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Phyllis H. Parise, Esq.  
LAW OFFICES OF PHYLLIS H. PARISE, P.C.  
5125 N. 16th Street, Ste. B223  
Phoenix, Arizona 85016

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**DECLARATION OF COVENANTS, CONDITIONS,  
RESTRICTIONS AND EASEMENTS  
FOR  
LOST DUTCHMAN GARDENS  
PINAL COUNTY, ARIZONA**

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**DECLARATION OF COVENANTS, CONDITIONS,  
RESTRICTIONS AND EASEMENTS  
FOR  
LOST DUTCHMAN GARDENS**

This Declaration of Covenants, Conditions, Restrictions and Easements for Lost Dutchman Gardens (the "Declaration") is made this \_\_\_ day of March, 2000, by ALC BUILDERS, INC., an Arizona corporation (the "Declarant").

**RECITALS**

- A. Declarant is the owner of that certain parcel of real property situated in Pinal County, Arizona, more particularly described on Exhibit A attached hereto and incorporated herein by this reference (the "Project").
- B. Declarant desires to create a planned residential community which will include common retention and landscaping facilities for the benefit of the community as further provided herein.

NOW, THEREFORE, Declarant, for the purposes set forth above, declares as follows:

**ARTICLE 1 DEFINITIONS**

In addition to the definitions contained elsewhere in the Project Documents, and unless otherwise defined, the following words and phrases when used in this Declaration shall have the meanings set forth in this Article.

1.1 "Area(s) of Association Responsibility" means (i) all Common Area; (ii) all land, and the Improvements situated thereon, located within the boundaries of a Lot which the Association is obligated to maintain, repair and replace pursuant to the terms of this Declaration or the terms of another recorded document executed by the Association; and (iii) all real property, and the Improvements situated thereon, within the Project located within dedicated rights-of-way with respect to which the State of Arizona or any county or municipality has not accepted responsibility for the maintenance thereof, but only until such time as the State of Arizona or any county or municipality has accepted all responsibility for the maintenance, repair and replacement of such areas.

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

1.3 "Assessment" means an Annual Assessment or Special Assessment or any other charge properly levied against a Lot by the Association pursuant to this Declaration or Arizona law.

1.4 "Assessment Lien" means the lien created and imposed by Article 6 of this Declaration and Arizona law.

1.5 "Association" means the Arizona nonprofit corporation to be organized by Declarant to administer and enforce the Project Documents and to exercise the rights, powers and duties set forth therein, and its successors and assigns. Declarant intends to incorporate the Association under the name "Lost Dutchman Gardens Homeowners Association," but if such name is not available, Declarant reserves the right to incorporate the Association under such other name as the Declarant deems appropriate.

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

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

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

1.9 "Common Area" means (i) Tract A according to the Plat, and (ii) all land, together with all Improvements situated thereon, which the Association at any time owns in fee or in which the Association has a leasehold interest for as long as the Association is the owner of the fee or leasehold interest.

1.10 "Common Expense(s)" means expenditures made by or financial liabilities incurred by the Association, together with allocations to reserves.

1.11 "First Mortgage" means any mortgage or deed of trust on a Lot which has priority over all other mortgages and deeds of trust on the same Lot, with the holder or beneficiary of First Mortgage being a "First Mortgagee."

1.12 "Improvement" means any building, fence, gate, sidewalk, wall, swimming pool, spa, or other structures, road, driveway, parking area, mailboxes, permanent signage, and lighting fixtures, and trees, plants, shrubs, grass or other landscaping of every type and kind.

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

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

1.15 "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 title interest of a Lot. An 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. An Owner shall not include: (i) Persons having an interest in a Lot merely as security for the performance of an obligation; (ii) a lessee or (iii) a purchaser under a purchase contract and receipt, escrow instructions or similar executory contract which are intended to control the rights and obligations

of the parties to the executory contract pending the closing of a sale or purchase transaction. In the case of Lots the fee simple title to which is vested in a trustee pursuant to A.R.S. §33-801 et seq., the trustor shall be deemed to be the Owner. In the case of Lots, the fee simple title to which is vested in a trustee pursuant to a subdivision trust agreement or similar agreement, the beneficiary of any such trust who is entitled to possession of the trust property shall be deemed to be the Owner.

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

1.17 **"Plat"** means the plat of LOST DUTCHMAN GARDENS recorded on January 24, 2000 in Cabinet C, Slide 115, records of Pinal County, Arizona, and Affidavit of Correction recorded on February 16, 2000 at Fee No. 2000-007075, records of Pinal County, Arizona and all amendments, supplements and corrections thereto.

1.18 **"Project Documents"** means this Declaration, the Articles, the Bylaws, and the Association Rules, if any.

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

1.20 **"Resident"** means each individual lawfully occupying or residing in any Residential Dwelling, including, without limitation, the Owner or lessee of a Lot and their family members and other members of their household residing with them on a regular basis.

1.21 **"Residential Dwelling"** means any building, or portion of a building, situated on a Lot and designed and intended for independent ownership and for use and occupancy as a residence, and shall include any detached garage building except as required by context.

1.22 **"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 on any part of such neighboring property at an elevation no greater than the elevation of the base of the object being viewed.

1.23 **"Yard"** means the portion of the Lot devoted to Improvements other than the Residential Dwelling. **"Private Yard"** means that portion of a Yard which is enclosed or shielded from view by walls, fences, hedges or the like so that it is not generally Visible from Neighboring Property. **"Public Yard"** means that portion of a Yard which is generally Visible from Neighboring Property, whether or not it is located in front of, beside, or behind the Residential Dwelling.

## ARTICLE 2 PROJECT PLAN

2.1 Project General Plan; Binding Effect. This Declaration is being recorded to establish a general plan for the development, sale, lease and use of the Project in order to protect and enhance the value and desirability of the Project. The Declarant declares that the Project shall be held, sold, and conveyed subject to this Declaration. By acceptance of a deed or by acquiring an interest in any portion of the Project, each Person, binds himself, his heirs, personal representatives, successors, transferees and assigns, and all Residents of his Lot, to all of the provisions, restrictions, covenants, conditions, and Rules now or hereafter imposed by this Declaration. In addition, each such Person by so doing thereby acknowledges that this Declaration sets forth a general scheme for the development, sale, lease and use of the Project and hereby evidences his interest that all restrictions, conditions and covenants contained in this Declaration shall run with the land and be binding on all subsequent and future Owners and their lessees, transferees, assigns and First Mortgagees. Furthermore, each such Person fully understands and acknowledges that this Declaration shall be mutually beneficial, prohibitive and enforceable by the Association and all Owners.

2.2 Disclaimer of Representations. Declarant makes no representations or warranties whatsoever that: (i) the Project will be completed in accordance with the plans for the Project as they exist on the date this Declaration is recorded; (ii) any portion of the Project will be committed to or developed for a particular use or for any use, except that all such uses shall be consistent with the development of the Project for single family residential purposes; or (iii) the use of any portion of the Project will not be changed in the future.

## ARTICLE 3 USE RESTRICTIONS

### 3.1 Architectural Control.

3.1.1 All references to "Board" in this Section 3.1 and elsewhere in this Declaration referring to matters of architectural control and design approval shall mean and refer to the Architectural Committee if one is designated by the Board pursuant to Section 5.10 below.

3.1.2 No excavation or grading work shall be performed on any Lot without the prior written approval of the Board, except for Private Yard landscaping.

3.1.3 No addition, alteration, repair, change or other work or Improvement which in any way alters the exterior appearance of any part of a Lot and/or any Improvements located thereon, from their appearance on the date this Declaration is recorded, shall be made or done without the prior written approval of the Board. Any Owner desiring approval of the Board for such construction, installation, addition, alteration, repair, change or replacement of such work or Improvement shall submit to the Board 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 Board shall also submit to the Board any additional information, plans and specifications which the Board may request. In



the event that the Board fails to approve or disapprove an application for approval within thirty (30) days after the application, together with any fee payable pursuant to Section 3.1.7 of this Declaration and all supporting information, plans and specifications requested by the Board, have been submitted to the Board, approval will not be required and this Section 3.1 will have been deemed to have been complied with by the Owner who had requested approval of such plans. The approval by the Board of any construction, installation, addition, alteration, repair, change or other work pursuant to this Section 3.1 shall not be deemed a waiver of the Board's right to withhold approval of any similar construction, installation, addition, alteration, repair, change or other work subsequently submitted for approval.

3.1.4 The Board may disapprove plans and specifications for any construction, installation, addition, alteration, repair, change or other work which must be approved by the Board pursuant to this Section 3.1 if the Board determines, in its sole and absolute discretion, that the proposed construction, installation, addition, alteration, repair, change or other work: (i) would violate any provision of this Declaration; (ii) does not comply with any Architectural Rule; (iii) is not in harmony with existing Improvements in the Project or with Improvements previously approved by the Board but not yet constructed; (iv) is not aesthetically acceptable; (v) would be detrimental to or adversely affect the appearance of the Project; or (vi) is not otherwise in accord with the general plan of development for the Project.

3.1.5 Upon receipt of approval from the Board for any construction, installation, addition, alteration, repair, change or other work, the Owner who had requested such approval shall proceed to perform or cause to be performed the work approved by the Board 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 Board.

3.1.6 Any change, deletion or addition to the plans and specifications approved by the Board must be approved in writing by the Board.

3.1.7 The Board shall have the right to charge a fee for reviewing requests for approval of any construction, installation, alteration, addition, repair, change or other work or Improvement pursuant to this Section 3.1, which fee shall be payable at the time the application for approval is submitted to the Board.

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

3.1.9 The provisions of this Section 3.1 do not apply to, and approval of the Board shall not be required for, the construction, installation, addition, alteration, repair, or change of any Improvements made by, or on behalf of, Declarant.

3.1.10 The approval required of the Board pursuant to this Section 3.1 shall be in addition to, and not in lieu of, any approvals or permits which may be required under any federal, state or local law, statute, ordinance, rule or regulation. Before commencing the work of the Improvement and, after receiving Board approval, the Owner shall provide the Board with a copy of any applicable permits required by law for the work.

3.1.11 The approval by the Board of any construction, installation, alteration, addition, repair, change or other work or Improvement pursuant to this Section 3.1 shall not be deemed a warranty or representation by the Board as to the quality of such work or that such work conforms to any applicable building codes or other federal, state or local law, statute, ordinance, rule or regulation.

3.1.12 The Board may condition its approval of plans and specifications upon the agreement of the Owner submitting such plans and specifications to furnish to the Association a bond or other security acceptable to the Board in an amount to be determined by the Board 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 Improvements, and (ii) repair any damage which might be caused to an 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 Board; and (ii) the Owner's written request to the Board, provided that there is no damage caused to an Area of Association Responsibility by the Owner or its agents or contractors.

3.1.13 If the plans and specifications pertain to an Improvement which is within an Area of Association Responsibility so that the Association is responsible for maintenance, repair and replacement of such Improvement, the Board may condition its approval of the plans and specifications for the proposed construction, installation, alteration, addition, 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.

3.2 Temporary Occupancy and Temporary Structures. No trailer, basement of an incomplete building, tent, shack, garage or barn, and no temporary buildings or structures of any kind shall be used at any time as a Residential Dwelling, either temporarily or permanently. Temporary structures used during the construction of Improvements approved by the Board shall be removed immediately after the completion of construction.

3.3 Nuisances; Construction Activities. No rubbish or debris of any kind shall be placed or permitted to accumulate upon or adjacent to any Lot or any other portion of the Project and no odors or loud noises shall be permitted to arise or emit therefrom, so as to render any portion of the Project or activity thereon, unsanitary, unsightly, offensive or detrimental to any other portion of the Project or the Residents. No nuisance shall be permitted to exist or operate upon any Lot or any other portion of the Project so as to be offensive or detrimental to any other portion of the Project or to its Residents. Without limiting the generality of any of the foregoing provisions, no exterior speakers, horns, whistles, bells or other sound devices, except ordinary and customary security devices used exclusively for security purposes, shall be located, used or placed on any Lot or any other portion of the Project. Normal construction activities and parking in connection with the building of Improvements on a Lot or other portion of the Project shall not be considered a nuisance or otherwise prohibited by this Declaration, but Lots and all other portions of the Project shall be kept in a neat and tidy condition during construction periods and trash and debris shall not be permitted to accumulate. The Board, in its sole discretion, shall have

the right to determine the existence of any such nuisance. The provisions of this Section 3.3 shall not apply to construction activities of Declarant.

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

**3.5 Antennas.** No antenna or other device for the transmission or reception of television or radio signals or any other form of electromagnetic radiation including, without limitation, satellite or microwave dishes, shall be erected, used, or maintained on any Lot without the prior written approval of the Board who may limit or restrict the placement of such antennas or other devices absent appropriate screening and architectural conformity consistent with FCC Rules as further described in Section 3.15 below.

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

**3.7 Environmental Restrictions.** All Owners and Residents in the Project shall be responsible for complying with all federal and state environmental and health laws. Without limiting the foregoing, no Resident may dispose of, transport, or store "hazardous materials" on his Lot or on the Common Area other than small amounts of ordinary household non-combustible cleaning agents maintained on his Lot or ordinary amounts of gasoline maintained to run lawn mowers and other gas powered Lot maintenance equipment. In no event may any Owner or Resident dispose of any hazardous materials, including without limitation, motor oil, hydrocarbons, or other petroleum products, in or down a dry well within or adjacent to the Project.

**3.8 Trash and Recyclable Materials Containers and Collection.** No garbage, trash, or recyclable materials shall be placed or kept on any Lot or other portion of the Project, except in covered containers of a type, size and style which are approved by the Board and/or supplied by a private trash collection company. 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, garbage and recyclable materials shall be regularly removed from Lots and other portions of the Project and shall not be allowed to accumulate thereon. No indoor or outdoor incinerators shall be kept or maintained on any Lot or other portion of the Project. The Board shall have the right to designate trash and recyclable collection points in the Project and to enact fines for those Residents who do not remove containers within a reasonable period after collection or otherwise do not comply with this Section 3.8.

**3.9 Clothes Drying Facilities.** No outside clotheslines or other outside facilities for drying or airing clothes shall be erected, placed or maintained on any Lot or other portion of the Project so as to be Visible from Neighboring Property.

**3.10 Utility Service.** Subject to the further provisions of Sections 3.15 below, 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 portion of the Project 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 Board. 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 Board.

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

**3.12 Residential Use.** Subject to the provisions of any applicable federal or state Fair Housing Acts, all Residential Dwellings shall be used, improved and devoted exclusively to residential use by a single family. In no event shall there be more than three Residents of a Residential Dwelling who are not all so related by blood, marriage, or legal adoption. Subject to such Fair Housing Acts, no trade or business may be conducted on any Lot or in or from any Residential Dwelling, except that an Owner or other Resident of a Residential Dwelling may conduct a business activity within a Residential Dwelling 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 Dwelling; (ii) the business activity conforms to all applicable zoning ordinances or requirements for the Project; (iii) the business activity does not involve persons coming onto the Lot or the door-to-door solicitation of Residents; (iv) the trade or business conducted by the Owner or Resident does not require more than one (1) employee working in or from such Residential Dwelling who is not a lawful Resident thereof; (v) the volume of vehicular or pedestrian traffic generated by such trade or business does not result in traffic congestion or parking violations; (vi) the trade or business does not use flammable liquids or hazardous materials in quantities not customary for residential use; and (vii) 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 3.12 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 to or does generate a profit; or (iii) a license is required for such activity.

The leasing of a Residential Dwelling by the Owner thereof shall not be considered a trade or business within the meaning of this Section 3.12 and the Owner of a Lot shall have the absolute right to lease his Lot and the Residential Dwelling thereon, provided that the lease is in writing and all Residents occupying the Residential Dwelling under the Lease, are specifically made subject to the covenants, conditions, restrictions, easements, limitations and uses contained in this Declaration, the Bylaws and any Association Rules and provided further that the lease shall not be for a period of less than thirty (30) days.

**3.13 Animals.** No animals, bird, fowl, poultry, reptile or livestock may be kept on a Lot temporarily or permanently, except for a reasonable number of dogs, cats, common domestic birds such as parakeets, cockatiels and parrots, or similar household pets kept, bred or raised thereon solely as domestic pets and not for commercial purposes. All dogs, cats or other household pets permitted to be kept on a Lot under this Section 3.13 shall be confined to an Owner's Lot, except that a dog, cat or other pet capable of being walked on a leash may be permitted to leave an Owner's Lot without being confined if such animal is kept at all times on a leash not to exceed six feet (6') in length and is not permitted to enter upon any other Lot. It shall be the responsibility of the Owner or Resident to immediately remove any droppings from pets. No household pet permitted on a Lot under this Section 3.13 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 permitted household pet shall be maintained so as to be Visible from Neighboring Property. Upon the written request of any Owner or Resident, the Board shall conclusively determine, in its sole discretion, whether for the purposes of this Section 3.13, a particular animal constitutes a household pet pursuant to this Section 3.13 or whether such animal is a nuisance or making an unreasonable amount of noise. Any decision rendered by the Board shall be enforceable in the same manner as other restrictions set forth in this Declaration. The right of Residents to maintain a reasonable number of house pets pursuant to this section is expressly subject to the right of the Board to prospectively restrict the size and number of dogs or other pets which may be maintained or kept on the Lots while "grandfathering" such pets which do not satisfy the newly adopted Rules if such pets otherwise conform to this Section 3.13 and are not a nuisance.

**3.14 Machinery and Equipment.** No machinery or equipment of any kind shall be placed, operated or maintained upon or adjacent to any Lot, or any other portion of the Project, except: (i) such machinery or equipment used in connection with the maintenance or construction (during the period of construction) of an Improvement (ii) such machinery or equipment as is customary in the maintenance of a Residential Dwelling and Improvements such as lawn mowers and landscaping equipment; or (iii) such machinery or equipment which Declarant or the Association may require for the operation and maintenance of the Project.

**3.15 Roof Structures and Equipment.** No solar units or panels, heating, air-conditioning or ventilation equipment, or any other equipment or structures shall be located or installed on any roof of a Residential Dwelling or other Improvement on a Lot. The Board may grant a variance for solar panels or other solar equipment if attractively screened in accordance with standards established by the Board, subject to applicable federal or state energy conservation laws governing the installation of solar equipment on Residential Dwellings; and provided further, that the Association may not prohibit or unduly restrict satellite dishes and antennas of the types covered by the Federal Communications Commission rules promulgated pursuant to the Telecommunications Act of 1996, as amended from time to time; provided further, that nothing shall preclude the Association from adopting reasonable safety and/or architectural aesthetics Rules which do not impede the Owner's ability to obtain adequate reception from a protected class of satellite dishes or antennas within the scope of the FCC Rules.

**3.16 Window Treatments.** Each Purchaser shall cause all windows within his Residential Dwelling on a Lot to be covered with appropriate window treatments within ninety (90) days after first occupancy by a Resident. No reflective materials, including but not limited to, aluminum foil, reflective screens or glass, mirrors or similar-type items shall be installed or placed on the outside or inside of any windows. The exterior of all drapes, curtains or other window coverings shall be white, off-white, beige or natural wood-toned in color or such other colors as permitted by the Board.

**3.17 Signs.** No emblem, logo, sign or billboard of any kind whatsoever (including, but not limited to, commercial, political, "for sale," "for rent" and similar signs) which are Visible from Neighboring Property shall be erected or maintained on any Lot except: (i) signs required by legal proceedings; (ii) Residential Dwelling identification signs not exceeding 6 x 12 inches in size; (iii) one standard size realty company "for sale" or "for lease" sign; (iv) Project identification signs and other marketing signs installed by Declarant or the Association; and (v) such other signs as are approved by the Board.

**3.18 Restriction on Further Subdivision, Property Restrictions and Rezoning.** No Lot shall be further subdivided or separated into smaller Lots or parcels or divided into "time share" intervals as that term is defined in A.R.S. §32-2197, as amended from time to time, and no portion less than all of any such Lot shall be conveyed or transferred by an Owner other than Declarant, without the prior written consent of the Board. No further covenants, conditions, restrictions or easements shall be recorded by any Owner, Resident or other Person other than Declarant or the Board without the provisions thereof having first been approved by the Board. No application for rezoning, variances or use permits pertaining to any Lot shall be filed with any governmental authority by any Person other than Declarant or the Board, unless the application has been approved by the Board and the proposed use otherwise complies with this Declaration.

**3.19 Commercial Vehicles.** No truck (other than a Family Vehicle truck as defined below), mobile home, bus, travel trailer, tent trailer, trailer, camper shell, detached camper, recreational vehicle, boat, boat trailer, or other similar equipment or vehicle (hereinafter "Commercial Vehicles") may be parked, maintained, constructed, reconstructed or repaired on any Lot or Common Area (including driveways or Public Yards of Lots and any Common Area streets) so as to be Visible from Neighboring Property without the prior written approval of the Board, except for: (i) the temporary parking of any Commercial Vehicle on a Lot or street for loading and unloading for a period of not more than twenty-four (24) consecutive hours; (ii) temporary construction trailers or facilities maintained during, and used exclusively in connection with, the construction of any Improvement by the Declarant or any Improvement approved by the Board; and (iii) Commercial Vehicles parked completely within enclosed Residential Dwelling garages. A "Family Vehicle" means any domestic or foreign car, station wagon, sport wagon, pick-up truck of less than one (1) ton capacity with camper shells not exceeding eight (8) feet in height measured from ground level, mini-van, jeep, sport utility vehicle, motorcycle and similar non-commercial and non-recreational vehicles that are used by a Resident for family and domestic purposes and which are used on a regular and recurring basis for basic transportation. The Board may, acting in good faith, designate a Commercial Vehicle as a Family Vehicle, if, prior to use, the Resident petitions the Board to classify the same as a

Family Vehicle and the parking of such Vehicle on a Lot will not adversely affect the Project or the Residents. Family Vehicles and Commercial Vehicles are collectively referred to in this Article 3 as "Vehicles."

**3.20 General Vehicle Restrictions.**

**3.20.1** Except for emergency Vehicle repairs, and subject to the further restrictions of Section 3.19 above, no Vehicle shall be constructed, reconstructed or repaired on a Lot or any other portion of the Project except within the enclosed garage of a Residential Dwelling.

**3.20.2** Subject to the further restrictions of Section 3.19 above, no Vehicle shall be parked on the Public Yard of any Lot, except for a concrete driveway in front of the driveway and designed for the parking of up to two (2) Family Vehicles, or in the enclosed garage.

**3.21 Towing of Vehicles.** The Board shall have the right to have any Vehicle which is parked, kept, maintained, constructed, reconstructed or repaired in violation of the Project Documents and this Article 3 towed away at the sole cost and expense of the owner of the Vehicle. Any expense incurred by the Association in connection with the towing of any Vehicle shall be paid to the Association upon demand by the owner of the Vehicle. If the Vehicle 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 such amounts in the same manner as provided for in this Declaration for the collection of Assessments.

**3.22 Lighting.** Except as initially installed by Declarant, no spotlights, flood lights or other high intensity lighting shall be placed or utilized on any Lot which will allow light to be directed or reflected in any manner on the Common Area or onto another Lot.

**3.23 Drainage.** No Residential Dwelling 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 the Project as originally developed by Declarant including through any drainage easements set forth on the Plat, or for any Lot as shown on the drainage plans on file with Pinal County, Arizona.

**3.24 Garages.** Garages shall be used only for the parking of Vehicles and shall not be used or converted for living or recreational activities without the prior written approval of the Board. Garage doors shall be kept closed at all times when the garage is not in use.

**3.25 Basketball Goals and Backboards.** No basketball goal or backboard shall be attached to a roof and/or installed in a Public Yard of a Residential Dwelling.

**3.26 Planting and Landscaping.** Within one hundred twenty (120) days after acquiring a Lot from Declarant, each Owner shall install grass, trees, plants and other landscaping Improvements (together with any sprinkler or drip irrigation system sufficient to water the same) on the Public Yards of Lots. All such landscaping must be installed in

accordance with plans and specifications approved by the Board, pursuant to Section 3.1 of this Declaration.

**3.27 Variances.** The Board may, at its option and in extenuating circumstances, grant variances from the restrictions set forth in this Article 3 if the Board determines in its discretion that: (i) a restriction would create an unreasonable hardship or burden on an Owner or Resident or a change of circumstances since the recording of this Declaration has rendered such restriction obsolete and (ii) the activity permitted under the variance will not have any substantial adverse effect on the Owners or Residents of the Project. Such variances must be evidenced in writing and must be signed by a majority of the Board. If such variance is granted, no violation of the covenants, conditions and restrictions contained in this Declaration shall be deemed to have occurred with respect to the specific matter for which the variance was granted. The granting of such a variance shall not operate to waive any of the terms and provisions of this Declaration for any purpose except as to the particular provision hereof covered by the variance, and only for so long as the special circumstances warranting the variance exist, nor shall it affect in any way the Owner's and/or Resident's obligation to comply with all governmental laws and regulations affecting the use of his Lot. The Board shall have the right to condition the granting of a variance as it may determine in the Board's sole discretion, including, without limitation, making a variance temporary or permanent; or requiring the removal or replacement of a non-permanent or semi-permanent structure upon the sale or other conveyance of a Lot. Moreover, because of the unique facts and circumstances surrounding each variance request, the granting of a variance in one instance or under certain circumstances, terms and conditions does not mandate the granting of a variance under similar or related circumstances, terms or conditions if the experiences of the Association and the Project as a whole or the differences in circumstances (however slight) of a variance request from a previously approved variance lead the Board in good faith, to disapprove a variance request in such instance.

**3.28 No Warranty of Enforceability.** While Declarant has no reason to believe that any of the restrictive covenants contained in this Article 3 or elsewhere in this Declaration are or may be invalid or unenforceable for any reason or to any extent, Declarant makes no warranty or representation as to the present or future validity or enforceability of any such restrictive covenant. Any Owner acquiring a Lot in the Project in reliance on one or more of such restrictive covenants shall assume all risks of the validity and enforceability thereof and by acquiring the Lot agrees to hold Declarant harmless therefrom.

#### **ARTICLE 4 EASEMENTS**

##### **4.1 Owners' Easements of Enjoyment in Common Area/Declarant's Obligation to Convey Common Area.**

**4.1.1** Subject to the rights and easements granted to the Declarant in this Article and elsewhere in this Declaration, every Owner, and any Resident, shall have a right and easement of enjoyment in and to the Common Area (including, but not limited to, the right to use any private streets which are part of the Common Area for ingress and egress to the Owner's



Lot), which right shall be appurtenant to and shall pass with title to every Lot, subject to the following provisions:

(i) The right of the Association to dedicate, convey, transfer, mortgage or encumber the Common Area as provided in Section 5.11 of this Declaration; and

(ii) The right of the Association to regulate the use of the Common Area through Association Rules and to prohibit access to such portions of the Common Area, such as landscaped areas, not intended for use by the Owner or Residents;

**4.1.2** Declarant shall convey the Common Area free and clear of all liens and monetary encumbrances to the Association not later than the conveyance of the first Lot to a Purchaser.

**4.2** Utility Easement. There is hereby created a blanket easement upon, across, over and under the Common Area for reasonable ingress, egress, installation, replacing, repairing or maintaining of all utilities, including, but not limited to, gas, water, sewer, telephone, cable television and electricity. By virtue of this easement, it shall be expressly permissible for the providing utility company to erect and maintain the necessary equipment on the Common Area but no sewer, electrical, water, or other utility or service lines may be installed or located on the Common Area except as initially designed, approved and constructed by the Declarant or the Board, as applicable.

**4.3** Declarant's Use for Sales and Leasing Purposes. Declarant shall have the right and an easement to maintain sales and leasing offices, management offices and model homes on any Lots owned or leased by Declarant and to maintain one or more advertising, identification or directional signs on the Common Area or on any Lots owned by Declarant while Declarant is selling or building upon Lots. Declarant reserves the right to retain all personal property and equipment used in the sales, management, or development of the Project that has not been represented as property of the Association and to remove all such goods and Improvements used in marketing, whether or not they have become fixtures. In the event of any conflict or inconsistency between this Section 4.3 and any other provisions of this Declaration, this Section 4.3 shall control.

**4.4** Declarant's Easements. Declarant shall have the right and an easement on or over the Areas of Association Responsibility to construct all Improvements the Declarant may deem necessary and to use the Areas of Association Responsibility and any Lots and other property owned or leased by Declarant for construction related purposes including the storage of tools, machinery, equipment, building materials, appliances, supplies and fixtures, and the performance of work respecting the Project. Irrespective of whether Declarant at any time is an Owner of Lots, Declarant shall have the right and an easement upon, over, and through the Areas of Association Responsibility as may be reasonably necessary for the purpose of discharging its obligations or exercising the rights granted to or reserved by the Declarant in this Declaration, including, without limitation, warranty work. In the event of any conflict or inconsistency between this Section 4.4 and any other provisions of this Declaration, this Section 4.4 shall control.

4.5 **Easements in Favor of Association.** The Lots are hereby made subject to easements in favor of the Association and its directors, officers, agents, employees and independent contractors for: (i) inspection of the Lots (but not the interior of Residential Dwellings) in order to verify the performance by Owners of all items of maintenance and repair for which they are responsible and compliance by Owners and Residents with the Project Documents; (ii) inspection, maintenance, repair and replacement of the Areas of Association Responsibility accessible only from such Lots; (iii) correction of emergency conditions on one or more Lots; and (iv) the purpose of enabling the Board to exercise and discharge its rights, powers and duties under the Project Documents.

4.6 **Easements for Encroachments.** Each Residential Dwelling and other Improvements on the Lot are hereby declared to have an easement over adjoining Lots and Common Area for the purpose of accommodating minor encroachments due to engineering errors, errors in original construction, settlement or shifting of Improvements or any similar cause for as long as such encroachments shall exist; provided however, that in no event shall such easement exist for willful misconduct by any Owner or intentional encroachments, and provided, further that Declarant may remove and/or relocate any boundary wall or other encroachments onto Lots owned by Declarant (at Declarant's sole expense unless caused by the willful misconduct of an adjacent Owner or Resident).

## ARTICLE 5 **ASSOCIATION MEMBERSHIP AND VOTING RIGHTS**

5.1 **Formation of Association.** The Association shall be a non-profit Arizona corporation charged with the duties and invested with the powers prescribed by law and set forth in the Articles, Bylaws and this Declaration.

5.2 **Board of Directors and Officers.** The affairs of the Association shall be conducted by the Board and such officers as the Board may elect or appoint in accordance with the Articles and the Bylaws. Unless the Project Documents specifically require the vote or written consent of the Members, approvals or actions to be given or taken by the Association shall be valid if given or taken by the Board.

5.3 **Association Rules.** The Board may, from time to time, and subject to the provisions of this Declaration, adopt, amend and repeal Rules pertaining to: (i) the management, operation, and use of the Areas of Association Responsibility; (ii) minimum standards for maintenance of Lots; or (iii) the health, safety and welfare of the Owners and Residents.

5.4 **Personal Liability.** No member of the Board or of any committee of the Association, no officer of the Association, and no managing agent, representative or employee of the Association shall be personally liable to any Member, or to any other Person, including the Association, for any damage, loss or prejudice suffered or claimed on account of any act, omission, error, or negligence of the Association, the Board, a managing agent, any representative or employee of the Association, or any committee, committee member or officer of the Association; provided, however, the limitations set forth in this Section 5.4 shall not apply

to any Person who has failed to act in good faith or has engaged in willful or intentional misconduct.

**5.5 Implied Rights.** The Association may exercise any right or privilege given to the Association expressly by the Project Documents and every other right or privilege reasonably to be implied from the existence of any right or privilege given to the Association by the Project Documents or reasonably necessary to effectuate any such right or privilege, including, without limitation, the right to employ a managing agent or other independent contractor to perform all of the duties and responsibilities of the Association and the Board, subject to Section 5.13 hereof, the Bylaws and restrictions imposed by any governmental or quasi-governmental body or agency having jurisdiction over the Project.

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

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

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

**5.7.2 Class B.** The Class B Member shall be Declarant. The Class B Member shall be entitled to three (3) votes for each Lot owned. The Class B membership shall cease and be converted to Class A membership on the earlier of: (i) ninety (90) days following the date on which the votes entitled to be cast by the Class A Members equals or exceeds the votes entitled to be cast by the Class B Member; (ii) the date which is three (3) years after the recording of this Declaration; or (iii) when Declarant notifies the Association in writing that it relinquishes its Class B membership. If any Person to whom Declarant has assigned, or hereafter assigns, all or substantially all of its rights under this Declaration succeeds to the interests of Declarant by virtue of the assignment, Class B membership shall not be terminated and the Person so succeeding to Declarant's interest shall hold Class B membership on the same terms as they were held by Declarant.

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

the time the vote is cast. In the event more than one vote is cast by a Class A Member for a particular Lot, none of the votes cast for that Lot shall be counted and all of the votes so cast for that Lot shall be deemed void.

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

**5.10 Architectural Control.** The Board may establish an Architectural Committee to perform the architectural design review and related functions of the Board set forth in this Declaration. If established, the Architectural Committee shall be a committee of the Board and shall consist of such number of regular members and alternate members as may be provided for in the Bylaws. The Board, and/or Architectural Committee, if any, may promulgate Architectural Rules to be followed in rendering its decisions. Such Rules may include, without limitation, provisions regarding: (i) architectural design, with particular regard to the harmony of the design with the surrounding structures and topography; (ii) requirements concerning exterior Improvements; and (iii) signage. The decision of the Architectural Committee shall be final on all matters submitted to it pursuant to this Declaration.

**5.11 Conveyance or Encumbrance of Common Area.** Subject to the further restrictions of Section 9.4.3 below, the Common Area shall not be mortgaged, conveyed, transferred, dedicated or encumbered without the prior written consent or affirmative vote of the Class B Member while Declarant holds Class B membership, and the affirmative vote or written consent of the Owners representing at least two-thirds (2/3) of the votes entitled to be cast by Class A Members (including Declarant, if Declarant is then a Class A Member). Without limiting the foregoing, no portion of the Common Area providing ingress and egress to any Lots may be mortgaged, conveyed, transferred, dedicated or encumbered without the prior written consent or affirmative vote of the Owners of the affected Lots and all First Mortgagees whose First Mortgages encumber those Lots.

**5.12 Suspension of Voting Rights.** If any Owner fails to pay any Assessments or other amounts due to the Association under the Project Documents within fifteen (15) days after such payment is due or if any Owner or a Resident of an Owner's Lot violates any other provisions of the Project 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 late charges, interest and attorneys' fees, are brought current and, for a period of sixty (60) days from the date of suspension for any other infractions or violations of the Project Documents.

5.13 Professional Management/Contracts with Declarant and Affiliates. While Class B Membership exists, any agreement for professional management of the Project executed by Declarant, or any member, agent or representative of Declarant or providing for services of the Declarant and/or its affiliates, may not exceed three (3) years. Any such agreements must also provide for termination by either party without cause and without payment of a termination fee upon thirty (30) days' or less written notice.

## ARTICLE 6 ASSESSMENTS

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

### 6.2 Annual Assessments.

6.2.1 In order to provide for the operation and management of the Association and to provide funds for the Association to pay all Common Expenses and to perform its duties and obligations under the Project Documents, including the establishment of replacement and maintenance reserves and the payment of real property taxes levied against the Common Area, the Board, for each Assessment Period, shall assess against each Lot an annual Assessment (the "Annual Assessment").

6.2.2 The Board shall give notice of the Annual Assessment to each Owner at least thirty (30) days prior to the beginning of each Assessment Period, but the failure to give such notice shall not affect the validity of the Annual Assessment established by the Board nor relieve any Owner from its obligations 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 Assessments by Members, it may increase the Annual Assessment for that Assessment Period (except as expressly limited in Section 6.2.3 (iv) below and by Arizona law) up to the Maximum Annual Assessment for that year and the revised Annual Assessment for that Assessment Period shall commence on the date designated by the Board.

6.2.3 The maximum Annual Assessment (the "Maximum Annual Assessment") for each fiscal year of the Association shall be as follows:

(i) Until January 1 of the year immediately following the conveyance of the first Lot to a Purchaser, the Maximum Annual Assessment for each Lot shall be Three Hundred Dollars (\$300.00).

(ii) From and after January 1 of the year immediately following the conveyance of the first Lot to a Purchaser, the Board may, without a vote of the Members, increase the Maximum Annual Assessment during each fiscal year of the Association by the greater of: (a) five percent (5%) of the Maximum Annual Assessment for the immediately preceding fiscal year or (b) an amount based upon the percentage increase in the Consumer Price Index for All Urban Consumers (CPI-U) U.S. City Average (1982-1984=100), issued by the United States Department of Labor, Bureau of Labor Statistics (the "Consumer Price Index"), which amount shall be computed in the last month of each fiscal year in accordance with the following formula:

X=Consumer Price Index for September of the calendar year immediately preceding the year in which the Annual Assessments commenced.

Y= Consumer Price Index for September of the calendar year immediately preceding the calendar year for which the Maximum Annual Assessments is to be determined.

$\frac{Y-X}{X}$  multiplied by the Maximum Annual Assessment for the then current fiscal year

= the amount by which the Maximum Annual Assessment may be increased.

In the event the Consumer Price Index ceases to be published, then the index which shall be used for computing the increase in the Maximum Annual Assessment permitted under this Section 6.2.3 shall be the substitute recommended by the United States government for the Consumer Price Index or, in the event no such successor index is recommended by the United States government, the index selected by the Board.

(iii) From and after January 1 of the year immediately following the conveyance of the first Lot to a Purchaser, the Maximum Annual Assessment may be increased by an amount greater than the amount established under Section 6.2.3(ii) above, only by a vote of Members who are voting in person or by proxy at a meeting duly called for such purpose.

(iv) Irrespective of the Maximum Annual Assessment established pursuant to this Section 6.2.3, in no event may the Association impose an Annual Assessment for any Assessment Period that is more than twenty percent (20%) greater than the immediately preceding Assessment Period's Annual Assessment without the approval of a majority of the Members of the Association.

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

6.4 **Obligation of Declarant for Deficiencies.** So long as there is a Class B membership in the Association, and unless Declarant elects to pay full Assessments for its Lots, in which event this obligation to pay Common Expense shortfall shall not apply to such Lots, Declarant shall pay and contribute to the Association, within thirty (30) days after the end of each fiscal year of the Association, or at such other times as may be requested by the Board, such funds as may be necessary when added to the Annual Assessments levied by the Association to pay all Common Expenses of the Association as they become due.

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

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

6.7 **Commencement Date of Assessment Obligation.** All Lots shall be subject to assessment upon the conveyance of the first Lot to a Purchaser.

6.8 **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 (but no less frequently than semi-annually). Special Assessments may be collected as specified by the Board. The Board shall have the right to adopt Rules setting forth procedures for levying Assessments and for the billing and collection thereof provided that the procedures are not inconsistent with the provisions of this Declaration, the Articles or Bylaws. 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 the Project Documents, but the Assessment Lien therefor shall not be foreclosed until the Member has been given not less than thirty (30) days' written notice prior to such foreclosure that the Assessment or any installation thereof is or will be due and of the amount owing. Such notice may be given at any time prior to or after delinquency of such payment. The Association

shall be under no duty to refund any payments received by it even though the ownership of a Lot changes during an Assessment Period, but successor Owners of Lots shall be given credit for prepayments, on a prorated basis, made by prior Owners.

**6.9 Effect of Nonpayment of Assessments; Remedies of the Association.**

**6.9.1** Any Assessment, or any installment of an Assessment, not paid within fifteen (15) days after the Assessment or any installment thereof first became due, shall bear interest from the due date at the rate of twelve percent (12%) per annum or the prevailing VA/FHA interest rate for new homes, whichever is higher. In addition to or in lieu of delinquent interest, the Board may establish a late fee to be charged to any Owner who has not paid any Assessment or installment thereof or any other charges payable to the Association pursuant to the Project Documents within fifteen (15) days after such payment was due in an amount not to exceed the limitations of A.R.S. §33-1803, as amended from time to time.

**6.9.2** The Association shall have a lien on each Lot for: (i) all Assessments levied against the Lot; (ii) all interest, lien fees, late charges, fines, penalties and other fees and charges assessed against the Lot or payable by the Owner of the Lot; (iii) all attorney fees, court costs, title report fees, costs and fees charged by any collection agent 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; (iv) any amounts payable to the Association pursuant to Section 7.3 or 7.4 of this Declaration; and (v) any other amounts payable to the Association pursuant to the Project Documents. The recording of this Declaration constitutes record notice and perfection of the Assessment Lien. The Association may, at its option, record a Notice of Lien setting forth the name of the delinquent Owner as shown in the records of the Association, the legal description or street address of the Lot against which the Notice of Lien is recorded and the amount claimed to be past due as of the date of the recording of the Notice, including interest, late charges, lien recording fees and reasonable attorneys' fees. Before recording any Notice of Lien against a Lot, the Association shall make a written demand to the defaulting Owner for payment of the delinquent amounts. The demand shall state the date and amount of the delinquency and a statement as to the nature of the amounts due. Each default shall constitute a separate basis for a demand, but any number of defaults may be included within a single demand. If the delinquency is not paid within thirty (30) days after delivery of the demand, the Association may proceed with recording a Notice of Lien against the Lot. If the Association records a Notice of Lien, the Association may charge the Owner of the Lot against which the Notice of Lien is recorded a lien fee in an amount to be set from time to time by the Board.

**6.9.3** Except as may be otherwise provided by Arizona law, 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 other Person acquiring title or coming into possession of a Lot through foreclosure of the First Mortgage, purchase at a foreclosure sale or trustee sale, or through any equivalent proceedings, such as, but not limited to, the taking of a deed in lieu of foreclosure, shall acquire title free and clear of any claims for unpaid Assessments and charges against the Lot which became payable prior to the acquisition of such Lot by the First Mortgagee



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

**6.9.4** Except as may be otherwise provided by Arizona law or in this Declaration, the Association shall not be obligated to release the Assessment Lien until all delinquent Assessments, interest, late charges, lien fees, fines, penalties, reasonable attorneys' fees, court costs, collection costs and all other sums payable to the Association by the Owner of the Lot have been paid in full.

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

**6.10 Evidence of Payment of Assessments.** Upon receipt of a written request by a Member or other Person, and within a reasonable period of time thereafter (but not to exceed fifteen (15) days or such earlier time period as may be established under A.R.S. §33-1807 from time to time), the Association shall issue to such Member or other Person a written certificate stating that all Assessments, interest, late charges, lien fees, fines, penalties, and other fees and costs have been paid with respect to any specified Lot as of the date of such certificate, or if all Assessments or other charges have not been paid, the amount of such Assessments or other 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 the Association, every Owner, and the bona fide Purchaser or Person acquiring the Lot in question, and any First Mortgagee thereof, if the statement is requested by an escrow agency that is licensed pursuant to Title 6, Chapter 7. In addition to the foregoing information, the Association shall also provide such information to prospective Residential Dwelling Purchasers as may be requested by a Member for purposes of complying with A.R.S. §33-1806, as amended from time to time, in the event of a resale of a Lot, and the Association may charge a reasonable fee for such services as determined by the Board from time to time.

**6.11 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 from year to year such surplus as the Board reasonably determines to be desirable for the greater financial security of the Association and the accomplishment of its purposes.

**6.12 Working Capital Fund.** To insure that the Association shall have adequate funds to meet its expenses or to purchase necessary equipment or services, each Purchaser of a

Lot from the Declarant shall pay to the Association immediately upon becoming the Owner of the Lot a sum equal to one-half (1/2) of the current Annual Assessment for the Lot. Funds paid to the Association pursuant to this Section 6.12 may be used by the Association for payment of operating expenses or any other purpose permitted under the Project Documents. Payments made pursuant to this section shall be nonrefundable and shall not be considered as an advance payment of any Assessments levied by the Association pursuant to this Declaration.

**6.13 Transfer Fee.** Each Purchaser of a Lot from any Owner other than Declarant shall pay to the Association immediately upon becoming the Owner a transfer fee in such amount as is established from time to time by the Board.

**6.14 No Offsets.** All Assessments and other amounts payable to the Association shall be payable in accordance with the provision of the Project Documents, and no offsets against such Assessments or other amounts shall be permitted for any reason, including, without limitation, a claim that the Association is not properly exercising its duties and powers as provided in the Project Documents, or by an Owner's abandonment of his Lot.

**6.15 Maintenance of Reserve Fund.** Out of the Annual Assessments, the Association shall establish and maintain an adequate reserve fund for the periodic maintenance, repair and replacement of Improvements to the Common Area and other Areas of Association Responsibility.

**6.16 Notice and Quorum for any Action Authorized Under Sections 6.2 or 6.5.** Written notice of any meeting called for the purpose of obtaining the consent of the Members for any action for which the consent of Members is required under Sections 6.2 or 6.5 of this Declaration shall be sent to all Members not less than thirty (30) days nor more than fifty (50) days in advance of the meeting. At the first such meeting called, the presence of Members or of proxies entitled to cast sixty percent (60%) of all the votes of each class of membership shall constitute a quorum. If the required quorum is not present, another meeting may be called subject to the same notice requirement, and the required quorum at the subsequent meeting shall be one-half (1/2) of the required meeting at the preceding meeting. No such subsequent meeting shall be held more than fifty (50) days following the preceding meeting without the quorum requirements reverting back to the original level.

## **ARTICLE 7 MAINTENANCE**

**7.1 Maintenance of Common Area and Other Areas of Association Responsibility.** The Association, or its duly designated representatives, without any approval of the Owners or First Mortgagees being required, shall undertake all of the following for the benefit of the Project and its Owners and Residents:

**7.1.1** Maintain, reconstruct, repair, replace, or refinish in first class condition in accordance with the standards of the Project and community as a whole any Improvements on the Common Area or in an Area of Association Responsibility (including any Project perimeter wall regardless of whether located on a portion of a Lot or Common Area) to the extent that such

work is not being done by a governmental entity, if any, responsible for such maintenance or upkeep.

7.1.2 Maintain and replace all landscaping and plantings in the Common Area, in rights-of-way along Warner Drive, Windsong Street, and Lost Dutchman Blvd. and on the Public Yards of Lots outside of Project perimeter walls using drought resistant desert vegetation in accordance with the approved landscaping plan for the Project.

7.1.3 Place and maintain upon any such area such signs as the Board may deem appropriate for the proper identification, use and regulation thereof.

7.1.4 Do all such other and further acts which the Board deems necessary to preserve and protect the Common Area and other Areas of Association Responsibility and the appearance thereof, in accordance with the Project Documents.

7.1.5 The City of Apache Junction and Pinal County are not responsible for and will not accept maintenance of any private utilities, streets, retention areas, facilities, and landscaped areas within this Project.

7.2 Maintenance of Lots by Owners. Each Owner of a Lot shall be responsible for maintaining, repairing or replacing his Lot, and/or all Improvements thereon, as applicable, including his Residential Dwelling, except for any Areas of Association Responsibility established in accordance with this Declaration. All such Improvements shall be kept in good condition and repair. No Owner, Resident or other Person may make any modifications or changes to the exterior color scheme of any Residential Dwelling without the prior written approval of the Board. Except for Areas of Association Responsibility, all Public Yard landscaping shall be irrigated, moved, trimmed and/or cut, as appropriate, at regular intervals so as to be maintained in a neat and attractive manner. Any such landscaping which dies shall be promptly removed and replaced with living foliage of like kind unless different foliage is approved in writing by the Board. No yard equipment, wood piles or storage areas may be maintained so as to be Visible from Neighboring Property. Any Lots without Residential Dwellings thereon shall be maintained in a weed free manner.

7.3 Assessment of Certain Costs of Maintenance and Repair. In the event that the need for maintenance, repair or replacement of Common Area or other Area of Association Responsibility is caused through the willful or negligent act of any Owner or Resident of a Lot, or their guests, invitees or animals for whom the Owner or Resident is legally responsible under Arizona law, the Association shall cause the maintenance, repairs or replacement to be performed and the cost of such work shall be paid by the Owner of the Lot to the Association upon demand to the extent the Owner is liable under Arizona law. Payment of such amounts shall be secured by the Assessment Lien and the Association may enforce collection of any such amounts in the same manner and to the same extent as provided elsewhere in this Declaration for the collection and enforcement of Assessments.

7.4 Improper Maintenance and Use of Lots. In the event any portion of a Lot is so maintained as to present a public or private nuisance, or as to substantially detract from the

appearance or quality of the surrounding Lots or other areas of the Project which are substantially affected thereby or related thereto, or in the event any portion of a Lot is being used in any manner which violates the Project Documents, or in the event an Owner is failing to perform any of his obligations under the Project Documents, the Board may make a finding to that effect. The Board shall specify the particular condition or conditions which exist, and pursuant thereto, give notice of such findings to the offending Owner that unless corrective action is taken within thirty (30) days, the Board may cause such action to be taken at said Owner's expense. If, at the expiration of said thirty (30) day period, the requisite 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. Payment of such amounts shall be secured by the Assessment Lien.

**7.5 Boundary Walls.** Each wall or fence which is located between two Lots shall constitute a boundary wall and, to the extent not inconsistent with this Section 7.5, the general rules of law regarding boundary walls shall apply. The Owners or Residents of contiguous Lots who share a boundary wall shall both equally have the right to use such wall provided that such use by one Owner or Resident does not interfere with the use and enjoyment of the same by the other Owner or Resident. In the event that any boundary wall is damaged or destroyed through the act of an Owner or Resident of a Lot, or their guests, invitees or animals, it shall be the obligation of such Owner to rebuild and repair the boundary wall without cost to the other Owner. In the event any such boundary wall is damaged or destroyed by some other cause (including ordinary wear and tear and deterioration through lapse of time), then, in such event, both adjoining Owners shall proceed forthwith to rebuild or repair the same to as good condition as formerly existed at their joint and equal expense. The right of an Owner to contribution from any other Owner under this Section 7.5 shall be appurtenant to the land and shall pass to such Owner's successors in title. 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 and the Board. In the event any boundary wall encroaches upon a Lot, pursuant to the provisions of Section 4.6, a valid easement for such encroachment and for the maintenance of the boundary wall shall and does exist in favor of the Owners of the Lots which share the boundary wall. To the extent necessary for an Owner to construct Improvements in the Private Yard of his Lot, an Owner may remove all or part of a boundary wall, except such wall which comprises part of the structural wall of a Residential Dwelling garage located on or adjacent to a Lot line, provided the Owner gives reasonable notice to the adjoining Owners and Residents that all or part of the boundary wall will be removed. The Owner desiring to temporarily remove a portion of the wall shall make appropriate arrangements (including the erection of a temporary fence or barrier) or pay appropriate compensation for the protection of children and pets on the adjoining Lot. Any Owner removing all or part of a boundary wall pursuant to this Section 7.5 shall rebuild and restore the boundary wall to its prior condition at such Owner's sole cost and expense within a reasonable time after entry through the boundary wall is no longer necessary in connection with the construction of Improvements.

**7.6 Maintenance of Walls Other than Boundary Walls.** Walls or fences (other than boundary walls as described in Section 7.5 above) located on a Lot shall be maintained, repaired and replaced by an Owner of the Lot. Any wall which is placed on the boundary line

between a Lot and the Common Area shall be maintained, repaired and replaced by the Owner of the Lot, except that the Association shall be responsible for the repair and maintenance of the side of the wall which faces the Common Area. In the event any such wall encroaches upon the Common Area or a Lot, an easement for such encroachment shall exist in favor of the Association or the Owner as the case may be, pursuant to Section 4.6 above. Any wall which is placed on the boundary line between a Lot and public right-of-way (including all Project perimeter walls) shall be maintained, repaired and replaced by the Association, except that the Owner of the Lot shall be responsible for the repair, painting and stuccoing or retexturing of the surface of the wall which faces the Private Yard or interior of the Lot and is Not Visible from Neighboring Property. To the extent necessary for an Owner to construct Improvements in the Private Yard of his Lot, an Owner may remove all or part of a wall separating his Lot from Common Area or public right-of-way with the prior written consent of the Board and the City of Phoenix, as applicable. Such approval may be conditioned on the erection of a temporary fence or barrier.

**7.7 Payment of Utility Charges.** Each Residential Dwelling shall be separately metered for water, sewer and electrical service, and all charges for such service to the Residential Dwellings shall be the sole obligation and responsibility of the Owner of each Lot. All bills for water, sewer and electrical service to the Common Area shall be billed to the Association, and the Association shall be responsible for the payment of such charges as a Common Expense to be included in the budget of the Association. To the extent the Association enters into a contract with a private refuse collection provider, and such provider, does not separately bill the Residents for its services, then the Association shall pay the provider's fees as part of the Common Expenses and shall include such item in its budget.

## **ARTICLE 8 INSURANCE**

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

**8.1.1** Comprehensive General Liability insurance, including medical payments insurance, in an amount determined by the Board, but not less than \$1,000,000 for any single occurrence and \$2,000,000 general aggregate. 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 Areas of Association Responsibility.

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

8.1.3 Workmen's compensation insurance to the extent necessary to meet the requirements of Arizona law.

8.1.4 Such other insurance as the Association shall determine from time to time to be appropriate to protect the Association, the Board, or the Owners and Residents or as is required by the Federal National Mortgage Association or the Federal Home Loan Mortgage Corporation, including, without limitation, directors' and officers' errors and omissions coverage and fidelity coverage against dishonest acts by directors, managing agents, officers, trustees, employees or volunteers of the Association who are responsible for handling funds belonging to or administered by the Association. The fidelity insurance shall name the Association as the insured and shall provide coverage in an amount not less than one and one-half times the Association's estimated annual operating expenses and reserves.

8.2 Contents of Policies. The insurance policies purchased by the Association shall, to the extent reasonably available, contain the following provisions: (i) that there will be no subrogation with respect to the Association, its agents, servant, and employees, with respect to Owners and Residents; (ii) no act or omission by any Owner or Resident, 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 Residents, their First Mortgagees, or other mortgagees or beneficiaries; (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) a 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 all First Mortgagees named in the policy at least ten (10) days in advance of the effective date of any substantial modification, reduction or cancellation of the policy.

8.3 Limitation of Liability. Neither the Declarant nor the Association, or any member, director, officer, shareholder, employee, or agent thereof, shall be liable to any Owner or Resident or any other Person if any risk or hazard is not covered by insurance or the amount thereof is inadequate. Without limiting the foregoing, each Owner shall be responsible for obtaining insurance for his own benefit and at his own expense insuring his Lot and the Improvements thereon against loss and providing personal liability coverage. Each Owner is responsible for ascertaining the Association's coverage and for procuring such additional coverage as such Owner deems necessary. First Mortgagees may pay overdue premiums and may secure new insurance coverage upon the lapse of any policy with respect to any insurance required to be maintained by the Association or any Owner under this Declaration, and any First Mortgagee making such expenditure shall be entitled to immediate reimbursement from the Association or Owner on whose behalf the expenditure was made.

8.4 Certificates of Insurance. An insurer that has issued an insurance policy under this Article 8 shall issue a certificate or a memorandum of insurance to the Association and, upon request, to any Owner, First Mortgagee or other mortgagee or beneficiary of a deed of trust. Any insurance obtained pursuant to this Article 8 may not be canceled until thirty (30) days after notice of the proposed cancellation has been mailed to the Association, each Owner and each

First Mortgagee or other mortgagee or beneficiary of a deed of trust to whom certificates of insurance have been issued.

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

**8.6 Payment of Insurance Proceeds.** With respect to any loss to any Area of Association Responsibility covered by property insurance obtained by the Association in accordance with this Article 8, the loss shall be adjusted with the Association, and the insurance proceeds shall be payable to the Association and not to any mortgagee or beneficiary under a deed of trust. Subject to the provisions of Section 8.7 of this Declaration, the proceeds shall be disbursed for the repair or restoration of the damage to the Area of Association Responsibility.

**8.7 Repair and Replacement of Damaged or Destroyed Property.** Any portion of an Area 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 elect not to rebuild by vote or proxy cast at a duly held meeting or by written agreement. 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 shall be used to restore the damaged Areas 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 Owners representing more than fifty percent (50%) of the votes in the Association.

Subject to other provisions of this Declaration, in the event of damage to or destruction of any part of a Residential Dwelling or Lot, the Owner of each Lot shall reconstruct the same as soon as reasonably practicable and substantially in accordance with the plans and specifications therefor or shall remove all debris from the Lot such that the Lot does not have an unsightly appearance or otherwise constitute a nuisance. Each Owner shall have an easement of reasonable access into any adjacent Lot for purposes of repair or reconstruction of his Residential Dwelling as provided in this Section 8.7.

## **ARTICLE 9 GENERAL PROVISIONS**

**9.1 Enforcement.** The Association or any Owner shall have the right to enforce the Project Documents in any manner provided for in the Project Documents or by law or in equity, including, but not limited to, an action to obtain an injunction to compel removal of any Improvements constructed in violation of this Declaration or to otherwise compel compliance with the Project Documents. The failure of the Association or an Owner to take enforcement action with respect to a violation of the Project Documents shall not constitute or be deemed a

waiver of the right of the Association or any Owner to enforce the Project Documents in the future. If any law suit is filed by the Association or any Owner to enforce the provisions of the Project Documents or in any other manner arising out of the Project Documents or the operations of the Association, the prevailing party in such action shall be entitled to recover from the other party all attorneys' fees incurred by the prevailing party in the action. In addition to any other rights or remedies available to the Association pursuant to the Project Documents or at law or in equity, the Association shall have the power to levy reasonable monetary fines or penalties against an Owner for a violation of the Project Documents by the Owner or by any Resident of the Owner's Lot, or their guests and invitees under their control.

**9.2 Term; Method of Termination.** This Declaration shall continue in full force and effect for a term of twenty (20) years from the date this Declaration is recorded. After which time, this Declaration shall be automatically extended for successive periods of ten (10) years each. This Declaration may be terminated at any time during the initial term of this Declaration or any extension or renewal term, if such termination is approved by the affirmative vote or written consent, or any combination thereof, of the Owners representing ninety percent (90%) or more of the votes in each class of membership and by the holders of First Mortgages on Lots, the Owners of which have seventy-five percent (75%) or more of the votes in the Association. If the necessary votes and consents are obtained, the Board shall cause to be recorded with the County Recorder of Pinal County, Arizona, a Certificate of Termination, duly signed by the President or Vice President and attested by the Secretary or Assistant Secretary of the Association, with their signatures acknowledged. Thereupon, this Declaration shall have no further force or effect and the Association shall be dissolved pursuant to the provisions set forth in the Articles.

**9.3 Amendments.**

**9.3.1** Except as otherwise set forth herein, this Declaration may be amended at any time during the initial term of this Declaration or any renewal or extension term, without regard to whether such amendments are of uniform effect as to the Owners or the Lots, by the written approval or the affirmative vote, or any combination thereof, of Owners of not less than seventy-five percent (75%) of the Lots, with one vote per Lot.

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

**9.3.3** All amendments shall be signed by the President or Vice President of the Association and shall be recorded with the County Recorder of Pinal County, Arizona, and any such amendment shall certify that the amendment has been approved as required by this Section 9.3. Unless a later effective date is specified in the amendment, any amendment to this Declaration shall be effective upon the recording of the instrument.



9.3.4 While Class B Membership exists, Declarant may amend the Plat at any time without the consent of any other Owner to alter the size of and boundaries between any Lots so long as all such altered Lots are owned by Declarant, all First Mortgagees then encumbering the Lots to be altered consent in writing, and such alterations do not modify or change the size, the boundaries of any other Lot or the Common Area and do not increase the share of Common Expenses payable by Owners.

9.4 Rights of First Mortgagees.

9.4.1 Any First Mortgagee will, upon written request identifying the name and address of the First Mortgagee for any Lot or any insurer or guarantor of such First Mortgagee and the Lot number or address, shall be entitled to receive timely written notice of: (i) all meetings of the Members and be permitted to designate a representative to attend all such meetings; (ii) any condemnation loss or any casualty loss which affects a material portion of the Project or any Lot subject to a First Mortgage; (iii) any delinquency in the payment of Assessments or other charges owed or any other default in the performance of obligations under the Project Documents by an Owner of a Lot subject to a First Mortgage which remains uncured for a period of sixty (60) days; (iv) any lapse, cancellation or material modification of any insurance policy or fidelity bond maintained by the Association; and (v) any proposed action which would require the consent of a specified percentage of First Mortgagees under this Declaration.

9.4.2 No Lot subject to a First Mortgage shall be partitioned or subdivided without the prior written approval of the First Mortgagee.

9.4.3 Unless at least two-thirds (2/3) of the First Mortgagees (based upon one vote for each First Mortgage owned by the First Mortgagee in the Project) or Owners (other than Declarant or any developer of Residential Dwellings for resale) 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. The granting of easements for public utilities or for other public purposes consistent with the intended use of such Common Area pursuant to the provisions of Section 5.11 above shall not be deemed a transfer within the meaning of this Section 9.4.3.

(ii) change the method of determining the obligations, Assessments, dues or other charges which may be levied against any Owner.

(iii) change, waive or abandon any scheme or regulations, or enforcement thereof, pertaining to the architectural design or the exterior appearance of the Lots or the maintenance of Areas of Association Responsibility.

(iv) fail to maintain fire and extended insurance coverage on a current replacement cost basis for the Areas of Association Responsibility in an amount of at least one hundred percent (100%) of insurable value.

(v) use hazard insurance proceeds for losses to Project Improvements other than for the repair, replacement or reconstruction of such Project Improvements.

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

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

9.4.6 No breach of any of the covenants, conditions and restrictions contained in this Declaration, and no enforcement of any lien provisions herein shall render invalid the lien of any First Mortgage.

9.4.7 During the pendency (including any period of redemption) of any proceedings to foreclose a First Mortgage (or from the time a trustee under a first deed of trust has given notice of sale pursuant to the power of sale conferred under the deed of trust and pursuant to law), the First Mortgagee, or a receiver appointed in any such action, may, but need not, exercise any or all of the rights and privileges of the Owner of the Lot in default, including, but not limited to, the right to vote as a Member of the Association in the place and stead of the defaulting Owner, irrespective of whether the Member's voting rights have been suspended for nonpayment of Assessments.

9.4.8 Notwithstanding anything contained herein to the contrary, at such time as the First Mortgagee shall become record Owner of a Lot, the First Mortgagee shall be subject to all of the terms and conditions of this Declaration, including, but not limited to, the obligations to pay all Assessments and charges accruing thereafter in the same manner as any other Owner.

9.4.9 The right of any Owner to sell, transfer or otherwise convey his Lot shall not be subject to any right of first refusal or any similar restriction in favor of the Association and no such right of first refusal or similar restriction shall be hereinafter imposed by amendment of this Section 9.4.9 without the prior written consent of all First Mortgagees of record at the time the requested amendment is proposed.

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

Declaration and the Articles, Bylaws, Association Rules or Architectural Rules, this Declaration shall control. In the event of any conflict between the Articles and the Bylaws, the Articles shall control. In the event of any conflict between the Bylaws and the Association Rules or the Architectural Rules, the Bylaws shall control. 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. Wherever the context of this Declaration so requires, the 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. All captions, titles or headings of the Articles and Sections in this Declaration are for the purpose of reference and convenience only and are not to be deemed to limit, modify or otherwise affect any of the provisions hereof or to be used in determining the intent of context hereof.

**9.6 Rule Against Perpetuities.** If any interest, privilege, covenant or right created by this Declaration shall be unlawful, void or voidable for violation of the Rule against Perpetuities or any related rule, then such interest, privilege, covenant or right shall continue until twenty-one (21) years after the death of the last survivor of the now living descendants of the President of the United States in office on the date this Declaration is recorded.

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

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

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

**9.10 Right to Inspect Documents; Audited Financial Statements.** The Association shall make available to Owners, mortgagees and insurers or guarantors of First Mortgagees, current copies of the Project Documents and the books, records and financial statements of the Association. "Available" means available for inspection (and copying at the expense of the requesting party), upon request, during normal business hours or under other reasonable circumstances. In addition, First Mortgagees holding fifty-one percent (51%) or more of First Mortgages shall be entitled to have prepared, at their expense, an audited financial statement of the Association for the immediately preceding fiscal year if one is not otherwise available, and the Association shall have prepared and distributed such statement to the First Mortgagees requesting it within a reasonable time following receipt by the Association of the request.

**9.11 Condemnation.** Upon receipt of notice of intention or notice of proceedings whereby all or any part of the Common Area or other Area of Association Responsibility is to be taken by any governmental body by exercise of the power of condemnation or eminent domain, all Owners shall be immediately notified by the Association thereof. The Association shall represent the Owners in any condemnation or eminent domain proceedings or in negotiations, settlements and agreements with the condemning authority for acquisition of any part of the Common Area or other Area of Association Responsibility, and every Owner appoints the Association as his attorney-in-fact for this purpose. The entire award made as compensation for such taking, including, but not limited to, any amount awarded as severance damages or the entire amount received and paid in anticipation and settlement for such taking, after deducting therefrom, in each case, reasonable and necessary costs and expenses, including, but not limited to, attorneys' fees, appraisers' fees and court costs (which net amount shall hereinafter be referred to as the "Award"), shall be paid to the Association as trustee for the use and benefit of the Owners and their First Mortgagees as their interests may appear. The Association shall, as it is practicable, cause the Award to be utilized for the purpose of repairing and restoring the Project, including, if the Association deems it necessary or desirable, the replacement of any Improvements so taken or conveyed. In the event of any taking of any Lot in the Project by eminent domain, the Owner of such Lot shall be entitled to receive the award for such taking, and after acceptance thereof he and all of his mortgagees shall be divested of all interest in the Project if such Owner shall vacate his Lot as a result of such taking. The remaining Owners shall decide by majority vote whether to rebuild or repair the Project or take other action. The remaining portion of the Project shall be resurveyed, if necessary, and the Declaration shall be amended to reflect such taking.

**9.12 References to this Declaration in Deeds.** Deeds to and instruments affecting any Lot or any other portion 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 Owner or other Person claiming through any deed or other instrument and his heirs, executors, administrators, successors and assignees.

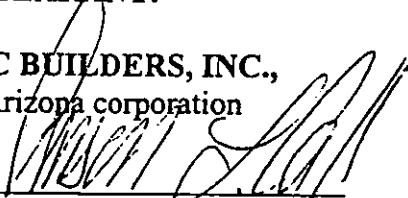
9.13 FHA/VA Approval. So long as there is Class B membership in the Association and while either the FHA or VA has insured or guaranteed any First Mortgage in the Project or has otherwise approved the plan of development of the Project, the following actions shall require the prior written approval of the Federal Housing Administration or the Veterans Administration: annexation of additional properties, dedication, mortgaging or conveyance of Common Area, amendment of the Articles of the Association, mergers and consolidations of the Association, and amendment of this Declaration.

9.14 No Absolute Liability. No provision of the Project Documents shall be interpreted or construed as imposing on Owners absolute liability for damage to the Common Area or the Lots. Owners shall only be responsible for damage to the Common Area or Lots caused by the negligence or intentional acts of the Owners or Residents of the Lots or their family members, guests, invitees or pets.

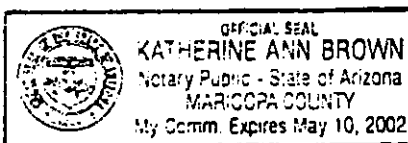
IN WITNESS WHEREOF, the undersigned, being the Declarant herein, has hereunto set its hand to be effective as of the date first set forth above.

DECLARANT:

ALC BUILDERS, INC.,  
an Arizona corporation

By   
Anson Ladell Call  
Its President

STATE OF ARIZONA     )  
                                  )ss.  
COUNTY OF MARICOPA )



On this 15<sup>th</sup> day of March, 2000, before me, the undersigned notary public, in and for said county and state, personally appeared ANSON LADELL CALL, the President of ALC BUILDERS, INC., an Arizona corporation, personally known (or proved) to me to be the person whose name is subscribed to the above instrument and who acknowledged that he executed the above instrument for and on behalf of the limited liability company.

  
NOTARY PUBLIC

My Commission Expires:

5/10/2002

EXHIBIT A

Lots 1 through 35, inclusive, and Common Area Tract A, LOST DUTCHMAN GARDENS, a subdivision according to the plat recorded in Cabinet C, Slide 115, records of Pinal County, Arizona and Affidavit of Correction recorded on February 16, 2000 at Fee No. 2000-007075.