

WHEN RECORDED, RETURN TO:

Rancho Gabriela I, Inc.
c/o Stardust Development, Inc.
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Attention: Chris Heeter

FIRST AMERICAN TITLE

DECLARATION OF COVENANTS, CONDITIONS, RESTRICTIONS,

RESERVATIONS AND EASEMENTS

FOR

RANCHO GABRIELA

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DECLARATION OF COVENANTS, CONDITIONS,
RESTRICTIONS, RESERVATIONS AND EASEMENTS
FOR
RANCHO GABRIELA

This Declaration of Covenants, Conditions, Restrictions, Reservations and Easements for Rancho Gabriela (as amended and supplemented from time to time, the "Declaration") is made as of the 17th day of April, 2002, by RANCHO GABRIELA I, INC., an Arizona corporation (as more fully described in Article 1(p), the "Declarant").

This Declaration provides for an extensive degree of control by the Declarant, including, but not limited to (i) control of the Association and the type and design of Improvements that may be built upon or made to Lots and Parcels; and (ii) substantial flexibility in developing the Property. Section 8.5 and Article 9 include limitations on certain legal proceedings related to this Declaration and the Property, including, but not limited to, a requirement that certain claims be submitted to mediation and final and binding arbitration, rather than instituting litigation. Article 19 contains certain limitations on the liability of Declarant and a waiver of certain representations and warranties of Declarant and Designated Builders. Section 20.1 includes a disclosure that the Property is located in the vicinity of a military airport and describes some of the impacts the military airport could have on the Property. Each Owner, by accepting title to a Lot or a Parcel, and all other Persons hereafter acquiring any other interest in any portion of the Property, acknowledge, agree to and accept Declarant's control of the Property, the limitations on legal proceedings, the limitations on liability and representations and warranties, and the location of the Property in the vicinity of a military airport. Capitalized terms used in this paragraph are defined in this Declaration.

RECITALS

A. Declarant is the owner of certain real property situated in Maricopa County, Arizona and described on Exhibit "A" attached hereto and incorporated herein by this reference (the "Covered Property"). The Covered Property, together with any land added to it as provided in Article 16 hereof, and any Improvements thereto, shall constitute the "Property" to be called "Rancho Gabriela."

B. Declarant desires to develop the Property in phases as an integrated development for residential use, with such Common Area as may from time to time be designated pursuant hereto.

C. As part of the various stages of development of the Property, Declarant intends, without obligation, to Record or cause to be Recorded various subdivision plats and to dedicate portions of the Property to the public or otherwise for streets, roadways, drainage, flood control

and other public uses. Where deemed appropriate for the character of the area, various Neighborhood Declarations may also be Recorded against portions of the Property. Any Neighborhood Declarations Recorded after the effective date hereof may set forth additional covenants, conditions, restrictions, assessments, charges, servitudes, liens, reservations and easements applicable to portions of the Property and may provide for the establishment of separate Neighborhood Associations, which will be subordinate to the Association for Rancho Gabriela provided for herein.

D. Declarant desires to form a nonprofit corporation for the purpose of acquiring, constructing, operating, managing and maintaining any Common Areas and Areas of Common Responsibility; establishing, levying, collecting and dispersing the Assessments imposed hereunder; and administering and enforcing this Declaration.

E. Declarant desires to subject the Property to the covenants, conditions, restrictions, assessments, charges, servitudes, liens, reservations and easements hereinafter set forth in order to establish a general scheme for the development, sale, use and enjoyment of the Property for the purpose of enhancing and protecting the value, desirability and quality of life within the Property.

DECLARATIONS

NOW, THEREFORE, Declarant, for the purposes above set forth, hereby declares that the Property shall hereafter be held, transferred, sold, conveyed, leased, occupied and used subject to the covenants, conditions, restrictions, liens, assessments, easements, privileges and rights hereinafter set forth, all of which shall run with the land and be binding upon the Property and all parties having or acquiring any right, title or interest in or to the Property or any portion thereof and shall inure to the benefit of each owner thereof, the Declarant, the Association and each member of the Association.

ARTICLE 1 DEFINITIONS

The following words, phrases or terms used in this Declaration shall have the following meanings:

(a) "Annexable Property" shall mean the real property described on Exhibit "B" attached hereto and incorporated herein by this reference.

(b) "Area of Common Responsibility" shall mean any area that is not owned, leased or otherwise held by the Association (and is therefore not part of the Common Area) but for which the Association has maintenance, repair, and/or operational responsibility by the terms of this Declaration, any Supplemental Declaration, any Neighborhood Declaration or any other applicable real property covenants, or by requirements of governmental authorities, or by contract. Any area described in the preceding sentence shall continue to be an Area of Common Responsibility only so long as the Association's responsibility for it continues.

(c) "Articles" shall mean the Articles of Incorporation of the Association, as they may from time to time be amended or supplemented.

(d) "Assessable Property" shall mean any Lot or Parcel included within the Property, except such part or parts thereof as may from time to time constitute Exempt Property.

(e) "Assessments" shall mean Regular Assessments, Special Assessments, Capital Reserve Assessments, Neighborhood Assessments, plan review fees and any other fees or charges levied pursuant hereto.

(f) "Assessment Lien" shall mean the lien created and imposed by Article 7 hereof.

(g) "Association" shall mean the Arizona nonprofit corporation to be organized by Declarant to administer and enforce this Declaration and to exercise the rights, powers and duties set forth in this Declaration, its successors and assigns. Declarant hereby reserves the exclusive right to cause the Association to be incorporated. It is the present intent of the Declarant that the Association shall be referred to as the Rancho Gabriela Homeowners Association, but Declarant shall be entitled to name the Association as it deems appropriate.

(h) "Association Rules" shall mean the rules provided for in Section 5.3 hereof.

(i) "Board" shall mean the Board of Directors of the Association.

(j) "Bylaws" shall mean the Bylaws of the Association, as they may from time to time be amended or supplemented.

(k) "Capital Reserve Assessment" shall mean the charge levied and assessed pursuant to Section 7.4 hereof.

(l) "City" shall mean the City of Surprise, Arizona.

(m) "Common Area" and "Common Areas" shall mean all real property, and the Improvements thereon, owned, leased or otherwise held by the Association for the common use and enjoyment of the Owners (including, but not limited to, areas used for landscaping, drainage, flood control and open areas). The Common Areas do not include the Areas of Common Responsibility or the Neighborhood Common Areas. Any real property, and Improvements thereon, that are described as "common areas" in a Supplemental Declaration or on a Plat shall be deemed to be "Common Areas" as that term is defined herein and shall, for all purposes, be integrated into and deemed to be a part of the Common Areas subject to this Declaration.

(n) "County" shall mean Maricopa County, Arizona.

(o) "Covered Property" shall mean the real property referred to in the Recitals hereof and described on Exhibit "A" attached hereto.

(p) "Declarant" shall mean the above-recited Declarant and its successors and assigns. The Declarant's rights shall only be assigned by a written, Recorded instrument executed by Declarant expressly assigning those rights. An assignment by Recorded instrument

of all of Declarant's rights shall vest in the assignee all of Declarant's rights hereunder on the same terms that they were held by Declarant. An assignment by Recorded instrument of part of Declarant's rights shall vest in the assignee the specific rights named in the instrument of assignment on the same terms they were held by Declarant. Notwithstanding anything to the contrary herein, an assignment of all or any portion of Declarant's rights, or a sharing of those rights with Designated Builders, shall not deprive the assignor of any protection, indemnity or freedom from liability that would otherwise exist under this Declaration if the assignor had retained all of the Declarant's rights hereunder. No successor Declarant shall have any liability resulting from any actions or inactions of any preceding Declarant unless expressly assumed by the successor Declarant, in which event the preceding Declarant shall be released from liability.

(q) "Declaration" shall mean this Declaration of Covenants, Conditions, Restrictions, Reservations and Easements, as amended and supplemented from time to time.

(r) "Design Review Committee" shall mean the committee to be created pursuant to Article 13 hereof.

(s) "Design Review Guidelines" shall mean those guidelines established pursuant to Section 13.1 hereof, as amended or supplemented from time to time in accordance with Article 13 hereof.

(t) "Designated Builder" shall mean any Owner who regularly engages in the business of constructing residences and related Improvements, who owns Lots or Parcels and constructs or intends to construct Dwelling Units on the Lots or Parcels it owns, and who has been specifically designated as a Designated Builder hereunder by Declarant pursuant to a written Recorded instrument. In any written notice naming a Designated Builder, Declarant shall specify what special rights, privileges, obligations and exemptions of Declarant that particular Designated Builder will have pursuant to this Declaration, any applicable Supplemental Declaration, the Association Rules and the Design Review Guidelines.

(u) "Designated Service Providers" shall have the meaning set forth in Section 10.6 of this Declaration.

(v) "District" shall have the meaning set forth in Section 14.3.

(w) "District Property" shall have the meaning set forth in Section 14.3.

(x) "Dwelling Unit" shall mean any building or portion of a building situated upon a Lot designed and intended for use and occupancy as a residence by a Single Family.

(y) "Excess Costs" shall have the meaning set forth in Section 14.3.

(z) "Exempt Property" shall mean the following parts of the Property:

(i) All land and Improvements owned by or dedicated to and accepted by the United States of America, the State of Arizona, the County, the City or any other governmental entity, for as long as the governmental entity or political subdivision is the owner thereof or for so long as the dedication remains effective;

(ii) All Common Areas, for as long as the Association is the owner thereof; and

(iii) All Neighborhood Common Areas, for as long as the Association or a Neighborhood Association is the owner thereof.

(aa) "Improvements" shall mean buildings, amenities, roads, driveways, levees, dams, channels, basins, parking areas, fences, walls, rocks, hedges, plantings, planted trees and shrubs, and all other structures and landscaping improvements, and any addition, alteration, repair, change or other work regarding any such item, including exterior paint.

(bb) "Lot" shall mean any area of real property within the Property that is designated as a Lot on a Plat; as used herein, "Lot" shall include the Improvements on the Lot.

(cc) "Member" shall mean any Person holding a Membership in the Association pursuant to this Declaration.

(dd) "Membership" shall mean a Membership in the Association and the rights granted to the Owners and the Declarant pursuant to Article 6 hereof to participate in the Association.

(ee) "Neighborhood" shall mean an area within the Property designated as an individual Neighborhood in a Supplemental Declaration or in a Neighborhood Declaration.

(ff) "Neighborhood Assessment" shall mean any charge levied and assessed pursuant to Section 7.5 hereof.

(gg) "Neighborhood Association" shall mean a property owners association provided for in Article 17, which may govern one or more Neighborhoods within the Property.

(hh) "Neighborhood Common Areas" shall mean all real property, and the Improvements thereon, owned, leased or otherwise held by the Association or a Neighborhood Association, which are intended predominantly or exclusively for the common use and enjoyment of the Owners of property within a Neighborhood, such as community swimming pools, development landscaping, perimeter walls of the Neighborhood and other areas not designed for use with a single Dwelling Unit within the Neighborhood or designed for the general benefit of all Owners of the Property. Any real property, and Improvements thereon, that are described as "neighborhood common areas" in a Supplemental Declaration, Neighborhood Declaration or on a Plat shall be deemed to be "Neighborhood Common Areas" as that term is defined herein and shall, for all purposes, be integrated into and deemed to be a part of the Neighborhood Common Areas subject to this Declaration.

(ii) "Occupant" shall mean any Person temporarily occupying any Dwelling Unit with the permission of the Owner thereof.

(jj) "Owner" shall mean the record holder of legal title to the fee simple interest in any Lot or Parcel, but excluding Declarant and those who hold title merely as security for the performance of an obligation. In the case of a Lot or Parcel, the fee simple title to which

is vested of Record in a trustee pursuant to A.R.S. § 33-801, et seq. (as amended from time to time), legal title shall be deemed to be in the Trustor. An Owner shall include any Person who holds record title to a Lot or Parcel in joint ownership with any other Person or holds an undivided fee interest in any Lot or Parcel. To the extent the rights and obligations of Designated Builders, as Owners of Lots or Parcels, differ from the rights and obligations of other Owners of Lots or Parcels, the rights and obligations of Designated Builders, as Owners of Lots or Parcels, shall be separately set forth herein.

(kk) "Parcel" shall mean an area of the Property that is subject to this Declaration but that has not been subdivided into Lots and related amenities and rights-of-way by a subdivision plat or other Recorded instrument creating Lots and related amenities, and rights-of-way. Any area of land within the Property shall cease to be a Parcel upon the Recordation of a subdivision plat or other instrument covering the area and creating Lots, related amenities, and rights-of-way. A Parcel shall not include a Lot or any Exempt Property.

(ll) "Person" shall mean an individual, corporation, partnership, limited liability company, trustee, or other entity capable of holding title to real property under Arizona law.

(mm) "Plats" shall mean the subdivision plat of the Covered Property as first Recorded, and as amended or supplemented from time to time, together with all subsequent Recorded subdivision plats for real property that is annexed to the Property pursuant to Article 16, as those subdivision plats may be amended or supplemented from time to time.

(nn) "Property" and "Rancho Gabriela" shall mean the Covered Property and any other real property actually annexed and subjected to this Declaration as provided in Article 16 hereof, together with all Improvements located thereon.

(oo) "Recording," "Recordation" or "Record" shall mean placing an instrument of public record in the Office of the County Recorder of Maricopa County, Arizona, and "Recorded" shall mean having been so placed of public record.

(pp) "Regular Assessment" shall mean the charge levied and assessed pursuant to Section 7.2 hereof.

(qq) "Resident" shall mean:

(i) Each Occupant actually residing on any part of the Assessable Property; and

(ii) Members of the immediate family of each Owner or Occupant actually living in the same household with the Owner or Occupant.

Subject to such rules and regulations as the Association may hereafter specify, the term "Resident" also shall include the guests or invitees of any Owner or Occupant to the extent necessary to enforce the provisions of this Declaration.

(rr) "Retail Purchaser" shall mean a Person that purchases a Lot in a retail transaction and shall not include Declarant, any Person related to Declarant, a Designated Builder, or any other Person who acquired the Lot (i) solely for the purpose of development and resale in one or a series of retail transactions, (ii) by distribution (as distinguished from purchase), or (iii) in any similar transaction.

(ss) "Single Family" shall mean a group of one or more persons each related to the other by blood, marriage or legal adoption, or a group of not more than three persons not all so related, who maintain a common household in a Dwelling Unit.

(tt) "Special Assessment" shall mean any charge levied and assessed pursuant to Section 7.3 hereof.

(uu) "Special Use Fees" shall mean special fees that an Owner, Occupant, Resident or other Person is obligated by this Declaration, a Supplemental Declaration or the Association Rules to pay to the Association for use of, access to, or for the granting of, a right or privilege with respect to, a service, amenity, facility or other improvement including, but not limited to, fees collected pursuant to Section 10.5 hereof for services provided by Designated Service Providers. Special Use Fees shall be in addition to any Assessment hereunder.

(vv) "Supplemental Declarations" shall mean those instruments provided for in Article 16 hereof, which annex real property and subject it to the provisions of this Declaration.

(ww) "Transition Date" shall have the meaning set forth in Section 6.3.

(xx) "Visible From Neighboring Property" shall mean, with respect to any given object, that the object is, or would be, visible to a person six feet tall, standing on the same plane as the object being viewed at a distance of 200 feet or less from the nearest boundary of the property being viewed.

ARTICLE 2

EASEMENTS AND RIGHTS OF ENJOYMENT IN COMMON AREAS

Section 2.1 Easements of Enjoyment. Declarant and every Owner, Occupant and Resident of the Property shall have a right and easement of enjoyment in and to all of the Common Areas, which easement shall be appurtenant to, and shall pass with, the title to every Lot and Parcel, subject to all of the easements, covenants, conditions, restrictions and other provisions contained in this Declaration, including, but not limited to, the following provisions:

2.1.1 The right of the Association to suspend the right of an Owner, Occupant, Resident or any other Person to use the Common Areas, or any designated portion thereof, for any period during which any Assessment against the Owner's Lot or Parcel remains delinquent and remains unpaid and for any period during which the Owner, Occupant, Resident or other Person is otherwise in default under this Declaration, any Supplemental Declaration or the Association Rules, after written notice of the failure to make payment or other default is given by the Board to the defaulting party. Notwithstanding the foregoing, the Association shall

not have the right to suspend any Owner's right to use any portion of the Common Area necessary for the Owner to gain access to the Owner's Lot or Parcel.

2.1.2 The right of the Association to regulate the use of the Lots, Parcels and Common Areas through the Association Rules and to prohibit or limit access to the Common Areas, and other specified areas, not intended for use by the Owners, Occupants and Residents. The Association Rules shall be intended, in the absolute discretion of the Board, to enhance the preservation of the Common Areas for the safety and convenience of the users thereof, and otherwise shall serve to promote the best interests of Declarant, Owners, Occupants and Residents of the Property.

2.1.3 The right of the Association to dedicate, transfer and grant easements over all or any part of the Common Areas to any public or quasi-public agency, authority, or utility for such purposes and subject to such conditions as may be agreed to by the Association, provided that these actions otherwise comply with this Declaration.

2.1.4 The right of the Association to change the use of the Common Areas, provided that this action otherwise complies with this Declaration.

2.1.5 The right of the Association to change the size, shape or location of Common Areas, to exchange Common Areas for other lands or interests therein which become Common Areas, and to abandon or otherwise transfer Common Areas, provided that these actions otherwise comply with this Declaration.

2.1.6 The right of the Association to borrow money for the purpose of improving, replacing, restoring or expanding the Common Areas or Areas of Common Responsibility, and the right of the Association to mortgage the Common Areas, provided that the rights of any lender shall be subordinated to the rights of the Owners, and provided that the foregoing actions otherwise comply with this Declaration.

2.1.7 Notwithstanding anything to the contrary herein, the Common Areas shall not be mortgaged or conveyed without the consent of Declarant and at least two-thirds (2/3) of the Memberships in each class of Members.

Section 2.2 Delegation of Use. The Declarant and any Owner or Resident may, in accordance with the Declaration and the Association Rules, delegate the Owner's right of enjoyment in the Common Areas to the Owner's family members, tenants and guests; provided, however, that the Association shall have the right to limit the number of guests of an Owner or Resident using the Common Areas.

Section 2.3 Waiver of Use. No Owner may exempt himself from personal liability for Assessments, nor release the Owner's Lot or Parcel from the liens or charges arising under this Declaration, any Supplemental Declaration and the Association Rules, by waiver of the Owner's use and enjoyment of the Common Areas.

Section 2.4 Indemnification/Acknowledgment. The Owners (other than the Designated Builders) acknowledge that: (i) the Property subject to this Declaration contains Common Areas; (ii) the Common Areas are intended solely for aesthetic purposes and limited

recreational use; (iii) the Common Areas possess certain inherent dangers from which the Owners must take precautions to protect themselves, their families, invitees, guests and others; (iv) no safety personnel will patrol the Common Areas, and the Owners assume the risk and the responsibility of protecting themselves, their families, invitees, guests or others; and (v) the Owners will indemnify, defend and hold harmless the Declarant, the Association, the Designated Builders, and their respective successors and assigns, for, from and against any claims, liabilities, injuries and damages, including, but not limited to, interest, reasonable attorneys' fees, witness fees, costs and related expenses incurred by or claimed against the Declarant, the Association, the Designated Builders, and their respective successors and assigns, under any laws arising in any way from or in connection with the Common Areas.

ARTICLE 3 EASEMENTS

Section 3.1 Utility Easement. There is hereby created a blanket easement upon, across, over and under the Property (including all Lots, Parcels, Common Areas, Neighborhood Common Areas and Areas of Common Responsibility) for ingress to, egress from and the installation, replacement, repair and maintenance of, all utility and service lines and systems, including, but not limited to, water, sewer, gas, telephone, electricity, cable or communication lines and systems. Pursuant to this easement, a providing utility or service company may install and maintain the necessary or appropriate facilities, wires, circuits, conduits, cables and equipment on the Property. Notwithstanding anything to the contrary contained in this Section, no sewers, electrical lines, water lines, or other utility or service lines may be installed or relocated within the Property except as initially created or approved by Declarant, without the prior written approval of, in the case of a Common Area, Neighborhood Common Area or an Area of Common Responsibility, the Association and the Design Review Committee or, in the case of a Lot or Parcel, the Owner of the Lot or Parcel and the Design Review Committee. Nothing contained herein shall entitle Declarant or any utility or service company in exercising the rights granted herein to disturb any Dwelling Unit constructed in accordance with the requirements of this Declaration.

Section 3.2 Declarant Easement. There is hereby created a nonexclusive easement for ingress and egress over, for the right to go over, under, and across, and for the right to enter and remain upon, all portions of the Property, including, but not limited to, Lots and Parcels (except the interiors of occupied Dwelling Units) and Common Areas, for the purpose of enabling Declarant and its employees, agents, invitees, licensees, contractors and guests to exercise Declarant's rights and obligations hereunder and to engage in activities reasonably related to the development, management, administration, operation, maintenance, advertisement and sale or rental of the Property. Without limiting the generality of the foregoing, Declarant's easement shall include the right to maintain and correct drainage of surface or storm water throughout the Property, which includes the right to cut any trees, bushes or shrubbery, to grade the soil or to take other actions reasonably related to the maintenance and correction of drainage. The rights of access established in this Section 3.2 shall be exercised so as to reasonably minimize interference with the quiet enjoyment of a Lot or Parcel by its Owner and any Resident or Occupant.

Section 3.3 Association Easement. There is hereby created a nonexclusive easement in favor of the Association for ingress and egress over, for the right to go over, under and across, and for the right to enter and remain upon, all portions of the Property, including, but not limited to, Lots and Parcels (except the interiors of occupied Dwelling Units) and Common Areas, for the purpose of enabling the Association and its contractors, employees, representatives, and agents to exercise the Association's rights and obligations hereunder. The rights of access established in this Section 3.3 shall be exercised so as to reasonably minimize interference with the quiet enjoyment of a Lot or Parcel by its Owner and any Resident or Occupant.

Section 3.4 Drainage Easement. All Lots, Parcels, Common Areas and Neighborhood Common Areas shall be subject to an easement for the drainage and/or retention of water from other Lots, Parcels, Common Areas, Neighborhood Common Areas and properties in accordance with the drainage plans for the Property and any portions thereof on file with the City. No Persons shall be entitled to alter the drainage patterns on any portion of the Property that are set forth on drainage plans approved by the City to increase materially, or to relocate materially, the drainage of water onto adjacent portions of the Property without the consent of any Owners of the affected property (or the Declarant, if the Declarant owns the affected property), and the Association.

Section 3.5 Irrigation Easement. Every Lot and Parcel is also hereby subjected to a nonexclusive easement for overspray and runoff of water from any irrigation systems serving the Common Areas, Neighborhood Common Areas or Areas of Common Responsibility. Under no circumstances will the Association or any officers, directors, employees, or agents of the Association be responsible for any property damage or personal injury resulting from any overspray or from the operation of the irrigation systems serving the Common Areas, Neighborhood Common Areas or Areas of Common Responsibility.

Section 3.6 Access Easement. If access to a Lot or Parcel is through a Common Area or a Neighborhood Common Area, any conveyance or encumbrance of that Common Area or Neighborhood Common Area shall be subject to an access easement benefiting the Lot or Parcel.

Section 3.7 Perimeter Wall Easement. Declarant may establish one or more perimeter wall easements from time to time by Plat, Supplemental Declaration, Neighborhood Declaration or other Recorded instrument, for walls or fences or other similar structures at the perimeter of the Property, a Neighborhood, or other similar locations, but only with the prior written consent of any Designated Builder that owns all or any portion of the property subject to the easement, which consent shall not be unreasonably withheld, conditioned or delayed.

ARTICLE 4 PERMITTED USES AND RESTRICTIONS

(a) Architectural Control. The Property is subject to architectural control as more particularly described in this Article 4, Article 13 and elsewhere in this Declaration. Except as otherwise expressly provided in this Declaration, no improvements, alterations, repairs, excavation, grading, landscaping or other work which in any way alters a Lot or Parcel, or the exterior appearance of Improvements located thereon, shall be made or done without the prior written approval of the Design Review Committee. No changes or deviations in or from the plans

and specifications once approved by the Design Review Committee shall be made without prior written approval of the Design Review Committee. All subsequent additions to or changes or alterations in any Improvement, including exterior color scheme, and all changes in the grade of Lots and Parcels, shall be subject to the prior written approval of the Design Review Committee.

Section 4.2 Restriction on Further Property Restrictions. No further covenants, conditions, restrictions or easements shall be Recorded by any Owner, Occupant or other Person (except Declarant) against any Lot or Parcel without the provisions thereof having been first approved in writing by the Board, and any covenants, conditions, restrictions or easements Recorded without the required approval being evidenced thereon shall be null and void. Nothing contained herein shall preclude Declarant from amending or supplementing this Declaration in accordance with its terms or imposing such additional covenants, conditions, reservations, and restrictions as Declarant deems appropriate, subject to any limitations set forth herein.

Section 4.3 Landscaping.

4.3.1 Within 90 days after the close of escrow for initial sale of a Dwelling Unit on a Lot, the Owner of the Lot shall complete the landscaping of all portions of the Lot that are disturbed by the construction of the Dwelling Unit and that are Visible From Neighboring Property. All such landscaping shall be subject to the prior written approval of the Design Review Committee as more particularly described in Section 4.3.4 below. It is strongly recommended that the Owner retain the services of a landscape design professional who has special knowledge of plant material and watering systems suitable to the Sonoran Desert region and the plant materials approved by the Design Review Committee.

4.3.2 Landscaping shall be subject to the following general requirements: (i) landscape design shall reinforce and compliment the architectural and site planning; (ii) landscape design shall promote continuity while creating interesting character for the community; (iii) no hedge more than three feet in height shall be closer than the front yard setback as may be required by the City; and (iv) each Owner must submit a separate, detailed landscape plan for approval by the Design Review Committee as provided above.

4.3.3 In the event an Owner fails to complete the required landscaping within the 90 day period, the Board may, by resolution, make a finding to such effect and pursuant thereto give notice to the Owner that unless landscaping is commenced within 14 days and thereafter diligently pursued to completion, the Board may (i) cause the required landscaping to be accomplished at the Owner's expense; and/or (ii) pursue any of the other rights and remedies permitted by Article 8 hereof. If, at the expiration of the 14 day period of time, the required landscaping has not been commenced and thereafter diligently pursued to completion, the Board shall be authorized and empowered (a) to pursue any of the rights and remedies permitted by Article 8 hereof; and/or (b) to cause the landscaping to occur and the cost thereof to be added to, and become a part of, the Assessment to which the offending Owner and the Owner's Lot is subject, with such costs to be secured by the Assessment Lien.

4.3.4 Except as otherwise expressly provided in this Declaration, any landscaping and incidental work performed pursuant to the foregoing provisions shall not be commenced without the prior written approval of the Design Review Committee, and no material

changes or deviations (as determined by the Design Review Committee) in or from any plans and specifications approved by the Design Review Committee shall be made without the prior written approval of the Design Review Committee. As more particularly described in Section 13.3.5, a Designated Builder shall have the right to submit one or more standard landscaping plans that may be used on any of that Designated Builder's Lots, and the Design Review Committee's approval of a Designated Builder's standard landscaping plan shall constitute approval of each use of that standard landscaping plan by the Designated Builder, unless otherwise specified by the Design Review Committee.

Section 4.4 Health, Safety and Welfare. In the event any uses, activities and facilities on any Lot or Parcel are deemed by the Board to be a nuisance or to adversely affect the health, safety or welfare of Owners, Occupants or Residents, the Board may make rules restricting or regulating their presence within the Property as part of the Association Rules, or may direct the Design Review Committee to make rules governing their presence on Lots and Parcels as part of the Design Review Guidelines.

Section 4.5 Maintenance of Lawns and Plantings. Each Owner shall keep neatly trimmed, properly cultivated and free from trash, weeds and other unsightly material, all shrubs, trees, hedges, grass and plantings of every kind located on (i) the Owner's Lot or Parcel (including setback areas); (ii) any other public right-of-way or easement area that abuts the Owner's Lot or Parcel and is located between the boundary line of the Owner's Lot or Parcel and the paved area of any street, sidewalk, bike path or similar area; and (iii) any non-street public right-of-way; provided, however, that the Owner shall not be responsible for maintenance of any area over which (a) the Association assumes the responsibility in writing; (b) the Association has been given the responsibility by a Recorded instrument as provided in Section 11.1 of this Declaration; or (c) the County, the City, or another public agency assumes responsibility, for so long as the Association, the political subdivision or other public agency assumes or has responsibility as provided in (a), (b) or (c) above. The Design Review Committee may require landscaping by the Owner of the areas described in Subsections (ii) and (iii) above.

Section 4.6 Nuisances, Construction Activities. No rubbish or debris of any kind shall be placed or permitted to accumulate upon or adjacent to any Lot or Parcel, and no odors shall be permitted to arise or emit therefrom so as to render any such property or any portion thereof, or activity thereon, unsanitary, unsightly, offensive or detrimental to any other Lot or Parcel in the vicinity thereof or to the Owners, Occupants or Residents of any other Lot or Parcel. No other nuisance shall be permitted to exist or operate upon any Lot or Parcel so as to be offensive or detrimental to any other property in the vicinity thereof or to its occupants. Temporary toilets shall be located in reasonable proximity to each Lot or Parcel upon which construction has commenced and shall be maintained in such locations during the entire course of construction, and all construction workers shall be required to use the temporary toilets. The temporary toilets shall be maintained in presentable, safe, clean, sanitary and odor-free condition and removed immediately after completion of construction. Without limiting the generality of any of the foregoing provisions, no exterior speakers, horns, whistles, fireworks, bells or other sound devices, except security devices used exclusively for security purposes, shall be located, used or placed on any such Lot or Parcel. Normal construction activities and parking in connection with the building of Improvements on a Lot or Parcel shall not be considered a nuisance or otherwise prohibited by this Declaration, but all Lots and Parcels shall be kept in a neat and tidy condition

during construction periods; trash and debris shall not be permitted to accumulate, and supplies of brick, block, lumber and other building materials shall be piled only in the areas approved by the Design Review Committee. All trash and construction debris shall be immediately deposited in an enclosed metal container maintained by the Owner on the Lot or Parcel, and these containers shall be emptied with sufficient frequency to prevent the accumulation of trash and debris. Each Owner shall be responsible for immediately removing any dirt, mud or debris collecting in public streets as a result of the Owner's construction activities. In addition, any construction equipment and building materials stored or kept on any Lot or Parcel during construction of Improvements may be kept only in areas approved by the Design Review Committee. The Design Review Committee may also require screening of the storage areas. The Board, in its sole discretion, shall have the right to determine the existence of any nuisance.

Section 4.7 Repair of Building. No building or structure on any Lot or Parcel shall be permitted to fall into disrepair, and each building and structure shall at all times be kept in good condition and repair and adequately painted or otherwise finished. In the event any building or structure on any Lot or Parcel is damaged or destroyed, then, subject to the approvals required by (a) above, the building or structure shall be immediately repaired or rebuilt or shall be demolished.

Section 4.8 Signs. No signs whatsoever (including, but not limited to, commercial, political and similar signs) which are Visible From Neighboring Property shall be erected or maintained on any Lot or Parcel except:

4.8.1 Signs required by legal proceedings.

4.8.2 Numbering designating the street address of the Dwelling Unit (i) stenciled and located on the curb immediately in front thereof, or (ii) affixed to the Dwelling Unit.

4.8.3 Signs indicating a property to be "For Sale" or "For Lease," provided no more than one such sign is located on each individual residence, no individual sign is larger than nine square feet in size, and no sign is placed closer to the street than six feet.

4.8.4 Other signs that are in conformance with the applicable requirements of the City or other applicable governmental agencies and have been approved in advance and in writing by the Design Review Committee as to size, color, design, message content and location.

The foregoing shall not prohibit signs at street entrances constructed by Declarant identifying the Property or signs identifying or used in connection with or directing traffic to model homes or other temporary signs used by the Designated Builders in connection with the sale of homes in the Property.

Section 4.9 Roof Structures and Equipment. If a Dwelling Unit has a pitched roof, the roofing material for that portion Visible From Neighboring Property must be clay or concrete tile. No heating, air-conditioning or ventilation equipment, or any other equipment or structures shall be located or installed on any roof. In addition, any such equipment or structures shall not be located or installed anywhere on a Lot or Parcel if it is Visible From Neighboring Property.

The location and installation of solar units and panels on the roof shall not be prohibited, but the Board may adopt reasonable rules, restrictions and requirements, from time to time, regulating the placement, appearance, size, operation, and other aspects of any solar units and panels, and the placement of any solar units and panels on any roof or anywhere on a Lot or Parcel that is Visible From Neighboring Property shall require the prior written approval of the Design Review Committee, which approval shall not be unreasonably withheld or delayed.

Section 4.10 Utility Service. No lines, wires, or other devices for the communication or transmission of electric current or power, including telephone, television, and radio signals, shall be erected, placed or maintained anywhere in or upon any Lot or Parcel unless they are contained in conduits or cables installed and maintained underground, except (i) to the extent (if any) underground or concealed placement may be prohibited by law, (ii) for above-ground structures and/or media for transmission as may be originally constructed by Declarant, or (iii) as may otherwise be approved by the Design Review Committee. 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 Design Review Committee.

Section 4.11 Right of Entry. During reasonable hours and upon reasonable notice to the Owner or other Resident of a Lot or Parcel (or the Declarant, if Declarant owns the Lot or Parcel), any member of the Design Review Committee, any member of the Board, or any of their respective authorized representatives, shall have the right to enter upon and inspect any Lot or Parcel, and the Improvements thereon, except for the interior portions of any completed Dwelling Unit, 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 an entry.

Section 4.12 Permitted Uses. Except for the construction, maintenance and other activities related to the model homes as provided below and business activities permitted by this Section 4.12 and the other provision of this Declaration, the Lots and Parcels shall be used, improved and devoted exclusively to residential use by Single Families. No gainful occupation, profession, trade or other non-residential use may be conducted on any Lot or Parcel or in or from any Dwelling Unit, except that an Owner, Occupant or Resident may conduct a business activity within the Dwelling Unit so long as: (i) the existence or operation of the business activity is not apparent or detectable by sight, sound or smell from outside the Dwelling Unit; (ii) the business activity conforms to all zoning ordinances and requirements for the Property; (iii) the business activity does not involve persons coming on to the Lot or Parcel or the door-to-door solicitation of Owners or other Residents in the Property; (iv) the business activity does not involve the delivery of products or other materials to the Lot or Parcel (other than once a day document or package delivery services and once a day document or package pick up services, such as Federal Express); (v) the business activity does not violate any provision of this Declaration, the Design Review Guidelines or the Association Rules; and (vi) the business activity is consistent with the residential character of the Property and does not constitute a nuisance or a hazardous or offensive use or threaten security or safety of other Owners, Occupants and Residents in the Property, as may be determined from time to time in the sole discretion of the Board. The terms "business" and "trade" as use in this Section shall be construed to have ordinary, generally accepted meanings and shall include, without limitation, any occupation, work or activity undertaken on an ongoing basis which involves the provision of

goods or services to Persons other than the provider's family and for which the provider receives a fee, compensation or other form of consideration, regardless of whether (a) the activity is engaged in full or part time; (b) the activity is intended to or does generate a profit; or (c) a license is required for the activity. The leasing of an entire Dwelling Unit by the Owner thereof shall not be considered a trade or business within the meaning of this Section.

Section 4.13 Animals. No animal, horse, bird, poultry or livestock, other than a reasonable number of generally recognized house or yard pets, shall be maintained on any Lot or Parcel, and no animal of any sort shall be kept on a Lot or Parcel before the close of escrow for purchase of the Dwelling Unit. This prohibition includes, but is not limited to, guard dogs or any other animal maintained, kept or housed on a Lot or Parcel for security or to prevent theft during the course of construction. Animals are permissible only if they are kept or raised thereon solely as domestic pets and not for commercial purposes. No animal or bird shall be allowed to make an unreasonable amount of noise or to become a nuisance. No structure for the care, housing or confinement of any bird or other animal shall be maintained so as to be Visible From Neighboring Property without the prior written consent of the Design Review Committee. Upon the written request of any Member or Resident, the Board shall conclusively determine, in its sole and absolute discretion, whether, for the purposes of this Section, a particular animal or bird is a generally recognized house or yard pet, whether such a pet is a nuisance, or whether the number of animals or birds on any such property is reasonable. Any decision rendered by the Board shall be enforceable in the same manner as other restrictions contained herein.

Section 4.14 Temporary Structures. No structure of a temporary character, trailer, basement, tent, shack, barn or other outbuilding shall be constructed, erected, placed or used on portions of the Property at any time for any purpose whatsoever, either temporarily or permanently. Notwithstanding the foregoing, it shall be expressly permissible for Declarant and the Designated Builders to maintain, during the period of construction and sale of Lots within the Property, upon such portions of the Property as Declarant may authorize, both temporary offices and trailers which are convenient or incidental to the sale of Lots and the construction of residences on such Lots.

Section 4.15 Model Homes. The provisions of this Declaration which prohibit non-residential use of Lots and Parcels and regulate parking of vehicles shall not prohibit the construction and maintenance of model homes or temporary trailers for marketing by Declarant, Designated Builders, or other builders specifically designated by Declarant and parking incidental to the use of such model homes and lights, flags, flagpoles, fences, signs and other associated Improvements, so long as the use of the trailers and location of such model homes are approved by the Design Review Committee, and the construction, operation and maintenance of such model homes otherwise complies with all of the provisions of this Declaration. In the event that any garages attached to the model homes are converted to office use in connection with the sale of homes within the Property, each such garage shall be converted back to use for the storage of vehicles at such time as the respective model home is sold for residential use. The Design Review Committee may also permit other areas to be used for parking in connection with the showing of model homes, provided such parking and parking areas are in compliance with applicable governing ordinances and any rules of the Design Review Committee. No home shall be used as a model home for the sale of homes not located within the Property.

Section 4.16 Diseases and Insects. No Owner shall permit any thing or condition to exist upon any Lot or Parcel that may induce, breed or harbor infectious plant diseases or noxious insects.

Section 4.17 Antennas. No antenna, satellite dish, or other device for the transmission or reception of television or radio signals or any other form of electromagnetic radiation which is Visible From Neighboring Property shall be erected, used or maintained outdoors on any Lot or Parcel whether attached to a building or structure or otherwise, without the prior written approval of the Design Review Committee. The Board may adopt reasonable rules, restrictions and requirements from time to time regulating the placement, appearance, size, operation, and other aspects of any antennas, satellite dishes, and other structures and devices for the transmission or reception of television or radio signals or any other form of electromagnetic radiation, allowed for use on Lots or Parcels, within the constraints of any applicable law. Any such rules, restrictions and requirements shall take into account aesthetic considerations, available technology, cost, feasible alternatives, and the effect (if any) of applicable laws and other requirements of governmental authorities.

Section 4.18 Trash Containers and Collection. No garbage or trash shall be placed or kept on any Lot or Parcel, except in covered containers of a type, size and style that are approved by the City and acceptable to the appropriate garbage/trash collector. 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 collection. In no event shall such containers be placed for collection before sunset of the day immediately preceding the day of collection. All rubbish, trash, or garbage shall be promptly removed from all Lots and Parcels and shall not be allowed to accumulate thereon. No outdoor incinerators shall be kept or maintained on any Lot or Parcel.

Section 4.19 Clothes Drying Facilities. Outside clotheslines or other outside facilities for drying or airing clothes shall not be erected, placed or maintained on any Lot or Parcel.

Section 4.20 Window Treatments. All windows within any Dwelling Unit constructed on any Lot shall be covered with appropriate window treatments within 60 days after first occupancy thereof. No reflective materials, including, but not limited to, aluminum foil, reflective screens or glass, mirrors or similar-type items shall be installed or placed on the outside or inside of any windows unless approved by the Design Review Committee. The exterior side of all drapes, curtains or other window coverings shall complement the natural colors of the Dwelling Unit.

Section 4.21 Party Walls. Except as hereinafter provided, the rights and duties of Owners with respect to party walls between Lots or Parcels, or party fences between Lots or Parcels shall be as follows:

4.21.1 The Owners of contiguous Lots or Parcels who have a party wall or party fence shall both equally have the right to use such wall or fence, provided that such use by one Owner does not interfere with the use and enjoyment of same by the other Owner.

4.21.2 In the event that any party wall or party fence is damaged or destroyed through the act of an Owner or any of the Owner's agents, guests, or family members (whether or not the act is negligent or otherwise culpable), it shall be the obligation of that Owner to rebuild and repair the party wall or party fence without cost to the Owner of the adjoining Lot or Parcel. Any dispute over an Owner's liability for such damage shall be resolved as provided in Section 4.21.5 below, but any liability imposed on an Owner hereunder shall not prevent the Owner from seeking indemnity therefor from the Persons causing such damage.

4.21.3 In the event any party wall or party fence is destroyed or damaged (including deterioration from ordinary wear and tear and lapse of time), other than by the act of an adjoining Owner, the Owner's agents, guests or family, it shall be the obligation of all Owners whose Lots or Parcels adjoin the party wall or party fence to rebuild and repair the wall or fence at their joint expense, with the expense to be allocated among the Owners in accordance with the frontage of their Lots or Parcels on the party wall or party fence.

4.21.4 Notwithstanding anything to the contrary herein contained, there shall be no impairment of the structural integrity of any party wall or party fence without the prior consent of all Owners with any interest therein whether by way of easement or in fee.

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

4.21.6 Anything in the foregoing to the contrary notwithstanding, in the case of party fences between (i) Common Areas and Lots or Parcels, or (ii) constructed by the Declarant or the Association on Common Areas, the Association shall be responsible for all maintenance thereof, subject to the provisions of Article 7 of this Declaration, except that each Owner of a Lot or Parcel shall be responsible for painting the portion of the party wall or party fence facing that Owner's Lot or Parcel or the portion thereof which is not a portion of the Common Area.

4.21.7 In the event any party wall encroaches less than one foot (1') upon a Lot or Parcel, an easement for the encroachment and for the maintenance of the party wall shall exist in favor of the Owners of the Lots or Parcels that share the party wall.

Section 4.22 Walls and Fences. No solid wall or fence shall be constructed or maintained closer to the boundary of the Lot or Parcel than is permitted by applicable building setback lines. Except as may be specifically permitted by the Design Review Committee or as required by applicable municipal zoning ordinances, no side or rear fence and no side or rear wall (except the wall of the building constructed on the Lot or Parcel), shall be more than six feet in height, as measured from the higher side of the fence or wall. All walls and fences shall be painted cinder block or integral color cinder block. Wrought iron inserts are permissible if they are approved by the Design Review Committee and painted to blend with the color of the Dwelling Unit. Notwithstanding the foregoing, all fences and walls, including, but not limited to, the color thereof, are subject to Design Review Committee approval. In no event shall chain link or wire fencing be allowed.

Section 4.23 Overhead Encroachments. No tree, shrub or planting of any kind on any Lot or Parcel shall be allowed to materially overhang or otherwise encroach upon any sidewalk, street, pedestrian way or other area from ground level to a height of eight feet without the prior written approval of the Design Review Committee.

Section 4.24 Trucks, Trailers, Campers and Boats. No motor vehicle classed by manufacturer rating as exceeding $\frac{3}{4}$ ton, mobile home, travel trailer, tent trailer, trailer, camper shell, detached camper, boat, boat trailer or other similar equipment or vehicle may be parked, maintained, constructed, reconstructed or repaired on any Lot, Parcel or street in the Property so as to be Visible From Neighboring Property.

Section 4.25 Motor Vehicles. No automobile, motorcycle, motorbike or other motor vehicle shall be constructed, reconstructed or repaired upon any Lot, Parcel or street in the Property, and no inoperable vehicle may be stored or parked on any such Lot, Parcel or street so as to be Visible From Neighboring Property.

Section 4.26 Parking. Vehicles of all Owners and Residents are to be kept only in garages or the driveway of any Lot. Except with respect to model home garages, no garage located on a Lot shall be used for any purpose other than the storage of vehicles and other household items, and in no event shall any garage be converted to living area. Guests and the invitees of Owners shall be entitled to keep their vehicles on streets in front of a Lot or within reasonable proximity thereof for a period of no greater than three days. In no event shall a disabled or inoperative vehicle be maintained on a street, driveway or otherwise be Visible from Neighboring Property.

Section 4.27 Tenants. The entire Dwelling Unit on a Lot may be let to a Single Family tenant from time to time by the Owner, subject to the provisions of this Declaration.

Section 4.28 Environmental Protections. Neither Lots or Parcels nor any Improvements on Lots or Parcels shall be used to generate, manufacture, refine, transport, treat, store, handle, dispose of, transfer, produce or process Hazardous Substances or solid waste, except in compliance with all applicable federal, state, and local laws or regulations. For purposes of this Section, "Hazardous Substances" shall be deemed to include pollutants or substances defined as "hazardous waste," "hazardous substances," "hazardous materials," or "toxic substances" in any federal, state or local laws, ordinances, regulation, policies or orders pertaining to the environment.

Section 4.29 No Subdivision. No Parcel shall be subdivided, and no Lot shall be further subdivided, by any Owner, Occupant or other Person (except Declarant), without the prior written consent of Declarant (until the Transition Date) and the Board, and any subdivisions accomplished without the required consents shall be null and void. No portion less than all of any Lot or Parcel shall be conveyed, transferred or hypothecated by any Owner or other Person (except Declarant), without the prior written consent of Declarant (until the Transition Date) and the Board. Nothing in the foregoing shall preclude Declarant from replatting the Property or subdividing any Parcel or re-subdividing any Lot.

ARTICLE 5
ORGANIZATION OF ASSOCIATION

Section 5.1 Formation of Association. The Association shall be a nonprofit Arizona corporation charged with the duties and invested with the powers prescribed by law and set forth in the Articles, Bylaws and this Declaration. Neither the Articles, nor Bylaws shall, for any reason, be amended or otherwise changed or interpreted so as to be inconsistent with this Declaration.

Section 5.2 Board of Directors and Officers. The affairs of the Association shall be conducted by the Board and such officers as the Board may elect or appoint in accordance with the Articles and the Bylaws. The initial Board shall be composed of three members. The Board also may appoint various committees. The Board may retain the services of a managing agent to be responsible for the day-to-day operation of the Association, subject to the discretion of the Board. The Board shall determine the compensation and other terms on which the managing agent is retained and shall determine the compensation to be paid to any employees of the Association.

Section 5.3 Association Rules. By a majority vote of the Board, the Association may, from time to time and subject to the provisions of this Declaration, adopt, amend and repeal rules and regulations to be known as the "Association Rules," provided the Association Rules are not inconsistent with the provisions of this Declaration, the Articles or the Bylaws. The Association Rules may pertain to any of the Association's rights, activities and duties, including, but not limited to, rules restricting and governing the use of any Common Area, Neighborhood Common Area or Area of Common Responsibility by any Member, Occupant or Resident, and rules regarding permitted activities on Lots and Parcels. Upon adoption, the Association Rules shall have the same force and effect as if they were set forth in and were a part of this Declaration.

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

Section 5.5 Other Ancillary Associations. In the event any homeowners or similar association, other than the Association provided for herein or a Neighborhood Association, is to be formed by a developer (other than Declarant) of any portion of the Property, or in the event any club, group or organization is to be formed and plans to use the Common Areas or Neighborhood Common Areas as a meeting place or site for other group activities, the articles of incorporation and bylaws or other governing documents for the association shall not be effective unless the contents thereof have been approved by the Board and the governing documents specify that the association and the rights of its members are subject and subordinate to the provisions of this Declaration, the Articles and Bylaws, and the provisions of the Association

Rules. This Section 5.5 shall not apply to social clubs and other clubs and associations that may be formed for the benefit of Owners and Residents within the Property, but which do not perform the functions of a typical owners' association such as maintenance of real property, the collection of assessments for activities related to the operation and maintenance of real property within the Property, or the establishment or enforcement of restrictions and regulations affecting real property within the Property.

ARTICLE 6 MEMBERSHIPS AND VOTING

Section 6.1 Owners of Lots and Parcels. All Lots and Parcels shall be entitled to Memberships in the Association as follows:

(a) one Membership for each Lot.

(b) one Membership for each acre (43,560 square feet), or fraction thereof, in each Parcel owned, unless otherwise provided in any Supplemental Declaration or Neighborhood Declaration. If a subdivision plat or other instrument creating Lots is Recorded covering all or part of the area within the Parcel, (i) there shall be one Membership for each platted Lot, and the Parcel shall be reduced in size by the area so platted; and (ii) there shall be one Membership for each acre, or fraction thereof, in the unplatted remainder of the Parcel so long as it remains unplatted.

Each Membership shall be appurtenant to, and may not be separated from, ownership of the Lot or Parcel to which the Membership is attributable.

Section 6.2 Declarant. Notwithstanding anything to the contrary in this Declaration, Declarant shall be entitled to the Memberships and votes for each Lot and Parcel owned by Declarant. If any lender to whom Declarant has assigned or hereafter assigns all or substantially all of its rights under this Declaration succeeds to the interests of Declarant by virtue of that assignment, the voting rights of Declarant shall not be terminated and the lender shall hold Declarant's Memberships and voting rights on the same terms as they were held by Declarant pursuant to this Declaration.

Section 6.3 Voting/Memberships. The Association shall have two classes of voting Memberships:

6.3.1 Class A. Class A Memberships shall be all Memberships, except the Class B Memberships held by the Declarant and the Designated Builders, and each Owner shall be entitled to one vote for each Class A Membership held by the Owner, subject to the authority of the Board to suspend the voting rights of the Owner for violations of this Declaration in accordance with the provisions hereof;

6.3.2 Class B. Until converted to Class A Memberships as provided below, each Membership owned by Declarant or a Designated Builder shall be a Class B Membership. At the time of any vote by the Members of the Association, Declarant and the Designated Builders shall be entitled to three votes for each Class B Membership owned thereby, respectively. The respective Class B Memberships of the Declarant or a Designated Builder shall

cease and be converted to Class A Memberships on the first to occur of the following (the "Transition Date"):

(a) The date when the total votes outstanding in the Class A Memberships entitled to vote equal the total votes outstanding in the Class B Memberships;

(b) The 31st day of December, 2008; or

(c) The date Declarant or a Designated Builder notifies the Board in writing that the party is terminating its Class B Memberships and converting its Memberships to Class A Memberships; provided, however, that the voluntary termination of the Class B Memberships of Declarant, or of the individual Class B Memberships of any Designated Builder, will not affect the status of the remaining Class B Memberships, and that, so long as the Designated Builder's Class B voting rights are assigned to the Declarant pursuant to Section 6.3.3 below, any such notification by the Designated Builder shall require the prior written approval of the Declarant.

6.3.3 Assignment of Voting Rights. Notwithstanding anything to the contrary herein, all voting rights associated with Memberships held by Designated Builders, as of the date of this Declaration and hereafter acquired, shall be deemed to be assigned to the Declarant, with the assignment to continue with respect to each Membership until the earlier of the following to occur: (i) the sale of the Lot or Parcel to which the Membership is appurtenant to a Retail Purchaser; or (ii) the Declarant notifies the Designated Builder, in writing, that it is terminating the assignment of that Designated Builder's voting rights. The assignment of voting rights pursuant to this Section 6.3.3. shall not be deemed to convert the associated Memberships from Class B Memberships to Class A Memberships or to otherwise alter the nature of the assigned Memberships.

Section 6.4 Right to Vote. No change in the ownership of a Membership shall be effective for voting purposes unless and until the Board is given actual written notice of the change and is provided with satisfactory proof thereof. The vote for each such Membership must be cast as a unit, and fractional votes shall not be allowed. If a Membership is owned by more than one Person and such Owners are unable to agree amongst themselves as to how their vote or votes shall be cast, they shall lose the right to vote on the matter in question. If any Member casts a vote representing a certain Membership, it will thereafter be conclusively presumed for all purposes that the Member was acting with the authority and consent of all other owners of the same Membership unless objection thereto is made at the time the vote is cast. In the event more than one vote is cast for a particular Membership, none of the votes for that Membership will be counted and all the votes for that Membership will be deemed void.

Section 6.5 Membership Rights. Each Member shall have the rights, duties and obligations set forth in this Declaration and such other rights, duties and obligations as are set forth in the Articles and Bylaws.

Section 6.6 Transfer of Membership. The rights and obligations of a Class A Member in the Association shall not be assigned, transferred, pledged, conveyed or alienated in any way except upon transfer of ownership to an Owner's Lot or Parcel and then only to the transferee of ownership of the Lot or Parcel. A transfer of ownership to a Lot or Parcel may be effectuated by

deed, intestate succession, testamentary disposition, foreclosure of a mortgage or deed of trust of record or such other legal process as is now in effect or as may hereafter be established under or pursuant to the laws of the State of Arizona. Any attempt to make a prohibited transfer shall be void. Any transfer of the ownership of a Lot or Parcel shall operate to transfer the Membership(s) appurtenant to the Lot or Parcel to the new Owner thereof. To the extent applicable, the provisions of this Section 6.6 are subject to Section 6.3.3.

Section 6.7 Suspension of Voting Rights. If any Owner is in arrears in the payment of any Assessments or other amounts due hereunder or is otherwise in default under any of the provisions of this Declaration and the violation is not cured before any meeting of the Members where votes are to be taken, the Owner's right to vote as a Member of the Association shall not be exercisable for the meeting and shall remain suspended until all payments, including accrued interest, penalties, reasonable attorneys' fees and other costs as set forth below, are brought current, and until any other infractions or violations of this Declaration are cured; provided, however, the voting rights assigned to Declarant pursuant to Section 6.3.3 may not be suspended, so long as the assignment of voting rights is in effect.

ARTICLE 7 COVENANT FOR ASSESSMENTS AND CREATION OF LIEN

Section 7.1 Creation of Lien and Personal Obligation of Assessments. The Declarant, for each Lot and Parcel within the Property, hereby covenants and agrees, and each Owner, by acceptance of a deed or other conveyance of an ownership interest in a Lot or Parcel (whether or not it shall be so expressed in such deed), is deemed to covenant and agree, to pay to the Association all Assessments and other charges provided for herein, including, but not limited to: (i) Regular Assessments; (ii) Special Assessments; (iii) Capital Reserve Assessments; (iv) Neighborhood Assessments; (v) Special Use Fees established in accordance with Section 10.5; and (vi) all other fees and charges levied pursuant hereto. All Assessments, together with interest, penalties, collection costs, reasonable attorneys' fees, witness fees, costs and related expenses, shall be a charge, continuing servitude and lien upon the Lot or Parcel against which each such Assessment is made. Each Assessment, together with interest, penalties, collection costs, reasonable attorneys' fees, witness fees, costs and related expenses, shall also be the personal obligation of the Person who was the Owner of the Lot or Parcel at the time the Assessment was due. The personal obligation for delinquent Assessments shall not pass to the successors in title of the Owner unless expressly assumed by such successors. If more than one Person owns a Lot or Parcel, all co-Owners of the Lot or Parcel shall be jointly and severally liable for all Assessments provided for in this Declaration.

Section 7.2 Regular Assessments. To provide for the uses and purposes specified in Article 10 hereof, including the establishment of replacement and maintenance reserves, real estate taxes, insurance, management fees and such expenses that the Board deems reasonable or necessary to conduct the business of the Association, the Board shall assess against each Membership a Regular Assessment. The amount of the Regular Assessment shall be determined with the objective of fulfilling the Association's obligations under this Declaration to provide for the uses and purposes specified in Article 10. The Board may, during an Assessment period, revise the amount of the Regular Assessment in order to meet expenses that exceed the amounts anticipated by the Association and collect the increased Assessment in accordance with

procedures established pursuant to Section 7.12 below. The Regular Assessment shall be assessed against each Member commencing with the first day of the month following the date the first Lot or Parcel is conveyed by the Declarant; provided, however, that in the event fulfillment of the purposes of the Association does not require the imposition of a Regular Assessment at that time, the Board may delay the initial imposition of the Regular Assessment against each Member until such time as the fulfillment of the purposes of the Association require such imposition.

Section 7.3 Special Assessments for Capital Improvements and Extraordinary Expenses. In addition to the other Assessments provided for herein, the Association may levy against each Membership, in any Assessment period, a Special Assessment applicable to that Assessment period 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, or for the purpose of defraying other extraordinary expenses; provided that any such Special Assessment must have the prior written consent of Declarant, if it still holds a Class B Membership, and 75% of the votes of the Members who are voting in person or by proxy at a meeting duly called for such purpose. The provisions of this Section shall not preclude or limit the assessment, collection or use of the Regular Assessments for the aforesaid purposes.

Section 7.4 Capital Reserve Fund. In addition to the other Assessments provided for herein, a Capital Reserve Assessment shall be levied against a new Member at the time of a transfer of a Lot to a Retail Purchaser. The Capital Reserve Assessment shall equal one-sixth (*i.e.*, two months' value) of the then-annual total Regular Assessments per Membership in effect at the time of the sale or transfer of the Membership. The Board may also charge a transfer fee to be reasonably set by the Board upon any subsequent sale of a Lot. Notwithstanding Section 10.1 hereof, the Capital Reserve Assessments shall be kept in a separate capital reserve fund and shall only be used for the reconstruction, replacement or non-routine maintenance and repair of Common Area Improvements (including, but not limited to, landscaping, equipment and other amenities).

Section 7.5 Neighborhood Assessment. In addition to the other Assessments provided for herein, if a Supplemental Declaration or Neighborhood Declaration designates certain costs as a Neighborhood Assessment or if the Board in its reasonable discretion determines that a Neighborhood benefits in a substantial way from a particular feature, characteristic or service and other parts of the Property outside the Neighborhood do not benefit or do not benefit as much from the feature, characteristic, or service, the Association may charge a Neighborhood Assessment against each Membership within the Neighborhood to pay for the incremental cost incurred in connection with the feature, characteristic or service, including, but not limited to, maintenance, repair and replacement costs. Unless otherwise provided in Supplemental Declaration or a Neighborhood Declaration, all Neighborhood Assessments shall be on a uniform basis among those Memberships subject to the Neighborhood Assessment. Notwithstanding anything to the contrary in this Declaration, with respect to any Neighborhood that is controlled by Declarant, whether by voting control of the Neighborhood Association or otherwise, the imposition of a Neighborhood Assessment shall require the prior written consent of the Declarant.

Section 7.6 Rate of Assessment. Regular Assessments and Neighborhood Assessments may be collected on a monthly, quarterly, or annual basis as determined by the Board (or, with respect to Neighborhood Assessments, as specified in a Neighborhood Declaration or a Supplemental Declaration or as determined by the Neighborhood Association, if any), and Special Assessments may be collected as specified by the Board unless otherwise determined by the resolution of the Members of the Association approving the Special Assessment. Subject to Section 7.12, the amount of any Regular Assessment shall be set in the sole discretion of the Board except that (i) in regard to all Members other than Declarant and the Designated Builders, the Regular Assessment must be fixed at a uniform rate for each Membership, and (ii) in regard to each of Declarant and the Designated Builders, the Regular Assessment shall be an amount per Membership equal to 25% of the uniform rate set in subsection (i) hereof. All Special Assessments shall be on a uniform basis per Membership.

Section 7.7 Deficits. In the event that the Regular Assessments set forth in this Article are insufficient to meet the operating and business expenses of the Association, Declarant and the Designated Builders shall subsidize the difference, the subsidy being allocated between Declarant and the Designated Builders as follows: beginning on the date that Regular Assessments commence and continuing for 30 days thereafter, and for each successive 30 day period, Declarant and the Designated Builders shall allocate the percentage amount of any deficit for the 30 day period (with expenses to be allocated to 30 day periods on an accrual basis) such that each shall contribute based on the number of Memberships attributable to Lots and Parcels that each respectively owns on the first day of each such 30 day period divided by the total number of Memberships attributable to Lots and Parcels owned by Declarant and all the Designated Builders on that same day. Notwithstanding any other provision of this Section 7.7, in no event shall the sum of the reduced Regular Assessment and subsidy paid by each of Declarant or any Designated Builder per year exceed the total amount that each respectively would have paid had they been required to pay the full Regular Assessment rate per Membership set forth in Section 7.6(i) above. Notwithstanding anything to the contrary in this Section 7.7, in the event of any inconsistency between the provisions of this Section 7.7 and the provisions of any written agreement between Declarant and a Designated Builder, the provisions of the written agreement between the Declarant and the Designated Builder shall prevail as between Declarant and the Designated Builder.

Section 7.8 Notice and Quorum for Any Action Authorized Under Section 7.3 or Section 7.12. Written notice of any meeting called for the purpose of taking any action authorized under Section 7.3 or Section 7.12 of this Article shall be sent to all Members subject to the Assessment no less than 10 days nor more than 50 days in advance of the meeting. At the first such meeting called, the presence of Members or of proxies entitled to cast 50% of all the votes (exclusive of suspended voting rights) of each class 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 one-half ($\frac{1}{2}$) of the required quorum at the preceding meeting. No such subsequent meeting shall be held more than 60 days following the preceding meeting. Any Member can waive notice to a meeting and right to vote may be exercised by proxy pursuant to such rules as the Board may from time to time promulgate.

Section 7.9 Rules Regarding Billing and Collection Procedures. The Board shall have the right to adopt rules and regulations setting forth procedures for the billing and collection of the Assessments, provided that the procedures are not inconsistent with the provisions hereof. The failure of the Association to send a bill to a Member shall not relieve any Member of liability for any Assessment under this Declaration, but the Assessment Lien therefor shall not be foreclosed or otherwise enforced until the Member has been given not less than 30 days written notice, prior to foreclosure or enforcement, at the address of the Member on the records of the Association, that the Assessment, or any installment thereof is, or will be, due, and of the amount owing. Such notice may be given at any time prior to or after delinquency of the payment. The Association shall be under no duty to refund any payments received by it even though the ownership of a Membership changes during an Assessment period; successor Owners of Lots or Parcels shall be given credit on a prorated basis for prepayments made by prior Owners.

Section 7.10 Computation of Assessments; Annual Budget. The Board shall adopt a budget for each fiscal year of the Association, which budget shall serve as the basis for determining the Assessments for the applicable fiscal year (subject to the limitations of Section 7.12 hereof). Within a reasonable period following the meeting of the Board at which it adopts the budget for the year in question, the Board shall make available to each Owner, upon request, a copy of the budget and a statement of the amount of Assessments to be levied against the Owner's Membership for the upcoming year. In the event the Board fails to adopt a budget for any fiscal year prior to commencement of such fiscal year, then until and unless such budget is adopted, the budget (and the amount of the Assessments provided for therein) for the year immediately preceding shall remain in effect. Except as provided in Section 7.12, neither the budget nor any Assessment levied pursuant thereto shall be required to be approved by the Owners.

Section 7.11 Due Dates. Assessments for each fiscal year shall be due and payable as determined by the Board. Assessments shall be deemed "paid" when actually received by the Association or by its designated manager or agent, but if any Assessments are paid by check and the bank or other institution upon which such check is drawn thereafter dishonors and refuses to pay the check, those Assessments shall not be deemed "paid" and shall remain due and payable with interest accruing from the date the Assessments were originally due.

Section 7.12 Maximum Regular Assessment. The Regular Assessments provided for herein shall not, at any time, exceed the "Maximum Regular Assessment" as determined in accordance with this Section. For the fiscal year ending December 31, 2002, the Maximum Regular Assessment shall be \$45.00 per month for each Membership. Thereafter, except as provided below, unless a greater increase is approved by a vote of two-thirds (2/3) of the votes of each class of Members represented in person or by proxy at a meeting of Members called for such purpose, the Maximum Regular Assessment for any fiscal year shall be equal to the Regular Assessment for the immediately preceding fiscal year increased by the greater of: (i) 10%; or (ii) the percentage increase for the immediately preceding year over the year before that in the Consumer Price Index--All Urban Consumers--All Items (1982-1984 Average = 100 Base) published by the Bureau of Labor Statistics of the U.S. Department of Labor (or its successor). Notwithstanding the foregoing, the Board may, without the approval of the Members, increase the Maximum Regular Assessment for any fiscal year by an amount sufficient to permit the Board to meet any increases over the preceding fiscal year in: (a) premiums for any insurance

coverage required by this Declaration to be maintained by the Association; (b) charges for utility services necessary to the Association's performance of its obligations under this Declaration; or (c) taxes, notwithstanding the fact that the resulting increase in the Maximum Regular Assessment is greater than otherwise permitted under this Section 7.12.

Section 7.13 Collection Costs and Interest on Delinquent Assessments. Any Assessment or installment thereof not paid within 30 days after the date the Assessment or installment is due shall be deemed delinquent and shall bear a late fee and default interest, the amount of which shall be set forth in Section 8.1 below, and the Member shall be liable for all collection costs, reasonable attorneys' fees, witness fees, costs and related expenses, which may be incurred by the Association in collecting such amounts or in enforcing all of the rights and remedies provided herein. The Board also may, but is not obligated to, Record a Notice of Delinquent Assessment against any Lot or Parcel as to which an Assessment is delinquent and constitutes a lien and may establish a fixed fee to reimburse the Association for the Association's cost in Recording the Notice, processing the delinquency and Recording a notice of payment. Any such fixed fee shall be treated as a collection cost of the Association secured by the Assessment Lien.

Section 7.14 Evidence of Payment of the Assessments. Upon receipt of a written request by a Member or any other Person, the Association, within a reasonable period of time thereafter, shall issue to such Member or other Person a written certificate stating (i) that all Assessments and all collection costs, reasonable attorneys' fees and other charges, if any, as provided above, have been paid with respect to any specified Lot or Parcel as of the date of the certificate; or (ii) if all Assessments and other charges have not been paid, the amount of unpaid Assessments and the amount of any collection costs, reasonable attorneys' fees, and other charges, due and payable as of that date. The Association may make a reasonable charge for the issuance of these certificates, which charge must be paid at the time the request for a certificate is made. Any such certificate, when duly issued as herein provided, shall be conclusive and binding with respect to any matter therein stated as against any bona fide purchaser of, or lender on, the Lot or Parcel in question.

Section 7.15 Property Exempted from Assessments and Assessment Lien. Exempt Property shall be exempted from Assessments and the Assessment Lien; provided, however, that if any change of ownership of Exempt Property results in all or any part thereof becoming Assessable Property in any year, the previously Exempt Property shall thereupon, to the extent applicable, be subject to Assessments (prorated as of the date it became Assessable Property) and the Assessment Lien.

Section 7.16 No Offsets. All Assessments and other amounts payable to the Association shall be payable in accordance with the provisions of this Declaration, and no offsets against Assessments or other amounts shall be permitted for any reason, including, but not limited to, a claim that the Association is not properly exercising its duties and powers as provided in the Declaration.

ARTICLE 8
ENFORCEMENT OF DECLARATION AND ASSESSMENTS AND OF ASSESSMENT
LIEN

Section 8.1 Enforcement. The Declarant, for so long as it holds a Class B Membership, and the Association, as the agent and representative of the Members, shall have the right to enforce the provisions of this Declaration, any Supplemental Declaration, the Articles, Bylaws and Design Guidelines and any and all covenants, restrictions, reservations, charges, servitudes, assessments, conditions, liens, or easements provided for in any contract, deed, declaration or other instrument relating to the Property that have been executed pursuant to, or subject to, the provisions of this Declaration, or that otherwise indicate its provisions were intended to be enforced either by the Association or by the Declarant for the Association. If, however, the Association fails or refuses to enforce this Declaration or any of the instruments listed above for an unreasonable period of time after written request to do so, then an Owner, at the Owner's expense, or the Declarant, at the Declarant's expense (if Declarant owns a Lot or Parcel but no longer has enforcement rights pursuant to the first sentence of this Section 8.1) may enforce them on behalf of the Association by any appropriate legal action, whether at law or in equity. Notwithstanding any provision of this Declaration, Declarant shall have no duty to undertake any such enforcement actions and shall not be deemed a guarantor of enforcement.

8.1.1 Any amounts owing the Declarant or Association hereunder as a result of a default by any Owner and which are not paid within 30 days after such amounts are due shall be immediately subject to a late payment penalty as may be set by the Board from time to time (not to exceed the greater of 10% of the amount owed or \$15.00), plus default interest on the amount of the late payment and the late payment fee, at a per annum rate equal to 18%.

8.1.2 In the event of a default of any provisions hereof, including, but not limited to, any failure to comply with use restrictions or landscaping or design review control, the Association or Declarant shall be entitled to obtain, in addition to any other rights or remedies at law or in equity, immediate injunctive relief. Each Owner agrees that damages are an inadequate remedy for any violation of any term or provision of this Declaration. The Association and the Declarant are authorized, although not required, to retain an attorney in conjunction with the enforcement of this Declaration. The Owner in violation of this Declaration shall be liable for all reasonable attorneys' fees, witness fees, costs and related expenses associated with the enforcement, and the foregoing enforcement costs shall be secured by the Assessment Lien.

8.1.3 If any Owner, including, but not limited to, any Designated Builder fails to keep the streets clear of mud, dirt or debris resulting from the construction activities or fails to keep any Lot or Parcel clear of rubbish or debris or maintains a nuisance or unsafe, unsightly or offensive condition thereon or otherwise undertakes any activity or fails or permits any condition or circumstance to arise that constitutes a violation of any term or condition of this Declaration, Declarant or the Association shall be entitled to take such action as it deems appropriate in order to correct or remove such condition and enter the Lot, Parcel, street or other property on which the condition exists, with or without such notice as Declarant or the Association deems prudent under the circumstances, and all costs, expenses and fees (including reasonable attorneys' fees, witness fees, costs and related expenses incurred by Declarant or

Association in taking action) shall be immediately due and owing by the Owner creating, causing or permitting the condition to exist, together with default interest from the date such costs are incurred and late payment fee as set forth above. The exercise of Declarant's and the Association's rights shall not be deemed to cure such default and may be exercised in addition to and not in lieu of any other right or remedy provided herein or at law or in equity.

Section 8.2 Remedies to Enforce Payment of Assessments. If any Member fails to pay any Assessments when due, the Association may enforce the payment of the Assessments and/or the Assessment Lien by taking either or both of the following actions, concurrently or separately (and, by exercising either of the remedies hereinafter set forth, the Association does not prejudice or waive its right to exercise the other remedy):

8.2.1 Bring an action at law and recover a judgment against the Member personally obligated to pay the Assessments; and

8.2.2 Foreclose the Assessment Lien against the Lot or Parcel in accordance with the then-prevailing Arizona law relating to the foreclosure of realty mortgages or, if applicable, a non-judicial sale under deeds of trust (including, where applicable, the right to recover any deficiency) and, if foreclosed as a realty mortgage, the Lot or Parcel may be redeemed after foreclosure sale as provided by law.

Section 8.3 Subordination of Assessment Lien to First Mortgage or Deed of Trust; Priority of Lien. The Assessment Lien provided for herein shall be subordinate to any first mortgage lien held by, or deed of trust of which the beneficiary is, a lender who has lent funds with the Lot or Parcel as security, or held by the lender's successors and assigns, and shall also be subject and subordinate to liens for taxes and other public charges, which by applicable law are expressly made superior. Except as above provided, the Assessment Lien shall be superior to any and all charges, liens or encumbrances which hereafter in any manner may arise or be imposed upon each Lot and Parcel. Sale or transfer of any Lot or Parcel shall not affect the Assessment Lien; provided, however, that if the sale or transfer is pursuant to foreclosure of a mortgage or deed of trust to which the Assessment Lien is subordinate, or pursuant to any sale or proceeding in lieu thereof, the purchaser at the mortgage foreclosure or deed of trust sale, or any grantee taking by deed-in-lieu of foreclosure, shall take the Lot or Parcel free of the Assessment Lien for all Assessments that have accrued up to the date of issuance of a sheriff's or trustee's deed or deed in lieu of foreclosure; but upon the date of issuance of a sheriff's or trustee's deed or deed in lieu of foreclosure, the Assessment Lien immediately shall become and remain superior to any and all other charges, liens or encumbrances (except liens for taxes or other public charges which by applicable law are expressly made superior), and the mortgage or deed of trust foreclosure sale purchaser or grantee shall take subject to all Assessments, and the Assessment Lien thereof, accruing subsequent to the date of issuance of a sheriff's or trustee's deed or deed given in lieu of foreclosure.

Section 8.4 Costs to be Borne by Member in Connection with Enforcement of Payment of Assessments. In any action taken pursuant to Section 8.2, the Member shall be personally liable for, and the Assessment Lien shall be deemed to secure the amount of, all Assessments, Special Use Fees and other charges, together with interest, penalties and the

Association's collection costs, reasonable attorneys' fees, witness fees, costs and related expenses, including those costs and fees specified in Section 7.13.

Section 8.5 Approval of Legal Proceedings. Except for any legal or collection proceedings initiated by the Association to (i) enforce the use restrictions contained in this Declaration; (ii) enforce the Association Rules; (iii) enforce the Design Review Guidelines; (iv) collect any unpaid Assessments levied pursuant to this Declaration; or (v) enforce a contract entered into by the Association with vendors providing services to the Association, the Association shall not incur legal expenses, including, but not limited to, reasonable attorneys' fees, witness fees, costs and related expenses or liability for costs and fees of an adverse party, where the Association initiates legal proceedings or is joined as a plaintiff in legal proceedings, without the prior approval of Members holding more than 50% of the total votes entitled to be cast by all Members, excluding the vote of any Member who would be a defendant in such proceedings. The costs of any legal proceedings initiated by the Association that are not included in the above exceptions shall be financed by the Association only with monies that are collected for that purpose by Special Assessment, and the Association shall not borrow money, use reserve funds, or use monies collected for other Association obligations. Each Owner shall notify prospective purchasers of such legal proceedings initiated by the Board and not included in the above exceptions. Nothing in this Section shall preclude the Board from incurring expenses for legal advice in the normal course of operating the Association to (a) enforce this Declaration and related documents; (b) comply with the statutes or regulations related to the operation of the Association; (c) amend this Declaration and related documents, in accordance with their terms; (d) grant easements or convey Common Area as provided in this Declaration; or (e) perform the obligations of the Association as provided in this Declaration. Subject to the exceptions in the first sentence of this Section, with respect to matters involving property or Improvements to property, the Association additionally shall not initiate legal proceedings or join as a plaintiff in legal proceedings unless (1) the property or Improvement is owned either by the Association or jointly by all Members of the Association, (2) the Association has the maintenance responsibility for the property or Improvements pursuant to this Declaration, or (3) the Owner who owns the property or Improvements consents in writing to the Association initiating or joining the legal proceeding.

ARTICLE 9

CLAIM AND DISPUTE RESOLUTION/LEGAL ACTIONS

Section 9.1 Generally. It is intended that the Common Area, Neighborhood Common Area, each Lot and Parcel, and all Improvements constructed on the Property by Persons in the business of constructing Improvements ("Developers"), will be of a quality that is consistent with good construction and development practices in the area where the Property is located for housing and amenities similar to that constructed within the Property. Nevertheless, due to the complex nature of construction and the subjectivity involved in evaluation of quality, disputes may arise as to whether a defect exists and the responsibility therefor. It is intended that all disputes and claims regarding alleged defects ("Alleged Defects") in any Improvements on any Lot, Parcel, Common Area or Neighborhood Common Area and the other disputes and claims described herein will be resolved amicably, without the necessity of time-consuming and costly litigation. Accordingly, all Developers, the Association, the Board, and all Owners shall be bound by the following claim resolution procedures. As used in this Article 9, the term

“Developers” shall be understood to exclude Declarant; the applicability of this Article 9 to the Declarant is set forth in Section 9.10 below.

Section 9.2 Right to Cure Alleged Defect. If the Association, the Board or any other Owner or Person (“Claimant”) claims, contends, or alleges an Alleged Defect, the Developer that constructed the Improvement shall have the right to inspect, repair and/or replace the Alleged Defect as set forth herein.

9.2.1 Notice of Alleged Defect. If a Claimant discovers an Alleged Defect, the Claimant shall give written notice of the Alleged Defect (“Notice of Alleged Defect”), including a description of the specific nature of the Alleged Defect, within 30 days after discovery to the Developer that constructed the Improvement.

9.2.2 Right to Enter, Inspect, Repair and/or Replace. Within a reasonable time after the receipt of a Notice of Alleged Defect, or the independent discovery of any Alleged Defect by a Developer, the Developer that constructed the Improvement shall have the right, upon reasonable notice to the Claimant and during normal business hours, to enter onto or into the Common Area, Neighborhood Common Area, Area of Common Responsibility, Lot, Parcel or Dwelling Unit, and/or any other Improvements or portion of the Property for the purposes of inspecting and/or conducting testing and, if deemed necessary by the Developer in its sole discretion, repairing and/or replacing the Alleged Defect. In conducting such inspection, testing, repair and/or replacement, the Developer shall be entitled to take any actions it deems reasonable and necessary under the circumstances.

Section 9.3 No Additional Obligations; Irrevocability and Waiver of Right. Nothing set forth in this Article shall be construed to impose any obligation on a Developer to inspect, test, repair, or replace any item or Alleged Defect for which the Developer is not otherwise obligated under applicable law or any warranty provided by the Developer in connection with the sale of the Lots, Parcels and Dwelling Units and/or the Improvements constructed thereon. The right reserved to each Developer to enter, inspect, test, repair and/or replace an Alleged Defect shall be irrevocable and may not be waived or otherwise terminated with regard to the Developer, except by a written document executed by that Developer and Recorded.

Section 9.4 Legal Actions. Any legal action initiated by a Claimant must be brought in accordance with, and subject to, Section 8.5 and Section 9.5 of this Declaration. If a Claimant initiates any legal action, cause of action, regulatory action, proceeding, reference, mediation, or arbitration against a Developer alleging damages for costs related to an Alleged Defect (“Alleged Defect Costs”), any judgment or award in connection therewith shall first be used to correct and or repair the Alleged Defect or to reimburse the Claimant for any costs actually incurred by the Claimant in correcting and/or repairing the Alleged Defect. If the Association, as a Claimant, recovers any funds from a Developer (or any other Person) to repair an Alleged Defect, any excess funds remaining after repair of the Alleged Defect shall be paid in to the Association’s reserve fund. If the Association is a Claimant, the Association must provide a written notice to all Members prior to initiation of any legal action, regulatory action, cause of action, proceeding, reference, mediation or arbitration against a Developer including, at a minimum: (i) a description of the Alleged Defect; (ii) a description of the attempts of the Developer to correct the Alleged Defect and the opportunities provided to the Developer to correct the Alleged Defect; (iii) a

certification from an architect or engineer licensed in the State of Arizona that the Alleged Defect exists along with a description of the scope of work necessary to cure the Alleged Defect and a resume of such architect or engineer; (iv) the estimated Alleged Defect Costs; (v) the name and professional background of the attorney retained by the Association to pursue the claim against the Developer and a description of the relationship between the attorney and member(s) of the Board or the Association's management company (if any); (vi) a description of the fee arrangement between the attorney and the Association; (vii) the estimated attorneys' fees and expert fees and costs necessary to pursue the claim against the Developer and the source of the funds that will be used to pay the fees and expenses; (viii) the estimated time necessary to conclude the action against the Developer; (ix) a good faith estimate of the fees and costs the Association may be required to pay to the Developer in the event that the Association's claim is unsuccessful; and (x) an affirmative statement from a majority of the members of the Board that the action is in the best interests of the Association and its Members.

Section 9.5 Alternative Dispute Resolution. Any dispute or claim (each, a "Dispute") between or among (i) a Developer (or its brokers, agents, consultants, contractors, subcontractors, or employees) on the one hand, and any Owner or the Association on the other hand; or (ii) the Association and any Owner, including any claim based on contract, tort, or statute, arising out of or relating to (a) the rights or duties of the parties under this Declaration; (b) the design or construction of any portion of the Property, or (c) an Alleged Defect, but excluding disputes relating to the payment of any type of Assessment and routine enforcement of the use restrictions set forth in Article 4, shall be subject first to mediation and then arbitration as set forth in this Section 9.5, in lieu of instituting litigation with regard to the Dispute. EACH OWNER, BY ACCEPTING TITLE TO A LOT OR A PARCEL, AND ALL OTHER PERSONS HEREAFTER ACQUIRING ANY OTHER INTEREST IN ANY OF THE PROPERTY, ACKNOWLEDGE AND ACCEPT THAT THEY WILL HAVE NO RIGHT TO HAVE THE DISPUTES DESCRIBED ABOVE TRIED IN COURT.

9.5.1 Mediation.

9.5.1.1 Initiation of Mediation. Mediation shall be initiated by the party or parties instituting the Dispute (each, a "Disputing Party") delivering written notice of the intent to mediate to the party or parties against whom the Dispute is alleged (each, a "Respondent"). Within ten days from the date the mediation notice is delivered to the last Respondent, the parties shall agree upon a mediator. If the parties are unable to agree upon a mediator within ten days, the Disputing Party (or Disputing Parties, if there are more than one) shall promptly select one mediator, and the Respondent (or Respondents, if there are more than one) shall promptly select one mediator, and those two mediators shall select a third independent mediator who shall serve as the sole mediator of the Dispute.

9.5.1.2 Conduct of Mediation. The mediation shall be held in the County. The mediator shall have the discretion to conduct the mediation in the manner in which the mediator believes is most appropriate for reaching a settlement of the Dispute. The mediator is authorized to conduct joint and separate meetings with the parties to the Dispute and to make oral and written recommendations for settlement. Whenever necessary, the mediator may also obtain expert advice concerning technical aspects of the Dispute, provided the parties to the Dispute agree to obtain, and to assume the expenses of obtaining, the expert advice as

provided in Section 9.5.3. Persons other than the parties to the Dispute, and their attorneys, may attend mediation sessions only with the permission of all parties to the Dispute and with the consent of the mediator. There shall be no stenographic record of the mediation process.

9.5.1.3 Conclusion of Mediation. The mediator shall not have the authority to impose a settlement on any party to the Dispute. Upon termination of the mediation, the mediator shall notify the parties to the Dispute, in writing, of the date on which the mediation terminated. Any admissions, offers of compromise, settlement negotiations or other communications at the mediation shall not be admissible in any subsequent dispute resolution forum.

9.5.2 Final and Binding Arbitration. If the parties cannot resolve their Dispute pursuant to the mediation procedures described in Section 9.5.1, the Disputing Party shall have 30 days following termination of mediation proceedings (as determined by the mediator in writing) to submit the Dispute to final and binding arbitration by delivering written notice of the intent to arbitrate to all Respondents. If the Disputing Party does not submit the Dispute to arbitration within 30 days after termination of mediation proceedings, the Disputing Party shall be deemed to have waived any claims related to the Dispute, and all Respondents shall be released and discharged from any and all liability to the Disputing Party on account of the Dispute; provided, however, nothing herein shall release or discharge any party from any liability to Persons who are not a party to the proceedings.

9.5.2.1 Necessary Parties. The parties to the Dispute shall cooperate in good faith to ensure that all necessary and appropriate parties are included in the arbitration proceeding. No Developer shall be required to participate in the arbitration proceeding if all parties against whom the Developer would have necessary or permissive cross-claims or counterclaims cannot be joined in the arbitration proceedings.

9.5.2.2 Arbitrator. Within ten days from the date the written notice of arbitration is delivered to the last Respondent, the parties shall agree upon an arbitrator. If the parties are unable to agree upon an arbitrator within ten days, the Disputing Party (or Disputing Parties, if there are more than one) shall promptly select one arbitrator, and the Respondent (or Respondents, if there are more than one) shall promptly select one arbitrator, and those two arbitrators shall select a third independent arbitrator who shall serve as the sole arbitrator of the Dispute. If an arbitrator resigns or becomes unwilling or unable to continue to serve as an arbitrator in the Dispute, a replacement shall be selected in accordance with this Section 9.5.2.2. Any arbitrator selected pursuant to this Section 9.5.2.2 shall be impartial, fully active in the arbitrator's occupation, knowledgeable as to the subject matter involved in the Dispute and experienced in arbitration proceedings. The foregoing shall not preclude otherwise qualified retired judges or lawyers.

9.5.2.3 Arbitration Proceedings. The arbitration proceedings shall be held in the County. The arbitrator shall have the authority to try all issues, whether of fact or law, and shall have the power to hear and dispose of all motions (including, but not limited to, motions to dismiss and summary judgment motions) in the same manner as a trial court judge. Except as otherwise specifically provided in this Section 9.5, the arbitrator shall have the discretion to conduct the arbitration in the manner in which the arbitrator believes is

most appropriate for the Dispute. Within 20 days of being selected as the arbitrator, the arbitrator shall produce a written arbitration management plan, describing how the arbitration will proceed, which may include, but need not be limited to, deadlines for conducting discovery and hearing motions, one or more pre-hearing conferences, and limitations on discovery (in addition to those described in Section 9.5.2.4)

9.5.2.4 Discovery. The parties to the Dispute shall be entitled to limited discovery only, consisting of the exchange between the parties of the following matters: (i) witness lists; (ii) expert witness designations; (iii) expert witness reports; (iv) exhibits; (v) reports of testing or inspections of the property subject to the Dispute, including, but not limited to, destructive or invasive testing; and (vi) trial briefs. The Developer shall also be entitled to conduct further tests and inspections as provided in Section 9.2. Any other discovery shall be permitted by the arbitrator upon a showing of good cause or based on the mutual agreement of the parties to the Dispute. The arbitrator shall oversee discovery and may enforce all discovery orders in the same manner as any trial court judge.

9.5.2.5 Final Award. The arbitrator shall render a final decision, in writing, no later than 60 days following the conclusion of the arbitration proceedings.

9.5.2.6 Limitation on Remedies/Prohibition on the Award of Certain Damages. The arbitrator shall have the power to award compensatory damages and to grant all other legal and equitable remedies, except the arbitrator shall not have the authority to award punitive, special or consequential damages. EACH OWNER, BY ACCEPTING TITLE TO A LOT OR A PARCEL, AND ALL OTHER PERSONS HEREAFTER ACQUIRING ANY OTHER INTEREST IN ANY OF THE PROPERTY, ACKNOWLEDGE AND ACCEPT THAT THEY SHALL HAVE NO RIGHT TO RECEIVE PUNITIVE, SPECIAL OR CONSEQUENTIAL DAMAGES FOR ANY OF THE DISPUTES DESCRIBED ABOVE.

9.5.3 Expenses of Mediation and Arbitration. Each party to the Dispute shall bear all of its own costs incurred prior to and during the mediation and arbitration proceedings, including, but not limited to, the fees and costs of its attorneys or other representatives, discovery costs, and expenses of witnesses produced by the party. Each party to the Dispute shall share equally all charges of the mediator(s), arbitrator(s), and all costs of obtaining expert advice concerning technical aspects of the Dispute (for which the parties to the Dispute agreed to pay), unless otherwise agreed to by the parties.

9.5.4 Enforcement of Resolution. If the parties to a Dispute resolve the Dispute through mediation in accordance with Section 9.5.1 and any party thereafter fails to abide by the terms of such mediation, or if an arbitration award is made in accordance with Section 9.5.2 and any party to the Dispute thereafter fails to comply with such resolution or award, then the other party or parties to the Dispute may file suit or initiate administrative proceedings to enforce the terms of the mediation resolution or arbitration award without the need to again comply with the procedures set forth in this Article. In that event, the party taking action to enforce the terms of the mediation or the award shall be entitled to recover from the non-complying party (or if more than one non-complying party, from all such parties pro rata),

all costs incurred to enforce the terms of the mediation or arbitration award including, but not limited to, reasonable attorneys' fees, witness fees, costs and all related expenses.

9.5.5 Confidentiality. All papers, documents, briefs, written communication, testimony and transcripts as well as any and all mediation resolutions and arbitration decisions shall be confidential and not disclosed to anyone other than the mediator, arbitrator, the parties to the Dispute, the attorneys of the parties to the Dispute and expert witness (where applicable to their testimony), unless: (i) the prior written consent of all parties to the Dispute has been obtained; (ii) the information is otherwise available to the public through no act of the party or parties that received the information in the course of the Dispute; or (iii) a court order requires otherwise. Prior to disclosure, all third parties must agree in writing to keep such information confidential.

Section 9.6 Repurchase Option for Alleged Defect Claims. Notwithstanding anything in this Declaration to the contrary, in the event any Owner, either directly or through the Association has a dispute with a Developer regarding any Alleged Defects in the Owner's Dwelling Unit and submits the dispute to arbitration pursuant to Section 9.5.2, the Developer that constructed the Dwelling Unit (or any assignee of the Developer) shall have the option (BUT NOT THE OBLIGATION) to purchase such Dwelling Unit on the following terms and conditions.

9.6.1 The purchase price shall be an amount equal to the sum of the following less any sums paid to such Owner under any homeowner's warranty in connection with the Alleged Default:

9.6.1.1 the purchase price paid by the original Owner of the Dwelling Unit when originally purchased from the Developer;

9.6.1.2 the value of any Improvements made to the Dwelling Unit by anyone other than the Developer;

9.6.1.3 the Dwelling Unit Owner's reasonable moving costs;
and

9.6.1.4 any closing costs, including loan fees and/or "points" incurred by the Dwelling Unit Owner in connection with the purchase of another primary residence within 90 days after the closing of the repurchase provided for herein. If the costs set forth in this Section 9.6.1.4 have not been incurred prior to the closing of the repurchase provided for herein, upon presentation of reasonable documentation after the closing of the repurchase option, the Developer that exercised the repurchase option shall promptly reimburse the Owner for such costs incurred within the time period referenced above.

9.6.2 Close of escrow on the repurchase of the Dwelling Unit shall occur within 45 days after written notice from the Developer to the Dwelling Unit Owner of the Developer's intent to exercise the option herein.

9.6.3 Title shall be conveyed to the applicable Developer free and clear of all monetary liens and encumbrances other than non-delinquent real estate taxes.

9.6.4 All closing costs in connection with the repurchase shall be paid by the applicable Developer.

9.6.5 Exercise of the repurchase option as provided hereinabove shall constitute full and final satisfaction of all claims relating to the subject Dwelling Unit, including claims relating to the Alleged Defect. The Dwelling Unit Owner (or Association, as applicable) shall promptly execute and deliver any notice of dismissal or other document necessary or appropriate to evidence such satisfaction.

Section 9.7 Class Action Claims. The provisions set forth in this Article are intended to apply to any class action claims.

Section 9.8 Statutes of Limitations. Nothing in this Article shall be construed to toll, stay, reduce, or extend any applicable statute of limitations. All statutes of limitation applicable to claims that are subject to mediation and arbitration pursuant to the alternative dispute resolution provisions of Section 9.5 above shall apply to the commencement of mediation proceedings pursuant to Section 9.5.1.

Section 9.9 As-Built Conditions. Various engineering and architectural plans pertaining to the Property, including, but not limited to, Plats, subdivision maps, grading plans, plot plans, improvement plans and building plans (collectively, the "Plans"), contain dimensions regarding certain aspects of the Dwelling Units, Common Areas and other parts of the Property. By accepting a deed to any portion of the Property, each Owner shall be deemed to have acknowledged and agreed that (i) if there is a discrepancy between the Plans and the actual as-built conditions of any Dwelling Unit, Common Area, Neighborhood Common Area or any other Improvement within the Property, the as-built conditions will control and be deemed to be accepted as-is by the Owner; (ii) the usable or buildable area, location and configuration of the Dwelling Units, Common Areas, Neighborhood Common Areas and any other Improvements located within the Property may deviate from the Plans or from any other display or configuration related thereto; (iii) each Owner waives the right to make any demands of or claims against Developers or the Declarant as a result of any discrepancies between the Plans and any actual as-built conditions of any Dwelling Unit, Common Area, Neighborhood Common Area or any other Improvement within the Property; and (iv) the location, size, height and composition of all walls and fences to be constructed on or as part of a Dwelling Unit or adjacent thereto shall be determined in the discretion of the Declarant or the Developer, as applicable, in accordance with this Declaration. Despite the Plans or any other materials that may exist, Developers and the Declarant shall be deemed to have made no representations, warranties or assurances with respect to any such matters or with respect to the size, height, location or composition of any wall or fence to be constructed on or adjacent to any Dwelling Units.

Section 9.10 Applicability to Declarant.

9.10.1 Each Owner acknowledges that Designated Builders, and not the Declarant, are constructing Dwelling Units and related Improvements on Lots within the Property. Each Owner further acknowledges that (i) the Declarant is not responsible for the construction of Dwelling Units on Lots; (ii) there is no direct relationship or privity of contract between the Owner and the Declarant; and (iii) the Owner is not a third party beneficiary to any

agreement between Designated Builder, or any other party, and the Declarant. To the extent that a claim arises regarding the construction of Improvements on the Common Areas or other matters that involve the Declarant, however, the provisions of this Article 9 (including, but not limited to, Section 9.2, Section 9.4 and Section 9.5) shall apply to the Declarant as if Declarant was a "Developer" (as defined in Section 9.1). Notwithstanding the foregoing, Section 9.9 shall apply to the Declarant, as more particularly described therein, regardless of whether a claim arises involving the Declarant. As used in this Section 9.10, the term "Owner" shall be deemed to exclude Designated Builders.

9.10.2 Nothing set forth in this Article shall be construed to impose any obligation on the Declarant that the Declarant does not otherwise have under applicable law or under any warranty provided by the Declarant, including, but not limited to, the obligation to inspect, test, repair, or replace any item or Alleged Defect for which the Declarant is not otherwise obligated.

9.10.3 Notwithstanding anything to the contrary in this Article 9, in the event of any inconsistency between the provisions of this Article 9 and the provisions of any written agreement between Declarant and a Designated Builder, the provisions of the written agreement shall govern as between Declarant and the Designated Builder.

ARTICLE 10 USE OF FUNDS

Section 10.1 Purposes for which Association's Funds May Be Used. The Association shall apply all funds and property collected and received by it (including the Regular Assessments and Special Assessments, fees, loan proceeds, surplus funds and all funds and property received by it from any other source) for the common good and benefit of the Property and the Owners, Occupants and Residents by devoting the funds and property, among other things, to the acquisition, construction, alteration, maintenance, provision and operation, by any manner or method whatsoever, of any and all land, properties, Improvements, facilities, services, projects, programs, studies and systems, within or without the Property, which may be necessary, desirable or beneficial to the general common interests of the Property, the Owners, Occupants and the Residents. The following are some, but not all, of the areas in which the Association may seek to aid, promote and provide for such common benefit: maintenance of walls, project signage and landscaping on Common Areas and public right-of-way and drainage areas within the Property; maintenance and repair of Areas of Common Responsibility; obtaining of liability insurance; supplying of utilities and other public services; funding "Excess Costs" associated with the Street Light Improvement District (as more particularly described in Section 14.3); providing for communication and transportation within, and dissemination of information concerning, the Property; indemnification of officers and directors of the Association, including such Director and Officer liability insurance as the Board deems appropriate; and generally protecting the health and safety of the Owners, Occupants and the Residents. The Association also may expend its funds for any purposes which any municipality may expend its funds under the laws of the State of Arizona or the municipality's charter.

Section 10.2 No Borrowing Power. Prior to the Transition Date, the Association may not borrow money unless specifically authorized by Declarant. In no event shall Declarant

authorize any borrowing in excess of \$10,000.00 without the consent of the majority of the Class A Members, and in no event shall the proceeds of any borrowing be applied to any expenditure that could not otherwise be defrayed through the application of the proceeds of the Regular Assessments.

Section 10.3 Association's Rights in Spending Funds From Year to Year. The Association shall not be obligated to spend in any year all the sums received by it in that year (whether by way of Regular Assessments, Special Assessments, fees or otherwise), and may carry forward as surplus any balances remaining. The Association shall not be obligated to reduce the amount of the Regular Assessment in the succeeding year if a surplus exists from a prior year, and the Association may carry forward from year to year such surplus as the Board in its discretion may determine to be desirable for the greater financial security of the Association and the accomplishment of its purposes.

Section 10.4 Insurance.

10.4.1 The Board shall have the power and authority to purchase, with Association funds, such public liability, casualty, officers' and directors' liability and indemnity, worker's compensation and other insurance as the Board deems necessary or appropriate from time to time. Policies shall be on such terms and conditions as the Board determines are appropriate from time to time. All insurance policies and claims thereunder shall be administered by the Board. To the extent reasonably available, the Association shall maintain at least \$1,000,000 (combined limits) of insurance against liability incurred as a result of death or injury to persons or damage to property on the Common Areas.

10.4.2 Each Owner shall be responsible for providing insurance on the Owner's Lot or Parcel, and all Improvements thereto, and furnishings and personal property therein, and the Owner's personal liability to the extent not covered by public liability insurance obtained by the Association, and such other insurance as the Owner desires.

10.4.3 Neither the Association, nor any Board member or officer of the Association, nor Declarant, nor any Designated Builder shall be liable to any Owner or other Person if any risks or hazards are not covered by insurance or if the amount of insurance is not adequate, and it shall be the responsibility of each such owner and other Person to ascertain the coverage and protection afforded by the Association's insurance and to procure and pay for such additional insurance coverage and protection as the Owner or other Person may desire.

Section 10.5 Special Use Fees. Subject to the provisions of this Declaration, including, but not limited to, Article 18, the Board is authorized to impose, bill for, sue for, collect, administer, and disburse Special Use Fees, and the payment of all Special Use Fees shall be secured by the Assessment Lien established in Section 7.1. In establishing or adjusting the amounts of Special Use Fees from time to time, the Board shall have the discretion to establish reasonable classifications among Owners, Occupants, Residents and other Persons.

Section 10.6 Designated Service Providers. The Board shall have the authority to designate exclusive providers of services within the Property when the Board deems it necessary or desirable to do so for reasons of obtaining better rates or terms of service for Owners or for

other reasons deemed reasonable by the Board, with such service providers to be known as "Designated Service Providers." If the Board makes such a designation, the Association may enter into an agreement with the Designated Service Provider on behalf of the Owners, and the cost of services purchased by the Board shall be considered an expense of the Association and shall be charged as a Special Use Fee as described in Section 10.5 above. The Board may allocate such costs between improved and unimproved properties, among portions of the Property or otherwise among recipients of the services, in such a manner as the Board reasonably deems equitable. Notwithstanding any designation and negotiation with a Designated Service Provider, each Owner may contract separately with the Designated Service Provider to receive services in excess of those provided to the Property pursuant to the Designated Service Provider's agreement with the Association, and the cost of the additional services shall be paid separately by the Owner and shall not be a Special Use Fee under this Declaration. Any Designated Service Provider shall have an easement over the Common Areas and Neighborhood Common Areas to the extent necessary or convenient for the efficient delivery of the designated service.

ARTICLE 11 MAINTENANCE

Section 11.1 Common Areas and Areas of Common Responsibility. The Association, or its duly delegated representative, shall maintain and otherwise manage all Common Areas and all Areas of Common Responsibility, including, but not limited to, entry signs, drainage and flood control areas, landscaping, project perimeter walls, walkways, paths, trails, parking areas, drives and other facilities, the landscaped portions of public street rights-of-way (to the extent required by the County or the City), "gang" mail boxes and lighting. The Association shall not maintain areas that (i) the County, the City or another governmental entity is maintaining, or (ii) are to be maintained by the Owner of a Lot or Parcel, unless the Association elects to maintain such areas. Specific areas to be maintained by the Association may be identified on Plats or may be identified in deeds from the Declarant to a transferee of a Lot or Parcel, but the failure to so identify such areas shall not affect the Association's rights or responsibilities with respect to the Common Areas and Areas of Common Responsibility.

11.1.1 The Board shall use a reasonably high standard of care in providing for repair, management and maintenance, so the Property will reflect a high pride of ownership. In connection therewith the Association may, in the discretion of the Board:

(a) Reconstruct, repair, replace or refinish any Improvement or portion thereof upon any Common Area or Area of Common Responsibility;

(b) Replace injured and diseased trees and other vegetation in any Common Area or Area of Common Responsibility and plant trees, shrubs and ground cover to the extent that the Board deems necessary or desirable for the conservation of water and soil or for aesthetic purposes;

(c) Place and maintain upon any Common Area or Area of Common Responsibility such signs as the Board may deem appropriate for the proper identification, use and regulation thereof;

(d) Do all such other and further acts as the Board deems necessary or appropriate to preserve and protect the Common Areas and the Areas of Common Responsibility and the beauty thereof, in accordance with the general purposes specified in this Declaration.

11.1.2 The Board shall be the sole judge as to the appropriate maintenance of all Common Areas and Areas of Common Responsibility. Any cooperative action necessary or appropriate to the proper maintenance and upkeep of the properties shall be taken by the Board or by its duly delegated representative.

11.1.3 In the event this Declaration permits the Board to determine whether Owners of certain Lots or Parcels will be responsible for maintenance of certain Common Areas or Areas of Common Responsibility, the Board shall have the sole discretion to determine whether or not it would be in the best interest of the Owners, Occupants and Residents of the Property for the Association or an individual Owner to be responsible for such maintenance, considering cost, uniformity of appearance, location and other factors deemed relevant by the Board. The Board may cause the Association to contract with others for the performance of the maintenance and other obligations of the Association under this Article 11 and, in order to promote uniformity and harmony of appearance, the Board also may cause the Association to contract to provide maintenance services to Owners of Lots or Parcels having such responsibilities in exchange for the payment of such fees as the Association and Owner may agree upon.

Section 11.2 Assessment of Certain Costs of Maintenance and Repair of Common Areas and Areas of Common Responsibility. In the event that the need for maintenance or repair of Common Areas, Neighborhood Common Areas and Areas of Common Responsibility is caused through the willful or negligent act of any Member, the Member's family, guests or invitees, the cost of such maintenance or repairs shall be added to, and become a part of, the Assessment to which the Member and the Member's Lot or Parcel is subject, and shall be secured by the Assessment Lien.

Section 11.3 Maintenance of Lots and Parcels.

11.3.1 Generally. Subject to the Association's obligations with respect to any Areas of Common Responsibility on Lots or Parcels, each Owner shall furnish and be responsible for, at the Owner's expense, all of the maintenance, repairs and replacements within the Owner's Lot or Parcel. Without limiting the generality of the foregoing sentence, each Owner shall:

(a) keep all shrubs, trees, hedges, grass, and plantings of every kind located on landscaped portions of the Owner's Lot or Parcel neatly trimmed, in accordance with Section 4.5;

(b) keep all natural areas of the Lot or Parcel free of trash and other unsightly material, in accordance with Section 4.5; and

(c) maintain in good condition and repair all paved, concrete and other synthetically surfaced areas on the Owner's Lot or Parcel, including, but not limited to, driveways, roadways, and parking areas.

11.3.2 Improper Maintenance and Use of Lots and Parcels. In the event any portion of any Lot or Parcel is so maintained as to present a public or private nuisance, or as to substantially detract from the appearance or quality of the surrounding Lots or Parcels or other areas of the Property which are substantially affected thereby or related thereto, or in the event any portion of a Lot or Parcel is being used in a manner which violates this Declaration, or in the event the Owner of any Lot or Parcel is failing to perform any of its obligations under this Declaration, the Association Rules or the Design Review Guidelines the Board may, by resolution, make a finding to such effect, specifying the particular condition or conditions which exist, and pursuant thereto give notice thereof to the offending Owner that unless corrective action is taken within 14 days, the Board may (i) cause corrective action to be taken at the Owner's cost; and/or (ii) pursue any other rights and remedies permitted by Article 8 hereof. If at the expiration of the 14 day period of time the requisite corrective action has not been taken, the Board shall be authorized and empowered (a) to pursue any of the rights and remedies permitted by Article 8 hereof; and/or (b) to cause corrective action to be taken and the cost thereof to be added to, and become a part of, the Assessment to which the offending Owner and the Owner's Lot or Parcel is subject, with such costs to be secured by the Assessment Lien.

ARTICLE 12 EMINENT DOMAIN

Section 12.1 Definition of Taking. The term "Taking" shall mean condemnation by eminent domain or sale under threat of condemnation of all or any portion of the Common Areas or Neighborhood Common Areas.

Section 12.2 Representation in Condemnation Proceedings. The Owners hereby appoint the Association through such Persons as the Board may delegate, to represent all of the Owners in connection with any threatened Taking. The Board shall act in its sole discretion with respect to any awards made in connection with the Taking and shall be entitled to make a voluntary sale to the condemnor in lieu of engaging in a condemnation action.

Section 12.3 Award For Common Areas. Any awards received by the Association on account of the Taking shall be paid to the Board. The Board may, in its sole discretion, retain any award in the general funds of the Association (or in the Neighborhood's funds, if the Taking relates to Neighborhood Common Areas), expend the funds for restoration and repair of Common Areas or Neighborhood Common Areas, as applicable, or distribute all or any portion thereof to the Owners, as their interests may appear. The rights of an Owner and any mortgagee of the Owner's Lot or Parcel as to any distribution shall be governed by the provisions of the mortgage encumbering the Lot or Parcel.

Section 12.4 Condemnation of Lots or Parcels. If any Lots, Parcels or other portions of the Assessable Property are condemned by eminent domain or sale under threat of condemnation, the Association shall have no right to receive any portion of any award distributed for such Lots or Parcels as a result of Assessment revenue lost by the conversion of the Lots and Parcels to Exempt Property.

ARTICLE 13
DESIGN REVIEW COMMITTEE

Section 13.1 Establishment. Declarant shall establish a Design Review Committee and shall establish and adopt Design Review Guidelines and procedural rules and regulations (including an "Approved Plant List" for the purposes of establishing landscaping criteria) to direct the Design Review Committee in the performance of its duties. The Design Review Guidelines may, but shall not be required to, vary with respect to different portions of the Property. The Design Review Committee shall consist of three regular members and an alternate member, each appointed by Declarant. The appointees need not be Owners, Occupants or Residents and need not possess any special qualifications except such as Declarant may, in its sole discretion, require. Declarant may replace any member of the Design Review Committee at any time with or without cause. In the event of the death or resignation of any member of the Design Review Committee, Declarant shall replace the member within 90 days following death or resignation. Pending the replacement of the deceased or resigned member, the remaining member or members of the Design Review Committee shall have full authority to act as the Design Review Committee under this Declaration. Declarant's right to appoint, remove and replace Design Review Committee members shall cease, and the Board shall be vested with that right and all rights of the Declarant pertaining to the Design Review Committee upon the earliest to occur of the following: (i) two years after the Transition Date; or (ii) when such rights are expressly relinquished by Declarant to the Board in writing.

Section 13.2 Purpose. The purpose of the Design Review Committee is to maintain consistency of architectural and landscaping standards throughout the Property and thereby preserve the aesthetic and economic value of the Property. The Design Review Committee is hereby empowered to supplement and amend the Design Review Guidelines and its procedural rules and regulations to the extent and with the frequency it deems necessary or appropriate; provided, however, that the modifications are in general conformity with the standards set forth in this Declaration and the modifications receive the prior written approval of the Board. Neither the Design Review Committee, Declarant nor the Association is assuming any liability for the economic value nor structural integrity of any Improvement. Design Review Committee's decisions shall pertain solely to the matters set forth herein and shall in no way constitute a representation or warranty of economic value or structural integrity. All decisions shall be made in the Design Review Committee's sole discretion and shall be final and conclusive.

Section 13.3 Operation/Authority.

13.3.1 It shall be the duty of the Design Review Committee to consider and act upon all proposals and plans submitted to it pursuant to this Declaration. A quorum for any such meeting of the Design Review Committee shall consist of two members, and a vote of two of the members of the Design Review Committee shall be necessary for any decision. A duly appointed alternate member may participate in any meeting in which there is not a quorum of regular members present, may constitute a quorum by his/her presence and shall have all the authority of a regular member while so participating. The Design Review Committee shall review all applications submitted to it and shall furnish a written decision to the applicant setting forth the reasons for its decision and the nature of any objections, which may be indicated on the plans submitted or as the Design Review Committee may deem otherwise appropriate.

13.3.2 The Design Review Committee shall have broad discretionary powers in determining whether an application is in conformance with the Design Review Guidelines. In addition, the Design Review Committee may disapprove any application if the Design Review Committee, in its discretion, believes the applicant has not supplied sufficient or accurate information for the Design Review Committee to exercise the judgment required by this Declaration. The Design Review Committee has the authority to grant variances to the Design Review Guidelines by an affirmative vote of the majority of the members of the Design Review Committee. In no event, however, shall the Design Review Committee have the authority to grant any variance from a prohibition, restriction, requirement or other provision of this Declaration, unless expressly provided otherwise herein.

13.3.3 The Design Review Committee shall keep complete written records of all applications for approval submitted to it (including one set of all preliminary sketches and all architectural plans) in connection with all actions taken by it under the provisions of the Design Review Guidelines. For purposes of this Article 13, an "application" to the Design Review Committee shall not be deemed submitted unless (i) it is in writing and in such form as the Design Review Committee may from time to time request; (ii) it is submitted with such elevations, drawings and other documents prepared by design professionals in accordance with industry standards and such requirements as the Design Review Committee may require; (iii) it is submitted in such multiple copies and at such location or locations as specified by the Design Review Committee; (iv) it is accompanied by an application fee, if applicable, in the full and correct amount; and (v) it meets such other requirements as the Design Review Committee may from time to time impose. Each Owner (including each Designated Builder) is encouraged to submit to the Design Review Committee preliminary elevations for review to avoid incurring unnecessary costs making unacceptable final submissions.

13.3.4 The Design Review Committee shall review an application submitted to it and issue its written decision within 30 days of the date the application was received by the Design Review Committee, as evidenced by an appropriately signed receipt. If the Design Review Committee does not issue a written decision regarding an application within 30 days from the date the application was received, as evidenced by an appropriately signed receipt, the application shall be deemed approved.

13.3.5 Notwithstanding anything to the contrary in this Declaration, a Designated Builder shall have the right to submit one or more standard Dwelling Unit plans and one or more standard landscaping plans that may be used on any of that Designated Builder's Lots, and the Design Review Committee's approval of a Designated Builder's standard Dwelling Unit plans and standard landscaping plans shall constitute approval of each use of those standard Dwelling Unit plans and standard landscaping plans by the Designated Builder, unless otherwise specified by the Design Review Committee.

Section 13.4 Fee. The Board shall have the right, in its sole discretion, to assess against applicants a processing fee to, among other things, defer any costs incurred by the Design Review Committee for the services of an architect or other professionals in considering any requests for approval submitted to it. An architect or other professionals may serve on the Design Review Committee. If a processing fee is assessed, the fee shall be in such amount, and payable in accordance with such schedule, as may be reasonably determined by the Design Review

Committee. Any processing fee not paid in full at the time of submittal of the request for approval shall be added to, and become a part of, the Assessment to which the requesting Owner and the Owner's Lot or Parcel is subject, and shall be secured by the Assessment Lien. The Design Review Committee shall be entitled, however, to refuse to process the application if the applicant does not include payment of any applicable fee.

Section 13.5 No Liability of Design Review Committee. All plans, drawings and specifications approved by the Design Review Committee are not approved for engineering, design or architectural competence. Through its approval of plans, drawings and specifications, the Design Review Committee does not assume liability or responsibility therefor or for any defect in any structure constructed from the plans, drawings and specifications. Declarant, members of the Design Review Committee and members of the Board shall not be liable to the Association, any Owner or any other Person for any damage, loss or prejudice suffered or claimed because of:

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

13.5.2 the construction or performance of any work, whether or not pursuant to approved plans, drawings or specifications.

Section 13.6 Waiver. The approval by the Design Review Committee of any plans, drawings or specifications for any work done or proposed, or for any other matter requiring the approval of the Design Review Committee, shall not be deemed to constitute a waiver of any right to withhold approval of a similar plan, drawing, specification or matter subsequently submitted for approval. No approval by the Design Review Committee shall waive or replace applicable approval requirements by the County, the City, or other governmental authorities having jurisdiction.

ARTICLE 14 RIGHTS AND POWERS OF ASSOCIATION

Section 14.1 Association's Rights and Powers as Set Forth in Articles and Bylaws. In addition to the rights and powers of the Association set forth in this Declaration, the Association shall have such rights and powers as are set forth in its Articles and Bylaws. Such rights and powers, subject to the approval thereof by any agencies or institutions deemed necessary by Declarant, may encompass any and all things which a natural person could do or which now or hereafter may be authorized by law, provided the Articles and Bylaws are not inconsistent with the provisions of this Declaration and are necessary, desirable or convenient for effectuating the purposes set forth in this Declaration. After incorporation of the Association, a copy of the Articles and Bylaws of the Association shall be available for inspection at the office of the Association during reasonable business hours. Until such time as the Association is incorporated, Declarant shall and hereby reserves to itself, its successors and assigns, the exclusive right to exercise the powers, rights and duties granted to or imposed upon the Association under this Declaration.

Section 14.2 Reservation of Trade Name. Declarant hereby reserves all right, title and interest in the name "Rancho Gabriela" and such other names as Declarant may use in connection with the Property or the Association for the uses set forth herein and any other use as Declarant may choose. The Association and all Owners shall be entitled to the non-exclusive use of the name "Rancho Gabriela" and other names only with reference to, and in connection with, the Property, the Association or its authorized activities. Any officer of the Association, each acting alone without the other, is hereby authorized to execute on behalf of the Association such consents, approvals, confirmations, acknowledgments and other instruments as Declarant may request in order to evidence and confirm the rights and interests of Declarant in "Rancho Gabriela" and such other names as Declarant may use in connection with the Property or the Association.

Section 14.3 Obligations Regarding Street Light Improvement District. A Street Light Improvement District (the "District") has been or will be formed for the purpose of purchasing energy for the lighting of public streets and parks within the Property, and such other real property as is included in the District (collectively, the "District Property"). All expenses associated with the District will be allocated among the District Property and will be levied and assessed against the owners of the District Property (which will include the Owners of the Property subject to this Declaration) as ad valorem taxes, in accordance with the applicable ordinances, rules and regulations of the City. In conjunction with the formation of the District, the Declarant has agreed, or will agree, to pay the City for all costs and expenses of purchasing energy for street and public park lighting for the District billed in excess of the amount of ad valorem taxes collected for the District (the "Excess Costs"). Upon incorporation, the Association shall assume the obligation to fund the Excess Costs, as permitted by the ordinances, rules and regulations applicable to the District. If the Association is required to pay the City for Excess Costs, the Association, in its sole and absolute discretion, may either (i) include the Excess Costs in the general operating expenses of the Association and fund the Excess Costs by revenue derived from Regular Assessments; or (ii) levy any portions of the Excess Costs that arose as the result of the failure of an Owner to pay the taxes for the District against the Owner that failed to make the payment (in which event, the payment of any such amount shall be secured by the Assessment Lien).

ARTICLE 15

TERM; AMENDMENTS; TERMINATION

Section 15.1 Term; Method of Termination. This Declaration shall be effective upon the date of its Recordation and, as amended from time to time, shall continue in full force and effect for a term of 20 years from the date this Declaration is Recorded. From and after that date, this Declaration, as amended, shall be automatically extended for successive periods of 10 years each, unless there is an affirmative vote to terminate this Declaration by the then Members casting 90% of the total votes cast at a meeting held for such purpose within six months prior to the expiration of the initial effective period hereof or any 10 year extension. The Declaration may be terminated at any time if 90% of the votes cast by each class of Members shall be cast in favor of termination at a meeting held for such purpose. Notwithstanding the foregoing, no vote to terminate this Declaration shall be effective unless and until the written consent to termination has been obtained, within a period from six months prior to the vote to six months after the vote, from the holders of Recorded first mortgages or deeds of trust to which the Assessment Lien is

subordinate pursuant to Section 8.3 above, on 75% of the Lots upon which there are such Recorded first mortgages and deeds of trust. If the necessary votes and consents are obtained, the Board shall cause to be Recorded with the County Recorder of Maricopa County, Arizona, a Certificate of Termination, duly signed by the President or Vice President and attested by the Secretary or Assistant Secretary of the Association, with their signatures acknowledged. Thereupon, this Declaration shall have no further force and effect, and the Association shall be dissolved pursuant to the terms set forth in its Articles.

Section 15.2 Amendments. This Declaration may be amended by Recording with the County Recorder of Maricopa County, Arizona, a Certificate of Amendment, duly signed and acknowledged. The Certificate of Amendment shall set forth in full the amendment adopted, and, except as provided in Section 15.3 and Section 15.4 of this Article, shall certify that, at a meeting duly called and held pursuant to the provisions of the Articles and Bylaws, or pursuant to written consent in accordance with the provisions of the Articles and Bylaws, the Members casting at least 75% of the votes then entitled to be cast voted affirmatively for the adoption of the Amendment.

Section 15.3 Right of Amendment if Requested by Governmental Agency or Lending Institutions. Notwithstanding anything contained herein to the contrary, Declarant reserves the right to amend all or any part of this Declaration to such an extent and with such language as may be requested by the Federal Housing Administration ("FHA"), the Veterans Administration ("VA"), Federal National Mortgage Association ("FNMA") or the Federal Home Loan Mortgage Corporation ("FHLMC") and to further amend to the extent requested by any other federal, state or local governmental agency which requests such an amendment as a condition precedent to such agency's approval of this Declaration, or by any federally or state chartered lending institution as a condition precedent to lending funds upon the security of any Lot(s) or Parcel(s) or any portions thereof. Any such amendment shall be effected by the Recording, by Declarant, of a Certificate of Amendment duly signed and acknowledged by or on behalf of the Declarant specifying the federal, state or local governmental agency or the federally or state chartered lending institution requesting the amendment and setting forth the amendatory language requested by the agency or institution. The Recording of such a Certificate shall be deemed conclusive proof of the agency's or institution's request for such an amendment, and the Certificate, when Recorded, shall be binding upon all of the Property and all Persons having an interest therein. It is the desire of Declarant to retain control of the Association and its activities during the anticipated period of planning and development. If any amendment requested pursuant to the provisions of this Section deletes, diminishes or alters Declarant's control, Declarant shall have the right to prepare, provide for and adopt, as an amendment hereto, other and different control provisions. Except as provided in this Section 15.3 and in Section 15.4, Declarant shall not have any right to amend this Declaration otherwise than in accordance with and pursuant to the provisions of Section 15.2 of this Article.

Section 15.4 Declarant's Rights of Amendment. Notwithstanding anything in this Article to the contrary, Declarant shall, for so long as it possesses a Class B Membership, be entitled to unilaterally amend this Declaration to correct minor errors and omissions.

ARTICLE 16
ANNEXATION OF ADDITIONAL PROPERTY

Section 16.1 General Intent. It is contemplated that additional real property will be annexed to and become subject to this Declaration as set forth in this Article 16. Declarant intends, but is not obligated, to annex some or all of the Annexable Property; provided, however, that no Annexable Property can be annexed unless it is owned by Declarant at the time of annexation or the express written consent to annexation by the record owner of the property being annexed is reflected in the public record at the time of annexation.

Section 16.2 Annexations by Declarant. Declarant may elect to annex all or any portion of the Annexable Property to this Declaration in increments of any size whatsoever, or to annex more than one increment at any given time and in any given order by Recording a Supplemental Declaration describing the property being annexed. Until the date that is the tenth anniversary of the Recording of this Declaration, Declarant may annex any of the Annexable Property to this Declaration without the vote of the Members and without notice to or approval of any other Person (other than the owner of the land if the owner at the time of annexation is a Person other than Declarant). Although Declarant shall have the ability to annex additional property as provided in this Article, Declarant shall not be obligated to annex any property. No property, other than the Covered Property, shall become subject to this Declaration unless and until a Supplemental Declaration is Recorded as provided in this Article and takes effect.

Section 16.3 Supplemental Declarations. A Supplemental Declaration shall be a writing in recordable form that annexes additional real property to the plan of this Declaration and that incorporates by reference all of the provisions of this Declaration. It may also contain such other provisions as may be appropriate to the property being annexed so long as any such additional provisions are not in conflict with the existing provisions of this Declaration.

Section 16.4 Effects of Annexation. Recordation of a Supplemental Declaration, as provided for in Section 16.3, shall constitute and effectuate the annexation of the property described in the Supplemental Declaration (unless a later effective date is specified in the Supplemental Declaration) making the property subject to this Declaration and subject to the functions, powers, and jurisdiction of the Association, and thereafter the property shall be part of the Property for all intents and purposes of this Declaration and all of the owners of Lots and Parcels in the annexed property shall automatically be Owners and Members under this Declaration.

ARTICLE 17
NEIGHBORHOODS AND NEIGHBORHOOD ASSOCIATIONS

Section 17.1 Neighborhood Declarations and Neighborhood Associations.

17.1.1 Any Neighborhood may have a Recorded "Neighborhood Declaration" that sets forth additional covenants, conditions, restrictions and easements applicable to the property in that Neighborhood. Neighborhood Declarations shall be subordinate to, and not materially inconsistent with, this Declaration, subject to the provisions of Section 17.4 below. Any Neighborhood Declaration may cover one or more than one Neighborhood. A

Neighborhood Declaration and a Supplemental Declaration may be combined into a single instrument. Unless waived in writing by the Board, Neighborhood Declarations shall provide for, among other things, (i) the right of the Association to provide management support services to the Neighborhood, if the Association should elect to do so, as provided in Section 17.2; (ii) the right of the Association to provide property management and Neighborhood Common Area maintenance services to the Neighborhood, if the Association should elect to do so, as provided in Section 17.3; (iii) the obligation of the Neighborhood, pursuant to Section 17.5, to pay the Association for all costs incurred by the Association in performing services as provided in this Article; and (iv) the right of the Association to take temporary control of a Neighborhood and its Neighborhood Association, if any, as provided in Section 17.6.

17.1.2 Any Neighborhood may have an incorporated "Neighborhood Association" (which may govern one or more than one Neighborhood). Copies of the minutes for each meeting of the board of directors and of the members of each Neighborhood Association shall be furnished to the Board of the Association immediately after each meeting.

17.1.3 Prior to the Transition Date, any Neighborhood Declaration and the articles of incorporation and bylaws for any Neighborhood Association must be approved by Declarant in order to be effective. Unless they are prepared by Declarant or a Designated Builder, any Neighborhood Declaration and the articles of incorporation and bylaws for any Neighborhood Association must also be approved by the Board of the Association in order to be effective. After they are initially effective, no Neighborhood Declaration or articles or bylaws of a Neighborhood Association may be amended, supplemented or terminated, except as expressly provided in any such instrument, without the prior written consent of (i) Declarant (prior to the Transition Date); and (ii) after the Neighborhood is no longer subject to the control of Declarant or a Designated Builder, the Board of the Association.

Section 17.2 Management Support. Although a Neighborhood Association will be governed by its own board of directors and its officers, unless otherwise provided in the Neighborhood Declaration, the Board of the Association, at its election, may require any Neighborhood (after it is no longer controlled by Declarant or a Designated Builder) to use the administrative and management services of the Association for the Neighborhood. Any Neighborhood (whether or not controlled by Declarant or a Designated Builder) may request that the Association provide administrative and management services to the Neighborhood. Administrative and management services that the Association may provide (or cause to be provided from its contractors) to Neighborhoods include, but are not limited to, acting as accountants for the Neighborhood; handling the collection of assessments levied by the Neighborhood, and enforcing such collection; assisting in the preparation of budgets; administering the use of the Neighborhood Common Area; negotiating contracts for services; and enforcing the governing documents of the Neighborhood.

Section 17.3 Property Management and Maintenance. Unless otherwise provided in the Neighborhood Declaration, the Board of the Association, at its election, may require any Neighborhood (after it is no longer controlled by Declarant or a Designated Builder) to retain the Association as the property manager for the Neighborhood so that an approximately uniform level of Neighborhood Common Area maintenance in the various Neighborhoods may be achieved. Any Neighborhood (whether or not controlled by Declarant or a Designated Builder)

may request that the Association serve as the property manager for the Neighborhood. When the Association is serving as the property manager for a Neighborhood, the Association shall maintain the Neighborhood Common Areas within that Neighborhood.

Section 17.4 Neighborhood Common Area Maintenance. Neighborhood Common Areas shall be maintained in accordance with not less than the same standards established for the Common Areas of the Association. Neighborhoods may, however, establish maintenance and similar standards that are more stringent or otherwise higher than the standards for Common Areas of the Association, in which event, the higher standards shall control. Maintenance of the Neighborhood Common Areas may be performed by employees of the Neighborhood Association (or the Association, as applicable) and/or one or more Persons designated by, or under contract to, the Neighborhood Association (or the Association, as applicable).

Section 17.5 Charges to Neighborhoods. Each Neighborhood, through its Neighborhood Association, if any, upon presentation of a billing statement from the Association, shall promptly pay the Association for all costs incurred by the Association in providing any services described in this Article 17, or any other sums due the Association from the Neighborhood pursuant to this Declaration or any agreement between the Neighborhood and the Association. The Association shall perform the services provided for in this Article on a nonprofit basis, but may allocate overhead costs among the Neighborhoods being served on a reasonable basis determined by the Board or its accountants; provided, however, the compensation payable to the Association for any services under this Article shall be reasonably competitive with the charges for similar services rendered by unaffiliated companies providing such services on a contract basis to other communities and customers in the area. If any costs to be paid by a Neighborhood are not reimbursed promptly when due, the Association shall be entitled to exercise any rights and remedies specified in this Declaration for nonpayment and also such rights and remedies as it may have at law or in equity to enforce collection of such sums. All costs of such enforcement and collection shall be borne by the Neighborhood and its Neighborhood Association, if any.

Section 17.6 Additional Association Rights. At any time after Declarant or the Designated Builder has relinquished control of a Neighborhood, the Association shall have the right to take control of a Neighborhood and its Neighborhood Association, if any, for such period of time as is necessary to bring about collection of Assessments or otherwise to cause the Neighborhood and its Neighborhood Association to meet the standards and obligations described in this Article. Control may (but shall not be required to) be effected by the Association removing such officers and directors as the Association deems appropriate and substituting other individuals, including, if the Board so elects, individuals who are also officers and directors of the Association.

ARTICLE 18 DECLARANT'S EXEMPTION FROM RESTRICTIONS

Notwithstanding anything contained in this Declaration to the contrary, none of the restrictions contained in this Declaration shall be construed or deemed to limit or prohibit any act of Declarant or its employees, agents and subcontractors, or parties designated by Declarant (to the extent specified in the designation) in connection with the construction or completion of

Improvements upon, or sale or leasing of, the Lots, Parcels, Common Areas and other portions of the Property. Without limiting the generality of the foregoing in any way and notwithstanding anything to the contrary in this Declaration, (i) Declarant is expressly exempted from the provisions of this Declaration requiring submittals to, or authorizations by, the Design Review Committee, including, but not limited to, Section 4.1; (ii) the provisions of Article 13 are not applicable to any Lots or Parcels owned by Declarant; and (iii) Declarant shall have the right to place, structures, construction trailers, equipment yards, landscape or materials storage or signs on any part of the Property, as may be necessary or convenient to the development or sale of Lots and Parcels within the Property.

ARTICLE 19

DISCLAIMER OF REPRESENTATIONS; LIMITATION ON LIABILITY

Section 19.1 Declarant's Disclaimer of Representations. Anything to the contrary in this Declaration notwithstanding and in addition to any other disclaimers set forth in this Declaration, Declarant and the Designated Builders make no warranties or representations whatsoever that the plans presently envisioned for the complete development of the Property can, or will be, carried out, or that any land now owned or hereafter acquired by any of them (including, but not limited to, any property presently expected to become part of the Property) is, or will be, subjected to this Declaration, or that any such land (whether or not it has been subjected to this Declaration) is, or will be, committed to, or developed for, a particular (or any) use, or that if such land is once used for a particular use, such use will continue in effect. Declarant and the Designated Builders make no representations or warranties that the use of any Property subject to this Declaration will not be changed in the future. Nothing contained in this Declaration and nothing which may be represented to a purchaser of a Lot or Parcel by real estate brokers or salesmen representing the Declarant or any of the Designated Builders shall be deemed to create any implied covenants or restrictions with respect to the use of any Property. Each Owner acknowledges that Declarant and the Designated Builders may undertake development of the Property in phases and that by undertaking development of a phase the Declarant or a Designated Builder is making no representation that such phase or any other phase will be completed.

Section 19.2 Disclaimer of Representations Regarding Drainage. Without limiting the generality of the disclaimer set forth in Section 19.1 above, in no event is Declarant making any representations or warranties regarding the adequacy of any drainage onto or off of any Lot, Parcel, Common Area or other part of the Property. Declarant is assuming no responsibility or liability for drainage of water over, under or across the Lots, Parcels, Common Area or any other part of the Property (whether such drainage is from neighboring property or other parts of the Property) nor for any damage, loss, costs, expenses or fees incurred as a result of any debris, silt, erosion, or other incidental consequences thereof.

Section 19.3 Disclaimer of Representations Regarding Soil Condition.

19.3.1 Each Owner acknowledges that Declarant has certain obligations to Designated Builders to prepare the Lots, Parcels and other portions of the Property for construction of Dwelling Units and related Improvements and to provide the Designated Builders with certain certifications and reports regarding the conditions of the Lots, Parcels and other portions of the Property, including, but not limited to, reports and certifications regarding

the condition of the soils or subsurface condition, soils preparation, drainage and construction of the building pad (collectively, the "Soils Condition"), all pursuant to agreements between the Declarant and Designated Builders. Each Owner further acknowledges that Designated Builders are responsible for constructing Dwelling Units in accordance with soils and geotechnical reports and studies, and insuring that the Dwelling Unit and other Improvements, including landscaping, as constructed by Designated Builders, do not impede the drainage on the Lot or Parcel as contemplated by the drainage plans. Each Owner who purchases a Lot from a Designated Builder, or any party other than Declarant, hereby further acknowledges (i) that there is no direct relationship or privity of contract between the Owner and the Declarant; (ii) that the Owner is not a third party beneficiary to any agreement between a Designated Builder, or any other party, and the Declarant; and (iii) that no warranty from the Declarant to the Designated Builder, or any other party, has been, will be or can be conveyed or assigned to Owner, by express assignment, by conveyance or by implication, including, but not limited to, any representation or warranty regarding the Soils Condition of the Property.

19.3.2 Each Designated Builder shall defend, indemnify and hold Declarant harmless from, of, for and against any claims, damages, obligations, liabilities, losses, expenses or fees (including reasonable attorneys' fees, witness fees, costs and related expenses) arising from any Soils Condition on the Lots or Parcels owned or developed by the Designated Builder. In the event of any inconsistency between the provisions of this Section 19.3 and the provisions of any written agreement between Declarant and a Designated Builder, the provisions of the written agreement shall govern as between Declarant and the Designated Builder.

19.3.3 Each Owner hereby acknowledges that proper drainage is necessary for the maintenance of the Lots and Parcels and accordingly agrees that the Owner shall not install any sprinklers or water system, construct ponds, wells, retention basins, make or remove Improvements to the Dwelling Unit or otherwise alter the surface of the Lot or Parcel so as to impede or impair the drainage of the Lot or Parcel. Each Owner agrees that following the installation of a pool, landscaping, sprinklers, water systems or other Improvements on a Lot or Parcel, the Owner shall have the Improvements inspected by a qualified testing and inspection company to confirm proper drainage away from the Dwelling Unit and to confirm that the Improvements will not otherwise impede or impair the drainage of the Lot or Parcel.

Section 19.4 Limitation on Liability. Notwithstanding anything to the contrary in this Declaration, each Owner, by accepting title to any portion of the Property and becoming an Owner, and each other Person acquiring an interest in the Property (including, but not limited to, any mortgagee) (but, with respect to Designated Builders, subject to the last sentence of Section 19.3.2), acknowledges and agrees that neither Declarant (including, but not limited to, any assignee of the interest of Declarant), nor any entity related to Declarant, nor any of their respective partners, shareholders, trustees, officers, directors, principals, or similar persons, shall have any personal liability to the Association, or any Owner, Member, mortgagee or other Person, arising under, in connection with, or resulting from (including, but not limited to, resulting from action or failure to act with respect to) this Declaration, any Supplemental Declaration or Neighborhood Declaration, the Association, or the Design Review Committee, except to the extent of that Person's interest in the Property; and, in the event of a judgment, no execution or other action shall be sought or brought thereon against any other assets, nor be a lien upon such other assets, of that Person.

ARTICLE 20
MISCELLANEOUS

Section 20.1 VICINITY OF MILITARY AIRPORT. NOTICE IS HEREBY GIVEN THAT THE PROPERTY LIES WITHIN AN AREA DESIGNATED PURSUANT TO STATE LAW AS BEING "TERRITORY IN THE VICINITY OF A MILITARY AIRPORT." THIS AREA IS SUBJECT TO OVERFLIGHTS, AND AN AVIGATION EASEMENT OVER THE PROPERTY HAS BEEN GRANTED TO THE UNITED STATES AIR FORCE. AS SUCH, THE PROPERTY WILL BE SUBJECT TO THE SITES AND SOUNDS TYPICALLY INCIDENT TO MILITARY AIR OPERATIONS, WHICH MAY INCLUDE, BUT NEED NOT BE LIMITED TO, ATTENDANT NOISE, VIBRATIONS, FUMES, DUST, FUEL AND LUBRICANT PARTICLES, AND ALL OTHER EFFECTS THAT MAY BE CAUSED BY AIRCRAFT LANDING AT, OR TAKING OFF FROM, OR OPERATING AT OR ON LUKE AIR FORCE BASE. THE RIGHT OF OWNERS TO OBJECT TO MILITARY AIR OPERATIONS WILL BE LIMITED BY APPLICABLE LAWS.

Section 20.2 Interpretation of the Covenants. Except for judicial construction, the Association, by its Board, shall have the exclusive right to construe and interpret the provisions of this Declaration. In the absence of any decision to the contrary pursuant to dispute resolution proceedings, the Association's construction or interpretation of the provisions hereof shall be final, conclusive and binding as to all Persons and property benefited or bound by this Declaration.

Section 20.3 Severability. Any determination pursuant to dispute resolution proceedings that any provision of this Declaration is invalid or unenforceable shall not affect the validity or enforceability of any of the other provisions hereof.

Section 20.4 Rule Against Perpetuities. If any of the options, privileges, covenants or rights created by this Declaration are unlawful, void or voidable for violation of the rule against perpetuities, then the provision shall continue until 21 years after the death of the survivor of the now living descendants of the President of the United States on the date hereof.

Section 20.5 References to the Declaration in Deeds. Deeds to, and instruments affecting, any Lot, Parcel or any part of the Property may reference this Declaration; but regardless of whether any such reference is made in any deed or instrument, each and all of the provisions of this Declaration shall be binding upon the grantee/Owner or other Person claiming through any instrument and his heirs, executors, administrators, successors and assigns.

Section 20.6 Gender and Number. Wherever the context of this Declaration so requires, words used in the masculine gender shall include the feminine and neuter genders; words used in the neuter gender shall include the masculine and feminine genders; words in the singular shall include the plural; and words in the plural shall include the singular.

Section 20.7 Captions and Titles. All captions, titles or headings of the Articles and Sections in this Declaration are for the purpose of reference and convenience only and are not to be deemed to limit, modify or otherwise affect any of the provisions hereof or to be used in determining the intent or context thereof.

Section 20.8 Notices. If applicable law requires notice of any action or proposed action by the Board or any committee, or requires notice of any meeting, or requires a copy of any resolution of the Board to be given to any Owner, Occupant or Resident then, unless otherwise specified herein or in the resolution of the Board, the notice requirement shall be deemed satisfied if notice is published once in any newspaper in general circulation within the County. This Section shall not be construed to require that any notice be given if not otherwise required and shall not prohibit satisfaction of any notice requirement in any other manner.

Section 20.9 Utilities Disclosure. In the event that any provider of utility services to individual Dwelling Units within the Property cannot or will not bill Owners individually for such services (or in the event that the Board elects to have such services billed collectively to get reduced rates or better terms for Owners through a bulk purchase of such services), the utility provider shall invoice the Association for such services and the Association shall allocate the invoice among the Owners and Dwelling Units receiving the services as a Special Use Fee secured by the Assessment Lien. Any such collective invoice to the Association shall be allocated prorata to the recipients of the service, or as the Board may otherwise reasonably determine to be equitable.

Section 20.10 FHA/VA.

20.10.1 If a Designated Builder desires VA or FHA approval, the Designated Builder shall notify Declarant and all other Designated Builders in writing.

20.10.2 Prior to the Transition Date, the following actions will require the prior approval of the FHA and/or the VA, as applicable (if and to the extent that this Declaration shall have been previously submitted to and approved by the FHA and/or the VA and, at the time of the action in question, the applicable agency has insured or guaranteed an outstanding loan against any portion of the Property): (i) annexation of additional properties into the Property (unless the annexation is in accordance with a plan of annexation or expansion previously approved by such agencies); (ii) dedication of any part of the Common Areas or Neighborhood Common Areas; and (iii) amendment of this Declaration. Consent of the FHA or VA will be deemed to have been given if the matter has been submitted to the agency for approval and the agency has failed to respond within 30 days of submittal.

20.10.3 Nothing in this Declaration shall be understood (i) to require any mortgagees to collect Assessments that accrued prior to the date upon which the mortgagee came into possession of, or acquired title to, a Lot or Parcel, whichever occurs first.; or (ii) to cause the failure to pay Assessments to constitute a default under a mortgage.

[END]

IN WITNESS WHEREOF, Rancho Gabriela I, Inc., an Arizona corporation, has caused its name to be signed by the signature of its duly authorized representatives as of the day and year first above written.

“DECLARANT”

RANCHO GABRIELA I, INC.,
an Arizona corporation

By: 
Name: Chris B. Heeter
Title: President

STATE OF ARIZONA)
) ss.
County of Maricopa)

On this the 11th day of April, 2002, before me, the undersigned Notary Public, personally appeared Chris Heeter, who acknowledged himself to be the President of RANCHO GABRIELA I, INC., an Arizona corporation, on behalf of the corporation.

IN WITNESS WHEREOF, I hereunto set my hand and official seal.

Sharon K. Nelson
Notary Public

My commission expires:

11/18/05

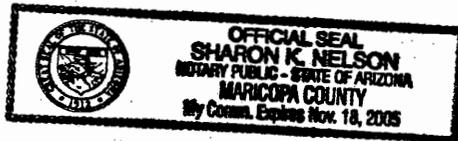


EXHIBIT "A"
Legal Description of the Covered Property

Lots 1 through 671 and Tracts A, B, C, D, E, F, G, H, J, and K of the FINAL PLAT RANCHO GABRIELA PHASE 1, according to the plat of record in the office of the County Recorder of Maricopa County, Arizona, recorded in Book 584 of Maps, Page 16, Document No. 2002-0135796.

EXHIBIT "B"

Legal Description of Annexable Property

All of Section 20, Township 3 North, Range 1 West of the Gila and Salt River Base and Meridian, Maricopa County, Arizona.

WHEN RECORDED RETURN TO:

Rancho Gabriela I, Inc.
6730 North Scottsdale Road
Suite 230
Scottsdale, AZ 85253
Attn: Chris Heeter

FIRST AMERICAN TITLE

1st 1
1462507

**CERTIFICATE OF FIRST AMENDMENT TO
DECLARATION OF COVENANTS, CONDITIONS, RESTRICTIONS,
RESERVATIONS AND EASEMENTS FOR RANCHO GABRIELA**

This Certificate of First Amendment to Declaration of Covenants, Conditions, Restrictions, Reservations and Easements for Rancho Gabriela (the "First Amendment") is entered into as of the 14 day of May, 2002, by Rancho Gabriela I, an Arizona corporation ("Declarant").

RECITALS

A. Declarant executed and caused to be recorded in the official records of Maricopa County, Arizona, on April 12, 2002, as Instrument No. 2002-0378464, that certain Declaration of Covenants, Conditions, Restrictions, Reservations and Easements for Rancho Gabriela (as amended from time to time, the "Declaration"). Declarant is named as the "Declarant" in the Declaration.

B. Section 15.2 of the Declaration provides that amendments to the Declaration may be adopted at a meeting of the Members at which Members casting at least seventy-five percent (75%) of the votes then entitled to be cast voted affirmatively for the adoption of the Amendment. The Declarant certifies that, pursuant to written consents in lieu of a meeting, Members holding at least seventy-five percent (75%) of the votes then entitled to be cast approved the adoption of this First Amendment.

C. The Declarant now desires to amend the Declaration as set forth in this First Amendment.

DECLARATIONS

NOW, THEREFORE, Declarant hereby declares that the Declaration is amended as follows:

1. Except as otherwise defined herein, all capitalized terms used herein shall have the meanings ascribed thereto in the Declaration.

2. The Recitals set forth above are declared to be true and correct and are hereby incorporated herein by reference.

3. Article 4, Section (a) of the Declaration, entitled "Architectural Control", is hereby renumbered as Section 4.1.

4. Section 6.3.3 of the Declaration is hereby deleted in its entirety and the following inserted therefor:

6.3.3 Assignment of Voting Rights. Notwithstanding anything to the contrary herein, all voting rights associated with Memberships held by Designated Builders, as of the date of this Declaration and hereafter acquired, shall be deemed to be assigned to the Declarant, with the assignment to continue with respect to each Membership until the earliest of the following to occur: (i) the sale of the Lot or Parcel to which the Membership is appurtenant to a Retail Purchaser; (ii) the Declarant notifies the Designated Builder, in writing, that it is terminating the assignment of that Designated Builder's voting rights; or (iii) neither the Declarant nor any affiliate of the Declarant owns, directly or indirectly, any of the Property or Annexable Property. The assignment of voting rights pursuant to this Section 6.3.3. shall not be deemed to convert the associated Memberships from Class B Memberships to Class A Memberships or to otherwise alter the nature of the assigned Memberships.

5. Section 13.3 of the Declaration is hereby amended to add the following:

13.3.6 Unless this Declaration specifically provides to the contrary, the Design Review Committee shall not arbitrarily or unreasonably withhold its approval with respect to any matter requiring Design Review Committee approval under this Declaration.

6. Section 15.2 of the Declaration is hereby deleted in its entirety and the following inserted therefor:

15.2 Amendments. This Declaration may be amended by Recording with the County Recorder of Maricopa County, Arizona, a Certificate of Amendment, duly signed and acknowledged. The Certificate of Amendment shall set forth in full the amendment adopted, and, except as provided in Section 15.3 and Section 15.4 of this Article, shall certify that, at a meeting duly called and held pursuant to the provisions of the Articles and Bylaws, or pursuant to written consent in accordance with the provisions of the Articles and Bylaws, the Members casting at least 75% of the votes then entitled to be cast voted affirmatively for the adoption of the Amendment. Notwithstanding the foregoing, except as otherwise provided in Sections 15.3 and 15.4 of the Declaration, so long as the Designated Builders, collectively, are

the Owners of more than twenty-five percent (25%) of the Lots (a) Declarant will not unilaterally amend, or vote in favor of any amendment to, the Declaration without the prior written consent of Designated Builders owning a majority of the total Lots then-owned by Designated Builders, and (b) Declarant will not vote in favor of the imposition of any Special Assessment without the prior written consent of Designated Builders owning a majority of the total Lots then-owned by Designated Builders, and, so long as the Designated Builders, collectively, are the Owners of more than twenty-five percent (25%) of the Lots in a Neighborhood, Declarant will not vote in favor of the imposition of any Neighborhood Assessment without the prior written consent of Designated Builders owning a majority of the total Lots then-owned by Designated Builders within such Neighborhood.

7. Article 18 is hereby amended to add the following:

Notwithstanding anything to the contrary contained in this Article 18, in the event that Declarant is regularly engaged in the business of constructing and selling residences on the Lots owned by Declarant, Declarant will be entitled to all of the rights, privileges and exemptions, and subject to all of the obligations, imposed on Designated Builders under this Declaration with respect to such residential construction and sales activities.

8. As amended by this First Amendment, the Declaration remains in full force and effect.

[END]

IN WITNESS WHEREOF, Declarant has caused its name to be signed by the signature of its duly authorized representative as of the date and year first above written.

DECLARANT:

RANCHO GABRIELA I, INC., an Arizona corporation

By: *C. B. Heeter*
Name: Chris B. Heeter
Title: President

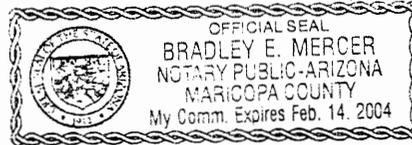
STATE OF ARIZONA)
) s.s.
County of Maricopa)

On this the 14 day of May, 2001, before me, the undersigned Notary Public, personally appeared Chris B. Heeter, who acknowledged himself to be the President of RANCHO GABRIELA I, INC., an Arizona corporation, on behalf of said corporation.

IN WITNESS WHEREOF, I hereunto set my hand and official seal.

Bradley E. Mercer
Notary Public

My Commission Expires:
2-14-2004



WHEN RECORDED RETURN TO:

Rancho Gabriela I, Inc.
6730 North Scottsdale Road
Suite 230
Scottsdale, AZ 85253
Attn: Chris Heeter



SCHUERHANK

FIRST AMERICAN TITLE

1 of 1

**CERTIFICATE OF SECOND AMENDMENT TO
DECLARATION OF COVENANTS, CONDITIONS, RESTRICTIONS,
RESERVATIONS AND EASEMENTS FOR RANCHO GABRIELA**

This Certificate of Second Amendment to Declaration of Covenants, Conditions, Restrictions, Reservations and Easements for Rancho Gabriela (the "Second Amendment") is entered into as of the 21st day of May, 2002, by Rancho Gabriela I, an Arizona corporation ("Declarant").

RECITALS

A. Declarant executed and caused to be recorded in the official records of Maricopa County, Arizona, on April 12, 2002, as Instrument No. 2002-0378464, that certain Declaration of Covenants, Conditions, Restrictions, Reservations and Easements for Rancho Gabriela (as amended from time to time, the "Declaration"). Declarant is named as the "Declarant" in the Declaration.

B. Section 15.2 of the Declaration provides that amendments to the Declaration may be adopted at a meeting of the Members at which Members casting at least seventy-five percent (75%) of the votes then entitled to be cast voted affirmatively for the adoption of the Amendment. The Declarant certifies that, pursuant to written consents in lieu of a meeting, Members holding at least seventy-five percent (75%) of the votes then entitled to be cast approved the adoption of this Second Amendment.

C. The Declarant now desires to amend the Declaration as set forth in this Second Amendment.

DECLARATIONS

NOW, THEREFORE, Declarant hereby declares that the Declaration is amended as follows:

1. Except as otherwise defined herein, all capitalized terms used herein shall have the meanings ascribed thereto in the Declaration.
2. The Recitals set forth above are declared to be true and correct and are hereby incorporated herein by reference.
3. Article 1 of the Declaration is amended to add the following in alphabetical order:

9517017012

“Affiliate” shall mean, as to any Person, (a) any Person which directly or indirectly is in control of, is controlled by, or is under common control with, any such Person, (b) any Person who is a director, officer or employee (i) of any such Person or (ii) of any Person described in the preceding clause (a). For purposes of this definition, control of a Person means the power, direct or indirect, (i) to vote 10% or more of the securities having ordinary voting power for the election of directors of such Person or (ii) to direct or cause the direction of the management and policies of such Person, whether by contract or otherwise.

4. Section 19.3.2 of the Declaration is hereby deleted in its entirety and the following inserted therefor:

19.3.2 Each Designated Builder shall defend, indemnify and hold Declarant harmless from, of, for and against any claims, damages, obligations, liabilities, losses, expenses or fees (including reasonable attorneys’ fees, witness fees, costs and related expenses) arising from any Soils Condition on the Lots or Parcels owned or developed by the Designated Builder. In the event of any inconsistency between the provisions of this Section 19.3 and the provisions of any written agreement between Declarant or any Affiliate of Declarant and a Designated Builder, the provisions of the written agreement shall govern as between Declarant and such Affiliate of Declarant and the Designated Builder.

5. As amended by this Second Amendment, the Declaration remains in full force and effect.

[END]

921292707

IN WITNESS WHEREOF, Declarant has caused its name to be signed by the signature of its duly authorized representative as of the date and year first above written.

DECLARANT:

RANCHO GABRIELA I, INC., an Arizona corporation

By: *Chris B. Heeter*

Name: Chris B. Heeter

Title: President

STATE OF ARIZONA)
) s.s.
County of Maricopa)

On this the 21st day of May, 2002, before me, the undersigned Notary Public, personally appeared Chris B. Heeter, who acknowledged himself to be the President of RANCHO GABRIELA I, INC., an Arizona corporation, on behalf of said corporation.

IN WITNESS WHEREOF, I hereunto set my hand and official seal.

Sharon K. Nelson
Notary Public

My Commission Expires:

11/18/05



WHEN RECORDED, RETURN TO:
Chris Heeter, President
Rancho Gabriela I, Inc.
6730 N. Scottsdale Road, Suite 230
Scottsdale, AZ 85253

#229-185-1425822

5 of 7

OFFICIAL RECORDS OF
MARICOPA COUNTY RECORDER
HELEN PURCELL
20021033628 10/04/2002 16:26
1425822-3-7-5--
ELECTRONIC RECORDING

**CERTIFICATE OF THIRD AMENDMENT
TO
DECLARATION OF COVENANTS, CONDITIONS,
RESTRICTIONS, RESERVATIONS AND EASEMENTS
FOR
RANCHO GABRIELA**

This Certificate of Third Amendment to Declaration of Covenants, Condition, Restrictions and Easements for Rancho Gabriela (this "Amendment") is entered into this 4th day of October, 2002 by Rancho Gabriela I, Inc., an Arizona corporation ("Declarant"), with reference to the following:

A. Declarant is the Declarant under that certain Declaration of Covenants, Conditions, Restrictions, Reservations and Easements for Rancho Gabriela recorded on April 12, 2002 as Document No. 2002-0378464 in the Official Records of Maricopa County, Arizona, as amended by a Certificate of First Amendment to Declaration of Covenants, Conditions, Restrictions, Reservations and Easements for Rancho Gabriela recorded on May 15, 2002 as Document No. 2002-0497443 in the Official Records of Maricopa County, Arizona, and as further amended by a Certificate of Second Amendment to Declaration of Covenants, Conditions, Restrictions, Reservations and Easements for Rancho Gabriela recorded on May 21, 2002 as Document No. 2002-0521726 in the Official Records of Maricopa County, Arizona (collectively, the "Declaration").

B. Section 15.3 of the Declaration provides that Declarant may amend the Declaration to make the Declaration comply with requirements of the Federal Housing Administration, the Veterans Administration, the Federal Home Loan Mortgage Corporation or any other governmental agency to the extent such amendments are necessary for any such governmental agencies to approve the Declaration.

C. To satisfy the certification requirements of the Federal Housing Administration, Declarant desires to amend the Declaration pursuant to the authority vested in Declarant under Section 15.3 of the Declaration.

NOW, THEREFORE, Declarant hereby declares that the Declaration is amended as follows:

1. Except as otherwise defined herein, all capitalized terms used herein shall have the meanings ascribed thereto in the Declaration.

2. The Recitals set forth above are declared to be true and correct and are hereby incorporated herein by reference.

3. Section 15.2 of the Declaration is hereby deleted in its entirety and the following inserted therefor:

Section 15.2 Amendments. *This Declaration may be amended by Recording with the County Recorder of Maricopa County, Arizona, a Certificate of Amendment, duly signed and acknowledged. The Certificate of Amendment shall set forth in full the amendment adopted, and, except as provided in Section 15.3 and Section 15.4 of this Article, shall certify that, at a meeting duly called and held pursuant to the provisions of the Articles and Bylaws, or pursuant to written consent in accordance with the provisions of the Articles and Bylaws: (i) Members holding not less than 75% of the Class A Membership votes then entitled to be cast voted affirmatively for the adoption of the amendment; (ii) so long as the Class B Membership is in existence, the Members holding not less than 75% of the Class B Membership votes then entitled to be cast voted affirmatively for the adoption of the amendment; and (iii) so long as the Class B Membership is in existence, the Declarant has consented to the adoption of the amendment. Notwithstanding the foregoing, except as otherwise provided in Sections 15.3 and 15.4 of the Declaration, so long as the Designated Builders, collectively, are the Owners of more than twenty-five percent (25%) of the Lots, (a) Declarant will not unilaterally amend, or vote in favor of any amendment to, the Declaration without the prior written consent of Designated Builders owning a majority of the total Lots then owned by Designated Builders, and (b) Declarant will not vote in favor of the imposition of any Special Assessment without the prior written consent of Designated Builders owning a majority of the total Lots then owned by Designated Builders, and so long as the Designated Builders, collectively, are the Owners of more than twenty-five percent (25%) of the Lots in a Neighborhood, Declarant will not vote in favor of the imposition of any Neighborhood Assessment without the prior written consent of Designated Builders owning a majority of the total Lots then owned by Designated Builders within such Neighborhood.*

4. As amended by this Third Amendment, the Declaration remains unchanged and in full force and effect.

IN WITNESS WHEREOF, the undersigned have executed this Third Amendment as of the date first written above.

DECLARANT:

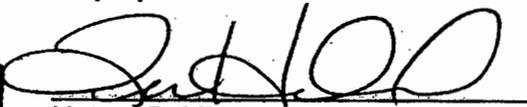
RANCHO GABRIELA I, INC., an Arizona corporation

By  _____
Chris B. Heeter,
Its President

STATE OF ARIZONA)
) ss.
County of Maricopa)

The foregoing instrument was acknowledged before me this 3 day October, 2002, by Chris B. Heeter, President of Rancho Gabriela I, Inc., an Arizona corporation, on behalf of the corporation for the purposes contained therein.





Notary Public