall mean and refer to any plot of real property and portion of a Building shown upon any recorded subdivision map or plat of the Land and/or the Project, with the exception of the Common Elements and Lots, that is designed and intended for independent ownership for use and occupancy as a residence by a Single Family and which may be connected by a Party Wall to another portion of the same Building which portion is also designed and intended for independent ownership for use and occupancy by a Single Family.

1.33 "Manager" shall mean the person, firm or company, if any, designated from time to time by the Association to manage, in whole or in part, the affairs of the Association and the Project.

1.34 "Mortgage" shall mean any mortgage, deed of trust or other security instrument by which a Lot or any part hereof is encumbered. "First Mortgage" shall mean any first mortgage, deed of trust or other security instrument by which a Lot or any part thereof is encumbered.

1.35 "Mortgagee" shall mean (i) any persons or entities named as the mortgagee or beneficiary under any Mortgage or Deed of Trust by which the interest of any Owner is encumbered, (ii) any successor to the interest of such person or entity under such Mortgage or Deed of Trust or (iii) any insurer or guarantor of such person or entity under such Mortgage or Deed of Trust.

1.36 "Owner or Lot Owner" shall mean the person or persons, including the Declarant, owning in fee simple a Lot in the Project, as such ownership is shown by the records of the County Recorder of Maricopa County, State of Arizona. The term "Lot Owner" shall not refer to any Mortgagee (unless such Mortgagee has obtained title in fee simple to a Lot pursuant to a judicial or nonjudicial action, including, without limitation, a foreclosure proceeding or any deed or

other arrangement in lieu of foreclosure). In the case of a contract for conveyance of real property, as defined in A.R.S. § 33-741, Lot Owner shall mean the purchaser of a Lot.

1.37 "Party Fence" and "Party Wall" shall mean a fence or wall constructed on, or immediately adjacent to, (i) the common boundary of Lots, including the wall separating the interiors of two Lots, or (ii) the common boundary of Common Elements or Tracts and Lots.

1.38 "Plat" shall mean the plat map for Millstone, recorded in Book ___ of Maps, Page ___, records of Maricopa County, Arizona, a copy of which is attached hereto as Exhibit "B" and incorporated herein by this reference, and any supplemental plats pertaining to the Project and recorded or to be recorded in the office of the County Recorder of Maricopa County, State of Arizona.

1.39 "Project" shall mean the Millstone townhouses, and shall include Land, the Lots, all improvements submitted by this Declaration and the Plat, and Additional Property to the extent there are any additions or expansions of real property made pursuant to the provisions of Article 15 of this Declaration.

1.40 "Resident" shall mean each individual occupying or residing in any Lot.

1.41 "Rules and Regulations" shall mean the rules and regulations, if any, adopted by the Association pursuant to Section 8.6, or by a committee of the Association pursuant to Section 8.13, and the Articles and Bylaws.

1.42 "Single Family" shall mean a group of one or more persons each related to the other by blood, marriage or legal adoption, or a group of persons not all so related, together with their domestic servants, who maintain a common household in a dwelling.

1.43 "Special Declarant Rights" shall mean any right or combination of rights reserved by or granted to the Declarant in this Declaration to do any of the following:

1.43.1 Construct improvements provided for in the Declaration;

1.43.2 Exercise any Developmental Right;

1.43.3 Maintain sales offices, management offices, signs advertising the Project, and models;

1.43.4 Use easements on, over and through the Common Elements for the purpose of making improvements within the Project or within any real estate which may be added to the Project;

1.43.5 Appoint or remove any officer of the Association or any board member during any period of Declarant Control.

1.44 "Supplemental Plat" shall mean, with regard to any real property that is being added to the Project, a supplemental record of survey plat which shall describe the real property added to the Project.

1.45 "Total Votes of the Association" shall mean the total number of votes appertaining to all Lots in the Project, as shown in Exhibit "C" attached hereto.

1.46 "Tract" shall mean those portions of the Land designated on the Plat as a Tract.

1.47 "Visible From Neighboring Property" shall mean, with respect to any given object, that such object is or would be visible to a natural person six (6) feet tall, standing at ground level on any part of a Common Element.

1.48 "Vote" shall refer to the number of Votes in the Association that each Owner is allocated as shown on Exhibit "C".

ARTICLE 2

DIVISION OF PROJECT

2.1 Townhouse Project. The Declarant hereby declares the Land, described on Exhibit A attached to this Declaration totaling 48 Lots, together with all other improvements now or hereafter made in or upon the Land, to be subject to the easements, restrictions, covenants and conditions set forth in this Declaration. The Identifying Numbers of the Lots are 1 through 48. All of said property is and shall be held, conveyed, hypothecated, encumbered, leased, rented, used and improved as a fee simple townhouse project to be known as Millstone. All of said property is and shall be subject to the covenants, conditions, restrictions, uses, limitations and obligations set forth herein, each and all of which are declared and agreed to be for the benefit of said Project and in furtherance of a plan for improvement of said property and division thereof into Lots; further, each and all of the provisions hereof shall be deemed to run with the Land and shall be a burden and a benefit on the Land and shall be binding upon the Declarant, its successors and assigns, and to any person acquiring, leasing or owning an interest in a Lot and to their respective personal representatives, heirs, successors and assigns. The Lots created by this Declaration may be expanded in accordance with the provisions of this Declaration.

2.2 Division into Lots. The Project is hereby divided into Lots as shown on the Plat.

2.3 Exercise of Development Rights. The Declarant hereby reserves the right and is hereby granted the right to exercise any and all Special Declarant Rights and Development Rights.

2.4 Existing Restriction. This Declaration is recorded in accordance with and shall, for all purposes, be subject and subordinate to the Existing Restrictions. To the extent of any conflict or inconsistency between any term or provision of this Declaration and the Existing Restrictions, the term or provision of the Existing Restrictions shall supersede and control.

ARTICLE 3

UNITS AND COMMON AREAS

3.1 Buildings and Improvements. The Buildings and other improvements constructed or to be constructed on the Land are described on the Plat, including the number of Lots in a Building.

3.2 Description of Lots. The Plat contains the Identifying Number, location and dimensions of each Lot in the Project and all other information necessary to identify each such Lot.

3.3 Description of Common Elements. The Plat contains a description of the Tracts, which include all portions of the Project other than the Lots, including without limitation, the real property between Lots 41 and 42 and the real property between Lots 33 and 34, notwithstanding such real property may be owned by the adjacent Lot Owners.

ARTICLE 4

NATURE AND INCIDENTS OF UNIT OWNERSHIP

4.1 Interior of Lots. Each Owner shall have the exclusive right to paint, repaint, tile, wax, paper, carpet or otherwise decorate the interior surfaces of the walls, ceilings, floors and doors forming the boundaries of his Lot and the surfaces of all walls, ceilings, floors and doors within such boundaries. Each Owner shall also have the right to construct partition walls, fixtures and improvements within the boundaries of his Lot; provided, however, that such partition walls, fixtures and improvements (i) shall comply with all applicable laws, ordinances and building codes, (ii) shall not interfere with facilities necessary for the support, use or enjoyment of any other part of the Project, (iii) shall not impair the structural soundness or integrity of the Building in which it is located and (iv) shall not encroach upon the Common Elements or Tracts or any part thereof.

4.2 Maintenance of Lots. Each Owner shall keep the interior of his Lot, including, without limitation, interior walls, windows, ceilings, floors and permanent fixtures and appurtenances thereto, in a clean and sanitary condition and in a state of good repair. No building, residence, improvement or structure upon any Lot nor the landscaping on any Lot, shall be permitted to fall into disrepair, and it shall be each Owner's responsibility, at his sole cost and expense, to

maintain the Lot in a clean and sanitary condition, free of trash and other unsightly objects, and in a state of good repair. In the event that any such Lot shall develop an unsanitary or unclean or unsafe condition or fall into a state of disrepair, and in the event that the Owner of such Lot shall fail to correct such condition or state of disrepair promptly following written notice from the Board of Directors, the Board of Directors on behalf of the Association shall have the right, at the expense of the Owner and without liability to the Owner for trespass or otherwise, to enter said Lot and correct or eliminate said unsanitary or unclean condition or state of disrepair; provided, however, that the Association shall in no event have the obligation to correct or eliminate any such condition or state of disrepair. Each Owner shall be responsible for the maintenance, repair, and replacement of any air conditioning, heating, water heaters, and any other systems or equipment that exclusively service such Owner's Lot. Each Owner shall also be responsible for the maintenance, repair and replacement of that portion of a roof of a Building which specifically covers, protects and shelters such Owner's Lot. The Association shall be responsible for the exterior painting of Buildings in the Project and the maintenance, repair and replacement of the exterior lighting attached or mounted to Buildings used to illuminate Common Elements in the Project. Notwithstanding the foregoing sentence, the exterior lighting attached to or mounted to Buildings shall be a part of the electrical system of the Lot to which such lighting is attached. Accordingly, the Owner of such Lot shall be responsible for the cost of electricity for any such lighting. The Association shall also be responsible for the landscaping, maintenance and repair of the Landscaped Areas in the Project.

4.3 Title. Title to a Lot within the Project may be held or owned by any person or entity, or any combination thereof, and in any manner in which title to any other real property may be held or owned in the State of Arizona, including, without limitation, joint tenancy, tenancy in common, community property or community property joint-tenancy.

4.4 Ownership of Tracts and Common Elements. The Tracts and Common Elements shall be owned by the Association; provided, however, the real property between Lots 33 and 34, which is an area of the Common Elements, may be owned by the Owners of Lots 33 and 34. Except as otherwise provided in this Declaration, any Owner shall be entitled to nonexclusive use of the Common Elements in any manner that does not hinder or encroach upon the rights of other Owners and is not contrary to the Rules and Regulations.

4.5 Inseparability. Title to no part of a Lot within the Project may be separated from any other part thereof, and each Lot shall always be conveyed, devised, encumbered and otherwise affected only as a complete Lot. Every devise, encumbrance, conveyance or other disposition of a Lot, or any part thereof, shall be construed to be a devise, encumbrance, conveyance or other disposition, respectively, of the entire Lot, together with all appurtenant rights created by law or by this Declaration, including appurtenant membership in the Association as hereinafter set forth.

4.6 No Partition. The Common Elements shall be owned by the Association, and no Owner may bring any action for partition thereof; provided, however, the real property between

Lots 33 and 34, which is an area of the Common Elements, may be owned by the Owners of Lots 33 and 34.

4.7 Separate Mortgages by Owners. Each Owner shall have the right separately to mortgage or otherwise encumber his Lot. No Owner shall attempt to or shall have the right to mortgage or otherwise encumber the Common Elements or any part thereof, provided that the Owners of Lots 33 and 34 may encumber that real property immediately adjacent to their respective Lot owned by such Lot Owner, but which is deemed to be an area of the Common Elements. Any mortgage or other encumbrance of any Lot within the Project shall be subordinate to all of the provisions of this Declaration, and in the event of foreclosure, the provisions of this Declaration shall be binding upon any Owner whose title is derived through foreclosure by private power of sale, judicial foreclosure or otherwise.

4.8 Separate Taxation. Each Lot within the Project shall be deemed to be a parcel of real property and shall be assessed separately for all taxes, assessments and other charges of the State of Arizona or of any political subdivision or of any special improvement district or of any other taxing or assessing authority. The Tracts shall be separately assessed. All such taxes, assessments and other charges on each respective Lot shall be separately levied against the Owner thereof. No forfeiture or sale of any Lot for delinquent taxes, assessments or other governmental charges shall divest or in any way affect the title to any other Lot. Notwithstanding the foregoing, any portion of the Common Elements which the Declarant has reserved the right to withdraw from the Project shall be separately taxed and assessed against the Declarant and the Declarant alone is liable for payment of those taxes, as long as the Declarant retains this right to withdraw.

4.9 Mechanics Liens. No labor performed or material furnished for use in connection with any Lot with the consent or at the request of an Owner or his agent or subcontractor shall create any right to file a statement of mechanic's lien against the Lot of any other Owner not expressly consenting to or requesting the same or against any interest in the Common Elements.

4.10 Description of Lot. Every contract for the sale of a Lot and every other instrument affecting title to a Lot within the Project may describe a Lot by its Identifying Number or symbol as indicated in this Declaration or as shown on the Plat together with the name of the Project, and the recording information for the Declaration. Such description will be construed to describe the Lot, and to incorporate all of the rights incident to ownership of a Lot within the Project and all of the limitations on such ownership.

ARTICLE 5

EASEMENTS

5.1 Easements for Encroachments. If any part of the Common Elements encroaches or shall hereafter encroach upon any Lot, an easement for such encroachment and for the maintenance of the same shall and does exist. If any part of a Lot encroaches or shall hereafter

encroach upon the Common Elements, or upon an adjoining Lot, an easement for such encroachment and for the maintenance of the same shall and does exist. Such encroachments shall not be considered to be encumbrances either on the Common Elements or the Lots. Encroachments referred to herein include, but are not limited to, encroachments caused by error in the original construction of the Building or any improvements constructed or to be constructed within the Project, by error in the Plat, by settling, rising or shifting of the earth, or by changes in position caused by repair or reconstruction of the Project, or any part thereof, in accordance with the provisions of this Declaration.

5.2 Easements for Maintenance, Cleaning and Repair. Some of the Common Elements may be located within the Lots or may be conveniently accessible only through the Lots. The Association shall have the irrevocable right to have access to each Lot and to all Common Elements from time to time, with reasonable advance notice to the Owner, during such reasonable hours as may be necessary for the maintenance, cleaning, repair or replacement of any Common Elements, or without notice, for making emergency repairs at any time therein necessary to prevent damage to the Common Elements or to any Lot. In addition, agents of the Association may enter any Lot upon reasonable advance notice to the Owner when necessary in connection with any cleaning, maintenance, repair, replacement, landscaping, construction or reconstruction for which the Association is responsible. Such entry shall be made with as little inconvenience to the Owners as practicable, and any damage caused thereby shall be repaired by the Association with funds from the Common Expense Fund.

5.3 Right to Ingress, Egress and Support. Each Owner shall have the right to ingress and egress over, upon and across the Common Elements as necessary for access to such Owner's Lot and shall have the right to horizontal, vertical and lateral support of such Lot, and such rights shall be perpetual and shall be appurtenant to and pass with title to each Lot.

5.4 Association's Right to Use Common Elements. The Association shall have the right to make such use of the Common Elements as may be necessary or convenient to perform the duties and functions that it is obligated or permitted to perform pursuant to this Declaration, including, without limitation, the right to construct and maintain in the Common Elements facilities for use by Owners generally or by the Association and its agents exclusively.

5.5 Easement for Completion of Project. The Declarant shall have a transferable easement over and on the Project for the purpose of completing construction of the Project and making improvements therein as shown on the Plat and for the purpose of doing all things reasonably necessary or appropriate in connection therewith including the exercising of Special Declarant Rights. To the extent that damage is inflicted on any part of the Project by any Person utilizing said easement, the Person causing the damage shall be liable to the Association for the prompt repair of such damage.

5.6 Easements Deemed Created. All conveyances of Lots within the Project thereafter made, whether by the Declarant or otherwise, shall be construed to grant and reserve such

reciprocal easements as are provided herein, even though no specific reference to such easements appears in any such conveyance.

5.7 Easement for Construction of Project. The Declarant shall have an easement over and upon such portions of the Project and the Common Elements as are reasonably necessary for the Declarant for the purpose of constructing the Lots, constructing and installing any perimeter walls appurtenant to the Lots, making improvements to the Project, including constructing and maintaining a swimming pool and appurtenant structures and fixtures as shown on the Plat, and doing all things reasonably necessary or appropriate in connection therewith. To the extent that damage is inflicted on any part of the Project as a result of Declarant's use of such easement, then Declarant and the Person causing the damage shall be liable to the Association in the event of damage to the Common Elements, or to the Owner in the event of damages to a Lot, for the prompt repair of such damage.

5.8 Easements for Landscaping. The Association shall have the irrevocable right to have access to each Lot and to all Landscaped Areas from time to time, with reasonable advance notice to the Owner, during such reasonable hours as may be necessary for the landscaping, cutting, trimming, maintenance, planting, cleaning, repair or replacement of any trees, shrubs, plants, flowers, or grass in the Landscaped Areas, or without notice, for making emergency repairs at any time therein necessary to prevent damage to the Common Elements or to any Lot. In addition, agents of the Association may enter any Lot upon reasonable advance notice to the Owner when necessary in connection with any landscaping, cleaning, maintenance, repair, or replacement, for which the Association is responsible. Such entry shall be made with as little inconvenience to the Owners as practicable.

ARTICLE 6

RESTRICTIONS ON USE

In addition to and without limiting the covenants and restrictions imposed by the Existing Restrictions, the following covenants and restrictions shall apply to the Project. The following restrictions are in addition to those imposed by the Existing Restrictions. To the extent any restriction under the Existing Restrictions imposes a greater restriction regarding the subject matter of any restriction herein, the provisions in the Existing Restrictions shall prevail.

6.1 Architectural Control.

6.1.1 Excavation. No excavation or grading work shall be performed on any portion of the Project without the prior written approval of the Architectural Committee.

6.1.2 Prior Approval. No improvement which would be Visible From Neighboring Property shall be constructed or installed on any portion of the Project without the prior written approval of the Architectural Committee. 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 part of a Lot, or any improvements located thereon which are Visible From Neighboring Property, shall be made or done without the prior written approval of the Architectural Committee. Any Owner desiring approval of the Architectural Committee for the construction, installation addition, alteration, repair, change or replacement of any improvement which is or would be Visible From Neighboring Property shall submit to the Architectural Committee a written request for approval specifying in detail the nature and extent of the construction, installation, addition, alteration, repair, change or other work which the Owner desires to perform. Any Owner requesting the approval of the Architectural Committee shall also submit to the Architectural Committee any additional information, plans and specifications which the Architectural Committee may request. In the event that the Architectural Committee fails to approve or disapprove an application for approval within sixty (60) days after the application, together with any fee payable pursuant to Section 6.1.6 of this Declaration and all supporting information, plans and specifications requested by the Architectural Committee, have been submitted to the Architectural Committee, 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 construction, installation, addition, alteration, repair, change or other work pursuant to this Section shall not be deemed a waiver of the Architectural Committee's right to withhold approval of any similar construction, installation, addition, alteration, repair, change or other work subsequently submitted for approval.

6.1.3 Plan Review. In reviewing plans and specifications for any construction, installation, addition, alteration, repair, change or other work which must be approved by the Architectural Committee, the Architectural Committee, among other things, may consider the quality of workmanship and design, harmony of external design with existing structures and location in relation to surrounding structures, topography and finish grade elevation. The Architectural Committee may disapprove plans and specifications for any construction, installation, addition, alteration, repair, change or other work which must be approved by the Architectural committee pursuant to this Section 6.1 if the Architectural Committee determines, in its sole and absolute discretion, that: (i) the proposed construction, installation, addition, alteration, repair, change or other work would violate any provision of this Declaration; (ii) the proposed construction, installation, addition, alteration, repair, change or other work does not comply with the Rules and Regulations; (iii) the proposed construction, installation, addition, alteration, repair, change or other work is not in harmony with existing improvements in the Project or with improvements previously approved by the Architectural Committee but not yet constructed; (iv) the proposed construction, installation, addition, alteration, repair, change or other work is not aesthetically acceptable; (v) the proposed construction, installation, addition, alteration, repair, change or other work would be detrimental to or adversely affect the appearance of the Project; or (vi) the proposed construction, installation, addition, alteration, repair, change or other work is otherwise not in accord with the general plan of development for the Project.

6.1.4 Diligent Construction. Upon receipt of approval from the Architectural Committee for any construction, installation, addition, alteration, repair, change or

other work, the Owner who had requested such approval shall proceed to perform, construct or make the construction, installation, 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.

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

6.1.6 Review Fee. The Architectural Committee shall have the right to charge a fee for reviewing requests for approval of any construction, installation, alteration, addition, repair, change or other work pursuant to this Section 6.1, which fee shall be payable at the time the application for approval is submitted to the Architectural Committee.

6.1.7 No Application for Declarant Action. The provisions of this Section 6.1 do not apply to, and approval of the Architectural Committee shall not be required for, the construction, erection, installation, addition, alteration, repair, change or replacement of any improvements made by, or on behalf of, the Declarant.

6.1.8 Permits. The approval required of the Architectural Committee pursuant to this Section 6.1 shall be in addition to, and not in lieu of, any approvals or permits which may be required under any federal, state or local law, statute, ordinance, rule or regulation. It shall be the responsibility of the Owner to obtain the required approvals and permits; provided, however, that all such approvals and permits be issued in the name of the Association. All such permit applications shall be signed by the duly designated officer or agent of the Association as shown in the Bylaws and resolutions of the Association. Notwithstanding the fact that a permit is issued to the Association, the Owner shall be responsible for, and hold the Association harmless from, all costs, expenses, liabilities, damages, or losses that arise out of or are in any manner connected with the construction, installment, repair, change, improvement or other work approved by the Architectural Committee pursuant to this Section 6.1.

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

6.1.10 Condition to Approval. The Architectural Committee may condition its approval of plans and specifications upon the agreement by the Owner submitting such plans and specifications to furnish to the Association a bond or other security acceptable to the Architectural Committee in an amount determined by the Architectural Committee to be reasonably sufficient to:

(i) assure the completion of the proposed improvements or the availability of funds adequate to remedy any nuisance or unsightly conditions occurring as a result of the partial completion of such improvement, and (ii) to repair any damage which might be caused to any Common Element or other portion of the Project as a result of such work. Any such bond shall be released or security shall be fully refundable to the Owner upon: (i) the completion of the improvements in accordance with the plans and specifications approved by the Architectural Committee; and (ii) the Owner's written request to the Architectural Committee, provided that there is no damage caused to any Common Element or other portion of the Project by the Owner or its agents or contractors.

6.1.11 Cost to Maintain. If the plans and specifications pertain to an improvement which is within any Common Element or other portion of the Project so that the Association would be responsible for the maintenance, repair and replacement of such improvement, the Architectural Committee may condition its approval of the plans and specifications for the proposed construction, installation, addition, alteration, repair, change or other work with respect to the improvement on the agreement of the Owner to reimburse the Association for the future cost of the repair, maintenance or replacement of such improvement.

6.2 Single Family Residential Use. The Land may be used only for the construction and occupancy of Lots intended for the Single Family residential use and enjoyment of the Lot Owners and incidental residential activities, such as the construction and use of swimming pools, spas, and other recreational amenities. No trade or business may be conducted on, in or from any Lot, except that an Owner or other Resident of a Lot may conduct a business activity within a Lot so long as: (i) the existence or operation of the business activity is not apparent or detectable by sight, sound or smell from outside the Lot; (ii) the business activity conforms to all applicable zoning ordinances or requirements for the Project; (iii) the business activity does not involve persons coming into the Lot or the door-to-door solicitation of Owners or other Residents in the Project; and (iv) the business activity is consistent with the residential character of the Project and does not constitute a nuisance or hazardous or offensive use or threaten the security or safety of other Residents in the Project, as may be determined from time to time in the sole discretion of the Board of Directors. The terms "business" and "trade" as used in this Section shall be construed to have ordinary, generally accepted meanings, and shall include, without limitation, any occupation, work, or activity undertaken on an ongoing basis which involves the provision of goods or services to persons other than the provider's family and for which the provider receives a fee, compensation, or other form of consideration, regardless of whether: (i) such activity is engaged in full or part time; (ii) such activity is intended or does generate a profit; or (iii) a license is required for such activity. The leasing of a Lot by the Owner thereof shall not be considered a trade or business within the meaning of this Section.

6.3 Nuisances, Construction Activities. No rubbish or debris of any kind shall be placed or permitted to accumulate upon or adjacent to any Lot and no odors or loud noises shall be permitted to arise or emit therefrom, so as to render any such property or any portion thereof, or activity thereon, unsanitary, unsightly, offensive or detrimental to any other property in the vicinity thereof or to the occupants of such other property. No other nuisance shall be permitted to exist or

operate upon any Lot so as to be offensive or detrimental to any other property in the vicinity thereof or to its occupants. Without limiting the generality of any of the foregoing provisions, no exterior speakers, horns, whistles, firecrackers, bells or other sound devices, except security devices used exclusively for security purposes, shall be located, used or placed on any Lot. Normal construction activities and parking in connection with the building of improvements on a Lot shall not be considered a nuisance or otherwise prohibited by this Declaration, but Lots shall be kept in a neat and tidy condition during construction periods, trash and debris shall not be permitted to accumulate and supplies of brick, block, lumber and other building materials shall be piled as close to the Lots under construction as is reasonably possible, or in such area as is specifically designated for storage of construction materials.

6.4 Signs. No signs whatsoever (including, but not limited to, commercial, political, "for sale," "for rent" and similar signs) which are unsightly or Visible From Neighboring Property shall be erected or maintained on any portion of the Project except:

6.4.1 Legal Signs. Signs required by legal proceedings.

6.4.2 Identification of Lot. No more than two (2) identification signs for Lots, each with a face area of seventy-two (72) square inches or less, the nature and location of which have been approved in advance and in writing by the Architectural Committee.

6.4.3 Security Sign. A single sign identifying a security company or service or the existence of security devices, having a face area no greater than three (3) square feet, the location and design of which has been approved in advance and in writing by the Architectural Committee.

6.4.4 For Sale Sign. One (1) "For Sale" sign, provided the size, color, design, message content, location and type has been approved in writing by the Architectural Committee.

6.5 Pets and Animals. No animal, bird, fowl, poultry or livestock, other than a reasonable number of generally recognized house or yard pets, shall be maintained on any portion of the Project and then only if they are kept, bred or raised thereon solely as domestic pets and not for commercial purposes. No animal, bird, fowl, poultry or livestock shall be allowed to make any unreasonable amount of noise or to become a nuisance. No structure for the care, housing or confinement of any animal, bird, fowl, poultry or livestock shall be maintained so as to be unsightly or Visible From Neighboring Property. Upon the written request of any member of the Association or Resident, the Board of Directors shall conclusively determine in its sole and absolute discretion, whether, for the purpose of this Section, a particular animal, bird, fowl, poultry or livestock is a generally recognized house or yard pet, whether such a pet is a nuisance or making an unreasonable amount of noise, or whether the number of animals, birds, fowl, poultry or livestock on any such property is reasonable. Any decision rendered by the Board of Directors shall be enforceable in the same manner as other restrictions contained herein. The Rules and Regulations of the Association

may include a limit on the number and type of pets that may be kept on any Lot. In no event shall any pet be permitted in any portions of the Common Elements unless carried or on a leash not exceeding six (6) feet in length. No pet owner shall permit any pet to relieve itself on any portion of the Common Elements. It shall be the responsibility of the Owner, lessee or guest to remove immediately any droppings from pets. Each Owner who keeps a pet in a Lot shall indemnify and hold all other Owners harmless against any loss or liability of any kind or character whatsoever arising from or as a result of having such pet in the Project.

6.6 Trucks, Trailers, Campers and Boats. Except as will fit in a Lot's garage, with door closed, no trucks, mobile homes, recreational vehicles, travel trailers, tent trailers, trailers, camper shells, detached campers, recreational vehicles, boats, boat trailers or other similar equipment or vehicle may be parked, kept, maintained, constructed, reconstructed or repaired on an Auto Court or any part of the Project except for temporary parking of vehicles for the purpose of making emergency repairs.

6.7 Motor Vehicles. Except for emergency repairs, no automobile, motorcycle, motor bike or other motor vehicle shall be constructed, reconstructed, serviced or repaired on any portion of the Project, and no inoperable vehicle may be stored or parked on an Auto Court or any portion of the Project. No automobile, motorcycle, motor bike or other motor vehicle shall be parked upon any Auto Court or street within the Project. Garages shall be used only for the parking of motor vehicles and shall not be used or converted for living or recreational activities without the prior written approval of the Architectural Committee.

6.8 Towing of Vehicles. The Board of Directors shall have the right to have any truck, mobile home, travel trailer, tent trailer, trailer, camper shell, detached camper, recreational vehicle, boat, boat trailer or similar equipment or vehicle or any other automobile, motorcycle, motor bike or other motor vehicle parked, kept, maintained, constructed, reconstructed or repaired in violation of the Declaration or Rules and Regulations towed away at the sole cost and expense of the Owner of the vehicle or equipment. Any expense incurred by the Association in connection with the towing of any vehicle or equipment shall be paid to the Association upon demand by the Owner of the vehicle or equipment.

6.9 No Obstructions. No Owner shall obstruct the Common Elements or any part thereof by placement on or adjacent to any portion of the Common Elements any structure, plant, apparatus, equipment or the like that shall overhang the Common Elements or prevent or restrict access thereto. No Owner shall store or cause to be stored in the Common Elements any property whatsoever, unless the Board of Directors shall consent thereto in writing.

6.10 Machinery and Equipment. No machinery or equipment of any kind shall be placed, operated or maintained upon any portion of the Project except (i) such machinery or equipment as is usual and customary in connection with the use, maintenance or construction (during the period of construction) of a Building, appurtenant structures, or other improvements; (ii) that which Declarant or the Association may require for the operation and maintenance of the Project.

No Owner shall permit the use or operation in his Lot of any equipment, machinery or other apparatus that will in any manner injure, vibrate or shake the Building or portions thereof. No Owner shall bring anything into his Lot or permit anything to be done in his Lot that will cause damage to the Building.

6.11 Prohibition of Damage and Certain Activities. Nothing shall be done or kept in any Lot, in the Common Elements or in any other part of the Project that would result in cancellation of the insurance on the Project or any part thereof nor shall anything be done or kept in any Lot that would increase the rate of insurance on the Project or any part thereof over that which the Association, but for such activity, would pay. Nothing shall be done or kept in any Lot or in the Common Elements or any part thereof which would be in violation of any statute, rule, ordinance, regulation, permit or other validly imposed requirement of any governmental authority. No damage to, or waste of, the Common Elements or any part thereof shall be committed by any Owner or guest of any Owner, and Owner shall indemnify and hold harmless the Association and the other Owners from and against all loss resulting from any such damage or waste caused by such Owner or by the guests, tenants, licensees or invitees of such Owner.

6.12 Parking. Motor vehicles owned or leased by an Owner, Lessee or Resident of a Lot must be parked in the garage of a Lot unless there is insufficient space within the garage for the parking of all such motor vehicles, in which case such motor vehicles must be parked on a public street adjacent to the Project. Motor vehicles driven by guests of an Owner, Lessee or other Resident shall be parked on a public street adjacent to the Project.

6.13 Temporary Occupancy and Temporary Buildings. 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, either temporary or permanent. Temporary buildings or structures used during the construction of a Building, Lot, dwelling or other structure on the Project shall be removed immediately after the completion of construction.

6.14 Leasing Restrictions. No Owner shall be permitted to lease his or her Lot for a period of less than one (1) month. Any lease agreement shall be required to provide that the terms of the lease shall be subject in all respects to the provisions of this Declaration, the Articles and the Bylaws and that any failure by the lessee to comply with the terms of such documents shall be a default under the lease. All leases shall be in writing.

6.15 Trash. No garbage or trash may be stored or placed on any portion of the Project except in a trash receptacle of a size, type, and style approved by the Architectural Committee and the City. All garbage and trash must be removed regularly. Trash receptacles serving the Project may be located only in the garages of Lots and such other places approved by the Architectural Committee. In no event shall such receptacles be maintained so as to be unsightly or Visible From Neighboring Property except to make the same available for collection and then only for the shortest time reasonably necessary to affect such collection.

6.16 Hazardous Wastes. No Owner may permit any hazardous waste or substance to be produced, stored, dumped, or generated on the Project or the Owner's Lot.

6.17 Drainage. No Owner may interfere with or obstruct the drainage plans and pattern over the Project from or within an Owner's Lot or to any other Lots or the Common Elements, as such drainage plans may be established by the Declarant or as may be shown on file with the county or City in which the Project is located.

6.18 Outside Lights. Except as initially installed by Declarant, no spotlights, flood lights or other high intensity lighting shall be placed or utilized upon any building, structure, balcony, or patio or parking space which in any manner will allow light to be directed or reflected to the Auto Courts, streets or adjacent properties in the Project. All security, landscaping, and safety lighting shall be low wattage, incandescent and indirect.

6.19 Diseases and Insects. No Owner shall permit any thing or condition to exist upon any portion of the Project which shall induce, breed or harbor infectious plant diseases or noxious insects.

6.20 Air Conditioners. No window air conditioners or portable units visible from outside the Lot shall be installed in any Lot.

6.21 Outside Furniture and Fixtures. Enclosures, shades, screens or other items affecting the exterior appearance of any patio, balcony or porch shall not be permitted without the express written consent of the Architectural Committee and shall be subject at all times to the Rules and Regulations. Patios and balconies shall be furnished only with normal patio furniture and furniture and furnishings and shall not be used for storage of personal items, such as bicycles, exercise equipment, trash containers, pet houses, storage boxes.

6.22 Window Coverings. No reflective materials, including, but not limited to, aluminum foil, reflective screens or glass, mirrors or similar items shall be installed upon the outside or inside of any window of a Lot. All enclosures, drapes, blinds, shades, screens, or other items affecting the exterior appearance of a Lot shall be white to the exterior view and shall be subject to the approval of the Architectural Committee.

6.23 Antennas. No antenna or other device for the transmission or reception of television or radio signals or any other form of electromagnetic radiation, including, but not limited to, satellite television, microwave or radio disks, antennas or equipment, shall be placed, erected, used or maintained upon any Lot or Building, unless approved in writing by the Architectural Committee, except that Declarant shall have the right to install a master antenna or antennas and to provide access to such antenna to the Lots. Due to the design of the Buildings, it is unlikely that the Architectural Committee will approve installation of any satellite dish or exposed antenna.

6.24 Mineral Exploration. No portion of the Project 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, except for grading and excavation work and the removal of fill material in connection with the construction of a Lot, Building, structure or other improvement or which has been approved in writing by the Architectural Committee.

6.25 Clothes Drying Facilities. Outside clotheslines or other outside facilities for drying or airing clothes shall not be erected, placed or maintained in the Project unless they are erected, placed and maintained exclusively in a fenced yard or otherwise concealed and shall not be unsightly or Visible From Neighboring Property.

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

6.27 Rooftop Equipment. The Rules and Regulations of the Association may, restrict the installation of rooftop equipment and may require that all such equipment be fully screened.

6.28 Basketball Poles and Backboards. No basketball pole and/or backboard or similar sport equipment that will be located in a front yard or visible from adjacent Auto Courts or streets may be installed without the prior written approval of the Architectural Committee.

6.29 Utility Service. 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 the Project unless the same shall be contained in conduits or cables installed and maintained underground or concealed in or under Buildings, except to the extent (if any) such underground or concealed placement may be prohibited by law, or as may be otherwise approved by the Architectural Committee. No provision hereof shall be deemed to forbid the creation of temporary power or telephone structures incident to the construction of buildings or structures approved by the Architectural Committee.

6.30 Right of Entry. During reasonable hours and upon reasonable notice to the Owner, Lessee or other Resident of a Lot, any member of the Architectural Committee, any member of the Board of Directors, or any authorized representative of either of them, shall have the right to enter upon and inspect any Lot and the improvements thereon, for the purpose of ascertaining whether or not the provisions of this Declaration have been, or are being, complied with, and such persons shall not be deemed guilty of trespass by reason of such entry.

6.31 Variances. The Architectural Committee may, at its option and in extenuating circumstances, grant variances from the restrictions set forth in this Article 6 if the Architectural Committee determines in its discretion that (i) a restriction would create an unreasonable hardship or burden on an Owner, Lessee or Resident or a change in circumstances

since the recording of this Declaration has rendered such restriction obsolete and (ii) that the activity permitted under the variance will not have any substantial adverse effect on the Owners, Lessees, and Residents of the Project and is consistent with the high quality of life intended for Residents of the Project.

6.32 Rules and Regulations. Each Owner shall comply strictly with all Rules and Regulations adopted by the Association for the governance of the Lots, the Common Elements and the Project, as such Rules and Regulations may be modified, amended and construed by the Association in the sole discretion of its Board of Directors.

6.33 Construction and Sales Period Exemption. During the course of the construction and sale of any permitted structures or improvements within the Project, the provisions, covenants, conditions and restrictions contained in this Declaration shall be deemed waived as to the Declarant, but not with respect to any other Owner, to the extent necessary or convenient to permit such construction and sale. As used herein, "sale" shall include the sale and closing of Lots.

6.34 Party Walls. Except as hereinafter provided, the rights and duties of Owners with respect to Party Walls or Party Fence shall be as follows:

6.34.1 Contiguous Lots. The Owners of contiguous Lots who have a Party Wall or Party Fence shall both equally have the right to use such wall or fence, provided that such use by one (1) Owner does not interfere with the use and enjoyment of the same by the other Owner.

6.34.2 Destruction of Wall. If any Party Wall or Party Fence is damaged or destroyed through the act of an Owner or any of his Residents, Lessees, agents, guests, or members of his family (whether or not such act is negligent or otherwise culpable), it shall be the obligation of such Owner to rebuild and repair the Party Wall or Party Fence without cost to the Owner of the adjoining Lot. Any dispute over an Owner's liability for such damage shall be resolved as provided in Section 6.34.5 below, but any liability imposed on an Owner hereunder shall not prevent the Owner from seeking indemnity therefor from the persons causing such damage.

6.34.3 Wear and Tear. If any Party Wall or Party Fence is destroyed or damaged (including deterioration from ordinary wear and tear and lapse of time), other than by the act of an adjoining Owner, his Residents, Lessees, agents, guests or family, it shall be the obligation of all Owners whose Lots are affected by or whose Lots' structural integrity is dependent upon such Party Wall or Party Fence to rebuild and repair such wall or fence at their joint expense.

6.34.4 Consent to Modify. Notwithstanding anything to the contrary herein contained, there shall be no modification of any Party Wall or Party Fence or impairment of the structural integrity of any Party Wall or Party Fence without the prior consent of all Owners of any interest therein, whether by way of easement or in fee.

6.34.5 Party Wall Dispute. If a dispute occurs between Owners with respect to the construction, repair or rebuilding of a Party Wall or Party Fence or with respect to the sharing of the cost thereof, such adjoining Owners shall submit the dispute to the Board of Directors, the decision of which shall be binding.

6.34.6 Common Element Walls. Anything in the foregoing to the contrary notwithstanding, in the case of Party Fences or Party Walls (a) between Common Elements and Lots or (b) constructed by Declarant, or the Association on Common Elements, the Association, only following its approval of the construction of such Party Fence and acceptance of the maintenance thereof, shall be responsible for all maintenance thereof, except that each Owner of a Lot shall be responsible for all painting of the interior portion of the Party Fence facing his Lot or the portion thereof which is not a part of the Common Elements.

ARTICLE 7

THE ASSOCIATION

7.1 Membership. Each Owner shall be entitled and required to be a member of the Association. Membership shall begin immediately and automatically upon becoming an Owner and shall terminate immediately and automatically upon ceasing to be an Owner. If title to a Lot is held by more than one person, the membership appurtenant to that Lot shall be shared by all such persons in the same proportionate interest and by the same type of tenancy in which title to the Lot is held. An Owner shall be entitled to one membership for each Lot owned by him. Each membership shall be appurtenant to the Lot to which it relates and shall be transferred automatically by conveyance of that Lot. Ownership of a Lot within the Project cannot be separated from membership in the Association appurtenant thereto, and any devise, encumbrance, conveyance or other disposition, respectively, of the Owner's membership in the Association and rights appurtenant thereto. No person or entity other than an Owner may be a member of the Association, and membership in the Association may not be transferred except in connection with the transfer of a Lot. The Association shall make available to the Owners, Mortgagees and the holders, insurers and guarantors of the first mortgage on any Lot current copies of the Declaration, Articles, Bylaws and other rules governing the Project and other books, records and financial statements of the Association. The Association also shall be required to make available to prospective purchasers of Lots current copies of the Declaration, Articles, Bylaws, other rules governing the Project and the most recent annual audited financial statement of the Association, if such is prepared. "Available" shall mean available for inspection, upon request, during normal business hours or under other reasonable circumstances. Copies, of such documents, may be obtained at the expense of the person requesting copies.

7.2 Board of Directors. Until such time as the responsibility for electing the Directors of the Association is turned over to the Owners in accordance with this Declaration, the Articles and Bylaws, the Declarant shall have the exclusive right to appoint and to remove all such Directors. This exclusive right shall terminate after the first to occur of the following:

7.2.1 No Ownership by Declarant. The date the Declarant no longer owns any Lots in the Project; or

7.2.2 Seventy-Five Percent (75%) Ownership. Ninety (90) days after seventy-five percent (75%) of the Lots which may be created in the Project have been conveyed by the Declarant to the purchasers thereof.

7.3 Votes. The number of Votes appurtenant to each Lot shall be as set forth in Exhibit "C." Subject to revision upon each expansion of the Project as provided in Article 15 of this Declaration, the number of Votes appurtenant to each Lot as set forth in said Exhibit "C" shall have a permanent character and shall not be altered without the unanimous written consent of all Owners expressed in a duly recorded amendment to this Declaration.

ARTICLE 8

CERTAIN RIGHTS AND OBLIGATIONS OF THE ASSOCIATION AND BOARD OF DIRECTORS

8.1 The Common Elements. The Board of Directors, acting on behalf of the Association and, subject to the rights and duties of the Owners as set forth in this Declaration, shall be responsible for the exclusive management and control of the Tracts and the Common Elements and all improvements thereon and shall keep the same in a good, clean, attractive, safe and sanitary condition, order and repair. The Association shall be responsible for the maintenance and repair of the exterior of all perimeter fence walls, other improvements and grounds, including, without limitation, the painting of the exterior of the Buildings and Party Fences, the repair and replacement of exterior trim and fences, the repair and maintenance of exterior lighting attached or mounted to Buildings used to illuminate Common Elements in the Project, and maintenance of landscaping in the Landscaped Areas (specifically excluding any areas within any perimeter fence walls or Party Fence), walkways, and parking areas, subject to the provisions of paragraph 6.34 regarding Party Walls. The Association shall not be responsible for the maintenance, repair and replacement of the roofs of the Buildings in the Project. The Association shall also be responsible for maintenance, repair and replacement of any Common Elements within the Buildings, if any, and all improvements and other items located within or used in connection with the Common Elements. The specification of duties of the Board of Directors with respect to particular Common Elements shall not be construed to limit its duties with respect to other Common Elements. All goods and services procured by the Board of Directors in performing its responsibilities under this section shall be paid for with funds from the Common Expense Fund. The Association shall be responsible for payment of any real or personal property taxes or assessments on the Tracts and Common Elements.

8.2 Manager. The Board of Directors may retain the services of an experienced, professional Manager to manage the Project. Appropriate fidelity bond coverage shall be required for any employee of the Manager who handles funds of the Association. The Board of Directors may by written contract delegate in whole or in part to a Manager such of the duties, responsibilities,

functions and powers hereunder of the Board of Directors as are delegable. The services of any Manager retained by the Board of Directors shall be paid for with funds from the Common Expense Fund. Any management contract, employment contract or lease of any recreational or parking areas or facilities, or any contract or lease, including franchises or licenses, to which the Declarant or an affiliate of the Declarant is a party which binds the Association either directly or indirectly shall provide that without cause such agreement may be terminated by the Board of Directors or the Association, without penalty at any time after the period of Declarant Control, upon not more than thirty (30) days' written notice to the other party thereto.

8.3 Miscellaneous Goods and Services. The Board of Directors may, on behalf of the Association, obtain and pay for such goods or services of such personnel as the Board of Directors shall determine to be necessary or desirable for the proper operation of the Project, whether such personnel are furnished or employed directly by the Association or by any person or entity with whom or which it contracts. The Board of Directors may, on behalf of the Association, obtain and pay for legal and accounting services necessary or desirable in connection with the operation of the Project or the enforcement of this Declaration. In addition to the foregoing, the Board of Directors may, on behalf of the Association, acquire and pay for out of the Common Expense Fund water, sewer, garbage collection, electrical, gas and other necessary or desirable utility services for the Common Elements, insurance, bonds and other goods and services common to the Lots.

8.4 Right of Board of Directors to Bind Association. A contract for any of the following, if entered into before the responsibility for electing the Board of Directors of the Association is turned over to the Owners in accordance with Section 7.2, shall contain a provision in the contract that the contract may be terminated without penalty by the Association at any time after the Board of Directors elected by the Lot Owners takes office:

8.4.1 Management Contract. Any management contract or employment contract.

8.4.2 Other Contracts. Any other contract or lease between the Association and Declarant or affiliate of a Declarant.

8.4.3 Unconscionable Contracts. Any contract or lease that is not bona fide or was unconscionable to the Owners at the time thereto and under the circumstances then prevailing.

The Board of Directors shall notify the appropriate contractual party of the termination in not fewer than thirty (30) days before termination. If a contract covered by this Section 8.4 fails to contain the provisions required by this Section, the contract shall be voidable at the option of the Association.

8.5 Real and Personal Property. The Board of Directors may acquire and hold on behalf of the Association real, personal and mixed property of all types for the use or benefit of all of the Owners and may dispose of such property by sale or otherwise, provided that any acquisition or disposition of value of any real, personal or mixed property by the Board of Directors

wherein such property exceeds Five Thousand Dollars (\$5,000) must be approved by a vote of at least fifty-one percent (51%) of the Total Votes of the Association at a meeting duly called for that purpose. All such property shall be paid for out of the Common Expense Fund and all proceeds from the disposition thereof shall be part of such fund.

8.6 Rules and Regulations. The Board of Directors shall make reasonable Rules and Regulations governing the use of the Lots, the Common Elements and all parts of the Project, which Rules and Regulations shall be consistent with the rights and duties established by this Declaration. The Board of Directors on behalf of the Association may take judicial action against any Owner to enforce compliance with such Rules and Regulations or other obligations of such Owner arising hereunder, or to obtain damages for noncompliance therewith, as permitted by law. In the event of such judicial action, the Association shall be entitled to recover its costs, including reasonable attorneys' fees, from the offending Owner.

8.7 Granting Easements. The Board of Directors may, subject to the consent of the Declarant as long as Declarant owns any Lots or Land at the Project, without the vote or consent of the Owners or of any other person, grant or create, on such terms as it deems advisable, easements, licenses and rights-of-way over, under, across and through the Common Elements for utilities, roads and other purposes reasonably necessary or useful for the proper maintenance or operation of the Project.

8.8 Other Rights and Duties. The Association may exercise any right, power or privilege given to it expressly by this Declaration or by law, and every other right or privilege reasonably implied from the existence of any right or privilege given to it herein or reasonably necessary to effectuate any such right or privilege, including, but not limited to the following:

8.8.1 New Bylaws. Adopt and amend bylaws and rules.

8.8.2 Budgets. Adopt and amend budgets for revenues, expenditures and reserves and collect assessments for Common Expenses from Owners.

8.8.3 Hiring Managers. Hire and discharge managing agents and other employees, agents and independent contractors.

8.8.4 Suits. Subject to the provisions of Section 17.13, institute, defend or intervene in litigation or administrative proceedings in its own name on behalf of itself or two or more Owners on matters affecting the Project.

8.8.5 Contract. Make contracts and incur liabilities.

8.8.6 Regulate Common Elements. Regulate the use, maintenance, repair, replacement and modification of Common Elements.

8.8.7 New Improvements. Cause additional improvements to be made as a part of the Common Elements.

8.8.8 Conveyances. Acquire, hold, encumber and convey in its own name any right, title or interest to real or personal property.

8.8.9 Grant Easements. Grant easements, leases, licenses and concessions through or over the Common Elements.

8.8.10 Impose Fees. Impose and receive any payments, fees or charges for the use, rental or operation of the Common Elements and for services provided to Lot Owners.

8.8.11 Late Charges. Impose charges for late payment of assessments and impose reasonable monetary penalties upon Owners for violations of the Declaration, Bylaws and Rules and Regulations of the Association.

8.8.12 Charge for Amendments. Impose reasonable charges for the preparation and recordation of amendments to the Declaration or statements of unpaid assessments.

8.8.13 Indemnify Officers. Provide for the indemnification of its officers and Board of Directors and maintain directors' and officers' liability insurance.

8.8.14 Future Income. Assign its right to future income, including the right to receive common expense assessments, but only to the extent the Declaration expressly provides.

8.8.15 Other Powers. Exercise any other powers conferred by the Declaration or Bylaws.

8.8.16 Necessary Powers. Exercise all other powers necessary and proper for the governance and operation of the Association.

8.9 Power of Attorney and Amendments. Each Owner makes, constitutes and appoints the Association his true and lawful attorney in his name, place and stead to make, execute, sign, acknowledge and file with respect to the Project such amendments to this Declaration and the Plat as may be required by law or by vote taken pursuant to the provisions of the Declaration.

8.10 Request. Except as otherwise specifically provided in this Declaration, any action by an Owner requiring written or other approval of the Board of Directors shall be submitted to the Board of Directors in the form of a written request. The Board of Directors shall have thirty (30) days from receipt of the written request to respond to such Owner. In the event the response reasonably takes longer than said thirty-day period the Board of Directors shall have such additional time as is necessary to respond. No Owner shall proceed to act upon such request without a written

response from the Board of Directors. In the event the Board of Directors fails to respond within thirty (30) days the request shall be deemed denied by the Board of Directors.

8.11 Statement. From and after the first fiscal year of the Association, the Association shall make available to a First Mortgagee an audited financial statement for the preceding fiscal year upon written request for such audited financial statement from the First Mortgagee. The audited financial statement shall be available within 120 days of receipt of the First Mortgagee's written request for the audited financial statement.

8.12 Association Litigation. Except for any legal proceedings initiated to (i) as against any Owner with the exception of the Declarant, enforce any use restrictions, easement rights or nonmonetary obligations of Owners expressly set out in this Declaration; (ii) enforce any Association Rules or Regulations; (iii) enforce any Architectural Committee Rules; (iv) collect any unpaid Assessments levied pursuant to this Declaration; or (v) pursue or resolve any "small claims" (i.e., matters in which the amount in controversy could not reasonably be expected to exceed \$15,000), the Association (or Board of Directors) shall not initiate legal proceedings or join as a plaintiff in legal proceedings without the prior approval of eighty percent (80%) of the members of the Association entitled to vote. The costs of any legal proceedings initiated by the Association which are not included in the above exceptions shall be funded by the Association with monies that are specifically collected for that purpose and the Association shall not borrow money, use reserve funds, or use monies collected for other specific Association obligations for such purpose. With respect to matters involving property or improvements to property, the Association (or Board of Directors) additionally shall not initiate legal proceedings or join as a plaintiff in legal proceedings unless (1) such property or improvements is owned either by the Association or jointly by all members of the Association; (2) the Association has the maintenance responsibility for such property or improvements pursuant to this Declaration; or (3) the Owner who owns such property or improvements consents in writing to the Association initiating or joining such legal proceeding. Nothing in this section shall preclude the Board of Directors from incurring expenses for legal advice in complying with statutes or regulations related to the operation of the Association or otherwise in the normal course of operating the Association when legal proceedings are not involved. Notwithstanding anything herein to the contrary, this section shall be subject to the provisions of Section 17.13 and this section may not be modified or amended unless the Owners of at least eighty percent (80%) of Total Votes of the Association vote, consent or approve of such modification or amendment.

8.13 Architectural Committee. The Association shall have an Architectural Committee to perform the functions of the Architectural Committee set forth in this Declaration. The Architectural Committee shall consist of such number of regular members and alternate members as may be provided for in the Bylaws. So long as the Declarant owns any Lot or property in the Project, the Declarant shall have the sole right to appoint and remove the members of the Architectural Committee. At such time as the Declarant no longer owns any Lot or property in the Project, the members of the Architectural Committee shall be appointed by the Board. The Declarant may at any time voluntarily surrender its right to appoint and remove the members of the

Architectural Committee, and in that event, the Declarant may require, for so long as the Declarant owns any Lot or property in the Project, that specified actions of the Architectural Committee, as described in a recorded instrument executed by the Declarant, be approved by the Declarant before they become effective. The Architectural Committee may adopt, amend and repeal architectural guidelines, standards and procedures to be used in rendering its decisions. Such guidelines, standards and procedures may include, without limitation, provisions regarding: (i) the size of Lots; (ii) architectural design, with particular regard to the harmony of the design with the surrounding structures and topography; (iii) placement of Lots and other buildings; (iv) landscaping design, content and conformance with the character of the Project and permitted and prohibited plants; (v) requirements concerning exterior color schemes, exterior finishes and materials; (vi) signage; and (vii) perimeter and screen wall design and appearance. The decision of the Architectural Committee shall be final on all matters submitted to it pursuant to this Declaration.

ARTICLE 9

ASSESSMENTS

9.1 Agreement to Pay Assessments. The Declarant, for each Lot owned by it within the Project, and for and as the owner of the Project and every part thereof, hereby covenants and each Owner of any Lot by the acceptance of a deed whether or not it be so expressed in said instrument, shall be deemed to covenant and agree with each other and with the Association to pay to the Association all assessments made by the Association for the purposes provided in this Declaration. Such assessments shall be fixed, established and collected from time to time as provided in this Article 9.

9.2 Annual Assessments. Annual Assessments shall be computed and assessed against all Lots in the Project as follows:

9.2.1 Common Expense. Annual Assessments shall be based upon advance estimates of the Association's cash requirements to provide for payment of all estimated expenses arising out of or connected with the maintenance and operation of the Common Elements and/or furnishing utility services and other common items to the Lots. Such estimated expenses shall include, without limitation, the following: expenses of management; real property taxes and special assessments; premiums for all insurance that the Association is required or permitted to maintain hereunder; repairs and maintenance; wages for Association employees, including fees for a Manager (if any); utility charges, including charges for utility services to the Lots to the extent not separately metered or billed; legal and accounting fees; any deficit remaining from a previous period; creation of an adequate reserve fund for maintenance, repairs, and replacement of those Common Elements that must be replaced on a periodic basis, and such reserve shall be funded by monthly payments rather than extraordinary special assessments; and any other expenses and liabilities which may be incurred by the Association for the benefit of the Owners under or by reason of this Declaration. Such expenses shall constitute the Common Expense, and all funds received from assessments under this Section 9.2 shall be part of the Common Expense Fund.

9.2.2 Apportionment: Expenses attributable to the Common Elements or the Project as a whole shall be apportioned equally among and assessed to all Lots equally. The Declarant shall be liable for the amount of any assessments against Lots owned by it and which are completed and ready for occupancy. If any Common Expense is caused by the misconduct of any Owner, the Association may assess that expense exclusively to such Owner.

9.2.3 Uncompleted Lot. At the Declarant's option, the Annual Assessment for any Lot on which construction has not been substantially completed may be an amount which is not less than twenty-five percent (25%) of the Annual Assessment for Lots which have been substantially completed; provided, the Declarant shall pay to the Association any deficiency in funds due to the Declarant having paid a reduced Annual Assessment and necessary for the Association to be able to timely pay all Common Expenses. No assessment shall be paid by Declarant on account of any Lot upon which construction has not yet commenced.

9.2.4 Annual Budget. Annual Assessments shall be determined on the basis of a fiscal year beginning January 1 and ending December 31 next following, provided the first fiscal year shall begin on the date of this Declaration, and, on or before December 15 of each year thereafter, the Board of Directors shall prepare and furnish to each Owner, or cause to be prepared and furnished to each Owner, an operating budget for the upcoming fiscal year. The budget shall itemize the estimated expenses of Common Expense for such fiscal year, anticipated receipts (if any) and any deficit or surplus from the prior operating period. The budget shall serve as the supporting document for the Annual Assessment for the upcoming fiscal year and as the major guideline under which the Project shall be operated during such annual Period.

9.2.5 Notice and Payment. Except with respect to the first fiscal year, the Board of Directors shall notify each Owner as to the amount of the Annual Assessment against his or her Lot on or before December 15 each year for the fiscal year beginning on January 1 next following. Each Annual Assessment shall be payable in twelve equal monthly installments, one such installment due on the first day of each calendar month during the fiscal year to which the assessment relates; provided, however, the Annual Assessment for the first fiscal year shall be based upon such portion of the first fiscal year. The Owners shall commence payment of the full monthly assessments against their respective Lots no later than sixty (60) days after the conveyance of the first Lot in the Project. All unpaid installments of any Annual Assessment shall bear interest at the rate of eighteen percent (18%) per annum from the date each such installment became due until paid. In addition, in the event that any installment Annual Assessment is not paid within fifteen (15) days of the date such installment becomes due, the Association may, at its option, and upon fifteen (15) days prior written notice to the Owner, accelerate the due date for all remaining unpaid installments of the Annual Assessment for the remainder of the fiscal year and all accrued but unpaid interest thereon. Payment of the Annual Assessment installments so accelerated shall be due at the expiration of said fifteen (15) day notice period and interest shall accrue on the entire sum at the rate, of eighteen percent (18%) per annum from such date until paid in full. The failure of the Board of Directors to give timely notice of any Annual Assessment as provided herein shall not be deemed a waiver or modification in any respect of the provisions of this Declaration, or a release of any Owner from the

obligation to pay such assessment or any other assessment; but the date when the payment shall become due in such case shall be deferred to a date fifteen (15) days after notice of such assessment shall have been given to the Owner in the manner provided in this Declaration.

9.2.6 Inadequate Funds. In the event that the Common Expense Fund proves inadequate at any time for whatever reason, including nonpayment of any Owner's assessment, the Board of Directors may, on behalf of the Association, levy additional assessments in accordance with the procedure set forth in Section 9.3 below, except that the vote therein specified shall be unnecessary.

9.3 Special Assessments. In addition to the Annual Assessments authorized by this article, the Board of Directors may, on behalf of the Association, levy, at any time and from time to time, upon the affirmative vote of at least fifty-one percent (51%) of the Total Votes of the Association, Special Assessments, payable over such periods as the Board of Directors may determine, for the purpose of defraying, in whole or in part, the cost of any construction or reconstruction, unexpected repair or replacement of the Project or any part thereof, or for any other expenses incurred or to be incurred as provided in this Declaration (including, without limitation, Common Expenses). This section shall not be construed as an independent source of authority for the Association to incur expenses but shall be construed to prescribe the manner of assessing for expenses authorized by other sections or articles hereof. Any amounts assessed pursuant hereto shall be assessed to Owners in proportion to their respective Vote in the Association. Notice in writing of the amount of each such Special Assessment and the time for payment thereof shall be given promptly to the Owners; no payment shall be due less than fifteen (15) days after such notice shall have been given. All unpaid portions of any Special Assessment shall bear interest at the rate of eighteen percent (18%) per annum from the date such portions become due until paid. All funds received from assessments under this section shall be part of the Common Expense Fund.

9.4 Lien for Assessments. All sums assessed to Owners of any Lot within the Project pursuant to the provisions of this Article 9, together with penalties and interest thereon as provided herein, shall be secured by a lien on such Lot in favor of the Association. Recording of the Declaration constitutes record notice and perfection of the lien. Such lien may be enforced by sale or foreclosure conducted in accordance with the provisions of law applicable to the foreclosure of mortgages or in any other manner permitted by law. In any such foreclosure, the Owner shall be required to pay the costs and expenses of such proceeding (including reasonable attorneys' fees), and such costs and expenses shall be secured by the lien being foreclosed. The Owner shall also be required to pay to the Association any assessments against the Lot which shall become due during the period of foreclosure, and all such assessments shall be secured by the lien being foreclosed. The Board of Directors shall have the right and power in behalf of the Association to bid in at any foreclosure sale and to hold, lease, mortgage or convey the subject Lot in the name of the Association.

9.5 Personal Obligation of Owner. The amount of any Annual or Special Assessment against any Lot shall be the personal obligation of the Owner of such Lot to the

Association. Suit to recover a money judgment for such personal obligation shall be maintainable by the Association at its option without foreclosing or waiving the lien securing the same. No Owner may avoid or diminish any such personal obligation by waiver of the use and enjoyment of any of the Common Elements or by abandonment of his Lot or by waiving any services or amenities provided for in this Declaration. In the event of any suit to recover a money judgment for unpaid assessments hereunder, the involved Owner shall pay the costs and expenses incurred by the Association in connection therewith, including reasonable attorneys' fees.

9.6 Statement of Account. Upon written request of any Owner, Mortgagee or prospective purchaser of a Lot, the Board of Directors shall within twenty (20) days issue a recordable written statement setting forth the following: the amount of the unpaid assessments, if any, with respect to such Lot; the amount of the current Annual Assessment and the date or dates upon which installments thereof become due; and credit for advanced payments or prepaid items, including, without limitation, the Owner's share of prepaid insurance premiums. Such statements shall be conclusive upon the Association in favor of persons who rely thereon in good faith.

9.7 Personal Liability of Purchaser. A purchaser of a Lot shall be jointly and severally liable with the seller thereof for all unpaid assessments against such Lot up to the time of the grant or conveyance; provided, however, that the provisions of this Section 9.7 shall not prejudice the purchaser's right to recover from the seller the amount paid by the purchaser for such assessments.

9.8 Working Capital Fund. The Association shall establish and maintain an initial working capital fund equal to at least two monthly installments of the Annual Assessment for each Lot. Each Lot's share of the working capital fund must be collected and transferred to the Association at the time of the closing of sale of that Lot. The working capital fund must be maintained in a segregated account for the use and benefit of the Association. The purpose of the working capital fund is to ensure that the Association will have cash available to meet unforeseen expenditures or to acquire additional equipment or services deemed necessary or desirable by the Association. Amounts paid into the working capital fund are not to be considered advance payments of any regular assessment. Working capital so contributed shall remain with the Association and shall not be refunded in the event of any sale of a Lot.

9.9 Amendment of Article. This Article 9 shall not be amended unless (a) the Owners of at least seventy-five percent (75%) of the Total Votes of the Association vote, consent or approve of such amendment and such amendment is set forth in a duly executed and recorded instrument; and (b) as long as the Declarant owns any Lots or Land at the Project, the consent of the Declarant shall be required.

ARTICLE 10**INSURANCE**

10.1 Types of Insurance. Commencing not later than the time of the first conveyance of a Lot to a person other than Declarant, the Association shall obtain and keep in full force and effect at all times the following types of insurance coverage, provided by companies licensed to do business in the State of Arizona:

10.1.1 Hazard Insurance. The Association shall obtain, maintain and pay for as a Common Expense a "master" or "blanket" multi-peril policy of property insurance covering all of the Common Elements in the Project, as well as the fixtures and Building service equipment to the extent that they are part of the Common Elements or common personal property and supplies belonging to the Association. It shall be each Owner's responsibility, at his sole discretion, cost, and expense, to procure and maintain at all times fire and hazard insurance covering that portion of a Building comprising such Owner's Lot. Such master policy of hazard insurance shall provide, as a minimum, protection against the following:

(a) Loss or damage by fire and other perils normally covered by the standard extended coverage endorsement; and

(b) All other perils customarily covered with respect to projects similar to the Project in construction, location and use, and any other perils for which coverage is commonly required by private institutional mortgage investors for such projects, including all perils normally covered by the standard "all risk" endorsement, where such is available. The total amount of insurance after application of any deductibles shall be not less than eighty percent (80%) of the actual cash value of the insured property (based upon the current replacement cost of the Project and all property covered by the policy). In addition, such master policy of hazard insurance shall include the following endorsements, if available: an agreed amount and inflation guard endorsement; and, if the Project should hereafter become subject to a construction code provision which would require the Association to incur a significant expense in order to effect code required changes in the undamaged portions of the Project in the event of the partial destruction of the Project by an insured peril, construction code endorsements (e.g., a demolition cost endorsement, a contingent liability from operation of building laws endorsement and an increased cost of construction endorsement).

10.1.2 Public Liability Insurance. The Association shall obtain and maintain a comprehensive policy of public liability insurance covering all of the Common Elements in the Project. Such insurance policy shall contain a severability of interest endorsement or equivalent coverage which shall preclude the insurer from denying the claim of an Owner because of the negligent acts of the Association or other Owners. The scope of coverage shall include, without limitation:

(a) Legal liability of the insureds for property damage, bodily injuries and deaths of persons in connection with the operation, maintenance or use of the Common Elements and legal liability arising out of lawsuits related to employment contracts of the Association; and

(b) Additional coverages as may be required to include protection against such other risks as are customarily covered with respect to projects similar to the Project in construction, location and use, any other coverage in the kinds and amounts required by private institutional mortgage investors for such projects, including, but not limited to, host liquor liability, contractual and all-written contract insurance and comprehensive automobile liability insurance.

Coverage limits shall be in amounts generally required by private institutional mortgage investors for projects similar to the Project in construction, location and use; provided, however, that such coverage shall be for at least One Million Dollars (\$1,000,000) for bodily injury, including deaths of persons, and property damage arising out of a single occurrence.

10.1.3 Workers Compensation Insurance. The Association shall obtain and maintain workers compensation and employer's liability insurance and all other similar insurance with respect to employees of the Association in the amount and in the forms now or hereafter required by law.

10.1.4 Fidelity Insurance or Bond. If the Association shall self-manage (other than management by Declarant) and not hire a professional management company, the Association shall obtain and maintain blanket fidelity bonds against dishonest acts on the part of all officers, directors, trustees, managers and employees of the Association and all other persons, including, without limitation, volunteers handling or responsible for funds of or administered by the Association. Furthermore, where the Association has designated some or all of the responsibility for the handling of funds to a management agent, such bonds shall be required for such management agent's officers, employees and agents handling or responsible for funds of, or administered by the Association. Furthermore, where the Association has designated some or all of the responsibility for the handling of funds to a management agent, such bonds shall be required for such management agent's officers, employees and agents handling or responsible for funds of, or administered on behalf of, the Association. Such fidelity bonds shall meet the following requirements:

(a) All shall name the Association as an obligee and the named insured;

(b) All shall be based on the best business judgment of the Association and shall not be written in an amount less than one and one-half times the amount of the Association's estimated annual operating expenses and reserves, or the estimated maximum of funds, including reserve funds in the custody of the Association or the Manager at any time during the term of each fidelity bond, whichever is greater; provided, however, that in no event may the aggregate

amount of such bonds be less than a sum equal to three months' aggregate assessments on all Lots plus reserve funds;

(c) All shall contain waivers by the issuers of the bonds or policies of any defense based upon the exclusion of persons who serve without compensation from any definition of "employee" or similar terms or expressions or shall contain an appropriate endorsement to the policy to cover any persons who serve without compensation if the policy would not otherwise cover volunteers;

(d) All shall provide that they may not be canceled or substantially modified (including cancellation for nonpayment of premium) without at least ten (10) days' prior written notice to the Association or any insurance trustee; and

(e) The premiums shall all be paid by the Association as a common expense, except for premiums on fidelity bonds or insurance maintained by a management agent for its officers, employees and agents.

10.1.5 Flood Insurance. The Project is not located in either an area identified by the Secretary of Housing and Urban Development or the Federal Emergency Management Agency as an area having special flood hazards for which flood insurance is not available because the community in which the Project is located is ineligible for participation in the National Flood Insurance Program or an area having special flood hazards and for which flood insurance has been made available under the National Flood Insurance Program. In the event that at some future time the Project should be declared to be an area having special flood hazards and for which flood insurance is available under the National Flood Insurance Program, the Association shall at that time obtain and maintain at all times a blanket policy of flood insurance that meets the then existing FHLMC/FNMA flood insurance requirements for similar townhouse projects.

10.1.6 GNMA/FNMA Requirements. Notwithstanding any other provisions contained herein to the contrary, the Association shall continuously maintain in effect such casualty, flood and liability insurance and a fidelity bond meeting the insurance and fidelity bond requirements for townhouse development projects established by FNMA and the Government National Mortgage Association, so long as any of them is a Mortgagee or owner of a Lot within the Project, except to the extent such coverage is not available or has been waived in writing by FNMA or the Government National Mortgage Association.

10.2 Insurance Policy Requirements. The hazard, public liability and flood insurance policies obtained by the Association pursuant to Sections 10.1.1, 10.1.2, and 10.1.5 shall be subject to the following:

10.2.1 Named Insured. The named insured under any such policies shall be set forth therein substantially as follows: "Millstone Homeowners Association for the use and benefit of the individual Owners" (designated by name if required by law). The policies may also be issued

in the name of an authorized representative of the Association, including any insurance trustee with whom the Association has entered into an insurance trust agreement or any successor to such trustee (each of which shall be referred to as "Insurance Trustee") for the use and benefit of the individual Owners. Loss payable shall be paid in favor of the Association (or Insurance Trustee) as a trustee for each Owner and each such Owner's Mortgagee. Each Owner and each such Owner's Mortgagee, if any, shall be beneficiaries of the policies according to each Owner's respective Vote in the Association. Evidence of insurance shall be issued to each Owner and Mortgagee upon request;

10.2.2 Primary Coverage. Insurance coverage obtained and maintained pursuant to the requirement of Sections 10.1.1, 10.1.2, and 10.1.5 shall be primary in the event any Owner has insurance covering the same loss;

10.2.3 No Owner Prejudice. Insurance coverage must not be prejudiced by an act or omission of individual Owners when such act or omission is not within the control of either such Owners collectively or the Association;

10.2.4 No Cancellation. Coverage may not be canceled, changed in a way which is adverse to an Owner or substantially reduced or modified (including cancellation for nonpayment of premium) without at least ten (10) days' prior written notice in advance of the effective date of any reduction in or cancellation of the policy to the Association;

10.2.5 Waiver of Subrogation. All policies must contain a waiver of subrogation by the insurer as to any and all claims against the Association, any Owner and/or their respective agents, employees or tenants;

10.2.6 Rating. Each hazard insurance policy shall be written by a hazard insurance carrier which has a current financial rating by Best's Insurance Reports of Class B+ or better;

10.2.7 Nonassessable. Policies shall be deemed unacceptable where (i) under the terms of the carrier's charter, bylaws or policy, contributions or assessments may be made against the Association, an Owner, FNMA, FHLMC or any designee of FNMA or FHLMC or (ii) by the terms of the carrier's charter, bylaws or policy, loss payments are contingent upon action by the carrier's board of directors, policyholders, or members; or (iii) the policy includes any limiting clauses (other than insurance conditions) which could prevent FNMA or an Owner from collecting insurance proceeds;

10.2.8 Mortgagee Clause. All policies shall contain or have attached the standard mortgagee clause, or equivalent endorsement (without contribution), which is commonly accepted by private institutional mortgage investors in the area in which the Project is located and which appropriately names all First Mortgagees in the policy. The standard mortgagee clause in each policy must be endorsed to provide that any proceeds shall be paid to the Association, or any Insurance Trustee named to represent the Association as provided in Section 10.7, for the use and

benefit of the Owners and their first mortgage holders as their interests may appear or must be otherwise endorsed to fully protect FNMA's and FHLMC's interests;

10.2.9 Mortgage Assessment. Policy contracts shall provide that no assessment may be made against FNMA, FHLMC (or their designees) and that any assessment made against others may not become a lien on the mortgaged premises superior to the First Mortgage; and

10.2.10 Compliance with Law. Policies shall be in compliance with and consistent with applicable local and state insurance law. Each insurer and any reinsurer must be specifically licensed or authorized by law to transact business within the State of Arizona.

10.3 Evidence of Insurance. Upon request, the Board of Directors shall provide the First Mortgagee with a copy of the "master" or "blanket" policy of multi-peril property insurance, including copies of endorsements to such policy as required by FHLMC or FNMA, and, where applicable, a copy of any flood insurance policy, a copy of the comprehensive policy of public liability insurance, an appropriate certificate or memorandum of insurance as to each Lot in the Project which is the subject of a mortgage being serviced for FHLMC or FNMA, any other insurance drafts, policies, notices, invoices and other similar documents.

10.4 Additional Coverage. The provisions of this Declaration shall not be construed to limit the power or authority of the Association to obtain and maintain insurance coverage in addition to any insurance coverage required by this Declaration, in such amounts and in such forms as the Association may deem appropriate from time to time.

10.5 Owner's Own Insurance. Each Owner, at his own expense, may procure and maintain at all times fire, hazard, and casualty insurance covering the Lot of such Owner as well as the personal property of such Owner and additional fixtures and improvements added by such Owner against loss by fire and other casualties, including, without limitation, vandalism and malicious mischief. All policies providing such casualty insurance shall provide that they do not diminish the insurance carrier's coverage for liability arising under insurance policies obtained by the Association pursuant to this Article 10. Notwithstanding the provisions hereof, each Owner may obtain insurance at his own expense providing such other coverage upon his Lot, his personal property, for his personal liability and covering such other risks as he may deem appropriate. If obtainable under industry practice without an unreasonable additional charge for such waiver, all such insurance shall contain a waiver of the insurance company's right of subrogation against the Association, the Declarant, the Manager, other Owners and their respective servants, agents and guests,

10.6 Insurance Trustee, Power of Attorney. Notwithstanding anything to the contrary in this Declaration, the hazard, public liability and flood insurance policies obtained by the Association pursuant to Sections 10.1.1, 10.1.2, and 10.1.5 may name as an insured, on behalf of the Association, the Association's authorized representative, including any Insurance Trustee. All such policies obtained by the Association must provide for recognition of any insurance trust agreement, and the Insurance Trustee, or such other authorized representative, shall have exclusive authority to

negotiate losses under any such policy. Each Owner appoints the Association, or the Insurance Trustee (in the event a trustee is designated hereafter to represent the Association), as attorney-in-fact for the purpose of purchasing and maintaining such insurance, including: the collection and appropriate disposition of the proceeds thereof; the negotiation of losses and execution of releases of liability; the execution of all documents; and the performance of all other acts necessary to accomplish such purpose. The Association or any Insurance Trustee must hold or otherwise properly dispose of any proceeds of insurance in trust for the Owners and their First Mortgage holders, as their interests may appear.

10.7 Review of Insurance. The Association shall review annually the coverage and policy limits of all insurance on the Project to be maintained by the Association and adjust the same at its discretion. Such annual review may include an appraisal of the improvements in the Project by a representative of the insurance carrier or carriers providing the policy or policies on the Project or by such other qualified appraisers as the Association may select.

ARTICLE 11

DAMAGE OR DESTRUCTION

11.1 Association as Attorney in Fact. All of the Owners irrevocably constitute and appoint the Association their true and lawful attorney in fact in their name, place and stead for the purpose of dealing with the Project upon its damage or destruction as hereinafter provided. Acceptance by any grantee of a deed from the Declarant or from any Owner shall constitute an appointment by said grantee of the Association as his attorney in fact as herein provided. As attorney in fact, the Association shall have full and complete authorization, right and power to make, execute and deliver any contract, deed or other instrument with respect to the interest of an Owner which may be necessary or appropriate to exercise the powers herein granted.

11.2 Repair and Reconstruction of Common Elements. It shall be the Association's responsibility to repair and reconstruct the Common Elements and to restore the Common Elements in the Project to substantially the same condition in which they existed prior to the damage or destruction, with each Lot and the Common Elements having substantially the same boundaries as before.

11.3 Damage or Destruction to Lots. It shall be each Owner's responsibility, at his sole cost and expense, to maintain and repair his respective Lot, including without limitation, any repairs necessary upon a partial or complete destruction of or damage to his respective Lot. As provided in paragraph 10.5 of this Declaration, it is left to each Owner to procure and maintain, at his sole cost and expense, fire, hazard and casualty insurance covering the Lot of such Owner as well as the personal property of such Owner and additional fixtures and improvements added by such Owner against loss by fire and other casualties, including, without limitation, vandalism and malicious mischief.

11.4 Procedures. In the event all or any part of the Common Elements in the Project are damaged or destroyed and subject to the provisions of Article 13 below, the Association shall proceed as follows:

11.4.1 Notice to First Mortgagees. The Association and each Owner shall give timely written notice to any institutional holder of any First Mortgage on a Lot in the event of substantial damage to or destruction of any part of the Common Elements.

11.4.2 Estimate of Costs. As soon as practicable after an event causing damage to or destruction of any part of the Common Elements, the Association shall obtain complete and reliable estimates of the costs to repair and reconstruct the Common Elements in the Project damaged or destroyed, for which the Association has the responsibility to maintain or repair.

11.4.3 Sufficient Insurance. If the proceeds of the insurance maintained by the Association exceed the estimated costs to repair and reconstruct the damaged or destroyed part of the Common Elements, such repair and reconstruction shall be carried out, unless eighty percent (80%) of the Owners vote not to rebuild.

11.4.4 Insufficient Insurance. If the proceeds of the insurance maintained by the Association are less than the estimated costs to repair and reconstruct the damaged or destroyed part of the Common Elements, such repair and reconstruction shall nevertheless be carried out unless eighty percent (80%) of the Owners vote not to rebuild. The Association shall levy a Special Assessment sufficient to provide funds to pay the actual costs of such repair and reconstruction to the extent that such insurance proceeds are insufficient to pay such costs. Such Special Assessment shall be allocated and collected as provided in Section 9.3 hereof, except that the vote therein specified shall be unnecessary. Further levies may be made in like manner if the amounts collected (together with the proceeds of insurance) are insufficient to pay all actual costs of such repair and reconstruction.

11.5 Repair or Reconstruction. The Association shall, as soon as practicable after receiving the said estimate of costs to repair and reconstruct the Common Elements damaged or destroyed, commence and diligently pursue to complete the repair and reconstruction of that part of the Common Elements damaged or destroyed. The Association may take all necessary or appropriate action to effect repair and reconstruction, as attorney in fact for the Owners, and no consent or other action by any Owner shall be necessary in connection therewith, except as otherwise expressly provided herein. The Common Elements in the Project shall be restored or repaired to substantially the same condition in which they existed prior to the damage or destruction, with each Lot and the Common Elements having substantially the same boundaries as before. Any restoration or repair of the Common Elements in the Project, after a partial condemnation or damage due to an insurable hazard, shall be performed substantially in accordance with the Declaration and the original architectural plans and specifications, unless other action is first approved in writing by a sufficient number of Eligible First Mortgagees pursuant to Section 13.2.

11.6 Disbursement of Funds for Repair and Reconstruction. The insurance proceeds held by the Association and any amounts received from assessments made pursuant to Section 11.4.4 hereof shall constitute a fund for the payment of costs of repair and reconstruction to the Common Elements after casualty. It shall be deemed that the first money disbursed in payment for costs of repair and reconstruction shall be made from insurance proceeds; if there is a balance after payment of all costs of such repair and reconstruction, such balance attributable to the Owners of the Lots in proportion to their respective Vote as a percentage of the total Votes in the Association.

11.7 Amendment of Article. This Article 11 shall not be amended unless (a) the Owners of at least eighty percent (80%) of the Total Votes of the Association vote, consent or approve of such amendment and such amendment is set forth in a duly executed and recorded instrument; and (b) as long as the Declarant owns any Lot or Land at the Project, the Declarant's consent shall be required; and so long as Declarant owns any Lots at the Project or has the option to purchase a Lot at the Project, the consent of the Declarant shall be required.

ARTICLE 12

CONDEMNATION

12.1 Condemnation. If at any time or times all or any part of the Project shall be taken or condemned by any public authority under power of eminent domain, the provisions of this Article 12 shall apply. A voluntary sale or conveyance of all or any part of the Project in lieu of condemnation, but under threat of condemnation, shall be deemed to be a taking by power of eminent domain. If any Lot or portion thereof, or the Common Elements or any portion thereof, is made the subject matter of any condemnation or eminent domain proceeding or is otherwise sought to be acquired by a condemning authority, the Board of Directors shall give prompt written notice of any such proceeding or proposed acquisition to each Owner in the Project and to any First Mortgagee. The Association shall represent the Owners in any condemnation proceedings or in negotiations, settlements and agreements with the condemning authority for acquisition of the Common Elements, or any part thereof, and each Owner hereby appoints the Association as such Owner's attorney in fact for the purposes of such representation.

12.2 Proceeds. Any Condemnation Award with respect to the Common Elements shall be made payable to the Association and shall be distributed by the Board of Directors, on behalf of the Association as herein provided.

12.3 Complete Taking. In the event the Common Elements and Tracts are taken by power of eminent domain, ownership pursuant thereto shall terminate and the Condemnation Award shall be allocated among and distributed to the Owners in proportion to their respective Votes. Such distribution shall be made by check payable jointly to the respective Owners and their respective Mortgagees, as appropriate.

12.4 Partial Taking. In the event less than the entire Project is taken by power of eminent domain, the following shall occur:

12.4.1 Allocation of Award. As soon as practicable, the Board of Directors shall, on behalf of the Association, reasonably and in good faith, apportion the Condemnation Award between compensation, severance damages or other proceeds and shall allocate such apportioned amounts and pay the same to the Owners as follows:

(a) The total amount apportioned to taking of or injury to the Common Elements shall be allocated among and distributed to all Owners (including Owners whose entire Lots have been taken) in proportion to their respective Votes;

(b) The total amount apportioned to severance damages shall be allocated among and distributed to the Owners of those Lots that have not been taken in proportion to their respective Votes;

(c) The respective amounts apportioned to the taking of or injury to a particular Lot shall be allocated and distributed to the Owner of such Lot;

(d) The total amount apportioned to consequential damages and any other takings or injuries shall be allocated and distributed as the Association determines to be equitable under the circumstances;

(e) If apportionment or allocation is already established by negotiation, judicial decree, statute or otherwise, the Association shall employ such apportionment and allocation to the extent it is relevant and applicable;

(f) Distribution of allocated proceeds shall be made by check payable jointly to individual Owners and their respective Mortgagees, as their interests may appear; and

(g) No provision of this Article 12 or any other provisions in this Declaration, the Articles or the Bylaws shall entitle the owner of a Lot or other party to priority over any First Mortgagee holding such Lot with respect to the distribution to such Lot of the proceeds of any award, settlement or proceeds from any eminent domain or condemnation proceeding.

12.4.2 Continuation and Reorganization. If less than the entire Project is taken by power of eminent domain, ownership pursuant hereto shall not terminate but shall continue. In such event the Project shall be reorganized as follows:

(a) If any partial taking results in the taking of an entire Lot, then the Owner thereof shall cease to be a member of the Association and all voting rights appertaining to such Lot shall cease;

(b) If any partial taking results in the taking of a portion of a Lot and if no determination is made by the Board of Directors, after duly considering any recommendations, proposals or other input from the Owners, that such taking does not make it impractical to use the remaining portion of such Lot for any lawful purpose permitted by this Declaration, then the Owner of such Lot shall remain a member of the Association and all voting rights and any rights to use the Common Elements shall be retained by such Owner;

(c) If any partial taking results in the taking of a portion of a Lot and if there is a determination made by the Board of Directors, after duly considering any recommendations, proposals, or other input from the Owners, that such taking makes it impractical to use the remaining portion of such Lot for any lawful purpose permitted by this Declaration, then all voting rights shall cease, and the remaining portion of such Lot shall thenceforth be part of the Common Elements;

(d) The Board of Directors, after duly considering any recommendations, proposals or other input from the Owners, shall have the duty and authority to make all determinations and to take all actions necessary or appropriate to effectuate reorganization of the Project under the provisions of this Section 12.4.2; provided, however, that if any such determination shall have been or such action taken by judicial decree, the Board of Directors shall defer thereto and proceed in accordance therewith.

12.4.3 Repair and Reconstruction. Any repair and reconstruction necessitated by condemnation shall be governed by the provisions specified in Article 11 hereof for cases of damage or destruction; provided, however, that the provisions of said Article dealing with sufficiency or insufficiency of insurance proceeds shall not be applicable.

ARTICLE 13

MORTGAGE PROTECTION

13.1 Notice of Action. Upon written request made to the Association by a First Mortgagee, or an issuer or governmental guarantor of a First Mortgage, which written request shall identify the name and address of such First Mortgagee, issuer or governmental guarantor and the Identifying Number or address of the Lot, any such First Mortgagee, issuer or governmental guarantor shall be entitled to timely written notice of:

13.1.1 Material Loss. 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, issuer or governmental guarantor;

13.1.2 Default by Owner. Any default in the performance by the Owner of a Lot which is held or is subject to a First Mortgage held, insured or guaranteed by such First Mortgagee, insurer or governmental guarantor, of any obligation under this Declaration, including,

without limitation, any delinquency in the payment of assessments or charges owed by such Owner, which default remains uncured for a period of sixty (60) days;

13.1.3 Insurance Lapse. Any lapse, cancellation or material modification of any insurance policy or fidelity bond maintained by the Association; and

13.1.4 Percentage Required. Any proposed action which would require the consent of a specified percentage of Eligible First Mortgagees as specified in Section 13.2 below.

13.2 Matters Requiring Prior Eligible First Mortgagee Approval. Except as provided in case of condemnation or substantial loss to the Lots and/or Common Elements and as may be required to give effect to the provisions of Article 15 relating to the expansion of the Project, the prior written consent of Owners entitled to vote at least sixty-seven percent (67%) of the Total Votes in the Association (unless pursuant to a specific provision of this Declaration the consent of Owners entitled to vote a greater percentage of the Total Votes in the Association is required, in which case such specific provisions shall control), Eligible First Mortgagees holding First Mortgages on Lots having at least fifty-one percent (51%) of the Votes of the Lots subject to First Mortgages held by Eligible First Mortgagees shall be required to:

13.2.1 Abandon Legal Status. Abandon or terminate the legal status of the Project (whether by act or omission);

13.2.2 Self-Management. Establish self-management of the Project by the Association when professional management has been previously required by any First Mortgagee;

13.2.3 Amend Bylaws, Etc. Add or amend any material provision of the Declaration, Articles, Bylaws or Plat, which establishes, provides for, governs or regulates any of the following (an addition or amendment to such documents shall not be considered material if it is for the purpose of correcting technical errors or for clarification only):

- (a) Voting;
- (b) Assessments, assessment liens or subordination of such liens;
- (c) Reserves for maintenance, repair and replacement of the
Common Elements;
- (d) Fidelity bonds or insurance;
- (e) Rights to use of Common Elements;
- (f) Responsibility for maintenance and repair of the several
portions of the Project;

- (g) Boundaries of any Lot;
- (h) Imposition of any right of first refusal or similar restriction on the right of an Owner to sell, transfer or otherwise convey his or her Lot; and
- (i) Any provisions which are for the express benefit of Mortgagees.

13.2.4 Change Ratio. Except in the event of expansion pursuant to Article 15, change the pro rata interest or obligations of any individual Lot for the purpose of: (i) levying assessments or charges or allocating distributions of hazard insurance proceeds or Condemnation Awards; or (ii) determining the Votes appertaining to each Lot;

13.2.5 Partition. Partition or subdivide any Lot;

13.2.6 Abandon Common Elements. By act or omission, seek to abandon, partition, subdivide, encumber, sell or transfer the Common Elements; provided that the granting of easements by the Association for public utilities or for other public purposes consistent with the intended use of the Common Elements by the Owners shall not be deemed a transfer within the meaning of this clause; and

13.2.7 Loss Proceeds Use. Use hazard insurance proceeds for losses to any portion of the Project (whether to Lots or Common Elements) for other than the repair, replacement or reconstruction of the Project.

In addition, the prior written approval of Eligible First Mortgagees holding First Mortgages on Lots having at least fifty-one percent (51%) of the Votes of Lots subject to First Mortgages held by Eligible First Mortgagees, shall be required to (i) effect any restoration or repair of the Project, after a partial condemnation or damage due to an insurable hazard, which will not be substantially in accordance with the Declaration and the original architectural plans and specifications of the Project, (ii) expand or contract the Project or add to or withdraw any property from the Project or (iii) convert any of the Lots in the Project into Common Elements or Common Elements into Lots. Any Eligible First Mortgagee who receives a written request from the Association to approve additions or amendments to the constituent documents and who fails to deliver or post to the Association a negative response within thirty (30) days shall be deemed to have approved such request.

13.3 Prior Liens Relate Only to Individual Lots. All taxes, assessments and charges which may become liens prior to the First Mortgage under local law shall relate only to the individual Lots and not to the Project as a whole.

13.4 Subordination of Common Expense Lien. Any lien which the Association may have on any Lot in the Project for the payment of common expense assessments attributable to

such Lot and any fees, late charges, taxes or interest levied by the Association in connection therewith shall be subordinate to the lien or equivalent security interest of any First Mortgage on the Lot recorded prior to the date on which any such common expense assessments became due.

13.5 Information Made Available to Owners and First Mortgagees. Any Owner or First Mortgagee shall, upon two (2) business days notice and request, be entitled to inspect current copies of the Declaration, Bylaws, other rules and regulations concerning the Project and the books, records and financial statements of the Association during normal business hours or under other reasonable circumstances.

13.6 Additional Information Made Available to First Mortgagees. In addition to the rights granted in Section 13.5, any First Mortgagee shall, upon request, be entitled to written notice of all meetings of the Association and be permitted to designate a representative to attend all such meetings.

13.7 Priority of First Mortgagee in Event of Damage. In the event of substantial damage to or destruction of any Lot, or any part of the Common Element, no provision of this Declaration, the Articles or Bylaws or any amendment thereto shall entitle the owner of a Lot or other party to priority over any First Mortgagee with respect to the distribution to such Owner of any insurance proceeds.

13.8 Priority of First Mortgagee in Event of Condemnation. If any Lot or portion thereof or the Common Elements or any portion thereof is made the subject matter of any condemnation or eminent domain proceeding or is otherwise sought to be acquired by a condemning authority, no provision of this Declaration, the Articles or Bylaws or any amendment thereto shall entitle the Owner of a Lot, or any other party, to priority over any First Mortgagee with respect to the distribution to such Lot of the proceeds of any award or settlement.

13.9 First Mortgagee Rights in Event of Foreclosure. Each First Mortgagee who obtains title to a Lot pursuant to the remedies provided in the Mortgage, or by deed or assignment in lieu of foreclosure, or any purchaser at a foreclosure sale, shall take the Lot free of any claims for unpaid assessments and charges against the Lot which accrue prior to the acquisition of title to such Lot by the First Mortgagee or purchaser at foreclosure sale.

13.10 No Right of First Refusal. No "right of first refusal" shall be included or added by amendment to this Declaration, the Articles or Bylaws.

13.11 Audited Financial Statement. A First Mortgagee may have an audited financial statement of the Association prepared at its own expense. A copy of the audited financial statement shall be delivered to the Association upon receipt by the First Mortgagee.

13.12 No Approval of Exercise of Development Right. Notwithstanding anything in the Declaration to the contrary, no notice need be given to or any consent obtained from any First

Mortgagee or Eligible First Mortgagee in connection with the exercise of any Special Declarant Right or any Development Right reserved pursuant to the Declaration.

ARTICLE 14

COMPLIANCE WITH DECLARATION AND BYLAWS

14.1 Compliance. Each Owner shall comply strictly with the provisions of this Declaration, the Existing Restrictions, the Articles and Bylaws of the Association, Rules and Regulations promulgated by the Association and the decisions and resolutions of the Association adopted pursuant thereto, as the same may lawfully be modified and amended from time to time. Failure to comply with any of the same shall be grounds for an action to recover sums due for damages or for injunctive relief or for both, maintainable by the Association or, in a proper case, by an aggrieved Owner.

14.2 Enforcement and Remedies. The obligations, provisions, covenants, restrictions and conditions contained in this Declaration, or in any supplemental or amended Declaration, with respect to the Association or Lots within the Project shall be enforceable by the Declarant (if it so elects) or by any Owner of a Lot within the Project, subject to this Declaration, by a proceeding for a prohibitive or mandatory injunction or by a suit or action to recover damages or to recover any amount due or unpaid. The obligations, provisions, covenants, restrictions and conditions contained in this Declaration, or in any supplemental or amended Declaration, with respect to a person or entity or property of a person or entity other than the Association shall be enforceable by the Declarant (if it so elects) or by the Association or, in a proper case, by an aggrieved Owner by a proceeding for a prohibitive or mandatory injunction or by a suit or action to recover damages or to recover any amount due or unpaid. No summary abatement or similar procedure may be utilized through nonjudicial means to alter or demolish items of construction.

ARTICLE 15

EXPANSION OF PROJECT

15.1 Reservation of Right to Expand. The Declarant hereof expressly reserves the option and right to expand the Project pursuant to the provisions of this Article 15.

15.2 Consent of Owners Not Required. The consent of the Owners in the Project shall not be required for such expansion, and the Declarant may proceed with such expansion at its sole option.

15.3 Preparation and Recording of Supplemental Plat and Amendment. Prior to adding all or any portion of the Additional Property to the Project, the Declarant shall:

15.3.1 Substantial Offsite Completion. Substantially complete or cause the substantial completion of any intended offsite and street improvements to be constructed upon the Additional Property to be added to the Project;

15.3.2 Tax Payments. Pay or provide for the payment of all taxes, assessments, mechanic's liens and other charges affecting or relating to the Additional Property to be added to the Project covering any period of time prior to the date upon which such Additional Property is added to the Project;

15.3.3 Record Supplemental Plat. Record, with regard to the Additional Property or any portion thereof that is being added to the Project, a Supplemental Plat, which shall describe the real property added to the Project and comply in all respects with this Article 15. Each such Supplemental Plat shall be certified as to its accuracy by the land surveyor who prepared or supervised the preparation thereof; and

15.3.4 Record Amendment. Prepare, execute and record simultaneously with each Supplemental Plat an Amendment, which shall contain a legal description by metes and bounds of the real property added to the Project and shall describe the new Total Votes of the Association. Each such Amendment shall assign an Identifying Number to each Lot, if any, formed out of the real property added to the Project. Each such Amendment shall describe or delineate the Common Elements or Tracts, if any, formed out of the Additional Property added to the Project.

15.4 Expiration of Right to Expand. This option to expand the Project shall expire seven (7) years after the recording of this Declaration; however, the Declarant may, at any time prior to the expiration of such period, terminate its option to expand by recording among the land records wherein this Declaration is recorded an executed and notarized document terminating this option.

15.5 Declarant's Right to Add All or Portions of Additional Property. The Declarant need not add all or any portion of the Additional Property to the Project; however, the Declarant may, at its sole discretion and without limitation, add all or any portion or portions of the Additional Property to the Project and may do so at different times.

15.6 Number of Lots. The minimum number of Lots to be built shall be adequate to support reasonably the Common Elements to be created within the Additional Property. The maximum number of Lots to be built in the Project, as expanded, shall not overload the Common Elements.

15.7 Compatibility with Structures in Initial Project. Declarant intends to erect structures, if any, on any portion of the Additional Property added to the Project that will be compatible with the structures on the Land initially within the Project; however, Declarant hereby reserves the right to select the design and configuration of any improvements erected on any portion of the Additional Property added to the Project that in the judgment of the Declarant may be required to achieve the best development of the Project, provided that such improvements are consistent with

the improvements on the Land initially within the Project in terms of quality of construction. All improvements shall be constructed in accordance with an approved plan for the total development of the Project supported by detailed plats and plans.

15.8 Other Improvements. Any improvements in addition to Lots to be placed on the Additional Property shall be limited to parking, recreational and service facilities, and temporary sales and marketing office.

15.9 Lots Not Identical to Initial Lots. Although Declarant intends to create Lots and improvements, if any, on the Additional Property that will be compatible with the Lots initially constructed within the Project, Declarant makes no assurances as to whether Lots that may be created on the Additional Property will be compatible with or identical to Lots initially constructed within the Project.

15.10 Reservation for Residential Use. Any portion of the Additional Property which is hereafter added to the Project and any Lots created thereon shall be restricted primarily to residential purposes, including, but not limited to, both owner and tenant occupied townhouse structures.

15.11 Votes and Common Expenses. The Owners of the Lots created within any portion of the Additional Property that is added to the Project shall be entitled to vote the Votes in the Association appurtenant to each such Lot. The formula for such reallocation of Votes shall be a fraction, the numerator of which is one (1) and the denominator of which is the total number of Lots then subject to the Declaration. Expenses attributable to the Common Expense or to the Project as a whole shall be apportioned among and assessed to the existing Owners and to the Owners of the additional Lots in proportion to their respective Vote in the Association, as expanded.

ARTICLE 16

AMENDMENTS

16.1 Approval of Owners. Except in cases of amendments that may be executed by a Declarant in the exercise of its Development Rights under this Declaration, by the Association, or certain Owners pursuant to Arizona law, and except to the extent permitted or required by other provisions of Arizona law or the Declaration, this Declaration, including the Plat, may be amended only by a vote of the Owners of at least sixty-seven percent (67%) of the Total Votes of the Association.

16.2 Amendments Requiring Unanimous Consent. Except for any Additional Property added by the Declarant pursuant to Article 15, the amendment to the Declaration shall not create or increase Special Declarant Rights, increase the number of Lots or change the boundaries of any Lot, the Allocated Interest of a Lot, the use as to which any Lot is restricted, in the absence of unanimous consent of the Lot Owners.

16.3 Amendments Requiring Declarant Approval. An amendment to the Declaration shall not terminate or decrease any unexpired Development Right, Special Declarant Right or period of Declarant Control unless the Declarant approves the amendment in writing. Notwithstanding anything in this Declaration to the contrary, during any period of Declarant Control, no amendment to the Declaration shall be made without Declarant's consent.

16.4 Amendment by Declarant. During the period of Declarant Control, the Declarant shall have the right to amend the Declaration, including the Plat, to (i) comply with any applicable law if the amendment does not adversely affect the rights of the Lot Owners, (ii) correct any error or inconsistency in the Declaration if the amendment does not adversely affect the rights of any Lot Owner, (iii) comply with the rules or regulations in effect from time to time of any governmental entity or municipality having jurisdiction over the Project, or (iv) comply with the rules or guidelines in effect from time to time of any governmental or quasi-governmental entity or federal corporation guaranteeing or insuring mortgage loans or governing transactions involving mortgage instruments, including without limitations, the Veterans Administration, the Federal Housing Administration, the Federal National Mortgage Association or the Federal Home Loan Mortgage Corporation. Declarant shall have the right to amend the Declaration, including the Plat, without the vote or consent of any Lot Owner, for the limited purpose of correcting or modifying the size, shape, configuration, and physical boundaries of any Lot, Tract, Building, or Common Elements, as well as the number of Lots within any Building, as may be approved by the City from time to time. Notwithstanding the foregoing, if title to a Lot proposed to be affected by any such amendment has been conveyed to an Owner other than Declarant, then the consent of such affected Lot Owner(s) shall be required to any such amendment.

16.5 Recordation of Amendment. Any amendment adopted by the Owners pursuant to Section 16.1 or 16.2 above shall be signed by the President or Vice President of the Association and shall be recorded with the County Recorder of Maricopa County. Any such amendment shall certify that the amendment has been approved as required by this Article 16. Any amendment by the Declarant pursuant to Section 16.4 of this Article 16 shall be executed by the Declarant and shall be recorded with the County Recorder of Maricopa County.

ARTICLE 17

GENERAL PROVISIONS

17.1 Intent and Purpose. The provisions of this Declaration, and any supplemental or amended Declaration, shall be liberally construed to effectuate the purpose of creating a uniform plan for the development and operation of a townhouse project. Failure to enforce any provision, restriction, covenant or condition contained in this Declaration, or in any supplemental or amended Declaration, shall not operate as a waiver of any such provision, restriction, covenant or condition or of any other provisions, restrictions, covenants or conditions.

17.2 Construction. The provisions of this Declaration shall be in addition and supplemental to all other provisions of law. Whenever used herein, unless the context shall otherwise require, the singular shall include the plural, the plural shall include the singular, the whole shall include any part thereof and any gender shall include both genders. The Article and Section headings set forth herein are for convenience and reference only and are not intended to expand, limit or otherwise affect the meaning or interpretation of this Declaration or any provision hereof. The provisions hereof shall be deemed independent and several, and the invalidity or partial invalidity or unenforceability of any one provision or portion thereof shall not affect the validity or enforceability of any other provision hereof.

17.3 Notices and Registration of Mailing Address. Each Owner shall register from time to time with the Association his current mailing address. All notices, demands and other communications to any Owner as provided for in this Declaration shall be in writing and shall be sufficient for all purposes if personally served or if sent by first-class U.S. mail, postage prepaid, addressed to the Owner at his registered mailing address or, if no address has been registered, to the Lot of such Owner. All notices, demands and other communications to the Association as provided for in this Declaration shall be in writing and shall be sufficient for all purposes if personally served or if sent by first-class U.S. mail, postage prepaid, addressed to the Association. Any notice, demand or communication referred to in this Declaration shall be deemed to have been given and received when personally served or when deposited in the U.S. mail, postage prepaid, and in the form provided for in this Section 17.3, as the case may be.

17.4 Audit. Any Owner may at any reasonable time, upon appointment and at his own expense, cause an audit or inspection to be made of the books and records maintained by the Association. The Association, at the expense of the Common Expense Fund, shall obtain an audit, by certified public accountants, of all books and records, pertaining to the Project at no greater than annual intervals, and copies thereof shall be furnished to the Owners.

17.5 Duration. The covenants and restrictions of this Declaration shall run with and bind the Land, 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.

17.6 Rule Against Perpetuities. If any interest purported to be created by this Declaration is challenged under the Rule against Perpetuities or any related rule, the interest shall be construed as becoming void and of no effect as of the end of the applicable period of perpetuities computed from the date when the period of perpetuities starts to run on the challenged interest; the "lives in being" for computing the period of perpetuities shall be (i) those which would be used in determining the validity of the challenged interest, plus (ii) those of the issue of the Board of Directors who are living at the time the period of perpetuities starts to run on the challenged interest.

17.7 Effective Date. This Declaration shall take effect upon recording.

17.8 Agent for Service. The name and address of the person to receive service of process in all cases shall be the registered agent and address of the Association as shown on the official corporate records maintained in the office of the Arizona Corporation Commission. On the date of this Declaration, the registered agent of the Association is Jules I. Firetag, Firetag Law Firm, P.C., 5611 North 16th Street, Suite 300, Phoenix, Arizona 85016.

17.9 Limitation on Association's Liability. The Association shall not be liable for any failure of water service or other utility service (if any) to be obtained and paid for by the Association hereunder, or for injury or damage to any person in or upon the Project, or resulting from electricity, water, rain, snow or ice which may leak or flow from outside or from any parts of the Building or its drains, pipes, conduits, appliances or equipment, or from any other place, unless caused by the grossly negligent or willful misconduct of the Association. No diminution or abatement of any assessments under this Declaration shall be claimed or allowed for inconvenience or discomfort arising from the making of any repairs or improvements to or maintaining the Project or any part thereof, or from any action taken to comply with the provisions of this Declaration or with the laws, ordinances, regulations, rules or order of any governmental authority.

17.10 Owner's Obligation. All obligations of an Owner, under and by virtue of the provisions contained in this Declaration shall continue, notwithstanding that he may be leasing, renting or selling under contract his Lot. The Owner of a Lot within the Project shall have no obligation for expenses or other obligations accruing after he conveys such Lot.

17.11 Model Lots, Sales Offices and Advertising Signs. Declarant, and Declarant's duly authorized agents, representatives, employees and assigns shall have the right to establish and maintain model units and sales offices in Lots and within the Project and the right to use such model units and sales offices during the period that Lots in the Project remain unsold. Declarant reserves the right to relocate the same from time to time within the Project. Declarant further reserves the right to maintain advertising signs on the Project and to place the same in any location and to relocate, replace and remove the same at the sole discretion of Declarant during the period that Lots in the Project remain unsold. A Lot remains unsold until such time as the sale of such Lot has closed by recording the deed to such Lot in the Recorder's office of Maricopa County.

17.12 References to FNMA, FHLMC and GNMA. In various places throughout the Project documents, references are made to the FNMA, the FHLMC and the GNMA; and, in particular, to various consents or approvals required of any or all of such agencies. Such references are included so as to cause the Project documents to meet certain requirements of such agencies should Declarant request approval of the Project by any or all of those agencies. However, Declarant shall have no obligation to request approval of the Project by any or all of such agencies. Unless and until the FNMA, FHLMC or GNMA have approved the Project as acceptable for insured or guaranteed loans and at any time during which such approval, once given, has been revoked, withdrawn, canceled or suspended and there are no outstanding mortgages or deeds of trust recorded against a Lot to secure payment of an insured or guaranteed loan by any or all of such agencies, all references herein to required approvals or consents of such agencies shall be deemed null and void

and of no force and effect. In the event of any conflict between this Section 17.12 and any other provision of the Project documents, this Section 17.12 shall control.

17.13 Alternative Dispute Resolution. Except for any legal proceedings initiated to (i) enforce any use restrictions, easement rights or nonmonetary obligations of Owners (other than Declarant) expressly set out in this Declaration; (ii) enforce any Association Rules or Regulations; (iii) enforce any Architectural Committee Rules; (iv) collect any unpaid Assessments levied pursuant to this Declaration; or (v) pursue or resolve any "small claims" (i.e., matters in which the amount in controversy could not reasonably be expected to exceed \$15,000), any Dispute under or pertaining to this Declaration or any provision hereof between or among (1) any Owner(s) and any other Owner(s), (2) any Owner(s) and the Association, or (3) the Declarant (or their brokers, agents, consultants, contractors, subcontractors or employees) and any Owner(s) or the Association, shall be subject to the negotiation, mediation and arbitration provisions contained herein.

17.13.1 Negotiation. Each party to a Dispute shall make every reasonable effort to meet in person and confer for the purpose of resolving the Dispute by good faith negotiation before resorting to any legal proceedings or any other dispute resolution procedure. Upon receipt of a written request from any party to the Dispute, the Board may appoint a representative to assist the parties in resolving the Dispute by negotiation.

17.13.2 Mediation. If the Dispute cannot be settled through negotiation, the parties to the Dispute shall make every reasonable effort to settle the Dispute by mediation administered by the American Arbitration Association under its Commercial Mediation Rules (or if such procedure is unavailable, by such other comparable entity or comparable rules as the parties to the Dispute may in good faith agree upon) before resorting to any legal proceedings or any other dispute resolution procedure.

17.13.3 Arbitration. If a Dispute cannot be settled through mediation, the Dispute shall be settled by arbitration administered by the American Arbitration Association under its Commercial Arbitration Rules, and judgment on the award rendered by the arbitrator(s) may be entered in any court having jurisdiction thereof. If any party to the Dispute does not submit the Dispute to arbitration within thirty (30) days after termination of the mediation proceedings, such party shall be deemed to have waived any claims under the Dispute and all of the other parties to the Dispute shall be released and discharged from any and all liability to such party on account of such Dispute; provided, however, nothing herein shall release or discharge such party or parties from any liability to persons or entities not a party to the foregoing proceedings. The parties to a Dispute shall cooperate in good faith to assure that all necessary and appropriate persons and entities are included in the arbitration proceeding. It is understood and agreed that in connection with any arbitration proceedings, any party may employ an attorney to represent him, her or it. Any arbitration award shall include an award of the prevailing party's reasonable attorney's fees in such amount as the arbitrator shall determine. Any arbitration award may be entered in any court of competent jurisdiction as a judgment and be enforced as any other judgment. Notwithstanding the foregoing, an Owner shall have the right to bring such proceedings as such Owner may have available before

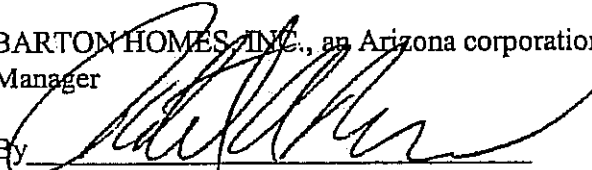
the Registrar of Contractors of the State of Arizona; it being specifically understood that the Owners' rights with respect to the Registrar of Contractors shall be unaffected hereby.

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

DECLARANT:

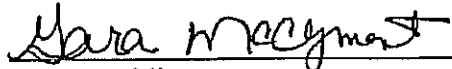
MILLSTONE - BARTON HOMES, L.L.C., an Arizona limited liability company,

By: BARTON HOMES, INC., an Arizona corporation
Its: Manager

By 
Patrick A. Barker, President

STATE OF ARIZONA)
) ss.
County of Maricopa)

The foregoing instrument was acknowledged before me this 3rd day of May, 2005, by Patrick A. Barker, who affirmed himself to be President of BARTON HOMES, INC., an Arizona corporation, the Manager of MILLSTONE - BARTON HOMES, L.L.C., an Arizona limited liability company, and authorized to execute the foregoing instrument on behalf of the company.


Notary Public

My Commission Expires



EXHIBIT "A"
Legal Description of Land

EXHIBIT "A"

EXHIBIT "A"

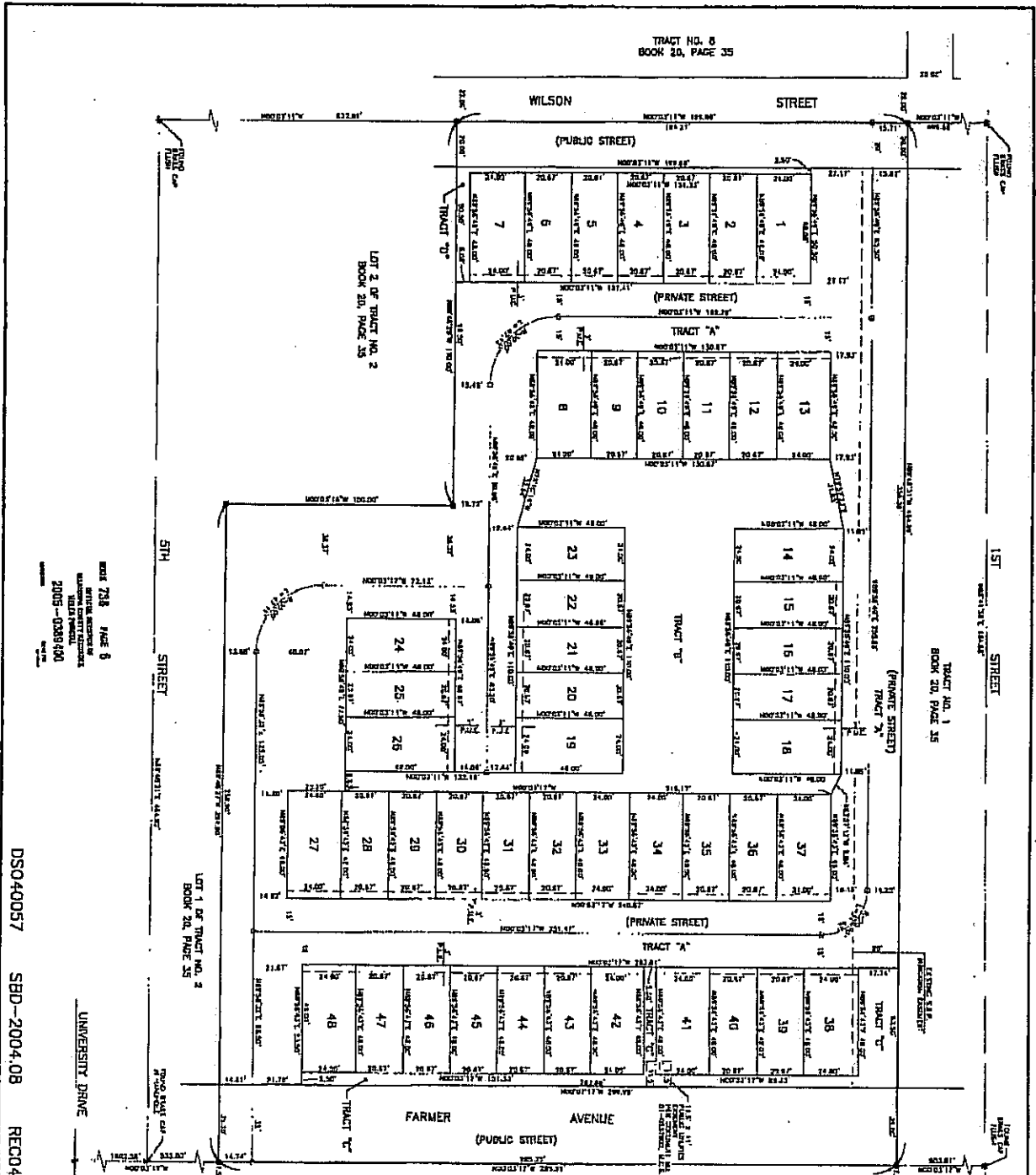
Lots 1 through 48 inclusive and Tracts A through D inclusive, MILLSTONE, according to Book 738 of Maps, page 6, records of Maricopa County, Arizona.

EXHIBIT "B"

Plat Map

EXHIBIT "B"

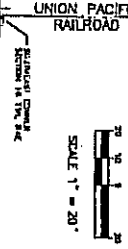
TRACT NO. 8
BOOK 20, PAGE 35



BOOK 23B PAGE 8
 NOTICE RECEIVED BY
 COUNTY CLERK
 JUNE 10, 2005
 2005-0389-001

DSO40057 SBD-2004.08 REC04041

Clause Engineering, Inc.
 ENGINEERS & SURVEYORS
 1101 S. 10th Street, Suite 200
 Oklahoma City, Oklahoma 73106
 Phone: (405) 241-8888
 Fax: (405) 241-8889



DSO40057 SBD-2004.08 REC04041

TRACT NO.	OWNER NAME	LEGAL DESCRIPTION
TRACT A	CLAUDE ENGINEERING, INC.	SECTION 16, T34N, R10E, S4E, 1/4 AC. LOTS 1-18, 20, 21, 22, 23, 24, 25, 26, 27, 28, 29, 30, 31, 32, 33, 34, 35, 36, 37, 38, 39, 40, 41, 42, 43, 44, 45, 46, 47, 48.
TRACT B	CLAUDE ENGINEERING, INC.	SECTION 16, T34N, R10E, S4E, 1/4 AC. LOTS 1-18, 20, 21, 22, 23, 24, 25, 26, 27, 28, 29, 30, 31, 32, 33, 34, 35, 36, 37, 38, 39, 40, 41, 42, 43, 44, 45, 46, 47, 48.
TRACT C	CLAUDE ENGINEERING, INC.	SECTION 16, T34N, R10E, S4E, 1/4 AC. LOTS 1-18, 20, 21, 22, 23, 24, 25, 26, 27, 28, 29, 30, 31, 32, 33, 34, 35, 36, 37, 38, 39, 40, 41, 42, 43, 44, 45, 46, 47, 48.
TRACT D	CLAUDE ENGINEERING, INC.	SECTION 16, T34N, R10E, S4E, 1/4 AC. LOTS 1-18, 20, 21, 22, 23, 24, 25, 26, 27, 28, 29, 30, 31, 32, 33, 34, 35, 36, 37, 38, 39, 40, 41, 42, 43, 44, 45, 46, 47, 48.
TRACT E	CLAUDE ENGINEERING, INC.	SECTION 16, T34N, R10E, S4E, 1/4 AC. LOTS 1-18, 20, 21, 22, 23, 24, 25, 26, 27, 28, 29, 30, 31, 32, 33, 34, 35, 36, 37, 38, 39, 40, 41, 42, 43, 44, 45, 46, 47, 48.

TRACT NO.	OWNER NAME	LEGAL DESCRIPTION
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TRACT C	CLAUDE ENGINEERING, INC.	SECTION 16, T34N, R10E, S4E, 1/4 AC. LOTS 1-18, 20, 21, 22, 23, 24, 25, 26, 27, 28, 29, 30, 31, 32, 33, 34, 35, 36, 37, 38, 39, 40, 41, 42, 43, 44, 45, 46, 47, 48.
TRACT D	CLAUDE ENGINEERING, INC.	SECTION 16, T34N, R10E, S4E, 1/4 AC. LOTS 1-18, 20, 21, 22, 23, 24, 25, 26, 27, 28, 29, 30, 31, 32, 33, 34, 35, 36, 37, 38, 39, 40, 41, 42, 43, 44, 45, 46, 47, 48.
TRACT E	CLAUDE ENGINEERING, INC.	SECTION 16, T34N, R10E, S4E, 1/4 AC. LOTS 1-18, 20, 21, 22, 23, 24, 25, 26, 27, 28, 29, 30, 31, 32, 33, 34, 35, 36, 37, 38, 39, 40, 41, 42, 43, 44, 45, 46, 47, 48.

MILLSTONE

UNION PACIFIC RAILROAD

EXHIBIT "C"

Lots and Votes

Lots

There are 48 Lots, numbered 1-48

Votes

1 each

EXHIBIT "C"

EXHIBIT "C"

Lots and Votes

Lots

There are 48 Lots, numbered 1-48

Votes

1 each

EXHIBIT "C"