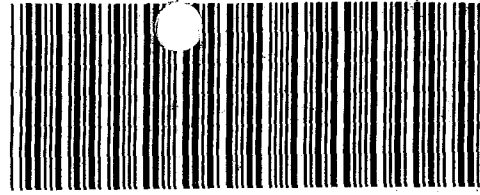


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**DECLARATION OF COVENANTS, CONDITIONS
AND RESTRICTIONS
FOR
QUEEN CREEK RANCHETTES III**

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

FOR

QUEEN CREEK RANCHETTES III

This Declaration of Covenants, Conditions, and Restrictions for Queen Creek Ranchettes III (the "Declaration") is made this ___ day of January, 1998, by Queen Creek Partners Limited Partnership, an Arizona limited partnership (the "Declarant").

ARTICLE 1

DEFINITIONS

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

1.1 "Additional Property" means the real property described on Exhibit B attached hereto, together with all Improvements situated thereon, and any other real property, together with the Improvements located thereon, situated within the vicinity of the Project.

1.2 "Annual Assessment" means the assessments levied against each Lot, and the Owner thereof, pursuant to Section 6.2 of this Declaration.

1.3 "Architectural Committee" means the committee of the Association to be created pursuant to Section 5.10 of this Declaration.

1.4 "Architectural Committee Rules" means the rules and guidelines adopted by the Architectural Committee pursuant to Section 5.10 of this Declaration, as amended or supplemented from time to time.

1.5 "Areas of Association Responsibility" means (i) all Common Area including any parts of the Additional Property designated as Common Area in a Declaration of Annexation recorded by the Declarant pursuant to Section 2.2 of this Declaration; (ii) the portions of Lots 1, 17, 18 and 59 subjected to a Private Landscape, Fence and Sign Easement as shown on the Plat; (iii) the landscaping situated on that portion of Tract A which is within fifteen feet (15') of the south boundary of Lots 20 and 21; (iv) the landscaping within the public rights-of-way for Sossaman Road and 196th Street that the Association is required to maintain under the stipulations imposed by the Town of Queen Creek in connection with the final approval of the Plat; and (v) all land, and the Improvements situated thereon, located within the boundaries of a Lot which the Association is obligated to maintain, repair and replace pursuant to the terms of this Declaration, a

Declaration of Annexation recorded by the Declarant pursuant to Section 2.2 of this Declaration or the terms of any Recorded document executed by the Association.

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

1.7 "**Assessment**" means an Annual Assessment, Special Assessment or Equestrian Assessment.

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

1.9 "**Assessment Period**" means the period set forth in Section 6.7 of this Declaration.

1.10 "**Association**" means Queen Creek Ranchettes III Homeowners Association, an Arizona nonprofit corporation, and its successors and assigns.

1.11 "**Association Rules**" means the rules adopted by the Board pursuant to Section 5.3 of this Declaration, as amended from time to time.

1.12 "**Board**" means the Board of Directors of the Association.

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

1.14 "**Common Area**" means (i) Tract B, Queen Creek Ranchettes III, according to the plat recorded at Recording No. 98-~~53261~~ and in Book ~~460~~, page ~~3~~, records of Maricopa County, Arizona; and (ii) all land, together with all Improvements situated thereon which the Association at any time owns in fee or in which the Association has a leasehold interest for as long as the Association is the owner of the fee or leasehold interest.

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

1.16 "**Declarant**" means Queen Creek Partners Limited Partnership, an Arizona limited partnership, and any Person to whom it may expressly assign any or all of its rights under this Declaration by an instrument recorded with the County Recorder of Maricopa County, Arizona.

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

1.18 "**Equestrian Assessment**" means the assessment levied against each Equestrian Lot pursuant to Section 6.3 of this Declaration.

1.19 "**Equestrian Easement**" means the private equestrian easement created pursuant to Section 4.6 of this Declaration and as shown on the Plat.

1.20 "**Equestrian Lots**" means Lots 20 through 27, inclusive, and 32, and Lots 48, 49, 52, 53, 56, 57 and 58, to the extent such Lots are annexed and subjected to this Declaration pursuant to Section 2.2 of this Declaration.

1.21 "**First Mortgage**" means any mortgage or deed of trust on a Lot which has priority over all other mortgages and deeds of trust on the same Lot.

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

1.23 "**Front Yard**" means for each Lot the area of the Lot located between (i) the nearest edge of the pavement on the street adjacent to the Lot for which the building set-back line is forty feet (40'), and (ii) a line contiguous with the front or side of the Residential Unit facing such adjacent street as extended from the front corners of the Residential Unit to intersect perpendicularly with the side property boundary lines of the Lot.

1.24 "**Improvement**" means any building, fence, wall or other structure or any swimming pool, road, driveway, parking area or any trees, plants, shrubs, grass or other landscaping improvements of every type and kind.

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

1.26 "**Lot**" means a portion of the Project intended for independent ownership and use and designated as a lot on the Plat and, where the context indicates or requires, shall include any Residential Unit, building, structure or other Improvements situated on the Lot.

1.27 "**Maintenance Standard**" means the standard of maintenance of Improvements established from time to time by the Board or, in the absence of any standard established by the Board, the standard of maintenance of Improvements generally prevailing throughout the Project.

1.28 "**Member**" means any Person who is a Member of the Association.

1.29 "**Non-Equestrian Lots**" mean all Lots which are not Equestrian Lots.

1.30 "**Owner**" means the record owner, whether one or more Persons, of beneficial or equitable title (and legal title if the same has merged with the beneficial or equitable title) to the fee simple interest of a Lot. Owner shall not include Persons having an interest in a Lot merely as security for the performance of an obligation or a Lessee. Owner shall include a purchaser under a contract for the conveyance of real property subject to the provisions of A.R.S. § 33-741 et. seq. Owner shall not include a purchaser under a purchase contract and receipt, escrow instructions or similar executory contracts which are intended to control the rights and obligations of the parties to the executory contracts pending the closing of a sale or purchase transaction. In the case of Lots the fee simple title to which is vested in a trustee pursuant to Arizona Revised Statutes, Section 33-801, et seq., the Trustor shall be deemed to be the Owner. In the case of the Lots the fee simple title to which is vested in a trustee pursuant to a subdivision trust agreement or similar agreement, the beneficiary of any such trust who is entitled to possession of the trust property shall be deemed to be the Owner.

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

1.32 "**Plat**" means the plat of Queen Creek Ranchettes III recorded at Recording No. 98-~~53261~~ and in Book ~~460~~, page 3, records of Maricopa County, Arizona, and all amendments, supplements and corrections thereto and any subdivision plat recorded against any Additional Property annexed pursuant to Section 2.2 of this Declaration and all amendments, supplements and corrections thereto.

1.33 "**Property**" or "**Project**" means the real property described on Exhibit A attached to this Declaration together with all Improvements located thereon, and all real property, together with all Improvements located thereon, which is annexed and subjected to this Declaration by the Declarant pursuant to Section 2.2 of this Declaration.

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

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

1.36 "**Rear Yard**" means, with respect to each Lot, the area of the Lot located between (i) a line contiguous with the rear of the Residential Unit constructed on the Lot and extending from the rear corners of the Residential Unit to intersect perpendicularly with the side property boundary lines of the Lot, and (ii) the property boundary or boundary lines of the Lot furthest from the street adjacent to the Front Yard of the Lot.

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

1.38 "**Resident**" means each individual occupying or residing in any Residential Unit.

1.39 "**Residential Unit**" means any building, or portion of a building, situated upon a Lot and designed and intended for independent ownership and for use and occupancy as a residence.

1.40 "**Side Yard**" means and refers to the areas between the Front Yard and the Rear Yard on each side of the Residential Unit on a Lot.

1.41 "**Single Family**" means a group of one or more persons each related to the other by blood, marriage or legal adoption, or a group of not more than three (3) persons not all so related, who maintain a common household in a Residential Unit.

1.42 "**Special Assessment**" means any assessment levied and assessed pursuant to Section 6.6 of this Declaration.

1.43 "**Visible From Neighboring Property**" means, with respect to any given object, that such object is or would be visible to a natural person six feet tall, standing at ground level on any part of any Lot or Common Area adjoining the Lot on which the object is situated.

ARTICLE 2

PLAN OF DEVELOPMENT

2.1 **Property Initially Subject to the Declaration.** This Declaration is being recorded to establish a general plan for the development, sale, lease and use of the Project in order to protect and enhance the value and desirability of the Project. The Declarant declares that all of the property within the Project shall be held, sold and conveyed subject to this Declaration. By acceptance of a deed or by acquiring any interest in any of the property subject to this Declaration, each person or entity, for himself or itself, his heirs, personal representatives, successors, transferees and assigns, binds himself, his heirs, personal representatives, successors, transferees and assigns, to all of the provisions, restrictions, covenants, conditions, rules, and regulations now or hereafter imposed by this Declaration and any amendments thereof. In addition, each such person by so doing thereby acknowledges that this Declaration sets forth a general scheme for the development, sale, lease and use of the Property and hereby evidences his interest that all the restrictions, conditions, covenants, rules and regulations contained in this Declaration shall run with the land and be binding

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

2.2 Annexation of Additional Property.

2.2.1 At any time on or before the date which is seven (7) years after the date of the Recording of this Declaration, the Declarant shall have the right to annex and subject to this Declaration all or any portion of the Additional Property without the consent of any other Owner or Person. The annexation of all or any portion of the Additional Property shall be effected by the Declarant Recording a Declaration of Annexation setting forth the legal description of the Additional Property being annexed, stating that such portion of the Additional Property is annexed and subjected to the Declaration and describing any portion of the Additional Property being annexed which will be Common Area or any other area which will be maintained, repaired and replaced by the Association. Unless a later effective date is set forth in the Declaration of Annexation annexing Additional Property, the annexation shall become effective upon the Recording of the Declaration of Annexation. A Declaration of Annexation recorded pursuant to this Section may divide the portion of the Additional Property being annexed into separate phases and provide for a separate effective date with respect to each phase. The voting rights of the Owners of Lots annexed pursuant to this Section shall be effective as of the date the Declaration of Annexation annexing such property is Recorded. The Lot Owner's obligation to pay Assessments shall commence as provided in Section 6.7 of this Declaration. If an Amendment annexing a portion of the Additional Property divides the annexed portion of the Additional Property into phases, the Declarant shall have the right to amend any such Declaration of Annexation to change the description of the phases within the annexed property, except that the Declarant may not change any phase in which a Lot has been conveyed to a Purchaser.

2.2.2 Declarant makes no assurances as to the exact number of Lots which shall be added to the Project by annexation or if all or any portion of the Additional Property will be annexed.

2.2.3 The Additional Property may be annexed as a whole, at one time or in one or more portions at different times, or it may never be annexed, and there are no limitations upon the order of annexation or the boundaries thereof. The property annexed by the Declarant pursuant to this Section 2.2 need not be contiguous with other property in the Project, and the exercise of the right of annexation as to any portion of the Additional Property shall not bar the further exercise of the right of annexation as to any other portion of the Additional Property.

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

ARTICLE 3

USE RESTRICTIONS

3.1 Architectural Control.

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

3.1.2 No Improvement which would be Visible From Neighboring Property shall be constructed or installed on any Lot 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, from their appearance on the date this Declaration is Recorded 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 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 3.1.5 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.

3.1.3 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 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.

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

3.1.5 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, which fee shall be payable at the time the application for approval is submitted to the Architectural Committee.

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

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

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

3.1.9 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.

3.1.10 The approval by the Architectural Committee of any construction, installation, addition, alteration, repair, change or other work requiring the approval of the Architectural Committee shall not be deemed to constitute a waiver of any right to withhold approval of any similar construction, installation, addition, alteration, repair, change or other work subsequently submitted for approval.

3.2 Temporary Occupancy and Temporary Buildings. No trailer, basement of any incomplete building, tent, shack, garage or barn, and no temporary buildings or structures of any kind, shall be used at any time for a residence, either temporary or permanent. Temporary buildings, trailers or other structures used during the construction of Improvements

approved by the Architectural Committee shall be removed immediately after the completion of construction, and in no event shall any such buildings, trailer or other structures be maintained or kept on any property for a period in excess of twelve months without the prior written approval of the Architectural Committee.

3.3 Nuisances; Construction Activities. No rubbish or debris of any kind shall be placed or permitted to accumulate upon or adjacent to any Lot or other property, and no odors or loud noises shall be permitted to arise or emit therefrom, so as to render any such property or any portion thereof, or activity thereon, unsanitary, unsightly, offensive or detrimental to any other property in the vicinity thereof or to the occupants of such other property. No other nuisance shall be permitted to exist or operate upon any Lot or other property so as to be offensive or detrimental to any other property in the vicinity thereof or to its occupants. Normal construction activities and parking in connection with the building of Improvements on a Lot or other property shall not be considered a nuisance or otherwise prohibited by this Declaration, but Lots and other property shall be kept in a neat and tidy condition during construction periods, trash and debris shall not be permitted to accumulate, and supplies of brick, block, lumber and other building materials will be piled only in such areas as may be approved in writing by the Architectural Committee. During the construction of a Residential Unit on a Lot, at least one forty cubic yard trash container must be kept on the Lot and all trash and debris must be placed in such containers. In addition, any construction equipment and building materials stored or kept on any Lot or other property during the construction of Improvements may be kept only in areas approved in writing by the Architectural Committee, which may also require screening of the storage areas. The Architectural Committee in its sole discretion shall have the right to determine the existence of any such nuisance. The provisions of this Section shall not apply to construction activities of the Declarant.

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

3.5 Antennas. No antenna or other device for the transmission or reception of television or radio signals or any other form of electromagnetic radiation including, without limitation, satellite or microwave dishes, shall be erected, used, or maintained on any Lot without the prior written approval of the Architectural Committee.

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

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

garbage shall be removed from Lots and other property and shall not be allowed to accumulate thereon. No outdoor incinerators shall be kept or maintained on any Lot or other property.

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

3.9 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 any Lot or other property unless the same shall be contained in conduits or cables installed and maintained underground or concealed in, under or on buildings or other structures approved by the Architectural Committee. No provision of this Declaration shall be deemed to forbid the erection of temporary power or telephone structures incident to the construction of buildings or structures approved by the Architectural Committee.

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

3.11 Residential Use. All Residential Units shall be used, improved and devoted exclusively to residential use by a Single Family. No trade or business may be conducted on any Lot or in or from any Residential Unit, except that an Owner or other Resident of a Residential Unit may conduct a business activity within a Residential Unit so long as: (i) the existence or operation of the business activity is not apparent or detectable by sight, sound or smell from outside the Residential Unit; (ii) the business activity conforms to all applicable zoning ordinances or requirements for the Project; (iii) the business activity does not involve persons coming on to the Lot or the door-to-door solicitation of Owners or other Residents in the Project; and (iv) the business activity is consistent with the residential character of the Project and does not constitute a nuisance or a hazardous or offensive use or threaten security or safety of other Residents in the Project, as may be determined from time to time in the sole discretion of the Board. The terms "business" and "trade" as used in this Section shall 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 Residential Unit by the Owner thereof shall not be considered a trade or business within the meaning of this Section.

3.12 Animals. Horses may be kept on the Equestrian Lots provided they are not used, kept, bred or raised for commercial purposes. No horses may be kept on the Non-equestrian Lots. Horses on Equestrian Lots shall be cared for, and the physical facilities used in connection therewith shall be maintained, in a clean, neat, orderly fashion in accordance with

prevailing customs and methods, so that the horses and the facility shall at all times comply with all applicable laws, ordinances, health codes and governmental rules and regulations and with this Declaration, and shall not be a nuisance to other Owners or Residents. Except as expressly permitted by the foregoing provisions of this Section, no animal, bird, fowl, poultry, reptile or livestock may be kept on any Lot, except for dogs, cats, parakeets or similar household birds may be kept on a Lot if they are kept, bred or raised thereon solely as domestic pets and not for commercial purposes. All dogs, cats or other pets permitted under this Section shall be confined to an Owner's Lot, except that a dog may be permitted to leave an Owner's Lot if such dog is at all times kept on a leash not to exceed six feet (6') in length and is not permitted to enter upon any other Lot. No animal, bird, fowl, poultry or livestock shall be allowed to make an unreasonable amount of noise or to become a nuisance. No structure for the care, housing or confinement of any animal, bird, fowl, poultry, or livestock shall be maintained so as to be Visible From Neighboring Property. Upon the written request of any Owner, Lessee or Resident, the Architectural Committee shall conclusively determine, in its sole and absolute discretion, whether, for the purposes of this Section, a particular animal, bird, fowl, poultry, or livestock is a nuisance or making an unreasonable amount of noise. Any decision rendered by the Architectural Committee shall be enforceable in the same manner as other restrictions set forth in this Declaration.

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

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

3.14.1 Signs required by legal proceedings.

3.14.2 Residence identification signs provided the size, color, content and location of such signs have been approved in writing by the Architectural Committee.

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

3.15 Restriction on Further Subdivision, Property Restrictions and Rezoning. No Lot shall be further subdivided or separated into smaller lots or parcels by any Owner other than the Declarant, and no portion less than all of any such Lot shall be conveyed or transferred by any Owner other than the Declarant, without the prior written approval of the Architectural Committee. No further covenants, conditions, restrictions or easements shall be recorded by any Owner, Lessee, or other Person other than the Declarant against any Lot without the provisions

thereof having been first approved in writing by the Architectural Committee. No application for rezoning, variances or use permits pertaining to any Lot shall be filed with any governmental authority by any Person other than the Declarant unless the application has been approved by the Architectural Committee and the proposed use otherwise complies with this Declaration.

3.16 Trucks, Trailers, Campers and Boats. No truck, mobile home, travel trailer, tent trailer, trailer, camper shell, detached camper, recreational vehicle, boat, boat trailer, or other similar equipment or vehicle may be parked, maintained, constructed, reconstructed or repaired on any Lot or Common Area or on any street so as to be Visible From Neighboring Property without the prior written approval of the Architectural Committee, except for: (i) the parking of passenger automobiles and vehicles not exceeding seven feet (7') in height and not exceeding eighteen feet (18') in length which may be parked on the streets adjoining the Lots; (ii) temporary construction trailers or facilities maintained during, and used exclusively in connection with, the construction of any Improvement approved by the Architectural Committee; (iii) boats and motor vehicles parked in garages on Lots so long as such boats or motor vehicles are in good operating condition and appearance and are not under repair; or (iv) motor vehicles not exceeding seven (7) feet in height and eighteen (18) feet in length which are not used for commercial purposes and which do not display any commercial name, phone number or message of any kind which are parked in driveways situated on the Lots.

3.17 Motor Vehicles.

3.17.1 Except for emergency vehicle repairs, no automobile or other motor vehicle shall be constructed, reconstructed or repaired upon a Lot or other property in the Project, and no inoperable vehicle may be stored or parked on any such Lot or other property so as to be Visible From Neighboring Property or to be visible from any Common Area or any street.

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

3.18 Towing of Vehicles. The Board shall have the right to have any truck, mobile home, travel trailer, tent trailer, trailer, camper shell, detached camper, recreational vehicle, boat, boat trailer or similar equipment or vehicle or any automobile, motorcycle, motorbike, or other motor vehicle which is parked, kept, maintained, constructed, reconstructed or repaired in violation of the Project Documents towed away at the sole cost and expense of the owner of the vehicle or equipment. Any expense incurred by the Association in connection with the towing of any vehicle or equipment shall be paid to the Association upon demand by the owner of the vehicle or equipment. If the vehicle or equipment is owned by an Owner, any amounts payable to the Association shall be secured by the Assessment Lien, and the Association may enforce collection of suit amounts in the same manner provided for in their Declaration for the collection of Assessment.

3.19 **Variances.** The Architectural Committee may, at its option and in extenuating circumstances, grant variances from the restrictions set forth in this Article 3 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 of circumstances since the recordation 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.

3.20 **Drainage.** No Residential Unit, structure, building, landscaping, fence, wall or other Improvement shall be constructed, installed, placed or maintained in any manner that would obstruct, interfere with or change the direction or flow of water in accordance with the drainage plans for the Project, or any part thereof, or for any Lot as shown on the drainage plans on file with the county or municipality in which the Project is located.

3.21 **Garages and Driveways.** Garages shall be used only for the parking of vehicles and shall not be used or converted for living or recreational activities without the prior written approval of the Architectural Committee.

3.22 **Rooftop Air Conditioners Prohibited.** No air conditioning units or appurtenant equipment may be mounted, installed or maintained on the roof of any Residential Unit or other building so as to be Visible From Neighboring Property. All air conditioners or other mechanical equipment must be screened so as to not be Visible From Neighboring Property.

3.23 **Basketball Goals and Backboards.** No basketball goal or backboard shall be attached to a Residential Unit or other building. Basketball goals and backboards attached to a free-standing pole may be installed on a Lot provided the location of the basketball goal and backboard is approved in writing by the Architectural Committee.

3.24 **Light Post.** Each Owner shall install at least one (1) approved ornamental light post in the Front Yard of the Owner's Lot. The location, design and construction of the light post shall be as directed by the Architectural Committee. Each light post shall be equipped and maintained with an automatic electronic sensor or timer for turning the light on and off. Each Owner shall keep the Owner's light post in good repair and working condition at all times.

3.25 **Minimum Livable Area.** Each Residential Unit constructed on a Lot shall contain a minimum livable area of 2,600 square feet on grade level, with or without a basement, exclusive of open porches, covered entries and attached garages. A split level Residential Unit containing a grade level, sub-grade level and above grade level shall contain a minimum livable area of 2,600 square feet on the grade level and sub-grade level combined, exclusive of open porches, covered entries and attached garages.

3.26 **Septic Tanks and Sewers.** Each Owner shall as part of the construction of the Residential Unit on such Owner's Lot install a septic tank, which septic tank must be located in the Front Yard.

3.27 **Fences/Walls.** All fences/walls on each Lot shall comply with and conform to the following standards:

3.27.1 **Non-Equestrian Lots.** The Rear and Side Yards of all Non-Equestrian Lots shall be enclosed with a six foot (6') masonry block wall. Lots 29, 30, 33, 34, 37, 39, 40, 43, 44, 47, 50, 51, 54, 55 and 59 that have Side Yards which are across a street and otherwise face another Lot's Front Yard shall have architecturally treated fencing to match the Residential Unit on the Lot.

3.27.2 **Equestrian Lots.** The Rear and Side Yards of all Equestrian Lots shall be enclosed in the same manner and comply with the same standards as Non-Equestrian Lots except that a six foot (6') masonry block wall may be constructed only up to twenty feet (20') from the Rear Yard property line. Fencing between the twenty foot (20') setback line and the Equestrian Easement (or in the case of Lots 20 and 21, the northerly property line of Tract A) may be constructed as fifty percent (50%) open, such as three feet (3') solid and three feet (3') non-view obscuring, with a rail along the top of the wall for safety purposes. For those Equestrian Lots that have an Equestrian Easement on or adjacent to a Side Yard property line, solid wall fencing may be constructed four feet (4') in height. Because Lots 58 and 59 have Rear Yards that are adjacent to 196th Street, solid wall fencing four feet (4') in height may be constructed at the Rear Yard property line of these Lots. The height of all such fencing shall be measured from the approved yard grade set by the Town of Queen Creek. If the Owner of an Equestrian Lot elects to install a gate in such fence or wall, then the gate must open toward the Residential Unit on the Equestrian Lot and away from the Equestrian Easement.

3.27.3 **Front Yards.** No fence or wall in a Front Yard shall exceed three feet (3') in height (and no more than two feet (2') in height within (i) the Private Landscape Fence and Sign Easements shown on Lots 1, 17, 18 and 59, as shown on the Plat, and (ii) the Visibility Easement at all intersections as shown on the Plat). Front Yard fences or walls shall only be constructed of masonry brick or block (stuccoed and painted) or with vertical wrought iron in combination therewith.

3.27.4 **General Provisions.** For each Lot, the wall or fence required or permitted hereunder shall be installed by the Owner in connection with the original construction of Improvements on the Lot and shall be completed prior to occupancy of the Residential Unit on the Lot. The location, design, detail and type of materials for all fences and walls must be approved in advance by the Architectural Committee. No wood fences shall be constructed or installed on any Lot. All corner fences or walls must be a minimum of three feet (3') from any sidewalk.

3.28 **Driveways.** All driveways shall be constructed of concrete or asphalt, and in particular, but without limiting the specificity of the foregoing requirement, no granite or gravel surfaced driveways shall be permitted.

3.29 **Tanks.** No elevated tanks of any kind shall be erected, placed or permitted on any Lot, and any tank, including fuel storage tanks, must be buried or attractively screened so as not to be Visible From Neighboring Property using screening material of the same quality and type as the residence on the Lot or such other material as the Architectural Committee may approve.

3.30 **Construction Requirements.** All structures erected on a Lot must be of new construction, and no buildings or other structures may be moved to a Lot from another location. Wood siding shall not be permitted on any Residential Unit except as may be approved by the Architectural Committee as design work or such shiplap siding as may be approved by the Architectural Committee to preserve the architectural integrity of the Improvement. Otherwise, the walls of all Residential Units shall be brick or frame and stucco construction. No gray metal framed windows shall be constructed or installed in any Residential Unit. Second story elevations of Residential Units constructed on Lots adjacent to Sossaman Road or 196th Street must contain "pop outs" or other similar architectural features as approved by the Architectural Committee. Each Residential Unit shall include a variety of exterior trim and base colors as approved by the Architectural Committee. All garages shall have metal roll up sectional doors or their equivalent as approved by the Architectural Committee.

3.31 **Roofs.** All roofs must be of either tile or wood shake construction having a Dutch gable, gable or hip, except that a flat roof may be permitted with the approval of the Architectural Committee provided that the flat roof is designed with a parapet. No "3-12" or similarly pitched roofs shall be permitted. Any variation in roofing materials from tile or wood shake must be approved by the Architectural Committee, but no asphalt shingles shall be approved by the Architectural Committee.

3.32 **Garages.** Each Residential Unit shall be constructed with at least one (1) enclosed two (2) car garage. No carports shall be allowed.

3.33 **Tennis Courts.** The location, setbacks, design, fencing, lighting and type of materials for any tennis court, handball court or similar recreational improvement must be approved in advance of construction by the Architectural Committee. The lighting for such facilities must comply with applicable county, city or other governmental rules, regulations and ordinances, but notwithstanding any more lenient governmental rules, regulations and ordinances, lights shall be turned off and utilization of such facilities terminated no later than 10:30 p.m. each day.

3.34 **Landscaping.** All required landscaping as approved by the Architectural Committee shall be completed within sixty (60) days of the first date on which the Residential Unit on the Lot could be legally occupied and used as a residence under the ordinances of the Town of

Queen Creek and thereafter maintained in the condition as approved. The required landscaping for the Lot shall include as a minimum five (5) twenty-four inch (24") box trees, two (2) thirty-six inch (36") box trees and twenty (20) five gallon shrubs with the yard areas to be leveled and seeded with grass or covered with plastic and gravel. Two of the twenty-four inch box trees must be installed in the front ten feet (10') of the Front Yard of the Lot. The Plat restricts landscaping and other structures to a maximum height of two (2) feet within (i) the Private Landscape, Fence and Sign Easement on Lots 1, 17, 18 and 59 as shown on the Plat, and (ii) the Visibility Easement at all intersections as shown on the Plat.

3.35 Setback Requirements. The Residential Unit and all accessory improvements (including parking areas, but excluding fences, walls, driveways, sidewalks, light posts and landscaping) on a Lot shall be constructed within the building setback lines shown on the Plat for the Lot. In the event the then applicable county, city or other zoning ordinance specifies a setback requirement different from that shown on the Plat for the Lot, the setback requirement specifying the greater setback shall apply.

ARTICLE 4

EASEMENTS

4.1 Owners' Easements of Enjoyment.

4.1.1 Subject to the rights and easements granted to the Declarant in Section 4.3 and 4.4 of this Declaration, every Member, and any person residing with such Member, shall have a right and easement of enjoyment in and to the Common Area which right shall be appurtenant to and shall pass with the title to every Lot, subject to the following provisions:

(i) The right of the Association to regulate the use of the Common Area through the Association Rules.

(ii) The easement created by the Plat for public equestrian use and irrigation purposes.

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

4.2 Utility Easement. There is hereby created an easement upon, across, over and under the Common Area and the Lots for reasonable ingress, egress, installation, replacing, repairing or maintaining of all utilities, including, but not limited to, gas, water, sewer, telephone, cable television and electricity, but no utility or service lines of any nature or kind shall be placed,

allowed or maintained upon or above the ground on any Lot, except to the extent, if any, underground placement thereof may be prohibited by law or would prevent the line from being functional. The foregoing shall not prohibit service pedestals and above ground switch cabinets and transformers where required for the proper operation and servicing of the lines.

4.3 Declarant's Use for Sales and Leasing Purposes. Declarant shall have the right and an easement to maintain sales or leasing offices, management offices and models throughout the Project and to maintain one or more advertising, identification or directional signs on the Common Area or on the Lots owned by Declarant while the Declarant is selling Lots. Declarant reserves the right to place models, management offices and sales and leasing offices on any Lots owned by Declarant and on any portion of the Common Area in such number, of such size and in such locations as Declarant deems appropriate. In the event of any conflict or inconsistency between this Section and any other provision of this Declaration, this Section shall control.

4.4 Declarant's Easements. Declarant shall have the right and an easement on and over the Areas of Association Responsibility to construct all Improvements the Declarant may deem necessary and to use the Areas of Association Responsibility and any Lots and other property owned by Declarant for construction or renovation related purposes including the storage of tools, machinery, equipment, building materials, appliances, supplies and fixtures, and the performance of work respecting the Project. The Declarant shall have the right and an easement upon, over, and through the Areas of Association Responsibility as may be reasonably necessary for the purpose of discharging its obligations or exercising the rights granted to or reserved by the Declarant by this Declaration. In the event of any conflict or inconsistency between this Section and any other provision of this Declaration, this Section shall control.

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

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

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

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

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

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

4.6 **Equestrian Easement.** Declarant hereby grants, establishes and reserves for and on behalf of Declarant and all persons having or acquiring any right, title or interest in an Equestrian Lot a private, non-exclusive, non-vehicular easement for ingress and egress on, over, across and through that portion of the Property shown on the Plat as a private Equestrian Easement for the purpose of providing horseback access to the Equestrian Lots.

4.7 **Fence Easements.** Declarant hereby grants, establishes and reserves for and on behalf of Declarant and the Association private, exclusive fence easements over those portions of Lots 15 through 21 and Lots 1, 58 and 59 as shown on the Plat for the purposes of constructing and installing boundary fences or walls.

4.8 **Entryway Easement.** Declarant hereby grants, establishes and reserves for and on behalf of Declarant and the Association a private, exclusive easement over those portions of Lots 1, 17, 18 and 59 that are subject to a Private Landscape, Fence and Sign Easement as shown on the Plat for the construction, installation, repair, maintenance and replacement of landscaping, fences, walls and signs (including lighting) and other Improvements that may be constructed thereon by the Declarant or the Association.

4.9 **Irrigation Easements.** Declarant hereby grants, establishes and reserves for and on behalf of Declarant, the Association and their successors and assigns, private, non-exclusive irrigation easements as shown on the Plat for the purpose of installing, maintaining and replacing irrigation pipes, valves and related equipment and structures.

4.10 **Vehicular Non-Access Easements.** Declarant hereby establishes vehicular non-access easements as shown on the Plat for the purpose of prohibiting vehicular access on or over the easements.

ARTICLE 5

THE ASSOCIATION; ORGANIZATION; MEMBERSHIP AND VOTING RIGHTS

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

5.2 **Board of Directors and Officers.** The affairs of the Association shall be conducted by the Board and such officers as the Board may elect or appoint in accordance with

the Articles and the Bylaws. Unless the Project Documents specifically require the vote or written consent of the Members, approvals or actions to be given or taken by the Association shall be valid if given or taken by the Board. The Board shall have the power to levy reasonable fines against an Owner for a violation of the Project Documents by the Owner, a Lessee of the Owner or by any Resident of the Owner's Lot.

5.3 The Association Rules. The Board may, from time to time, and subject to the provisions of this Declaration, adopt, amend and repeal rules and regulations pertaining to: (i) the management, operation and use of the Areas of Association Responsibility including, but not limited to, any recreational facilities situated upon the Areas of Association Responsibility; (ii) minimum standards for any maintenance of Lots; (iii) the health, safety or welfare of the Owners and Residents; or (iv) restrictions on the use of the Lots. In the event of any conflict or inconsistency between the provisions of this Declaration and the Association Rules, the provisions of this Declaration shall prevail. The Association Rules shall be enforceable in the same manner and to the same extent as the covenants, conditions and restrictions set forth in this Declaration.

5.4 Personal Liability. No member of the Board or of any committee of the Association, no officer of the Association, and no manager or other employee of the Association shall be personally liable to any Member, or to any other person or entity, including the Association, for any damage, loss or prejudice suffered or claimed on account of any act, omission, error, or negligence of the Association, the Board, the manager, any representative or employee of the Association, or any committee, committee member or officer of the Association; provided, however, the limitations set forth in this Section shall not apply to any person who has failed to act in good faith or has engaged in wilful or intentional misconduct.

5.5 Implied Rights. The Association may exercise any right or privilege given to the Association expressly by the Project Documents and every other right or privilege reasonably to be implied from the existence of any right or privilege given to the Association by the Project Documents or reasonably necessary to effectuate any such right or privilege.

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

5.7 Classes of Members and Voting Rights. The Association shall have the following two classes of voting membership:

(i) **Class A.** Class A members are all Owners, with the exception of the Declarant until the termination of the Class B membership, of Lots. Each Class A member shall be entitled to one (1) vote for each Lot owned. Upon the termination of the Class B membership, the Declarant shall be a Class A member so long as the Declarant owns any Lot.

(ii) **Class B.** The Class B member shall be the Declarant. The Class B member shall be entitled to three (3) votes for each Lot owned. The Class B membership shall cease and be converted to Class A membership on the earlier of (i) the date on which the votes entitled to be cast by the Class A members equals or exceeds the votes entitled to be cast by the Class B member; (ii) the date which is seven (7) years after the recording of this Declaration; or (iii) when the Declarant notifies the Association in writing that it relinquishes its Class B membership.

5.8 Voting Procedures. No change in the ownership of a Lot shall be effective for voting purposes unless and until the Board is given actual written notice of such change and is provided satisfactory proof thereof. The vote for each such Lot must be cast as a unit, and fractional votes shall not be allowed. In the event that a Lot is owned by more than one person or entity and such Owners are unable to agree among themselves as to how their vote or votes shall be cast, they shall lose their right to vote on the matter in question. If any Member casts a vote representing a certain Lot, it will thereafter be conclusively presumed for all purposes that he was acting with the authority and consent of all other Owners of the same Lot unless objection thereto is made at the time the vote is cast. In the event more than one vote is cast by a Class A Member for a particular Lot, none of the votes shall be counted and all of the votes shall be deemed void.

5.9 Transfer of Membership. The rights and obligations of any Member other than the Declarant shall not be assigned, transferred, pledged, conveyed or alienated in any way except upon transfer of ownership of an Owner's Lot, and then only to the transferee of ownership to the Lot. A transfer of ownership to a Lot may be effected by deed, intestate succession, testamentary disposition, foreclosure of a mortgage of record, or such other legal process as now in effect or as may hereafter be established under or pursuant to the laws of the State of Arizona. Any attempt to make a prohibited transfer shall be void. Any transfer of ownership to a Lot shall operate to transfer the Membership appurtenant to said Lot to the new Owner thereof. Each Purchaser of a Lot shall notify the Association of his purchase within ten (10) days after he becomes the Owner of a Lot.

5.10 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 be a Committee of the Board. 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, 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, 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, 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 promulgate architectural guidelines, standards and procedures to be used in rendering its decisions. Such guidelines, standards and procedures may include, without limitation, provisions regarding: (i) architectural design, with particular regard to the harmony of the

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

5.11 Suspension of Voting Rights. If any Owner fails to pay any Assessments or other amounts due to the Association under the Project Documents within fifteen (15) days after such payment is due or if any Owner violates any other provision of the Project Documents and such violation is not cured within fifteen (15) days after the Association notifies the Owner of the violation, the Board of Directors shall have the right to suspend such Owner's right to vote until such time as all payments, including interest and attorneys' fees, are brought current, and until any other infractions or violations of the Project Documents are corrected.

ARTICLE 6

COVENANT FOR ASSESSMENTS AND CREATION OF LIEN

6.1 Creation of Lien and Personal Obligation of Assessments. The Declarant, for each Lot owned by it, hereby covenants and agrees, and each Owner, other than the Declarant, by becoming the Owner of a Lot, is deemed to covenant and agree, to pay Assessments to the Association in accordance with this Declaration. All Assessments shall be established and collected as provided in this Declaration. The Assessments, together with interest, late charges and all costs, including but not limited to reasonable attorneys' fees, incurred by the Association in collecting or attempting to collect delinquent Assessments, whether or not suit is filed, shall be a charge on the Lot and shall be a continuing lien upon the Lot against which each such Assessment is made. Each Assessment, together with interest and all costs, including but not limited to reasonable attorneys' fees, incurred by the Association in collecting or attempting to collect delinquent Assessments, whether or not suit is filed, shall also be the personal obligation of the person who was the Owner of the Lot at the time when the Assessment became due. The personal obligation for delinquent Assessments shall not pass to the successors in title of the Owner unless expressly assumed by them.

6.2 Annual Assessments.

6.2.1 In order to provide for the operation and management of the Association and to provide funds for the Association to pay all Common Expenses (except for Common Expenses related to the Equestrian Easements which are to be assessed only to the Equestrian Lots as provided in Section 6.3 of this Declaration) and to perform its duties and obligations under the Project Documents, including the establishment of replacement and maintenance reserves, the Board, for each Assessment Period shall assess against each Lot an Annual Assessment. The total amount to be assessed against the Lots as an Annual Assessment shall be the amount which is estimated by the Board to be the Common Expenses (except for Common Expenses

related to the Equestrian Easements) which will be incurred by the Association during the applicable Assessment Period less the amount of funds which the Board estimates will be received by the Association from sources other than Assessments.

6.2.2 The Board shall give notice of the Annual Assessment to each Owner at least thirty (30) days prior to the beginning of each Assessment Period, but the failure to give such notice shall not affect the validity of the Annual Assessment established by the Board nor relieve any Owner from its obligation to pay the Annual Assessment. If the Board determines during any Assessment Period that the funds budgeted for that Assessment Period are, or will, become inadequate to meet all Common Expenses (except for Common Expenses related to the Equestrian Easements) for any reason, including, without limitation, nonpayment of Assessment by Members, it may increase the Annual Assessment for that Assessment Period and the revised Annual Assessment shall commence on the date designated by the Board.

6.3 Equestrian Assessment. The Equestrian Easement and Tract B are primarily for the benefit of the Owners and Residents of the Equestrian Lots. Accordingly, the Common Expenses related to the maintenance, repair and replacement of the Improvements situated on Tract B and the Equestrian Easements should be assessed equally to the Equestrian Lots rather than to all of the Lots. In order to provide funds for the Association to pay all Common Expenses related to the maintenance, repair or replacement of all Improvements located on Tract B and on the Equestrian Easement and the portion, if it can be segregated, of the insurance premiums paid by the Association for liability and property damage insurance allocable to Tract B and the Equestrian Easement and all Improvements situated thereon, the Board, for each Assessment Period, shall assess against each Equestrian Lot an Equestrian Assessment. The total amount to be assessed against the Equestrian Lots as an Equestrian Assessment shall be an amount which is estimated by the Board to be the Common Expenses pertaining to the maintenance, repair and replacement of the Improvements on the Equestrian Easement and the portion, if it can be segregated, of the insurance premiums paid by the Association for liability and property damage insurance allocable to the Equestrian Easement and the Improvements situated thereon, which will be incurred by the Association during the applicable Assessment Period. The Board shall give notice of the Equestrian Easement to each Owner of an Equestrian Lot at least thirty (30) days prior to the beginning of each Assessment Period, but the failure to give such notice shall not affect the validity of the Equestrian Easement established by the Board nor relieve any Owner of an Equestrian Lot from its obligation to pay the Equestrian Assessment. If the Board determines during any Assessment Period that the Equestrian Assessment is, or will, become inadequate to meet all Common Expenses related to the maintenance, repair and replacement of the Improvements on the Equestrian Easement and the portion, if it can be segregated, of the insurance premiums paid by the Association for liability and property damage insurance allocable to the Equestrian Easement and the Improvements situated thereon, for any reason, including, without limitation, nonpayment of the Equestrian Assessment by the Owners of Equestrian Lots, it may increase the Equestrian Assessment for that Assessment Period and the revised Equestrian Assessment shall commence on the date designated by the Board.

6.4 **Rate of Assessment.** The amount of the Annual Assessment shall be the same for each Lot other than Lots owned by the Declarant. The Annual Assessment for Lots owned by the Declarant shall be an amount equal to twenty-five percent (25%) of the Annual Assessment levied against Lots owned by Persons other than the Declarant. If a Lot ceases to qualify for the twenty-five percent (25%) rate of assessment during the period to which an Annual Assessment is attributable, the Annual Assessment shall be prorated between the applicable rates on the basis of the number of days in the Assessment Period that the Lot qualified for each rate. The amount of the Equestrian Assessment shall be the same for each Equestrian Lot other than the Equestrian Lots owned by the Declarant. The Equestrian Assessment for Equestrian Lots owned by the Declarant shall be an amount equal to twenty-five percent (25%) of the Equestrian Assessment levied against Equestrian Lots owned by Persons other than the Declarant. If any Equestrian Lot ceases to qualify for the twenty-five percent (25%) rate of assessment during the period to which an Equestrian Assessment is attributable, the Equestrian Assessment shall be prorated between the applicable rates on the basis of the number of days in the Assessment Period that the Equestrian Lot qualified for each rate.

6.5 **Obligation of Declarant for Deficiencies.** So long as there is a Class B membership in the Association, Declarant shall pay and contribute to the Association, within thirty (30) days after the end of each fiscal year of the Association, or at such other times as may be requested by the Board, such funds as may be necessary, when added to the Annual Assessments levied by the Association, to pay all Common Expenses of the Association as they become due.

6.6 **Special Assessments.** The Association may levy against each Lot which is then subject to assessment, in any Assessment Period, a Special Assessment for the purpose of defraying, in whole or in part, the cost of any construction, reconstruction, repair or replacement of an Improvement upon the Areas of Association Responsibility, including fixtures and personal property related thereto, provided that any Special Assessment shall have the assent of two-thirds (2/3) of the votes entitled to be cast by Members who are voting in person or by proxy at a meeting duly called for such purpose.

6.7 **Assessment Period.** The period for which the Annual Assessment is to be levied (the "Assessment Period") shall be the calendar year, except that the first Assessment Period, and the obligation of the Owners to pay Annual Assessments shall commence upon the conveyance of the first Lot to a Purchaser and terminate on December 31 of such year. The Board in its sole discretion from time to time may change the Assessment Period.

6.8 **Commencement Date of Assessment Obligation.** All Lots described on Exhibit A to this Declaration shall be subject to assessment upon the conveyance of the first Lot to a Purchaser. All Lots annexed pursuant to Section 2.2 of this Declaration shall be subject to assessment upon the conveyance to a Purchaser of the first Lot within the annexed property. If the amendment to this Declaration which annexes all or any part of the Additional Property divides the

property being annexed into phases, then the Lots within each phase will be subject to assessment when the first Lot in the phase is conveyed to a Purchaser.

6.9 Rules Regarding Billing and Collection Procedures. Annual Assessments shall be collected on a quarterly basis or such other basis as may be selected by the Board. Special Assessments may be collected as specified by the Board. The Board shall have the right to adopt rules and regulations setting forth procedures for the purpose of making Assessments and for the billing and collection of the Assessments provided that the procedures are not inconsistent with the provisions of this Declaration. The failure of the Association to send a bill to a Member shall not relieve any Member of his liability for any Assessment or charge under this Declaration, but the Assessment Lien therefor shall not be foreclosed until the Member has been given not less than thirty (30) days written notice prior to such foreclosure that the Assessment or any installation thereof is or will be due and of the amount owing. Such notice may be given at any time prior to or after delinquency of such payment. The Association shall be under no duty to refund any payments received by it even though the ownership of a Lot changes during an Assessment Period but successor Owners of Lots shall be given credit for prepayments, on a prorated basis, made by prior Owners.

6.10 Effect of Nonpayment of Assessments; Remedies of the Association.

6.10.1 Any Assessment, or any installment of an Assessment, not paid within five (5) days after the Assessment, or the installment of the Assessment, first became due shall bear interest from the due date at the rate of interest specified from time to time by the Board. In addition, the Board of Directors may establish a late fee to be charged to any Owner who has not paid any Assessment, or any installment of an Assessment, within five days after such payment was due.

6.10.2 The Association shall have a lien on each Lot for: (i) all Assessments levied against the Lot; (ii) all interest, lien fees, late charges and other fees and charges assessed against the Lot or payable by the Owner of the Lot; (iii) all fines levied against the Owner of the Lot; (iv) all attorney fees, court costs, title report fees, costs and fees charged by any collection agency either to the Association or to an Owner and any other fees or costs incurred by the Association in attempting to collect Assessments or other amounts due to the Association by the Owner of a Lot; (v) any amounts payable to the Association pursuant to Section 7.3 or 7.4 of this Declaration; and (vi) any other amounts payable to the Association pursuant to the Project Documents. The Recording of this Declaration constitutes record notice and perfection of the Assessment Lien. The Association may, at its option, record a Notice of Lien setting forth the name of the delinquent owner as shown in the records of the Association, the legal description or street address of the Lot against which the Notice of Lien is recorded and the amount claimed to be past due as of the date of the recording of the Notice, including interest, lien recording fees and reasonable attorneys' fees. Before recording any Notice of Lien against a Lot, the Association shall make a written demand to the defaulting Owner for payment of the delinquent Assessments, together with interest, late charges and reasonable attorneys' fees, if any. The demand shall state the date and

amount of the delinquency. Each default shall constitute a separate basis for a demand, but any number of defaults may be included within the single demand. If the delinquency is not paid within ten (10) days after delivery of the demand, the Association may proceed with recording a Notice of Lien against the Lot. If the Association records a Notice of Lien, the Association may charge the Owner of the Lot against which the Notice of Lien is Recorded a lien fee in an amount established from time to time by the Board.

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

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

6.10.5 The Association shall have the right, at its option, to enforce collection of any delinquent Assessments together with interest, lien fees, reasonable attorneys' fees and any other sums due to the Association in any manner allowed by law including, but not limited to, (i) bringing an action at law against the Owner personally obligated to pay the delinquent Assessments and such action may be brought without waiving the Assessment Lien securing the delinquent Assessments or (ii) bringing an action to foreclose the Assessment Lien against the Lot in the manner provided by law for the foreclosure of a realty mortgage. The Association shall have the power to bid in at any foreclosure sale and to purchase, acquire, hold, lease, mortgage and convey any and all Lots purchased at such sale.

6.11 Evidence of Payment of Assessments. Upon receipt of a written request by a Member or any other Person, the Association, within a reasonable period of time thereafter, shall issue to such Member or other Person a written certificate stating that all Assessments, interest, and other fees and charges have been paid with respect to any specified Lot as of the date of such certificate, or if all Assessments have not been paid, the amount of such Assessments, interest, fees and charges due and payable as of such date. The Association may make a reasonable charge for the issuance of such certificates, which charges must be paid at the time the request for any such certificate is made. Any such certificate, when duly issued as herein provided, shall be conclusive and binding with respect to any matters therein stated as against any bona fide Purchaser of, or lender on, the Lot in question.

6.12 Purposes for which Association's Funds May Be Used. The Association shall apply all funds and property collected and received by it (including the Assessments, fees, loan proceeds, surplus funds and all funds and property received by it from any other source) for the common good and benefit of the Project and the Owners and Residents by devoting said funds and property, among other things, to the acquisition, construction, alteration, maintenance, provision and operation, by any manner or method whatsoever, of any and all land, properties, improvements, facilities, services, projects, programs, studies and systems, within or without the Project, which may be necessary, desirable or beneficial to the general common interests of the Project, the Owners and the Residents. The following are some, but not all, of the areas in which the Association may seek to aid, promote and provide for such common benefit: social interaction among Members and Residents, maintenance of landscaping on Areas of Association Responsibility and public right-of-way and drainage areas within the Project, recreation, liability insurance, communications, ownership and operation of vehicle storage areas, education, transportation, health, utilities, public services, safety and indemnification of officers and directors of the Association. The Association may also expend its funds under the laws of the State of Arizona or such municipality's charter.

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

6.14 Working Capital Fund. To insure that the Association shall have adequate funds to meet its expenses or to purchase necessary equipment or services, each Purchaser of a Lot from the Declarant shall pay to the Association immediately upon becoming the Owner of the Lot a sum equal to one-sixth (1/6th) of the current Annual Assessment for the Lot. Funds paid to the Association pursuant to this Section may be used by the Association for payment of operating expenses or any other purpose permitted under the Project Documents. Payments made pursuant to this Section shall be nonrefundable and shall not be considered as an advance payment of any Assessments levied by the Association pursuant to this Declaration.

6.15 Transfer Fee. Each Person who purchases a Lot from a Person other than the Declarant shall pay to the Association immediately upon becoming the Owner of the Lot a transfer fee in such amount as is established from time to time by the Board to compensate the Association for the administrative cost resulting from the transfer of a Lot. The transfer fee is not intended to compensate the Association for the costs incurred in the preparation of the statement which the Association is required to mail or deliver to a purchaser under A.R.S. § 33-1806A and, therefore, the transfer fee shall be in addition to the fee which the Association is entitled to charge pursuant to A.R.S. § 33-1806C.

6.16 Irrigation Water Rights. Each Owner, by acceptance of a deed to a Lot, whether or not expressed in the deed, irrevocably appoints and authorizes the Association as the Owner's agent to take whatever action may be necessary to insure that the Owner's appurtenant water rights and that of all other Owners are used to provide irrigation to the Property. In particular, without limiting the generality of the foregoing, the Association on behalf of all Owners may enter into any and all contracts or other agreements as the Association may consider desirable or necessary to obtain, transport and distribute irrigation water for and to the Property, and in connection therewith, to establish such rules, regulations and charges as the Association may elect with respect to irrigation of Lots. No Owner shall be entitled to compensation for the uses provided above by the Association or appurtenant water rights. The Association is obtaining water for irrigation from companies, projects or other sources not controlled by the Association and, accordingly, Declarant and the Association disclaim any warranties, implied and expressed, as to the quality or quantity of irrigation water available to the Property from time to time and each Owner, by acceptance of the deed to a Lot, releases Declarant and the Association from all liability for the failure of water to be delivered to the Owner's Lot for any reason, including, without limitation, liability for damages to landscaping. Each Owner shall be solely responsible for ordering irrigation water for the Owner's Lot in accordance with such procedures as may be established by the irrigation company furnishing the irrigation water or by the Association. Each Owner shall be responsible for payment of all irrigation water ordered by such Owner with such payment being made directly to the irrigation company furnishing the irrigation water.

ARTICLE 7

MAINTENANCE

7.1 Areas of Association Responsibility. The Association shall manage, maintain, repair and replace the Areas of Association Responsibility, except for any part of the Areas of Association Responsibility which any governmental entity is maintaining or is obligated to maintain. The Board shall be the sole judge as to the appropriate maintenance, repair and replacement of all Areas of Association Responsibility. No Owner or other Person except for the Declarant or the Association may construct, install or erect any Improvement on any Area of Association Responsibility or alter, change or add to any Improvement situated on any Area of Association Responsibility. The Town of Queen Creek is not responsible for and will not accept maintenance of private facilities, landscape areas or any other part of the Common Area in the Project.

7.2 Lots. Each Owner of a Lot shall be responsible for maintaining, repairing or replacing his Lot, and all buildings, Residential Units, landscaping or other Improvements situated thereon, except for any portion of the Lot which is an Area of Association Responsibility. All buildings, Residential Units, landscaping and other Improvements shall at all times be kept in good condition and repair. All grass, hedges, shrubs, vines and plants of any type on a Lot shall be irrigated, mowed, trimmed and cut at regular intervals so as to be maintained in a neat and attractive

manner. Trees, shrubs, vines, plants and grass which die shall be promptly removed and replaced with living foliage of like kind, unless different foliage is approved in writing by the Architectural Committee. No yard equipment, wood piles or storage areas may be maintained so as to be Visible From Neighboring Property or streets. All Lots upon which no Residential Units, buildings or other structures, landscaping or Improvements have been constructed shall be maintained in a weed free and attractive manner.

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

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

7.5 Boundary Walls.

7.5.1 Each wall or fence which is located between two Lots shall constitute a boundary wall and, to the extent not inconsistent with this Section 7.5, the general rules of law regarding boundary walls shall apply.

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

7.5.3 The adjoining Owners shall each have the right to perform any necessary maintenance, repair or replacement of the wall and the cost of such maintenance, repair or replacement shall be shared equally by the adjoining Owners except as otherwise provided in this Section.

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

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

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

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

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

7.5.9 In the event any boundary wall encroaches upon a Lot, a valid easement for such encroachment and for the maintenance of the boundary wall shall and does exist in favor of the Owners of the Lots which share such boundary wall.

7.6 Maintenance of Walls other than Boundary Walls.

7.6.1 Walls (other than boundary walls) located on a Lot shall be maintained, repaired and replaced by the Owner of the Lot.

7.6.2 Any wall which is placed on the boundary line between a Lot and the Common Area shall be maintained, repaired and replaced by the Owner of the Lot, except that the Association shall be responsible for the repair and maintenance of the side of the wall which faces the Common Area. In the event any such wall encroaches upon the Common Area of a Lot, an easement for such encroachment shall exist in favor of the Association or the Owner of the Lot, as the case may be.

7.6.3 Any wall which is placed on the boundary line between a Lot and public right-of-way shall be maintained, repaired and replaced by the Association except that the Owner of the Lot shall be responsible for the repair and replacement of the surface of the wall which faces the Lot.

ARTICLE 8

INSURANCE

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

8.1.1 Comprehensive general liability insurance, including medical payments insurance, in an amount determined by the Board, but not less than \$1,000,000. Such insurance shall cover all occurrences commonly insured against for death, bodily injury and property damage arising out of or in connection with the use, ownership or maintenance of the Areas of Association Responsibility and all other portions of the Project which the Association is obligated to maintain under this Declaration, and shall also include hired automobile and non-owned automobile coverages with cost liability endorsements to cover liabilities of the Owners as a group to an Owner;

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

8.1.3 Workmen's compensation insurance to the extent necessary to meet the requirements of the laws of Arizona;

8.1.4 Such other insurance as the Association shall determine from time to time to be appropriate to protect the Association or the Owners;

8.1.5 The insurance policies purchased by the Association shall, to the extent reasonably available, contain the following provisions: (i) that there shall be no subrogation with respect to the Association, its agents, servants, and employees, with respect to Owners and members of their household; (ii) no act or omission by any Owner, unless acting within the scope of his authority on behalf of the Association, will void the policy or be a condition to recovery on the policy; (iii) that the coverage afforded by such policy shall not be brought into contribution or proration with any insurance which may be purchased by Owners or their mortgagees or beneficiaries under deeds of trust; (iv) a "severability of interest" endorsement which shall preclude the insurer from denying the claim of an Owner because of the negligent acts of the Association or other Owners; (v) statement of the name of the insured as the Association; and (vi) for policies of hazard insurance, a standard mortgagee clause providing that the insurance carrier shall notify the first mort-

gagee named in the policy at least ten (10) days in advance of the effective date of any substantial modification, reduction or cancellation of the policy;

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

8.3 **Payment of Premiums.** The premiums for any insurance obtained by the Association pursuant to Section 8.1 of this Declaration shall be included in the budget of the Association and shall be paid by the Association.

8.4 **Payment of Insurance Proceeds.** With respect to any loss to any Area of Common Responsibility covered by property insurance obtained by the Association in accordance with this Article, the loss shall be adjusted with the Association, and the insurance proceeds shall be payable to the Association and not to any mortgagee or beneficiary under a deed of trust. Subject to the provisions of Section 8.5 of this Declaration, the proceeds shall be disbursed for the repair or restoration of the damage to the Area of Association Responsibility.

8.5 **Repair and Replacement of Damaged or Destroyed Property.** Any portion of the Areas of Association Responsibility which is damaged or destroyed shall be repaired or replaced promptly by the Association. The cost of repair or replacement in excess of insurance proceeds and reserves shall be paid by the Association.

ARTICLE 9

GENERAL PROVISIONS

9.1 **Enforcement.** The Association or any Owner shall have the right to enforce the Project Documents in any manner provided for in the Project Documents or by law or in equity, including, but not limited to, an action to obtain an injunction to compel removal of any Improvements constructed in violation of this Declaration or to otherwise compel compliance with the Project Documents. The failure of the Association or an Owner to take enforcement action with respect to a violation of the Project Documents shall not constitute or be deemed a waiver of the right of the Association or any Owner to enforce the Project Documents in the future. If any lawsuit is filed by the Association or any owner to enforce the provisions of the Project Documents or in any other manner arising out of the Project Documents or the operations of the Association, the prevailing party in such action shall be entitled to recover from the other party all attorney fees incurred by the prevailing party in the action.

9.2 Term; Method of Termination. The covenants, conditions, restrictions and easements contained in this Declaration, as amended from time to time, shall run with the land and bind the Property and be in full force and effect in perpetuity unless terminated as provided in this Section. This Declaration may be terminated at any time if such termination is approved by the affirmative vote or written consent, or any combination thereof, of the Owners representing ninety percent (90%) or more of the votes in each class of membership and by the holders of First Mortgages on Lots, the Owners of which have seventy-five percent (75%) or more of the votes in the Association. If the necessary votes and consents are obtained, the Board shall cause to be recorded with the County Recorder of Maricopa County, Arizona, a Certificate of Termination, duly signed by the President or Vice President and attested by the Secretary or Assistant Secretary of the Association, with their signatures acknowledged. Thereupon this Declaration shall have no further force and effect, and the Association shall be dissolved pursuant to the terms set forth in its Articles.

9.3 Amendments.

9.3.1 Except for amendments made pursuant to Subsection 9.3.2 or 9.3.5 of this Declaration, the Declaration may only be amended by the written approval or the affirmative vote, or any combination thereof, of Owners of not less than seventy-five percent (75%) of the Lots.

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

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

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

9.3.5 So long as the Declarant owns more than seventy-five percent (75%) of the Lots subject to this Declaration, any amendment to this Declaration shall be signed by Declarant and recorded in the records of Maricopa County, Arizona. At any time the Declarant does not own at least seventy-five percent (75%) of the Lots subject to this Declaration, any amendment approved pursuant to Subsection 9.3.1 of this Declaration or by the Board pursuant to Subsection 9.3.2 or 9.3.4 of this Declaration shall be signed by the President or Vice President of the Association and shall be recorded with the County Recorder of Maricopa County, Arizona, and any such amendment shall certify that the amendment has been approved as required by this Section. Any

amendment made by the Declarant pursuant to Subsection 9.3.2 or 9.3.4 of this Declaration shall be signed by the Declarant and recorded with the County Recorder of Maricopa County, Arizona. Unless a later effective date is provided for in the amendment, any amendment to this Declaration shall be effective upon the Recording of the amendment.

9.4 Rights of First Mortgagees.

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

9.4.2 No Lot shall be partitioned or subdivided without the prior written approval of the holder of any First Mortgage on such Lot.

9.4.3 Unless at least two-thirds (2/3) of the First Mortgagees (based upon one vote for each First Mortgage owned) or Owners (other than the sponsor, developer or builder) of at least two-thirds (2/3) of the Lots have given their prior written approval, the Association shall not be entitled to:

(i) Seek to abandon, partition, subdivide, sell or transfer the Common Area owned, directly or indirectly, by the Association for the benefit of the Lots. The granting of easements for public utilities or for other public purposes consistent with the intended use of such Common Area shall not be deemed a transfer within the meaning of this Subsection;

(ii) Change the method of determining the obligations, assessments, dues or other charges which may be levied against an Owner;

(iii) Change, waive or abandon any scheme or regulations, or enforcement thereof, pertaining to the architectural design or the exterior appearance of Lots or the maintenance of the Common Area;

(iv) Fail to maintain fire and extended coverage on insurance common area on current replacement cost basis in an amount of at least 100 percent of insurable value;

(v) Use hazard insurance proceeds for losses to any Common Area, other than the repair, replacement or reconstruction of such Common Area.

9.4.4 No provision of this Declaration gives or shall be construed as giving any owner or other Person priority over any rights of a First Mortgagee of a Lot in the case

of the distribution to such Owner of insurance proceeds or condemnation awards for losses to or taking of the Common Area.

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

9.4.6 In the event of any conflict or inconsistency between the provisions of this Section and any other provision of the Project Documents, the provisions of this Section shall prevail; provided, however, that in the event of any conflict or inconsistency between the provisions of this Section and any other provisions of the Project Documents with respect to the number or percentage of Owners or First Mortgagees that must consent to (i) an amendment of the Declaration, Articles or Bylaws, (ii) a termination of the Project, or (iii) certain actions of the Association as specified in Subsection 9.4.3 of this Declaration, the provision requiring the consent of the greatest number or percentage of Owners or First Mortgagees shall prevail; provided, however, that the Declarant, so long as the Declarant owns any Lot, and thereafter, the Board, without the consent of any Owner or First Mortgagee being required, shall have the right to amend this Declaration, the Articles of the Bylaws in order to conform this Declaration, the Articles or the Bylaws to the requirements or guidelines of the Federal National Mortgage Association, the Federal Home Loan Mortgage Corporation, the Federal Housing Administration, the Veterans Administration or any federal, state or local governmental agency whose approval of the Project, the Plat or the Project Documents is required or requested by the Declarant or the Board.

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

9.6 **Severability.** Any determination by any court of competent jurisdiction that any provision of this Declaration is invalid or unenforceable shall not affect the validity or enforceability of any of the other provisions hereof.

9.7 **Rule Against Perpetuities.** If any interest purported to be created by this Declaration is challenged under the Rule against Perpetuities or any related rule, the interest shall be construed as becoming void and of no effect as of the end of the applicable period of perpetuities computed from the date when the period of perpetuities starts to run on the challenged interest; the "lives in being" for computing the period of perpetuities shall be (i) those which would be used in

determining the validity of the challenged interest, plus (ii) those of the issue of the Board who are living at the time the period of perpetuities starts to run on the challenged interest.

9.8 Change of Circumstances. Except as otherwise expressly provided in this Declaration, no change of conditions or circumstances shall operate to extinguish, terminate or modify any of the provisions of this Declaration.

9.9 Notice of Violation. The Association shall have the right to record a written notice of a violation by any Owner or Resident of any restriction or other provision of the Project Documents. The notice shall be executed by an officer of the Association and shall contain substantially the following information: (i) the name of the Owner or Resident violating, or responsible for the violation of, the Project Documents; (ii) the legal description of the Lot against which the notice is being Recorded; (iii) a brief description of the nature of the violation; (iv) a statement that the notice is being Recorded by the Association pursuant to this Declaration; and (v) a statement of the specific steps which must be taken by the Owner or occupant to cure the violation. Recordation of a notice of violation shall serve as notice to the Owner and Resident, and any subsequent purchaser of the Lot, that there is such a violation. If, after the recordation of such notice, it is determined by the Association that the violation referred to in the notice does not exist or that the violation referred to in the notice has been cured, the Association shall Record a notice of compliance with shall state the legal description of the Lot against which the notice of violation was Recorded, and the recording data of the notice of violation, and shall state that the violation referred to in the notice of violation has been cured or that the violation did not exist. Failure by the Association to Record a notice of violation shall not constitute a waiver of any such violation, constitute any evidence that no violation exists with respect to a particular Lot or constitute a waiver of any right of the Association to enforce the Project Documents.

9.10 Laws, Ordinances and Regulations.

9.10.1 The covenants, conditions and restrictions set forth in this Declaration and the provisions requiring Owners and other persons to obtain the approval of the Board or the Architectural Committee with respect to certain actions are independent of the obligation of the Owners and other persons to comply with all applicable laws, ordinances and regulations, and compliance with this Declaration shall not relieve an Owner or any other person from the obligation to also comply with all applicable laws, ordinances and regulations.

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

9.11 References to this Declaration in Deeds. Deeds to and instruments affecting any Lot or any other part of the Project may contain the covenants, conditions and restrictions herein set forth by reference to this Declaration; but regardless of whether any such reference

is made in any Deed or instrument, each and all of the provisions of this Declaration shall be binding upon the grantee-Owner or other person claiming through any instrument and his heirs, executors, administrators, successors and assignees.

9.12 Gender and Number. Wherever the context of this Declaration so requires, words used in the masculine gender shall include the feminine and neuter genders; words used in the neuter gender shall include the masculine and feminine genders; words in the singular shall include the plural; and words in the plural shall include the singular.

9.13 Captions and Titles. All captions, titles or headings of the Articles and Sections in this Declaration are for the purpose of reference and convenience only and are not to be deemed to limit, modify or otherwise affect any of the provisions hereof or to be used in determining the intent of context thereof.

QUEEN CREEK PARTNERS LIMITED PARTNERSHIP, an Arizona limited partnership

By Combined Resources, Ltd., an Arizona general partnership
Its General Partner

By: William H. Jury
William H. Jury
Its Managing Partner

State of Arizona)
) ss.
County of Maricopa)

Acknowledged before me this 20th day of January, 1998, by William H. Jury, the Managing Partner of Combined Resources, Ltd., an Arizona general partnership, on behalf of the partnership as the general partner of Queen Creek Partners Limited Partnership, an Arizona limited partnership.

Kimberly A. Clarke
Notary Public

My Commission Expires:

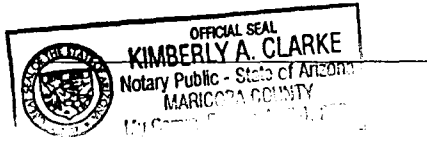


EXHIBIT A

DESCRIPTION OF PROPERTY SUBJECT TO DECLARATION

Lots 12 through 43, inclusive, and Tract B, Queen Creek Ranchettes III, according to the plat recorded at Recording No. 98-53261 and in Book 460 of Maps, page 3, records of Maricopa County, Arizona.

EXHIBIT B

DESCRIPTION OF ADDITIONAL PROPERTY

Lots 1 through 11, inclusive, and Lots 44 through 59, inclusive, Queen Creek Ranchettes III, according to the plat recorded at Recording No. 98-53261 and in Book 460 of Maps, page 3, records of Maricopa County, Arizona.

**CONSENT OF BENEFICIARY UNDER
DEED OF TRUST, ASSIGNMENT OF RENTS AND LEASES,
SECURITY AGREEMENT AND FIXTURE FILING
TO DECLARATION OF COVENANTS, CONDITIONS AND RESTRICTIONS**

State Savings Bank, FSB, as the Beneficiary under the Construction Deed of Trust, Assignment of Rents and Leases, Security Agreement and Fixture Filing dated August 1, 1997, recorded at Recording No. 97-0551712, records of Maricopa County, Arizona (the "Deed of Trust"), hereby consents to the recording of the foregoing Declaration of Covenants, Conditions and Restrictions for Queen Creek Ranchettes III (the "CC&Rs") and acknowledges and agrees that the Deed of Trust shall be subordinate to the CC&Rs and that the CC&Rs shall survive any trustee's sale held pursuant to the Deed of Trust or any execution sale held as a result of any judicial foreclosure of the Deed of Trust.

Dated this 20 day of January, 1998.

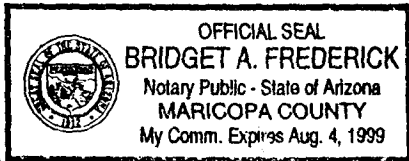
STATE SAVINGS BANK, FSB

By: John P. Miller

Its: AVP

State of Arizona)
) ss.
County of Maricopa)

The foregoing instrument was acknowledged before me this 20 day of January, 1998, by John P. Miller, the A. Vice President of State Savings Bank, FSB, on behalf of the corporation.



Bridget A. Frederick
Notary Public

My Commission Expires:

8/4/99