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DECLARATION OF COVENANTS, CONDITIONS  
AND RESTRICTIONS  
FOUNTAIN COURT

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**DECLARATION OF COVENANTS, CONDITIONS  
AND RESTRICTIONS  
FOUNTAIN COURT**

Know all men by these Presents:

THIS DECLARATION OF COVENANTS, CONDITIONS AND RESTRICTIONS (the "Declaration"), made on the date hereinafter set forth by Marlboro Holdings Co., an Arizona corporation (the "Declarant"), is made with reference to the following facts:

A. Declarant is the owner of certain real property described as Fountain Court, per map recorded in Book 264, Page 24 of Maps, in the office of the County Recorder of Maricopa County, Arizona (excluding Lot 38) more particularly described in Exhibit "A" attached hereto and incorporated by reference (the "Real Property" or "Property").

B. Declarant has improved or intends to improve the Real Property by constructing thereon residential and recreational improvements (the "Project").

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

D. The property is part of a larger project described in Exhibit "B" attached hereto and incorporated herein by this reference and is thereby subject to that certain Declaration of Covenants, Conditions and Restrictions for Gila Springs dated July 5, 1984 and recorded July 6, 1984 as Instrument No. 84 295812 of the Official Records of the Maricopa County, Arizona Recorder as amended from time to time or any other declaration to which said larger project may be subject, (the "Master Declaration").

NOW, THEREFORE, Declarant hereby declares that the Real Property shall be occupied, sold and improved, subject to the following declarations, limitations, covenants, conditions, restrictions and easements, all of which are for the purpose of enhancing and protecting the value and attractiveness of the Real Property, and every part thereof, in accordance with the plan for its development.

All of the declarations, limitations, covenants, conditions, restrictions and easements shall run with the land and shall be binding upon Declarant, its successors and assigns, and all parties having or acquiring any right, title or interest in or to any part of the Real Property.

ARTICLE I

DEFINITIONS

Section 1. "Articles of Incorporation" or "Articles" shall mean and refer to the Articles of Incorporation of FOUNTAIN COURT HOMEOWNERS' ASSOCIATION, an Arizona non-profit corporation.

Section 2. "Association" shall mean and refer to FOUNTAIN COURT HOMEOWNERS' ASSOCIATION, an Arizona non-profit corporation, its successors and assigns, which shall be formed by Declarant and shall perform the matters and duties set forth herein.

Section 3. "Board" or "Board of Directors" shall mean and refer to the Board of Directors of the Association.

Section 4. "Bylaws" shall mean and refer to the Bylaws of the Association.

Section 5. "Common Areas" shall initially mean all of the real property designated as Parcels "A", "B", "C", "D", and "E", and Lot #21 on the Plat which has been or will be deeded to the Association for construction of a swimming pool and appurtenant facilities, and all improvements thereon, including without limitation a fountain located on Parcel "E", together with all other real property now or hereafter owned by the Association, its successors and assigns for the common use and enjoyment of its Members, including but not limited to the parking areas, private drives, driveways, landscaping and recreational areas and all appurtenances thereto located on Common Area.

Section 6. "Constituent Documents" shall mean this Declaration, the Plat, the Articles of Incorporation of the Association, the Bylaws of the Association, and any amendments to any of the foregoing.

Section 7. "Declarant" shall mean MARLBORO HOLDINGS CO., an Arizona corporation, and its successors and assigns, if such successors or assigns should acquire more than four (4) undeveloped lots from the Declarant for the purpose of development. "Original Developer" shall mean MARLBORO HOLDINGS CO., an Arizona corporation.

Section 8. "Declaration" shall mean and refer to the covenants, conditions and restrictions set forth in this entire document as amended from time to time.

Section 9. "Lot" shall mean the separately designated Lots numbered one (1) through thirty-seven (37) inclusive, as shown on the Plat, together with and improvements thereon exclusive of Lot 21 which has been or will be deeded to the Association as Common Area for the use of its Members.

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Section 10. "Owner" shall mean the Owner of record, whether one or more persons or entities, of equitable title (or legal title if equitable title has merged) of any Lot which is part of the Property. An Owner does not include a person or entity who holds an interest in a Lot merely as security for the performance of an obligation. Also, the words "Owner" or "Owners of record" as used herein, in addition to their recognized legal meaning, shall include a purchaser or purchasers under an agreement of sale or contract of purchase, and a beneficiary or beneficiaries under a deed of trust or of any trust owning or purchasing a Lot.

Section 11. "Plat" shall mean that certain plat of FOUNTAIN COURT, recorded by Declarant in Book 264 of Maps, Page 24 of the official records of the County Recorder of Maricopa County, Arizona.

Section 12. "Property" or "Premises" or "Development" or "Subdivision" shall mean only that certain Real Property shown on the Plat as Lots 1 through 37, inclusive, together with all Common Area including Lot 21.

Section 13. "Unit" shall mean and refer to a separately designated Lot at such time as a residential living unit has been constructed thereon, without limiting or restricting the definition of Lot referred to in Section 9 above which also may include any improvements erected on a Lot.

Section 14. "Visible from Neighboring Property" shall mean, with respect to any given object, that such object would be visible to a person six feet tall, standing on any part of such neighboring property at an elevation no greater than the elevation of the base of the object being viewed.

ARTICLE II

PROPERTY RIGHTS

Section 1. Owners' Easements of Enjoyment. Every Owner including Declarant shall have a right and easement of enjoyment in and to the Common Area, for the purposes for which the Common Area is intended, which shall be appurtenant to and shall pass with the title to every Lot, subject to the following provisions:

(a) The right of the Association to charge reasonable fees for the use of any facility situated upon the Common Area;

(b) The right of the Association to suspend the voting rights and right to use of the facilities by an Owner for any period during which any assessment against his Lot remains unpaid or for a period not to exceed sixty (60) days after notice and a hearing for any infraction of this Declaration or the rules or regulations duly promulgated by the Association, the Board or any duly constituted committee of the Association or Board.

(c) The right of the Association to dedicate, transfer or convey, all or any part of the Common Area to any public agency, authority, or utility for such purposes and subject to such conditions as may be agreed to by the Members as hereinafter provided. No such dedication, transfer, or conveyance shall be effective unless an instrument, signed by Owners representing two-thirds (2/3) of the Lots and Declarant and agreeing to such dedication, transfer, or conveyance, has been recorded.

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

Section 2. Delegation of Use. Any Owner may delegate, in accordance with this Declaration, his right of enjoyment to the Common Area to the members of his family, his tenants, lessees, guests, and invitees, provided such delegation is for a reasonable number of persons and at reasonable times. The Board shall at all times have the right and authority to adopt and promulgate rules and regulations governing or restricting the usage of the Common Area, including hours of usage, number of members or guests using common facilities at one time, reservations and advance notice.

Section 3. Owner's Easement of Enjoyment Limitations.

(a) An Owner's right and easement of enjoyment in and to the Common Area shall not be conveyed, transferred, alienated or encumbered separate and apart from an Owner's Lot and such right and easement of enjoyment in and to the Common Area shall

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be deemed to be conveyed, transferred, alienated or encumbered upon the sale of any Owner's Lot, notwithstanding the description in the instrument of conveyance, transfer, alienation or encumbrance may not refer to the Common Area.

(b) The Common Area shall remain undivided and no action for partition or division of any part thereof shall be permitted.

(c) Each Owner, tenant and occupant of a Lot, and the invitees, tenants, agents and employees of such Owner, may, subject to rules and regulations adopted by the Board, use the Common Area in common with the Owners, invitees, tenants, agents and employees of the other Lots in accordance with the purposes for which it is intended without hindering or encroaching upon the lawful right of such others.

(d) No Owner will be exempted from liability for assessments with respect to the Common Area by waiver of the enjoyment of the right to use the Common Area or by abandonment of his Lot or otherwise.

Section 4. Title to Common Area. Declarant shall convey title to the Common Area and all improvements thereon to the Association, free of all encumbrances except current real property taxes and other easements, conditions, reservations and restrictions then of record. The conveyance of Common Area shall be made to the Association prior to or at the time of the conveyance of the first Lot.

ARTICLE III

POWERS OF THE ASSOCIATION

Section 1. Powers of the Association. In addition to the duties and powers enumerated elsewhere in this Declaration and without limiting the generality of the same, the Association, except as otherwise provided herein, shall have the right and authority to:

(a) Enforce, through legal action or otherwise, applicable provisions of the Constituent Documents.

(b) To construct, modify, improve, reconstruct, repair, maintain and in every way deal with all improvements located on the Property.

(c) To purchase insurance in its own name and the name of its Members with regard to the protection of the Common Area and improvements thereon, including, but not limited to, buildings, water systems, recreational facilities, landscaping, mechanical equipment, parking lots, signs and fencing.

(d) To assist, collect and enforce obligations of the various Owners with regard to the costs incurred in the operation of the Association in the carrying out of any of the provisions and powers enumerated herein; provided, however, that such assessments shall be in accordance with the provisions of this Declaration.

(e) To provide for, allow and approve improvements to, modification of, construction and/or reconstruction of improvements for the benefit of the Owners as a whole or with regard to a group of Owners.

(f) To maintain any and all improvements to the Property, including mechanical, buildings, roadways, lighting, signs and the like.

(g) To construct, reconstruct, improve, maintain, modify and provide for any and all utility facilities or functions being provided to the Owners, including all functions with regard to water and sewer services, supplementary electricity or gas and/or telephone service and any and all other utility services which may now or hereafter become available, on a basis exclusively for, and to the profit of the Lot Owners or in conjunction with adjacent property owners.

(h) To hire, supervise and/or discharge and give direction to employees and/or independent contractors to carry out the functions as provided for hereinabove and in addition thereto, hire employees subject to appropriate licensing requirements, to allow and facilitate the sale and/or lease of any of the Property for compensation as shall be agreed upon from time to time between the Association, the Owners and such employee.

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(i) To institute, construct, maintain, reconstruct, improve and/or modify recreational facilities for the benefit of all or some of the Owners.

(j) To act, perform, execute or carry out any and all reasonable or necessary functions whether presently existing or hereafter becoming so in order to satisfy the purpose of allowing the Real Property to be used for residential purposes as set forth herein.

(k) To establish reasonable rules, regulations and procedures to implement these powers and the reasonable exercise thereof.

Section 2. Purchase of Salt River Water Project Water. Without limiting the generality of the foregoing, the Association shall have the power to contract with the Gila Springs Association, which is the master association for Gila Springs for the purchase of Salt River Project water from time to time, in accordance with the terms and provisions of the Master Declaration.

## ARTICLE IV

THE ASSOCIATION  
AND  
MEMBERSHIP IN THE ASSOCIATION

Section 1. Purpose. The Association shall be a non-profit corporation organized under and by virtue of the laws of the State of Arizona for the general welfare and benefit of the Owners of Lots in the Development. The Association, through its Members and Board, shall take the appropriate action to manage and maintain, repair, replace and improve the Common Areas together with improvements located thereon in a proper, first class condition, to perform related activities and to perform all other functions and duties assigned to the Association by this Declaration, all in accordance with this Declaration and with the Articles of Incorporation and Bylaws.

Section 2. Membership. Membership in the Association shall be limited to the Owners of Lots as hereinabove defined, and such membership shall be subject to all the provisions of this Declaration and to the Articles of Incorporation and Bylaws, as the same may be amended from time to time. Upon becoming the Owner of a Lot, but subject to the terms hereof, an Owner shall automatically become a Member of the Association. An Owner shall be and remain a Member of the Association until such time as his ownership of a Lot ceases, at which time his membership in the Association shall cease automatically. Ownership of a Lot shall be the sole qualification and criterion for membership and membership in the Association shall be and is hereby declared to be an appurtenance to ownership of a Lot and may not be separated from ownership of any Lot in the Property. The foregoing is not intended to include persons or entities who hold an interest merely as security for the performance of an obligation. A membership in the Association shall not be sold, assigned, transferred, pledged, hypothecated or alienated in any way except upon the transfer, pledge, hypothecation or alienation of such Lot, and then only to such purchaser, or encumbrancer, or by intestate succession, testamentary disposition, foreclosure of mortgages or sale under a deed of trust, or other legal process. An encumbrance or lien upon a Lot shall similarly be deemed an encumbrance or lien upon the membership appurtenant to that Lot. Any attempt to make a prohibited transfer is void and will not be reflected upon the books and records of the Association. In the event the Owner of any Lot should fail or refuse to transfer the membership registered in his name to the person or entity acquiring title to such Lot, the Association shall have the right to record the transfer upon the books of the Association and issue a new membership to the purchaser, and thereupon the old membership outstanding in the name of the seller shall be null and void as though the same had been surrendered. The record Owner of a Lot shall be entitled to one membership in the Association for himself and his family residing in a residence on a Lot provided, however, in the event any such Lot is owned by



two or more persons, the membership as to each such Lot shall be joint, and a single membership for such Lot shall be issued in the names of all Owners, and they shall designate to the Association the individual who shall have the power to vote said membership. At the discretion of the Board, no certificates of membership need be issued, and if certificates are not issued, membership shall be evidenced by an official list of Members kept by the Secretary of the Association.

Section 3. Directors. The affairs of the Association shall be managed by a Board of Directors which shall be established and which shall conduct regular and special meetings according to the provisions of the Articles and Bylaws of the Association.

Section 4. Voting Rights. The Members shall be entitled to vote to elect Directors. The Members shall have no other voting rights and no other right or power to direct or control the activities of the Association. For purposes of voting, the Members of the Association shall be divided into two classes of membership:

Class A. Class A shall consist of all Owners except Declarant and each shall be entitled to one vote for each Lot owned.

Class B. Class B shall be the Declarant who shall be entitled to three votes for each Lot owned either directly or beneficially. The Class B membership shall cease and be converted to Class A membership on the happening of either of the following events, whichever occurs earlier:

(a) When the total votes outstanding in the Class A membership equals the total votes outstanding in the Class B membership (tripled as provided in the Articles); or

(b) September 1, 1990; or

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

Section 5. Suspension. If any Owner shall be in arrears in the payment of any amounts due under any of the provisions of this Declaration for a period of fifteen days, or shall be in default in the performance of any of the terms of this Declaration for a period of fifteen days, that Owner's right to vote as a Member of the Association shall be suspended automatically and shall remain suspended until all payments are brought current and for a period not to exceed 60 days for any infractions of its published rules and regulations.

Section 6. Procedure. The election of Directors shall be conducted by secret written ballot duly mailed to the Members or provided at a meeting of the Members.

Section 7. The Fountain Court Rules. By a majority vote of the Directors of the Board, from time to time and subject to the provisions of this Declaration, the Association may adopt, amend, repeal rules and regulations to be known as "The Fountain Court Rules." The rules may restrict and govern the use of any area by any Owner, by the family of such Owner, or by any invitee, licensee or lessee of such Owner; provided, however, that the rules shall not be inconsistent with this Declaration, the Articles or the Bylaws. A copy of the rules as they may from time to time be adopted, amended or repealed, shall be mailed or otherwise delivered to each Owner and may be recorded. The Board shall have the right to impose fines and penalties for violations of this Declaration and the rules and if such fines or penalties are not paid within ten days after written notice to the Owner in violation, the fines or penalties shall become a lien on the Owner's Lot and be enforceable as any other lien created by Paragraph 7. The fines and penalties shall be in the amount of \$100.00 for each offense, or such other amount as the Board may determine. Each occasion of violation and each day during which such violation continues shall be deemed a separate offense subject to a separate and additional fine and penalty.

Section 8. Indemnification. Every Director and every officer of the Association shall be indemnified by the Association against all expenses and liabilities, including attorney's fees, reasonably incurred by or imposed upon him in connection with any proceeding to which he may be a part, or in which he may become involved, by reason of his being or having been a director or officer of the Association in accordance with the provisions of the Articles and Bylaws. No director or officer of the Association shall have any monetary liability for a failure of the Association or the Board to act in accordance with the terms of this Declaration unless such failure was due to the willful, wanton and intentional act of such Director or officer.

Section 9. Board's Determination Binding. In the event of any dispute or disagreement between any Owners relating to the Property, or any questions or interpretation or application of the provisions of the Declaration, the Articles, or the Bylaws, the determination by the Board shall be final and binding on each and all of such Owners. If a decision cannot be reached by the Board upon any matter submitted to or considered by the Board, it shall be determined by the Members of the Association or by arbitration in accordance with the rules and regulations of the American Arbitration Association, Maricopa County, Arizona.

Section 10. Delegation of Duties. In connection with its duties of architectural control and landscaping, the Board may designate a special committee (with not less than five members) who may or may not be members of the Board, to act for and on its behalf. Wherever in this Declaration or the Articles or Bylaws, the approval of the Board of Directors is required for such matters, the approval of that committee shall be sufficient;

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provided, however, any decision of such a committee may be appealed to the Board within five (5) days after rendered and the Board shall review such decision within fifteen (15) days thereafter, and render a final decision.

## EXTERIOR MAINTENANCE

Section 1. Maintenance Responsibility. Maintenance, repair and upkeep of each Unit shall be the sole responsibility of each Owner. Subject to the approval requirements of the Architectural Control Committee set forth in Article IX hereof, the Owner's responsibility of maintenance, repair and upkeep includes maintenance of interior and exterior painting, roof, and all exterior Unit surfaces, exterior lighting which is wired to the individual Unit, light posts, and mail boxes. In the event an Owner fails to maintain his or her Unit in a manner in keeping with the general neighborhood, the Association, by its agents or employees, shall have the right but not the duty to enter upon the Lot and repair, maintain or restore the exterior unit structure, or other improvements erected on the Lot. The Board of Directors of the Association, by a two-thirds (2/3) vote, shall have the right, in their sole discretion, to determine whether or not an exterior of a Unit, or other improvement upon a Lot is in need of maintenance, repair, or upkeep in order to conform to the general neighborhood standard. In making that determination the Board shall consider the general neighborhood standard to be that standard which reflects a high pride of ownership from the Units as a whole. Each Owner, by acceptance of a deed to a Lot, grants an easement to the Association for maintenance, upkeep and repair which may be occasioned by this paragraph.

Section 2. Landscape and Fountain Maintenance. The Association shall be solely responsible for all planting and maintenance of landscaping on the Common Area, and on each Lot, including front yard areas of the Lot except for individual patio areas or other such areas on the Lot which have been enclosed or separated by any decorative or masonry wall. Each Owner shall be responsible for planting and maintenance of the individual patio area of his or her own Unit and shall not plant or erect any structure or decorative item upon Common Area or upon any portion of his or her Lot outside of the individual patio area. Each Owner, by acceptance of a deed to a Lot, grants an easement to the Association over and upon the Lot for performance of landscape maintenance. In addition, the Association shall be solely responsible for maintenance of the fountain located on that portion of the Common Area designated as Parcel "E" on the Map. In the event that the need for maintenance or repair is caused through the willful or negligent act of the Owner, his family, guests or invitees, the cost of such maintenance or repairs shall be added to and become a part of the assessment to which such Owner's Lot is subject.

Section 3. Maintenance of Public Utility Easements. The Association shall be responsible for maintaining Public Utility Easement Areas appurtenant to the Lots and all landscaping, fixtures or equipment including utility lines located

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thereon. "Public Utility Easement Areas" shall mean and refer to the easement area appurtenant to the Lots as indicated on the Map which are dedicated for public right-of-way and utilities, including installation of water lines and mains. The Owners of said Lots, by acceptance of a deed to said Lots, hereby grant an easement to the Association over and upon the Lot for performance of maintenance to the Public Utility Easement Area.

Section 4. Custodian Lot. The Association shall have the power and authority, with the vote or written assent of seventy-five percent (75%) of the Members, to purchase a Lot (the "Custodian Lot") to be occupied by the custodian of the Development. In such case, during the period the Custodian Lot is owned by the Association:

(a) No right to vote shall be exercised on behalf of the Custodian Lot; and the Custodian Lot shall be Common Area subject to this Declaration;

(b) No assessment shall be assessed or levied against the Custodian Lot; and

(c) Each other Owner shall be charged, in addition to this usual assessment, his share of the assessment that would have been charged to the Custodian Lot but for the provisions of this section.

## ARTICLE VI

## PERMITTED USES AND RESTRICTIONS

The permitted uses, easements, and restrictions for all Property covered by this Declaration, shall be as follows:

Section 1. Access Easement. Whenever any wall to be maintained by the Owner of any Lot within which the wall is located abuts the boundary line of another Lot or the Common Areas, an easement adjacent thereto is hereby created for the purposes of access to maintain, repair and replace same, subject to the terms hereof.

Section 2. Accessories. No clotheslines, service yards, wood piles, basketball apparatus, free-standing mailboxes or newspaper receptacles, exterior storage area, sheds or structures, heating or air conditioning equipment, or other exterior fixtures, machinery or equipment shall be permitted except with the prior written approval of the Board. Any such use or equipment as is approved and authorized shall be attractively screened or concealed (subject to all required approvals as to architectural control) so as not to be Visible From Neighboring Property.

Section 3. Animals. No dogs, cats or other animals, birds, fowl, poultry or livestock shall be maintained on any portion of any Property covered by this Declaration without securing the prior written consent of the Board for each such animal to be so maintained. In ruling upon such applications for consent the Board shall have the right to consider the effect of such animal or animals on neighbors and on surrounding properties and Common Area and shall have the right to condition any approval of such application upon the agreement of the applicant to provide such animal facilities and care as the Board shall require. All decisions of the Board regarding pets and animals shall be final and binding. The Board shall at all times have the right to adopt and promulgate rules and regulations regarding pets and animals. No Owner shall permit any pet or animal to defecate or urinate except on the Lot owned by the Owner of the pet or animal. Decisions rendered and rules and regulations adopted by the Board shall be enforceable as other restrictions contained herein.

Section 4. Antennas. No antenna or other device for the transmission or reception of television or radio signals or any other form of electromagnetic radiation shall be erected, used or maintained outdoors on any Property whether attached to a building or structure or otherwise, unless approved by the Board and in no event shall any such antenna or device be Visible From Neighboring Property.

Section 5. Business or Offensive Activities. No noxious or offensive activity may be carried on or permitted on

any part of the Property, nor shall anything be done thereon which may be or become an annoyance or nuisance to the Development or the neighborhood; nor shall any part of the Development be used for business, professional, commercial, rest home (including but not limited to care or treatment of the physically or mentally sick or disabled), religious or institutional purposes. This section does not apply to the activities of the Association in furtherance of its powers and purposes as set forth in this Declaration.

Section 6. Clothes Drying Facilities. Outside clotheslines or other outside facilities for drying or airing clothes shall not be erected, placed or maintained on any Property so as to be Visible from Neighboring Property.

Section 7. Damage to Common Area. In the event of damage to or destruction of Common Areas, the Association shall immediately cause such damage to be repaired or such destroyed property to be replaced or rebuilt in accordance with, or as closely as practicable to, the original plans and specifications for the Project. In the event that such damage or destruction is uninsurable, the Board, in its discretion, shall levy a special assessment for the purpose of raising sufficient capital, not to exceed \$1500 without the vote of the Association, as provided for herein, to cause such damage to be repaired or such destroyed property to be replaced or rebuilt in accordance with, or as closely as practicable to the original plans and specifications for the Project.

Section 8. Declarant's Exemption. Nothing contained in this Declaration shall be construed to prevent the erection or maintenance by Declarant or its duly authorized agents, of any structures, improvements, or signs reasonably necessary or convenient to the development, sale, maintenance of models, operation or other disposition of the Property. Declarant will be undertaking the work of constructing residential dwellings and incidental improvements upon the Lots. The completion of that work and the sale, rental or other disposal of said residential units is essential to the establishment and welfare of the Property as a residential community. In order that the work may be completed and the Property established as a fully occupied residential community as rapidly as possible, nothing in this Declaration shall be understood or construed to:

(a) Prevent Declarant, its contractors or subcontractors from going on the Property or any Lot thereof, whenever reasonably necessary or advisable in connection with the completion of said work; or

(b) Prevent Declarant, or its representatives, from erecting, constructing and maintaining on the Property, such structures as may be reasonably necessary for the conduct of its business of completing the work and disposing of the same by sale, lease or otherwise;

(c) Prevent Declarant at any time prior to acquisition of title by a purchaser, from amending this Declaration to establish on the Property additional easements, reservations of rights of way to itself, to utility companies or to others as may from time to time be reasonably necessary for the proper development and disposal of the Property or any Lot herein. Declarant shall have the right, following the acquisition of title by a purchaser, to grant easements and rights of way to utility companies for the purpose of serving any portion of the Property affected by this Declaration. Declarant or the organization for whose benefit said easements, reservations and rights of way have been established, shall have the right at any time to cut and remove any trees or branches or any other unauthorized object from such easements, reservations and rights of way.

Section 9. Diseases and Insects. No Owner shall permit any thing or condition to exist upon any Property which shall induce, breed or harbor infectious plant diseases or noxious insects.

Section 10. Drainage Easement. There is hereby created a blanket easement for drainage of groundwater on, over and across the Property. No Owner shall obstruct, divert, alter or interfere in any way with the drainage of groundwater upon, across or over any portion of the Property. Each Owner shall at his own expense maintain the drainage-ways and channels on his Lot in proper condition free from obstruction. The Association shall have the right, after thirty (30) days' notice to an Owner, to repair or otherwise maintain the drainage-way or channel on said Owner's Lot, which the Association, acting through its Board, determines has not been maintained by the Owner in compliance with this provision. All costs and expenses, including reasonable attorney's fees incurred by the Association shall be borne by the Owner, and shall be paid to the Association on demand, plus interest at the rate of twelve percent (12%) per annum from ten (10) days after said demand until paid in full. Any sum not paid by an Owner may be treated as an assessment and collected in like manner as assessments levied pursuant to this Declaration.

Section 11. Encroachments. Each improvement shall be subject to an easement for encroachments created by construction, settling and overhangs as designed or constructed by the original builder. A valid easement for said encroachments and for the maintenance of same, so long as it stands, shall and does exist. In the event the same is partially or totally destroyed, and then rebuilt, the Owners agree that minor encroachments of parts of the adjacent improvements due to construction shall be permitted and that a valid easement for said encroachments and the maintenance thereof shall exist. Anything herein to the contrary notwithstanding, any such encroachment shall not exceed such size as is approved by the Board.



Section 12. Fences.

(a) Wherever the word "fence" or "fences" or "fencing" appears in this Declaration, it includes block walls used as a fence or fences.

(b) Except as may be installed by the Declarant, no side or rear wall, other than the wall of the building constructed on said Lot, shall be more than six (6) feet in height. Notwithstanding the foregoing, however, the prevailing governmental regulations shall take precedence over these restrictions if said regulations and provisions are more restrictive. Unless otherwise approved by the Board, all fencing and any materials used for fencing, dividing or defining the Lots must be of cement block construction and of new materials, and erected in a good workmanlike manner. The color(s) of the fencing for all Lots will be selected by the Declarant and shall not be changed without the approval of the Board. All fences shall be maintained in good condition and repair, and fences, upon being started, must be completed within a reasonable time. In the event any fence is wholly or partially damaged, it shall be removed in its entirety and be thereupon replaced, or returned to its original condition; provided, however, any fences installed by the Declarant must be promptly restored to their original condition. All Lots, when developed, shall be improved with fences as approved by Declarant or Board.

(c) Fences which may be constructed upon the dividing line between Lots (or near or adjacent to said dividing line because existing easements prevent a fence from being located on the dividing line) by the Declarant shall be maintained and repaired at the joint cost and expense of the adjoining Lot Owners and fences constructed upon the back of any Lot by the Declarant shall be maintained and repaired at the cost and expense of the Lot Owner on whose Lot (or immediately adjacent to whose Lot) the fence is installed. Such fences shall not be altered, or changed in design, color, material or construction from the original installation made by the Declarant; provided, however, in the event any such fence is damaged or destroyed by the act or acts of one of the adjoining Lot Owners, the Lot Owner, his family, agents, guests or tenants responsible for said damage shall forthwith rebuild and repair same to its prior condition, at his sole cost and expense. All gates shall be no higher than the adjacent fence.

(d) In the event of a dispute between Owners with respect to the construction, repair, or rebuilding of a fence or wall, or with respect to the sharing of the cost thereof, such adjoining Owners shall submit the dispute to the Board, the decision of which shall be binding.

Section 13. Improvements and Alterations. No improvements, alteration, repairs, excavation or other work which in any way alters the exterior appearance of any Property or the

improvements located thereon from its natural or improved state existing on the date such Property was first conveyed or transferred to a public purchaser shall be made or done without the prior approval of the Board, except as otherwise expressly provided in this Declaration, all as provided in Article IX.

Section 14. Machinery and Equipment. No machinery or equipment of any kind shall be placed, operated or maintained upon or adjacent to any portion of the Property except such machinery or equipment as is usual and customary in connection with the use, maintenance or construction of buildings, improvements or structures which are within the permitted uses of such Property, and except that which Declarant, or the Association may require for the operation and maintenance of the Common Area. No elevated tanks or large containers of any kind shall be erected, placed or permitted upon any Lot, except for use in connection with any Unit thereon, and except as shall have first been approved by the Board.

Section 15. Mineral Exploration. No 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.

Section 16. Nuisances. No rubbish or debris of any kind shall be placed or permitted to accumulate upon or adjacent to any Property, and no odors shall be permitted to arise therefrom, so as to render any such Property or any portion thereof unsanitary, unsightly, offensive or detrimental to any other Property in the vicinity thereof or to its occupants. No nuisance shall be permitted to exist or operate upon any such Property so as to be offensive or detrimental to any other Property in the vicinity thereof or to its occupants. Without limiting the generality of any of the foregoing provisions, no exterior speakers, horns, whistles, bells or other sound devices, except security devices used exclusively for security purposes, shall be located, used or placed on any such Property. The Board in its sole discretion shall have the right to determine the existence of any such nuisance. No motorcycles or motor driven vehicles (except lawn maintenance equipment) shall be operated on any walkways or sidewalks within the Property.

Section 17. Obligation to Maintain and Repair. Each Unit Owner shall, at his sole cost and expense, maintain and repair his Unit and keep the same in good condition. In the event of damage to or destruction of any part of a Unit, the Owner shall reconstruct the same as soon as reasonably practicable, and substantially in accordance with the original plans and specifications therefor, and in accordance with the terms and conditions of this Declaration.

Section 18. Outside Lighting. Except as may be initially installed by Declarant, no spotlights, floodlights or similar type high intensity lighting shall be placed or utilized

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upon any Unit which will direct light to any other Unit or to the Common Areas or any part thereof without prior written authorization of the Board. Other types of low intensity lighting which do not disturb the Owners or other occupants of the Property shall be allowed.

Section 19. Overhead Encroachments. No tree, shrub or planting of any kind on any Lot shall be allowed to overhang or otherwise to encroach upon any sidewalk, street, pedestrian way, or other area from ground level to a height of twelve (12) feet without the prior approval of the Board.

Section 20. Parking. Subject to the respective rules of any municipality or governmental authority having jurisdiction over the Development, the Association shall regulate parking within the Development pursuant to reasonable rules and regulations.

Section 21. Restriction on Further Subdivision. No Lot shall be further subdivided or separated into smaller Lots by any Owner, and no portion less than all of any such Lot, nor any easement or other interest therein, shall be conveyed or transferred by any Owner without the prior written approval of the Board.

Only the entire Lot, and not a portion thereof, together with the improvements thereon, may be rented, and then only to a single family. The Lots or improvements thereon shall not be rented by the Owners thereof for transient or hotel purposes, which shall be defined as (a) rental for any period less than thirty (30) days, or (b) any rental if the occupants of the Unit are provided customary hotel service such as, but not limited to, room service or food and beverage, maid service, furnishing laundry and linen, and bellboy service. Subject to the foregoing restrictions, the Owners of the respective Units shall have the absolute right to lease the respective Units subject to the covenants, conditions, restrictions, limitations and uses contained in this Declaration and the Bylaws and any reasonable rules and regulations promulgated by the Association.

No application for zoning of any Lot and no applications for variances or use permits, shall be filed with any governmental authority unless the proposed use of the Lot has been approved by the Board for such Lot and the proposed use otherwise complies with this Declaration.

Section 22. Access to Lots. After reasonable notice to the Owner (except in cases of emergency) and during reasonable hours, Declarant, any member of the Board, or any authorized representative of any of them, shall have the right to enter upon and inspect any Property and the improvements thereon, except for the interior portions of any building, for the purpose of ascertaining whether or not the provisions of this Declaration have been or are being complied with, and such persons shall not be deemed guilty of trespass by reason of such entry.

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Section 23. Screening Areas. All screening areas, whether fences, hedges or walls, shall be maintained and replaced on the Lots in accordance with the original construction of the improvements by the Declarant, or as approved by the Board as hereinafter set forth.

Section 24. Signs. No signs whatsoever which are Visible from Neighboring Property shall be erected or maintained on any Lot except such signs the nature, number and location of which have been approved in advance in writing by the Board.

Section 25. Solar Heating. Upon obtaining the prior approval of the Board in accordance with the provision of this Declaration, the Owner of any Lot may, subject to the terms, covenants, provisions and conditions of this Declaration, install, replace, repair, maintain, use, modify and change a solar heating system on such Lot. No Owner shall plant trees, or make changes, alterations or improvements to any Lot, or do any act or thing, which will obstruct the rays of sun from the collectors of any then existing solar heating system, or otherwise interfere with the normal use and operation of any then existing solar heating system. The Board shall have the right and power to promulgate reasonable and non-discriminatory rules relating to the use, operation, repair, replacement, maintenance and modification of any solar heating system, and each and every Owner shall be bound thereby.

Section 26. Storage Sheds. No storage sheds or similar or related type objects shall be located on any Lot if the height of such object is greater than the height of the block fence on or adjoining said Lot or if such object is Visible from the front of the Lot or is Visible from Neighboring Property.

Section 27. Temporary Occupancy. No trailer, basement of any incomplete improvement, building, tent, shack, garage or barn, and no temporary improvement of any kind shall be used at any time for a temporary or permanent residence on any portion of the Property. Temporary buildings or structures used during the construction of a dwelling on any such Property shall be removed immediately after the completion of construction. Notwithstanding any contrary provision hereof, Declarant shall have the right until the Property is completely developed to maintain temporary construction, sales and storage facilities incident to the development and sale of the Lots to public purchasers.

Section 28. Trailers and Motor Vehicles. No mobile home, motorhome, boat, recreational vehicle, trailer of any kind, truck, camper, permanent tent, or similar structure shall be kept, placed, maintained, constructed, reconstructed or repaired, nor shall any motor vehicle be constructed, reconstructed or repaired, upon any portion of any Property or street (public or private) within the Property, in such a manner as will be Visible from Neighboring Property for more than forty-eight (48) consecu-

tive hours or for more than seventy-two (72) hours, in the aggregate, during any consecutive seven (7) day period; provided, however, that the provisions of this paragraph shall not apply to emergency vehicle repairs or temporary construction shelters or facilities maintained during, and used exclusively in connection with, the construction of any improvement approved by the Board. Garages shall be used for parking vehicles and storage purposes only, and shall not be converted for living or recreational activities.

Except as provided above, only automobiles in operating condition shall be parked in uncovered parking areas. Automobiles and other motor vehicles owned by Lot Owners shall not be parked in or on the streets or private drives constituting part of the Common Area without the prior approval of the Board.

Section 29. Trash Containers and Collection. No garbage or trash shall be placed or kept on any portion of the Property except in covered containers of a type, size and style which are approved by the Board. 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. The Board shall have the right, in its sole discretion, to require all Owners to subscribe to a trash service. All rubbish, trash, or garbage shall be removed from the Lots and shall not be allowed to accumulative thereon. No incinerators shall be kept or maintained on any Lot.

Section 30. Utility Easements. There is hereby created a blanket easement upon, across, over and under the Common Area for ingress, egress, installation, replacing, repairing and maintaining all utility and service lines and systems, including, but not limited to, water, sewer, gas, telephone, electricity, television cable or communication lines and systems. By virtue of this easement, it shall be expressly permissible for the providing utility or service company to install and maintain facilities and equipment on said property and to affix and maintain wires, circuits and conduits on, in and under the roofs and exterior walls of said property. Notwithstanding anything to the contrary contained in this paragraph, no sewers, electrical lines, water lines, or other utilities or service lines may be installed or relocated on said property except as initially developed and approved by the Declarant or thereafter approved by the Board. This easement shall in no way affect any other recorded easements on said property.

Section 31. Utility Service. No lines, wires, or other devices for the communication or transmission of electric current or power, including telephones, television, and radio signals, shall be erected, placed or maintained anywhere in or upon any portion of the 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

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by the Board. No provision hereof shall be deemed to forbid the erection of temporary power or telephone structures incident to the construction of buildings or structures approved by the Board, nor shall any provision hereof prohibit the erection of service pedestals and above-ground switch cabinets and transformers where required.

Section 32. Windows and Awnings. No reflective materials including, but not limited to aluminum foil, reflective screens or glass, mirrors or similar type items, shall be permitted to be installed or placed on the outside or inside of any windows or any other part of a Unit which can be seen from the outside of the Development or from other portions of the Development. Further, no metal or rigid plastic awnings of any nature whatsoever shall be permitted to be placed or installed on or attached to the outside of any of the Units, and only canvas or any other type awnings that shall have been first approved by the Board in writing shall be allowed.

Section 33. No Warranty of Enforceability. While Declarant has no reason to believe that any of the restrictive covenants contained in this Article VI or elsewhere in this Declaration are or may be invalid or unenforceable for any reason or to any extent, Declarant makes no warranty or representations as to the present or future validity or enforceability of any such restrictive covenant. Any Owner acquiring a Lot in the Development in reliance on one or more of such restrictive covenants shall assume all risks of the validity and enforceability thereof and by acquiring the Lot agrees to hold harmless Declarant therefrom.

## ARTICLE VII

## COVENANT FOR MAINTENANCE ASSESSMENTS

Section 1. Creation of the Lien and Personal Obligations of Assessments. The Declarant, for each Lot owned within the Property, hereby covenants and each Owner of any Lot by acceptance of a deed therefor, whether or not it shall be so expressed in such deed, is deemed to covenant and agree to pay to the Association: (1) annual assessments or charges, and (2) special assessments for capital improvements, such assessments to be established and collected as hereinafter provided. The annual and special assessments, together with interest, costs, and reasonable attorney's fees, shall be a charge on the land and shall be a continuing lien upon the Lot against which such assessment is made. Each assessment, together with interest, costs and reasonable attorney's fees, shall also be the personal obligation of the person who was the Owner of such Lot at the time when the assessment fell due. The personal obligation for delinquent assessments shall not pass to his successors in title unless expressly assumed by them.

Section 2. Purpose of Assessments. The assessments levied by the Association shall be used exclusively to promote the recreation, health, safety and welfare of the residents in the Development and for the improvement and maintenance of the Common Area and the carrying out of the Association's responsibilities hereunder. The Association shall have the responsibility of the maintenance and safety of and liability for the Common Area.

Section 3. Maximum Annual Assessment. Until January 1 of the year immediately following the conveyance of the first Lot to an Owner, the maximum annual assessment shall be Seven Hundred Eighty Dollars (\$780.00), per Lot as adjusted, payable in equal monthly installments. Within thirty (30) days prior to the end of each calendar year (January 1 through December 31), the Board of Directors shall estimate the total charges to be paid during the forthcoming year (including reasonable reserve for contingencies and less any expected surplus from the prior year) and shall fix each Lot's assessment in an amount not to exceed the maximum annual assessment effective for the forthcoming year.

From and after January 1 of the year immediately following the conveyance of the first Lot to an Owner, the maximum regular annual assessment shall be increased in each year by an amount equal to the percentage increase, if any, in the Consumer Price Index, United States City Average for Urban Wage Earners and Clerical Workers - All Items (published by the Department of Labor, Washington, D.C.) for the year ending with the previous July (or a similar index chosen by the Board if the above-described Index is no longer published) without an authorizing vote of the Members.

From and after January 1 of the year immediately following the conveyance of the first Lot to an Owner, the maximum regular annual assessment may be increased above the percentage increase in the above-described Index by a vote of two-thirds (2/3) of all Members voting at an annual or special meeting of Owners duly called for such purpose.

Section 4. Special Assessments for Capital Improvements. In addition to the annual assessments authorized above, the Association may levy, in any assessment year, a special assessment applicable to that year only for the purpose of defraying in whole or in part the cost of any construction, reconstruction, repair or replacement of a capital improvement upon the Common Area, including fixtures and personal property related thereto, provided that any such assessment shall have the assent of two-thirds (2/3) of the votes of the Members who are voting in person or by proxy at a meeting duly called for this purpose.

Section 5. Notice, Quorum and Vote for any Action Authorized Under Sections 3 and 4. Written notice of any meeting called for the purpose of taking any action authorized under Sections 3 or 4 of this Article VII shall be sent to all Members not less than thirty (30) days nor more than fifty (50) days in advance of the meeting. At the first such meeting called, the presence of members or of proxies entitled to cast fifty-one (51%) of all votes of membership shall constitute a quorum. If the required quorum is not present, another meeting may be called subject to the same notice requirement, and the required quorum at the subsequent meeting shall be twenty-five percent (25%) of all the votes of the membership. No such subsequent meeting shall be held more than thirty (30) days following the preceding meeting.

Section 6. Uniform Rate of Assessment. Both annual and special assessments must be fixed at a uniform rate for all Lots and may be collected on a monthly basis.

Section 7. Date of Commencement of Annual Assessments: Due Dates. The annual assessments provided for herein shall commence as to all Lots on the first day of the month following the conveyance of a Lot to an Owner. The first annual assessments shall be adjusted according to the number of months remaining in the calendar year. The Board of Directors shall fix the amount of the annual assessment against each Lot at least thirty (30) days in advance of each annual assessment period. Written notice of the annual assessment shall be sent to every owner subject thereto. The due dates shall be established by the Board of Directors. The Association shall, upon demand, and for a reasonable charge, furnish a certificate signed by an officer of the Association setting forth whether the assessments on a specified Lot have been paid.



Section 8. Reserve Fund. By appropriate action the Association may establish and maintain a reserve fund for replacements by the allocation and payment monthly to such reserve fund of an amount to be designated from time to time by the Board. Such fund shall be a depository, and may be in the form of cash deposits or invested in obligations of, or fully guaranteed as to principal by the United States of America. The reserve fund is for the purpose of effecting replacement or repair because of damage, depreciation or obsolescence to the Common Area.

By appropriate action of the Board, the Association shall establish and maintain a general operating reserve by allocation and payment thereto monthly of a sum to be determined by the Board. This reserve shall remain in a special account and may be in the form of cash deposits or invested in obligations of, or fully guaranteed as to principal by the United States of America, and shall at all times be under the control of the Association. This cumulative reserve is intended to provide a measure of financial stability during periods of special stress and may be used to meet deficiencies from time to time as a result of delinquent payments of delinquent payments of assessments by Owners, and other contingencies. Reimbursements shall be made to the account upon payment of delinquencies for which funds were withdrawn from the reserve.

In the event that assessments received during any year are in excess of the actual expenditures for such year for common expenses of the Property, the Board may determine in its sole discretion that such excess shall be designated in whole or in part as a capital contribution to the Association to be used for future capital improvements and replacements; segregated and held in whole or in part as a Custodial Fund to be expended solely for specifically designated capital improvements and replacements; or segregated and added in whole or in part to the Maintenance Reserve Fund. The proportionate interest of each Owner in said capital contributions, Custodial Fund or Maintenance Reserve Fund, cannot be withdrawn or separately assigned but shall be deemed to be transferred with such Unit even though not expressly mentioned or described in the conveyance thereof.

Section 9. Advance Assessments. Upon the initial purchase of a Lot, and from successor purchasers, the Association may require an advance payment or a deposit of at least two (2) months' regular monthly installments.

Section 10. Accounting. The Board of Directors, at all times, shall keep, or cause to be kept, true and correct records of account in accordance with generally accepted accounting principles. All books and records of the Association shall be available for inspection by all voting Owners and by all First Mortgagees, at reasonable times. Such books shall specify in reasonable detail all expenses incurred and funds accumulated from assessments or otherwise. In addition, any Mortgage-holder

shall be entitled to have prepared, at its expense, an audited financial statement of the Association for the immediately preceding fiscal year if one is not otherwise available, and the Association shall have prepared and distributed such statement to such Mortgage-holder requesting it within a reasonable time following receipt by the Association of the required request.

Section 11. Effect of Non-payment of Assessments; Remedies of the Association. Each Owner of any Lot shall be deemed to covenant and agree to pay to the Association the assessments provided for herein, and agrees to the enforcement of the assessments in the manner herein specified. In the event the Association employs an attorney or attorneys for collection of any assessment, whether by suit or otherwise, or to enforce compliance with or specific performance of the terms and conditions of this Declaration, or for any other purpose in connection with the breach of this Declaration, each Owner and Member agrees to pay reasonable attorneys' fees and costs thereby incurred in addition to any other amounts due or any other relief or remedy obtained against said Owner or Member. In the event of a default in payment of any such assessment when due, in which case the assessment shall be deemed delinquent, and in addition to any other remedies herein or by law provided, the Association may enforce each such obligation in any manner provided by law or in equity, or without any limitation of the foregoing, by either or both of the following procedures.

(a) Enforcement by Suit. The Board may cause a suit at law to be commenced and maintained in the name of the Association against an Owner or Member to enforce each such assessment obligation. Any judgment rendered in any such action shall include the amount of the delinquency, together with interest thereon at the rate of twelve percent (12%) per annum from the date of delinquency, court costs, and reasonable attorney's fees in such amount as the Court may adjudge against the delinquent Owner or Member.

(b) Enforcement by Lien. There is hereby created a claim of lien, with power of sale, on each and every Lot within the Property to secure payment to the Association of any and all assessments levied against any and all Owners of such Lots covered by the Declaration, together with interest thereon at the rate of twelve percent (12%) per annum from the date of delinquency, and all costs of collection which may be paid or incurred by the Association in connection therewith, including reasonable attorney's fees. At any time after the occurrence of any default in the payment of any such assessment, the Association, or any authorized representative may, but shall not be required to, make a written demand for payment to the defaulting Owner, on behalf of the Association. Said demand shall state the date and amount of the delinquency. Each default shall constitute a separate basis for a demand or claim of lien or a lien, but any number of defaults may be included within a single demand or claim of lien. If such delinquency is not paid within ten (10) days after

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delivery of such demand, or even without such a written demand being made, the Association may elect to file such a claim of lien on behalf of the Association against the Lot of the defaulting Owner. Such a claim of lien shall be executed and acknowledged by any officer of the Association, and shall contain substantially the following information:

- (i) The name of the delinquent Owner;
- (ii) The legal description and street address of the Lot against which claim of lien is made;
- (iii) The total amount claimed to be due and owing for the amount of the delinquency, interest thereon, collection costs, and reasonable attorney's fees (with any proper offset allowed);
- (iv) That the claim of lien is made by the Association pursuant to the Declaration, and
- (v) That a lien is claimed against said Lot in the amount equal to the amount stated.

Upon recordation of a duly executed original or copy of such a claim of lien, and mailing a copy thereof to said Owner, the lien claimed therein shall immediately attach and become effective in favor of the Association as a lien upon the Lot against which such assessment was levied. Such a lien shall have priority over all liens or claims created subsequent to the recordation of the claim of lien thereof, except only tax liens for real property taxes on any Lot, assessments on any Lot in favor of any municipal or other governmental assessing unit, and the liens which are specifically described in Section 12 hereinafter. Any such lien may be foreclosed by appropriate action in Court in the manner provided by law for the foreclosure of a realty mortgage or by the exercise of a power of sale in the manner provided by law under a trust deed, as set forth by the laws of the State of Arizona, as the same may be changed or amended. The lien provided for herein shall be in favor of the Association and shall be for the benefit of all other Lot Owners. The Association shall have the power to bid in at any foreclosure sale and to purchase, acquire, hold, lease, mortgage, and convey any Lot. In the event of such foreclosure, reasonable attorney's fees, court costs, title search fees, interest and all other costs and expenses shall be allowed to the extent permitted by law. Each Owner, by becoming an Owner of a Lot hereby expressly waives any objection to the enforcement and foreclosure of this lien in this matter.

Section 12. Subordination of the Lien to First Mortgages. The lien of the assessments provided for herein shall be subordinate to the lien of any first mortgage or deed of trust. Sale or transfer of any Lot shall not affect the assessment lien. However, the sale or transfer of any Lot pursuant to mortgage

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foreclosure or any proceeding in lieu thereof, shall extinguish the lien of such assessment as to payments which become due prior to such sale or transfer. No sale or transfer shall relieve such Lot from liability for any assessments thereafter becoming due or from the lien thereof.

Section 13. Unallocated Taxes. In the event that any taxes are assessed against the Common Area, or the personal property of the Association, rather than against the Units, said taxes shall be included in the assessments made under the provisions of this article, and, if necessary, a special assessment may be levied against all of the Units in an amount equal to said taxes.

Section 14. Compliance with FHLMC and FNMA Regulations. The Declarant intends that the Development shall comply with all requirements of the Federal Home Loan Mortgage Corporation (FHLMC) and the Federal National Mortgage Association (FNMA) pertaining to the purchase by the FHLMC and FNMA of conventional home loans. Declarant and all Unit Owners therefore agree that, in the event the Development or any of the Constituent Documents do not comply with the FHLMC and FNMA requirements, the Board shall have the power (on behalf of the Association) to enter into any agreements with the FHLMC or FNMA (or its designee) reasonably required by the FHLMC or FNMA to allow the Development to comply with such requirements, and make such changes in the Constituent Documents to effectuate the same.

Section 15. FHA/VA Approval. As long as there is a Lot owned by the Declarant, the following actions will require the prior approval of the Federal Housing Administration or the Veterans Administration: annexation of additional properties, dedication of Common Area, and amendment of this Declaration.

ARTICLE VIII

PARTY WALLS

Section 1. Rights and Duties of Owner. The rights and duties of the Owners of Units within this project with respect to party wall shall be governed by the following:

(a) Each wall, including patio walls, which is constructed as a part of the original construction of the Units any part of which is placed on the dividing line between the Lots, shall constitute a party wall. With respect to any such wall, each of the adjoining Owners shall assume the burdens and be entitled to the benefits of these restrictive covenants, and to the extent not inconsistent herewith, the general rules of law regarding party walls shall be applied thereto.

Section 2. Sharing of Repair and Maintenance. The cost of reasonable repair and maintenance of a party wall shall be shared by the Owners who make use of the wall in the proportionate amount of fifty percent (50%) each.

Section 3. Destruction by Fire or Other Casualty. If a party wall is destroyed or damaged by fire or other casualty, any Owner who has used the wall may restore it, and if the other Owners thereafter make use of the wall, they shall contribute to the cost of restoration thereof in proportion to such use without prejudice, however, to the right of any such Owners to call for a larger contribution from the others under any rule of law regarding liability for negligent or willful acts or omission.

Section 4. Exposure to Elements. Notwithstanding any other provisions of this article, an Owner who by his negligent or willful act causes any party wall to be exposed to the elements shall bear the whole cost of furnishing the necessary protection against such elements.

Section 5. Right to Contribution. The right of any Owner to contribution from any other Owner under this article shall be appurtenant to the land and shall pass to such Owner's successors in title.

Section 6. Disputes. In the event of a dispute between Owners with respect to the repair or rebuilding of a party wall, then, upon written request of one of such Owners addressed to the Association, the matter shall be submitted to arbitration under such rules as may from time to time be adopted by the Association. If no such rules have been adopted, the matter shall be submitted to three arbitrators, one chosen by each of the Owners and the third arbitrator to be chosen within five (5) days by any judge of the Superior Court of Maricopa County, Arizona. A determination of the matter signed by any two of the three arbitrators shall be binding upon the Owners who shall share the cost of arbitration equally. In the event one

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Owner fails to choose an arbitrator within ten (10) days after personal receipt of a request in writing for arbitration from the other Owner, then said requesting Owner shall have the right and power to choose both arbitrators.

Section 7. Alterations. In addition to meeting the other requirements of these restrictive covenants and of any building code or similar regulations or ordinances, any Owner proposing to modify, make additions to or rebuild his Unit in any manner which requires extension or the alteration of any party wall shall first obtain the written consent of the adjoining Owner and of the Board.

## ARTICLE IX

## ARCHITECTURAL CONTROL

Section 1. Submission of Plans for Original Construction. Except as hereinbelow set forth, no building, fence, wall, antenna, tower, awning or structure of any kind or character shall be commenced, erected, placed or maintained on the Property unless and until plans and specifications showing the location, kind, material, approximate cost, area, height, color, shape and design thereof first shall have been submitted to and approved by the Board as hereinbelow set forth and a copy of said plans and specifications as finally approved is lodged permanently with the Board, and all such construction shall comply strictly with the plans and specifications approved by the Board, with such conditions as the Board imposes. After such plans and specifications have been submitted to the Board, the Board shall have thirty (30) days to approve or disapprove same, in writing. The Board must take action within said thirty (30) days and failure to approve, in writing, the plans and specifications submitted to it within thirty (30) days shall constitute disapproval of said plans and specifications. The Board shall have the right to deny approval of any plans or specifications which, in its opinion, are not suitable or desirable for aesthetic or any other reasons. In this regard, the Board shall have the right to take into consideration all matters mentioned above (i.e., location, kind, material, etc.), as well as the effect any proposed building, structure or improvement may have upon the site where it is proposed to be constructed or placed, and the suitability of the same with respect to the surrounding area and the effect thereof (including but not limited to harmony of external design and location) upon adjacent Lots and the Property as a whole. The Board shall have the right to condition approval of any plans or specifications upon compliance with changes or modifications set forth in writing by the Board.

Notwithstanding the foregoing, until such time as Declarant has completed the Development, any proposed construction must be approved in writing by Declarant, and Declarant shall have the right to disapprove any proposed construction for any reason whatsoever. The restrictions and controls set forth in this section shall not be applicable to Declarant or to any construction or landscaping undertaken by Declarant within the Property.

Section 2. Landscaping. The initial landscaping that is provided by Declarant shall not be altered or changed (except for similar replacements and rehabilitation) without the prior approval of the Board as described in Section 1 above.

Section 3. Replacements; Additions; Alterations. All subsequent exterior additions, changes, alterations or redecorating (including but not limited to painting of exterior surfaces) or any building, fence, wall, landscaping, antenna, tower or

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structure of any kind or character shall be subject to the prior approval of the Board and Declarant under the same conditions set forth in Section 1 above.

Section 4. Common Area. Should the Association determine to make improvements, repairs or replacements to the Common Area, such duly adopted determination shall be deemed in compliance herewith.



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ARTICLE X

LIABILITY

Section 1. Liability. Neither the Board nor any member thereof shall be liable to the Association, any Owner, or to any other party, for any damage, loss or prejudice suffered or claimed on account of (a) the approval or disapproval of any plans, drawings, or specifications, whether or not defective, (b) the construction or performance of any work, whether or not pursuant to approved plans, drawings and specifications, (c) the development of any Property, or (d) the execution and filing of any estoppel certificate, whether or not the facts therein are correct; provided, however, that with respect to the liability of a member, such member has acted in good faith on the basis of such information as may be possessed by him. Without in any way limiting the generality of any of the foregoing provisions of this section, the Board, or any member thereof, may, but is not required to, consult with or hear the views of the Association or any Owner with respect to any plans, drawings, specifications, or any other proposal submitted to the Board.

## ARTICLE XI

## CONDEMNATION

Section 1. Common Area. If a part or portion of the Common Area is taken by exercise of the power of eminent domain or is transferred and conveyed to a condemning authority in anticipation of such exercise and such part or portion does not materially reduce the value or worth of the Development, the entire award (less the costs and expenses of recovering same) shall be paid to and used by the Association and it shall be used to improve the Common Area and mitigate any harmful or depreciating effects of such taking. In that respect, improvement to the remaining Common Area shall be made so as to assist and prevent depreciation and harmful effect to those Lots most directly affected by the taking. Should all or substantially all of the Common Area be so taken, then any award shall be used to rehabilitate and repair any remaining Common Area, and the balance shall be used for the benefit of the Development (such as, by agreement with the condemning authority, establishing a trust fund to contribute to, and ensure, the continued maintenance and repair of the facilities so taken by the condemning authorities in a better condition). In the event of such a whole or substantially whole taking, Declarant (while Declarant is an Owner of any Lots) and at least two-thirds (2/3) of the Members other than Declarant or of the First Mortgagees shall agree upon use of the proceeds of any award.

Section 2. Residences. Should any Lot be taken by exercise of the power of eminent domain or is transferred and conveyed to a condemning authority in anticipation thereof, and notwithstanding the provisions hereof, such Lot ceases to be subject to assessment, then the fractional amount of the common expenses to be assessed against Lots shall automatically be altered to reflect the actual number of Lots subject to assessments.

Section 3. First Mortgagee. Nothing herein shall be deemed to impair or affect the right or priority of any First Mortgagee or First Mortgage in or to any proceeds. Further, the Association shall notify all First Mortgagees (or Servicers) upon receipt of notice of any proposed taking.

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ARTICLE XII

MANAGEMENT AGREEMENTS

Each Owner hereby agrees to be bound by the terms and conditions of all management agreements entered into by the Association acting through the Board. A copy of all management agreements shall be available to each Owner. Any agreement for professional management of the Development, or any other contract providing for services of the Declarant or any other party, shall not exceed a term of three (3) years, and any such agreement shall provide for termination by either party with or, without payment of a termination fee, upon thirty (30) days' written notice.

## ARTICLE XIII

## INSURANCE

Section 1. Units. Each Owner shall procure and maintain insurance upon the improvements which are part of his Lot. Because of the cooperative nature of the Development, evidence of insurance shall be supplied to the Association, and such insurance shall comply with any uniform and reasonable rules and regulations promulgated by the Association. Should an Owner fail to obtain insurance, in compliance with the Association's rules and regulations, then upon ten (10) days' written notice to the Owner and any First Mortgagee holding a First Mortgage on the Lot, the Association may procure coverage for that Lot (or cause the defects in existing coverage to be remedied) and the premium or increased premium therefor shall be immediately due and payable from such Owner to the Association and shall be secured by the assessment lien upon the Lot.

Section 2. Common Areas and Association Insurance.

(a) The Association shall maintain and pay for policies of insurance as follows:

(i) A comprehensive policy of public liability insurance covering all of the Common Areas and public ways in the Development in a minimum amount of at least One Million Dollars (\$1,000,000.00) per occurrence for personal injury and/or property damage or, in any event, such amount which satisfies FHLMC and FNMA requirements. Such insurance policy shall contain 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 and its agents or other Owners. The scope of such coverage shall include all other coverage in the kinds and amounts customarily acquired or required for projects similar in construction, location and use, and, to the maximum extent feasible, protect against liability for water damage, non-owned and hired vehicles, and property of others.

(ii) A multi-peril type policy covering all insurable improvements upon the Common Areas, providing as a minimum, fire and extended coverage, and all other coverage in kinds and amounts customarily acquired or required for projects similar in construction, location and use, including but not limited to vandalism and malicious mischief, in an amount not less than one hundred percent (100%) of the replacement value of such improvements. To the maximum extent feasible, such policy or policies shall include an Agreed Amount Endorsement and the Inflation Guard Endorsement and shall protect against sprinkler leakage, debris removal, cost of demolition, and windstorm and water damage. If the Property is located in an area identified by the Secretary of Housing and Urban Development as an area having special flood hazards, a "blanket" policy of flood insurance on the Development shall be maintained in an amount

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equal to the aggregate outstanding principal balance of all Mortgage loans on the individual Lots or the maximum limit of coverage available under the National Flood Insurance Act of 1968, as amended, whichever is less. Such policies shall be in form and amount as determined by the Board but, in any event, shall always satisfy FHLMC and FNMA requirements as amended from time to time, shall name as insured the Association, the Owners, Declarant (so long as Declarant is an Owner of any Lots), and all Mortgagees as their respective interests may appear, and shall provide that any proceeds be paid to the Association for the use and benefit of the Owners and Mortgagees as their interests may appear. Such policy shall not be required to insure the personal property within any individual Lot, which insurance shall be the responsibility and risk of the Owners.

(iii) The Association must obtain fidelity coverage against dishonest acts on the part of Directors, managers, trustees, employees or volunteers responsible for handling funds belonging to or administered by the Association. The fidelity bond or insurance must name the Association as the named insured and shall be written to provide protection which is in no event less than one and one-half times the insured's estimated annual operating expenses and reserves. In connection with such coverage, an appropriate endorsement to the policy to cover any person who serves without compensation shall be added if the policy would not otherwise cover volunteers.

(iv) A workmen's compensation policy, if necessary to meet the requirements of law.

(v) Such other insurance as the Board shall determine from time to time to be desirable.

(b) The insurance policies purchased by the Association shall, to the extent possible, contain the following provisions:

(i) The coverage afforded by such policies shall not be brought into contribution or proration with any insurance which may be purchased by Owners or First Mortgagees.

(ii) The conduct of any one or more Owners shall not constitute grounds for avoiding liability on any such policies.

(iii) There shall be no subrogation with respect to the Association, its employees, Owners and members of their household and their families and employees, unless the policy(ies) name(s) said persons as additional insureds.

(iv) A "severability of interest" endorsement shall be obtained which shall preclude the insurer from denying the claim of an Owner because of any negligent acts of the Association or other Owners.

(v) For policies of hazard insurance and fidelity coverage, a standard clause shall provide that the insurance carrier shall notify any First Mortgagee or Servicer at least thirty (30) days in advance of the effective date of any reduction in or cancellation of the policy.

(vi) Any "no other insurance" clause shall exclude insurance purchased by Owners of Lots subject to First Mortgages.

Section 3. First Mortgage Holders.

(a) The Association shall provide each Mortgagee with a letter wherein the Association agrees to give written notice to each First Mortgagee, or Servicer of a mortgage, or any entity or person designated by such First Mortgagee or Servicer, whenever:

(i) Damage to a Lot covered by a First Mortgage exceeds \$1,000.00;

(ii) Damage to the Common Areas and related facilities exceeds \$10,000.00

(b) Each hazard insurance policy shall be written by a hazard insurance carrier which has a financing rating by Best's Insurance Reports of Class VI or better, or if such rating be discontinued, by a successor thereto or a similar such rating service and, in any event, the insurance carrier must meet FHLMC and FNMA requirements as amended from time to time.

(c) Each insurance carrier must be specifically licensed or authorized by law to transact business within the State of Arizona.

(d) Policies shall not be utilized where:

(i) Under the terms of the carrier's charter, bylaws or policy, contributions or assessments may be made against the Owner or First Mortgagee or any entity or person purchasing or guaranteeing any First Mortgage; or

(ii) By the terms of the carrier's charter, bylaws or policy, loss payments are contingent upon action by the carrier's board of directors, policyholders, or members; or

(iii) The policy includes any limiting clauses (other than insurance condition) which could prevent collecting insurance proceeds.

(e) To the extent that any policies insure against loss or damage to property covered by a First Mortgage, a mortgagee clause shall be issued and it shall be properly endorsed, and there must have been given necessary notices of transfer, and any other action required to be taken must be taken in order to fully

protect, under the terms of the policies and applicable law, the interest of all First Mortgagees, their successors and assigns. Where permissible, the insurance carrier shall be required to name the Servicer of a First Mortgage, or "(Name of servicer) or assigns, "as First Mortgagee under such mortgage clause. If permissible, where a deed of trust is utilized, the insurance carrier shall be required to use "(name of servicer), beneficiary" or "(name of trustee) for the benefit of (name of servicer)" instead of only the name of trustee under the deed of trust. All insurance drafts, notices, policies, invoices and all other similar documents, or their equivalent, shall be delivered directly to each Servicer involved, regardless of the manner in which the mortgagee clause is endorsed. The Servicer's address on any First Mortgagee endorsement on a policy shall be used in the endorsements in lieu of the address of the First Mortgagee if requested by the First Mortgagee.

(f) First Mortgagees may pay overdue premiums, or may secure new insurance coverage on the lapse of a policy, with respect to any insurance required to be maintained by the Association as provided in this part, and First Mortgagees making expenditures therefor shall be owed immediate reimbursement by the Association.

Section 4. Premiums. Premiums upon insurance policies purchased by the Association shall be paid by the Association as a common expense.

Section 5. Benefit. Except as otherwise provided herein, all insurance policies purchased by the Association shall be for the benefit of the Association, the Lot Owners and First Mortgagees, as their interests may appear.

Section 6. Proceeds. Any insurance proceeds payable from policies procured by the Association on account of any loss or damage shall be used to defray such loss or damage. With respect to the damage or destruction of any Common Area or facilities, the Association, acting through its Board shall promptly repair, replace and rehabilitate all structures and things damaged or destroyed. Construction and design of any improvements shall be substantially similar to the prior condition of the Common Area and facilities unless otherwise approved by a majority of all of the Owners and a majority of all of the First Mortgagees. Should insurance proceeds not be sufficient or should the damage not be covered by insurance, repairs and replacements shall be effected and paid for by means of special assessments, charged in the same proportion as regular assessments.

Section 7. Repair By Owners. Owners of Lots which are damaged by fire or other casualty shall promptly repair or reconstruct the damaged portion of the Unit or Lot or remove all debris from each said Lot such that the Lot does not have an unsightly appearance or otherwise constitute a nuisance to neighboring Lots.

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Section 8. Additional Insurance Requirements. It is the intent of Article XIII of this Declaration to generally set forth the insurance requirements for the Development which are, at all times, to comply with FHLMC and FNMA requirements. Because FHLMC and FNMA Project insurance requirements are very lengthy and subject to change from time to time, it is impractical to set forth all of those requirements herein. Therefore, the Association, Board and Owners shall at all times carry, maintain in good standing and pay for all hazard, liability, fidelity and other insurance policies, binders and bonds required by the FHLMC and FNMA, and FHLMC and FNMA regulations or guidelines as such requirements change from time to time, including but not limited to all insurance and bonds required by Section 3.203 of the FHLMC Sellers' Guide Conventional Mortgages and FNMA regulations, and shall provide satisfactory evidence thereof promptly to any First Mortgagee or insurer to guarantor of any First Mortgage which requests such evidence. All such policies, binders and bonds shall comply with and be consistent in form and substance with all such FHLMC and FNMA requirements as they change from time to time, and shall include all mortgage clauses and endorsements of any kind or nature required by the FHLMC and FNMA, and FHLMC and FNMA regulations or guidelines as such requirements change from time to time.



## ARTICLE XIV

## RIGHTS OF FIRST MORTGAGEES

Notwithstanding any language to the contrary contained in this Declaration, and in addition to the rights granted elsewhere in this Declaration, the rights of all First Mortgagees of Lots in the Property shall be as follows:

Section 1. Rights of First Mortgagees to Security. This Declaration, the Articles of Incorporation or the Bylaws of the Association shall not impair the rights of the First Mortgagee to:

- (a) Foreclose or take title to a Unit pursuant to the remedies provided in the mortgage, or
- (b) Accept a deed (or assignment) in lieu of foreclosure in the event of default by a mortgagor, or
- (c) Sell or lease the Unit acquired by the Mortgagee.

Section 2. Liability for Assessments. Any First Mortgagee who obtains title to a Unit pursuant to the remedies provided in the mortgage or foreclosure of the mortgage will not be liable for such Unit's unpaid dues or charges which accrue prior to the acquisition of title to such Unit by the Mortgagee.

Section 3. Approval Rights for Project Changes. Unless at least two-thirds (2/3) of the First Mortgagees (based upon one vote for each mortgage owned) or Owners (other than Declarant) of the individual Units in the Property have given their prior written approval, the Association shall not be entitled to:

- (a) By act or omission seek to abandon, partition, subdivide, encumber, sell or transfer any portion of the Common Area, directly or indirectly, by the Association. (The granting of easements for public utilities or for other public purposes consistent with the intended use of the Common Area by the Association or the Members thereof shall not be deemed a transfer within the meaning of this subparagraph).
- (b) Change the method of determining the obligations, assessments, dues or other charges which may be levied against a Unit Owner or change the Common Interests of the Lots.
- (c) By act or omission, waive or abandon any scheme of regulations, or enforcement thereof, pertaining to the architectural design or exterior appearance of the Units, the maintenance of the Common Area walks or common fences and driveways, or the upkeep of lawns and plantings upon the Property;

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

(e) Use hazard insurance proceeds for loss to any common property for other than the repair, replacement or construction of such common property.

Section 4. Payment of Taxes and Insurance. First Mortgagees of Units may, jointly or singly, pay taxes or other charges which are in default and which may or have become a charge against any property constituting the Common Area and may pay overdue premiums on hazard insurance policies, or secure new hazard insurance coverage on the lapse of a policy for such Common Area and First Mortgagees making such payments shall be owed immediate reimbursement therefor from the Association.

Section 5. Priority of First Mortgages for Proceeds Distribution. No provision of the Constituent Documents gives a Unit Owner, or any other party, priority over any rights of the First Mortgagee of a Unit pursuant to its mortgage in the case of a distribution to such Unit Owner of insurance proceeds or condemnation awards for losses to or a taking of all or any portion of the Common Area.

Section 6. Reserve Fund. Annual assessments by the Association shall include an adequate reserve fund for maintenance, repairs and replacement of those elements of the Common Area that must be replaced on a periodic basis and are payable in regular monthly installments.

Section 7. Notification of Lot Owner's Default. Any First Mortgagee, upon request, shall be entitled to written notification from the Association of any default in the performance by an individual Unit Owner subject to the First Mortgage held by such of any obligations under the Constituent Documents which is not cured within sixty (60) days.

Section 8. Professional Management of Association. Any agreement for professional management of the Association and any other contract providing for such services of the Declarant, may not exceed three (3) years. Any such agreement must provide for termination by either party without cause and without payment of a termination fee upon thirty (30) days or less written notice.

Section 9. Definition. As used in this article, the term "First Mortgagee" shall mean and refer to the holder of any mortgage or deed of trust with first priority over the holder of any other mortgage or deed of trust.

## ARTICLE XV

RIGHTS OF ELIGIBLE FIRST MORTGAGEES AND  
ELIGIBLE INSURERS AND GUARANTORS OF FIRST MORTGAGESSection 1. Rights of First Mortgagees and Insurers or  
Guarantors of First Mortgages.

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

(i) Any condemnation loss or any casualty loss which affects a material portion of the Development or any Lot on which there is a First Mortgage held, insured or guaranteed by such First Mortgagee or insurer or guarantor, as applicable;

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

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

(iv) Any proposed action which would require the consent of a specified percentage of "Eligible First Mortgagees" (meaning First Mortgagees who have filed a written request as described above in this section as specified in Subsection B below or in Section 3 of Article XVII).

(b) When professional management previously has been required by an Eligible First Mortgagee or any "Eligible Insurer or Guarantor" (meaning an insurer or governmental guarantor of a First Mortgage which has requested notice of certain matters in accordance with Subparagraph A above), whether such entity became an Eligible First Mortgagee or Eligible Insurer or Guarantor at the time or later, any decision to establish self-management by the Association shall require the prior consent of Owners to which at least sixty-seven percent (67%) of the votes in the Association are allocated and the approval of Eligible First Mortgagees of Lots which have at least fifty-one percent (51%) of the votes of Lots subject to First Mortgages held by Eligible First Mortgagees.

## ARTICLE XVI

## ENFORCEMENT

The following provisions are in addition to and not in lieu of any other terms and conditions contained in this Declaration relating to remedies:

Section 1. Entry for Repairs. The Board of its agents may enter any Lot when necessary in connection with any repairs, maintenance, landscaping or construction for which the Association is responsible. Such entry shall be made upon reasonable notice, unless it would be impractical to give notice in an emergency, and with as little inconvenience to the Owner as practicable, and any damage caused thereby shall be repaired by the Board at the expense of the Association. No Owner shall do any act or create any obstruction which would unreasonably interfere with the right or ability of the Association to perform any of its obligations or exercise any of its rights under this Declaration.

Section 2. Owner's Compliance. Each Owner, tenant or occupant of a Lot shall comply with the provisions of the Project Documents and all decisions and resolutions of the Association or its duly authorized representatives), and failure to comply with any such provisions, decisions or resolutions shall be grounds for an action to recover sums due, for damage (including costs and attorney's fees) and/or for injunctive relief. All agreements and determinations lawfully made by the Association in accordance with the voting provisions established in this Declaration or in the Bylaws shall be deemed to be binding on all Owners, their successors and assigns.

Section 3. Persons Entitled to Enforce Declaration. The Association, any Owner and any governmental or quasi-governmental agency or municipality having jurisdiction over the Project shall have the right to enforce, by any proceeding at law or in equity, all covenants, conditions, restrictions, reservations, liens and charges now or hereafter imposed by this Declaration, and in such action shall be entitled to recover costs and reasonable attorney's fees as are ordered by the Court, provided however, that an individual Owner shall have no right to enforce the collection of any assessment levied against any other Owner under Article VII above. Failure by the Association or any such other persons as herein provided to enforce any such provision shall in no event be deemed a waiver of the right to do so thereafter.

Section 4. Remedies for Violation of Declaration. The following provisions are in addition to and not in lieu of any other terms and conditions contained in the Declaration relating to remedies, including but not limited to those contained in Article VII.

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

(b) In the event of any default by an Owner or occupant under the provisions of this Declaration, the Articles, the Bylaws or the rules and regulations of the Association, the Association, its successors and assigns, acting through the Board or an authorized agent, shall have each and all of the rights and remedies which may be provided for in this Declaration, the Articles, the Bylaws and said rules and regulations or which may be available at law or in equity, including but not limited to an action for the appointment of a receiver for the Lot without regard to the value of such Lot or the solvency of such Owner, or for damages, injunction, specific performance or for a judgment for payment of money and collection thereof. Nothing contained in this Declaration shall preclude the Association, its agents, the Board, Declarant, an aggrieved Owner, a First Mortgagee or other person having an interest in the project from exercising any available remedy at law or in equity. All cost and attorney's fees incurred by the Association in enforcing compliance with this Declaration (whether or not a lawsuit or other legal action is instituted or commenced) or in connection with any legal action or proceedings in connection with any default under this Declaration by an Owner or an occupant of any Lot and all damages, liquidated or otherwise, together with interest as provided in Article VII, shall be charged to and paid by such defaulting Owner. The Association, acting through the Board or its authorized agent, shall have the authority to correct any default and to do whatever may be necessary for such purpose, and all expenses in connection therewith shall be charged to and paid by such defaulting Owner, and such charges shall be part of and be secured by the lien against the defaulting Owner's Lot as provided in said Article VII. Any amounts charged to an Owner pursuant to this article or Article VII shall be immediately due and payable upon notice to the Owner unless a specific due date is established therefor pursuant to this Declaration.

(c) Anything to the contrary herein notwithstanding, any breach of any of the covenants, conditions, restrictions, reservations and servitudes provided for in this Declaration shall not defeat or adversely affect the lien of any First Mortgagee upon any Lot but, except as herein specifically

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provided, each and all of said covenants, conditions, restrictions, reservations and servitudes shall be binding upon and effective against any lessee or Owner whose title thereto is acquired by foreclosure, trustee's sale, sale, deed in lieu of foreclosure or otherwise.

Section 5. Judicial Proceedings. All Owners agree that any matter arising under this Declaration may be finally adjudged or determined in any court or courts of the State of Arizona or of the United States of America having jurisdiction in the State of Arizona, and such Owners hereby submit generally and unconditionally to the jurisdiction of such courts and of any of them in respect to any such matter, provided however, as to those matters to be submitted to arbitration pursuant to any provision hereof, such arbitration provisions shall be controlling and prevail. For the purpose of instituting or defending any action with respect to the Common Areas, or with respect to any matter affecting the Owners with respect to the Common Area, and further in connection with enforcing this Declaration, the Articles, the Bylaws and any rules and regulations adopted pursuant to this Declaration, the Articles or the Bylaws, or in any other instance where the Board and/or the Members of the Association deem it is necessary for the best interest of the Development as a whole, the Association, acting by and through its Board, shall be deemed the real party in interest and is hereby authorized to commence and prosecute any such proceedings or to defend any such action. Nothing contained in this Section 5 of Article XVI shall be deemed or construed to impose upon the Association, its Members or the Board any liabilities or obligations nor grant to any third party or parties any rights that any of said above-named parties would not otherwise have if this article were not contained herein.

## ARTICLE XVII

## GENERAL PROVISIONS

Section 1. Severability. Invalidation of any one of these covenants or restrictions by judgment or court order shall in no way affect any other provisions which shall remain in full force and effect.

Section 2. Amendment. The covenants and restrictions of this Declaration shall run with and bind the land, for a term of twenty (20) years from the date this Declaration is recorded, after which time they shall be automatically extended for successive periods of ten (10) years. This Declaration may be amended during the first twenty (20) year period and thereafter by an instrument signed by Owners representing seventy-five percent (75%) of the votes entitled to be cast by Members of the Association. Any amendment must be recorded.

Section 3. Additional Requirements for Amendment of Certain Provisions. The following subsections do not apply to amendments to the Constituent Documents or termination of the Development made as a result of destruction, damage or condemnation:

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

(b) The consent of Owners to which at least seventy-five percent (75%) of the votes in the Association are allocated and the approval of Eligible First Mortgagees holding First Mortgages on Lots which have at least fifty-one percent (51%) of the votes of Lots subject to First Mortgages held by Eligible First Mortgagees shall be required to add to or amend any "material" provisions of the Constituent Documents which establish, provide for, govern or regulate any of the following:

- (i) Voting;
- (ii) Assessments, Assessment liens or subordination of such liens;
- (iii) Reserve for maintenance, repair and replacement of Common Area and other areas of the Development for which the Association has maintenance and repair responsibility hereunder;
- (iv) Insurance or fidelity bonds;

- (v) Rights to use of the Common Area;
- (vi) Responsibility for maintenance and repair of the various portions of the Development;
- (vii) Expansion or contraction of the Development or the addition, annexation or withdrawal of property to or from the Development;
- (viii) Boundaries of any Lot;
- (ix) Convertibility of Lots into Common Area or of Common Area into Lots;
- (x) Common interests of the Lots;
- (xi) Leasing of Lots;
- (xii) Imposition of any right of first refusal or similar restriction on the right of a Lot Owner to sell, transfer or otherwise convey his/her Lot; and
- (xiii) Any provisions which are for the express benefit of Mortgagees, Eligible First Mortgagees or Eligible Insurers or Guarantors (as defined in Article XV) of First Mortgages on Lots.

(c) An addition or amendment to the Constituent Documents shall not be considered "material" if it is for the purpose of correcting technical errors or for clarification only. An Eligible First Mortgagee which receives a written request to approve additions or amendments under Subsections A and B and which does not deliver or post to the requesting party a negative response within thirty (30) days shall be deemed to have approved such request.

Section 4. Violations and Nuisance. Every act or omission whereby any provision of this Declaration is violated in whole or in part is hereby declared to be a nuisance and may be enjoined or abated, whether or not relief sought is for negative or affirmative action, by Declarant, the Association or any Owner or Owners of Lots within the Property. However, any other provisions to the contrary notwithstanding, the Declarant, the Association, the Board, or the duly authorized agents of any of them, may enforce by self-help any of the provisions of this Declaration.

Section 5. Violation of Law. Any violation of any state, municipal, or local law, ordinance or regulation, pertaining to the ownership, occupation or use of any property within the Property is hereby declared to be a violation of the Declaration and subject to any or all of the enforcement procedures set forth in said Declaration.



Section 6. Remedies Cumulative. Each remedy provided by the Declaration is cumulative and not exclusive.

Section 7. Delivery of Notices and Documents. Any written notice or other documents relating to or required by this Declaration may be delivered either personally or by mail. If by mail, it shall be deemed to have been delivered twenty-four (24) hours after a copy of same has been deposited in the United States mail, postage prepaid, addressed to the party. If to an Owner, a notice shall be deemed properly sent if sent to the address of any Lot within the Property owned, in whole or in part, by him or to any other address last furnished by Owner to the Association. Each Owner of a Lot shall file the correct mailing address of such Owner with the Association, and shall promptly notify the Association in writing of any subsequent change of address.

Section 8. Captions. All captions or titles used in this Declaration are included solely for convenience of reference and shall not affect the meaning or interpretation of that which is set forth in any of the terms or provisions of this Declaration.

Section 9. The Declaration. By acceptance of a deed or by the acquiring of any ownership interest in any of the Property included within 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 hereto. In addition, each such person by so doing thereby acknowledges that this Declaration sets forth a general scheme for the improvement and development of the Property covered thereby and hereby evidences his intent that all the restrictions, conditions, covenants, rules and regulations contained herein shall run with the land and be binding on all subsequent and future Owners, grantees, purchasers, assignees, and transferees thereof. Furthermore, each such person fully understands and acknowledges that this Declaration shall be mutually beneficial, prohibitive and enforceable by the various subsequent and future Owners.

Section 10. Savings Clause and Obligation of Declarant to Pay Assessments. Notwithstanding anything herein to the contrary, Declarant shall have full and complete authority to perform such acts which it deems necessary for the development and sale of Lots within the subdivision. Until Class B membership terminates, Declarant shall be obligated to pay only twenty-five percent (25%) of the annual assessment amount fixed for each Lot which it owns, payable in twelve (12) equal monthly installments except that Declarant shall pay the full assessment amount for any Lot owned by it after said Lot and the Unit on the Lot

are first rented or leased to or occupied by another person. In the event the reduced assessment amount is insufficient to cover the reasonable share of those Lots' contribution towards insurance and depreciation reserve, Declarant shall pay an additional sum each month to cover those costs.

Section 11. Compliance with Master Declaration. The terms and provisions set forth in this Declaration are expressly subject to the Master Declaration and to the extent of any conflict or inconsistency therewith, the terms and provisions of the Master Declaration shall govern. Subject to the foregoing, all requirements of this Declaration shall be deemed to be additional to all requirements of the Master Declaration and the fact that the provisions hereof may be more restrictive than those of the Master Declaration shall not be deemed to create a conflict or inconsistency in connection therewith.

IN WITNESS WHEREOF, the undersigned being the Declarant herein, has hereunto set its hand and seal this 21st day of December, 1984.

MARLBORO HOLDINGS CO., an Arizona corporation

By [Signature]  
its Exec. V.P.

STATE OF ARIZONA )  
County of Maricopa ) ss.

This instrument was acknowledged before me this 21st day of December, 1984, by Dean R. Marshall, the Exec. V.P. of Marlboro Holdings Co., an Arizona corporation, and that he, as such officer being authorized so to do, executed the above instrument for and on behalf of the Corporation for the purpose therein set forth.

[Signature]  
Notary Public

My Commission Expires:  
12-12-87

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EXHIBIT "A"

Lots 1-20, and 22-37, and Parcels "A", "B", "C", "D", "E", and Lot 21 according to the Plat of Record in the Office of the County Recorder of Maricopa Arizona recorded in Book 264, page 24 on March 22, 1984.

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EXHIBIT "B"

Tracts 1, 3-7, 10-11 and 13-14 and Parcel "A", THE VILLAGE OF GILA SPRINGS - PHASE I, according to the plat of record in Book 255 of Maps, page 29 of the official records of the Maricopa County, Arizona Recorder; Lots 1-20, and Parcel "A", GILA SPRINGS INDUSTRIAL PARK, according to the plat of record in Book 254 of Maps, page 13 of the official records of the Maricopa County, Arizona Recorder; and Lots 1-100, Lot 101 and Parcels "A" - "E", PINERIDGE, according to the plat of record in Book 265 of Maps, page 9 of the official records of the Maricopa County, Arizona Recorder.