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**WHEN RECORDED, RETURN TO:**

C. Timothy White, Esq.  
Tiffany & Bosco, P.A.  
Fifth Floor Viad Tower  
1850 N. Central Avenue  
Phoenix, Arizona 85004

**FIRST AMENDMENT  
TO  
DECLARATION OF COVENANTS, CONDITIONS,  
RESTRICTIONS AND EASEMENTS  
FOR  
SUMMIT SHADOWS**

*December, 2000.*

This First Amendment to Declaration of Covenants, Conditions, Restrictions and Easements for Summit Shadows (**this "Amendment"**) is entered into this 29 day of ~~January, 2001~~, by **Monterey Homes Construction, Inc., an Arizona corporation ("Monterey"), INCA Capital Fund 2, LLC, an Arizona limited liability company ("INCA") and Summit Shadows Community Association, an Arizona non-profit corporation (the "Association")**, with reference to the following:

- A. INCA and Monterey are Owners of all of the Lots described in that certain Declaration of Covenants, Conditions, Restrictions and Easements for Summit Shadows recorded on June 20, 2000 as Document No. 00-0466061 in the Official Records of Maricopa County, Arizona (**the "Declaration"**).
- B. The Association is the owner of all Common Area described in the Declaration.
- C. Pursuant to Section 14.01(A) of the Declaration, the undersigned desire and are authorized to amend the Declaration.

NOW, THEREFORE, Declarant, Optionor and Association hereby amend and supplement the Declaration as follows:

- 1. **Defined Terms.** Defined terms appear in this Amendment with the first letter of each word in the term capitalized. If not otherwise defined herein, defined terms shall have the meanings given to them in the Declaration.
- 2. **Initial Landscaping of Lots.** Notwithstanding Article 4 of the Declaration, plans for Landscaping need not be approved by the Committee. However, all Landscaping must comply with the requirements set forth in the document titled "A Resident's Guide to Landscaping for Summit Shadows" as adopted by the Committee and as may be amended from time to time by the Committee (**the "Landscaping Guidelines"**). Prior to installing any Landscaping, each Owner

should request a copy of the most recent form of the Landscaping Guidelines so as to facilitate such Owner's compliance with the then current Landscaping Guidelines. The Committee shall have the power and authority to require that certain Landscaping be installed and that any Landscaping which does not fully comply with the Landscaping Guidelines be removed and/or modified in such a manner as the Committee deems appropriate in order to bring such Landscaping into compliance with the Landscaping Guidelines.

3. **Basketball Goals and Play Structures.** Section 3.24 of the Declaration is hereby deleted and replaced with the following new Section 3.24:

*Section 3.24 - Basketball Goals and Play Structures. No basketball goal, backboard or similar structure or device and no swing set or other play structure which is Visible From Neighboring Property shall be placed or constructed on any Lot without the prior written approval of the Committee (including, but not limited to, approval of appearance and location). In no event shall basketball goals be permitted to be attached to any Living Unit. The backboard of any basketball goal must be composed of a clear material.*

4. **Landscaping Requirements and Control.** Section 4.02 of the Declaration is hereby deleted and replaced with the following new Section 4.02:

*Section 4.02 - Landscaping Requirements. All Landscaping installed on Lots must comply with the Landscaping Guidelines. If the Landscaping on each Lot is not installed prior to the closing of the sale of a Lot to an initial Purchaser of the Living Unit, the initial Purchaser of the Living Unit shall, within sixty (60) days of the closing of its purchase of the Living Unit, cause the front yard Landscaping on its Lot to be fully installed. Also, with respect to any Lot on which a view fence is installed so as to make the rear yard of such Lot or any part thereof visible from any Common Area, each initial Purchaser of such a Living Unit shall, within ninety (90) days of the close of its purchase of the Living Unit, cause the back yard Landscaping to be fully installed on its Lot, all in accordance with the Landscaping Guidelines. In the event an Owner fails to comply with the requirements set forth in this Section, the Association shall be entitled (although not obligated) to take all available action necessary to cause such Landscaping to be installed, including the initiation of legal proceedings against the non-complying Owner. In the event of such non-compliance, the Association shall also have the right to suspend such Owner's rights under this Declaration and the Project Documents. In addition, if an Owner fails to complete the Landscaping in accordance with this Section and the Landscaping Guidelines, and if the required Landscaping is not completed within thirty (30) days of written notice thereof from the Association to the non-complying Owner, the Association may assess a fine in the amount of \$250 against the non-complying Owner. In addition, if the non-complying Owner does not complete the Landscaping within sixty (60) days of the written notice from the Association, the Association may assess a fine against the non-complying Owner in the amount of \$50 for each day thereafter until the non-complying Owner is in compliance with this Section. The non-complying Owner shall be responsible for all fees and costs incurred by the Association and the Declarants in connection with the enforcement of this Section, including reasonable attorneys' fees, and such amounts shall be added to and become part of the Assessment for which the non-complying Owner's Lot is subject.*

5. **Full Force and Effect.** As amended hereby, the Declaration remains unchanged and in full force and effect.

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

5. **Full Force and Effect.** As amended hereby, the Declaration remains unchanged and in full force and effect.

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

**DECLARANT:** MONTEREY HOMES CONSTRUCTION, INC.,  
an Arizona corporation

By: *John Plummer*

Its: Vice President

**OPTIONOR:** INCA CAPITAL FUND 2, LLC,  
an Arizona limited liability company

By: INCA CAPITAL, LLC, an Arizona limited liability  
company, Its Sole Member

By: *William W. Cleverly*

William W. Cleverly,  
Its Manager

**ASSOCIATION:** SUMMIT SHADOWS COMMUNITY ASSOCIATION,  
an Arizona non-profit corporation

By: *Kathy Van Hilsen*

Its: Property Manager  
The Reedy Group

STATE OF ARIZONA )  
 ) ss.  
County of Maricopa )

This instrument was acknowledged before me this 29 day December, 2000, by John P. Moroney as Vice President of Monterey Homes Construction, Inc., an Arizona corporation, on behalf of the corporation for the purposes contained therein.

Marie E. Muller  
Notary Public

My Commission Expires:  
8/6/01

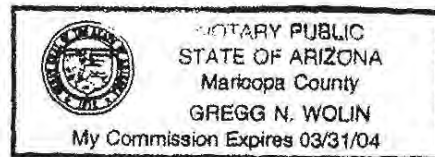


STATE OF ARIZONA )  
 ) ss.  
County of Maricopa )

This instrument was acknowledged before me this 29 day December, 2000, by William W. Cleverly, as the Manager of INCA Capital, LLC, an Arizona limited liability company which is the Manager of INCA Capital Fund 2, LLC, an Arizona limited liability company, on behalf of the companies for the purposes contained therein.

William W. Cleverly  
Notary Public

My Commission Expires:  
3/31/04



STATE OF ARIZONA )  
 ) ss.  
County of Maricopa )

This instrument was acknowledged before me this 10th day January 2001, by Kathy VanHusen as Property Manager of Summit Shadows Community Association, an Arizona non-profit corporation, on behalf of the association for the purposes contained therein.

Coral Ann Roberts  
Notary Public

My Commission Expires:  
January 31, 2004



**RATIFICATION BY LIENHOLDER**

The foregoing Declaration of Covenants, Conditions, Restrictions and Easements for Summit Shadows is hereby ratified and approved by California Bank & Trust, a California banking corporation, the beneficiary under that certain Construction Deed of Trust, Assignment of Rents, Security Agreement and Fixture Filing dated February 16, 2000 and recorded on February 24, 2000, as Document No. 00-0133127 in the Official Records of Maricopa County, Arizona.

DATED this 8 day of January, 2001

**CALIFORNIA BANK & TRUST,**  
a California banking corporation

By [Signature]  
Its Exec.

STATE OF ARIZONA                    )  
  ) ss.  
County of Maricopa                 )

On this 8<sup>th</sup> day of January, 2001, before me personally appeared Mark Young, the Executive Vice President of California Bank & Trust, a California banking corporation, known to me to be the person whose name is subscribed to the foregoing Ratification by Lienholder of the Declaration of Covenants, Conditions, Restrictions and Easements, and being authorized to do so, acknowledged that he/she executed the same on behalf of the corporation for the purposes contained therein.

[Signature]  
Notary Public

My Commission Expires:  
July 7, 2004



RATIFICATION BY LIENHOLDER

The foregoing Amendment Declaration of Covenants, Conditions, Restrictions and Easements for Summit Shadows is hereby ratified and approved by Wells Fargo Bank Arizona, National Association, a national banking association, in its capacity as agent for Wells Fargo Bank Arizona, National Association, and California Bank & Trust, a California banking corporation, the Beneficiary under that certain Deed of Trust recorded on 12-30-99 as Document No. 99-1165936 in the Official Records of Maricopa County, Arizona.

DATED this 16<sup>th</sup> day of January, 2001

WELLS FARGO BANK ARIZONA, NATIONAL ASSOCIATION, as Administrative Agent and Issuing Bank for Wells Fargo Bank, National Association, a national banking association, and California Bank & Trust, a California banking corporation

By [Signature]  
Its VP

STATE OF ARIZONA )  
 )ss  
County of Maricopa )

On this 16<sup>th</sup> day of January, 2001, before me personally appeared E. Kevin Kosah, the V.P. of Wells Fargo Bank Arizona, National Association, a national banking association, known to me to be the person whose name is subscribed to the foregoing Ratification by Lienholder of the Declaration of Covenants, Conditions, Restrictions and Easements, and being authorized to do so, acknowledged that he/she executed the same for the purposes contained therein.



[Signature]  
Notary Public

My Commission Expires:  
11-9-01

**WHEN RECORDED, RETURN TO:**

C. Timothy White, Esq.  
Tiffany & Bosco, P.A.  
Fifth Floor Viad Tower  
1850 N. Central Avenue  
Phoenix, Arizona 85004

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

**FOR**

**SUMMIT SHADOWS**

**Mesa, Arizona**

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

**FOR  
SUMMIT SHADOWS  
Mesa, Arizona**

This Declaration of Covenants, Conditions, Restrictions and Easements for Summit Shadows is made as of the 9<sup>th</sup> day of June, 2000 by **Monterey Homes Construction, Inc.**, an Arizona corporation ("**Monterey**") and **INCA Capital Fund 2, LLC**, an Arizona limited liability company ("**Optionor**"). Monterey and Optionor desire to establish a general plan for the improvement, development, operation, maintenance and use of the Property described herein as an attractive and harmoniously designed residential development to be known as Summit Shadows (the "**Project**") for the purpose of enhancing and protecting the value, desirability and attractiveness of the Project and the quality of life within the Project. In furtherance of that plan, Monterey and Optionor hereby declare that all of the property within the Project shall be held, sold, conveyed, encumbered, occupied, developed, built on, improved, used, leased and otherwise transferred subject to the covenants, conditions, restrictions, reservations, easements, liens and charges set forth in this Declaration, each of which shall attach to and run with the land, shall be binding on the Property and all Owners, Occupants, Lessees and other parties having, acquiring or otherwise at any time possessing any right, title or interest in or to the Property or any part thereof, and each of which shall inure to the benefit of said Owners, Occupants, Lessees and other parties. Optionor is currently the owner of legal title to the Property and Monterey is the developer of the Project and has the right to purchase the Lots from Optionor pursuant to the Option Agreement (as defined herein).

**ARTICLE 1  
DEFINITIONS**

**Section 1.01 - "Access Parcel"**. Access Parcel shall mean the parcel of real property described on Exhibit "A-1" and depicted on Exhibit "A-2" hereto, which Access Parcel is subject to the Access and Easement Agreement described in Article 16 to this Declaration. The Access Parcel is part of the Common Areas which will be conveyed to and will be owned by the Association. However, the size and dimensions of the Access Parcel are subject to change as provided for in the Access and Easement Agreement.

**Section 1.02 - "Architectural and Landscaping Guidelines"**. Architectural and Landscaping Guidelines shall mean the rules and guidelines adopted by the Committee, as they may be amended or supplemented, which shall govern the procedures of the Committee and the architectural design, placement, color schemes, exterior finishes, use of materials and similar features for all Improvements within the Project and the design, installation and placement of Landscaping within the Project.

Section 1.03 - "Areas of Association Responsibility". Areas of Association Responsibility shall mean (i) all Common Areas and Improvements situated therein, including, without limitation, the private streets for the Project; (ii) all land, and the Improvements situated thereon, situated within the boundaries of a Lot which the Association acknowledges in this Declaration or in another recorded document is land which is to be maintained and repaired by the Association; (iii) all real property and the Improvements situated thereon, if any, within the Project located within and improved as 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 a county, city or town has accepted the responsibility for the maintenance, repair and replacement of such areas; (iv) any access gates and other Project entry features constructed within the Project (although, unless shown on the Plat, Declarant shall have no obligation to install any gate); (v) all perimeter fences for the Project, including any perimeter fence walls located upon or within the boundaries of a Lot, provided, however, the Association shall not be responsible for painting or finishing the interior side of any perimeter fence walls located upon or within the boundaries of a Lot; and (vi) to the extent any perimeter fence of the Project is located within the boundaries of a Lot, the area of the Lot located outside such perimeter fence.

Section 1.04 - "Articles". Articles shall mean the Articles of Incorporation of the Association as they may from time to time be amended.

Section 1.05 - "Assessment". Assessment shall mean all assessments authorized and provided by Article 8 of this Declaration.

Section 1.06 - "Assessment Lien". Assessment Lien shall mean a lien created or imposed by Article 8 of this Declaration.

Section 1.07 - "Association". Association shall mean and refer to 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 in this Declaration, and its successors and assigns. Declarant intends to organize the Association in the name of "Summit Shadows Community Association" but if such name is not available, the Association shall be organized under such other name as the Declarant may select.

Section 1.08 - "Board". Board shall mean the Board of Directors of the Association.

Section 1.09 - "Bylaws". Bylaws shall mean the Bylaws of the Association, as they may from time to time be amended.

Section 1.10 - "City". City shall mean the City of Mesa, Arizona.

Section 1.11 - "Committee". Committee shall mean the Architectural and Landscaping Control Committee created pursuant to Article 4 of this Declaration, and, if no such committee is created, it shall mean the Board.

J. Section 1.12 - "Common Areas". Common Areas shall mean (i) those portions of the Project, together with the Improvements thereon, which the Association may, from time to time, own in fee or in which it may have an easement interest, for as long as the Association holds fee title or an easement interest, including, but not limited to, Tracts A through H, inclusive, as shown on the Plat; (ii) the Access Parcel; (iii) all land within the Project which Declarant, by this Declaration or in any other recorded instrument, makes available for use by Members of the Association or otherwise designates as Common Areas for purposes of this Declaration; (iv) all land or right-of-way easements within the Project which are dedicated to the public or to the City, and which the City or other governmental agency requires the Association to maintain; and (v) any other areas with respect to which the Association has, in writing, assumed the administrative or maintenance responsibilities.

Section 1.13 - "Declarant". Declarant shall mean and refer to Monterey Homes Construction, Inc., an Arizona corporation, and its affiliates (including Monterey Homes Arizona, Inc., an Arizona corporation), successors and assigns and any Person to whom it may expressly assign any or all of its rights under this Declaration. An assignment of the rights of the Declarant under this Declaration may be an assignment of less than all of the rights of the Declarant under this Declaration, and such assignment may apply to less than all the Property. No assignment of the Declarant's rights under this Declaration shall be valid until it is recorded with the County Recorder of Maricopa County, Arizona. Notwithstanding the foregoing, in the event the Option Agreement is terminated prior to the purchase by Monterey from Optionor of all of the Lots, Optionor shall automatically become the Declarant under this Declaration, in which event all references to "Declarant" shall, thereafter, mean and refer only to Optionor, and after which event Monterey shall no longer be the Declarant under this Declaration. In the event Optionor becomes a Declarant in accordance with the preceding sentences, then at such time as Optionor has sold all of its Lots to Purchasers, Monterey may, in its sole discretion and as long as Monterey then owns any Lot, elect to once again become the Declarant under this Declaration by recording a notice of such election, in which event all references to "Declarant" shall thereafter mean and refer only to Monterey.

Section 1.14 - "Declaration". Declaration means this Declaration of Covenants, Conditions, Restrictions and Easements for Summit Shadows, as and if amended.

Section 1.15 - "Developer". Developer shall mean Monterey if Optionor becomes the Declarant pursuant to the last sentence of Section 1.12 above, but, unless and until Optionor becomes the Declarant, there shall be no "Developer" under this Declaration.

Section 1.16 - "Eligible Insurer or Guarantor". Eligible Insurer or Guarantor shall mean an insurer or governmental guarantor of a First Mortgage who has requested notice of certain matters from the Association in accordance with Section 12.01 of this Declaration.

Section 1.17 - "Eligible Mortgage Holder". Eligible Mortgage Holder shall mean a First Mortgagee who has requested notice of certain matters from the Association in accordance with Section 12.01 of this Declaration.

Section 1.18 - "First Mortgage". First Mortgage shall mean any mortgage, deed of trust or any other form of security instrument or agreement given to an institutional lender for the purpose of creating a lien on one or more Lots, with the first priority over any other mortgage, deed of trust or other security instrument or agreement.

Section 1.19 - "First Mortgagee". First Mortgagee shall mean the holder of any First Mortgage.

Section 1.20 - "Improvement". Improvement shall mean any building, driveway, walkway, parking area, fence, wall or other structure, all parts of a Living Unit, any swimming pool or spa, any Landscaping and all other improvements of every type and kind constructed on a Lot or the Common Areas or otherwise located within the Project.

Section 1.21 - "Landscaping". Landscaping shall mean any tree, plant, shrub, hedge, cacti, grass and other vegetation of any kind, any inert material used as ground cover and any rocks or similar materials used in connection with the landscaping of Lots or Common Areas.

Section 1.22 - "Lessee". Lessee shall mean the lessee or tenant under a lease, oral or written, of any Lot, including any assignee of a lease.

Section 1.23 - "Living Unit". Living Unit shall mean any building, or portion of a building, situated upon a Lot, designed and intended for use and occupancy as a residence. All references to a Living Unit shall be deemed to refer also to the underlying Lot, whether or not developed, and all permanent Improvements thereon.

Section 1.24 - "Lot". Lot shall mean each parcel designated as a lot on the Plat, as and if amended, with the exception of the Common Areas, and where the context indicates or requires, shall include any Living Unit or other Improvement and Landscaping situated thereon.

Section 1.25 - "Member". Member shall mean any Person who is a member of the Association as provided in Article 7 below.

Section 1.26 - "Occupant". Occupant shall mean any Person, other than an Owner who occupies or is in possession of a Lot, or any portion thereof, or the Living Unit thereon, whether as a Lessee or otherwise.

Section 1.27 - "Option Agreement". Option Agreement shall mean the Option Agreement dated December 29, 1999, between Monterey and Optionor, a Memorandum of which is recorded as Document No. 99-1168789 in the Official Records of Maricopa County, Arizona.

Section 1.28 - "Optionor". Optionor shall mean INCA Capital Fund 2, LLC and any Person to whom INCA Capital Fund 2, LLC assigns all of its rights under the Option Agreement or any Persons to whom INCA Capital Fund 2, LLC conveys, subject to the Option Agreement, all Lots owned by INCA Capital Fund 2, LLC.

Section 1.29 - "Owner". Owner shall mean and refer to the record owner, whether one or more Persons, of beneficial or equitable title (and legal title if the same has merged with the beneficial or equitable title) to the fee simple interest of a Lot. Owner shall not include (i) Persons having an interest in a Lot merely as security for the performance of an obligation, (ii) a Lessee or (iii) an Occupant. Owner shall include a purchaser under a contract for the conveyance of Property, subject to the provisions of A.R.S. § 33-741 et seq. Owner shall not include a purchaser under a purchase contract and receipt, escrow instructions or similar executory contracts which are intended to control the rights and obligations of the parties to the executory contracts pending the closing of a sale or purchase transaction. In the case of Lots the fee simple title to which is vested in a trustee pursuant to 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.

Section 1.30 - "Person". Person shall mean a natural person, corporation, business trust, estate, trust, limited liability company, partnership, association, joint venture, municipality, governmental subdivision or agency or other legal or commercial entity.

Section 1.31 - "Plat". Plat shall mean the subdivision plat of Summit Shadows, as recorded on April 20, 2000 in Book 530 of Maps, page 8, and as Document No. 00-0297510 in the Official Records of Maricopa County, Arizona, as may hereafter be amended or supplemented.

Section 1.32 - "Project". Project shall mean the Property, together with all Improvements located thereon, and such additions thereto as may hereafter be brought within the jurisdiction of the Association.

Section 1.33 - "Project Documents". Project Documents shall mean this Declaration, the Articles, the Bylaws, the Rules and Regulations, the Architectural and Landscaping Guidelines and all other documents or instruments pertaining to and affecting the Project, as the same may be amended from time to time.

Section 1.34 - "Property". Property shall mean Lots 1 through 60 and Tracts A through H as shown in the Plat and the Access Parcel.

Section 1.35 - "Purchaser". Purchaser shall mean any Person, other than Monterey or Optionor, 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 or Developer for use as a model home in connection with the sale or lease of other Lots or (ii) a Person who, in addition to purchasing a Lot, is assigned any or all of the Declarant's rights under this Declaration.

Section 1.36 - "Rules and Regulations". Rules and Regulations shall mean any rules and regulations adopted and/or amended from time to time by the Association for the Project.



Section 1.37 - "Single Family". Single Family shall mean a group of one or more persons, each related to the other by blood, marriage or legal adoption, or a group of not more than three (3) persons not so related, who maintain a common household in a Living Unit.

Section 1.38 - "Single Family Residential Use". Single Family Residential Use shall mean the occupation or use of a Lot by a Single Family in conformity with this Declaration and the requirements imposed by applicable zoning and other applicable laws.

Section 1.39 - "Visible From Neighboring Property". Visible From Neighboring Property shall mean, with respect to any particular object or matter, if such object or matter would be visible to a person six (6) feet tall, standing on any part of the Project adjacent to the Lot on which the object or matter is situated at an elevation no higher than the elevation of the base of the object or matter being viewed.

## ARTICLE 2 PLAN OF DEVELOPMENT

Section 2.01 - Property Subject to the Declaration. Monterey and Optionor declare that all of the Property within the Project shall be held, sold and conveyed subject to this Declaration. By acceptance of a deed or by acquiring any interest in any Lot subject to this Declaration, each Person, for himself or itself, his or its heirs, personal representatives, successors, transferees and assigns, binds himself, his heirs, personal representatives, successors, transfers and assigns to all of the provisions, restrictions, covenants, easements, charges, conditions, rules and regulations now or hereafter imposed by this Declaration. In addition, each Person, by so doing, thereby acknowledges that all restrictions, conditions, covenants, easements, charges, rules and regulations contained in this Declaration shall run with the land and be binding on all subsequent and future Owners, grantees, Purchasers, assignees, Lessees, Occupants and transferees thereof. Furthermore, each such Person fully understands and acknowledges that this Declaration shall be mutually beneficial, prohibitive and enforceable by the Association and all Owners. The Lots and the membership in the Association and the other rights created by this Declaration shall not be separated or separately conveyed, and each shall be deemed to be conveyed or encumbered with its respective Lot, even though the description in the instrument of conveyance or encumbrance may refer only to the Lot.

Section 2.02 - Common Areas. The Common Areas shall be transferred to the Association by special warranty deed pursuant to the terms of this Declaration. Such transfer shall be subject to all easements and matters of record affecting the Common Areas, and such transfer shall occur as soon as practical following the recordation of this Declaration.

Section 2.03 - Private Roadway. The roadway to be constructed on Tract A of the Common Areas (the "Roadway") shall be a private Roadway constructed for the exclusive use of Owners, Lessees and their guests and other invitees, and an affirmative easement for ingress and egress over and across the Roadway is hereby granted to each Owner for such purposes. The Association and not the City shall be solely responsible for the upkeep, maintenance and repair of the Roadway.

Section 2.04 - Access Gates. Guard service will not be provided in the Project. However, there shall be access gates for the Project installed on the Roadway located at the entrance to the Project for the intended purpose of limiting access to the Project to Owners, Lessees and their guests and other invitees. The access gates shall be part of the Common Areas, and the Association shall be solely responsible for the maintenance of the access gates. It is contemplated that the access gates will be operated by remote openers. Each initial Purchaser shall be provided with two (2) remote units. Additional or replacement remote units may be purchased only through the Association at a charge to be established by the Association. Each Owner shall also be responsible for payment of any programming fees charged by the supplier or the programmer of the remote units.

Section 2.05 - Access Gate Limitations. While the access gates are intended to restrict access to the Project, such gates shall be unmanned and are not intended to make the Project a secured community. Each Owner, Lessee and their respective family members, guests and other invitees further acknowledge and hereby agree to assume the risks that the access gates may restrict or delay entry into the Project by police, fire, ambulances and other emergency vehicles or personnel and neither the Declarant nor the Association or any director, officer, agent or employee of Monterey, Optionor, the Declarant or the Association shall be liable to any Owner, Lessee or other occupant, family members, guests or other invitees for any claims or damages resulting directly or indirectly from (a) the construction, existence, maintenance or adequacy of the access gates for the Project or (b) any loss, damage, injury or theft occurring within the Project.

Section 2.06 - Security and Monitoring Service. The Board shall have the authority, but not the obligation, to enter into agreements with a security and monitoring service company for the purpose of providing security and monitoring to all Living Units within the Project. Any security and monitoring agreements shall be with such company and upon such terms and conditions as the Board shall determine, and the fees for such monitoring service, to the extent provided to all Living Units within the Project, shall be paid by the Association from Assessments.

Section 2.07 - Disclaimer of Representations. Notwithstanding anything to the contrary herein, Declarant, Monterey and Optionor make no warranties or representations whatsoever that the plans presently envisioned for the complete development of the Project can or will be carried out or that the Property or any adjacent real property is or will be committed to, or developed for, a particular (or any) use, or that if such real property is once used for a particular use, such use will continue in effect. While Declarant, Monterey and Optionor have no reason to believe that any of the restrictive covenants contained in this Declaration are, or may be, invalid or unenforceable, Declarant, Monterey and Optionor make no warranty or representation as to the present or future validity or enforceability of any such restrictive covenant. Any Owner acquiring a Lot in reliance on one or more of such restrictive covenants shall assume all risks as to the validity and enforceability thereof, and by accepting a deed to a Lot, agrees that Declarant, Monterey and Optionor shall have no liability with respect thereto.

**ARTICLE 3**  
**COVENANTS AND RESTRICTIONS**

In addition to all other covenants and restrictions contained herein, the use of the Lots and the Improvements, the Common Areas and all other parts of the Project, are subject to the covenants and restrictions contained in this Article.

Section 3.01 - Residential Use. Each Lot in the Project shall be improved and used exclusively for Single Family Residential Use. No trade or business may be conducted on any Lot or in or from any Living Unit, except that an Owner or other resident of a Living Unit may conduct a business activity within a Living Unit so long as (i) the existence or operation of the business activity is not apparent or detectable by sight, sound or smell from the outside of the Living Unit, (ii) the business activity conforms to all applicable zoning ordinances or requirements for the Project, (iii) the business activity does not involve persons coming onto the Lot (other than for incidental and minimal pick-ups, deliveries and visits) or the door-to-door solicitation of Owners or other residents in the Project, (iv) the business activity is consistent with the residential character of the Project and does not constitute a nuisance or a hazardous or offensive use or threaten the security or safety of other residents within the Project and (v) the business actually conducted on a Lot or from a Living Unit does not involve any employees routinely coming onto the Lot, other than family members residing in the Living Unit, all as may be determined from time to time in the sole discretion of the Board. If a guest house is located upon a Lot, under no circumstance may such guest house be used as an office. The terms "business" and "trade", as used in this Section, shall be construed to have ordinary, generally accepted meanings, and shall include without limitation, any occupation, work or activity undertaken on an ongoing basis which involves the provision of goods or services to persons other than the provider's family and for which the provider receives a fee, compensation or other form of consideration, regardless of whether (i) such activity is engaged in full or part-time, (ii) such activity is intended or does generate a profit or (iii) a license is required for such activity. The sale or lease of a Living Unit by the Owner thereof shall not be considered a "trade" or "business" within the meaning of this Section. No Lot, Living Unit or any part of the Project shall ever be used or caused, allowed or authorized in any way, directly or indirectly, to be used for any business, professional, religious, institutional, commercial, manufacturing, industrial, mercantile, storing, vending, or related purposes; provided, however, that Declarant and Developer, and their duly authorized agents and employees, may use any part of the Project owned by Declarant and Developer for a model site or sites, a display and sales office, a business office and construction office during the construction and sales period. No garage, yard, patio or other similar type of sale shall be held within the Project.

Section 3.02 - Temporary Occupancy and Buildings. No trailer, bus, mobile home, tent, shack, storage shed, garage, barn or other building of a temporary nature shall be installed, located or used on any Lot at any time as a residence, either temporarily or permanently. Notwithstanding the foregoing, Declarant and Developer shall, as long as they own any Lot, have the right, until the Project is fully developed and improved, to maintain construction facilities and storage areas incident to their respective development and improvement of the Project.

Section 3.03 - Nuisances. 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 Property. In addition, a Living Unit or any other portion of the Project shall not be used in whole or in part for the storage of any property or thing that will cause the Living Unit or the Project or any part thereof to appear in any unclean or untidy condition or that will be unsightly, offensive, obnoxious or detrimental to any other Owners. No substance, thing or material shall be kept or used upon any Lot that will emit a foul, offensive or obnoxious odor or that will cause any noise that will or might disturb the peace, quiet, comfort, serenity or tranquility of the Occupants of adjacent portions of the Project. Without limiting the generality of the foregoing provisions, no exterior speakers, horns, whistles, bells or other sound devices, except security devices used exclusively for security purposes, shall be located, used or placed on any portion of any Lot without the written consent of the Committee. Notwithstanding the foregoing, speakers specifically designed and installed as built-in and recessed exterior speakers for a stereo system installed inside any Living Unit may be installed on a Lot provided that such speakers shall not be Visible From Neighboring Property and shall not be used in a manner so as to disturb the peace or the quiet, serenity or tranquility of the Occupants of adjacent portions of the Project. Noise caused by improperly muffled motor vehicles shall not be permitted and construction machinery and equipment must be operated within the manufacturers' recommendations and specifications and only during reasonable working hours. No nuisance of any kind or description shall be permitted to exist or operate upon any Lot so as to be offensive, unsanitary, unsightly or detrimental to the Occupants or Owners of adjacent portions of the Project. The Board, in its sole and absolute discretion, shall have the right to determine the existence of any nuisance whether described herein or not. No Improvements or Landscaping shall be permitted to be constructed on or to otherwise be permitted to exist on any Lots, the height or location of which shall be deemed by the Committee (i) to constitute a traffic hazard, (ii) to be unreasonably unattractive, or (iii) to be unreasonably detrimental to adjoining property.

Section 3.04 - Trash and Recycling Containers and Collection. No rubbish, trash, garbage, refuse, debris or recyclable materials shall be placed or kept on any portion of any Lot except in covered containers of a type, size and style which are approved by the Committee. Refuse containers shall be kept clean, sanitary and free of noxious odors. In no event shall such containers be maintained so as to be Visible From Neighboring Property except to make such containers available for collection and then only for the shortest period of time (not to exceed eighteen (18) consecutive hours) reasonably necessary to effect such collection. All rubbish, trash, garbage, refuse, debris and recyclable materials shall be promptly removed from the Lots and shall not be allowed to accumulate thereon. No incinerators shall be maintained or used and no rubbish, trash, garbage, refuse or debris shall be burned by open fire or otherwise on any portion of any Lot.

Section 3.05 - Animals. No animals, fish, fowl, poultry, swine, horses, reptiles or livestock shall be raised, bred or kept on or within any Living Unit or Lot, except that a reasonable number of dogs, cats or other generally recognized and commonly accepted household pets may be kept on or within the Living Units or Lots; provided, however, such household pets may not be kept, bred or maintained thereon for any commercial purposes, or in unreasonable numbers. No household pets may be kept on a Lot which result in an

annoyance to or which are obnoxious to other Owners or Occupants. All household pets must be kept indoors or within fenced yards and may not be permitted to run loose. No structure for the care, housing or confinement of any animal, bird, fowl, poultry or livestock shall be maintained so as to be Visible From Neighboring Property. The Owner of each pet is responsible for cleaning any dirt, soilage and damage caused by the pet. Upon the written request of any Owner, the Board shall conclusively determine, in its sole and absolute discretion, for the purposes of this Section, whether a particular animal, bird, fowl, poultry or livestock is a generally recognized and commonly accepted household pet or a nuisance or whether the number of animals, birds, fowl, poultry or livestock on any Lot is reasonable. Any decision rendered by the Board shall be enforceable as other restrictions contained herein.

Section 3.06 - Motor and Recreational Vehicles and Parking. No mobile home, boat, jet ski or wave runner or any boat, jet ski or wave runner trailer, motor home, recreational vehicle, all-terrain vehicle, off-road vehicle, trailer, horse trailer, camper, camper shell, snowmobile, bus, truck or other motor vehicle classed by manufacturing rating as exceeding three-quarter (3/4) tons, vehicles designed for commercial purposes or similar vehicles shall be kept, placed, maintained, constructed, reconstructed or repaired on any Lot or within the Project so as to be Visible From Neighboring Property; provided, however, that the provisions of this Section shall not apply to emergency vehicle repairs. All other motor vehicles shall be permitted to park only in garages or on paved driveways on Lots and may not park on the Roadway; provided, however, vehicles of guests and invitees may park on the Roadway for a temporary period of time not to exceed six (6) hours provided that such parking is done in a fashion so as not to obstruct driveways on other Lots or traffic within the Project and, provided further, that in no event may such vehicles be parked on any Roadway or Common Area overnight. All motor vehicles of Owners, Occupants, guests and invitees shall be kept in garages whenever such facilities are sufficient to accommodate the number of motor vehicles on a Lot. Any vehicle parked in violation of this Declaration may be towed at the direction of the Board or its agent, and the recording of this Declaration shall constitute the legal notice of intent to tow as though the Project were posted in accordance with the applicable laws and ordinances. Any expense incurred by the Association in connection with the towing of any vehicle or equipment shall be paid to the Association upon demand by the owner of the vehicle or equipment. If the vehicle or equipment is owned by an Owner, any amounts payable to the Association shall be secured by the Assessment Lien and the Association may enforce collection of such amounts in the same manner provided for in this Declaration for the collection of Assessments. The Board may adopt additional parking restrictions including the establishment of fines and assessments for their violation.

Section 3.07 - Garages. Any part of a Living Unit constructed as a garage shall be used for parking vehicles and other garage purposes only and shall not be converted for living or recreational purposes. All garages must be kept in a neat and tidy manner at all times. Garage doors must be kept completely closed at all times except to permit vehicle ingress and egress.

Section 3.08 - Signs. No signs or billboards of any kind shall be displayed to the public view on any portion of the Project except for: (i) signs as may be required by legal proceedings; (ii) not more than two (2) signs for each Living Unit for identification of the

address of such Living Unit with a combined total face area of eighty-four (84) square inches or less; (iii) such signs erected by the Declarant and Developer necessary or desirable in connection with the development, sale or operation of the Lots and Improvements during the construction and sales period; (iv) one (1) sign advertising the Lot for sale or for rent, which sign shall not be larger than 24" x 24" and shall be made of metal or fiberboard or wood and mounted on a wood or metal post; (v) one (1) "open house" sign; (vi) signage for the Project at such locations designated or installed by Declarant and Developer; and (vii) such other signs, the nature, number and location of which shall have been approved in advance by the Association. All signs provided for under this Section shall require the approval of the Committee as to the size, color, design, message content, location, type and hours of display.

Section 3.09 - Machinery and Equipment. No machinery or equipment of any kind shall be placed, operated or maintained upon or adjacent to any Lot except such machinery or equipment as is usual and customary in connection with the use, maintenance or construction of a residence, appurtenant structures or other Improvements, which machinery and equipment shall not be Visible From Neighboring Property, except when it is being operated or used in connection with the construction of Improvements or the maintenance of Improvements.

Section 3.10 - Clotheslines. No clotheslines of any sort or other device for drying or airing of clothes shall be erected, placed or maintained upon any Lot.

Section 3.11 - Sidewalk and Roadway Encroachments. No Landscaping or Improvement of any kind shall be permitted to overhang or otherwise encroach upon any Common Area, sidewalk or roadway within the Project.

Section 3.12 - HVAC and Solar Panels. Except as may be installed by Declarant during the original construction of any Living Unit, no heating, air conditioning, evaporative cooling facilities or solar collector panels may be installed, constructed or maintained upon any Living Unit unless (i) such facilities or panels are installed in such a manner so they are not Visible from Neighboring Property and (ii) the Committee has approved such facilities or panels.

Section 3.13 - Fencing. All fencing which is built upon a Lot shall be of masonry and/or wrought iron material only and shall have a maximum height of six (6) feet, except as otherwise approved in writing by the Committee.

Section 3.14 - Storage and Tool Sheds and Structures. No storage or tool sheds or similar structures shall be placed, erected or maintained upon any part of the Project, except where the storage or tool shed or similar structure (i) is constructed of the same or substantially similar materials as, and is the same color as and architecturally comparable to, the exterior of the Living Unit located upon the Lot (all as reasonably determined by the Committee) subject to the applicable provisions of any Architectural or Landscaping Guidelines; (ii) complies with any applicable set-back line requirements; and (iii) is not Visible From Neighboring Property.

Section 3.15 - Window Materials. Within ninety (90) days of occupancy of a Living Unit, each Owner shall install draperies or suitable window treatments on all windows facing

the street(s) adjacent to its Lot. However, no external window covering may be placed, or permitted to remain, on any window of any Living Unit or other Improvement without the prior written approval by the Committee in accordance with Article 4. No reflective coating, materials or covering may be placed on any window of any Living Unit or other Improvement. Further, all curtains, blinds, interior shutters, screens and window coverings or window treatments which are Visible From Neighboring Property must be neutral in color. No bedsheets, blankets, bedspreads or other items not designed for use as curtains or other window coverings may be used for such purposes, whether permanently or temporarily, if they are Visible From Neighboring Property.

Section 3.16 - Mineral Exploration. No Lot shall be used in any manner to explore for or to remove any water, oil or other hydrocarbons, minerals, gravel or other natural resources of any kind.

Section 3.17 - Conveyance. No portion less than all of a Living Unit or Lot shall be conveyed, transferred or encumbered. Nothing herein shall prevent the dedication or conveyance of or granting of easements over portions of the Project for public utilities or any other public purposes, in which event the remaining portion of any Lot or Living Unit affected shall, for the purpose of this Declaration, be considered a whole Lot or Living Unit.

Section 3.18 - Further Subdivision. No Lot in the Project shall be further subdivided or separated into smaller lots nor conveyed in less than the full original dimensions of such Lots as shown on the Plat. Notwithstanding this Section or any other provision contained in this Declaration, as long as the Class "B" Membership is in existence, Declarant, without the consent of any other Member, shall have the right to replat the Project in any manner Declarant deems appropriate, including, without limitation, changing the size, location and configuration of Lots, Roadways, and Common Areas and changing the number of Lots within the Project; provided, however, as long as the Option Agreement is in effect, any replat of the Project shall require the written consent of Optionor and, provided further, that any replat which would affect any Lots owned by Developer or access to such Lots shall require the written consent of Developer. In the event of any such replat, Optionor and/or Monterey, to the extent they then own any Lots, shall have the right, without the consent of any other Member, to amend this Declaration as may be necessary or appropriate as a result of such permitted replat of the Project.

Section 3.19 - Violation of Statutes, Ordinances and Regulations. No Lot shall be maintained or utilized in such a manner as to violate any applicable statute, ordinance or regulation of the United States of America, the State of Arizona, County of Maricopa, the City or any other municipality, governmental agency or subdivision authority having jurisdiction over the Lots or the use or occupation thereof.

Section 3.20 - Rental. Only entire Living Units may be rented, and if so rented, the occupancy thereof shall be limited to the Lessee and his family and guests. No Owner shall be permitted to lease a Living Unit for transient or hotel purposes. No Owner may lease less than his entire Living Unit. All lease agreements shall be in writing and shall provide that the terms of the Lease shall be subject in all respects to the provisions of this Declaration and the

Project Documents, and any failure by Lessee to comply with the terms of such documents shall be a default under the lease. For purposes of this Declaration, "lease" shall mean any agreement for the leasing or rental of all of a Living Unit, including, but not limited to, "month-to-month" rentals. Upon leasing his Living Unit, an Owner shall promptly notify the Association in writing of the commencement date and termination date of the lease, together with the names of each Lessee or other person who will be occupying the Living Unit during the term of the lease. The foregoing restrictions shall not apply to any leases pursuant to which Declarant and/or Developer lease a Living Unit(s) for purposes of operating and maintaining a Model Home(s) thereon.

Section 3.21 - Drainage. No Living Unit, Landscaping or other Improvement shall be constructed, installed, placed or maintained in any manner that would obstruct, interfere with or change the direction or flow of water in accordance with the drainage plans for the Project or any part thereof or for any Lot as shown on the drainage plan on file with the city or town in which the Project is located.

Section 3.22 - Utility and Irrigation Meters and Panels. No utility or service equipment or lines may be installed or located on any Lot except as has been approved by the Committee. No utility meter or apparatus shall be located on any pole or attached to the outside of any Improvement which is exposed to view from any street within the Project. Notwithstanding the foregoing, utility meters and related panels and similar equipment may be placed on outside building walls as necessary to comply with the requirements, requests, regulations, orders, commissions or specifications of any public, quasi-public or private utility or any governmental agency or body provided that reasonable efforts shall be made to avoid placing any such meter, panel or equipment on the outside front wall of any Living Unit or other building facing the street directly in front of or to the side of the Living Unit. All sprinkler and irrigation controls, valves, panels and equipment installed on any Lot shall be installed so as not to be visible from any street located directly in front of or to the side of any Lot.

Section 3.23 - Antennas and Satellite Dishes.

A. This Section applies to antennas, satellite television dishes and other devices ("**Receivers**"), including any poles or masts ("**Masts**") for such Receivers, for the transmission or reception of television or radio signals or any other form of electromagnetic radiation.

B. As of the date of recordation of this instrument, Receivers one (1) meter or less in diameter are subject to the provisions of Title 47, Section 1.4000 of the Code of Federal Regulations ("**Federal Regulations**"). "**Regulated Receivers**" shall mean Receivers subject to Federal Regulations as such regulations may be amended or modified in the future or subject to any other applicable federal, state or local law, ordinance or regulation ("**Other Laws**") that would render the restrictions in this Section on Unregulated Receivers (hereinafter defined) invalid or unenforceable as to a particular Receiver. "**Unregulated Receivers**" shall mean all Receivers that are not Regulated Receivers. Notwithstanding the foregoing, a Regulated Receiver having a Mast in excess of the size permitted under Federal Regulations



or Other Laws for Regulated Receivers shall be treated as Unregulated Receivers under this Section.

C. No Unregulated Receivers shall be permitted outdoors on any Lot, whether attached to a building or structure or on any Lot, unless approved in writing by the Committee, with such screening and fencing as such Committee may require. Unregulated Receivers must be ground mounted and must not be Visible from Neighboring Property.

D. Regulated Receivers shall be subject to the following requirements:

i) A Regulated Receiver and any required Mast shall be placed so as not to be Visible from Neighboring Property if such placement will not (a) unreasonably delay or prevent installation, maintenance or use of the Regulated Receiver, (b) unreasonably increase the cost of installation, maintenance or use of the Regulated Receiver or (c) preclude the reception of an acceptable quality signal.

ii) Regulated Receivers and any required Masts shall be placed on Lots only in accordance with the following descending order of locations, with Owners required to use the first available location that does not violate the requirement of parts (a) through (c) in subsection (i) above:

1. A location in the back yard of the Lot where the Receiver will be screened from view by Landscaping or other Improvements;
2. An unscreened location in the back yard of the Lot;
3. On the roof but below the roof line;
4. A location in the side yard of the Lot where the Receiver and any pole or Mast will be screened from view by Landscaping or other Improvements;
5. An unscreened location in the side yard; or
6. A location in the front yard of the Lot where the Receiver will be screened from view by Landscaping or other Improvements.

Notwithstanding the foregoing order of locations, if a location stated in the above list allows a Receiver to be placed so as not to be Visible from Neighboring Property, such location shall be used for the Receiver rather than any higher-listed location at which a Receiver will be Visible from a Neighboring Property, provided that placement in such non-visible location will not violate the requirements of parts (a) through (c) in subsection (i) above.

i) Owners shall install and maintain Landscaping or other Improvements ("**Screening**") around Receivers and Masts to screen items that would otherwise be Visible from Neighboring Property unless such requirement would violate the requirements of parts (a) through (c) in subsection (i) above. If an Owner is not required to install and maintain Screening due to an unreasonable delay in installation of the Receiver that such Screening would cause, the Owner shall install such Screening within thirty (30) days following installation of the Receiver and shall thereafter maintain such Screening, unless such Screening installation or maintenance will violate the provisions of parts (a) through (c) in subsection (i) above. If an Owner is not required to install Screening due to an unreasonable increase in the cost of installing the Receiver caused the cost of such Screening, the Association shall have the right, at the option of the Association, to enter onto the Lot and install such Screening and, in such event, the Owner shall maintain the Screening following installation, unless such Screening installation or maintenance will violate the provisions of parts (a) through (c) in subsection (i) above.

The provisions of this Section are severable from each other; the invalidity or unenforceability of any provision or portion of this Section shall not invalidate or render unenforceable any other provisions or portion of this Section, and all such other provisions or portions of this Section shall remain valid and enforceable. The invalidity or unenforceability of any provisions or portions of this Section to a particular type of Receiver or Mast or to a particular Receiver or Mast on a particular Lot shall not invalidate or render unenforceable such provisions or portions regarding other Receivers or Masts on other Lots.

Section 3.24 - Basketball Goals and Play Structures. No basketball goal, backboard or similar structure or device and no swing set or other play structure which is Visible From Neighboring Property shall be placed or constructed on any Lot without the prior written approval of the Committee (including, but not limited to, approval of appearance, dimensions and location). In no event shall basketball goals be permitted to be attached to any Living Unit. All basketball goals must be installed, placed and kept no further forward on any Lot than the garage doors of the Living Unit situated on that Lot. Permanent basketball goals must include a free standing pole, which must be painted the color of the body of the Living Unit. The backboard of any basketball goal must be composed of a clear material.

Section 3.25 - Items Visible From Neighboring Property. The following shall not be erected, used, maintained or kept on any Lot so as to be Visible From Neighboring Property: air conditioners, coolers, pool filters, pool heaters, lawn and yard tools, storage tanks for water, gas, gasoline, oil or other fuel.

Section 3.26 - Lights. Spot lights or other lights shall not be installed, maintained or used in a manner which causes glare to neighboring property or an annoyance to the Occupant of neighboring Lots. Sport court and overhead swimming pool lights, shall not be allowed except as approved by the Committee. Sport court lighting shall not be utilized between the hours of 10:00 p.m. and 6:00 a.m. All outside lights, if any, will be of a height, design and type approved by the Committee.

Section 3.27 - Reflective Materials. Reflective materials or articles, including reflective house sidings and roofing material, shall not be maintained on any Lot. No glass used in the construction of any exterior improvement on any Lot shall have a light reflective value in excess of fifty percent (50%).

Section 3.28 - Roofs and Flashings. No asbestos shingle roofs, light-reflective roofs or flat roofs (unless fully concealed by a parapet wall so as not to be Visible From Neighboring Property) shall be constructed or maintained on any Lot. No standing water shall be permitted to exist on any flat roof. Only roofs composed of concrete or clay tile or another material approved by the Committee shall be constructed on any Living Unit.

Section 3.29 - Tennis Courts. Tennis/sport courts shall be permitted only if, in the judgment of the Committee, after proper application, the proposed tennis/sport court is not detrimental to the surrounding properties and does not materially interfere with the harmonious and orderly development of the Project.

Section 3.30 - Declarant's/Developer's Exemption. Nothing contained in this Declaration shall be construed to prevent or materially impair the erection, operation, maintenance, replacement and repair by Declarant and/or Developer, or their duly authorized agents, of structures, improvements or signs necessary or convenient to the development, administration, management and sale and operation, maintenance and repair of property within the Project. Without limiting the generality of the preceding sentence and notwithstanding any provisions contained in this Declaration, Declarant is expressly exempted from the provisions hereof requiring submittals to or authorizations by the Committee, including but not limited to Article 4 hereof. In addition, Developer shall be exempted from the provisions hereof requiring submittals to or authorization by the Committee, including Article 4 hereof, but only to the extent the subject items do not contain material modifications from improvements previously constructed by Monterey within the Project. Any provisions of this Declaration which prohibit non-residential use of Lots and regulate parking and vehicles shall not prohibit the construction and operation by Declarant and Developer of model homes (including, without limitation, any use in whole or in part as sales offices) (collectively, the "Models") and parking available to the visiting of such Models so long as construction, operation and maintenance of such Model parking will otherwise comply with all of the provisions of this Declaration.

Section 3.31 - Height Restriction. No two (2) story improvements shall be constructed on Lots 43, 44, 45 or 46 of the Project.

#### ARTICLE 4 ARCHITECTURAL AND LANDSCAPING CONTROL

##### Section 4.01 - Architectural and Landscaping Control.

A. All improvements constructed on Lots shall be of new construction, and no buildings or other structures shall be moved from other locations onto any Lot.



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

C. No Improvement shall be constructed or removed from any Lot and, except for such removal as required in connection with routine Landscaping maintenance, no Landscaping shall be installed, planted, placed on or removed from any Lot without the prior written approval of the Committee, and all Improvements and Landscaping must fully comply with the Architectural and Landscaping Guidelines.

D. No addition, alteration, repair, change, painting or other work which in any way alters the exterior appearance of any Living Unit or any Landscaping or other Improvements on any Lot, including, without limitation, the exterior color scheme of any Improvements located thereon from their appearance on the date the Lot is ~~conveyed~~ by Declarant or Developer to a Purchaser shall be made or done without the prior written approval of the Committee.

E. Any Owner desiring approval of the Committee for the construction, installation, addition, alteration, repair, change or replacement of any Improvement or the Landscaping which would alter the exterior appearance of his or its Lot or the Improvements or Landscaping located thereon shall submit to the Committee a written request for approval, specifying in detail the nature and extent of the addition, alteration, repair, change or other work which the Owner desires to perform. Any Owner requesting the approval of the Committee shall also submit to the Committee any additional information, plans and specifications which the Committee may request.

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

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

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

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

J. The approval required by the Committee pursuant to this Section shall be in addition to and not in lieu of any approvals or permits which may be required under any

federal, state or local law, statute, ordinance, rule or regulation, including, but not limited to, the ordinance requirements of the city or town where the Property is located.

K. All Improvements (except Landscaping) must be constructed to comply with the applicable setback requirements set forth on the Plat.

Section 4.02 - Landscaping Requirements. If the front yard Landscaping on each Lot is not installed prior to the closing of the sale of a Lot by Declarant or Developer to a Purchaser of the Lot, the Purchaser of the Lot shall, within sixty (60) days of the closing of its purchase of the Lot, cause the front yard Landscaping on its Lot to be fully installed in accordance with a landscape plan approved by the Committee and in accordance with the criteria set forth in the Architectural Landscaping Guidelines. In the event an Owner fails to comply with the requirements set forth in this Section, the Association shall be entitled (although not obligated) to take all available action necessary to cause such Landscaping to be installed, including the initiation of legal proceedings against the non-complying Owner. In the event of such non-compliance, the Association shall also have the right to levy a fine against such Owner and suspend such Owner's rights under this Declaration and the Project Documents. The non-complying Owner shall be responsible for all fees and costs incurred by the Association or the Declarant in connection with the enforcement of this Section, including reasonable attorneys' fees, and such amounts shall be added to and become a part of the Assessment for which the non-complying Owner's Lot is subject.

Section 4.03 - Appointment of Committee. The Association shall appoint an Architectural and Landscaping Control Committee to perform the functions of the Committee set forth in this Declaration. The Committee shall consist of not less than three (3) members. From the date of this Declaration until the period ending one (1) year after Declarant has sold its last Lot, the Declarant shall have the sole right to appoint and remove the members of the Committee. At such time as the Declarant no longer is entitled to appoint members of the Committee, the members of the Committee shall be appointed by the Board. The Declarant, with the written consent of Optionor and Developer may at any time voluntarily surrender its right to appoint and remove members of the Committee, and in that event, the Declarant may require, for a period expiring one (1) year after the Declarant has sold its last Lot, that specified actions of the Committee, as described in a recorded instrument executed by the Declarant, be approved by whichever of Declarant, Optionor and Developer then own any Lot.

Section 4.04 - Determination of Architectural and Landscaping Guidelines. Prior to the termination of the Class "B" Membership, Declarant, with the written consent of Optionor and/or Developer, as the case may be, shall have the right but not the obligation to establish and revise the Architectural and Landscaping Guidelines. The Architectural and Landscaping Guidelines may include supplemental procedures and restrictions for the construction, installation and removal of any Improvements or Landscaping on any Lot. Upon the termination of the Class "B" Membership, the Board shall have the right to make such changes to the Architectural and Landscaping Guidelines as the Board shall deem appropriate. The Committee shall keep and maintain a written record of all actions taken in connection with the Committee. The Committee may establish a reasonable processing fee to cover the costs of

the Association in considering any request for approval submitted to the Committee, which fee shall be paid at the time such request for approval is submitted.

Section 4.05 - Failure to Approve or Disapprove. All requests for Committee approval pursuant to this Article must be made by an Owner in writing. In the event the Committee fails to approve or disapprove in writing an application for an improvement, addition or alteration to a Lot within thirty (30) days after the receipt by the president of the Association and any management company retained by the Association of a complete application, duly prepared in accordance with the rules promulgated by the Declarant or the Board, as the case may be, such application for an improvement shall be deemed disapproved, and the Owner shall be free to resubmit such application to the Committee. If any Owner resubmits an application which was deemed disapproved pursuant to the preceding sentence, and in the event the Committee fails to approve or disapprove in writing such resubmitted application within thirty (30) days after the receipt by the President of the Association and any management company retained by the Association of a complete resubmitted application, duly prepared in accordance with the rules promulgated by the Declarant or the Board, as the case may be, the application shall be deemed approved by the Committee, provided such improvement, addition or alteration described in the resubmitted application is carried out in precise conformity with such application.

Section 4.06 - Prior Approval. The approval by the Committee of any plans, drawings or specifications, as the case may be, for a matter requiring the prior written approval of the Committee, shall not be deemed to constitute a waiver of any requirement or restriction imposed by this Declaration, or of any right of the Committee to withhold approval of any similar plan, drawing, specification or matter subsequently submitted for approval.

Section 4.07 - Effect of Approval or Disapproval. All decisions of the Committee shall be final, and neither Monterey, Optionor, Declarant, the Board, the Committee nor any director, officer, shareholder or member thereof shall have any liability to any Owner or any other party for any damage or loss suffered or claimed on account of: (i) approval or disapproval of any plans, drawings or specifications or any landscape plan; (ii) construction or modification of any Improvement or performance of any work, whether or not pursuant to approved plans, drawings and specifications; or (iii) the development of any property within the Project.

Section 4.08 - Governmental Approvals. The approval of the Committee required by this Section shall be in addition to, and not in lieu of, any approvals, consents or permits required under the ordinances or rules and regulations of any county or municipality having jurisdiction over the Project.

## ARTICLE 5 EASEMENTS

Section 5.01 - Easements in Common Areas. Each and every Member shall have a nonexclusive perpetual easement of use and enjoyment in and to the Common Areas. Such right and easement of use and enjoyment shall be subject to:

- A. The right of the Association to limit the number of guests of Members;
- B. The right of the Association to suspend the right of any Member to use the facilities situated upon the Common Areas for any period during which an Assessment against the Member's Lot remains unpaid or for any violation of the Project Documents;
- C. The right of the Association to dedicate, transfer or convey, all or any part of the Common Areas to any public agency, authority or utility as provided in this Declaration;
- D. The right of the Association to promulgate Rules and Regulations concerning the use of any Common Areas and all facilities located thereon; and ~~and~~
- E. All existing easements of record.

Section 5.02 - Blanket Easement. There is hereby created in the Association and all providers to the Project of public utilities a blanket easement upon, across, over and under the Property for ingress and egress for the installation, replacing, repairing and maintaining of all utility and service lines and systems, including but not limited to water, sewer, gas, telephone, electrical, air conditioning, heating, television cable or communication lines and systems. By virtue of this easement, it shall be expressly permissible for the providing utility or service company or the Association or their agents to install and maintain facilities and equipment on the Property and to affix and maintain wires, pipes, lines, conduits, ducts, vents, cables, circuits and other appurtenant items on the Property and to trim any trees or shrubbery which interfere with any such utility facilities. Notwithstanding anything to the contrary contained in this Article, no sewer facilities, electrical lines, water lines or other utility or service lines may be installed or relocated on the Property, except as approved by Declarant, as long as Declarant owns any interest in any Lot or in the Project and, thereafter, except as approved by the Board.

Section 5.03 - Easement for Encroachments. Each Lot and the Common Areas shall be subject to an easement for encroachments, including but not limited to encroachments of walls, ceilings, ledges, floors and roofs caused by construction, reconstruction, repair, shifting, settling, movement and overhangs. If any portion of the Common Areas shall actually encroach upon any Lots, or if any Lot shall actually encroach upon any portion of the Common Areas, or, if any Lot shall actually encroach upon another Lot, as the Common Areas and Lots are shown by the Plat, a valid easement for such encroachments and for the maintenance, repair and replacement thereof shall and does exist. In the event that any Improvement is repaired, altered or reconstructed, similar encroachments shall be permitted and a valid easement for such encroachments and for the maintenance thereof shall exist. Owners and any other parties acquiring any interest in the Project shall be deemed to acquiesce and agree to the existence of such easements by accepting a deed or other Ownership interest from any seller of a Lot or by acquiring any interest whatsoever in the Project.



Section 5.04 - Association's Right of Entry. During reasonable hours, the Association or any authorized representative of the Association shall have the right to enter upon and inspect any Lot, excluding the interior of any Improvement located thereon, for the purpose of making inspections to determine whether the provisions of the Project Documents are being complied with by the Owner or Occupants of said Lot.

Section 5.05 - Association's Easement for Performing Maintenance Responsibilities. The Association shall have an easement upon, across, over and under the Common Areas and the Lots for the purpose of repairing, maintaining and replacing Areas of Association Responsibility and for performing all of the Association's other rights, duties and obligations hereunder.

Section 5.06 - Temporary Easements. Declarant, its agents, employees and contractors shall have a temporary easement upon each Lot and the Common Areas as is necessary for development of adjacent Lots and Common Areas and completion of improvements in public rights-of-way, public utility easements, drainage easements and Common Areas. In addition, Declarant, Developer and their agents, employees and contractors shall have a temporary easement over every Lot and the Common Areas as is necessary to carry out any work required by, convenient to or incidental to carrying out the terms of any warranty.

Section 5.07 - Public Easements. Each Owner who accepts a deed to or any interest in a Lot, agrees to recognize and be bound by any drainage easements or other easements shown in the Plat or which otherwise exist with respect to the Lot purchased by such Owner or the Common Areas, all in accordance with applicable ordinances and regulations.

Section 5.08 - Perimeter Wall Easements and Maintenance. Each Owner who accepts a deed to a Lot which borders Stapley Drive or any Common Area tract shall be deemed to grant to the Association a non-exclusive easement for access to, and maintenance and repair of, the perimeter walls for the Project along Stapley Drive and any adjacent Common Area tract, and each Owner of such a Lot shall be responsible for maintaining the interior of any such perimeter wall and shall also be responsible for repairing any damage to such perimeter wall caused by such Owner or its family members, guests, lessees or agents. To the extent any perimeter wall for the Project encroaches upon any Lot, an easement for such encroachment is hereby established over the encroached upon portion of any such Lot for the benefit of the Association.

## **ARTICLE 6 MAINTENANCE**

Section 6.01 - Maintenance of Areas of Association Responsibility. The Association, or its duly delegated representative, shall be responsible for the maintenance, repair and replacement of (i) the Common Areas, including, but not limited to, any walls, structures, signs, Landscaping, parking areas, streets, street lights and other lighting, the tot lot, the ramada and recreational facilities located thereon, together with all other real and personal property owned by the Association, and (ii) all other Areas of Association Responsibility.

Section 6.02 - Maintenance of Improvements. No Improvement upon any Lot shall be permitted to fall into disrepair, and all Improvements shall at all times be kept in good condition and repair, adequately painted and otherwise finished. Each Owner shall maintain in good repair the exterior surfaces of each Improvement on said Owner's Lot, including but not limited to walls, roofs, porches, patios and appurtenances. Nothing shall be done in or to any Improvement which will impair the structural integrity of any Improvement except in connection with any alterations and repairs permitted or required by the Committee. In the event of damage or destruction from any cause whatsoever to all or any portion of an Improvement, the Owner of the Lot shall promptly repair, reconstruct or restore the same, or cause the same to be repaired, reconstructed or restored, to the condition existing prior to such damage or destruction. Each Owner shall also maintain in good condition and repair all paved, concrete and other artificially surfaced areas, including driveways and walkways located on the Owner's Lot.

Section 6.03 - Maintenance of Landscaping. All lawn areas shall be kept mowed as needed to keep an even, well groomed appearance and shall be watered and fertilized at such times and in such quantities as required to keep the grass alive and attractive and free of weeds. In addition, each Owner of a Lot shall keep all other Landscaping of every kind located on his or its Lot neatly groomed and trimmed (including the pruning of dead wood) according to their plant culture and landscape design, and each Owner shall keep all such Landscaping watered and fertilized at such time and in such quantities as required to keep them alive and attractive and each Owner shall keep all such areas properly cultivated and free of trash, weeds and other unsightly materials. Each Owner shall immediately remove and replace any dead tree, shrub, plant, ground cover or other dead Landscaping on its Lot. Notwithstanding the foregoing, Owners shall not be responsible for maintenance of any area which (i) is an Area of Association Responsibility or (ii) is an area which the Association assumes responsibility for in writing.

Section 6.04 - Additional Maintenance: Standard of Care. The Association shall have the right, but not the obligation to undertake any maintenance within the Project as the Board may from time to time determine to be in the best interest of the Association and the Members. The Board shall endeavor to use a high standard of care in providing any maintenance, management and repair, so that the Project will reflect a high pride of ownership.

Section 6.05 - Assessment for Damage or Destruction. Notwithstanding any other provision contained in this Declaration, in the event that any Lot or Common Areas are damaged or destroyed through the willful or negligent act or omission of any Owner, his family, pets, guests, Lessees, Occupants, licensees or agents and the Association performs the appropriate repairs or replacements as required or permitted herein, the cost to repair such damage or destruction shall be added to and become a part of the Assessment to which such Lot is subject.

Section 6.06 - Assessment for Nonperformance of Maintenance. In the event any Owner fails to maintain any portion of its Lot and the Improvements located thereon, the Association shall have the right, but not the obligation, to enter upon such Owner's Lot to perform the maintenance and repairs not performed by the Owner, and the cost of such

maintenance and repairs shall be added to and become a part of the Assessment to which such Lot is subject.

Section 6.07 - Maintenance of Walls other than Common Walls. Walls (other than common walls and other than perimeter fences included as Areas of Association Responsibility) located on a Lot shall be maintained, repaired and replaced by the Owner of the Lot. Any wall which is placed on the boundary line between a Lot and the Common Area (other than perimeter fences included as Areas of Association Responsibility) 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. Common walls are to be maintained in accordance with Article 10 below.

Section 6.08 - Insurance Obtained by Owner. Each Owner shall be responsible for obtaining property damage insurance for its own benefit and at its own expense covering its own Lot and the Improvements located thereon. Each Owner shall also be responsible for obtaining at his/her own expense personal liability insurance for death, bodily injury or property damage arising out of the use, ownership or maintenance of its Lot and Improvements.

## ARTICLE 7 HOMEOWNERS' ASSOCIATION

Section 7.01 - Formation of Association. The Association has been or shall be incorporated as an Arizona non-profit corporation to perform and exercise all or any part of the responsibilities and functions granted to the Association under this Declaration and the Project Documents. In the event of any conflict or inconsistency between this Declaration and the Articles, Bylaws, Rules and Regulations, Architectural and Landscaping Guidelines or any other Project Document, this Declaration shall control.

Section 7.02 - Membership. Each Owner shall automatically be a Member of the Association, and upon subsequent transfers of the Owner's Lot, the new Owner shall automatically become a Member of the Association and the former Owner's membership shall automatically cease. Membership shall be appurtenant to and may not be separated from ownership of any Lot and any attempt to transfer membership, other than upon the transfer of the Lot giving rise to the membership, shall be void. Each and every Owner, by accepting its ownership interest in a Lot, agrees to become a Member of the Association and to be bound by the provisions of the Project Documents and this Declaration.

Section 7.03 - Classes of Membership and Voting Rights. The Association shall have two (2) classes of voting membership designated as Class "A" and Class "B". Class "A" Members shall be all Owners, except Declarant shall not be a Class "A" Member as long as the Class "B" membership is in existence. With the exception of the consent requirements set forth in Sections 8.03, 8.04 and 14.01 of this Declaration, the Class "A" Members shall not be entitled to exercise any voting rights in the Association until the termination of the Class "B" membership. Upon termination of the Class "B" membership, each Class "A" member, including Declarant with respect to any Lots owned by Declarant, shall be entitled to one (1) vote for each Lot owned by it. If a Lot is owned by more than one individual Class "A"

Member, the Members owning such Lot shall collectively be entitled to cast only one (1) vote for that Lot. The vote for such Lot shall be exercised as the Owners thereof among themselves determine, but in no event shall more than one (1) vote be cast with respect to any Lot. The Class "B" Member shall be the Declarant. As long as the Class "B" membership is in existence, the Class "B" Member shall, in its sole discretion, have the right and authority to elect the Board and the Committee and, except for the consent requirements set forth in Sections 8.03 and 8.04 of this Declaration or as set forth in Section 14.15 of this Declaration, the Class "B" Member shall have the full right to control the Association. The Class "B" membership shall cease and be converted to Class "A" membership upon the first to occur of the following:

- A. The closing of the sale of the last Lot owned by Optionor, Declarant and Developer to a Purchaser; or
- B. Such time as the Class "B" Member shall elect to convert its Class "B" membership to Class "A" membership and provides the Association with written notification of such election.

Notwithstanding the foregoing, as long as Monterey is the Declarant and the Option Agreement is in effect and as long as Optionor owns any Lots, Monterey may not, without the prior written consent of Optionor, elect to convert the Class "B" membership to Class "A" membership. Also, if Optionor becomes Declarant and as long as there is a Developer under this Declaration and if Optionor as Declarant desires to convert its Class "B" membership to Class "A" membership, before doing so, Optionor must first offer to assign to Developer all of its rights as the Declarant and Class "B" Member under this Declaration, and in the event Developer elects (by providing Declarant with written notice thereof) within ten (10) days of its receipt of such offer to accept such rights, Developer shall thereafter become the Declarant and Class "B" Member under this Declaration and, as such, Developer shall also be deemed to assume all liabilities of the Declarant which thereafter arise under this Declaration. Upon the termination of the Class "B" membership, that membership shall be converted to Class "A" membership and Declarant shall thereafter be entitled to one (1) vote for each Lot owned by Declarant. Notwithstanding any other provision contained in this Declaration or in any other Project Documents, Optionor shall not have any voting rights in the Association unless Optionor becomes the Declarant in accordance with Section 1.13 of this Declaration or unless Optionor still owns any Lots at the time the Class "B" Membership shall cease to exist.

Section 7.04 - Duties and Powers of the Association. In addition to the duties and powers enumerated in the Project Documents or elsewhere provided for herein, and without limiting the generality thereof, the Association shall have the duty and power to perform the following:

- A. Maintain, repair, replace, restore, operate and manage all Areas of Association Responsibility and all Improvements and Landscaping thereon, and all property that may be acquired by the Association;

- B. Enforce the provisions of this Declaration by appropriate means, including, without limitation, the expenditure of funds of the Association, the employment of legal counsel and the commencement and prosecution of legal proceedings;
- C. Maintain such policy or policies of insurance as are required by this Declaration or as the Board deems necessary or desirable in furthering the purposes of and protecting the interests of the Association and its Members;
- D. Grant and reserve easements where necessary for utilities and sewer facilities over the Common Area and the Lots;
- E. Employ a manager or other persons and contract with independent contractors or managing agents to perform all or any part of the duties and responsibilities of the Association, subject to the Bylaws and the restrictions imposed by any governmental or quasi-governmental body or agency having jurisdiction over the Project;
- F. Pay real property taxes, assessments and other governmental charges attributable to the Common Areas and all other expenses of the Association;
- G. Fix, levy, collect and enforce Assessments and fines as set forth in this Declaration and the Rules and Regulations.
- H. Pay all expenses and obligations incurred by the Association for the conduct of its business, including, without limitation, all licenses, taxes or governmental charges levied or imposed against the Common Areas and any other property or property rights owned by the Association;
- I. Engage in activities which will actively foster, promote and enhance the common interests of the Members;
- J. Buy or otherwise acquire, sell or otherwise dispose of, mortgage or otherwise encumber, exchange, lease, hold, use, operate and otherwise deal in and with real or personal property and any right or interest therein for any purpose of the Association;
- K. Borrow money for any purpose as may be limited in the Bylaws;
- L. Enter into, make, perform or enforce contracts of every kind and description and to do all other acts necessary, appropriate or advisable in carrying out any purpose of the Association, with or in association with any other association, corporation or other entity or agency, public or private;
- M. Dedicate, sell or transfer all or part of the Common Areas to any public agency, authority or utility for such purposes and subject to such conditions as may be agreed to by the members of the Association (such sale, transfer or dedication

shall be subject to the restrictions and requirements under the applicable laws of Arizona); and

- N. Have and exercise any and all other powers, rights and privileges and transact any lawful business which nonprofit corporations are permitted to have, exercise or transact under the laws of the State of Arizona, as they may be amended from time to time.

Section 7.05 - Board. The affairs of the Association shall be conducted by the Board which shall be selected in the manner stated in the Project Documents. Each director shall be an Owner of a Lot or the spouse of an Owner, or, if an Owner is a corporation, limited liability company, partnership, trust or other legal entity, a director may be an officer, director, member, partner, beneficiary or authorized agent of such Owner. If a director shall cease to meet such directorship qualifications during his term, he shall automatically cease to be a director and his place on the Board shall be deemed vacant. Notwithstanding the foregoing, as long as there is a Class "B" Membership, directors need not be an Owner of a Lot. Unless the Project Documents specifically require a vote of the Members, approvals or actions to be given or taken by the Association shall be valid if given or taken by the Board.

Section 7.06 - No Liability. Neither Monterey, Optionor, Declarant nor the Association shall be liable for any theft, vandalism, disturbance, accident, unauthorized entrance or other similar occurrence or breach of the peace or security which may occur or take place within the Project or on the Common Areas or on any Lot.

Section 7.07 - Rules and Regulations. The Association shall from time to time establish such Rules and Regulations as it deems necessary for the conduct and operation of the Project including, by way of illustration and not by way of limitation, Rules and Regulations for the purpose of establishing and maintaining general beautification features within the Project and providing for the health, safety and welfare of Occupants of and visitors to the Project.

Section 7.08 - Use of Common Areas. Every Owner of a Lot, each Occupant of a Lot, each Lot Owner's Lessees, if any, and the social guests and other invitees of the foregoing individuals shall have the non-exclusive right to use the Common Areas, subject to this Declaration and the Rules and Regulations.

Section 7.09 - Funds. All funds received by the Association and the titles of all properties acquired by the Association shall be held in trust for the Members of the Association in accordance with the Project Documents.

Section 7.10 - Availability of Documents. The Association shall make available to all Owners of Lots and prospective purchasers of Lots current copies of the Project Documents.

**ARTICLE 8**  
**COVENANTS FOR ASSESSMENTS AND CREATION OF LIENS**

Section 8.01 - Creation of the Assessment Lien and Personal Obligations for Assessments. Each Owner of any Lot by acceptance of a deed therefor, whether or not it shall be so expressed in such deed, is deemed to covenant and agree to pay to the Association (i) regular annual Assessments or charges ("**Annual Assessments**"); (ii) special Assessments for capital improvements and unexpected expenses ("**Special Assessments**"); and (iii) such other Assessments as are provided for herein or in the Project Documents. The Annual and Special Assessments and any other Assessment or charge made against a Lot pursuant to the Project Documents, together with interest, costs and reasonable attorneys' fees, shall be a charge and a continuing Assessment Lien upon the Lot against which each Assessment is made. Each such Assessment, together with interest, costs and reasonable attorneys' fees, shall also be a personal obligation of the Person who was the Owner of such Lot at the time when the Assessment fell due. No Owner of a Lot may exempt himself from liability for his contribution toward the Assessments by waiver of the use or enjoyment of any of the Common Areas or by the abandonment of his Lot. No diminution or abatement of Assessments or set-off shall be claimed or allowed by reason of the alleged failure of the Association or the Board to take some action or perform some function under this Declaration or the Project Documents, or for inconvenience or discomfort arising from the making of repairs or improvements which are the responsibility of the Association, or from any action taken to comply with any law or ordinance or with any order or directive of any municipal or other governmental authority.

Section 8.02 - Purpose of Assessments. The Assessments by the Association shall be used exclusively for the improvement, operation and maintenance of the Common Areas and any Areas of Association Responsibility, the promotion of the recreation, health, safety and welfare of all the residents in the Project, the operation and administration of the Association and for the common good of the Project. Annual Assessments shall include a reasonable reserve fund for taxes, insurance, maintenance, repairs and replacement of the Common Areas and any Areas of Association Responsibility.

Section 8.03 - Annual Assessments. The Board shall annually determine and fix the amount of the Annual Assessment against each Lot and shall notify the Owner of each Lot in writing as to the amount of such Annual Assessment not less than thirty (30) days prior to the date that such Annual Assessment is to commence. Along with such notification, the Board shall provide the Owners with a proposed budget for the next fiscal year and a summary of the Association's finances for the previous fiscal year. In addition to including amounts for the estimated common expenses and cash requirements of the Association, each budget shall also provide for a reserve for contingencies and a reserve for replacements, all in such amounts as shall be determined by the Board to be reasonably adequate, taking into account the number and nature of replaceable property within the Areas of Association Responsibility, the expected life of such item and each item's expected repair or replacement cost. Not later than sixty (60) days following the meeting of the Board at which the Board adopts the annual budget for the year in question, the Board shall cause a copy of the budget and a statement of the amount of the Annual Assessments to be levied against the Owner's Lot for the fiscal year in

question to be delivered or mailed to each Owner. In the event the Board fails to adopt a budget for any fiscal year prior to commencement of the fiscal year, then until and unless a budget is adopted, the budget (and the amount of the Annual Assessments provided for therein) for the year immediately preceding shall remain in effect. Except as to the first Annual Assessment, the Annual Assessment may be neither increased by more than twenty percent (20%) above, nor decreased by more than twenty percent (20%) below the Annual Assessment for the previous year, without the vote or written consent of sixty-seven percent (67%) of the membership present and voting at a meeting at which a quorum equal to fifty-one percent (51%) of the Members are present in person or by proxy. Notwithstanding the foregoing, the Board may without the approval of the Members, increase the maximum Annual Assessment for any fiscal year by an amount sufficient to permit the Board to cover any increase over the preceding fiscal year for: (i) premiums for any insurance coverage required by the Declaration to be maintained by the Association; (ii) taxes on the Common Areas or (iii) charges for utility services necessary to the Association's performance of its obligations under this Declaration. If item (i), (ii) or (iii) in the preceding sentence results in an increase in the maximum Annual Assessment, such increase shall be permitted notwithstanding the fact that the resulting increase in maximum Annual Assessment is at a rate greater than otherwise permitted by the preceding portions of this Section. Nothing herein shall obligate the Board to levy, in any fiscal year, Annual Assessments in a full amount of the maximum Annual Assessment for the fiscal year, and the election by the Board not to levy Annual Assessments in a full amount of the maximum Annual Assessments for the fiscal year shall not prevent the Board from levying Annual Assessments in subsequent years in the full amount of the maximum Annual Assessments for the subsequent fiscal year (as determined in accordance with this Section). In the event that for any fiscal year, the Board elects to levy an Annual Assessment at less than the full amount of the maximum Annual Assessment for the fiscal year, the Board may, if in its reasonable discretion circumstances so warrant, subsequently levy a supplemental Annual Assessment during the same fiscal year so long as the total of the Annual Assessments levied during the fiscal year have not exceeded the maximum Annual Assessments for such fiscal year. All Annual Assessments shall be payable in advance in quarterly installments on the first (1st) day of January, April, July and October of each year, or in accordance with such other payment schedule as the Board may determine. In the year of the close of escrow on the sale of the first Lot to a Purchaser, the maximum Annual Assessment per Lot shall be Twelve Hundred Dollars (\$1200). Upon the transfer of any Lot to a Purchaser, the Annual Assessment shall be prorated through the date of the close of escrow for each Lot based on the number of full and partial months remaining in the then current quarter.

Section 8.04 - Special Assessments. In addition to the Annual Assessments authorized above, the Board may levy in any assessment year a Special Assessment, applicable to that year only, for the purpose of defraying in whole or in part the cost of any construction, reconstruction, repair or replacement of a capital improvement upon the Common Areas and Areas of Association Responsibility, including equipment, fixtures and personal property related thereto, or to defray any unanticipated or underestimated expenses normally covered by an Annual Assessment, including taxes assessed against the Common Areas, provided, however, that the aggregate Special Assessments for any fiscal year shall not exceed fifty percent (50%) of the budgeted gross expenses of the Association for that



Assessment year without the vote or written consent of sixty-seven percent (67%) of the membership present and voting at a meeting at which a quorum equal to fifty-one percent (51%) of the Members are present in person or by proxy.

Section 8.05 - Enforcement Assessments. The Board shall also have the right to levy assessments against an individual Lot and its Owner to reimburse the Association for costs incurred by the Association in connection with its efforts to require that Owner and his Lot to comply with the provisions of this Declaration and the Project Documents or costs incurred by the Association in connection with causing to be done such work as is necessary to bring a Lot into such compliance (an "Enforcement Assessment"), and such Enforcement Assessments shall not be subject to the limitations set forth above as to the amount of Special Assessments.

Section 8.06 - Allocation of Assessments. Except as provided for in Section 8.07 below with respect to Declarant and in Section 8.05 above with respect to an Enforcement Assessment, the Owner of each Lot shall bear an equal share of Assessments.

Section 8.07 - Declarant's Assessments. Notwithstanding any other provision contained in this Declaration, the Declarant as the Class "B" Member shall not be liable for and shall not be required to pay any Assessments with respect to Lots owned by Declarant as long as the Class "B" membership is in existence. In lieu thereof, Declarant agrees that so long as the Class "B" membership is in existence, Declarant shall pay to the Association the difference, if any, between the actual cost of operating and administering the Association (other than costs for which a Special Assessment or Enforcement Assessment is levied) and the sum of the Annual Assessments levied by the Association plus any operating capital obtained by the Association pursuant to Sections 8.13 and 8.14 below; provided, however, in no event shall Declarant be required to pay pursuant to this Section any amount greater than the sum of the amount of the per-Lot Annual Assessment payable for Lots owned by Class "A" Members multiplied by the number of Lots owned by Declarant on July 1 of the calendar year in which a deficiency is determined to exist. Such payments by Declarant shall be made at such times as Declarant and the Board shall agree. Declarant's obligations under this Section may be satisfied in the form of a cash subsidy or by "in kind" contributions of services or materials, or a combination of both. Notwithstanding any other provision contained in this Declaration, as long as the Option Agreement is in effect, no Assessments shall be levied against Lots which remain subject to the Option Agreement.

Section 8.08 - Rules Regarding Billing and Collection Procedures. Annual Assessments shall be collected on a semi-annual basis or such other more frequent basis as may be selected by the Board. Special Assessments may be collected as specified by the Board. The Board shall have the right to adopt Rules and Regulations setting forth procedures for the purpose of making Assessments and for the billing and collection of the Assessments; provided that the procedures are not inconsistent with this Declaration. The failure of the Association to send a bill to a Member shall not relieve any Member of his or its liability for any Assessment or charge under this Declaration, but the Assessment Lien therefor shall not be foreclosed or otherwise enforced until the Member has been given not less than twenty (20) days written notice prior to such foreclosure or enforcement that the Assessment or any

installment thereof is or will be due and of the amount owing. Such notice may be given at any time prior to or after delinquency of 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 any period for which any such Assessment pertains. Successor Owners of Lots shall be given credit for prepayments of Assessments, on a prorated basis, made by prior Owners.

Section 8.09 - Transfer of Lot by Sale or Foreclosure. Sale or transfer of any Lot shall not affect any Assessment Lien against such Lot. No sale or transfer shall relieve such Lot from liability for any Assessments thereafter becoming due or from the lien thereof. Except for Assessment Liens existing prior to the recording of a First Mortgage, the Assessment Liens provided for in this Declaration shall be junior and subordinate to the lien of any First Mortgage against a Lot, and where the Owner of record acquires title to a Lot as a result of foreclosure of any such First Mortgage, such Owner shall not be liable for the share of the Assessments up to the time of the grant or conveyance, without prejudice to the grantee's right to recover from the grantor the amounts paid by the grantee therefor. However, any such grantee shall be entitled to a statement from the Association, setting forth the amount of the unpaid Assessments due the Association, and such grantee shall not be liable for, nor shall the Lot conveyed be subject to an Assessment Lien for, any unpaid Assessments made by the Association against the grantor in excess of the amount set forth in the statement, provided, however, the grantee shall be liable for any such Assessments becoming due after the date of any such statement.

Section 8.10 - Effect of Non-Payment of Assessments; Remedies of the Association. If any part of any Assessment is not paid within fifteen (15) days after the due date provided for herein or otherwise established by the Board, a late fee in an amount equal to the greater of \$15 or ten percent (10%) of the delinquent Assessment (or the greatest amount permitted by applicable laws) shall automatically become due and payable by the delinquent Member. In addition, if any part of any Assessment is not paid within fifteen (15) days after the due date, such unpaid Assessment or unpaid portion of an Assessment shall bear interest from the sixteenth (16th) day following the due date until paid at the greater of (i) fifteen percent (15%) per annum or (ii) two percent (2%) per annum over the prime rate of Bank One, Arizona, NA, or its successor. Any monies paid by a Member for a delinquent Assessment shall be applied first to the principal amount unpaid and then to the late charge and interest accrued. Any Assessment, or any installment of an Assessment, which is delinquent shall be a continuing lien on the Lot against which such Assessment was made. The Assessment Lien may, but need not, be evidenced by the recordation of a "Notice of Claim of Lien" which shall set forth (i) the name of the delinquent Owner as shown on the records of the Association, (ii) the legal description or street address of the Lot against which the claim of lien is made, (iii) the amount claimed as of the date of the recording of the Notice, including late charges, interest, recording fees, reasonable collection costs and reasonable attorneys' fees and (iv) the name and address of the Association. The Assessment Lien on each respective Lot shall be prior to and superior to all other liens except (i) all taxes, bonds, assessments and other levies which, by law, would be superior thereto, and (ii) the lien or charge of any First Mortgage of record made in good faith and for value. Any First Mortgagee or any other Person acquiring title or coming into possession of a Lot through foreclosure of the First Mortgage, purchase at a foreclosure sale or trustee's sale, or through any equivalent proceedings, such as, but not limited to, the taking

of a deed in lieu of foreclosure, all in connection with a First Mortgage, shall acquire title free and clear of any claims for unpaid Assessments and charges against the Lot which became payable subsequent to the recording of the First Mortgage but prior to the acquisition of such Lot by the First Mortgagee or other Person. An Assessment Lien, when delinquent, may be enforced by sale by the Association in accordance with the provisions of the Arizona Revised Statutes applicable to the exercise of powers of sale in mortgages or deeds of trust, or in any other manner permitted by law; however, the right to foreclose the same shall be in addition to and not in substitution of all of the rights and remedies which the Association and the Board may have in accordance with the provisions of this Declaration or otherwise. The Association, acting on behalf of the Owners, shall have the power to bid for the Lot at the foreclosure sale and to acquire and hold, lease, mortgage and convey the same. In the event the Owner against whom the original Assessment was made is the purchaser or redemptioner, the Assessment Lien shall continue in effect and the Assessment Lien may be enforced by the Association or by the Board for the respective Lot's Assessment that was due prior to the final conclusion of such foreclosure or equivalent proceedings. Further, any such unpaid Assessment shall continue to exist as a personal obligation of the defaulting Owner of the respective Lot to the Association, and the Board may use reasonable efforts to collect the same from said Owner even after he is no longer a Member. Suit to recover a money judgment for unpaid Assessments and attorneys' fees shall be maintainable without foreclosing or waiving the Assessment Lien securing the same. The Board may impose additional reasonable monetary penalties and may temporarily suspend the Association membership rights of an Owner who is in default in payment of any Assessment.

Section 8.11 - Suspension of Voting Rights. In the event any Owner is in arrears in the payment of any Assessments or other amounts due under the Project Documents for a period of fifteen (15) days, said Owner's right to vote as a Member of the Association shall be suspended for a period not to exceed sixty (60) days for each infraction of the Project Documents, and shall remain suspended until all payments, including accrued interest and attorneys' fees, are brought current.

Section 8.12 - 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 but may carry forward as surplus any balances remaining. The Association shall not be obligated to reduce the amount of the Annual Assessment in the succeeding year if a surplus exists from a prior year, and the Association may carry forward from year to year such surplus as the Board in its discretion may determine to be desirable for the greater financial security of the Association and the accomplishment of its purposes.

Section 8.13 - Working Capital Funds. To create a reasonable working capital fund, each initial Owner (other than a Declarant or a Developer or an optionor under an Option Agreement) who purchases a Lot from a Declarant or a Developer shall pay to the Association immediately upon becoming the owner of the Lot a sum equal to one-third (1/3rd) of the then current Annual Assessment against its Lot. Such payment shall be non-refundable and shall be paid in addition to, and shall not be applied against or considered as an advance payment of, any Assessment or transfer fee levied by the Association pursuant to this Declaration. All amounts paid pursuant to this Section may be used as working capital while the Declarants

are in control of the Association, and thereafter such amounts, if any then remain, shall be deposited into the Association's reserve account to fund future major repairs and replacements, and Declarants and the Association may take such payments into account when determining the amounts to be funded to reserves from other Association funds.

Section 8.14 - Transfer Fee. Each Owner, except for a Declarant and except for an optionor under an Option Agreement or a Developer, shall pay to the Association immediately upon becoming the Owner of a Lot a transfer fee in an amount equal to one-third (1/3rd) of the then current Annual Assessment against the Lot, which amount shall be used by the Association to cover administrative costs incurred by the Association in connection with such transfer, with any excess amounts, if any, to be used to supplement the Association's reserve fund. The transfer fee shall be in addition to, and shall not be offset against or considered as an advance payment of, any Assessment levied by the Association pursuant to this Declaration, and the payment of such transfer fee shall not entitle an initial Owner to the return of any working capital payments made to the Association pursuant to Section 8.13 above.

Section 8.15 - Fines. The Association, acting through its Board of Directors, shall have the right to adopt a schedule of fines for the violation of any provision of the Project Documents by any Owner or such Owner's Lessees, licensees and invitees. No fines shall be imposed without first providing a written warning to the Owner describing the violation and stating that failure to stop the violation within ten (10) days or another re-occurrence of the same violation within six (6) months of the original violation shall make the Owner subject to the imposition of a fine. All fines shall constitute a lien on all Lots owned by the Owner and shall be paid within thirty (30) days following imposition. The failure to pay any fine shall subject the Owner to the same potential penalties and enforcement as failure to pay any Assessments under this Article 8.

Section 8.16 - Books and Records. The Board shall at all times keep true and correct records of account for the Association in accordance with generally accepted accounting principles applied on a consistent basis, and shall furnish for the inspection of all voting Owners at reasonable times such records which shall specify in detail all expenses incurred and funds accumulated from Assessments or otherwise. If a management agent contracts with the Association to perform all or a part of the Association's duties, the management agreement therefore shall require such management agent to maintain records in accordance with the foregoing requirements, and to provide the Board with a report of its activities under such management agreement prior to the close of each fiscal year of the Association, and at such additional times as may be requested by the Board. The information set forth in such report shall be included in the annual budget and report from the Board to the Owners required by Section 8.03 above.

## ARTICLE 9 ENFORCEMENT

The Association shall have the right to enforce the restrictions, conditions and covenants set forth herein, and the Association shall be the proper party plaintiff in any legal

action initiated to enforce any provision of this Declaration. During reasonable hours and after notice (except in the event of an emergency), members of the Board or the Committee or persons authorized by the Board or the Committee shall have an easement on, over, across and through each Lot to inspect any portion of each Lot and the Improvements thereon for the purpose of ascertaining whether the provisions of this Declaration have been or are being complied with and to permit it to carry out its rights, duties and obligations under this Declaration and such persons shall not be deemed guilty of trespass by reason of such entry. In the event the Board determines that an Owner is in breach of the Owner's obligations under this Declaration, the Board may give the Owner written notice of its determination, including a reasonably detailed list or description of the repairs, maintenance, work or corrective measure required to cure the Owner's breach. If the Owner does not cure the breach within thirty (30) days after the date of the written notice, the Board, on behalf of the Association, may cause the repairs, maintenance, work or corrective measures to be performed so as to cure the Owner's breach. The Association's costs incurred in curing such a breach by an Owner, together with a fee in an amount equal to ten percent (10%) of such amount, shall constitute a lien on the Owner's Lot, which lien amount shall thereafter bear interest at the rate of ten percent (10%) per annum until paid. The Association shall also have standing and authority to request that a court of competent jurisdiction compel the Owner to cure the breach and to the extent not inconsistent with an order of such a court, the Association may pursue either or both of the courses of action described in this Section. Owners, by accepting a deed to a Lot, waive any right to assert that damages shall be an adequate remedy for any such non-compliance. If the Association shall fail or refuse to enforce any of the terms of this Declaration for an unreasonable period of time after being notified of a non-compliance, then any Owner shall become a proper party plaintiff.

#### ARTICLE 10 COMMON WALLS

Section 10.01 - Use. Each fence which is built upon a Lot and placed on the dividing line between Lots, shall constitute a common wall and, to the extent not inconsistent with the provisions of this Article, the Owners of contiguous Lots who have a common wall shall both equally have the right to use such common wall, provided such use by one Owner does not interfere with the use and enjoyment of the same by the other Owner.

Section 10.02 - Sharing of Repair and Maintenance. In the event any common wall is damaged or destroyed, including but not limited to deterioration from ordinary wear and tear, but other than by the act of the Owner of another Lot or his agents, guests, family or Lessees, the cost of reasonable repair and maintenance of a common wall shall be shared by the Owners whose Lots adjoin such common wall, at their joint and equal expense; provided, however, that each Owner shall be responsible for all nonstructural work (including painting) necessary to maintain the appearance of the common wall viewed from such Owner's Lot.

Section 10.03 - Negligent Destruction. In the event a common wall is destroyed or damaged through the negligent or willful act of an Owner or any of his agents, guests or members of his family (whether or not such act is negligent or otherwise culpable), it shall be

the obligation of such Owner to promptly rebuild or repair the common wall without cost to the other adjoining Lot Owner or Owners.

Section 10.04 - Right to Contribution. The right of any Owner to contribution from any other Owner under this Article shall be appurtenant to the land and shall pass to such Owner's successors in title.

Section 10.05 - Consent. In addition to meeting the other requirements of this Declaration and any other building code or similar regulations or ordinances, any Owner proposing to modify, make additions to or rebuild a common wall shall first obtain the written consent of the adjoining Owners.

Section 10.06 - Encroachments. In the event any common wall encroaches upon a Lot or the Common Area, a valid easement for such encroachment and for the maintenance of the common wall shall and does exist in favor of the Owners of the Lots which share such common wall.

## ARTICLE 11 INSURANCE

Section 11.01 - Scope of Coverage. Commencing not later than the first to occur of (a) the transfer to and acceptance for maintenance by the Association of any Common Area or (b) the conveyance of a Lot to a Purchaser, the Association shall maintain, to the extent reasonably available, the following insurance coverage:

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

B. Property insurance on all Common Areas insuring against all risk of direct physical loss, insured against in an amount equal to the maximum insurable replacement value of the Common Areas, 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.

C. Workmen's compensation insurance to the extent necessary to meet the requirements of the laws of Arizona.

D. Such other insurance as the Association shall determine from time to time to be appropriate to protect the Association and the Owners.

E. The insurance policies purchased by the Association shall, to the extent reasonably available, contain the following provisions:

ii) That there shall be no subrogation with respect to the Association, its agents, servants and employees, with respect to Owners and members of their households;

iii) No act or omission by any Owner, unless acting within the scope of his authority on behalf of the Association, will void the policy or be a condition to recovery on the policy;

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

v) Statement of the name of the insured as the Association;

vi) For policies of hazard insurance, a standard mortgagee clause providing that the insurance carrier shall notify the First Mortgagee or other beneficiary under a deed of trust named in the policy at least thirty (30) days in advance of the effective date of any substantial modification, reduction or cancellation of the policy;

F. If there is a steam boiler in connection with the Common Area, boiler explosion insurance evidenced by the standard form of boiler machinery insurance policy and providing coverage in the minimum amount of \$50,000 per accident per location;

G. If the Project is located in an area identified by the Secretary of Housing and Urban Development as an area having special flood hazards, a policy of flood insurance on the Common Area must be maintained in the lesser of one hundred percent (100%) of the current replacement cost of the buildings and any other Property covered by the required form of policy or the maximum limit of coverage available under the National Insurance Act of 1968, as amended; and

H. "Agreed Amount" and "Inflation Guard" endorsements.

Section 11.02 - Certificates of Insurance. An insurer that has issued an insurance policy under this Article shall issue a certificate or a memorandum of insurance to the Association and, upon request, to any Owner and First Mortgagee or other beneficiary under a deed of trust. Any insurance obtained pursuant to this Article may not be cancelled until thirty (30) days after notice of the proposed cancellation has been mailed to the Association, each Owner and each First Mortgagee or other beneficiary under a deed of trust to whom certificates of insurance have been issued.

Section 11.03 - Fidelity Bonds.

A. The Association shall maintain blanket fidelity bonds for all officers, directors, trustees and employees of the Association and all other persons handling or responsible for funds of or administered by the Association, including, but without limitation,

officers, directors and employees of any management agent of the Association, whether or not they receive compensation for their services. The total amount of fidelity bond maintained by the Association shall be based upon the best business judgment of the Board and shall not be less than the greater of (i) the amount equal to one hundred fifty percent (150%) of the estimated annual operating expenses of the Association, (ii) the estimated maximum amount of funds, including reserve funds, in the custody of the Association or the management agent, as the case may be, at any given time during the term of each bond, (iii) the sum equal to three (3) months assessments on all Lots plus adequate reserve funds. Fidelity bonds obtained by the Association must also meet the following requirements:

- i) The fidelity bonds shall name the Association as an obligee;
- ii) The bonds shall contain waivers by the issuers of the bonds of all defenses based upon the exclusion of persons serving without compensation from the definition of "employees" or similar terms or expressions; and
- iii) The bonds shall provide that they may not be cancelled or substantially modified (including cancellation from non-payment of premium) without at least ten (10) days prior written notice to the Association.

B. The Association shall require any management agent of the Association to maintain its own fidelity bond in an amount equal to or greater than the amount of the fidelity bond to be maintained by the Association pursuant to subsection (A) of this Section. The fidelity bond maintained by the management agent shall cover funds maintained in bank accounts of the management agent and need not name the Association as an obligee.

Section 11.04 - Payment of Premiums. The premiums for any insurance obtained by the Association pursuant to this Article shall be included in the budget of the Association and shall be paid by the Association.

Section 11.05 - 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, the loss shall be adjusted with the Association and the insurance proceeds shall be payable to the Association and not to any First Mortgagee or other beneficiary under a deed of trust. Subject to the provisions of Section 11.05 of this Declaration, the proceeds shall be disbursed for the repair or restoration of the damage to the Area of Association Responsibility.

Section 11.06 - Repair and Replacement of Damaged or Destroyed Property. Any portion of the Areas of Association Responsibility which is damaged or destroyed shall be repaired or replaced promptly by the Association unless (i) repair or replacement would be illegal under any state or local health or safety statute or ordinance, or (ii) Owners representing at least eighty percent (80%) of the total authorized votes in the Association vote not to rebuild. The cost of repair or replacement in excess of insurance proceeds and reserves shall be paid by the Association. If all of the Areas of Association Responsibility are not repaired or replaced, insurance proceeds attributable to the damaged Areas of Association Responsibility shall be used to restore the damaged area to a condition which is not in violation of any state or local health or safety statute or ordinance and the remainder of the proceeds



shall either (i) be retained by the Association as an additional capital reserve or (ii) be used for payment of operating expenses of the Association if such action is approved by the affirmative vote or written consent, or any combination thereof, of Members representing more than fifty percent (50%) of the votes in the Association.

Section 11.07 - Insurance Obtained by Owners. Each Owner shall be responsible for obtaining property insurance for its own benefit and its own expense covering its Lot and all Improvements and personal property located thereon. Each Owner shall also be responsible for obtaining at its expense personal liability coverage for death, bodily injury or property damage arising out of the use, ownership or maintenance of its Lot.

## ARTICLE 12 RIGHTS OF FIRST MORTGAGEES

Section 12.01 - Notification to First Mortgagees. Upon receipt by the Association of a written request from a First Mortgagee or insurer or governmental guarantor of a First Mortgage informing the Association of its correct name and mailing address and the Lot number or address to which the request relates, the Association shall provide such Eligible Mortgage Holder or Eligible Insurer or Guarantor with timely written notice of the following:

A. Any condemnation loss or any casualty loss which affects a material portion of the Project or any Lot on which there is a First Mortgage held, insured or guaranteed by such Eligible Mortgage Holder or Eligible Insurer or Guarantor;

B. Any delinquency in the payment of Assessments or charges owed by an Owner of a Lot subject to a First Mortgage held, insured or guaranteed by such Eligible Mortgage Holder or Eligible Insurer or Guarantor or any other default in the performance by such Owner of any obligation under the Project Documents, which delinquency remained uncured for a period of twenty (20) days;

C. Any lapse, cancellation or material modification of any insurance policy or fidelity bond maintained by the Association;

D. Any proposed action which will require the consent of a specified percentage of Eligible Mortgage Holders as set forth in Sections 12.02 and 12.03 of this Declaration.

Section 12.02 - Approval Required to Terminate Project. Any termination of the legal status of the Project for reasons other than the substantial destruction or a substantial taking in condemnation of the Project shall not be effective unless approved by Eligible Mortgage Holders holding First Mortgages on Lots the Owners of which have at least sixty-seven percent (67%) of the votes in the Association allocated to Owners of all Lots subject to First Mortgages held by Eligible Mortgage Holders.

Section 12.03 - Approval Required for Amendment to Declaration, Articles or Bylaws. The approval of Eligible Mortgage Holders holding First Mortgages on Lots the Owners of which have at least fifty-one percent (51%) of the votes in the Association allocated to Owners of all Lots subject to First Mortgages held by Eligible Mortgage Holders shall be

required to add or amend any material provisions to the Declaration, Articles or Bylaws which establish, provide for, govern or regulate any of the following:

- i) Expansion of the Project or the addition or annexation of property to the Project;
- ii) Restoration or repair of the Project (after a hazard damage or partial condemnation) in a manner other than that specified in the Project Documents;
- iii) Any action to terminate the legal status of the Project after substantial destruction or condemnation occurs; or
- iv) Any provisions which expressly benefit First Mortgagees, Eligible Mortgage Holders or Eligible Insurers or Guarantors.

B. Any addition or amendment to the Declaration, Articles or Bylaws shall not be considered material if it is for the purpose of correcting technical errors or for clarification only.

Section 12.04 - First Mortgagee's Right of Inspection of Records. Any First Mortgagee shall, upon written request, be entitled to (i) inspect the books and records of the Association during normal business hours, (ii) receive within sixty (60) days following the end of any fiscal year of the Association, a financial statement of the Association for the immediately preceding fiscal year of the Association free of charge to the requesting party and (iii) receive written notice of all meetings of the Members of the Association and be permitted to designate a representative to attend all such meetings.

Section 12.05 - Prior Written Approval of First Mortgagees. Unless at least two-thirds (2/3) of the First Mortgagees (based upon one vote for each Lot against which the First Mortgage acts as a lien) or Owners (other than the sponsor, developer or builder) of at least two-thirds (2/3) of the Lots have given their prior written approval, the Association shall not be entitled to:

- i) Seek to abandon, partition, subdivide, sell or transfer the Common Area owned by the Association. The granting of easements for public utilities or for other public purposes consistent with the intended use of such Common Area and any conveyances of a corrective nature made by Declarant shall not be deemed a transfer within the meaning of this Subsection;
- ii) Change the method of determining the obligations, Assessments, dues or other charges which may be levied against an Owner;
- iii) Fail to maintain fire and extended coverage insuring the Common Areas on a current replacement cost basis in an amount at least one hundred percent (100%) of insurable value; and
- iv) Use hazard insurance proceeds for losses to any Common Area for other than the repair, replacement or reconstruction of such Common Area.

Section 12.06 - No Priority over First Mortgagees. No provision of this Declaration gives or shall be construed as giving any Owner or other Person priority over any rights of a First Mortgagee of a Lot in the case of the distribution to such Owner of insurance proceeds or condemnation awards for losses to or taking of the Common Areas.

Section 12.07 - Failure of First Mortgagees to Respond. Any First Mortgagee who receives a written request from the Board to respond to or consent to any action requiring the consent of First Mortgagee shall be deemed to have approved such action if the Association has not received a written negative response from such First Mortgagee within thirty (30) days of the date of the Association's request.

Section 12.08 - Conflicting Provisions. In the event of any conflict or inconsistency between the provisions of this Article and any other provisions of the Project Documents, the provisions of this Article shall prevail; provided, however, that in the event of any conflict or inconsistency between the different sections of this Article or between the provisions of this Article and any other provisions of the Project Documents with respect to the number or percentage of Owners, First Mortgagees, Eligible Mortgage Holders or Eligible Insurers or Guarantors that must consent to (i) an amendment of this Declaration, the Article or the Bylaws, (ii) a termination of the Project or (iii) certain actions of the Association as specified in Sections 12.02, 12.03 and 12.05 of this Declaration, the provision requiring the consent of the greatest number or percentage of Owners, First Mortgagees, Eligible Mortgage Holders or Eligible Insurers or Guarantors shall prevail; provided, however, that so long as there is a Class "B" Membership in the Association, the Declarant, without the consent of any Owner or First Mortgagee being required, shall have the right to amend this Declaration, the Articles or the Bylaws in order to conform this Declaration, the Articles or the Bylaws to the requirements or guidelines of the Federal National Mortgage Association, the Federal Home Loan Mortgage Corporation, the Federal Housing Administration, the Veterans Administration or any other federal, state or local governmental agency whose approval of the Project; the Plat or the Project Documents is required or requested by Declarant.

### ARTICLE 13 TERM

This Declaration shall remain in full force and effect and shall run with and bind the land for a term of thirty (30) years from the date hereof. After such thirty (30) year period, this Declaration shall be deemed to have been automatically renewed for successive terms of ten (10) years, unless revoked by an amendment in writing, executed and acknowledged by the then Owners representing not less than two-thirds (2/3) of the Lots, or such higher percentage as required by applicable law, and recorded in the Maricopa County, Arizona Recorder's Office, within sixty (60) days prior to the expiration of the initial period hereof or any ten (10) year extension. Upon the expiration, revocation, termination or revocation of this Declaration, title to the Common Areas shall immediately pass in equal, undivided interests to the Owners, as tenants in common, but each Owner shall nevertheless continue to be individually and collectively liable under the duty to pay its pro rata share of the costs of maintaining the Association Areas of Responsibility, payment of all taxes assessed or due with respect to the Common Areas and securing and paying the premium for comprehensive general liability insurance for all Association Areas of Responsibility. If any Owner does not pay its pro rata share within twenty (20) days following written demand from any other Owner or the city or

town within which the Property is located, and if any other Owner or the city or town pays the delinquent Owner's pro rata share, the Person paying such delinquent Owner's pro rata share shall be entitled to assess the delinquent Owner's Lot, impose a lien upon and enforce such lien upon the delinquent Owner's Lot in accordance with the provisions of Article 8 hereof, as if such Person was the Association. The foregoing provisions of this Article shall survive the expiration, revocation, termination or cancellation of this Declaration.

#### **ARTICLE 14** **GENERAL PROVISIONS**

##### Section 14.01 - Amendments.

A. Except for amendments made pursuant to Sections 3.18, 8.03 and 8.04 of this Declaration, the Declaration may only be amended by the written approval or the affirmative vote, or any combination thereof, of Owners entitled to cast not less than sixty-seven percent (67%) of the votes in the Association.

B. Declarant reserves the right to amend all or any part of this Declaration to such an extent and with such language as may be requested by the Federal Housing Administration, the Veterans Administration, the Federal National Mortgage Association or the Federal Home Loan Mortgage Corporation and to further amend to the extent requested by any other federal, state or local governmental agency which requests such an amendment as a condition precedent to such agency's approval of this Declaration, or by any federally or state chartered lending institution as a condition precedent to lending funds upon the security of any Lot(s) or Parcel(s) or any portions thereof. Any such amendment shall be effected by the recording by Declarant of a Certificate of Amendment duly signed by or on behalf of the Declarant, specifying the federal, state or local governmental agency or the federally or state chartered lending institution requesting the amendment and setting forth the amendatory language requested or required by such agency or institution. The recording of such a Certificate shall be deemed conclusive proof of the agency's or institution's request for such an amendment, and such Certificate, when recorded, shall be binding upon the Project and all persons having an interest therein. It is the intent of Declarant to retain control of the Association and its activities during the anticipated period of planning and development. If any amendment requested pursuant to the provisions of this Section deletes, diminishes or alters such control, Declarant shall have the right to prepare, provide for and adopt, as an amendment thereto, other and different control provisions.

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

D. So long as Optionor owns any Lot, any amendment to this Declaration must be approved in writing by Optionor.

E. So long as Developer owns any Lot, any amendment to this Declaration which would restrict or limit Developer's ability to construct, market and sell homes as Monterey did while Monterey was the Declarant must be approved in writing by Developer.

F. Any amendment approved pursuant to Section 14.01(A) or Section 14.01(B) of this Declaration shall be signed by the President or Vice President of the Association and shall be recorded with the County Recorder of Maricopa County, Arizona. Any such amendment shall certify that the amendment has been approved as required by this Section. Any amendment made by the Declarant pursuant to Section 12.08 of this Declaration shall be executed by Declarant and shall be recorded with the County Recorder of Maricopa County, Arizona.

Section 14.02 - Interpretation of Covenants. Except for judicial construction, the Board shall have the exclusive right to construe and interpret the terms of this Declaration. In the absence of any adjudication to the contrary by a court of competent jurisdiction, the Board's construction or interpretation of the terms of this Declaration, the Architectural and Landscaping Guidelines, the Rules and Regulations and the Project Documents shall be final, conclusive and binding upon all Persons, any Lot and the Project.

Section 14.03 - Severability. Any determination by any court of competent jurisdiction that any term of this Declaration is invalid, illegal or unenforceable shall not affect the validity, legality or enforceability of the remaining provisions of this Declaration and the same shall remain in full force and effect.

Section 14.04 - References to This Declaration. Any and all instruments of conveyance or lease of any interest in any Lot must contain reference to this instrument and shall be subject to the terms of this Declaration the same as if they were therein set forth in full. Notwithstanding the foregoing, the terms of this Declaration shall be binding upon all Owners and all other persons and entities affected by the same, whether such express reference is made to this Declaration or not.

Section 14.05 - Waiver or Abandonment. The failure to enforce any breach or violation of any of the provisions of this Declaration shall not constitute an abandonment or a waiver of any right to enforce such provision or of any of the other terms hereof.

Section 14.06 - Violation of Law. Any violation of any federal, state, municipal or local law, ordinance or regulation, including zoning laws or ordinances pertaining to the ownership, occupation or use of any Lot is hereby declared to be a violation of this Declaration and subject to any or all of the enforcement procedures set forth in this Declaration.

Section 14.07 - Agents and Committees. The Board shall have the right to appoint agents or committees or both to act on behalf of the Association for the purpose of exercising any right, power or duty given to or imposed upon it by this Declaration.

Section 14.08 - Waiver of Damages. Neither Declarant, Optionor, Monterey nor the Association or their respective officers, directors, employees and agents shall be liable for damages to anyone relating in any manner to their actions or failures to act in performing or failing to perform their respective responsibilities and functions under this Declaration by reason of mistake in judgment, negligence, malfeasance or nonfeasance and each and every Owner, by accepting a deed to or acquiring any ownership interest in a Lot, thereby agrees to indemnify and hold harmless the Declarant, Optionor, Monterey and the Association and their

respective officers, directors, employees and agents in respect to the foregoing, except where such indemnification is contrary to Arizona law.

Section 14.09 - Remedies Cumulative. Each remedy provided by this Declaration is cumulative and non-exclusive.

Section 14.10 - Gender and Number. Whenever the context of this Declaration so requires, words used in the masculine gender shall include the feminine and neuter genders, words used in the neuter gender shall include the masculine and feminine genders, words used in the singular shall include the plural and words used in the plural shall include the singular.

Section 14.11 - Captions, Tables and Headings. All captions, titles and headings in this Declaration are for the purpose of reference and convenience only and are not to be deemed to limit, modify or otherwise affect any of the provisions hereof, or to be used in determining the intent or context of the terms of this Declaration.

Section 14.12 - Limitation on Declarant's, Monterey's and Optionor's Liability. Notwithstanding anything to the contrary herein, it is expressly agreed, and each Owner, by accepting title to a Lot and becoming an Owner, and each other person, by acquiring any interest in the Project, acknowledges and agrees, that neither Declarant, Monterey or Optionor (including, but not limited to, any assignee of the interest of Declarant, Monterey or Optionor) nor any partner, shareholder, officer, director, employee or affiliate of Declarant, Monterey or Optionor shall have any personal liability to the Association, or to any Owner, Member or other person, arising under or in connection with this Declaration or resulting from any action or failure to act with respect to this Declaration, the Association or the Committee except, in the case of Declarant, Monterey or Optionor (or their assignees), to the extent of their respective interests in the Project; and, in the event of a judgment no execution or other action shall be sought or brought thereon against any other assets, nor be a lien upon such other assets, of the judgment debtor.

Section 14.13 - Attorneys' Fees and Costs. The Declarant and the Association shall be entitled to collect from any Owner any attorneys' fees and related costs incurred in connection with enforcement action taken against an Owner or his Lot pursuant to provisions contained within this Declaration, and any such amount shall be a charge and a continuing lien upon the Lot of said Owner.

Section 14.14 - Indemnification and Acknowledgement. THE OWNERS ACKNOWLEDGE THAT: (1) THE PROPERTY SUBJECT TO THIS DECLARATION CONTAINS COMMON AREAS; (2) THE COMMON AREAS ARE INTENDED SOLELY FOR AESTHETIC PURPOSES AND LIMITED RECREATIONAL USE; (3) THE COMMON AREAS POSSESS CERTAIN INHERENT DANGERS FROM WHICH THE OWNERS MUST TAKE PRECAUTIONS TO PROTECT THEMSELVES, THEIR FAMILIES, INVITEES, GUESTS AND OTHERS; (4) NO SAFETY PERSONNEL WILL PATROL THE COMMON AREAS AND THE OWNERS ASSUME THE RISK AND THE RESPONSIBILITY OF PROTECTING THEMSELVES, THEIR FAMILIES, INVITEES, GUESTS AND OTHERS; AND (5) THE OWNERS WILL INDEMNIFY, DEFEND AND HOLD HARMLESS THE DECLARANT, MONTEREY, OPTIONOR AND THE ASSOCIATION AND THEIR SUCCESSORS AND ASSIGNS FROM AND AGAINST ANY CLAIMS, LIABILITIES, INJURIES,

DAMAGES, EXPENSES AND COSTS, INCLUDING INTEREST AND ATTORNEYS' FEES INCURRED BY OR CLAIMED AGAINST THE DECLARANT, THE ASSOCIATION AND THEIR SUCCESSORS AND ASSIGNS UNDER ANY LAWS ARISING IN ANY WAY FROM OR IN CONNECTION WITH THE COMMON AREAS.

Section 14.15 - Limitation on Rights of Monterey as Declarant. Notwithstanding any other provision contained in this Declaration, as long as Monterey is the Declarant, Monterey shall not, without the prior written consent of Optionor, have the right to exercise any of the "Declarant" rights under this Declaration in any manner which will have a material or adverse impact on the Lots owned by Optionor.

#### ARTICLE 15 GOVERNMENTAL APPROVALS

If certification from the Federal Housing Administration (FHA) or the United States Veterans Administration (VA) is sought by Declarant, the following actions will require the prior approval of the FHA and VA, unless such agencies have waived such requirements or unless the last sentence of this Section applies: (i) annexation of additional properties into the Project (unless such annexation is in accordance with a plan of annexation or expansion previously approved by such agency); (ii) mergers and consolidations; (iii) mortgaging or otherwise encumbering Common Area; (iv) dedication or other transfer of Common Areas; (v) dissolution of the Association; and (vi) amendment of provisions of this Declaration or other Project Documents to the extent required to be approved by the FHA or VA pursuant to their rules and regulations. Consent of the FHA and VA to the foregoing will not be required if the FHA and VA have elected not to approve the Project for certification or if such approval has been revoked, withdrawn, cancelled or suspended.

#### ARTICLE 16 AGREEMENT WITH THE ADJACENT OWNERS

Pursuant to a Declaration of Easements, Covenants, Conditions and Restrictions recorded on December 30, 1999 as Document No. 99-1168788 in the Official Records of Maricopa County, Arizona (the "Access and Easement Agreement"), the owners (the "Adjacent Owners") of real property adjacent to the southern boundary of the Project (the "Access Parcel") have been granted certain access and other easements over the Access Parcel which is situated between McKellips Road and the southernmost boundary of Common Area Tract A, and pursuant to the Access and Easement Agreement, the Association and the Adjacent Owners have certain obligations with respect to the maintenance of the Access Parcel and with respect to the common wall that separates the Project and the property owned by the Adjacent Owners. Pursuant to the Access and Easement Agreement, the Adjacent Owners are responsible for paying a portion of the costs incurred by the Association in maintaining the Access Parcel.

///

IN WITNESS WHEREOF, the undersigned has executed this Declaration as of the date first written above.

**MONTEREY:**

MONTEREY HOMES CONSTRUCTION, INC., an Arizona corporation

By         *Don Pharooney*        

Its         *V.P.*        

**OPTIONOR:**

INCA CAPITAL FUND 2, LLC, an Arizona limited liability company

By: INCA CAPITAL, LLC, an Arizona limited liability company, Its Manager

By     
William W. Cleverly,  
Its Manager



IN WITNESS WHEREOF, the undersigned has executed this Declaration as of the date first written above.

**MONTEREY:**

MONTEREY HOMES CONSTRUCTION, INC., an Arizona corporation

By \_\_\_\_\_

Its \_\_\_\_\_

**OPTIONOR:**

INCA CAPITAL FUND 2, LLC, an Arizona limited liability company

By: INCA CAPITAL, LLC, an Arizona limited liability company, Its Manager

By  \_\_\_\_\_

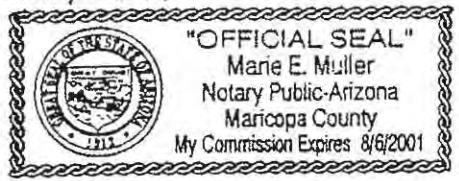
William W. Cleverly,  
Its Manager

STATE OF ARIZONA )  
 ) ss.  
County of Maricopa )

On this 15 day of June, 2000, before me personally appeared John P. Moroney,  
the Vice President of Monterey Homes Construction, Inc., an Arizona corporation,  
known to me to be the person whose name is subscribed to the foregoing Declaration of  
Covenants, Conditions, Restrictions and Easements, and being authorized to do so,  
acknowledged that he executed the same on behalf of the corporation for the purposes  
contained therein.

Marie E. Muller  
Notary Public

My Commission Expires:  
8/6/01



STATE OF ARIZONA )  
 ) ss.  
County of Maricopa )

On this \_\_\_ day of June, 2000, before me personally appeared William  
W. Cleverly, as the Manager of INCA Capital, LLC, an Arizona limited liability company which  
is the Manager of INCA Capital Fund 2, LLC, an Arizona limited liability company, known to  
me to be the person whose name is subscribed to the foregoing Declaration of Covenants,  
Conditions, Restrictions and Easements, and being authorized to do so, acknowledged that he  
executed the same on behalf of the company for the purposes contained therein.

\_\_\_\_\_  
Notary Public

My Commission Expires:  
\_\_\_\_\_

STATE OF ARIZONA )  
 ) ss.  
County of Maricopa )

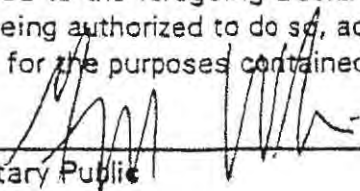
On this \_\_\_\_ day of June, 2000, before me personally appeared \_\_\_\_\_  
the \_\_\_\_\_ of Monterey Homes Construction, Inc., an Arizona corporation,  
known to me to be the person whose name is subscribed to the foregoing Declaration of  
Covenants, Conditions, Restrictions and Easements, and being authorized to do so,  
acknowledged that he executed the same on behalf of the corporation for the purposes  
contained therein.

\_\_\_\_\_  
Notary Public

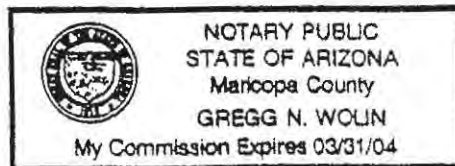
My Commission Expires:  
\_\_\_\_\_

STATE OF ARIZONA )  
 ) ss.  
County of Maricopa )

On this 15 day of June, 2000, before me personally appeared William  
W. Cleverly, as the Manager of INCA Capital, LLC, an Arizona limited liability company which  
is the Manager of INCA Capital Fund 2, LLC, an Arizona limited liability company, known to  
me to be the person whose name is subscribed to the foregoing Declaration of Covenants,  
Conditions, Restrictions and Easements, and being authorized to do so, acknowledged that he  
executed the same on behalf of the company for the purposes contained therein.

  
\_\_\_\_\_  
Notary Public

My Commission Expires:  
3/31/04



## EXHIBIT "A-1"

### Summit Shadows ACCESS PARCELS

#### Within Section 1, Township 1 North, Range 5 East

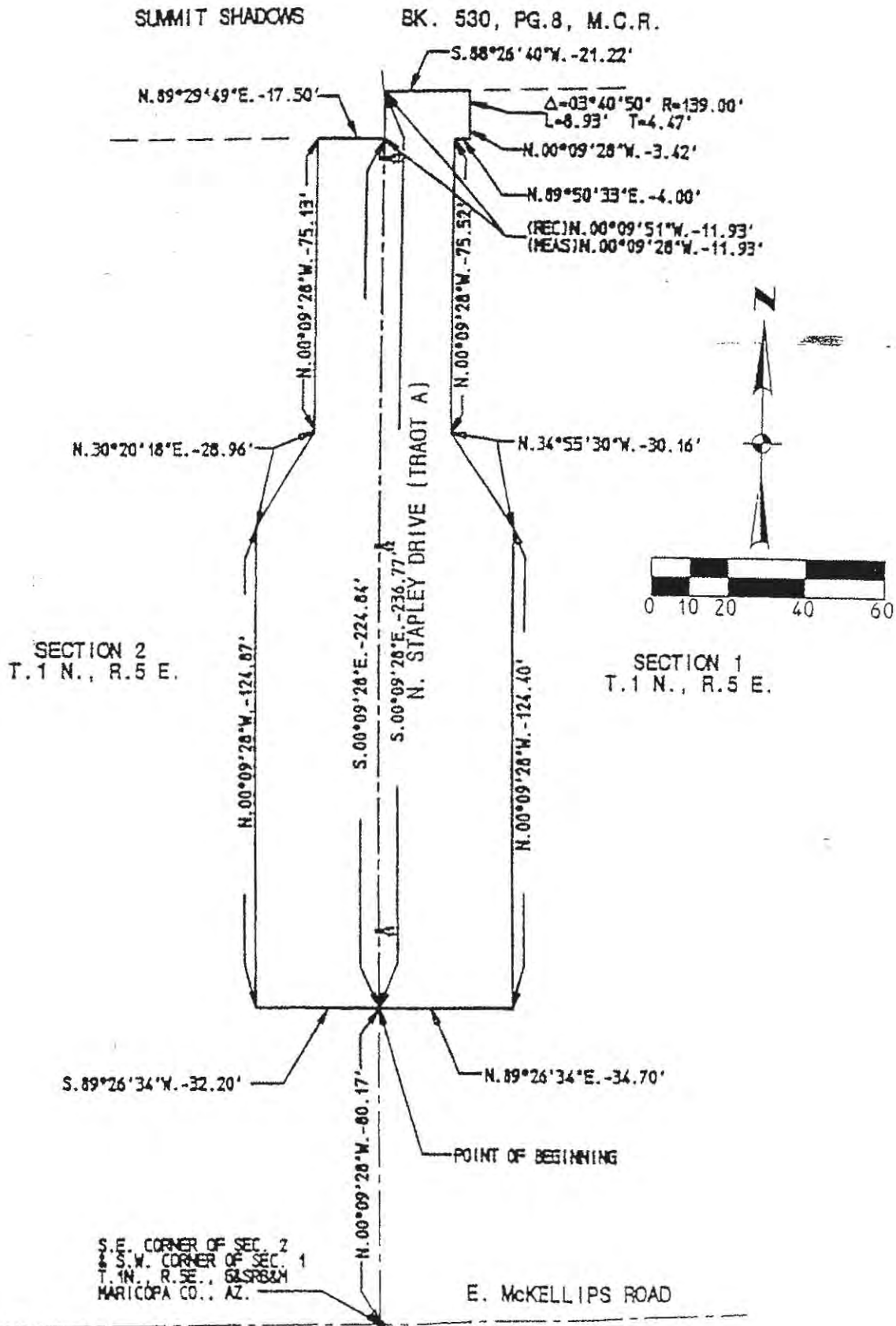
For a Point of Reference, Commence at the Southwest corner of Section 1, Township 1 North, Range 5 East of the Gila and Salt River Base and Meridian, Maricopa County, Arizona;  
Run Thence N00°09'28"W, along the West line of the Southwest quarter of said Section 1, a distance of 80.17 feet to the Point of Beginning;  
Run Thence N89°26'34"E a distance of 34.70 feet;  
Run Thence N00°09'28"W a distance of 124.40 feet;  
Run Thence N34°55'30"W a distance of 30.16 feet;  
Run Thence N00°09'28"W a distance of 75.52 feet;  
Run Thence N89°50'33"E a distance of 4.00 feet;  
Run Thence N00°09'28"W a distance of 3.42 feet to the Point of Curvature of a curve concave Westerly and having for its principle elements a radius of 139.00 feet and a central angle of 03°40'50";  
Run Thence Northerly along the arc of said curve a distance of 8.93 feet;  
Run Thence S88°26'40"W a distance of 21.22 feet to the Aforesaid West line of the Southwest quarter;  
Run Thence S00°09'28"E, along said West line, a distance of 236.77 feet to the Point of Beginning.

#### Within Section 2, Township 1 North, Range 5 East

For a Point of Reference, Commence at the Southeast corner of Section 2, Township 1 North, Range 5 East of the Gila and Salt River Base and Meridian, Maricopa County, Arizona.  
Run Thence N00°09'28"W, along the East line of the Southeast quarter of said Section 2, a distance of 80.17 feet to the Point of Beginning;  
Run Thence S89°26'34"W a distance of 32.20 feet;  
Run Thence N00°09'28"W a distance of 124.87 feet;  
Run Thence N30°20'18"E a distance of 28.96 feet;  
Run Thence N00°09'28"W a distance of 75.13 feet;  
Run Thence N89°29'49"E a distance of 17.50 feet to the aforesaid East line of the Southeast quarter;  
Run Thence S00°09'28"E, along said east line, a distance of 224.84 feet to the Point of Beginning.

Prepared by:  
Gerald H. Nelson  
RLS #16167  
Sage Engineering Corp.  
3414 S. 48th Street, Suite 8  
Phoenix, Arizona 85040  
(480) 966-9971  
Sage Job # 1224099  
Date: November 12, 1999

# EXHIBIT "A-2"



PRIVATE ACCESS R.O.W. EXHIBIT

RATIFICATION BY LIENHOLDER

The foregoing Declaration of Covenants, Conditions, Restrictions and Easements for Summit Shadows is hereby ratified and approved by California Bank & Trust, a California banking corporation, the beneficiary under that certain Construction Deed of Trust, Assignment of Rents, Security Agreement and Fixture Filing dated February 16, 2000 and recorded on February 24, 2000, as Document No. 00-0133127 in the Official Records of Maricopa County, Arizona.

DATED this 19 day of June, 2000.

CALIFORNIA BANK & TRUST,  
a California banking corporation

By [Signature]  
Its EVP

STATE OF ARIZONA )  
County of Maricopa ) ss.

On this 19<sup>th</sup> day of June, 2000, before me personally appeared Mark Young, the EVP of California Bank & Trust, a California banking corporation, known to me to be the person whose name is subscribed to the foregoing Ratification by Lienholder of the Declaration of Covenants, Conditions, Restrictions and Easements, and being authorized to do so, acknowledged that he/she executed the same on behalf of the corporation for the purposes contained therein.

[Signature]  
Notary Public

My Commission Expires:  
4-14-02



OFFICIAL RECORDS OF  
MARICOPA COUNTY RECORDER  
HELEN PURCELL

6/20/00

11:30:35

00-0466061  
CCRs for Summit Shadows

Received By ISIDRO

TIFFANY & BOSCO P A		
1 Documents	@ 9.00	9.00
51 Additional Pages	@ 1.00	51.00
		-----
Total Due		60.00
		-----
Balance Due		.00

The turnaround time for documents as of the above date is \_\_\_\_\_ days. (must bring receipt to pick up original document)