

BYLAWS
OF
SIESTA FOOTHILLS HOMEOWNERS ASSOCIATION, INC.,
an Arizona nonprofit corporation

ARTICLE I

GENERAL PROVISIONS

Section 1.01. Name. The name of this nonprofit corporation ("Association") is Siesta Foothills Homeowners Association, Inc.

Section 1.02. Known Place of Business. The known place of business of this corporation will be located initially at 2632 South 24th Street, Suite B, Phoenix, Arizona 85034; however, meetings of Members and Directors may be held at any other place within the State of Arizona that may be designated by the Directors.

Section 1.03. Defined Terms. Terms used but not defined in these Bylaws will have the same meanings specified in the Declaration of Homeowner Benefits and Covenants, Conditions, and Restrictions for Siesta Foothills recorded in the Official Records of Maricopa County, Arizona ("Declaration"). Terms used in these Bylaws but defined in the Declaration include, but may not be limited to, the following: Assessments, Declarant, Common Area, Members, Project Documents, Declarant Control, Project, Mortgagee, Owner, Lot, Areas of Association Responsibility, Covered Claims, Association Rules, and Architectural Committee.

Section 1.04. Conflicting Provisions. If there is any conflict between the Articles of Incorporation ("Articles") for the Association and these Bylaws, the terms of the Articles will control. In the case of any conflict between the Declaration and these Bylaws, the Declaration will control.

Section 1.05. Corporate Seal. The Association may have a corporate seal in a form approved by the Board.

Section 1.06. Designation of Fiscal Year. The fiscal year of the Association will begin on the 1st day of January and end on the 31st day of December of every year, except that the first fiscal year will begin on the date of incorporation of the Association.

Section 1.07. Books and Records. The Association will keep and maintain those books and records required under A.R.S. § 10-11601 *et seq.* The books and records of the Association (including the Project Documents) will be available for inspection by any Member or the Member's authorized agents during reasonable business hours for a proper purpose at the known place of business of the Association as permitted under A.R.S. § 10-11602 through § 10-11605, inclusive. The books and records of the Association may be withheld from disclosure for any of the reasons specified in A.R.S. § 10-11602.F.

Section 1.08. Amendment. These Bylaws may be amended by a vote of the Members that are present in person or by proxy at a regular or special meeting of the Members and that have greater than 50% of the total number of eligible votes, regardless of class.

Section 1.09. Open Meetings. Except in any of those instances enumerated under A.R.S. § 33-1804, all meetings of the Association and the Board of Directors of the Association (singularly or collectively, as applicable, referred to as the "Board", "Directors", or "Director") must be open to all Members to attend and listen. In the case of meetings of the Board, Members who are not part of the Board, however, are not be permitted to participate in any deliberation or discussion of the Board unless expressly authorized by vote of a majority of a quorum of the Board. The Board also may limit participation to eligible Members.

Section 1.10. Exemption of Private Property. The private property of each and every officer, Director, and Member of this Association at all times is exempt from all debts and liabilities of the Association.

Section 1.11. FHA/VA Financing. If FHA or VA financing is applicable to the Project, any amendment to these Bylaws while Class B membership is in existence must be approved by the Federal Housing Administration or the Veterans Administration in the same manner described in the Declaration.

ARTICLE II

MEETINGS OF MEMBERS

Section 2.01. Annual Member Meeting. The Association will hold annual meetings of the Members. The annual meetings of the Members will be held at the known place of business of the Association, unless a different location is designated by the Board of Directors. The first annual meeting of the Members will be held on Dec 22, 2003, or at any other date designated by the Board of Directors; however, the first annual meeting of the Members must be held no later than one year after the date of the close of escrow on the first Lot sold by the Declarant to an Owner. The Association will hold subsequent annual meetings of the Members on the third Wednesday of February at the hour of 7:00 p.m., unless otherwise specified by written notice to the Members. If the day for the annual meeting of the Members is a legal holiday, the meeting will be held at the same hour of the next subsequent day that is not a legal holiday. The failure of the Association to hold an annual meeting of its Members, however, will not affect the validity of any corporate action.

Section 2.02. Special Member Meetings. Special meetings of the Members may be called at any time by the President or by a majority of the Board of Directors or by a written request signed by Members having at least 25% of the total number of eligible votes of each class of Members in the Association.

Section 2.03. Notice of Member Meetings. Written notice of each meeting of the Members (annual or special) will be given by, or at the direction of, the Secretary or person authorized to call the meeting by hand delivery or by mailing a copy of each notice, postage prepaid, at least 10 days and not more than 60 days before the meeting to each Member entitled to vote at that meeting addressed to the Member's address last appearing on the books of the Association or supplied by the Member to the Association for the purpose of notice. The notice must specify the place, day, and hour of the meeting, and, in the case of a special meeting, the purpose of the meeting. A Member may waive notice of the meeting before or after the date stated in the notice. Waiver of notice of the Member's meeting must be in writing, signed by the Member waiving notice, and delivered to the Association for inclusion in the books and records of the Association. By attending a meeting, however, a Member waives any right he/she may have had to object to the meeting on the basis that the proper notice of the meeting was not given in accordance with these Bylaws or the laws of the State of Arizona. The failure of any Member to receive actual notice of a meeting of the Members does not affect the validity of any action taken at that meeting.

Section 2.04. Member Quorum and Voting. Except as otherwise provided in the Articles, the Declaration, or these Bylaws, the presence (at the beginning of the meeting) in person or by proxy of Members entitled to cast 25% or more of the total number of eligible votes in the Association, regardless of class, constitutes a quorum for the purposes of holding a duly called and noticed meeting of the Members. If a quorum is not present at any meeting, the Members eligible to vote at the meeting will have the power to adjourn the meeting and to reschedule the meeting to another date and time without additional notice other than announcement at the meeting. At any subsequent meeting, the presence (at the beginning of the meeting) in person or by proxy of Members entitled to cast at least 10% of the total number of eligible votes in the Association, regardless of class, constitutes a quorum for the subsequent meeting. The Members at the meeting may continue to adjourn and reschedule until a quorum is present. Except as otherwise provided in the Articles, the Declaration, or these Bylaws, any action that must have the approval of the Members of the Association before being undertaken will require the vote of greater than 50% of the Members present (in person or proxy) and voting at a duly called and held meeting of the Members at which a quorum is present. Whenever the terms "eligible" votes or "eligible" Members are used in these Bylaws or the other Project Documents, both terms describe those Members that are permitted to vote on the matter (taking into consideration any weighted voting of the Declarant) and whose voting privileges have not been suspended or revoked. Unless the Project Documents specify otherwise, all approvals must be affirmatively given and may not be made in the negative or based on non-responses.

Section 2.05. Proxies. At all meetings of the Members, a vote may be cast in person or by proxy. A proxy may be granted by any Member in favor of only another Member, any officer of the Association, the Declarant, or the Member's Mortgagee, or, in the case of a non-resident Member, the lessee of the Members' Lot or the non-resident Member's attorney or managing agent. To be valid, a proxy must be duly executed in writing and must be filed with the Secretary at least 24 hours prior to the commencement of the meeting for which the proxy is given. A proxy will be valid only for the particular meeting designated in the proxy. A proxy will be deemed revoked only: (i) by attending the meeting and voting in person; or (ii) by delivering written notice to the person presiding over the meeting, secretary of the Association, or designated vote tabulator of a revocation signed by the Member who granted the proxy. Except with respect to proxies in favor of a Mortgagee, no proxy will be valid for a period in excess of 180 days after the execution of the proxy.

Section 2.06. Eligibility. The membership of the Association will consist of all Owners of Lots. Membership in the Association is mandatory, and no Owner during his ownership of a Lot will have the right to relinquish or terminate his membership in the Association. By accepting a deed to a Lot or otherwise becoming an Owner, each Owner enters into a contract with the Association and the other Owners whereby the Owner becomes a Member of the Association and is bound by the terms of the Declaration, Articles, Bylaws, and the other Project Documents, all as may from time to time be amended.

Section 2.07. Joint Ownership. When more than one person is the Owner of any Lot, all Owners will be considered Members in the Association. The vote for a Lot with multiple Owners will be exercised as they, among themselves, determine; however, no more than one vote may be cast with respect to any Lot. The votes for each Lot must be cast as a whole unit, and fractional votes are not allowed. If joint Owners are unable to agree among themselves as to how their vote or votes are to be cast, they will lose their right to vote on the matter in question. If any Owner casts a ballot representing a certain Lot, it will thereafter be conclusively presumed for all purposes that the Owner was acting with the authority and consent of all other Owners of the same Lot. If more than one ballot is cast for a particular Lot, none of the votes will be counted, and the votes will be deemed void.

Section 2.08. Corporate Ownership. If any Lot is owned by a corporation, partnership, limited liability company, association, or other legal entity, that legal entity will be the Member and that legal entity must designate, in writing, at the time of acquisition of the Lot, an individual who has the power to vote for the Lot. In the absence of a designation and until a designation is made, the chief executive officer or managing partner or managing member, as applicable, of the corporation, partnership, limited liability company, association, or other legal entity will have the power to cast the vote for the Lot. If there is no chief executive officer or managing partner or managing member, the Board of Directors of the Association will have the power to designate the person authorized to vote.

Section 2.09. Suspension of Voting Rights. If any Owner is in arrears in the payment of any assessments or other amounts due under any of the provisions of the Declaration or the other Project Documents for a period of 15 days after its due date, the Owner's right to vote as a Member of the Association will be suspended automatically and will remain suspended until all payments, together with accrued interest, late charges, attorney's fees, and other applicable charges, are brought current and kept current. If there exists any non-monetary violation of the Declaration or the other Project Documents with respect to a Lot or an Owner, the Owner's right to vote as a Member of the Association will be suspended automatically within 15 days after the Owner's receipt of written notice from the Board of the violation, and the right of the Owner to vote will remain suspended until the earlier of: (i) the cure of the violation by the Owner; or (ii) a decision by the Board under Section 3.11 of these Bylaws that no violation exists.

ARTICLE III

BOARD OF DIRECTORS

Section 3.01. Number of Directors. The affairs of this Association will be managed by a Board of Directors. Except for the initial members of the Board of Directors that are designated under the Articles, the Board of Directors will be elected by the Members. Elections for the Board of Directors may be conducted in any one of the following manners: (i) by voice vote, roll call vote, hand vote, or written ballot at an annual meeting of the Members; or (ii) by written ballot indicated by mail. So long as there is a Class B membership in the Association, the Directors need not be members of the Association. After the termination of the Class B membership, all Directors must be members of the Association. The Board originally will be composed of the 2 persons designated in the Articles. After the Class B membership terminates, the Board will be comprised of three Directors or any greater, odd number as may be determined by the Board in accordance with the Articles.

Section 3.02. Board Term of Office. So long as the Board of Directors is composed of 2 persons, the Directors will hold office for one year and until their successors are appointed and qualified. The first term of the Directors will end as of the date of the first annual meeting of the Members, and each subsequent term will end on the date of each subsequent annual meeting of the Members. If the number of Directors is expanded beyond 2 Directors to any larger number permitted by the Articles, the additional Directors will serve one year terms.

Section 3.03. Removal and Resignation. So long as the Class B Membership remains in existence, the Class B Member shall have the sole right to remove all Directors at any time. After the Class B Membership is terminated, at any annual or special meeting of the Members duly called, any one or more of the Directors comprising the Board of Directors may be removed from the Board with or without cause by Members having two-thirds (2/3) or more of the total number of eligible votes of the Members present in person or by proxy at the meeting, and, at the meeting where the Director is removed, a successor may be elected to fill the vacancy created for the remaining and unexpired term. Any Director may resign at any time by giving written notice to the Board, the President, or the Secretary, and

the resignation will be effective as of the date of its receipt or at any later time specified in this notice. If a resignation is effective at a later date, the Board may fill the vacancy before the effective date of the resignation so long as the successor does not take office until the effective date of the resignation.

Section 3.04. Compensation. No Director will receive compensation for any service rendered to the Association; however, any Director may be reimbursed for actual expenses incurred in the performance of his/her duties.

Section 3.05. Notice to Members of Board Meetings. Unless a Member makes a specific written request for individual written notice of Board meetings, written notice of any regular or special meetings of the Board need not be given specifically to each Member, but rather notice of any regular or special meeting of the Board may be given in any manner determined by the Board at least 48 hours in advance of the meeting including conspicuous posting on Common Area or other areas of the Project, newsletter, reminder notices with assessment invoices, or calendaring. Written notice of regular or special Board meetings must be provided only to those Members who request so in writing. A Member's request for individual written notice of Board meetings, however, is valid only for one year and must be renewed in writing to entitle the Member to continue to receive individual written notices. Notwithstanding the foregoing, however, the Board is not required to give any notice of regular or special meetings of the Board that are held during the period of Declarant Control or of emergency meetings of the Board (whether during or after the period of Declarant Control). The Directors also will have the right to take any action without holding a formal meeting by obtaining the unanimous written consent of all the Directors. All written consents of the Directors will be filed with the minutes of the proceedings of the Board.

Section 3.06. Vacancies on the Board. Vacancies on the Board caused by any reason other than the removal of a Director in accordance with the provisions of Section 3.03 of these Bylaws will be filled by a majority vote of the remaining Directors at the first regular or special meeting of the Board held after the occurrence of the vacancy, even though the Directors present at the meeting may constitute less than a quorum. Each person so elected will serve the unexpired portion of the prior Director's term.

Section 3.07. Regular Board Meetings. Regular meetings of the Board may be held at the time and place determined from time to time by the Board. Regular meetings will be held at least once during each fiscal year and must comply with Section 1.09 of these Bylaws.

Section 3.08. Special Board Meetings. Special meetings of the Board of Directors may be called by the President on three business days notice to each Director, given in writing by hand delivery, mail, or telecopy. This notice must state the time, place, and purpose of the special meeting. Special meetings of the Board may be called by the Secretary in like manner and on like notice upon the written request of at least two Directors.

Section 3.09. Quorum of Directors. A majority of the Directors present at the beginning of the meeting will constitute a quorum for the transaction of business. Unless otherwise specified by these Bylaws, the Articles, or the Declaration, every act or decision done or made by a majority of the Directors present at a duly-held meeting at which a quorum is present will be regarded conclusively as the act of the Board.

Section 3.10. Powers and Duties of the Board. All Association powers will be exercised by or under the authority of the Board of Directors. The Board will have all of the powers and duties necessary for the administration of the affairs of the Association and may exercise all rights and powers granted to the Association under the Project Documents and may perform all acts and make all decisions that are not required by the Project Documents to be exercised or performed by the Members.

Specifically, but without limitation of the previous sentence, the Board will have the following powers and duties:

(a) Open bank accounts on behalf of the Association and designate the signatories of the Association;

(b) Make or contract for the making of repairs, additions, improvements, and alterations of the Common Area and Areas of Association Responsibility, in accordance with (and as specified in) the Declaration and Project Documents, after damage or destruction by fire or other casualty, or as a result of condemnation or eminent domain proceedings;

(c) In the exercise of its sole discretion, enforce by legal means the provisions of the Declaration and the Project Documents including, without limitation, the collection of any assessments;

(d) Designate, hire, and dismiss the personnel necessary for the maintenance, operation, repair, replacement of the Common Area and Areas of Association Responsibility and provide services for the Members, and, where appropriate, provide for the compensation of the personnel (which or who may be affiliates of the Declarant) and for the purchase of equipment, supplies, and material to be used by the personnel in the performance of their duties;

(e) Provide for the operation, care, upkeep, and maintenance of all of the Common Area and Areas of Association Responsibility and any other areas within the Project that the Association is permitted or required to maintain;

(f) Prepare, amend, and adopt an annual budget for the Association prior to the commencement of each fiscal year;

(g) Adopt and publish rules and regulations governing the use of the Common Area and facilities and the personal conduct of the Members and their family members, guests, lessees, and invitees on the Common Area and establish penalties for infraction in accordance with the provisions of A.R.S. § 33-1803;

(h) Suspend the voting rights and the right to the use of the Common Area of a Member during any period in which the Member is in default in the payment of any assessment or other amounts due under the terms of the Project Documents or during any period the Member is in non-monetary default of the Project Documents, subject to the applicable notice and grace periods established in these Bylaws;

(i) Exercise, on behalf of the Association, all powers, duties, and authority vested in or delegated to the Association and not reserved to the Members by Arizona law or the provisions of the Declaration or other Project Documents;

(j) Declare the office of a member of the Board of Directors to be vacant if a member is absent from three consecutive regular meetings of the Board;

(k) Employ, hire, and dismiss all employees of the Association as the Board deems necessary and to prescribe their duties and their compensation;

(l) Hire, employ, or terminate a manager, whether as an independent contractor or as an employee, whether affiliated with Declarant or not, and delegate to that manager the power to perform all services and duties as the Board may direct;

(m) Keep or cause to be kept a complete record of all acts of the Board and all corporate affairs and to establish procedures for inspections of the books and records of the Association by Members with a proper purpose for inspection, including establishing a reasonable fee (payable in advance) for all copies requested by a Member of the books and records;

(n) As more fully provided in the Declaration to: (i) fix the amount of the annual and special assessments against each Lot; (ii) send written notice of each assessment to every Owner subject to an assessment; (iii) assess a late charge for any late payments; (iv) record a notice and claim of lien against any Lot for which assessments are not paid; and (v) enforce, through foreclosure or any other permitted action, the Association's lien or the personal obligation of the Owner to pay assessments;

(o) Issue, or cause an appropriate officer to issue, upon demand, to any appropriate person, any disclosure statement required under A.R.S. § 33-1806 or any payment statement required under A.R.S. § 33-1807.L, subject to the right of the Board to impose a reasonable charge for the issuance of these statements;

(p) Procure and maintain commercial general liability, hazard, and other insurance coverage in the amounts as required or permitted by the Declaration;

(q) Cause the Common Area and Areas of Association Responsibility to be maintained, as more fully set forth in the Declaration, and to pay all taxes levied on the Common Area;

(r) Institute, defend, and intervene in any litigation or administrative proceedings in its own name or on behalf of the Owners;

(s) Borrow money and, with the consent of two-thirds (2/3) of the total number of eligible votes of each class of Members in the Association, to mortgage, pledge, deed in trust, or grant a security interest in any or all of the Common Area;

(t) Enter into and perform contracts of any kind incidental to the performance of the Association's duties under the Project Documents; and

(u) Own, operate, and maintain all other property of the Association.

Section 3.11. Non-Monetary Violations. If the Board believes there is a non-monetary violation of the Declaration or the other Project Documents with respect to a Lot or any Owner, the Board may send written notice to the offending Owner describing the non-monetary violation. The Owner will have a period of 15 days from receipt of the Board's written notice to either: (i) correct the violation; or (ii) request in writing a hearing by the Board for the Owner to explain why no non-monetary violation exists, why a specific approval of the violating item or conduct should be issued by the Board, why a period of more than 15 days is required to correct the violation, or why the Owner otherwise protests the Board's notice of violation. A failure of the Owner to correct the violation or make the written requests described above within this 15 day period will entitle the Board to exercise all rights available to it under

the Project Documents or Arizona law with respect to the violating Owner or Lot, including the right of self-help to correct the violation and the right to impose reasonable monetary penalties in amounts determined by the Board based on the severity and frequency of the violation and any other factor deemed relevant by the Board. If a hearing is requested and the Board and the requesting Member cannot otherwise agree on a date and time for the hearing, the Board will propose a minimum of three dates and times for the hearing. The requesting Member must select in writing one of the three dates, and a hearing will be held on the selected date. The hearing will be attended by the requesting Owner and at least one of the Directors. The hearing will be conducted by the attending Director or an attending Director so designated by all attending Directors. The Owner, on its own account or through legal counsel, will make an oral or written presentation, and, after the Owner's presentation (although not necessarily at the meeting), the attending Director or Directors will report to and consult with the entire Board to make a decision on the Owner's request. Any decision by a majority of the Board will be binding on the Owner. Additional rules for the hearing may be adopted by the attending Director or Directors so long as the Member is given a reasonable opportunity to be heard. A decision by the Board also could include the imposition of reasonable monetary penalties on the Owner. Any suspended voting rights will be reinstated upon the Member's cure of the non-monetary violation or the Board's favorable determination that no violation exists. Hearings conducted under this Section 3.11 that are attended by one or more of the Directors are not meetings of the Board for purposes of the open meeting requirements of Section 1.09 of these Bylaws.

Section 3.12. Committees of Board. The Board may appoint committees to study or handle specific matters of the Association so long as at least one member of the Board serves on the committee. Committees designated by the Board are not subject to the open meeting requirements of Section 1.09 of these Bylaws or A.R.S. § 33-1804.

ARTICLE IV

OFFICERS AND THEIR DUTIES

Section 4.01. Enumeration of Officers. The principal officers of the Association will be the President, the Vice President, the Secretary, and the Treasurer all of whom will be elected by the Board. The President must be a member of the Board. Any other officers may, but need not, be members of the Board.

Section 4.02. Election of Officers. The election of officers will take place at the first meeting of the Board following each annual meeting of the Members. The following persons will serve as the officers of the Association until their successors are qualified and elected:

William D. Donoghue
John D. Ratliff

President/Treasurer
Vice President / Secretary

Section 4.03. Officer Term. The officers of the Association will be elected annually by the Board, and each officer will hold office for one year unless he/she sooner resigns, is removed, or is otherwise disqualified to serve.

Section 4.04. Special Appointments. The Board may elect any other officers as the affairs of the Association may require, each of whom will hold office for the period, have the authority, and perform the duties as the Board may determine from time to time.

Section 4.05. Resignation and Removal of Officers. Any officer may be removed from office with or without cause by the Board. Any officer may resign at any time by giving written notice to the Board, the President, or the Secretary. Any officer resignation will take effect on the date of receipt of the resignation notice or at any later time specified in the notice, and, unless otherwise specified in the resignation notice, the acceptance of the resignation will not be necessary to make it effective. If a resignation is effective at a later date, the Board may fill the vacancy before the effective date of the resignation so long as the successor does not take office until the effective date of the resignation.

Section 4.06. Vacancies in Offices. A vacancy in any office may be filled by appointment by the Board. The officer appointed to the vacancy will serve for the remainder of the term of the officer replaced.

Section 4.07. Powers and Duties of Officers. In addition to the execution of any affidavit of notice of the type described in A.R.S. § 33-1804.C. and the preparation and delivery of any disclosure statement required under A.R.S. § 33-1806 or A.R.S. § 33-1807.I., where and when delegated to the officers by the Board, the powers and duties of the officers are as follows:

(a) **President.** The President will preside at all meetings of the Board or the Members, ensure that orders and resolutions of the Board are carried into effect; and, at the direction of the Board, engage in the general and active management of the business of the Association;

(b) **Vice President.** The Vice President will act in the place and stead of the President in the event of his absence, inability, or refusal to act, and will exercise and discharge other duties as may be required of him by the Board;

(c) **Secretary.** The Secretary will record the votes and keep the minutes of all meetings and proceedings of the Board and of the Members; keep the corporate seal, if any, of the Association; serve notice of meetings of the Board and of the Members; keep appropriate current records showing the Members of the Association together with their addresses, and perform all other duties as required by the Board; and

(d) **Treasurer.** The Treasurer will receive and deposit in appropriate bank accounts all monies of the Association and will disburse all funds as directed by resolution of the Board; keep proper books of account; and prepare an annual budget and a statement of income and expenditures of the Association; and, in general, perform all the duties incident to the office of Treasurer or as required by the Board.

ARTICLE V

INDEMNIFICATION

Section 5.01. Indemnification. The Association has the power and authority to indemnify any past or present Member, officer, Director, incorporator, employee, or agent of the Association to the fullest extent permitted by A.R.S. § 10-3202.B.2. and § 10-3850 *et seq.*, as these statutes (or any predecessor statutes) may be interpreted by applicable case law. This power of indemnification extends to third party actions and derivative actions, and includes indemnification for attorney fees, court cost, and other related expenses in addition to indemnification for judgment amounts.

Section 5.02. Procedure. The circumstances and procedures for effecting an indemnification by the Association will be governed by A.R.S. § 10-3850 *et seq.*, as this statute may be amended from time to time or supplemented by Arizona case law.

Section 5.03. Scope of Article. The indemnification provided by this Article V is not exclusive of any other rights to which those indemnified may be entitled under any agreement approved by the Members or a majority of the disinterested Directors or otherwise, both as to an action in the person's official capacity and as to an action in another capacity while holding the office.

Section 5.04. Limitation of Liability for Certain Acts. So long as he/she has acted or has failed to act in good faith on the basis of information actually possessed, neither the Architectural Committee nor any member of the Architectural Committee nor the Board nor any member of the Board nor any officer of the Association will be liable to the Association, any Owner, or to any other party for any damage, loss, or prejudice suffered or claimed arising out of: (i) the approval or disapproval of any plans, drawings, or specifications, whether or not defective; (ii) the construction or performance of any work, whether or not pursuant to approved plans, drawings, and specifications; (iii) the development of any portion of the Property; (iv) the execution and filing of any estoppel certificate, whether or not the facts in the estoppel certificate are correct; (v) any act or failure to act with respect to any matter involving the Project Documents; (vi) the failure to provide a statement or an accurate statement of the matters required under A.R.S. § 33-1806 or § 33-1807; (vii) the failure to approve any plans, drawings, and specifications; and (viii) the performance of any other function of the Board, the Architectural Committee, or any officer of the Association.

ARTICLE VI

ARCHITECTURAL CONTROL

Section 6.01. Committee Composition. Declarant initially will appoint an Architectural Committee consisting of at least two persons. These initial members of the Architectural Committee will hold office during the period of Declarant Control. After the period of Declarant Control, the members of the Architectural Committee will be appointed by the Board. If an Architectural Committee has not been appointed by the Declarant or the Board, the Board will serve as the Architectural Committee, but the Board will not be subject to the notice and open meeting rules specified in these Bylaws when the Board acts as the Architectural Committee. No member of the Architectural Committee is required to be an architect or to meet any other particular qualifications. Members of the Architectural Committee need not be, but may be, a member of the Board, an officer of the Association, or a Member. The Board may increase the number of persons on the Architectural Committee, but, other than during the period of Declarant Control, the number of persons must always be an odd number.

Section 6.02. Terms of Office. Except for the term of the initial Architectural Committee, which will serve during the period of Declarant Control, and except in those instances where the Board serves as the Architectural Committee, the term of office for members of the Architectural Committee is a period of one year, but all members will remain in office until the appointment of a successor (even if after one year). Any new member appointed to replace a member who has resigned or been removed will serve the member's unexpired term. Any members who have resigned, been removed, or whose terms have expired may be re-appointed.

Section 6.03. Appointment and Removal. Except during the period of Declarant Control, when the right to appoint and remove all members of the Architectural Committee is vested solely with the Declarant, the right to appoint and remove all members of the Architectural Committee at any time, is

vested solely in the Board; however, no member may be removed from the Architectural Committee by the Board except by the vote or written consent of more than 50% of the entire Board.

Section 6.04. Resignations. Any member of the Architectural Committee may resign at any time upon written notice to the Board.

Section 6.05. Vacancies. Vacancies on the Architectural Committee, however caused, will be filled by the Board, except during the period of Declarant Control when they will be filled by the Declarant. A vacancy or vacancies on the Architectural Committee will be deemed to exist in case of the death, resignation, or removal of any Member.

Section 6.06. Duties. The Architectural Committee will consider and act upon any and all proposals or plans submitted to it pursuant to the terms of the Declaration, and perform other duties delegated to it by the Board.

Section 6.07. Meetings and Compensation. The Architectural Committee will meet from time to time as necessary to perform its duties. The vote or written consent of a majority of the members of the Architectural Committee, at a meeting or otherwise, constitutes the act of the Architectural Committee unless the unanimous decision of the Architectural Committee is required by any other provision of the Declaration. The Architectural Committee will keep and maintain a written record of all actions taken by it at the meeting or otherwise. Members of the Architectural Committee are not entitled to compensation for their services. Meetings of the Architectural Committee are not subject to the open meeting requirements of Section 1.09 of these Bylaws or A.R.S. § 33-1804 even if the Board is acting as the Architectural Committee as authorized under Section 6.01 of these Bylaws.

Section 6.08. Architectural Committee Rules. By unanimous vote or written consent, the Architectural Committee may adopt, amend, and repeal architectural rules and regulations for the Association. These rules will supplement the Declaration by setting forth the standards and procedures for Architectural Committee review and the guidelines for architectural design, placement of buildings, landscaping, color schemes, exterior finishes and materials, and similar features that are recommended for use within the Property.

Section 6.09. Waiver. The approval by the Architectural Committee of the plans, drawings, or specifications for any work done or proposed, or for any other matter requiring the approval of the Architectural Committee under the Declaration, is not deemed to constitute a waiver of any right to withhold approval of any similar plan, drawing specification, or matter subsequently submitted for approval.

Section 6.10. Time for Approval. If the Architectural Committee fails to approve or disapprove any application for approval within 30 days after its receipt of the application, together with complete and legible copies of the supporting plans and specifications, the application will be deemed approved, and further approval will not be required, and this Article VI will be deemed to have been complied with in full.

ARTICLE VII

ALTERNATIVE DISPUTE RESOLUTION

Section 7.01. Arbitration Rules. All Bound ADR Parties, as identified and defined below, agree to encourage the amicable resolution of claims, grievances, controversies, disagreements, or disputes involving the Project or the Project Documents in order to avoid or limit wherever possible the

emotional and financial costs of litigation. Accordingly, each Bound ADR Party covenants and agrees that all Covered Claims, as defined below, between one or more Bound ADR Party must be resolved using the alternative dispute resolution procedures set forth below in this Declaration and the Bylaws in lieu of filing a lawsuit or initiating administrative proceedings. As used in the Project Documents, the term "Bound ADR Parties" means the Association, Board, Declarant, any affiliate of Declarant, any Owner, any property manager or association manager for the Project, all Owners, any tenant of an Owner, any family member residing in the Owner's Detached Dwelling Unit, and any person not subject to this Declaration who voluntarily agrees to be subject to the dispute resolution procedures described below. Unless they otherwise agree, Mortgagees and Institutional Guarantors are not Bound ADR Parties. As used in the Project Documents, the term "Covered Claims" means all claims, grievances, controversies, disagreements, or disputes that arise in whole or part out of: (i) the interpretation, application, or enforcement of the Declaration or the other Project Documents; (ii) any alleged violation of the Project Documents by any of the Bound ADR Parties; (iii) the authority of the Association or the Board to take or not take any action under the Project Documents; (iv) the failure of the Declarant or the Association or the Board to properly conduct elections, give adequate notice of meetings, properly conduct meetings, allow inspection of books and records, or establish adequate warranty and reserve funds; (v) the performance or non-performance by any of the Bound ADR Parties of any of their respective obligations or responsibilities under the Project Documents to or on behalf of any other Bound ADR Party; or (vi) the design or construction of any of the Detached Dwelling Units (other than matters of aesthetic judgment by the Architectural Committee or the Board, all of which are not subject to further review under the alternative dispute resolution procedures or legal action). The term "Covered Claims", however, specifically does not include any Exempt Claims of the type described below. The term "Alleged Defects" means only those Covered Claims described in subsections (vi) and (vii) above.

Section 7.02. Exempt Claims. The following claims, grievances, controversies, disagreements, and disputes (each an "Exempt Claim" and, collectively, the "Exempt Claims") are exempt from the alternative dispute resolution provisions described in this Declaration:

(a) *Collection of Assessments.* Any action taken by the Association against any Bound ADR Party to enforce the collection of any Assessments, to enforce or foreclose any lien in favor of the Association, or to determine the priority of any lien for Assessments;

(b) *Specific Actions.* Any claim, grievance, controversy, disagreement, or dispute that primarily involves:

- (i) Title to any Lot or Common Area;
- (ii) A challenge to a property taxation or condemnation proceeding;
- (iii) The eviction of a tenant from a Detached Dwelling Unit;
- (iv) The breach of fiduciary duty by any one or more of the Board of Directors or officers of the Association;
- (v) The rights of any Mortgagee or Institutional Guarantor;
- (vi) An employment matter between the Association and any employee of the Association; or
- (vii) The invalidation of any provision of the Declaration or any of the covenants and restrictions contained in the Project Documents.

(c) *Injunctive Relief.* Any suit by the Association to obtain a temporary or permanent restraining order or equivalent emergency equitable relief (together with any other ancillary relief as the court may deem necessary) in order to maintain the then-current status of the Project and preserve the Association's ability to enforce the architectural control provisions of the Project Documents and the use restrictions contained in this Declaration;

(d) *Owner Actions.* Any suit solely between Owners (that does not include as a party the Association, Declarant, seeking redress on any Covered Claim that would constitute a cause of action under federal law or the laws of the State of Arizona regardless of the existence of the Project Documents;

(e) *Separate Written Contracts.* Any action arising out of any separate written contract between Owners or between the Declarant and any Owner that would constitute a cause of action under the laws of the State of Arizona regardless of the existence of the Project Documents; and

(f) *Not Bound Parties.* Any suit in which less than all parties are Bound ADR Parties (unless the parties that are not Bound ADR Parties voluntarily agree to be subject to the alternative dispute resolution procedures established in this Declaration and the Bylaws).

Any Bound ADR Party having an Exempt Claim may submit it to the alternative dispute resolution procedures established in this Declaration and the Bylaws, but there is no obligation to do so and no obligation of any other Bound ADR Party to agree to have the Exempt Claim submitted to the alternative dispute resolution procedures. The submission of an Exempt Claim involving the Association or Declarant to the alternative dispute resolution procedures below requires the approval of the Association or Declarant, as applicable.

Section 7.03. Enforcement of Resolution. This agreement of the Bound ADR Parties to negotiate, mediate, and arbitrate all Covered Claims is specifically enforceable under the applicable arbitration laws of the State of Arizona. After resolution of any Covered Claim through negotiation, mediation, or arbitration in accordance with the provisions outlined above, if any Bound ADR Party fails to abide by the terms of any agreement or Arbitration Award, any other Bound ADR Party may file suit or initiate administrative proceedings to enforce the agreement or Arbitration Award without the need to again comply with the procedures set forth above. In this case, the Bound ADR Party taking action to enforce the agreement or Arbitration Award is entitled to recover from the non-complying Bound ADR Party (or if more than one non-complying Bound ADR Party, from all non-complying Bound ADR Parties pro rata) all costs incurred in enforcing the agreement or Arbitration Award, including, with limitation, attorney fees, and court costs.

Section 7.04. Alleged Defects. If any Owner or the Association desires or intends to bring a claim of any sort against the Declarant or its affiliates or contractors for an Alleged Defect, the following provisions will apply to provide full and fair notice of the existence of the Alleged Defect and an opportunity to repair or correct the Alleged Defect without costly and time-consuming litigation.

(a) *Notice of Alleged Defect.* If any Owner or the Association discovers an Alleged Defect, the discovering party (referred to as a "Defect Claimant") will give written notice to the Declarant of the Alleged Defect and, if known, the repair or remedy sought by the Defect Claimant.

(b) *Right to Enter.* Within a reasonable time after the receipt by Declarant of written notice of the Alleged Defect (or Declarant's independent discovery of a possible Alleged

Defect), Declarant will have the right to enter the Project and any affected Detached Dwelling Units or Common Area to inspect, test, and, if deemed necessary or advisable by the Declarant in its sole discretion, cause the repair or correction of the Alleged Defect. All tests, inspections, and applicable repairs may be made by Declarant or its agents or independent contractors (including contractors and subcontractors) but can be commenced only after reasonable written notice by the Declarant to the Defect Claimant and must be made only during normal business hours.

(c) *Declarant Discretion.* In performing the tests, inspections, or repairs, as applicable, Declarant will be entitled to utilize methods or take actions that it deems appropriate or necessary, and Declarant's sole obligation with respect to the Defect Claimant will be to restore the affected area as close as reasonably possible to its condition prior to the testings, investigations, or repairs.

(d) *No Extension of Warranties.* The existence of this right to notice and an opportunity to inspect and/or cure will not be deemed to impose any obligation on the Declarant to test, inspect, or repair any Alleged Defect or to establish or extend any applicable warranty of any builder, developer, or seller (including Declarant) that may be applicable to the Detached Dwelling Unit or Common Area. Notwithstanding Section 7.05 below, the provisions of this Section 7.04 may not be modified, amended, waived, or terminated in any manner during any period of time that Declarant or its affiliates or contractors may remain liable or responsible for the Alleged Defect or any resulting injury or damage from the Alleged Defect, without the prior and express written consent of Declarant given in a recorded instrument.

Section 7.05. Amendments to Article VII. The alternative dispute resolution procedures established in Article VII of these Bylaws may not be modified, amended, terminated, or waived in any manner without Declarant's prior and express written consent, as evidenced by a recorded instrument, for so long as Declarant owns at least one Lot within the Project. After Declarant ceases to own at least one Lot within the Project, the alternative dispute resolution procedures of Article VII may be modified, amended, or terminated in accordance with the procedures established in the Project Documents; however, to the extent any Covered Claim still involves the Declarant, the Declarant can elect for the Covered Claim to be governed by the alternative dispute resolution procedures previously contained in the Project Documents (as though not modified, amended, or terminated). Nothing contained in this Section 7.05 is intended to shorten, modify, or amend the provisions of Section 7.04 with respect to the notice and opportunity to inspect and/or cure an Alleged Defect.

I certify that the foregoing Bylaws were duly adopted by the Board of Directors of the Association as of May 5, 2003.


William D. Donoghue
President

Attest:


John D. Ratliff
Secretary