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DECLARATION OF COVENANTS, CONDITIONS
AND RESTRICTIONS
FOR
WEST POINT TOWNE CENTER

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

FOR

WEST POINT TOWNE CENTER

This Declaration of Covenants, Conditions, and Restrictions for West Point Towne Center is made this 10th day of FEBRUARY, 1997, by Group Six Properties, an Arizona general partnership.

ARTICLE 1

DEFINITIONS

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

1.1 "Annual Assessment" means the assessment levied pursuant to Section 7.2 of this Declaration.

1.2 "Architectural Committee" means the committee to be created pursuant to Section 3.9 of this Declaration.

1.3 "Areas of Association Responsibility" means (i) all Master Common Area; (ii) all real property, and the Improvements situated thereon, located within the boundaries of a Lot or Parcel which the Association is obligated to maintain, repair and replace pursuant to the terms of this Declaration, a Supplemental Declaration or another Recorded document executed by the Association; and (ii) all real property, and the Improvements situated thereon, designated on a Plat signed or ratified by the Association as property to be maintained, repaired and replaced by the Association.

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

1.5 "Assessable Property" means each Lot, Condominium Unit and Parcel, except such part or parts thereof as may from time to time be Exempt Property.

1.6 "Assessment" means an Annual Assessment or Special Assessment.

1.7 "Assessment Lien" means the lien created and imposed by Article 7 of this Declaration.

1.8 "Assessment Period" means the period set forth in Section 7.6 of this Declaration.

1.9 "Association" means the Arizona nonprofit corporation to be organized by Declarant to administer and enforce the Community Documents and to exercise the rights, powers and duties set forth therein, and its successors and assigns. The Declarant intends to incorporate the Association as "West Point Towne Center Community Association" but, if that name is not available, then Declarant may incorporate the Association under such other name as the Declarant deems appropriate.

1.10 "Association Rules" means the rules adopted by the Board pursuant to Section 6.3 of this Declaration, as amended from time to time.

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

1.12 "Builder" means any Person (other than a District Developer) who purchases four or more Lots or Condominium Units for the purpose of later sale in the ordinary course of such Person's business or for the purpose of constructing Improvements thereon for later sale in the ordinary course of such Person's business or who purchases one or more Parcels for the purpose of subdividing, developing or reselling such Parcel or Parcels in the ordinary course of such Person's business.

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

1.14 "Common Expenses" means the actual or estimated expenses incurred, or anticipated to be incurred, by the Association, together with any allocations to reserves.

1.15 "Community Documents" means this Declaration, the Articles, the Bylaws, the Association Rules and the Design Guidelines.

1.16 "Condominium Development" means a condominium established pursuant to the Arizona Condominium Act, A.R.S. § 33-1201, et seq.

1.17 "Condominium Unit" means a unit within a Condominium Development.

1.18 "Declarant" means Group Six Properties, an Arizona general partnership, its successors, any Person to whom it may expressly assign any or all of its rights under

this Declaration by a Recorded instrument, and the District Developers after the Declarant's rights are assigned to the District Developers pursuant to Section 2.6 of this Declaration.

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

1.20 "Design Guidelines" means the rules and guidelines adopted by the Architectural Committee pursuant to Section 3.9 of this Declaration, as amended or supplemented from time to time.

1.21 "Development Plan" means the Development Plan for West Point Towne Center approved by the City of Surprise, Arizona, on OCT. 24, 1995, Case No. 95-44, as amended from time to time.

1.22 "District" means each geographic area in the Property which is designated as a District in a Supplemental Declaration.

1.23 "District Developer" means a Person who is designated as a District Developer in a Supplemental Declaration executed by Declarant.

1.24 "District Representative" means a natural person elected or appointed pursuant to Section 6.13 of this Declaration.

1.25 "Exempt Property" means (i) all real property and improvements owned by, or dedicated to and accepted by the United States, State of Arizona, the County of Maricopa, Arizona, the City of Surprise, or any political subdivision thereof, so long as such entity or political subdivision is the owner thereof or for so long as said dedication remain effective; (ii) all Master Common Area; (iii) all Neighborhood Common Area; and (iv) all real property which is part of the common elements of the Condominium Development, but the undivided interest in the common elements allocated to each Unit shall not be considered Exempt Property but shall be considered part of the Unit.

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

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

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

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

1.30 "Lot" means (i) a portion of the Project intended for independent ownership and use and designated as a lot on a Plat and, where the context indicates or requires, any Residential Unit, building, structure or other Improvements situated on the Lot, or (ii) a Condominium Unit.

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

1.32 "Master Common Area" means all real property, together with all Improvements situated thereon, which the Association at any time owns in fee or in which the Association has a leasehold interest for as long as the Association is the owner of the fee or leasehold interest, except that Master Common Area shall not include any Lot or Parcel which the Association may acquire through foreclosure of the Assessment Lien or any deed in lieu of foreclosure.

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

1.34 "Neighborhood Association" means any homeowners association, condominium association or similar association formed or organized pursuant to any Neighborhood Declaration.

1.35 "Neighborhood Common Area" means all real property, and all Improvements located thereon, owned or leased by a Neighborhood Association for the common use and benefit of the members of the Neighborhood Association.

1.36 "Neighborhood Declaration" means any Declaration of Covenants, Conditions and Restrictions, Condominium Declaration or similar instrument other than this Declaration or a Supplemental Declaration recorded against any part of the Project.

1.37 "Owner" means the record owner, whether one or more Persons, of beneficial or equitable title (and legal title if the same has merged with the beneficial or equitable title) to the fee simple interest of a Lot or Parcel. Owner shall not include Persons having an interest in a Lot or Parcel merely as security for the performance of an obligation or a Lessee. Owner shall include a purchaser under a contract for the conveyance of real property subject to the provisions of A.R.S. § 33-741 *et. seq.* Owner shall not include a purchaser under a purchase contract and receipt, option agreement, escrow instructions or similar executory contracts which are intended to control the rights and obligations of the parties to the executory contracts pending the closing of a sale or purchase transaction. In the case of Lots or Parcels subject to a deed of trust Recorded pursuant to

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Arizona Revised Statutes, Section 33-801, et seq., the trustor shall be deemed to be the Owner. In the case of the Lots or Parcels the fee simple title to which is vested in a trustee pursuant to a subdivision trust agreement or similar agreement, the beneficiary of any such trust who is entitled to possession of the trust property shall be deemed to be the Owner.

1.38 "Parcel" means each separately owned contiguous area of real property (whether improved or unimproved) within the Project (other than a Lot, Condominium Unit or Master Common Area) and, where the context indicates or requires, all Improvements situated on the Parcel.

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

1.40 "Plat" means any subdivision plat or condominium plat recorded against all or any part of the Project, and all amendments, supplements and corrections thereto.

1.41 "Property" or "Project" means the real property described on Exhibit "A" attached to this Declaration together with all Improvements located thereon.

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

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

1.44 "Resident" means each natural person occupying or residing in a Residential Unit or Condominium Unit.

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

1.46 "Special Assessment" means any assessment levied pursuant to Section 7.5 of this Declaration.

1.47 "Supplemental Declaration" means a Declaration recorded pursuant to Section 2.2 of this Declaration.

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1.48 **"Visible From Neighboring Property"** means, with respect to any given object, that such object is or would be visible to a person six feet tall, standing at ground level on any part of any adjoining street, Lot, Parcel, Condominium Development, Master Common Area or Neighborhood Common Area.

ARTICLE 2

PLAN OF DEVELOPMENT

2.1 **Property Subject to the Declaration.** Declarant is the Owner of the Property, and Declarant intends by this Declaration to impose upon the Property mutually beneficial restrictions under a general plan of improvement and desires to provide a flexible and reasonable procedure for the overall development of the Property and to establish a method for the administration, maintenance, preservation, use and enjoyment of the Property. Declarant hereby declares that all the Property shall be held, sold, used and conveyed subject to the easements, restrictions, conditions and covenants set forth in this Declaration which are for the purpose of protecting the value and desirability of and which shall run with the Property. Declarant further declares that this Declaration shall be binding upon all Persons having any right, title or interest in the Property or any part thereof, their successors, successors in title and assigns and shall inure to the benefit of each Owner thereof. By acceptance of a deed or by acquiring any interest in any of the property subject to this Declaration, each Person, for himself or itself, his heirs, personal representatives, successors, transferees and assigns, binds himself, his heirs, personal representatives, successors, transferees and assigns, to all of the provisions, restrictions, covenants, conditions, rules, and regulations now or hereafter imposed by this Declaration and any amendments thereof. In addition, each such Person by so doing thereby acknowledges that this Declaration sets forth a general plan for the development, sale, lease and use of the Property and hereby evidences his interest that all the restrictions, conditions, covenants, rules and regulations contained in this Declaration shall run with the land and be binding on all subsequent and future Owners, grantees, purchasers, assignees, lessees and transferees thereof. Furthermore, each such Person fully understands and acknowledges that this Declaration shall be mutually beneficial, prohibitive and enforceable by the Association and all Owners. Declarant, its successors, assigns and grantees, covenant and agree that the Lots and Parcels and the membership in the Association and the other rights appurtenant to such Lots and Parcels shall not be separated or separately conveyed, and each shall be deemed to be conveyed or encumbered with its respective Lot or Parcel even though the description in the instrument of conveyance or encumbrance may refer only to the Lot or Parcel.

2.2 **Supplemental Declarations.** Declarant reserves the right, but not the obligation, to record one or more Supplemental Declarations against portions of the Property. A Supplemental Declaration may designate the area covered by the Supplemental Declaration as one or more Districts and designate the Person who will be the District Developer for each District. A Supplemental Declaration also may designate Master Common Areas and Neighborhood Common

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and impose such additional covenants, conditions and restrictions as the Declarant determines to be appropriate for the property subject to the Supplemental Declaration. A Supplemental Declaration may only be amended by a written instrument executed by (i) the Owners representing more than seventy-five percent (75%) of the votes in the Association held by the Owners of all of the Lots and Parcels subject to the Supplemental Declaration, (ii) the Association, (iii) the Declarant so long as the Declarant owns any Lot or Parcel in the Project, and (iv) the District Developer designated in the Supplemental Declaration so long as the District Developer owns any Lot or Parcel covered by the Supplemental Declaration. After the Declarant no longer owns any Lot or Parcel, the Association shall have the right to record a Supplemental Declaration for any part of the Property for which a Supplemental Declaration has not previously been recorded.

2.3 Withdrawal of Property. At any time on or before the date which is fifteen (15) years after the date this Declaration is Recorded the Declarant shall have the right to withdraw property from the Project without the consent of any other Owner or Person; provided, however, that no such withdrawal shall be effective unless consented to in writing by all District Developers who own any Lot or Parcel at the time of such withdrawal. The withdrawal of all or any portion of the Project shall be affected by the Declarant Recording a Declaration of Withdrawal setting forth the legal description of the property being withdrawn. Upon the withdrawal of any property from the Project pursuant to this Section, such property shall no longer be subject to any of the covenants, conditions and restrictions set forth in this Declaration.

2.4 Disclaimer of Implied Covenants. Nothing contained in this Declaration and nothing which may be represented to a purchaser by real estate brokers or salesmen representing the Declarant or any District Developer shall be deemed to create any implied covenants, servitudes or restrictions with respect to the use of any property subject to this Declaration.

2.5 Development Plan. Notwithstanding any other provision of this Declaration to the contrary, the Declarant, without obtaining the consent of any other Owner or Person, shall have the right to make changes or modifications to the Development Plan with respect to any property owned by the Declarant which is shown on the Development Plan but which is not part of the Property in any way which the Declarant desires including, but not limited to, changing the density of all or any portion of the property owned by the Declarant or changing the nature or extent of the uses to which the property may be devoted. Notwithstanding any other provisions of this Declaration to the contrary, the Declarant, without obtaining the consent of any other Owner or Person, shall have the right to make any changes or modifications to the Development Plan with respect to any part of the Property owned by the Declarant in any way which the Declarant desires, including, but not limited to, changing the density of all or a part of the property or changing the nature and extent of the uses to which the Property may be devoted; provided, however, that no such change or modification to the Development Plan shall be effective unless consented to in writing by all District Developers who own any Lot or Parcel at the time of each change or modification, which consent shall not be unreasonably withheld.

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2.6 Assignment of Declarant Rights to District Developers. The Declarant at any time may assign its rights as the Declarant under this Declaration to the District Developers by a Recorded instrument, and the District Developers shall be obligated to accept the assignment and execute any documents requested by the Declarant to evidence such acceptance. Unless the Declarant has previously assigned its Declarant rights to the District Developers, the rights of the Declarant under this Declaration shall be automatically assigned and transferred to the District Developers at such time as the Declarant no longer owns any Lot or Parcel. Following the assignment of the Declarant rights to the District Developers, no District Developer shall exercise any of the rights of the Declarant under this Declaration without the prior written approval of more than fifty percent (50%) of the District Developers who own any Lot or Parcel at the time of the exercise of such Declarant right.

ARTICLE 3

ARCHITECTURAL CONTROL

3.1 Approval Required. No Improvement which would be Visible From Neighboring Property shall be constructed or installed on any Lot, or Parcel without the prior written approval of the Architectural Committee which shall regulate the external design and appearance of the Lots and Parcels and all Improvements constructed thereon. No addition, alteration, repair, change or other work which in any way alters the exterior appearance of any part of a Lot, or Parcel, or any Improvements located thereon, which are or would be Visible From Neighboring Property, shall be made or done without the prior written approval of the Architectural Committee. Any Owner desiring approval of the Architectural Committee for the construction, installation, addition, alteration, repair, change or replacement of any Improvement which is or would be Visible From Neighboring Property shall submit to the Architectural Committee a written request for approval specifying in detail the nature and extent of the addition, alteration, repair, change or other work which the Owner desires to perform. Any Owner requesting the approval of the Architectural Committee shall also submit to the Architectural Committee any additional information, plans and specifications which the Architectural Committee may request. If the Architectural Committee fails to approve or disapprove an application for approval within forty-five (45) days after an application meeting all of the requirements of this Declaration and of the Design Guidelines, together with any fee payable pursuant to Section 3.5 of this Declaration and any additional information, plans and specifications requested by the Architectural Committee, have been submitted to the Architectural Committee, the application will be deemed to have been approved. The approval by the Architectural Committee of any construction, installation, addition, alteration, repair, change or other work shall not be deemed a waiver of the Architectural Committee's right to withhold approval of any similar construction, installation, addition, alteration, repair, change or other work subsequently submitted for approval.

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3.2 Review of Plans. In reviewing plans and specifications for any construction, installation, addition, alteration, repair, change or other work which must be approved by the Architectural Committee, the Architectural Committee, among other things, may consider the quality of workmanship and design, harmony of external design with existing structures and location in relation to surrounding structures, topography and finish grade elevation. The Architectural Committee may disapprove plans and specifications for any construction, installation, addition, alteration, repair, change or other work which must be approved by the Architectural Committee pursuant to this Article 3 if the Architectural Committee determines, in its sole and absolute discretion, that: (i) the proposed construction, installation, addition, alteration, repair, change or other work would violate any provision of this Declaration; (ii) the proposed construction, installation, addition, alteration, repair, change or other work does not comply with any Design Guideline; (iii) the proposed construction, installation, addition, alteration, repair, change or other work is not in harmony with existing Improvements in the Project or with Improvements previously approved by the Architectural Committee but not yet constructed; (iv) the proposed construction, installation, addition, alteration, repair, change or other work is not aesthetically acceptable; (v) the proposed construction, installation, addition, alteration, repair, change or other work would be detrimental to or adversely affect the appearance of the Project; or (vi) the proposed construction, installation, addition, alteration, repair, change or other work is otherwise not in accord with the general plan of development for the Project. The provisions of this Article do not apply to, and approval of the Architectural Committee shall not be required for, the construction, erection, installation, addition, alteration, repair, change or replacement of any Improvements made by, or on behalf of, the Declarant. In addition, the provisions of this Article shall not apply to, and approval of the Architectural Committee shall not be required for, the construction, erection, installation, addition, alteration, repair, change or replacement of any Improvements made by, or on behalf of, a District Developer or a Builder so long as such work complies in all respects with the Design Guidelines. The approval required of the Architectural Committee pursuant to this Article 3 shall be in addition to, and not in lieu of, any approvals or permits which may be required under any federal, state or local law, statute, ordinance, rule or regulation.

3.3 Construction of Improvements. Upon receipt of approval from the Architectural Committee for any construction, installation, addition, alteration, repair, change or other work, the Owner who had requested such approval shall proceed to perform, construct or make the addition, alteration, repair, change or other work approved by the Architectural Committee as soon as practicable and shall diligently pursue such work so that it is completed as soon as reasonably practicable and within such time as may be prescribed by the Architectural Committee.

3.4 No Changes Without Approval. Any change, deletion or addition to the plans and specifications approved by the Architectural Committee must be approved in writing by the Architectural Committee.

3.5 Review Fee. The Architectural Committee shall have the right to charge a fee for reviewing requests for approval of any construction, installation, alteration, addition, repair,

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change or other work pursuant to this Article 3, which fee shall be payable at the time the application for approval is submitted to the Architectural Committee.

3.6 No Warranty. The approval by the Architectural Committee of any construction, installation, addition, alteration, repair, change or other work pursuant to this Article 3 shall not be deemed a warranty or representation by the Architectural Committee as to the quality of such construction, installation, addition, alteration, repair, change or other work or that such construction, installation, addition, alteration, repair, change or other work conforms to any applicable building codes or other federal, state or local law, statute, ordinance, rule or regulation.

3.7 Conditional Approval. The Architectural Committee may condition its approval of plans and specifications upon the agreement by the Owner submitting such plans and specifications to furnish to the Association a bond or other security acceptable to the Architectural Committee in an amount determined by the Architectural Committee to be reasonably sufficient to: (i) assure the completion of the proposed Improvements or the availability of funds adequate to remedy any nuisance or unsightly conditions occurring as a result of the partial completion of such Improvement, and (ii) to repair any damage which might be caused to any Area of Association Responsibility as a result of such work. Any such bond shall be released or security shall be fully refundable to the Owner upon: (i) the completion of the Improvements in accordance with the plans and specifications approved by the Architectural Committee; and (ii) the Owner's written request to the Architectural Committee, provided that there is no damage caused to any Area of Association Responsibility by the Owner or its agents or contractors.

3.8 Improvements to Areas of Association Responsibility. If the plans and specifications pertain to an Improvement which is within an Area of Association Responsibility so that the Association is responsible for the maintenance, repair and replacement of such Improvement, the Architectural Committee may condition its approval of the plans and specifications for the proposed construction, installation, addition, alteration, repair, change or other work with respect to the Improvement on the agreement of the Owner to reimburse the Association for the future cost of the repair, maintenance or replacement of such Improvement.

3.9 Architectural Committee. So long as the Declarant owns any Lot or Parcel, the Architectural Committee shall consist of the District Representatives and one natural person appointed by the Declarant. After the Declarant no longer owns any Lot or Parcel, the Architectural Committee shall consist of the District Representatives. On each matter to be decided by the Architectural Committee, each District Representative shall have the number of votes equal to the number of memberships attributable to the Lots, and Parcels within his District and the person appointed by the Declarant shall have the number of votes attributable to Lots and Parcels owned by the Declarant. Any action of the Architectural Committee approved by members of the Architectural Committee entitled to cast more than fifty percent (50%) of the votes entitled to be cast by all members of the Architectural Committee shall be considered as the act of the Architectural Committee. One or more members of the Architectural Committee, other than an Owner, may be

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compensated by the Association for their services on the Architectural Committee and for their technical or professional expertise. The Architectural Committee may adopt, amend and repeal architectural guidelines, standards and procedures to be used in rendering its decisions. Such guidelines, standards and procedures may include, without limitation, provisions regarding: (i) the size of Residential Units; (ii) architectural design, with particular regard to the harmony of the design with the surrounding structures and typography; (iii) placement of Residential Units and other buildings; (iv) landscaping design, content and conformance with the character of the Property and permitted and prohibited plants; (v) requirements concerning exterior color schemes, exterior finishes and materials; (vi) signage; and (vii) perimeter and screen wall design and appearance. The decision of the Architectural Committee shall be final on all matters submitted to it pursuant to this Declaration.

ARTICLE 4

USE RESTRICTIONS

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

4.2 Temporary Occupancy and Temporary Buildings. No trailer, basement of any incomplete building, tent, shack, garage or barn, and no temporary buildings or structures of any kind, shall be used at any time for a residence, either temporary or permanent. No temporary construction buildings or trailers may be installed or kept on any Lot or Parcel without

the prior written approval of the Architectural Committee. Any such temporary buildings or trailers approved by the Architectural Committee shall be removed immediately after the completion of construction.

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

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

4.5 **Antennas.** Except as expressly permitted by the Design Guidelines, no antenna or other device for the transmission or reception of television or radio signals or any other form of electromagnetic radiation including, without limitation, satellite or microwave dishes, which is or would be Visible From Neighboring Property shall be erected, used, or maintained on any Lot or Parcel without the prior written approval of the Architectural Committee.

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

4.7 **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 which are approved by the Architectural Committee. In no event shall such containers be maintained so as to be Visible From Neighboring Property except to make the same available for collection and then only for the shortest time reasonably necessary to effect such collection. All rubbish, trash, or garbage shall be removed from Lots or Parcels and other property and shall not be allowed to accumulate thereon. No outdoor incinerators shall be kept or maintained on any Lot or Parcel.

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

4.9 **Utility Service.** No lines, wires, or other devices for the communication or transmission of electric current or power, including telephone, television, and radio signals, shall be erected, placed or maintained anywhere in or upon any Lot or other Parcel unless the same shall be contained in conduits or cables installed and maintained underground or concealed in, under or on buildings or other structures approved by the Architectural Committee. No provision of this Declaration shall be deemed to forbid the erection of temporary power or telephone structures incident to the construction of buildings or structures approved by the Architectural Committee.

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

4.11 **Animals.** No animal, bird, fowl, poultry, reptile or livestock may be kept on any Lot or Parcel, except that a reasonable number of dogs, cats, parakeets or similar household birds may be kept on a Residential Lot or in a Condominium Unit if they are kept, bred or raised thereon solely as domestic pets and not for commercial purposes. All dogs, cats or other pets permitted under this Section shall be confined to an Owner's Lot, except that a dog or cat may be permitted to leave an Owner's Lot if such dog or cat is at all times kept on a leash not to exceed six feet (6') in length and is not permitted to enter upon any other Lot. No animal, bird, fowl, poultry or livestock shall be allowed to make an unreasonable amount of noise or to become a nuisance. No structure for the care, housing or confinement of any animal, bird, fowl, poultry, or livestock shall be maintained so as to be Visible From Neighboring Property without the prior written approval of the Architectural Committee. Any person bringing a pet onto the Master Common Area shall immediately remove any solid waste deposited by the pet on the Master Common Area. In addition, each Owner and Resident shall promptly remove any solid waste deposited by a pet on the Lot or Parcel of the Owner or Resident. Upon the written request of any Owner, Lessee or Resident, the Architectural Committee shall conclusively determine, in its sole and absolute discretion, whether, for the purposes of this Section, a particular animal, bird, fowl, poultry, or livestock is a nuisance or making an unreasonable amount of noise. Any decision rendered by the Architectural Committee shall be enforceable in the same manner as other restrictions set forth in this Declaration.

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

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4.13 Signs. Except as expressly permitted by the Design Guidelines, no signs whatsoever (including, but not limited to, commercial, political, "for sale", "for rent" and similar signs) which are Visible From Neighboring Property shall be erected or maintained on any Lot or Parcel without the prior written approval of the Architectural Committee.

4.14 Restriction on Further Subdivision, Property Restrictions and Rezoning. No Lot or Parcel shall be further subdivided or separated into smaller lots or parcels by any Owner other than Declarant, a District Developer, or a Builder, and no portion less than all of any such Lot or Parcel shall be conveyed or transferred by any Owner, without the prior written approval of the Architectural Committee. No further covenants, conditions, restrictions or easements other than a Supplemental Declaration shall be recorded by any Owner, Lessee, or other Person against any part of the Property without the provisions thereof having been first approved in writing by the Board, except that a District Developer may record covenants, conditions and restrictions on any Lot or Parcel owned by the District Developer without obtaining the consent or approval of the Board or any other Owner. Any covenants, conditions or restrictions recorded by a District Developer shall not modify or amend this Declaration, but in the event that such covenants, conditions and restrictions impose restrictions on the use or occupancy of the real property subject to the covenants, conditions and restrictions which are more restrictive than the restrictions set forth in this Article 4, the more restrictive provision shall prevail. No application for rezoning, variances or use permits pertaining to any Lot or Parcel shall be filed with any governmental authority by any Person other than the Declarant unless the application has been approved by the Board and the proposed use otherwise complies with this Declaration.

4.15 Vehicles and Parking.

4.15.1 As used in this Section 4.15, the term "Motor Vehicle" means a car, van, truck, recreational vehicle, motor home, motorcycle, all terrain vehicle, utility vehicle, pickup truck or other motor vehicle.

4.15.2 No mobile home, travel trailer, tent trailer, trailer, camper shell, boat trailer, boat or other similar equipment may be parked, kept or stored on any Residential Lot or the Master Common Area or Neighborhood Common Area without the prior written approval of the Architectural Committee.

4.15.3 Except as permitted by Subsection 4.15.4 or 4.15.5, no Motor Vehicle may be parked, kept or stored on any Lot, Parcel, Master Common Area or Neighborhood Common Area without the prior written approval of the Architectural Committee.

4.15.4 Motor Vehicles owned or leased by an Owner, Lessee or Resident of a Lot must be parked in the garage of the Residential Unit unless there is insufficient space within the garage for the parking of all such Motor Vehicles, in which case such Motor Vehicles may be parked in the driveway situated on the Lot provided such Motor Vehicles do not

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exceed 7 feet in height and do not exceed 20 feet in length and do not extend onto any adjacent sidewalk or street. Recreational vehicles, motor homes and similar vehicles owned or leased by an Owner, Lessee or Resident which exceed 7 feet in height and/or exceed 20 feet in length may be parked in the rear or side yard of a Lot if the rear or side yard is fully enclosed by a wall or fence and may be parked in the driveway on a Lot for the purpose of loading or unloading, but in no event shall such recreational vehicle, motor home or similar vehicle be parked in the driveway for more than twenty-four (24) consecutive hours or for more than seventy-two (72) hours within any seven (7) day period.

4.15.5 Motor Vehicles owned by guests of an Owner, Lessee or other Resident may be parked in the driveway on a Lot or on a public or private street for a period not to exceed 72 hours within any seven (7) day period.

4.15.6 The Board shall have the right and power to adopt rules and regulations governing the parking of Motor Vehicles on Lots, Parcels, Master Common Areas or Neighborhood Common Areas and implementing the provisions of this Section 4.15. In the event of any conflict or inconsistency between the provisions of this Section 4.15 and the rules and regulations adopted by the Board, the provisions of this Section 4.15 shall control.

4.15.7 No Motor Vehicle shall be constructed, reconstructed or repaired on any Lot, Parcel, Master Common Area or Neighborhood Common Area in such a manner as to be Visible From Neighboring Property, and no inoperable vehicle may be stored or parked on any Lot, Parcel, Master Common Area or Neighborhood Common Area in such a manner as to be Visible From Neighboring Property.

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

4.17 Variations. The Architectural Committee may, at its option and in extenuating circumstances, grant variations from the restrictions set forth in this Article 4 if the Architectural Committee determines in its discretion that (i) a restriction would create an unreasonable hardship or burden on an Owner, Lessee or Resident or a change of circumstances since the recordation of this Declaration has rendered such restriction obsolete and (ii) that the activity

permitted under the variance will not have any substantial adverse effect on the Owners, Lessees and Residents of the Project and is consistent with the high quality of life intended for residents of the Project.

4.18 Drainage. No structure, building, landscaping, fence, wall or other Improvement shall be constructed, installed, placed or maintained in any manner that would obstruct, interfere with or change the direction or flow of water in accordance with the drainage plans for the Project, or any part thereof, or for any Lot or Parcel as shown on the drainage plans on file with the county or municipality in which the Project is located. No Person shall alter the grading of a Lot or Parcel or alter the natural flow of water over and across a Lot or Parcel without the prior written approval of the Architectural Committee.

4.19 Garages and Driveways. Garages situated on Lots shall be used only for the parking of vehicles and shall not be used or converted for living or recreational activities without the prior written approval of the Architectural Committee. Garages may be used for the storage of material so long as the storage of material does not restrict the use of the garage for the parking of motor vehicles.

4.20 Rooftop Air Conditioners Prohibited. No air conditioning units or appurtenant equipment may be mounted, installed or maintained on the roof of any Residential Unit or other building on a Lot so as to be Visible From Neighboring Property.

4.21 Basketball Goals and Backboards. Except as expressly permitted by the Design Guidelines, no basketball hoop, goal or backboard shall be constructed or installed on any Lot or Parcel without the prior written approval of the Architectural Committee.

4.22 Playground Equipment. Except as expressly permitted by the Design Guidelines, no jungle gyms, swing sets or similar playground equipment which would be Visible From Neighboring Property shall be erected or installed on any Lot or Parcel without the prior written approval of the Architectural Committee.

4.23 Development Rights of District Developers and Builders. Notwithstanding any other provision of this Declaration to the contrary, each District Developer and Builder shall have the right to maintain model homes and sales offices on Lots owned or leased by the District Developer or Builder and to construct and maintain parking areas for the purpose of accommodating persons visiting such model homes and sales offices. Any home constructed as a model home shall cease to be used as a model home and any sales office shall cease to be used as a sales office at any time the District Developer or Builder is not actually engaged in the construction and sale of Residential Units or Condominium Units in the Project. No Residential Unit shall be used as a model home for the sale of Residential Units or Condominium Units not located in the Project, and no sales office shall be used for the sale of Lots or homes not located in the Project. Notwithstanding any other provision of this Declaration to the contrary, a District Developer or

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Builder may store supplies of brick, block, lumber and other building materials on the Lots owned by the District Developer or Builder. In addition, normal construction activities of a District Developer or Builder in connection with the construction of Improvements shall not be considered a nuisance or otherwise prohibited by this Declaration. A District Developer or Builder constructing Improvements on Lots shall keep the Lots in a clean, safe and neat condition free of weeds, trash and debris. Notwithstanding any other provision of this Declaration to the contrary, a District Developer or Builder may construct and install temporary subdivision identification, direction and marketing signs on the Master Common Area or Lots or Parcels owned by such District Developer or Builder, but all such signs shall be maintained by the District Developer or Builder in good condition and must be removed promptly at such time as the District Developer or Builder is no longer offering Lots or Condominium Units for sale to the public.

4.24 **Installation of Front Yard Landscaping.** Within ninety (90) days after the date on which a Residential Unit is first occupied, grass, trees, plants and other landscaping improvements (together with a drip irrigation or sprinkler system sufficient to water adequately such grass, trees, plants and other landscaping improvements) shall be installed on that portion of the Lot which is between the street adjacent to the Lot and the exterior wall of the Residential Unit or any wall separating the side or back yard of the Lot from the front yard of the Lot. At least two 15 gallon trees must be planted in the front yard of the Lot. All landscaping installed pursuant to this Section must be installed in accordance with plans approved in writing by the Architectural Committee. If any Owner fails to landscape his Lot in the manner and within the time provided for in this Section, the Association shall have the right, but not the obligation, to enter upon such Owner's Lot and install such landscaping improvements as the Association deems appropriate, and the cost of any such installation shall be paid to the Association by the Owner of the Lot, upon demand from the Association. Any amounts payable by an Owner to the Association pursuant to this Section shall be secured by the Assessment Lien, and the Association may enforce collection of such amount in the same manner and to the same extent as provided elsewhere in this Declaration for the collection and enforcement of Assessments.

ARTICLE 5

EASEMENTS

5.1 **Easement for Use of Master Common Area.**

5.1.1 Every Owner, Lessee and Resident shall have a non-exclusive right and easement of use and enjoyment in and to the Master Common Area (including, but not limited to, the right to use any streets which may be part of the Master Common Area for ingress and egress to the Owner's Lot or Parcel) which right shall be appurtenant to and shall pass with the title to every Lot or Parcel, subject to the following:

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- (i) The right of the Association to dedicate, convey, transfer or encumber the Master Common Area as provided in Section 6.11 of this Declaration.
- (ii) The rights and easements granted to the Declarant and the Association in this Declaration, including, without limitation, the rights and easements granted to the Declarant in this Article 5.
- (iii) The right of the Board to impose reasonable membership requirements and charge reasonable membership admission fees for the use of any recreational facility situated on the Master Common Area.
- (iv) The right of the Association to regulate the use of the Master Common Area through the Association Rules and to prohibit access to such portions of the Master Common Area, such as landscaped areas, not intended for use by the Owners, Lessees or Residents.
- (v) The right of the Association to suspend the right of an Owner to use the Master Common Area (other than the right of an Owner and such Owner's family, tenants and guests to use any streets which are part of the Master Common Area for ingress or egress to the Owner's Lot or Parcel) if such Owner is more than fifteen (15) days delinquent in the payment of Assessments or other amounts due to the Association or if the Owner has violated any other provisions of the Community Documents and has failed to cure such violation within fifteen (15) days after the Association notifies the Owner of the violation. Any suspension of an Owner's right to use the Master Common Area shall also extend to the Lessees and Residents of the Owner's Lot and their guests and invitees.
- (vi) The right of the Board to permit the use of the Master Common Area by persons other than Owners, their families, Lessee's and guests on such conditions and upon the payment of such fees as the Board deems appropriate.
- (vii) The right of the Association to rent or lease any portion of the Master Common Area on a short-term basis to an Owner for the exclusive use of such Owner and such Owner's family and guests.

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

5.2 Utility and Development Easements.

5.2.1 A non-exclusive, perpetual blanket easement is hereby granted over and through the Master Common Area, and each Lot and Parcel (except that no easements may

be granted which run or will run under a building except to serve such building) for the purpose of: (i) installing, constructing, operating, maintaining, repairing or replacing equipment used to provide to any portion of the Property any utilities, including, without limitation, water, sewer, drainage, gas, electricity, telephone and television service, whether public or private; and (ii) ingress and egress to install, construct, operate, maintain, repair and replace such equipment and (iii) storm water management and storm water drainage, as necessary or desirable for the orderly development of the Property. Such easement is hereby granted to any Person providing such utilities or installing, constructing, maintaining, repairing or replacing equipment related thereto. Any pipes, conduits, lines, wires, transformers and any other apparatus necessary for the provision or metering of any utility may be installed or relocated only where permitted by the Declarant, where contemplated on any site plan approved by the Declarant or where approved by resolution of the Board. Equipment used to provide or meter such utilities or services may be installed above ground during periods of construction if approved by the Declarant. The Person providing a service or installing a utility pursuant to this easement shall install, construct, maintain, repair or replace the equipment used to provide or meter the utility as promptly and expeditiously as possible, and shall restore the surface of the land and the Improvements situated thereon to their original condition as soon as possible.

5.2.2 The Declarant hereby reserves to itself and to its successors and assigns, and also grants to the Association, the right to grant and reserve easements, rights-of-way and licenses over and through: (i) the Master Common Area; (ii) any Lot or Parcel within ten feet of any boundary line of the Lot or Parcel abutting a public or private street or ten feet from any other Lot or Parcel boundary line (except that no easements may be granted which run or will run under a building except to serve such building); for the purposes set forth in Section 5.2.1 or for any other purpose necessary or desirable for the orderly development of the Property. If the Person installing the utility or providing a service requests a specific easement by separate recordable documents, then the Declarant or the Association shall have the power to record a deed locating such easements.

5.3 Easements to Facilitate Development.

5.3.1 The Declarant hereby reserves to itself and its successors and assigns a non-exclusive blanket easement over and through the Property for all purposes reasonably related to the development and completion of Improvements on the Property, including without limitation: (i) temporary slope and construction easements; (ii) easements for the temporary storage of reasonable supplies of building materials and equipment necessary to complete Improvements; and (iii) easements for the construction, installation and maintenance of improvements (e.g., buildings, landscaping, street lights, signage, etc.) on the Property or reasonably necessary to serve the Property.

5.3.2 The Declarant hereby reserves to itself, its successors and assigns the right to: (i) use any Lots or Parcels owned or leased by the Declarant, any other Lot or Parcel with written consent of the Owner thereof or any portion of the Master Common Area as models, management offices, sales offices, a visitors' center, construction offices, customer service offices

or sales office parking areas; (ii) place and maintain in any location on the Master Common Area and each Lot or Parcel within ten feet of any lot boundary line abutting a public right-of-way or a private street or roadway, trails, paths and sidewalks, street lights, street and directional signs, temporary promotional signs, plantings, street lights, entrance features, "theme area" signs, lighting, stone, wood or masonry walls or fences and other related signs and landscaping features or to grant easements for the maintenance of any of the foregoing; and (iii) relocate or remove all or any of the above from time to time at the Declarant's sole discretion.

5.3.3 The Declarant shall not exercise any of the rights or easements reserved by or granted to the Declarant by this Section in such a manner as to unreasonably interfere with the construction, development or occupancy of any part of the Property.

5.4 **Easement to Correct Drainage.** The Declarant reserves to itself and its successors and assigns, and also grants to the Association, an easement and right on, over and under the ground within each Lot and Parcel and the Master Common Area to maintain and to correct drainage of surface water in order to maintain reasonable standards of health, safety and appearance, including any necessary right of access. Such right expressly includes the right to cut any trees, bushes or shrubbery, to regrade the land, or to take any other similar action reasonably necessary, following which the Declarant or Association, as applicable, shall restore the affected property to its original condition as near as practical.

5.5 **Dedications and Easements Required by Governmental Authority.** The Declarant hereby reserves to itself and its successors and assigns, the right to make any dedications and to grant any easements, rights-of-way and licenses required by any government or governmental agency over and through all or any portion of the Master Common Area.

5.6 **Further Assurances.** Any and all conveyances made to the Association or any Owner shall be conclusively deemed to incorporate these reservations of rights and easements, whether or not set forth in such grants. The easements granted and reservations made to the Declarant in this Declaration shall not terminate or merge and shall continue to run with the land, notwithstanding the common law doctrine of merger and the common ownership of all the Property at this time by the Declarant. Upon written request of the Declarant, the Association and each Owner shall from time to time sign, acknowledge and deliver to the Declarant such further assurances of these grants and reservations of rights and easements as may be requested.

5.7 **Duration of Development Rights; Assignment.** The rights and easements reserved by or granted to the Declarant pursuant to this Article 5 shall continue so long as the Declarant owns any Lot or Parcel. The Declarant may make limited temporary assignments of its easement rights under this Declaration to any Person performing construction, installation or maintenance on any portion of the Property. The Association's exercise of the rights, powers and easements granted in this Article 5 are not subject to the time limitations on duration applicable to the Declarant.

5.8 **Easement for Maintenance and Enforcement.** The Association, its employees and managing agent and any other Persons authorized by the Board, are hereby granted the right of access over and through any portion of the Property (excluding the interior of any Residential Unit or Condominium Units), for the exercise and discharge of their respective powers and responsibilities including without limitation, to make inspections, to correct any condition originating in a Lot, Parcel or in the Master Common Area threatening another Lot, Parcel or the Master Common Area, to correct drainage, to perform installations or maintenance of utilities, landscaping or other Improvements located on the Property for which the Association is responsible, or to correct any condition which violates the Community Documents.

5.9 **Easements for Encroachments.** If any Improvements on any Lot or Parcel or on the Master Common Area now or hereafter encroaches on any other portion of the Property by reason of: (i) the original construction thereof; (ii) deviations within normal construction tolerances in the maintenance of any Improvement; or (iii) the settling or shifting of any land or Improvement, an easement is hereby granted to the extent of any such encroachment for the period of time the encroachment exists, and the Owner of the encroaching Improvement shall also have an easement for the limited purpose of maintenance of the encroaching Improvement.

ARTICLE 6

THE ASSOCIATION; ORGANIZATION; MEMBERSHIP AND VOTING RIGHTS

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

6.2 **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. So long as there is a Class B membership in the Association, the Board shall consist of the District Representatives and one natural person appointed by the Declarant provided, however, that the initial Board must consist of at least three (3) directors, and, therefore, if at least two Districts have not been created as of the time the Association is incorporated, the Declarant shall appoint a sufficient number of persons so that there are three (3) directors. After the termination of the Class B membership, the Board of Directors shall consist of the District Representatives. On each matter to be decided by the Board, each District Representative shall have the number of votes equal to the number of memberships attributable to the Lots and Parcels in his District, and the director appointed by the Declarant shall have the number of votes equal to the number of memberships attributable to the Lots and Parcels owned by the Declarant. Unless the

Community Documents specifically require the vote or written consent of the Members, approvals or actions to be given or taken by the Association shall be valid if given or taken by the Board.

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

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

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

6.6 **Identity of Members.** The members of the Association shall be the Declarant, the District Developers, the Builders and the Owners of Lots and Parcels which are Assessable Property. An Owner of a Lot or Parcel which is Assessable Property shall automatically, upon becoming the Owner thereof, be a member of the Association and shall remain a member of the Association until such time as his ownership ceases for any reason, at which time his membership in the Association shall automatically cease. Membership in the Association shall be appurtenant to each Lot and Parcel which is Assessable Property and may not be separately assigned, transferred or conveyed.

6.7 **Allocation of Memberships.**

6.7.1 Each Member shall have one membership for each Lot or Condominium Unit owned by the Member and one membership for each Residential Unit or Condominium Unit that could be constructed on any Parcel owned by such Member under the

zoning ordinances of the City of Surprise. If a subdivision plat, condominium plat or other instrument creating Lots or Condominium Units is Recorded covering all or part of the area within the Parcel, the Parcel shall be reduced in size by the area so platted and the number of memberships allocated to such Parcel shall be reduced by a number equal to the number of Lots or Condominium Units in the Recorded subdivision plat or condominium plat. All memberships attributable to the Parcel shall cease when the land ceases to be a Parcel because all of the area in the Parcel has been platted or otherwise dedicated to the public and no unplatted area remains within the Parcel.

6.8 Voting. The Association shall have the following two classes of voting Memberships:

Class A. Class A memberships shall be all memberships except for the Class B memberships held by the Declarant, the District Developers and the Builders, and each Owner shall be entitled to one (1) vote for each Class A membership held by such Owner.

Class B. Class B memberships shall be all memberships held by the Declarant, the District Developers and the Builders. The Declarant and each District Developer and Builder shall be entitled to three (3) votes for each membership held by the Declarant, the District Developer or the Builder. The Class B memberships shall cease and be converted to Class A memberships on the earlier of the following:

(a) Ninety (90) days after the total votes outstanding in the Class A memberships equal the total votes outstanding in the Class B memberships; or

(b) The first day of January, 2010; or

(c) At any time by the Declarant and all District Developers and Builders have given written notice to the Association that they desire to convert their Class B memberships to Class A memberships.

6.9 Voting Procedures. No change in the ownership of a Lot or Parcel shall be effective for voting purposes unless and until the Board is given actual written notice of such change and is provided satisfactory proof thereof. The vote or votes for each such Lot or Parcel must be cast as a unit, and fractional votes shall not be allowed. In the event that a Lot or Parcel is owned by more than one Person and such Owners are unable to agree among themselves as to how their vote or votes shall be cast, they shall lose their right to vote on the matter in question. If any Member casts a vote or votes representing a certain Lot or Parcel, it will thereafter be conclusively presumed for all purposes that he was acting with the authority and consent of all other Owners of the same Lot or Parcel unless objection thereto is made at the time the vote is cast.

6.10 Transfer of Membership. The rights and obligations of any Member other than the Declarant shall not be assigned, transferred, pledged, conveyed or alienated in any way

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except upon transfer of ownership of an Owner's Lot or Parcel, and then only to the transferee of ownership to the Lot or Parcel. A transfer of ownership to a Lot or Parcel may be effected by deed, intestate succession, testamentary disposition, foreclosure of a mortgage of record, or such other legal process as now in effect or as may hereafter be established under or pursuant to the laws of the State of Arizona. Any attempt to make a prohibited transfer shall be void. Any transfer of ownership to a Lot or Parcel shall operate to transfer the Membership appurtenant to said Lot or Parcel to the new Owner thereof. Each Purchaser of a Lot or Parcel shall notify the Association of his purchase within ten (10) days after he becomes the Owner of a Lot or Parcel.

6.11 Conveyance or Encumbrance of Common Area. Except for dedications to the City of Surprise, the Master Common Area shall not be mortgaged, transferred, dedicated or encumbered without the prior written consent or affirmative vote of (i) Owners representing at least two-thirds (2/3) of the votes entitled to be cast Owners holding Class A memberships in the Association, (ii) the Declarant so long as the Declarant owns any Lot or Parcel, (iii) District Developers representing at least two-thirds (2/3) of the votes entitled to be cast by all District Developers, and (iv) Builders representing at least two-thirds (2/3) of the votes entitled to be cast by all Builders.

6.12 Suspension of Voting Rights. If any Owner fails to pay any Assessments or other amounts due to the Association under the Community Documents within thirty (30) days after such payment is due or if any Owner violates any other provision of the Community Documents and such violation is not cured within thirty (30) days after the Association notifies the Owner of the violation, the Board shall have the right to suspend such Owner's right to vote until such time as all payments, including interest and attorneys' fees, are brought current, and until any other infractions or violations of the Community Documents are corrected.

6.13 District Representatives.

6.13.1 So long as a District Developer owns any Lot or Parcel in its District, the District Developer shall have the right to appoint and remove the District Representative for the District. After the District Developer no longer owns any Lot or Parcel in its District, the District Representative for the District shall be elected by the Owners of the Lots and Parcels in the District by mail ballot at least ten (10) but not more than fifty (50) days prior to the annual meeting of the Members of the Association in accordance with the mail ballot procedures set forth in the Bylaws or adopted by the Board. Each District Representative shall serve a term of one (1) year or until a successor is elected, whichever is later, unless the District Representative shall resign or be removed pursuant to this Section 6.13.

6.13.2 Any District Representative elected by the Owners of the Lots and Parcels in the District may be removed with or without cause by the vote in person or by proxy of the Owners of Lots and Parcels in the District representing more than fifty percent (50%) of the Owners voting in person or by proxy at a duly called meeting of the Owners of the Lots and Parcels

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in the District. If a District Representative is removed pursuant to this Subsection, then the Members present in person or by proxy at the meeting at which the District Representative is removed shall elect a successor to serve the remainder of the term of the District Representative who was removed from office. The presence in person or by proxy of Owners entitled to cast at least ten percent (10%) of the votes entitled to be cast by all Owners of Lots and Parcels in the District shall constitute a quorum at a meeting called pursuant to this Subsection. A meeting of the Owners of Lots and Parcels in a District for the purpose of removing the District Representative shall be called by the President or Secretary of the Association within thirty (30) days after receipt of a written petition requesting such a meeting and signed by Owners entitled to cast at least twenty-five percent (25%) of the total votes entitled to be cast by all Owners of Lots and Parcels in the District.

6.13.3 A District Representative may resign at any time by giving notice to the Secretary of the Association. If the District Developer for the District still owns any Lot or Parcel in the District, the District Developer shall appoint a person to fill the vacancy and serve the remainder of the term of the District Representative who resigned. If the District Developer for the District no longer owns any Lot or Parcel in the District, the vacancy shall be filled by the remaining directors and the person appointed to fill the vacancy shall serve the remainder of the term of the District Representative who resigned.

ARTICLE 7

COVENANT FOR ASSESSMENTS AND CREATION OF LIEN

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

7.2 Annual Assessments. In order to provide for the operation and management of the Association and to provide funds for the Association to pay all Common Expenses and to perform its duties and obligations under the Community Documents, including the establishment of replacement and maintenance reserves, the Board, for each Assessment Period shall assess against each Lot and Parcel which is Assessable Property an Annual Assessment. The Board shall give notice of the Annual Assessment to each Owner at least thirty (30) days prior to the

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

7.3 Determination of Annual Assessment. For each Assessment Period, the Board shall determine the amount which is reasonably estimated by the Board to produce income to the Association equal to the total budgeted Common Expenses (other than Common Expenses pertaining to Subdivision Common Areas and Subdivision Services which are to be assessed as Subdivision Assessments) taking into account other sources of funds available to the Association (the "Budget Amount"). The amount of the Annual Assessment to be levied against each Lot and Parcel shall then be determined as follows:

- (a) For purposes of this Section 7.3, the term "Membership Assessment" shall mean the Budget Amount divided by the total number of memberships attributable to the Lots and Parcels which are Assessable Property.
- (b) Except for Lots and Parcels covered by Subsections (c), (d) or (e) of this Section 7.3, each Lot and Parcel shall be assessed an Annual Assessment in an amount equal to the number of memberships attributable to such Lot or Parcel multiplied by the Membership Assessment.
- (c) Each Parcel owned by a District Developer or Builder shall be assessed 12.5% of the amount equal to the number of memberships attributable to the Parcel multiplied by the Membership Assessment.
- (d) Each Lot and Condominium Unit owned by a District Developer or Builder or successor Declarant shall be assessed 25% of the amount equal to the number of memberships attributable to the Lots or Condominium Units multiplied by the Membership Assessment.
- (e) Each Lot, Condominium Unit and Parcel owned by the original Declarant shall be assessed 12.5% of the amount equal to the number of memberships attributable to such Lot, Condominium Unit or Parcel multiplied by the Membership Assessment, but this reduced assessment shall not apply to a successor Declarant.

7.4 Deficiency Obligation of Declarant, District Developers and Builders. The Declarant and each District Developer and Builder that owns Lots, Condominium Units or Parcels entitled to a reduced rate of assessment pursuant to Section 7.3 of this Declaration shall pay to the Association a percentage share of the difference

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between the actual cost of operating and administering the Association and the total amount assessed as an Annual Assessment pursuant to Section 7.3 of this Declaration. The percentage of such deficiency payable by the Declarant and each District Developer and Builder shall be determined by dividing the number of memberships held by the Declarant, District Developer or Builder by the total number of memberships held by the Declarant and all District Developers and Builders obligated to pay the deficiency as of the date the request for payment of the deficiency is made by the Association. The Declarant and each District Developer and Builder shall pay its percentage share of any such deficiency within thirty (30) days after receipt of a billing therefor from the Association.

7.5 Special Assessments. The Association may levy against each Lot or Parcel which is Assessable Property a Special Assessment for the purpose of paying, in whole or in part, the cost of any construction, reconstruction, repair or replacement of an Improvement upon an Area of Association Responsibility, including fixtures and personal property related thereto, provided that any Special Assessment is approved by Members having more than two-thirds (2/3) of the votes in each Class of Membership entitled to be cast by Members present in person or by proxy at a meeting duly called for such purpose. Special Assessments shall be levied at a uniform rate per membership.

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

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

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

7.8.1 Any Assessment, or any installment of an Assessment, which is not paid within fifteen (15) days (or such longer period as may be provided by law) after the Assessment, or the installment of the Assessment, first became due shall be delinquent and shall bear interest from the due date at the rate of twelve percent (12%) per annum. In addition, the Board may establish a late fee to be charged to any Owner who has not paid any Assessment, or any installment of an Assessment, before such Assessment, or any installment thereof, became delinquent.

7.8.2 The Association shall have a lien on each Lot or Parcel for: (i) all Assessments levied against the Lot or Parcel; (ii) all interest, lien fees, late charges and other fees and charges assessed against the Lot or Parcel or payable by the Owner of the Lot or Parcel; (iii) all monetary penalties levied against the Owner of the Lot or Parcel; (iv) all attorney fees, court costs, title report fees, costs and fees charged by any collection agency either to the Association or to an Owner and any other fees or costs incurred by the Association in attempting to collect Assessments or other amounts due to the Association by the Owner of a Lot or Parcel; (v) any amounts payable to the Association pursuant to Section 8.3 or 8.4 of this Declaration; and (vi) any other amounts payable to the Association pursuant to the Community Documents. The Recording of this Declaration constitutes record notice and perfection of the Assessment Lien. The Association may, at its option, record a Notice of Lien setting forth the name of the delinquent owner as shown in the records of the Association, the legal description or street address of the Lot or Parcel against which the Notice of Lien is recorded and the amount claimed to be past due as of the date of the Recording of the Notice, including interest, lien recording fees and reasonable attorneys' fees. Before recording any Notice of Lien against a Lot or Parcel, the Association shall make a written demand to the defaulting Owner for payment of the delinquent Assessments and all other amounts due to the Association by such Owner. The demand shall state the date and amount of the delinquency. Each default shall constitute a separate basis for a demand, but any number of defaults may be included within the single demand. If the delinquency is not paid within ten (10) days after delivery of the demand, the Association may proceed with Recording a Notice of Lien against the Lot or Parcel. If the Association records a Notice of Lien, the Association may charge the Owner of the Lot or Parcel against which the Notice of Lien is Recorded a lien fee in an amount to be set from time to time by the Board.

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

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by the First Mortgagee or other Person. Any Assessments and charges against the Lot or Parcel which accrue prior to such sale or transfer shall remain the obligation of the defaulting Owner of the Lot or Parcel.

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

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

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

7.10 Purposes for which Association's Funds May Be Used. The Association shall use all funds and property collected and received by it (including the Assessments, fees, loan proceeds, surplus funds and all funds and property received by it from any other source) solely for the purpose of (i) discharging and performing the Association's duties and obligations under the Community Documents; (ii) exercising the rights and powers granted to the Association by the Community Documents, and (iii) the common good and benefit of the Project and the Owners, Lessees and Residents by devoting said funds and property, among other things, to the acquisition, construction, alteration, maintenance, provision and operation, by any manner or method whatsoever, of any and all land, properties, improvements, facilities, services, projects, programs, studies and systems, within or without the Project, which may be necessary, desirable or beneficial to the general common interests of the Project, the Owners, Lessees and Residents. Notwithstanding any other provision of this Declaration to the contrary, so long as there is a Class B membership

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in the Association, funds of the Association may not be used for the initial construction of Improvements on the Master Common Area.

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

7.12 Working Capital Fund. To ensure that the Association shall have adequate funds to meet its expenses or to purchase necessary equipment or services, each Purchaser (other than a District Developer or Builder) of a Lot or Parcel from the Declarant and each Purchaser of a Lot or Parcel from a District Developer or a Builder shall pay to the Association immediately upon becoming the Owner of the Lot or Parcel a sum equal to one-sixth (1/6th) of the then current Membership Assessment (as defined in Section 7.3(a) of this Declaration) multiplied by the number of Memberships attributable to the Lot or Parcel. Funds paid to the Association pursuant to this Section may be used by the Association for payment of operating expenses or any other purpose permitted under the Community Documents. Payments made pursuant to this Section shall be nonrefundable and shall not be considered as an advance payment of any Assessments levied by the Association pursuant to this Declaration.

7.13 Transfer Fee. Each Person who purchases a Lot or Parcel from a Person other than the Declarant, a District Developer or a Builder shall pay to the Association immediately upon becoming the Owner of the Lot or Parcel a transfer fee in such amount as is established from time to time by the Board.

ARTICLE 8

MAINTENANCE

8.1 Areas of Association Responsibility. The Association, or its duly delegated representative, shall manage, maintain, repair and replace the Areas of Association Responsibility, and all Improvements located thereon, except for any part of the Areas of Association Responsibility which any governmental entity is maintaining or is obligated to maintain. The Board shall be the sole judge as to the appropriate maintenance, repair and replacement of all Areas of Association Responsibility, but all Areas of Association Responsibility, and the Improvements located thereon, shall be maintained in good condition and repair at all times. No Owner, Resident or other Person shall construct or install any Improvements on the Master Common Area or alter, modify or remove any Improvements situated on the Master Common Area without the approval of the Board. No Owner, Resident or other person shall remove, add to or modify any plants, trees, granite or other

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landscaping Improvements in the part of their Lot or Parcel which constitutes an Area of Association Responsibility without the prior written approval of the Board. No Owner, Resident or other Person shall obstruct or interfere with the Association in the performance of the Association's maintenance, repair and replacement of the Areas of Association Responsibility, and the Improvements located thereon.

8.2 Lots and Parcels. Each Owner of a Lot or Parcel shall be responsible for maintaining, repairing or replacing his Lot or Parcel, and all buildings, Residential Units, landscaping or other Improvements situated thereon, except for any portion of the Lot or Parcel which is an Area of Association Responsibility. All buildings, Residential Units, landscaping and other Improvements shall at all times be kept in good condition and repair. All grass, hedges, shrubs, vines and plants of any type on a Lot shall be irrigated, mowed, trimmed and cut at regular intervals so as to be maintained in a neat and attractive manner. Trees, shrubs, vines, plants and grass which die shall be promptly removed and replaced with living foliage of like kind, unless different foliage is approved in writing by the Architectural Committee. No yard equipment, wood piles or storage areas may be maintained so as to be Visible From Neighboring Property or streets. All Lots and Parcels upon which no Residential Units, buildings or other structures, landscaping or Improvements have been constructed shall be maintained in a weed free and attractive manner.

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

8.4 Improper Maintenance and Use of Lots or 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 Project 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 his obligations under the Community Documents, the Board may make a finding to such effect, specifying the particular condition or conditions which exist, and pursuant thereto give notice thereof to the offending Owner that unless corrective action is taken within fourteen (14) days, the Board may cause such action to be taken at said Owner's cost. If at the expiration of said fourteen day period of time the requisite corrective action has not been taken, the Board shall be authorized and empowered to cause such action to be taken and the cost thereof shall be paid by such Owner to the Association upon demand and payment of such amounts shall be secured by the Assessment Lien.

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8.5 Boundary Walls.

8.5.1 Each wall or fence which is located between two Lots or Parcels shall constitute a boundary wall and, to the extent not inconsistent with this Section 8.5, the general rules of law regarding boundary walls shall apply.

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

8.5.3 The adjoining Owners shall each have the right to perform any necessary maintenance, repair or replacement of the wall and the cost of such maintenance, repair or replacement shall be shared equally by the adjoining Owners except as otherwise provided in this Section; provided, however, that each Owner shall be solely responsible for painting the side of the wall which faces his Lot or Parcel.

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

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

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

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

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

8.6 Maintenance of Walls other than Boundary Walls.

8.6.1 Unless otherwise provided in a Supplemental Declaration, walls (other than boundary walls governed by Section 8.5 or walls covered by Subsections 8.6.2 and 8.6.3 of this Declaration) located on a Lot or Parcel shall be maintained, repaired and replaced by the Owner of the Lot or Parcel. Unless otherwise provided in a Supplemental

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Declaration, walls which constitute a boundary wall between a Lot or Parcel and an Area of Association Responsibility (other than walls covered by Subsections 8.6.2 and 8.6.3 of this Declaration) shall be maintained, repaired and replaced by the Association except that the Owner of the Lot or Parcel shall maintain, repair and replace the surface of the side of the wall which faces the Lot or Parcel.

8.6.2 Any wall which consists of masonry columns and/or masonry base and wrought iron fencing which separates a Lot or Parcel and an Area of Association Responsibility shall be maintained, repaired and replaced by the Owner of the Lot or Parcel, except that the Association shall be responsible for the painting, repair, maintenance and replacement of (i) the top of the masonry wall or columns, (ii) the side(s) of the masonry wall or columns which are visible from the Area of Association Responsibility, and (iii) all portions of any wrought iron fencing. The Owner of the Lot or Parcel shall be responsible for reimbursing the Association for one-half (½) of the cost incurred by the Association in painting, repairing and/or replacing any such wrought iron fencing. Any reimbursement due to the Association from an Owner pursuant to this Subsection shall be paid by the Owner to the Association within fifteen (15) days after receipt of a bill, invoice or other demand from the Association for such reimbursement amount.

8.6.3 If the Association deems it necessary to trim, cut or remove vines, plants, trees, bushes, shrubs or other landscaping planted on a Lot or Parcel in order for the Association to be able to perform its maintenance responsibilities under this Section, the Association shall give notice to the Owner of the applicable Lot or Parcel identifying the work which must be done in order for the Association to be able to perform its maintenance responsibilities and the date by which such work must be completed. If the Owner does not perform the work identified in the notice within the time period set forth in the notice, then the Association shall have the right to perform the necessary work and charge the Owner for all costs incurred by the Association in the performance of the work. Any such amounts which become payable by an Owner to the Association pursuant to this Subsection shall be paid by the Owner within fifteen (15) days after receipt of a billing, invoice or other demand from the Association for payment of such amount. The Association shall not be liable to the Owner of a Lot or Parcel or to any other Person for any loss or damage to the landscaping or for any change in appearance of a Lot or Parcel as a result of any work performed by the Association on a Lot or Parcel pursuant to this Subsection. The Association shall be liable to the Owner of a Lot or Parcel for any damage to a wall caused by the Association in the exercise of the Association's rights under this Section 8.6.

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

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ARTICLE 9

INSURANCE

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

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

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

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

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

9.1.5 The insurance policies purchased by the Association shall, to the extent reasonably available, contain the following provisions: (i) that there shall be no subrogation with respect to the Association, its agents, servants, and employees, with respect to Owners and members of their household; (ii) no act or omission by any Owner, unless acting within the scope of his authority on behalf of the Association, will void the policy or be a condition to recovery on the policy; (iii) that the coverage afforded by such policy shall not be brought into contribution or proration with any insurance which may be purchased by Owners or their mortgagees or beneficiaries under deeds of trust; (iv) a "severability of interest" endorsement which shall preclude the insurer from denying the claim of an Owner because of the negligent acts of the Association or other Owners; (v) statement of the name of the insured as the Association; and (vi) for policies of hazard insurance, a standard mortgagee clause providing that the insurance carrier shall notify the first mortgagee named in the policy at least ten (10) days in advance of the effective date of any substantial modification, reduction or cancellation of the policy;

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

9.3 **Payment of Premiums.** The premiums for any insurance obtained by the Association pursuant to Section 9.1 of this Declaration shall be included in the budget of the Association and shall be paid by the Association.

9.4 **Payment of Insurance Proceeds.** With respect to any loss to any Area of Common Responsibility covered by property insurance obtained by the Association in accordance with this Article, the loss shall be adjusted with the Association, and the insurance proceeds shall be payable to the Association and not to any mortgagee or beneficiary under a deed of trust. Subject to the provisions of Section 9.5 of this Declaration, the proceeds shall be disbursed for the repair or restoration of the damage to the Area of Association Responsibility.

9.5 **Repair and Replacement of Damaged or Destroyed Property.** Any portion of the Areas of Association Responsibility which is damaged or destroyed shall be repaired or replaced promptly by the Association unless (i) repair or replacement would be illegal under any state or local health or safety statute or ordinance, or (ii) Owners representing at least eighty percent (80%) of the total authorized votes in the Association vote not to rebuild. The cost of repair or replacement in excess of insurance proceeds and reserves shall be paid by the Association. If all of the Areas of Association Responsibility are not repaired or replaced, insurance proceeds attributable to the damaged Areas of Association Responsibility shall be used to restore the damaged area to a condition which is not in violation of any state or local health or safety statute or ordinance and the remainder of the proceeds shall either (i) be retained by the Association as an additional capital reserve, or (ii) be used for payment of operating expenses of the Association if such action is approved by the affirmative vote or written consent, or any combination thereof, of Members representing more than fifty percent (50%) of the votes in the Association.

ARTICLE 10

GENERAL PROVISIONS

10.1 **Enforcement.** The Association or any Owner shall have the right to enforce the Community Documents in any manner provided for in the Community Documents or by law or in equity, including, but not limited to, an action to obtain an injunction to compel removal of any Improvements constructed in violation of this

Declaration or to otherwise compel compliance with the Community Documents. The failure of the Association or an Owner to take enforcement action with respect to a violation of the Community Documents shall not constitute or be deemed a waiver of the right of the Association or any Owner to enforce the Community Documents in the future. If any lawsuit is filed by the Association or any Owner to enforce the provisions of the Community Documents or in any other manner arising out of the Community Documents or the operations of the Association, the prevailing party in such action shall be entitled to recover from the other party all attorney fees incurred by the prevailing party in the action. In addition to any other rights or remedies available to the Association pursuant to the Community Documents or at law or in equity, the Board shall have the power to levy reasonable monetary penalties against an Owner for a violation of the Community Documents by the Owner, a Lessee of the Owner or, in the case of a Residential Lot or Condominium Unit, by any Resident of the Owner's Lot, provided the Owner is given notice and an opportunity to be heard.

10.2 Duration; Termination. The covenants, conditions, restrictions and easements contained in this Declaration, as amended from time to time pursuant to Section 10.3 of this Declaration, shall run with and bind the Property and continue in full force and effect in perpetuity unless terminated pursuant to this Section. This Declaration may be terminated at any time if such termination is approved by the affirmative vote or written consent, or any combination thereof, of Owners representing ninety percent (90%) or more of the votes in each class of membership and by the holders of First Mortgages on Lots or Parcels, the Owners of which have seventy-five percent (75%) or more of the votes in the Association. If the necessary votes and consents are obtained, the Board shall cause to be Recorded 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.

10.3 Amendments.

10.3.1 Except for amendments made pursuant to Subsection 10.3.2 or 10.3.5 of this Declaration, the Declaration may only be amended by the written approval or the affirmative vote, or any combination thereof, of Owners representing not less than seventy-five percent (75%) of the total votes in the Association.

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

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10.3.3 So long as the Declarant is a Member of the Association, any amendment to this Declaration must be approved in writing by the Declarant.

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

10.3.5 The Declarant, so long as the Declarant is a Member of the Association, and thereafter, the Board, may amend this Declaration without the consent of any other Owner to correct any error or inconsistency in the Declaration.

10.3.6 So long as the Declarant holds more than seventy-five percent (75%) of the votes in the Association, any amendment to this Declaration shall be signed by Declarant and Recorded. At any time the Declarant does not hold at least seventy-five percent (75%) of the votes in the Association, any amendment approved pursuant to Subsection 10.3.1 of this Declaration or by the Board pursuant to Subsection 10.3.2 or 10.3.5 of this Declaration shall be signed by the President or Vice President of the Association and shall be Recorded, and any such amendment shall certify that the amendment has been approved as required by this Section. Any amendment made by the Declarant pursuant to Subsection 10.3.2 or 10.3.5 of this Declaration shall be signed by the Declarant and Recorded. Unless a later effective date is provided for in the amendment, any amendment to this Declaration shall be effective upon the Recording of the amendment.

10.4 Rights of First Mortgagees.

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

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

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

(i) Seek to abandon, partition, subdivide, sell or transfer the Common Area owned, directly or indirectly, by the Association for the benefit of the Lots. The granting of easements for public utilities or for other public purposes consistent

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with the intended use of such Common Area shall not be deemed a transfer within the meaning of this Subsection;

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

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

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

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

10.4.4 No provision of this Declaration gives or shall be construed as giving any owner or other Person priority over any rights of a First Mortgagee of a Lot in the case of the distribution to such Owner of insurance proceeds or condemnation awards for losses to or taking of the Common Area.

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

10.4.6 In the event of any conflict or inconsistency between the provisions of this Section and any other provision of the Community Documents, the provisions of this Section shall prevail; provided, however, that in the event of any conflict or inconsistency between the provisions of this Section and any other provisions of the Community Documents with respect to the number or percentage of Owners or First Mortgagees that must consent to (i) an amendment of the Declaration, Articles or Bylaws, (ii) a termination of the Project, or (iii) certain actions of the Association as specified in Subsection 10.4.3 of this Declaration, the provision requiring the consent of the greatest number or percentage of Owners or First Mortgagees shall prevail; provided, however, that the Declarant, so long as the Declarant owns any Lot, and thereafter, the Board, without the consent of any Owner or First Mortgagee being required, shall have the right to amend this Declaration, the Articles of the Bylaws in order to conform this Declaration, the Articles or the Bylaws to the requirements or guidelines of the Federal National Mortgage Association, the Federal Home Loan Mortgage Corporation, the Federal Housing Administration, the Veterans Administration or any federal, state or local governmental agency whose approval of the Project, the Plat or the Community Documents is required or requested by the Declarant or the Board.

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10.5 Condemnation of Common Area. If all or any part of the Master Common Area is taken or condemned, or conveyed by the Association in lieu of or under threat of such condemnation with the written consent or affirmative vote of Owners representing at least eight percent (80%) of the votes in the Association, by or to any authority having the power of condemnation or eminent domain, the award or other compensation paid as a result of such taking or conveyance shall be paid to the Association. If the taking involves a portion of the Master Common Area upon which Improvements have been constructed, then the Association shall construct replacement Improvements on the remaining Master Common Area to the extent land is available for such construction, unless within sixty (60) days after such taking the Owners having at least eighty percent (80%) of the votes in the Association, by written consent or affirmative vote, or any combination thereof, instruct the Board not to build replacement Improvements. If such replacement Improvements are to be constructed, then the Association shall be entitled to use the award or other compensation made for such taking solely for the purpose of such construction. If the taking does not involve any Improvements on the Common Area or if the Owners representing more than eighty percent (80%) of the votes in the Association decide not to construct any replacement Improvements or if there are any net funds remaining after such construction is completed, then such awarded net funds shall be retained by the Association and used for such purposes as may be determined by the Board.

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

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

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

10.9 Notice of Violation. The Association shall have the right to record against a Lot or Parcel a written notice of a violation with respect to any violation of the Community Documents by the Owner, Lessee or Resident of the Lot or Parcel. The notice shall be executed by an officer of the Association and shall contain substantially the following information: (i) the name of the Owner, Lessee or Resident violating, or responsible for the violation of, the Community Documents; (ii) the legal description of the Lot or Parcel against which the notice is being Recorded; (iii) a brief description of the

nature of the violation; (iv) a statement that the notice is being Recorded by the Association pursuant to this Declaration; and (v) a statement of the specific steps which must be taken by the Owner, Lessee or Resident to cure the violation. Recordation of a notice of violation shall serve as notice to the Owner, Lessee and Resident, and any subsequent purchaser of the Lot or Parcel, that there is such a violation. If, after the recordation of such notice, it is determined by the Association that the violation referred to in the notice does not exist or that the violation referred to in the notice has been cured, the Association shall Record a notice of compliance with shall state the legal description of the Lot or Parcel against which the notice of violation was Recorded, and the recording data of the notice of violation, and shall state that the violation referred to in the notice of violation has been cured or that the violation did not exist. Failure by the Association to Record a notice of violation shall not constitute a waiver of any such violation, constitute any evidence that no violation exists with respect to a particular Lot or Parcel or constitute a waiver of any right of the Association to enforce the Community Documents.

10.10 Laws, Ordinances and Regulations.

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

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

10.11 **References to this Declaration in Deeds.** Deeds to and instruments affecting any Lot, Parcel or any other part of the Project may contain the covenants, conditions and restrictions herein set forth by reference to this Declaration; but regardless of whether any such reference is made in any Deed or instrument, each and all of the provisions of this Declaration shall be binding upon the grantee-Owner or other person claiming through any instrument and his heirs, executors, administrators, successors and assignees.

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

10.13 **Captions and Titles.** All captions, titles or headings of the Articles and Sections in this Declaration are for the purpose of reference and convenience only and

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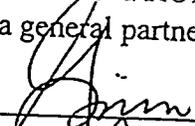
are not to be deemed to limit, modify or otherwise affect any of the provisions hereof or to be used in determining the intent of context thereof.

10.14 FHA/VA Approval. So long as there is a Class B membership in the Association, the following actions shall require the prior written approval of the Federal Housing Administration or the Veterans Administration: annexation of additional properties, dedication of common areas, an amendment to this Declaration.

10.15 No Absolute Liability. No provision of the Community Documents shall be interpreted or construed as imposing on Owners absolute liability for damage to the Master Common Area. Owners shall only be responsible for damage to the Master Common Area caused by the Owners' negligence or intentional acts.

10.16 References to VA and FHA. In various places throughout the Community Documents, references are made to the Department of Veterans Affairs ("VA") and the Federal Housing Administration ("FHA") and, in particular, to various consents or approvals required of either or both of such agencies. Such references are included so as to cause the Community Documents to meet certain requirements of such agencies should Declarant request approval of the Project by either or both of those agencies. However, Declarant shall have no obligation to request approval of the Project by either or both of such agencies. Unless and until the VA or the FHA have approved the Project as acceptable for insured or guaranteed loans and at any time during which such approval, once given, has been revoked, withdrawn, cancelled or suspended and there are no outstanding mortgages or deeds of trust recorded against a Lot to secure payment of an insured or guaranteed loan by either of such agencies, all references herein to required approvals or consents of such agencies shall be deemed null and void and of no force and effect.

GROUP SIX PROPERTIES, an
Arizona general partnership

By: 
Its: President

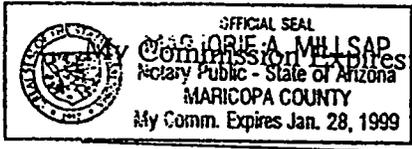
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State of Arizona)
) ss.
County of)

Acknowledged before me this 14th day of January, 1996, by Gary Douglas Forhjelrn, the President of Group Six Properties, an Arizona general partnership, on behalf of the general partnership.

Maioire A. Millson
Notary Public



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EXHIBIT A

LEGAL DESCRIPTION OF PROPERTY

Parcels 1, 2, 3 and 4, according to the Map of Dedication for West Point Towne Center recorded in Book 43 of Maps, page 33, records of Maricopa County, Arizona.