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DECLARATION OF COVENANTS, CONDITIONS AND RESTRICTIONS

FOR

THE COVE
AT THE ISLANDS

A PLANNED COMMUNITY
LOCATED AT THE ISLANDS

TOWN OF GILBERT
MARICOPA COUNTY, ARIZONA

TABLE OF CONTENTS

ARTICLE I	DEFINITIONS	2
Section 1.01.	"Additional Property"	2
Section 1.02.	"Annual Assessments"	2
Section 1.03.	"Architectural Committee"	2
Section 1.04.	"Architectural Committee Rules"	2
Section 1.05.	"Articles of Incorporation"	2
Section 1.06.	"Assessment"	2
Section 1.07.	"Assessment Lien"	2
Section 1.08.	"Association"	2
Section 1.09.	"Association Rules"	2
Section 1.10.	"Board" or "Board of Directors"	2
Section 1.11.	"Bylaws"	2
Section 1.12.	"Common Area"	3
Section 1.13.	"Constituent Documents"	3
Section 1.14.	"THE COVE AT THE ISLANDS"	3
Section 1.15.	"Declarant"	3
Section 1.16.	"Declaration"	3
Section 1.17.	"Developer"	3
Section 1.18.	"First Mortgage"	4
Section 1.19.	"Improvement"	4
Section 1.20.	"Individual Assessment"	4
Section 1.21.	"Initial Property"	4
Section 1.22.	"Insurer" or "Guarantor"	4
Section 1.23.	"The Islands"	4
Section 1.24.	"Lake Areas"	4
Section 1.25.	"Lot"	4
Section 1.26.	"Majority" or "Majority of Owners"	4
Section 1.27.	"Master"	4
Section 1.28.	"Master Association"	4
Section 1.29.	"Master Board"	5
Section 1.30.	"Master Declaration"	5
Section 1.31.	"Matters of Record"	5
Section 1.32.	"Mortgage"	5
Section 1.33.	"Owner(s)"	5
Section 1.34.	"Party Wall"	5
Section 1.35.	"Flat"	5
Section 1.36.	"Property" or "Properties" or the "Development"	5
Section 1.37.	"Recreational Vehicle"	5
Section 1.38.	"Rules"	6
Section 1.39.	"Special Assessment"	6
Section 1.40.	"Streets and Roadways"	6
Section 1.41.	"Tract Declaration"	6
Section 1.42.	"Unit"	6
Section 1.43.	"Visible From Neighboring Property"	6
Section 1.44.	"Waterfront Facility"	6
Section 1.45.	Incorporation of Definitions by Reference; Conflict	7
ARTICLE II	PROPERTY RIGHTS	7
Section 2.01.	Regarding Master Common Areas	7
Section 2.02.	Streets and Roadways	7
Section 2.03.	Accretion; Regarding Lake Areas	7
Section 2.04.	Owners' Easements of Enjoyment	7
Section 2.05.	Delegation of Use	8
Section 2.06.	Owners' Right of Enjoyment Limitations	8
Section 2.07.	Common Area Improvements	9
Section 2.08.	Ad Valorem Taxation	9
ARTICLE III	PROPERTY SUBJECT TO THIS DECLARATION	9
Section 3.01.	General Declaration	9
Section 3.02.	Certain Areas Deeded to Master Association	9
Section 3.03.	Association Bound Upon Issuance of Certificate	9

ARTICLE IV	USE RESTRICTIONS AND EASEMENTS	9
Section 4.01.	Single Family Private Residential Use	9
Section 4.02.	Limitation of Restrictions on Declarant	10
Section 4.03.	Compliance With Terms, Conditions and Use Restrictions of Master Declaration and Tract Declaration	11
Section 4.04.	Easements	11
Section 4.05.	Encroachments	15
Section 4.06.	Interference	15
Section 4.07.	Solar and Radio/Television Signal Collection Devices; Floodlights	16
Section 4.08.	Alterations, Additions and Improvements	15
Section 4.09.	No Further Subdivision	16
Section 4.10.	Certain Fencing Prohibited; Certain Required Landscape	16
Section 4.11.	Animals	16
Section 4.12.	Utility Service	17
Section 4.13.	Temporary Occupancy	17
Section 4.14.	Vehicles	17
Section 4.15.	Nuisances	18
Section 4.16.	Diseases and Insects	18
Section 4.17.	Clothes Drying; Window Screening	18
Section 4.18.	Signs	18
Section 4.19.	Burning and Incinerators	19
Section 4.20.	Machinery and Equipment	19
ARTICLE V	ARCHITECTURAL CONTROL	19
Section 5.01.	Organization, Power of Appointment and Removal of Members	19
Section 5.02.	Duties	20
Section 5.03.	Meetings and Compensation	20
Section 5.04.	Architectural Committee Rules	20
Section 5.05.	Waiver	21
Section 5.06.	Liability	21
Section 5.07.	Time for Approval	21
Section 5.08.	Processing Fee	21
Section 5.09.	Construction in Accord with Laws	21
Section 5.10.	Declarant to Control Initially	22
ARTICLE VI	ASSOCIATION, MEMBERSHIP AND VOTING RIGHTS	22
Section 6.01.	Purpose	22
Section 6.02.	Membership	22
Section 6.03.	Voting Rights	22
Class A		22
Class B		23
Section 6.04.	Suspension of Voting Rights	23
Section 6.05.	Persons Entitled to Vote	23
Section 6.06.	Powers and Duties of the Association	23
Section 6.07.	Meetings	24
Section 6.08.	Rules	24
Section 6.09.	Personal Liability	24
Section 6.10.	Budget	24
Section 6.11.	Professional Management Agreement	24
ARTICLE VII	COVENANTS FOR ASSESSMENTS AND CREATION OF LIENS	25
Section 7.01.	Creation of the Lien and Personal Obligation of Assessments	25
Section 7.02.	Purpose of Assessments	25
Section 7.03.	Annual Assessments	26
Section 7.04.	Special Assessments for Capital Improvements	27
Section 7.05.	Individual Assessment for Restoration of Lots or Units	28
Section 7.06.	Notice and Quorum for Any Action Authorized Under Sections 7.03 and 7.04	28
Section 7.07.	Uniform Rate of Assessment	28
Section 7.08.	Joint Ownership Payments	28

Section 7.09. Effect of Nonpayment of Assessments; Remedies of the Association	29
Section 7.11. Subordination of the Lien to Mortgages	30
Section 7.12. Written Notification	31
ARTICLE VIII COMMON AREA	31
Section 8.01. Permitted Uses	31
Section 8.02. Restricted Uses	31
Section 8.03. Maintenance by Association	32
Section 8.04. Damage or Destruction of Common Areas By Owners	38
ARTICLE IX MAINTENANCE	33
Section 9.01. Rights and Obligations of Association	33
Section 9.02. Rights and Obligations of Owners	36
ARTICLE X PARTY WALLS	34
Section 10.01. General Rules of Law to Apply	34
Section 10.02. Common Use	34
Section 10.03. Property Rights	34
Section 10.04. Sharing of Repair and Maintenance	34
Section 10.05. Destruction by Fire or Other Casualty	35
Section 10.06. Destruction by Adjoining Owner	35
Section 10.07. Structural Integrity to be Maintained	36
Section 10.08. Right to Contribution Runs With Land	35
Section 10.09. Extension or Alteration	35
Section 10.10. Arbitration	35
Section 10.11. Covenants Binding	36
ARTICLE XI INSURANCE	36
Section 11.01. Property Insurance	36
Section 11.02. Liability Insurance	37
Section 11.03. Fidelity Bonds	37
Section 11.04. Flood Insurance	37
Section 11.05. Additional Insurance	37
Section 11.06. Mortgages Held by Governmental Entities	38
ARTICLE XII DAMAGE AND DESTRUCTION	38
Section 12.01. Use of Insurance Proceeds	38
Section 12.02. Insufficient and Excessive Insurance Proceeds	38
Section 12.03. Notice to Holders	39
ARTICLE XIII CONDEMNATION	39
Section 13.01. Payment of Award	39
Section 13.02. Special Assessment for Deficiency	39
Section 13.03. Notice to Holders	39
ARTICLE XIV REMEDIES	39
ARTICLE XV RIGHTS OF FIRST MORTGAGE HOLDERS	41
Section 15.01. Rights of First Mortgage Holders	41
Section 15.02. Voting Rights	43
Section 15.03. First Mortgagees to Pay Assessment After Delivery of Deed	43
ARTICLE XVI COMPLIANCE WITH FHA AND VA REGULATIONS	43
ARTICLE XVII ANNEXATION	44
Section 17.01. Right of Annexation	44
Section 17.02. Phases	44
Section 17.03. Method of Annexation	44
Section 17.04. Effect of Annexation	44
Section 17.05. Rights of Declarant	45
Section 17.06. Limitations on Annexation	45
ARTICLE XVIII COVENANTS, CONDITIONS AND RESTRICTIONS APPLICABLE TO LAKE AREA	46
Section 18.01. Lake Areas	46
Section 18.02. Swimming	46

Section 19.03.	Boats and Other Watercraft	46
Section 19.04.	Waterfront Facilities	48
Section 19.05.	Right of Way	46
ARTICLE XIX	TERM AND AMENDMENT	46
ARTICLE XX	GENERAL PROVISIONS	47
Section 20.01.	Enforcement	47
Section 20.02.	Incorporation of Recitals	47
Section 20.03.	Severability	47
Section 20.04.	Violations and Nuisance	47
Section 20.05.	Violation of Law	47
Section 20.06.	Remedies Cumulative	47
Section 20.07.	Delivery of Notices and Documents	47
Section 20.08.	Public Dedication	48
Section 20.09.	Copy of Declaration to New Members	48
Section 20.10.	Purchase of Lot by Association	48
Section 20.11.	Perpetuity Savings	48
Section 20.12.	Change of Circumstances	48
Section 20.13.	Interpretation	48
Section 20.14.	No Warranties	49
Section 20.15.	Approval By Lender	49
Section 20.16.	Jurisdiction	49
Section 20.17.	The Declaration	49

THIS DECLARATION of Covenants, Conditions and Restrictions (hereinafter, this "Declaration") is made this 27 day of August, 1986 by V.L. Crow Development, Inc., an Arizona corporation (hereinafter sometimes called "Declarant").

W I T N E S S E T H:

WHEREAS, Declarant is the developer of approximately 16 acres of land in the Town of Gilbert, Maricopa County, Arizona, known as a portion of Parcel 29 in THE ISLANDS (as herein defined) development and legally described as follows:

That Part of the Southeast quarter of Section 14, Township 1 South, Range 6 East of the Gila and Salt River Base and Meridian, Maricopa County, Arizona, more particularly described as follows:

Lots 93 through 131 and 164 through 173, Tracts D, I, K, M, N, Q, R, S, T, U, V, W, X, Y, Z, AA, BB, CC and DD and all streets and roadways, located within THE COVE AT THE ISLANDS, according to the Plat of record, recorded with the Maricopa County Recorder on the 27th day of August, 1986, in Book 302 of Maps, Page 3, as shown in Exhibit "A" attached hereto and incorporated by reference.

Excluding roadway rights-of-way as shown on the "Islands" Map of Dedication as recorded in Book 275 of Maps, Page 42, Maricopa County Records.

WHEREAS, Declarant desires to develop the aforesaid lands into a planned residential community subject to the terms of this Declaration and the terms and conditions set forth in the Master Declaration and the Tract Declaration (as respectively herein defined); and

WHEREAS, Declarant desires to establish for its own benefit and for the mutual benefit of all future owners or occupants of the above-described real property, or any part thereof, certain easements and rights in, over and upon such real property and certain mutually beneficial restrictions and obligations with respect to the proper use, conduct and maintenance thereof; and

WHEREAS, Declarant desires to form a nonprofit corporation for the purposes of benefiting THE COVE AT THE ISLANDS and the Owners (as respectively herein defined), which nonprofit corporation will operate and control a variety of Common Areas (as herein defined) within THE COVE AT THE ISLANDS; cause the provision of management and maintenance services for the other areas as more fully set forth herein; and establish, levy, collect and disburse the Assessments (as herein defined) and other charges imposed hereunder; and

WHEREAS, Declarant desires and declares that all of the real property described above shall be held, sold and conveyed subject to the following easements, restrictions, covenants and conditions as set forth and/or referred to herein, which are for the purpose of protecting the value and desirability of, and shall run with, such real property and be binding on all parties having any right, title or interest in such real property or any part thereof, their heirs, successors and assigns, and shall inure to the benefit of each owner thereof; and

WHEREAS, this Declaration and the above-described real property is subject to all Matters of Record (as hereinafter

defined) and as to any inconsistencies between this Declaration and the Matters of Record including, but not limited to, the Master Declaration and Tract Declaration, the Matters of Record shall prevail and be deemed controlling; and

WHEREAS, certain other real property, designated herein the Additional Property and described in Exhibit "B" attached hereto may be annexed to the Property and be a part of said planned residential community all in accordance with the terms and conditions described in this Declaration.

NOW, THEREFORE, Declarant hereby declares, covenants and agrees as follows:

ARTICLE I

DEFINITIONS

Section 1.01. "Additional Property" shall mean and refer to the additional property which may be annexed to the Initial Property (as herein defined) pursuant to the provisions of Article XVII of this Declaration.

Section 1.02. "Annual Assessments" shall mean and refer to the charge levied and assessed each year against each Lot, Unit or Owner pursuant to Article VII, Section 7.03 hereof.

Section 1.03. "Architectural Committee" shall mean and refer to the committee which will generally supervise the architecture, design and upkeep of THE COVE AT THE ISLANDS, as more fully described in Article V hereof.

Section 1.04. "Architectural Committee Rules" shall mean and refer to the rules adopted for the architecture, design and maintenance of THE COVE AT THE ISLANDS adopted by the Architectural Committee pursuant to Article V, Section 5.04 hereof.

Section 1.05. "Articles of Incorporation" shall mean and refer to the Articles of Incorporation of the Association, as amended from time to time.

Section 1.06. "Assessment" shall mean and refer to an Annual Assessment, a Special Assessment or an Individual Assessment.

Section 1.07. "Assessment Lien" shall mean and refer to the lien created and imposed by Article VII hereof and is synonymous with the term "Lien". In that regard, "Claim of Lien" shall mean the notice and claim of Lien relating to Assessments described in Article VII, Section 7.09 hereof.

Section 1.08. "Association" shall mean and refer to THE COVE HOMEOWNERS ASSOCIATION, INC., an Arizona nonprofit corporation, its successors and assigns.

Section 1.09. "Association Rules" shall mean and refer to the Rules and Regulations relating to THE COVE AT THE ISLANDS and adopted by the Board and established by the Association, as they may be amended from time to time, and is synonymous with the terms "Rules and Regulations" and "Rules".

Section 1.10. "Board" or "Board of Directors" shall mean and refer to the Board of Directors of the Association.

Section 1.11. "Bylaws" shall mean and refer to the Bylaws of the Association, as amended from time to time.

Section 1.12. "Common Area" shall mean and refer to all real property, including the Improvements and personal property located thereon, owned by the Association for the common use and enjoyment of the Owners. The Common Area to be owned by the Association at the time the conveyance of the first lot and the intended purpose thereof is described as follows, with the intended purpose of each tract being more fully set forth on the Plat:

- (a) All private roads and emergency access areas;
- (b) Major open space and recreational areas -- Tract M;
- (c) Utility Easements and Landscaped areas-- Tracts D, I, K, N, Q, R, S, T, U, W, Y, CC & DD;
- (d) Landscape and Recreational Tracts -- V, X, Z, AA & BB to be maintained by The Islands Community Association.

The initial development scheme of the Property established by Declarant will not be altered without approval of the Board.

Additional property may hereafter be brought within the jurisdiction or control of the Association and be designated as "Common Area" pursuant to the provisions of this Declaration.

Section 1.13. "Constituent Documents" shall mean and include this Declaration, the Master Declaration, the Tract Declaration and the Articles of Incorporation and the Bylaws of the Association and of the Master Association, as amended from time to time.

Section 1.14. "THE COVE AT THE ISLANDS" shall mean the Development within The Islands to which this Declaration and the Plat relate.

Section 1.15. "Declarant" shall initially mean V.L. Crow Development, Inc., an Arizona corporation, or any trustee or encroacher which may be designated by Declarant, including any of Declarant's successors and assigns. "Declarant" also shall mean and include "Developer", which terms may be used interchangeably herein. Declarant shall also mean any person, entity or firm to which there is transferred one or more lots for the purpose of development thereof by such party and Declarant assigns its rights hereunder to such party. Thereafter, such person, entity or firm shall be and shall be deemed to be Declarant hereunder and Declarant (as initially defined herein) shall have no further responsibility or obligation under or pursuant to this Declaration. It is provided, however, that in no event shall there be more than one person or entity who or which shall be "Declarant" hereunder unless Declarant, by written instrument, declares its intention to split, divide or partition the Declarant's interest created hereby and the conditions under which the parties to whom the Declarant's interest is distributed may act as Declarant hereunder.

Section 1.16. "Declaration" shall mean this instrument, as same may be amended from time to time.

Section 1.17. "Developer" shall initially mean V.L. Crow Development, Inc., an Arizona corporation, or its successors and assigns. Unless otherwise expressly indicated herein, Developer shall be deemed the same as "Declarant" and any entity becoming Declarant hereafter shall also have the rights herein granted to Developer.

Section 1.18. "First Mortgage" shall mean a first lien deed of trust, as well as a first mortgage, on any Lot held by any bona fide lender who has lent funds with a Lot as security, including, without limitation, a First Mortgage which enabled Declarant to acquire Lots in the Development. "First Mortgage" means a holder of a First Mortgage, as well as a beneficiary, under a first deed of trust, and the successors and assigns of such parties.

Section 1.19. "Improvement" shall mean any buildings, dwelling houses or places and ancillary structures, clubhouses, patios, ramadas, walkways, gates, roads, roadways, parking areas, lighting fixtures, fences, walls, hedges, sprinkler systems, signs, sports or recreational equipment and facilities, pools or spas, plantings, planted trees and shrubs and all other structures or landscaping of every kind and type located on the Property.

Section 1.20. "Individual Assessment" shall mean and refer to an Assessment which is payable by a single Lot Owner only for certain items relating to his Lot or his actions, all as more fully described in Article VII, Section 7.08 hereof.

Section 1.21. "Initial Property" shall mean the Property initially subject to this Declaration and described in Recital 1 above.

Section 1.22. "Insurer" or "Guarantor" shall mean and refer to any person or entity which insures a recorded First Mortgage on any Unit or any governmental entity which guarantees a recorded First Mortgage on any Lot and provides the Association with its name and address and the address of the Unit.

Section 1.23. "The Islands" shall mean the real property described in the Master Declaration and the development to be completed thereon, together with any portion of the Additional Lands and the development to be completed thereon which may be annexed to The Islands pursuant to the Master Declaration.

Section 1.24. "Lake Areas" shall mean the lake and water areas shown on the Master Development Plan for The Islands, including the land underlying such Lake Areas. Lake Areas shall be a part of the Master Common Areas to be conveyed to the Master Association as set forth in Article III, Section 3.02.

Section 1.25. "Lot" shall mean and refer to one of the Lots numbered 1 through 179, inclusive, shown on the Plat, together with any Improvements on a Lot, with the exception of the Streets and Roadways and Common Areas as described in Article II below and with the exception of certain Lake Areas and other certain parcels of real property to be deeded to the Master Association pursuant to Section 4.04(g) below, all as shown on the Plat.

Section 1.26. "Majority" or "Majority of Owners" shall mean and refer to the Owners of more than fifty percent (50%) of the Lots.

Section 1.27. "Master", when used as an introductory word shall designate a term which is defined, or to which reference is made, in the Master Declaration. The use of such word in conjunction with a capitalized term herein shall refer to and have the meaning with respect to the capitalized term set forth in the Master Declaration.

Section 1.28. "Master Association" shall mean the Arizona nonprofit corporation organized by the Master Declarant to administer and enforce the provisions of, and exercise the rights, powers and duties set forth in, the Master Declaration.

Section 1.29. "Master Board" shall mean the Board of Directors of the Master Association, as the same may be constituted from time to time.

Section 1.30. "Master Declaration" shall mean the Declaration of Covenants, Conditions, Restrictions and Easements in which Continental Homes Corporation, a California corporation, is named as Declarant, and which was recorded on the 3rd day of December, 1984, in Maricopa County Records, Instrument No. 84-820816, and all amendments and supplements thereto, whether now, heretofore or hereafter existing and/or recorded.

Section 1.31. "Matters of Record" shall include and mean all reservations, easements, restrictions, conditions, rights of way, liens and encumbrances and other matters as shown in a title report with respect to the Property which title report shall have been prepared as of the date hereof, including but not limited to, the Master Declaration and the Tract Declaration.

Section 1.32. "Mortgage" shall mean and refer to a realty mortgage and includes a deed of trust; "Mortgagee" includes a beneficiary interest under a deed of trust; "Mortgagor" or "Mortgage Holder" includes a trustor under a deed of trust; and "foreclosure" includes a trustee's sale proceeding pursuant to a deed of trust.

Section 1.33. "Owner(s)" shall mean and refer to the record owner, whether one or more persons or entities, of equitable or beneficial title (or legal title if the same has merged) of any Lot. The foregoing does not include persons or entities who hold an interest in any Lot merely as security for the performance of an obligation so long as the holder of the beneficial title to said Lot has an interest of record. Except as stated otherwise herein, "Owner" shall not include a lessee or tenant of a Lot or Unit. For the purposes of Article IV of this Declaration, unless the context otherwise requires, "Owner" shall also include the family, guests, invitees, licensees and lessees of any Owner, together with any other person or parties holding any possessory interest granted by such Owner in any Lot or Unit. It is provided, however, that the term "Owner" shall never be construed so as to give any rights or privileges to family, guests, invitees, licensees and lessees of anyone but an Owner, it being the intent hereof that, for example, guests of guests or guests of family shall not be deemed to be Owners hereunder and shall have no rights under this Declaration. Except as otherwise indicated in this Declaration, "Owner" shall include Declarant so long as Declarant owns any Lot within the Property.

Section 1.34. "Party Wall" shall mean and refer to a common wall which is shared by two Units and which is more fully described in Article X hereof.

Section 1.35. "Flat" shall mean that certain Plat relating to this Declaration and to THE COVE AT THE ISLANDS and recorded on August 27, 1986, in Book of Maps 302, Page 3, Office of the County Recorder of Maricopa County, Arizona, and all amendments and supplements thereto.

Section 1.36. "Property" or "Properties" or the "Development" shall mean and refer to that certain real, personal or mixed property, hereinbefore described, which is subject to this Declaration.

Section 1.37. "Recreational Vehicle" shall mean any vehicle, whether used for recreational purposes or not, classed by manufacturer rating as exceeding 8/4-ton, including, without limitation, a mobile home, travel trailer, tent trailer, trailer, camper shell, detached camper, boat, boat trailer or other similar equipment or vehicle; provided, however, that the

following shall not constitute "Recreational Vehicles" within the meaning of this Declaration:

(a) Pick-up trucks of less than 3/4-ton capacity with camper shells, only if the same are of such a size and nature that they may be, and are, parked in a garage for a Unit; or

(b) Mini-motor homes only if the same are of such a size and nature that they may be, and are, parked in a garage for a Unit;

and in all cases used on a regular and recurring basis for basic transportation of a Unit Owner or of a lawful occupant of a Unit.

Section 1.38. "Rules" shall mean and refer to the Rules and Regulations as adopted by the Board and established by the Association, as the same may be amended from time to time, as more fully described in Article VI, Section 6.08 hereof, and is synonymous with the term "Association Rules".

Section 1.39. "Special Assessment" shall mean and refer to any Assessment levied and assessed pursuant to Article VII, Section 7.04 hereof.

Section 1.40. "Streets and Roadways" shall mean the streets and roadways located on the Property and on each parcel as shown on the Plat, which Streets and Roadways shall constitute private roadways designated within the Common Areas, as more fully set forth in Section 1.11 above. The Streets and Roadways are conveyed to the Association by virtue of the dedication thereof on the Plat.

Section 1.41. "Tract Declaration" shall mean the Declaration of that name recorded pursuant to Article IV, Section 4.1 of the Master Declaration, relating to THE COVE AT THE ISLANDS and recorded on December 31, 1984, in Maricopa County, Arizona Records, as Instrument No. 84-861302, and amended on February 5, 1985, in Maricopa County, Arizona Records, as Instrument No. 86-058526, and any amendments and supplements thereto, whether now, heretofore or hereafter existing whether or not recorded.

Section 1.42. "Unit" shall mean and refer to a single-family residential living unit constructed upon a separately designated Lot, which term shall also include any Improvements erected, constructed or maintained on a Lot.

Section 1.43. "Visible From Neighboring Property" shall mean, with respect to any given object, that such object is or would be visible to a person six feet tall, standing or located on any part of such Neighboring Property at an elevation no greater than the elevation of the base of the object being viewed. When used above, the term "Neighboring Property" shall mean any portion of the Property or The Islands, including, without limitation, any Master Common Elements, Common Areas, any Streets or Roadways, any Lake Areas, any Unit, any Lot or any other part of the Property.

Section 1.44. "Waterfront Facility" shall mean docks, wharves, floats, slips, paths, sidewalks, ramps, piers, landings and other structures or equipment designed for use with or access to Lake Areas.

Waterfront Facilities shall be located within the Common Area more fully described in Section 1.12 of this Article. Each Owner, by accepting a deed to a Lot, and the Association, acknowledges and agrees that the Waterfront Facilities located therein are within areas specifically designated as Lake Easements under the Master Declaration, the Tract Declaration and

the Plat and assumes the risks of water encroachment, damage and other intrusion of water into such Areas and on or upon such Facilities. Unless the context so indicates, the term "Waterfront Facility" when used in this Declaration shall mean and include the Common Area as shown on the Plat adjacent to Lake Areas.

Section 1.45. Incorporation of Definitions by Reference; Conflict. All capitalized terms not otherwise defined herein shall have the meanings ascribed to them in the Master Declaration. Moreover, a definition from the Master Declaration shall be deemed to be expressly incorporated herein by reference if a capitalized term is followed by the introductory word "Master," as more fully set forth in Section 1.27 above. This Declaration shall be construed as an independent instrument and defined terms set forth herein which may bear the same designations as set forth in the Master Declaration shall be construed in the context of this Declaration and the definitions ascribed to such terms herein only, unless the context otherwise indicates to the contrary. For example, the term "Owner" used in this Declaration shall only mean an Owner of Property located in The Cove at the Islands whereas the term "Owner" used in the Master Declaration means any Owner of any property in The Islands.

ARTICLE II

PROPERTY RIGHTS

Section 2.01. Regarding Master Common Areas. Each Owner shall have such use of the Master Common Areas, Master Streets and other common rights of way and any and all other amenities and improvements in The Islands which are dedicated for use by all Owners of Property thereof or therein, all as more fully described in the Master Declaration. This Declaration shall be construed in such a manner so as to permit the free and unobstructed use of all Master Common Areas by all Owners in THE COVE AT THE ISLANDS or The Islands consistent with the dedication of such Common Areas to the common uses of such Owners.

Section 2.02. Streets and Roadways. Declarant intends that all Streets and Roadways within the Development shall constitute private roadways; however, Owners shall, at all times, comply with all responsibilities which would otherwise be required had said Streets and Roadways been dedicated for public use to The Town of Gilbert. By accepting a deed to a Lot, an Owner acknowledges and agrees that such Streets and Roadways subject to the terms and conditions hereof.

Section 2.03. Accretion; Regarding Lake Areas. Each Owner, by the acceptance of a deed to a Lot, acknowledges and agrees that the contours of the Lake Areas may, either artificially or naturally, be changed in the future. Any additions to a Lot caused by such change shall be a part of such Lot and a Lot shall be correspondingly decreased by any subtractions from such Lots caused by such a change. Any changes in the solid earth which directly affect a Waterfront Facility shall, from time to time, be deemed to affect the description and extent of, and an Owner's right of ownership and use in, such Waterfront Facility. Each Owner acknowledges and agrees that such an affected Waterfront Facility may have to be moved or modified as a result of such future changes and hereby grants an easement to the Board, the Master Board or their respective designees to effect such a movement or modification.

Section 2.04. Owners' Easements of Enjoyment. Every Owner shall have a nonexclusive right and easement of enjoyment in and to the Common Area which shall be appurtenant to and shall pass with the title to every Lot. It is expressly acknowledged

and agreed by all parties concerned that this Section is for the mutual benefit of all Owners of Lots and is necessary for the protection of all Owners. Such easement of enjoyment is, however, subject to the following provisions:

- (a) the right of the Association to charge the Owners, the Owners' tenants and/or the Owners' licensees reasonable admission and other fees for the use of any recreational facility situated upon the Common Area;
- (b) the right of the Association to suspend the voting rights of an Owner and/or the right to the use of the recreational facilities by an Owner, an Owner's tenants and/or an Owner's licensees for any period during which any Assessment against such Owner's Lot remains unpaid, and for a period not to exceed sixty (60) days for any infraction of its published Rules and Regulations;
- (c) the right of the Association to dedicate or transfer all or any part of the Common Area to any public agency, authority, or utility for such purposes and subject to such conditions as may be agreed to by the Owners; provided, however, that no such dedication or transfer shall be effective unless an instrument agreeing to such dedication or transfer signed by two-thirds (2/3) of each class of Owners has been recorded;
- (d) the right of the Association to establish uniform Rules and Regulations pertaining to the use of the Common Area;
- (e) the right of Declarant and its agents and representatives, in addition to the rights set forth elsewhere in this Declaration, to non-exclusive use, without charge, of the Common Area for construction and improvement of the Development and for the maintenance of sales facilities and for display and exhibit purposes; and
- (f) all rights created or reserved by the Master Declaration.

Section 2.05. Delegation of Use. Any Owner may delegate, in accordance with this Declaration, the Articles of Incorporation, the Bylaws and the Rules and Regulations of the Association, his right of enjoyment to the Common Area and recreational facilities to the members of his family or to his tenants who reside on the Property.

Section 2.06. Owners' Right of Enjoyment Limitations.

(a) An Owner's right of use and enjoyment in and to the Common Area shall not be conveyed, transferred, alienated or encumbered separate and apart from an Owner's Lot and such right of use and enjoyment in and to the Common Area shall be deemed to be conveyed, transferred, alienated or encumbered upon the conveyance, transfer, alienation or encumbrance of any owner's Lot notwithstanding that the description in the instrument of conveyance, transfer, alienation or encumbrance may not refer to the Common Area or any right therein.

(b) The Common Area shall remain undivided and no action for partition or division of any part thereof shall be permitted.

(c) Each Owner, tenant and occupant of a Lot, and the invitees, tenants and agents of such Owner, may use the Common Area in common with the Owners, invitees, tenants and agents of the other Lots in accordance with the purposes for which they are intended without hindering or encroaching upon the lawful right of such others.

(d) No Owner will be exempted from liability for Assessments with respect to the Common Area by waiver of the enjoyment of the right to use the Common Area, by abandonment of his Lot or Unit or otherwise.

Section 2.07. Common Area Improvements. Declarant reserves the right to construct Improvements on the Common Area for the benefit of the Association after this Declaration and the Plat have been recorded. For this purpose, there is hereby created an easement in favor of Declarant, its agents and employees, to enter and construct upon said Common Area such Improvements as Declarant may deem advisable, at Declarant's sole expense, while it still owns Lots in the Development.

Section 2.08. Ad Valorem Taxation. Each Lot shall be assessed separately for all taxes, assessments and other charges or imposed by the State of Arizona, any political subdivision, special improvement or assessment district, or of or by any other taxing or assessing authority. The Board shall furnish to the County Assessor or other responsible official of any such taxing or assessing authority all necessary information with respect to the apportionment of such assessments and shall request that each Lot be carried on the tax records as a separate and distinct parcel of real property. No forfeiture or sale of any Lot for delinquent taxes, assessment or other governmental charges shall divest or in any way affect the title to any other Lot.

ARTICLE III

PROPERTY SUBJECT TO THIS DECLARATION

Section 3.01. General Declaration. Declarant has developed the Property into various Lots. Declarant intends to sell and convey Lots and Improvements within the Property so developed to third parties subject to this Declaration. Declarant hereby declares that all of the Property subject hereto is and shall be held, conveyed, hypothecated, encumbered, leased, occupied, built upon or otherwise used, improved or transferred, in whole or in part, subject to this Declaration, as amended or modified from time to time. This Declaration is declared and agreed to be in furtherance of a general plan for the subdivision, improvement and sale of the Property and is established for the purpose of enhancing and perfecting the value, desirability and attractiveness of the Property and every part thereof. All of this Declaration shall run with all of the Property for all purposes and shall be binding upon and inure to the benefit of Declarant, the Association, all Owners and their respective successors in interest.

Section 3.02. Certain Areas Deeded to Master Association. Certain areas depicted on the Plat and more fully described on Exhibit "C" attached hereto are unnecessary for the immediate development of the Property and will be deeded by Developer to the Master Association in fee upon recordation of this Declaration.

Section 3.03. Association Bound Upon Issuance of Certificate. Upon issuance of a Certificate of Incorporation by the Arizona Corporation Commission to the Association, this Declaration shall be binding upon the Association.

ARTICLE IV

USE RESTRICTIONS AND EASEMENTS

Section 4.01. Single Family Private Residential Use. A Lot or a Unit shall be occupied and used by the Owner solely for private Single Family (as defined in the Master Declaration)

residential use, together with related areas intended for the use and enjoyment of the Owners and residents of the Units and typical residential activities incidental thereto, such as the construction and use of a swimming pools, parking facilities, open spaces, roadways, picnic facilities, clubhouse, ramada and other recreational amenities approved by the Board, and for no other purpose. A Unit may be occupied by the family, tenants or social guests of an Owner, but nothing herein shall be deemed to prevent rental of a Unit to a tenant for private, Single Family residential use, subject to all provisions of this Declaration. The Owner of each Unit shall, at or prior to execution of any lease, furnish to the lessee or tenant a copy of this Declaration, the Master Declaration, the Articles and Bylaws, the Rules and the Rules of the Architectural Committee, and obtain a receipt for such items executed by the prospective lessee or tenant. The receipt obtained by the Owner shall be delivered to the Association on or before one week after the lessee or tenant shall be entitled to occupancy of a Unit. No structure whatsoever, other than one private Single Family residence, shall be erected, placed or permitted to remain on any Lot. Lots or Units owned by Declarant may be used as or for model homes and for sales and construction offices and parking for the purpose of enabling Declarant to sell Units within the Property or may be rented or leased by Declarant upon such terms and conditions as it may, from time to time, in its sole discretion, determine, until such time as all of the Lots and Units owned by Declarant have been sold to third parties. In no event shall any garage, parking area or other building or structure, ancillary or appurtenant to a Unit, be used as or converted to a living unit or occupied on either a permanent or temporary basis by any person or persons for living quarters or overnight occupancy of any kind, whether there is a fee paid or charged for said occupancy or not. No gainful occupation, trade or other non-residential use shall be conducted on or in any Unit or on or about the Property, except as specifically permitted hereby, and no person shall enter into the Property for the purpose of engaging in such uses or for the purpose of receiving products or services arising out of such uses.

Section 4.02. Limitation of Restrictions on Declarant. Declarant is undertaking the work of construction of residential living Units and incidental improvements upon the Property. The completion of that work and the sale, rental and other disposal of said Units is essential to the establishment and welfare of the Property as a residential community. In order that said work may be completed and the Property established as a fully occupied residential community as rapidly as possible, nothing in this Article or elsewhere in this Declaration shall be understood or construed to:

(a) Prevent Declarant, its contractors or subcontractors, from bringing on the Property whatever is necessary or advisable in connection with the completion of said work; or

(b) Prevent Declarant or its representatives from erecting, constructing and maintaining, on any part of the Property, such structures as may be reasonable or necessary for the conduct of its business of completing said work and establishing the Property as a residential community and disposing of the same by sale, lease or otherwise; or

(c) Prevent Declarant from maintaining such sign or signs on any of the Property or appurtenant thereto as may be reasonable or necessary for the sale, lease or disposition thereof, including, but not limited to, such sign or signs as may be required or requested by the institution(s) providing financing for all or any portion of the Development.

The foregoing limitations of the application of the restrictions to the Declarant shall terminate upon the happening of either of the following events, whichever occurs first: (a) the sale of the Declarant's entire interest in the Property, or (b) seven (7) years following conveyance of the first lot in the Development to an Owner by Declarant. So long as Declarant, its successors and assigns, owns one or more of the Lots, Declarant, its successors and assigns shall, except as herein specifically provided, be subject to the provisions of this Declaration. Declarant shall make reasonable efforts to avoid disturbing the Owners' use and enjoyment of their Lots while Declarant is completing any work necessary on the Lots and Common Area.

Section 4.03. Compliance With Terms, Conditions and Use Restrictions of Master Declaration and Tract Declaration. Notwithstanding anything to the contrary contained herein or in any instrument or document, recorded or not, including, without limitation, in any Matter of Record, no person shall use or cause to be used any portion of the Property in any manner which would violate any of the covenants, conditions, restrictions and reservations of easements and rights set forth in Article IV, Sections 4.02 and 4.03 of the Master Declaration. Any person owning, using or having any interest in the Property or any portion thereof shall comply with all of the conditions on use of the Property set forth in the Master Declaration and any Owner or the Association shall have the right, independently of or in conjunction with the Master Association, as the same may be regulated pursuant to the Master Declaration, to enforce any and all of the covenants of the Master Declaration relating to use of the Property or any portion thereof, all of which are specifically incorporated by reference as if fully rewritten herein.

Without restricting the generality of the foregoing, all of the covenants, conditions and restrictions set forth in Section 3 of the First Amendment to Tract Declaration relating to the Property shall be applicable to the Property and shall be complied with by all Owners and are incorporated by reference as if fully rewritten herein and may be enforced by the Association or any Owner in the same manner as the provisions of the Master Declaration may be enforced as set forth in the immediately preceding paragraph.

Without further limiting the generality of the foregoing, each Owner by accepting a deed to a Lot acknowledges that the additional covenants set forth in the Tract Declaration deal with: 1) zoning regulations applicable to Lots whereby each Lot must comply with R-3 zoning contained in Ordinance No. 401, as amended by Ordinance No. 484 of the Town of Gilbert; 2) a restriction on circumstances under which Units constructed on Lots may be let or leased; and 3) the responsibility of the Owners of Lots located on the Development to maintain common improvements and amenities, if any.

Section 4.04. Easements.

(a) Utilities and Common Services. Easements are hereby specifically reserved for public utilities and other common services in areas which are designated as "Public Utility Easements" on the Plat. Such easements shall be upon, across, over and under the Common Area, the Master Common Area, certain Streets and Roadways and the Lots, all as shown or described on the Plat, for ingress, egress, installation, replacing, repairing and maintaining all public and private utilities serving the Property, including but not limited to, water, sewers, gas, telephone, electricity and a television antenna or cable television system. By virtue of these easements, it shall be expressly permissible for the provider of such services to erect and maintain the necessary poles and underground facilities and

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other wires, circuits and conduits on, above and across the Property. No Improvements shall be located or constructed on any of said easements without the consent of the Association, the Master Association, the Architectural Committee or the Master Architectural Committee. The respective public utility providers (or in the case of cable television systems, the cable television provider) shall have the right at reasonable times to enter upon any portion of the Property upon which such easement is located for maintenance and repair of such easement and the wires, conduits, cables, pipes or other items or things installed thereon and for all other uses which are common to easements of such a type and nature. It is provided, however, that, the cable television provider or the utility providers shall: 1) complete such maintenance and/or replacement with all reasonable diligence; 2) after such maintenance or replacement, within a reasonable time, restore the Property or any portion thereof affected by said easement to its condition prior to such entry; and 3) indemnify and hold harmless the Association and any affected Lot Owner from claims or damages arising from such maintenance or repair. Notwithstanding anything to the contrary contained in this subsection, so long as Declarant owns any lots in the Development, no sewer systems, electrical lines, water lines, gas lines, telephone lines or other utilities may be installed or relocated except as programmed or approved by Declarant and the Master Association. These utility easements provided herein shall in no way affect any other recorded easements affecting the Property.

There shall be an access easement for the delivery and collection of the U. S. Mail in and about the lots, the Common Area and the Property and for reasonably required emergency or other related services relating to the Units, the Owners or the Common Area such as fire, medical, construction and residence service. It is provided, however, that no servicing trucks, equipment or other vehicles making use of the easement reserved by this paragraph shall be allowed to be parked overnight or for an unreasonable length of time on or about the Property or the Common Area and the parking of all vehicles shall be subject to the provisions of this Declaration and the Rules.

It is acknowledged that the Town of Gilbert shall own the fire hydrants and the water meters serving the Development. Easements are hereby granted for the maintenance and operation of said meters and hydrants, for the replacement thereof and for necessary services in reading or servicing said meters and hydrants.

(b) Master Declaration and Tract Declaration Easements. All Common Area, Master Common Areas, Streets and Roadways and Lots shall be subject to the same utility and other easements set forth in the Master Declaration and the Tract Declaration, all of which easements are incorporated herein by reference as if fully rewritten herein.

Without limiting the generality of the foregoing, all Lots and Common Area shall be subject to Landscape, Drainage, Private and Public Utility and Pedestrian Easements described in Paragraphs 6 and 7 of the Tract Declaration and also set forth on the Plat. Generally, these easements: 1) entitle Master Declarant and the Master Association to landscape certain areas; 2) provide for drainage easements for storm and other run-off waters with respect to the Property; 3) provide for public and private utility easements, the use of which is described therein and above; and 4) provide for pedestrian ingress and egress throughout the Development. If indicated on the Plat or referenced in the Tract Declaration, each Lot shall be subject to such other easements as may be set forth in the Tract Declaration.

(c) Common Area Easements. There is hereby created a blanket easement upon and across the Common Area in favor of: (1) each Lot Owner and his tenants, guests and invitees for the purpose of providing ingress and egress to the Lot owned by said Owner; (2) the Association, and its invitees, employees or independent contractors for the purpose of providing landscaping or other maintenance to the Common Area; and (3) the Declarant and its invitees, employees or independent contractors for the purpose of providing landscaping or other maintenance to the Common Area, and for any activities related to the promotion and sale of any of the Lots or Units or any Lots or Units within the expansion areas referred to in Article XVII below.

(d) Sidewalks and Driveways Located on the Common Area. There are hereby created exclusive use easements over, under and across those sidewalks and driveways, or portions thereof, located on the Common Area but intended for the sole use of one Lot in favor of any such Lot and the Owner thereof. By virtue of any such easement, the Owner of any such Lot shall have the right to the exclusive use of such sidewalk and/or driveway for purposes of ingress and egress to and from such Lot. Such easement shall be appurtenant to each Owner's ownership of his Lot and cannot be separated from such ownership. To the extent portions of sidewalks and/or driveways as shown on the Plat are located on the Common Area but intended for the use of two or more Lots but not all of the Lots in the Development, there are hereby created exclusive use easements in favor of the respective Lots and the Owners of the respective Lots across those portions of such sidewalks and/or driveways which are common to such Lots. By virtue of such easements, the Owners of such Lots shall have the right to the joint use of such sidewalks and/or driveways for the purposes of ingress and egress to and from their respective Lots. The Owners entitled to such joint use easements shall not use such portions of the sidewalks or driveways intended for joint use in any manner which would hinder or impede the use thereof by the other Owners entitled thereto, it being specifically provided that no vehicles of any kind shall be parked or allowed to stand in that portion of any driveway which is intended for the joint use of more than one Lot.

(e) Sidewalks Located on Lots. To the extent portions of sidewalks as shown on the Plat are located on a Lot but intended for the use of two or more Lots, there is hereby created an easement upon, across and over such portions of the Lot on which such sidewalks are located in favor of the respective Lots and the Owners of the respective Lots. By virtue of such easement the Owners of such Lots shall have the right to the joint use of such portion of the sidewalks for purposes of ingress and egress to and from their respective Lots and, where applicable, to and from the Common Area but for no other purpose whatsoever.

(f) Rights of Association and Declarant. There hereby created a blanket easement upon, across, over and under the Lots and the Common Area in favor of the Declarant and the Association, their respective invitees, employees or independent contractors for the purpose of maintaining or replacing any improvements upon such Lots or Common Area to the extent the Declarant and/or the Association have the authority under this instrument to undertake such maintenance or replacement, including, without limitation, maintenance of any master antenna system or cable television installed by Declarant or the Association on the Lots, the Units located thereon or on the Common Area.

(g) Lake Easement. It is acknowledged that all Common Areas bordering on Lake Areas shall be subject to easements for water encroachment as more fully described on the Plat and in the Master and Tract Declarations. In addition, Declarant shall, upon recordation hereof and development of THE

COVE AT THE ISLANDS, deed the real property originally within the Property as described on the Plat, which is not contained in a Lot but which is located in and beneath the Lake Areas, to the Master Association by quit-claim deed. A legal description of said real property is attached as Exhibit "A". All Lots and Units, all Common Area and all Waterfront Facilities shall be subject to an easement for encroachment by flood waters or other unusual conditions relating to the Lake Areas and their waters. Damage done to the solid earth of a Lot or beneath Waterfront Facilities or a Unit shall be the responsibility of the Owner having an interest therein, so long as such damage was not caused by the negligence of the Association, the Master Association or of a third party and the damage is not covered by insurance. No Owner shall have a cause of action against the Association, the Master Association or the Developer for changes in the solid earth beneath a Waterfront Facility, the Common Area or a Lot or Unit caused by natural or artificial conditions, actions or non-actions relating to Lake Areas, so long as such artificial conditions, actions or non-actions were not done, taken, omitted or omitted in bad faith.

(h) DRAINAGE EASEMENTS. In addition to the drainage easements set forth on the Plat, there is hereby reserved over each Lot and the Common Area an easement for drainage of water arising or flowing from the adjoining Lot or Lots, Common Area and Streets and Roadways. Such a mutual drainage easement for run-off or overflow water caused by natural occurrences shall be available to all adjoining Lots and the Owners of adjoining Lots shall cooperate to repair, and shall repair or cause the prompt repair of, any damage which may be caused by drainage. Cost of repairs to a Lot or Unit, however, shall be borne by the Owner of such Lot or Unit, provided that such damage shall not have occurred as a result of the negligence of the Owner of the adjoining Lot. In the event the parties cannot agree on the method of repair of such damage or the apportionment of the costs thereof, the dispute shall be submitted to the Architectural Committee and the decision thereof shall be binding upon all parties to the dispute. Cost of repairs to the Common Area shall be borne by the Association. Notwithstanding the foregoing, no Owner shall remove, replace or alter any facilities located on a Lot, including, without limitation, tiles, paving or cement areas or land contours, which facilitate or aid in the drainage of water and each Owner shall promptly repair any damage to or destruction of such facilities which occurs by virtue of such removal or of the Owner's neglect or willful acts. In the event that an Owner does not so repair after notice from the Association, the Master Association, the Architectural Committee or the Master Architectural Committee; the Association, Master Association, Architectural Committee, Master Architectural Committee or its or their designee may repair such damage and the cost thereof shall be borne by the Owner who refused to so repair and shall be enforceable in the manner provided for Individual Assessments as set forth herein.

(i) Sanitary Engineering Easements. There is hereby created a blanket easement for public or private refuse, trash and sanitary engineering services over all Streets and Roadways, driveways and sidewalks located within the Development. In using this easement, the provider of such services shall use best efforts to provide such services in a non-obtrusive fashion.

(j) Temporary Flooding and Water Easement. All Lots and Units, all Common Area and all Waterfront Facilities shall be subject to an easement for temporary encroachment by flood waters or other unusual conditions relating to Lake Areas and their waters. Damage done to the solid earth beneath Waterfront Facilities or a Unit shall be the responsibility of the Owner having an interest therein, so long as such damage was not caused by the negligence of the Association, the Master Association or of a third party and the damage is not covered by

insurance. No Owner shall have a cause of action against the Association, the Master Association or the Developer for changes in the solid earth beneath Common Area or the solid earth of a Lot beneath a Waterfront Facility or Unit caused by natural or artificial conditions relating to Lake Areas, so long as such artificial actions were not done or taken in bad faith.

(k) **Board-Designated Easements and the Like.** The Board shall have the right to grant permits, licenses and easements over the Common Area for utilities and other purposes reasonably necessary or useful for the proper maintenance or operation of the Development, on such terms and conditions as the Board may deem advisable, subject, with respect to easements, to the provisions of Article II, Section 2.04(c) hereof.

Section 4.05. Encroachments. Each Lot, Unit and the Common Area shall be subject to an easement for encroachments, including but not limited to encroachments of patios, balconies, ledges, roofs, walls, fences, driveways and sidewalks, created by construction, settling and overhangs, as designed or constructed by Declarant or its nominee. A valid easement for said encroachments and for the maintenance of same, so long as they stand, shall and does exist. In the event any Unit or any other Improvement is partially or totally destroyed and then rebuilt, the Owners of Lots and Units agree that similar encroachments of any such Unit or structure onto the adjacent Lots, Units or Common Area and/or of parts of the adjacent Lots, Units or Common Area onto any such Unit or Improvement, due to construction, settling and overhangs, shall be permitted and that a valid easement for said encroachments and the maintenance thereof shall exist.

Section 4.06. Interference. Except as may be constructed by Declarant or its nominee or as specifically allowed by this Declaration and the Plat, no building or other Improvement shall be placed or erected on any easements or interference made with the free use thereof for the purposes intended.

Section 4.07. Solar and Radio/Television Signal Collection Devices; Floodlights. No solar collection or energy device or equipment, including, without limitation, solar water heaters, solar electrical generation units or solar ovens or cooking devices, may be placed on or located on, upon or about a Lot or on, upon or about a Unit or the roof or walls thereof if the same is or shall be Visible From Neighboring Property, nor shall any so-called "satellite dish" or television or radio reception device, including, with limitation, antennas, aerials or other form of signal or electromagnetic radiation collectors or detectors, nor any telescope or other like optical device, be placed or located on, upon or about a Lot or on, upon or about a Unit or the roof or walls thereof if the same is or shall be Visible From Neighboring Property, without the advance written consent of the Architectural Committee.

Except as initially installed by Declarant, no spotlights, flood lights or other high intensity lighting shall be placed or utilized upon any Lot or any structure erected thereon which in any manner will allow light to be directed or reflected on any other Lot or the Common Area, or any part thereof.

Section 4.08. Alterations, Additions and Improvements. Subject to the terms hereof, any Owner may make non-structural additions, alterations and improvements within his Unit without the prior written approval of the Architectural Committee or the Board, but such Owner shall be responsible for any damage to other Units, the Common Area or the Project which results from any such alterations, additions or improvements. Notwithstanding the foregoing, no addition, alteration or improvement within a

Lot or Unit, whether structural or not, shall be made without the prior written approval of the Board and the Architectural Committee and the Master Board or the Master Architectural Committee, if required by the Master Declaration, if said addition, alteration or improvement (including, but not limited to, any awnings, screens, foil or other window coverings except inside drapes, shutters and blinds) is Visible From Neighboring Property, and prior to granting such approval, the Board and the Architectural Committee and the Master Board or the Master Architectural Committee, if required by the Master Declaration, must affirmatively find that the proposed addition, alteration or improvement is aesthetically pleasing and in harmony with the surrounding improvements and the Project. All outside landscaping, including without limitation, plants, plantings and the like planted on or placed on or about a Lot, Unit or Waterfront Facility which is Visible From Neighboring Property, is subject to Architectural Committee approval.

Section 4.09. No Further Subdivision. No Lot shall be further subdivided nor shall a portion of any Lot be sold, conveyed or hypothecated without the express written consent of Declarant, so long as Declarant owns Lots in the Development, and thereafter by the Board.

Section 4.10. Certain Fencing Prohibited; Certain Required Landscape. No Owner shall erect, maintain or suffer to exist a fence, wall or other structure of like nature on any Lot boundary or within or upon any Lot or Common Area which fence, wall or structure fronts upon or otherwise faces a Lake Area; provided, however, that in the case where a block fence or wall separates two (2) contiguous Lots, the final ten (10) feet of said wall or fence nearest to and/or terminating in or next to a Lake Area shall be and remain of wrought iron construction. The entire wall or fence shall be kept in good order, repair and condition (including paint and stucco work, if any, by the Owners of the respective Lots abutting upon such wall or fence).

Without limiting the generality of the foregoing, any yard or landscaped area within a Lot which faces or abuts upon a Lake Area or which is Visible From Neighboring Property across, over or through a Lake Area shall be landscaped solely with grass or other appropriate low-lying ground cover (which ground cover shall be of live, growing, healthy plant material and not of inorganic material unless otherwise approved) as may be approved by the Architectural Committee from time to time.

Section 4.11. Animals. No animals, birds, fowl, poultry or livestock, other than a reasonable number of domestic dogs, cats, fish and birds in cages shall be maintained in or on any Lot or Unit or on or about the Property and then only if they are kept therein solely as domestic pets and not for commercial purposes. No animal or bird shall be allowed to make an unreasonable amount of noise, nor to become a nuisance. No animal or bird shall be caged, chained or tied outdoors. No structure for the care, housing or confinement of any animal shall be maintained or suffered to exist so as to be Visible From Neighboring Property. Upon the written request of any Owner, the Board shall conclusively determine, in its sole and absolute discretion, whether, for the purpose of this Section, a particular animal or bird is a generally recognized household pet, or a nuisance, or whether the number of animals or birds in any Unit or upon any Lot is reasonable. The Board shall have the right to prohibit maintenance of any animal or bird which constitutes, in the sole and absolute discretion of the Board, a nuisance to any Owner. As used in this Declaration, the term "reasonable number" shall be deemed to limit the number of dogs, cats and birds to two (2) of any combination of the above animals or birds. Dogs and other animals must be kept on a leash when not confined in the Owner's Lot or Unit. No Owner shall permit its dog, cat or bird to create unsanitary conditions anywhere on

the Development. When such conditions are created, the Owner will be assessed an amount per incident (such amount to be determined by the Architectural Committee from time to time) for cleanup expenses by the Association as an Individual Assessment hereunder and the Board or any Owner may seek satisfaction thereof or other relief relating thereto as permitted by law and by this Declaration. Pets shall not be allowed loose or unsupervised on any part of the Property and walking of pets shall be allowed only on such portions of the Property as the Board may prescribe by its Rules and Regulations.

Section 4.12. Utility Service. No lines, wires or other devices for the communication or transmission of electric current or power, including telephone, television and radio signals shall be erected, placed or maintained anywhere in or upon any Lot or Unit unless the same shall be contained in conduits or cables installed and maintained underground or concealed in, under or on Lots or other structures approved by the Architectural Committee. No provision hereof shall be deemed to forbid the erection of temporary power or telephone structures incidental to the construction of buildings or Improvements approved by the Architectural Committee.

Section 4.13. Temporary Occupancy. No temporary buildings, tents, vehicles or structure of any kind shall be used at any time for a residence on the Property. By way of illustration, but not limitation, no Recreational Vehicle may be used for overnight accommodations on the Property. It is provided, however, that nothing contained herein shall prevent the use of a mobile construction office, sales office and caretaker's residence during construction and sales.

Section 4.14. Vehicles.

(a) No automobile, motorcycle, motorbike or other motor vehicle of any kind, type or description shall be constructed, reconstructed or repaired on the Property and no inoperable vehicle may be stored or parked on the Property; provided, however, that the provisions of this Section shall not apply to: (i) emergency vehicle repairs or temporary construction shelters or facilities maintained during, and used exclusively in connection with, the construction of any improvement approved by the Board or by Declarant; and (ii) vehicles parked in garages so long as such vehicles are in good operating condition and appearance and are not under repair. No trailer, camper, boat, motor home, Recreational Vehicle or similar equipment shall be permitted upon the Property for a period longer than is absolutely necessary to temporarily discharge or pick up Owners or other lawful occupants of the Development, and at no time shall such vehicle be left unattended, except as specifically provided herein.

(b) It is the intent of the Declarant to restrict on-street parking as much as possible. Therefore, all vehicles shall be parked only in designated garages, or, as to vehicles not owned by an Owner, in other parking areas designated on the Plat or by the Board. Any vehicle which is parked in violation of this Declaration or of fire and safety or traffic and parking regulations of the Town of Gilbert, The Islands or The Cove Homeowners Association shall be towed at the discretion of the Board or its agent. Whenever possible, a notice of intent to tow shall be placed on the vehicle for eight (8) hours prior to towing, or for such period of time as is consistent with safe practices. The recording of this Declaration shall constitute legal notice of intent to tow, as though the Property were posted in accordance with state and local law.

(c) Doors to garages must be kept closed at all times and approaches thereto kept free of vehicles, obstructions

or other objects unless actual use of the garage doorway or approach is then being made.

Section 4.15. Nuisances. No nuisance shall be permitted to exist or operate upon any portion of the Development so as to be offensive or detrimental to any other portion of the Development in the vicinity thereof or to its occupants. Without limiting the generality of the foregoing, the following shall be presumed to be a nuisance:

(a) rubbish, debris, building material or personal property of any kind which is placed or permitted to accumulate upon or adjacent to any Lot or Unit or the Common Areas or any odors which arise therefrom, so as to render any such Lot or Unit or the Common Areas or any portion thereof unsanitary, unsightly, offensive or detrimental to any other Lot or Unit in the vicinity thereof or to its occupants;

(b) any exterior speakers, horns, whistles, bells or other sound devices, except security devices used exclusively for security purposes, the use of which devices must be approved, in advance, by the Architectural Committee;

(c) any mineral collection, cactus ribs, old bottles, fountains, stationary or permanent outdoor furniture, license plates, statuaries or other memorabilia displayed so as to be visible outside a Unit or Visible From Neighboring Property. This provision shall be interpreted to preserve the aesthetic appearance of the Development and not to control the interior decoration of any Unit;

(d) any use of a Lot, Unit or Common Area which will increase the rate of insurance upon the Project; and

(e) any patio or Waterfront Facility planting which encroaches on any other Lot or Unit or Common Area.

The Board in its sole discretion shall have the right to determine the existence of any nuisance, shall give notice to the Owner, and if the nuisance is not removed within the reasonable time stated in the notice, shall have the nuisance removed and the cost thereof shall be enforceable as an Assessment. Nothing contained herein shall prevent Declarant from storing building materials nor from accumulating debris during the construction of Improvements.

Section 4.16. Diseases and Insects. No Owner shall permit any thing or condition to exist upon, in or about any Lot or Unit which shall induce, breed or harbor infectious plant or other diseases or noxious insects.

Section 4.17. Clothes Drying; Window Screening. There shall be no outdoor clothes drying on the Property which is Visible From Neighboring Property, including, but not limited to, the drying of towels and bathing suits. No shades, awnings, aluminum screens or any other type of shade screening which can be viewed or seen from the outside of any Unit shall be placed on the windows of, or on or about, any Unit unless approved in writing by the Architectural Committee.

Section 4.18. Signs. No signs whatsoever including, but not limited to, commercial, political and similar signs shall be erected or maintained in any Unit or on or about any Lot, whether in a window or otherwise, except;

(a) Such signs as may be required by legal proceedings;

(b) During a time of reconstruction or repair of any building or other Improvement, two (2) job identification

signs, each having a face area not larger than four (4) square feet, or as required by statute;

(c) Appropriate house number and mailbox identification all of which shall be placed, affixed and displayed in accordance with the Rules and Regulations; and

(d) Such signs the nature, number and location of which have been approved by the Board in advance.

Nothing contained in this Declaration shall be constructed to prevent the erection of maintenance by Declarant or its duly authorized agents of structures, Units, Improvements or signs necessary or convenient to the development, sale, operation or other disposition of the Development or of Units or Lots or any interest therein.

Section 4.19. Burning and Incinerators. No open fires or burning shall be permitted on the Property at any time and no incinerators or like equipment shall be placed, allowed or maintained upon the Property unless approved by the Board. The foregoing shall not be deemed to preclude the use of outdoor residential barbecues or grills to be located only in places approved by the Board.

Section 4.20. Machinery and Equipment. No machinery or equipment of any type, including, without limitation, heating, air conditioning or refrigeration equipment, shall be placed, located, allowed, suffered to exist or maintained upon any Lot or Unit except: (i) such machinery or equipment as is usual and customary in connection with the use, maintenance or construction (and only during the period of construction) of a Lot or Unit, appurtenant structures or of any other Improvement, whether located on a Lot or on the Common Areas; or (ii) that which Declarant or the Board may require for the operation and maintenance of the Property; without prior written approval and authorization of the Board. Without limiting the generality of the foregoing, there shall be no wall-mounted or roof-mounted heating, air conditioning, air circulating and/or cooling devices permitted within the Development. All such machinery and devices shall be installed and maintained at ground level and concealed from view so that they are not visible from neighboring property. In addition, no wood piles, compost or refuse heaps or piles nor any other like accumulation shall be placed or suffered to exist in and upon a Lot or Unit at any time except for Board-approved wood storage in a garage or Unit.

ARTICLE V

ARCHITECTURAL CONTROL

Section 5.01. Organization, Power of Appointment and Removal of Members. There shall be an Architectural Committee, organized as follows:

(a) **Committee Composition.** The Architectural Committee shall consist of three (3) members. None of such members shall be required to be an architect or to meet any other particular qualifications for membership. A member need not be, but may be, a member of the Board or an Officer of the Association.

The Board may act as the Architectural Committee if so determined by the majority vote of the Members of the Association at a duly called meeting for such purpose.

(b) **Initial Members.** The initial members of the Architectural Committee shall be appointed by Declarant and if

Declarant does not appoint same, the Board shall constitute the initial members.

(c) Terms of Office. Unless the initial members of the Architectural Committee have resigned or been removed, their terms of office shall be for a period of one (1) year, or until the appointment of their respective successors.

Thereafter, the term of each Architectural Committee member appointed shall be for a period of one (1) year and until the appointment of his successor. Any new member appointed to replace a member who has resigned or been removed shall serve such member's unexpired term. Members who have resigned, been removed or whose terms have expired may be reappointed if such member shall accept such re-appointment.

(d) Appointment and Removal. The right to appoint and remove members of the Architectural Committee at any time shall be and is hereby vested solely in the Board; provided, however, that no member may be removed from the Architectural Committee by the Board except by a majority vote of all members of the Board. Subsequent appointments or removals of members of the Architectural Committee, as set forth herein, shall be evidenced on the books and records of the Association and need not be recorded.

(e) Resignations. Any member of the Architectural Committee may at any time resign from the Committee by giving written notice thereof to Declarant or to the Board, whichever then has the right to appoint Committee members.

(f) Vacancies. Vacancies on the Architectural Committee, however caused, shall be filled by the Board or by Declarant, whichever then has the power to appoint Committee members. A vacancy or vacancies on the Architectural Committee shall be deemed to exist in case of the death, resignation or removal of any member.

Section 5.02. Duties. It shall be the duty of the Architectural Committee to consider and act upon any and all proposals or plans submitted to it pursuant to the terms hereof, to adopt Architectural Committee Rules, to perform other duties delegated to it by the Board and to carry out all other duties imposed upon it by this Declaration. Any use waivers of other items which are subject to approval by the Master Architectural Committee shall be submitted in duplicate to the Architectural Committee and it shall be a condition precedent to the effectiveness of such requests that the Architectural Committee shall have approved the request set forth therein.

Section 5.03. Meetings and Compensation. The Architectural Committee shall meet from time to time as necessary to perform its duties hereunder. Subject to the provisions of paragraph (b) of Section 5.01 above, the vote or written consent of any two members, at a meeting or otherwise, shall constitute the act of the Committee unless the unanimous decision of the Committee is required by any other provision of this Declaration. Members of the Architectural Committee shall not be entitled to compensation for their services, but may receive reimbursement for actual, reasonable out-of-pocket expenses incurred in the discharge of their duties as Committee members.

Section 5.04. Architectural Committee Rules.

(a) The Architectural Committee may, from time to time, adopt, amend and repeal, by majority vote, rules and regulations, to be known as "Architectural Committee Rules". Said Rules shall interpret and implement this 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 which are recommended for use within the Property; provided, however, the foregoing provisions are subject to the limitations set forth in subparagraph (b) below.

(b) Unless at least two-thirds (2/3) of the Owners (other than Declarant) of the individual Units (with the concurrence of the Class B Member) have given their prior written approval, neither the Association, the Board nor the Architectural Committee, by act or omission, shall change, waive or abandon any scheme of regulations or enforcement thereof established by Declarant, pertaining to the architectural design, the exterior of the Units, the exterior maintenance of Units, the maintenance of the Common Area, Party Walls, or the upkeep of lawns, areas and plantings on and about the Property.

Section 5.05. Waiver. The approval by the Architectural Committee of any plans, drawings or specifications for any work done or proposed, or for any other matter requiring the approval of the Architectural Committee under this Declaration, shall not be deemed to constitute a waiver of any right to withhold approval of any similar plan, drawing, specification or matter subsequently submitted for approval.

Section 5.06. Liability. Neither the Architectural Committee nor any member thereof shall be liable to the Association, to any Owner or to any other party, for any damage, loss or prejudice suffered or claimed on account of: (a) the approval or disapproval of any plans, drawings or specifications, whether or not defective; (b) the construction or performance of any work, whether or not pursuant to approved plans, drawings and specifications; (c) the development or non-development of any portion of the Property; or (d) the execution and filing of any estoppel certificate, whether or not the facts therein are correct; provided, however, that with respect to the liability of a member, such member has acted in good faith on the basis of such information as may be possessed by him. Without in any way limiting the generality of any of the foregoing provisions of this Section, the Architectural Committee, or any member thereof, may, but is not required to, consult with or hear the views of the Association or any Owner with respect to any plans, drawings, specifications or any other proposal submitted to the Architectural Committee.

Section 5.07. Time for Approval. Subject to the other provisions contained herein, in the event the Architectural Committee fails to approve or disapprove any design and location within sixty (60) days after said plans and specifications have been submitted to it, approval will not be required and this Article will be deemed to have been complied with.

Section 5.08. Processing Fee. With respect to any requests made to the Architectural Committee or in regard to the responsibility of the Architectural Committee to review any plans, drawings or specifications for any work done or proposed, the Architectural Committee may, consistent with its Rules and Regulations, establish processing fees for such requests or actions. The payment of such fees shall be a condition precedent to any Architectural Committee action on such request or other item and the non-payment of such fee shall be deemed to toll the time for approval of such items set forth in Section 5.07 hereof.

Section 5.09. Construction in Accord with Laws. All construction undertaken, or additions or improvements placed, on or located upon any portion of the Property shall, if applicable, be constructed in accordance with all building codes, or an appropriate variance obtained and exhibited to the Architectural Committee.

Section 8.10. Declarant to Control Initially. Notwithstanding anything to the contrary contained herein, until the Declarant has sold the last Lot or Unit within the Development, the initial approval of plans, specifications and designs for Improvements on the Property or any portion thereof shall be subject to primary review and approval by Declarant. In exercising its right of control set forth above, Declarant shall have full, entire and complete right and power, in its sole discretion, to approve or disapprove any plans, specifications designs, building materials, proposed structures, design materials or any other matter affecting architectural control of or building or construction upon any Lot or Unit within the Development. At the time the last Lot within the Development is sold by Declarant, full architectural control over the Development including, without limitation, the change of existing structures or Improvements within the Development shall devolve upon, be the responsibility of and be controlled by the Architectural Committee.

ARTICLE VI

ASSOCIATION, MEMBERSHIP AND VOTING RIGHTS

Section 6.01. Purpose. The Association shall be a nonprofit corporation organized under and by virtue of the laws of the State of Arizona for the general welfare and benefit of Owners in the Development. The Association, through its Members and Board, shall take the appropriate action to manage and maintain, repair, replace and improve the Common Area, together with improvements located thereon, to perform related activities, and to perform all other functions and duties assigned to the Association by this Declaration, all in accordance with this Declaration and with the Articles of Incorporation and Bylaws.

Section 6.02. Membership. Membership in the Association shall be limited to the Owners of Lots as hereinabove defined, and such membership shall be subject to all the provisions of this Declaration and to the Association's Articles of Incorporation and Bylaws. An Owner of a Lot shall automatically, upon becoming the Owner of a Lot, be a Member of the Association. An Owner shall remain a Member of the Association until such time as his ownership for any reason ceases, at which time his membership in the Association automatically shall cease. Ownership of a Lot shall be the sole qualification and criterion for membership. The foregoing is not intended to include persons or entities who hold an interest merely as security for the performance of an obligation. Membership shall be appurtenant to and may not be separated from ownership of any Lot which is subject to assessment by the Association. A membership in the Association shall not be transferred, pledged or alienated in any way except by the sale of such Lot and then only to such purchaser who shall automatically become a Member of the Association after such conveyance, or by intestate succession, testamentary disposition, foreclosure of a Mortgage of record, or other legal process. Any attempt to make a prohibited transfer is void and will not be reflected upon the books and records of the Association. At the discretion of the Board, no certificates of membership need be issued, and if certificates are not issued, membership shall be evidenced by an official list of Members kept by the Secretary of the Association.

Section 6.03. Voting Rights. The Association shall have two (2) classes of voting memberships:

Class A. Class A members shall be all Owners in Phase 1 and in Phases 2 through 22 if the Project is expanded to include such phases in accordance with the provisions of Article XVII hereof, with

the exception of the Declarant, and shall be entitled to one vote for each Lot owned. In the event any such Lot is owned by two (2) or more persons, the membership as to such Lot shall be joint, and a single membership for such Lot shall belong to all Owners, and they shall designate to the Association in writing one of their number who shall have the power to vote such membership, and in the absence of such designation, and until such designation is made, the Board shall make such designation. In no event shall more than one vote be cast with respect to any Lot.

Class B. The Class B member(s) shall be the Declarant and shall be entitled to three (3) votes for each Lot owned in Phase 1 and in Phases 2 through 22 if the Project is expanded to include such phases in accordance with the provisions of Article XVII hereof. The Class B membership shall cease and be converted to a Class A membership on the happening of either of the following events, whichever occurs earlier:

(a) when the total votes outstanding in the Class A membership equal the total votes outstanding in the Class B membership, or

(b) three (3) years following conveyance of the first Lot to an Owner by Declarant in the event additional property has not been annexed and become subject to this Declaration within such three (3) year period; or, in the event additional property has been annexed and become subject to this Declaration within such three (3) year period, seven (7) years following conveyance of the first Lot to an Owner by Declarant.

Section 6.04. Suspension of Voting Rights. In the event any Owner shall be in arrears in the payment of any amount due under any of the provisions of this Declaration for a period of fifteen (15) days, or shall be in default in the performance of any of the terms of this Declaration for a period of fifteen (15) days, said Owner's rights to vote and all other rights as a Member of the Association are and shall be suspended until said defaulting Owner's payments are brought current and all other defaults cured.

Section 6.05. Persons Entitled to Vote. When more than one person holds an interest in any Unit, only one (1) person shall be the Member who is entitled to vote. Such persons holding an interest shall designate the person to be the voting Member and give written notice thereof to the Association. The vote for such Unit may be exercised as the Owners among themselves determine, but in no event shall more than one vote be cast with respect to any Unit (except with respect to the Class "B" Membership as long as such Membership is in existence). The votes for each such Unit must be cast as a unit and fractional votes shall not be allowed. In the event that joint Owners are unable to agree among themselves as to how their vote or votes shall be cast, they shall lose their right to vote on the matter in question. If any Owner or Owners cast a vote representing a certain Unit, it will thereafter be conclusively presumed for all purposes that he or they were acting with the authority and consent of all other Owners of the same Unit. In the event more than one vote is cast for a particular Unit, none of said votes shall be counted and said votes shall be deemed void.

Section 6.06. Powers and Duties of the Association. The Association shall have such rights, duties and powers as set forth in this Declaration and the Articles and Bylaws, as the same may be amended from time to time.

Section 6.07. Meetings. The first annual meeting and all other meetings of the Members of the Association shall be held in accordance with the Bylaws and all Members shall be given written notice of the first annual meeting.

Section 6.08. Rules. By a majority vote of the Board, the Association may, from time to time and subject to the provisions of this Declaration, adopt, amend and repeal rules and regulations to be known as the "Rules". The term "Rules" shall be synonymous with the terms "Association Rules" and "Rules and Regulations". The Rules may, among other things, restrict and govern the use of any of the Common Area by any Owner, or by any invitee, licensee or lessee of such Owner; provided, however, that the Rules may not discriminate among Owners and shall not be inconsistent with this Declaration, the Master Declaration, the Tract Declaration, the Articles or Bylaws. A copy of the Rules as they may from time to time be adopted, amended or repealed, shall be mailed or otherwise delivered to each Owner and may, if desired by the Board, be recorded. Said Rules, as they may from time to time be amended, shall have the same force and effect at all times as if they were set forth in and were a part of this Declaration.

In addition to the foregoing, each Owner of a Unit and his licensees, invitees, guests and family members shall, at all times promptly and fully comply with The Islands Rules in addition to complying with the Rules promulgated by the Board.

Section 6.09. Personal Liability. No member of the Board or of any committee of the Association (including the Architectural Committee), or any officer of the Association shall be personally liable to any Owner, or to any other party, including the Association, for any damage, loss or prejudice suffered or claimed on account of any act, omission, error or negligence of the Association, the Board, or any other representative or employee of the Association, the Architectural Committee or any other committee or any officer of the Association, provided that such person has, upon the basis of such information as may be possessed by him, acted in good faith without willful or intentional misconduct.

Neither the Association nor the Board shall have any liability of any kind or nature with respect to any vehicles moving within or parked upon any portion of the Common Areas. Any person operating or parking any vehicles within the boundaries of the Common Area shall do so entirely at such person's own risk and shall indemnify and hold both the Association and the Board harmless from and against any and all claims, demands, actions, causes of action and proceedings arising out of the presence of any such vehicle within the boundaries of the Common Area.

Section 6.10. Budget. The Board shall, on an annual basis determined by the calendar year, prepare a budget which shall determine the funds needed by the Association during each year to operate and maintain the Common Area and to provide or cause to be provided the other maintenance obligations of the Association as set forth in this Declaration, to pay the expenses of the Association and to otherwise fund the expenses contemplate by the Articles and Bylaws and by this Declaration.

Section 6.11. Professional Management Agreement. Any agreement for professional management of the Property and the Common Area or any contract providing for services to be performed by the Declarant for the Association shall provide for termination by the Association with or without cause and without payment of a termination fee or penalty on thirty (30) days written notice, and no such contract or agreement shall be of a duration in excess of one (1) year, renewable by agreement of the parties for successive one (1) year periods.

ARTICLE VII

COVENANTS FOR ASSESSMENTS AND CREATION OF LIENS

Section 7.01. Creation of the Lien and Personal Obligation of Assessments. At all times as more fully set forth herein, 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: (1) Annual Assessments; (2) Special Assessments for capital improvements, such Assessments to be established and collected as hereinafter provided; and (3) Individual Assessments for restoration of a Lot, Unit or Common Area. The Assessments, together with interest, costs and reasonable attorneys' fees, shall be a charge on the Property and shall be a continuing lien upon the Lot against which each such Assessment is made. A deed out and back for the purpose of recording a mortgage or deed of trust shall not be a "conveyance" for the purposes of this Section. Each such Assessment, together with interest, costs and reasonable attorneys' fees, shall also be the personal obligation of the person who was the Owner of such Unit at the time when the Assessment fell due. The liability of multiple Owners shall be joint and several. The personal obligation for delinquent Assessments shall not pass to an Owner's successor in title unless expressly assumed by such successor. No Unit shall be sold, transferred or conveyed by any Owner without all Assessments having been paid in full, whether or not a lien has been filed or recorded. No event other than payment (or appropriate provision for payment approved by the Board in writing having been made) shall extinguish the personal obligation herein described. The above provisions are subject to the provisions set forth in this Article VII, Section 7.09 Hereof.

Section 7.02. Purpose of Assessments. The Assessments levied by the Association shall be used exclusively to promote the recreation, health, safety and welfare of the Owners of Lots or Units and for the improvement and maintenance of the Common Area. Without limiting the generality of the foregoing, such purposes shall include the payment for the following:

(a) Taxes and assessments and any water, sewer, garbage, electrical, lighting, telephone, gas and other necessary utility services for the Common Area;

(b) Maintenance and repair of Units as described herein and certain portions of Lots, storm drains, sanitary sewers, private streets, driveways and sidewalks lying within the Common Areas;

(c) Provision of insurance to be maintained by the Association as set forth in Article XI hereof;

(d) Painting, maintenance, repair and replacement of any and all portions of the Common Area and all Improvements located thereon;

(e) Reserves for repair and replacement of Improvements on the Common Area and for exterior maintenance to the Units;

(f) Reimbursement for any expenses contemplated by the Articles or Bylaws;

(g) For all other costs and expenses for obligations of the Board as set forth herein, including but not limited to the items set forth in Articles IV and VIII herein; and,

(h) Such other and further items as may be necessary or required by the Board to carry out the intent and purpose of the Association as set forth in this Declaration.

Section 7.03. Annual Assessments.

(a) The Board, subject to the provisions of this Article, shall determine and establish a budget and make assessments upon the Owners of Lots on the basis of costs and expenses incurred or estimated to be incurred by the Association. The Owner of each Lot, for said Owner and for said Owner's heirs, executors, administrators, personal representatives, successors and assigns, covenants and agrees that each Lot shall be subject to an assessment in an amount to be determined, which amount shall be the said Lot's pro rata share of the actual cost to the Association of all taxes and improvement assessments (if any), water, utilities, street lights, insurance, management and administrative costs and repair, construction, replacement and maintenance of the Common Area and the improvements and facilities located thereon, and Unit exteriors, and shall include but not be limited to charges in connection with the sprinkler systems, street paving, pathways, security guard service (if any), and other services benefiting the Owners, and all other charges necessary or appropriate to carry out the purposes of the Association as set forth in this Declaration, the Articles of Incorporation and Bylaws of the Association, and its Rules and Regulations.

(b) Until January 1 of the year immediately following the conveyance of the first Unit by Developer to an Owner, the initial Annual Assessment for each Unit shall be as determined by Developer. Commencing January 1 of the year immediately following the conveyance of the first Unit by Developer to an Owner, the Annual Assessment for each Unit shall be determined by the Board of Directors. The Annual Assessment for any Unit shall be deemed to be due and payable in advance as of January 1 for the coming year for which it is assessed. It is provided, however, that Annual Assessments may be payable in monthly installments as more fully set forth herein, but the fact that the Annual Assessment is payable in installments shall not be deemed to affect the nature of an Annual Assessment as completely due and payable in advance on January 1 of any particular year.

(c) Until January 1 of the year immediately following the conveyance of the first Lot to an Owner, the maximum Annual Assessment shall be Seven Hundred Twenty and No/100 Dollars (\$720.00) per Lot, payable at the rate of \$60.00 per month.

(d) From and after January 1 of the year immediately following the conveyance of the first Lot to an Owner, the maximum annual assessment may be increased effective January 1 of each year without a vote of the Membership in conformance with the rise, if any, of the Consumer Price Index (published by the Department of Labor, Washington, DC.) from the preceding month of July, or a five percent annual increase, whichever is greater.

(ii) From and after January 1 of the year immediately following the conveyance of the first Lot to an Owner the maximum annual assessment may be increased above the established by the formula set forth in subsection (ii) above by a vote of the Members for the next succeeding two (2) years and at the end of each such period of two (2) years, for each succeeding period of two (2) years, provided that any such change shall have the assent of two-thirds (2/3's) of the votes of each class of Members who are voting in person or by proxy, at a meeting duly called for such purpose.

(iii) The Board of Directors may fix the Annual Assessment at an amount not in excess of the maximum.

(d) The Board may increase or decrease the Annual Assessments and shall fix the Annual Assessments annually, but not in any manner except as above stated. Said Annual Assessments may be collected on a monthly, quarterly or other basis, and subject to the provisions set forth in this Declaration, the Annual Assessments may be changed or modified during any fiscal or calendar year. Collection thereof and accounting therefor may, at the option of the Board, be made by an agent, employee or independent contractor of the Board.

(e) It is intended that Annual Assessments shall include an adequate reserve fund for maintenance, repairs and replacements of those elements of the Common Areas that must be replaced on a periodic basis all as set forth, and required to be included, in the annual budgets of the Association.

(f) All Assessments shall be promptly paid in full by each Owner without offset or deduction therefrom. Alleged claims of insufficiency of services or any other claims against the Board with respect to services provided, the Common Area or Improvements located thereon may be brought before the Board by an Owner but such claims shall not affect the obligation of each Owner to pay Assessments as set forth herein.

(g) For a period of one (1) year from and after conveyance of the first Lot in a Phase to an Owner by Declarant, the Board shall maintain a working capital fund equal to at least a two (2) month share of the first year's Annual Assessment. At the time of closing of a sale of a Lot, such Lot's share of such working capital fund shall be collected and transferred to the Association and maintained by the Association in a segregated account. Each unsold Lot's share shall be paid to the Association within sixty (60) days after conveyance of the first Lot in a given Phase, provided however, that at such time as any such lot is conveyed and its share of the working capital fund is collected, Declarant shall be entitled to reimburse itself for, say and all such advance payments made to the Association from the funds collected at such closing. Such contributions to the working capital fund shall not be considered as advance payments of regular installments of Annual Assessments required to be paid hereunder.

Notwithstanding anything contained in this Article to the contrary, the Declarant shall be assessed as his share of the Annual Assessments for each completed but unoccupied Unit owned by Declarant an amount equal to twenty five percent (25%) of the proportionate share of the Annual Assessments otherwise assessable against such Lots, provided, however, that so long as any Class B membership remains outstanding, Declarant shall reimburse the Association for any deficit resulting from operating expenses of the Common Area. Under no circumstances shall Declarant have any responsibility for any deficits incurred as a result of capital improvements, reconstruction or additions to the Common Area or the Lots or for any expenses incurred at any time there is no Class B membership outstanding.

(h) In addition to all other Assessments referred to herein, each Lot shall be subject to the Master Assessments imposed by and defined in the Master Declaration and imposed and administered by the Master Association and all covenants, conditions, restrictions and obligations of record, and the Owner of each Lot agrees to pay same to the Master Association when due.

Section 7.04. Special Assessments for Capital Improvements. In addition to the Annual Assessments authorized

above, the Association may levy, in any year, one or more Special Assessments, payment of which, at the determination of the Board, may extend for a period not more than ten (10) years for the purpose of defraying, in whole or in part, the cost of any construction, reconstruction, repair or replacement of a capital improvement upon the Common Area, including fixtures and personal property related thereto, provided that any such Assessment shall be subject to the same approval requirements as set forth in Section 7.03 (b) above relating to subsequent increases in Annual Assessments.

Section 7.05. Individual Assessment for Restoration of Lots or Units. In the event the Owner of a Lot fails to maintain a Lot or Unit in a neat and clean condition or fails to maintain the exterior of his Unit in a neat, clean and attractive condition and appearance and generally in a manner satisfactory to the Board, all in accordance with his maintenance obligations set forth herein or in the Rules, the Association, through its agents, employees and/or independent contractors shall have the right (subject to prior notice as hereinbelow set forth), but not the obligation, to enter upon such Owner's Lot or Unit and repair, maintain, clean-up, rehabilitate and restore the structures located thereon to a condition deemed satisfactory by the Board. The cost thereof shall be deemed to be an "Individual Assessment" and shall be charged against such Lot and collected from the Owner thereof. Such cost shall be paid by the Owner within thirty (30) days from the date of the invoice sent by the Association to the Owner. Said amount also shall be secured by and subject to all provisions regarding Assessment liens as provided for in this Article.

Prior to exercising the aforesaid right of restoration, the Association shall give written notice to the Owner of said Lot or Unit specifying the necessary repairs, maintenance, rehabilitation or restoration to be undertaken, and granting the Owner fourteen (14) days to accomplish the same. If, at the end of said period, the work required to be performed has not been completed (or has been completed in a manner unsatisfactory to the Board), then the Association shall have the right, as above set forth, to make such repairs, maintenance, rehabilitation or restoration.

Section 7.06. Notice and Quorum for Any Action Authorized Under Sections 7.03 and 7.04. Written notice of any meeting called for the purpose of taking any action authorized under Sections 7.03 or 7.04, shall be sent to all Members not less than ten (10) days nor more than sixty (60) days in advance of the meeting. At the first such meeting called, the presence of Members or of proxies entitled to cast fifty-one percent (51%) of all of the votes for each class of Membership shall constitute a quorum. If the required quorum is not present, another meeting may be called subject to the same notice requirement, and the required quorum at the subsequent meeting shall be one-half (1/2) of the required quorum at the preceding meeting. No such subsequent meeting shall be held more than sixty (60) days following the preceding meeting.

Section 7.07. Uniform Rate of Assessment. Except for Lots owned by Declarant while the Class B Membership is afloat, both Annual and Special Assessments must be fixed at a uniform rate for all Lots and may be collected on a monthly, quarterly or annual basis at the discretion of the Board.

Section 7.08. Joint Ownership Payments. In cases wherein a Lot is owned by more than one person, such Owners shall arrange between themselves as to which one of them shall make payments of assessments so that only one payment is made to the Association. Under no circumstances shall the Association be required to accept multiple checks or partial payments of assessments from joint owners.

Section 7.09. Effect of Nonpayment of Assessments; Remedies of the Association. Each Owner of any Unit shall be deemed to covenant and agree to pay to the Association the Assessments provided for herein, and agrees to the enforcement of the Assessments in the manner herein specified. In the event the Association employs an attorney or attorneys for collection of any Assessment, whether by suit or otherwise, or to enforce compliance with or specific performance of the terms and conditions of this Declaration or the Rules, or for any other purpose in connection with the breach of this Declaration or the Rules, each Owner and Member agrees to pay reasonable attorneys' fees and costs thereby incurred, including collection costs and experts' or expert witness fees, (whether or not suit or proceedings are instituted or filed) in addition to any other amounts due or any other relief or remedy obtained against said Owner or Member. In the event of a default in payment of any such Assessment when due, in which case the Assessment shall be deemed delinquent, in addition to any other remedies herein or by law provided, the Association may enforce each such obligation in any manner provided by law or in equity, or without any limitation of the foregoing, by either or both of the following procedures:

(a) Acceleration. In the event any Assessment is unpaid after notice as set forth herein, the Board may, in its discretion, upon notice to the particular Owner, revoke such Owner's right to pay the remaining monthly or other periodic installments of the Annual Assessment due for the calendar year in which such notice becomes effective and the balance of such Annual Assessment due in such calendar year shall be immediately due and payable. The Board may then add the remaining portion of the Annual Assessment then unpaid to any other Assessments unpaid by the Owner at that time and reference to "Assessment" or the like in this Section 7.09 shall mean to the Assessment which is unpaid plus the accelerated portion of the Annual Assessment then owing by such Owner.

(b) Enforcement By Suit. The Board may cause a suit at law to be commenced and maintained in the name of the Association against an Owner or Member to enforce each such Assessment obligation. Any judgment rendered in any such action shall include the amount of the delinquency, together with interest thereon at the rate of eighteen percent (18%) per annum from the date of delinquency, court costs and reasonable attorneys' fees in such amount as the Court may adjudge against the delinquent Owner or Member.

(c) Enforcement by Lien. There is hereby created a Claim of Lien on each and every Lot within the Development to secure payment to the Association of any and all Assessments levied against any and all Owners of such Lots covered by this Declaration, together with interest thereon at the rate of eighteen percent (18%) per annum from the date of delinquency, and all costs of collection which may be paid or incurred by the Association in connection therewith, including reasonable attorneys' fees. Payments shall be applied first to interest and costs, then to principal in a fashion so that the oldest amounts of principal are first reduced. At any time after the occurrence of any default in the payment of any such Assessment, the Association, or any authorized representative, may, but shall not be required to, make a written demand for payment to the defaulting Owner on behalf of the Association. Said demand shall state the date and amount of the delinquency. Each default shall constitute a separate basis for a demand or Claim of Lien or a Lien, but any number of defaults may be included within a single demand or Claim of Lien. If such delinquency is not paid within ten (10) days after delivery of such demand, or even without such a written demand being made, the Association may elect to file

such a Claim of Lien on behalf of the Association against the Unit of the defaulting Owner. Such a Claim of Lien shall be executed and acknowledged by any officer or any duly authorized agent of the Association, and shall contain substantially the following information:

1. The name of the delinquent Owner;
2. The legal description and street address of the Lot against which the Claim of Lien is made;
3. The total amount claimed to be due and owing for the amount of the delinquency, interest thereon, collection costs and reasonable attorneys' fees (with any proper offset allowed);
4. That the Claim of Lien is made by the Association pursuant to this Declaration; and
5. That a Lien is claimed against said Lot in an amount equal to the amount stated.

Upon recordation of a duly executed original and one (1) copy of such Claim of Lien, and mailing or delivering a copy thereof to said Owner at the address of the Lot, the Lien claimed therein shall immediately attach and become effective in favor of the Association as a lien upon the Lot against which such Assessment was levied. Such a Lien shall have priority over all liens or claims created subsequent to the recordation of the Claim of Lien thereof, except only tax liens for real property taxes on any Lot, assessments on any Lot in favor of any municipal or other governmental assessing unit and the liens which are specifically described in Section 7.09 above. Any such Lien may be foreclosed by appropriate action in court in the manner provided by law for the foreclosure of a deed of trust or a realty mortgage, as provided by the laws of the State of Arizona, as the same may from time to time be amended. The Lien provided for herein shall be in favor of the Association and shall be for the benefit of all other Owners. The Lien created and imposed upon the Lot against which the Assessment was made also is created with the power of sale in the Board, and such power of sale may be exercised in the manner provided by law under a trust deed as set forth by the laws of the State of Arizona, as the same may from time to time be amended. The Association shall have the power to bid (including the right and power to make a so called "credit bid" for the amount of the obligation secured by the Lien) at any foreclosure or trustee's sale and to purchase, acquire, hold, lease, mortgage and convey any such unit so acquired. In the event of such foreclosure, reasonable attorneys' fees, court costs, title search fees, interest and all other costs and expenses shall be allowed to the maximum extent permitted by law. Each Owner, by becoming an Owner of a Lot, hereby expressly waives any objection to the enforcement and foreclosure of the Lien in this manner.

Section 7.11 Subordination of the Lien to Mortgage. The Assessment Lien provided for herein shall be subordinate to the lien mortgage or foreclosure of such First Mortgage will not be liable for such Unit's unpaid Assessments which accrue prior to the acquisition of title to such lot by such First Mortgagee. Sale or transfer of any Lot shall not affect the Assessment Lien; however, the sale or transfer of any Lot pursuant to foreclosure of First Mortgage or any proceeding or conveyance in lieu thereof shall extinguish the Lien of such Assessment as to payments which become due prior to such sale or transfer but shall not relieve

such Lot from liability for any Assessments thereafter becoming due nor shall such sale or transfer relieve such Lot from the Lien of any such Assessment thereafter becoming due.

Notwithstanding the foregoing, however, in the event the Lot Owner against whom the original Assessment was made is the purchaser or redemption or at a sale conducted pursuant to remedies granted in a First Mortgage, the Lien shall continue in effect and the Lien may be enforced by the Association for the respective Lot's Assessment that was due prior to the final conclusion of any such foreclosure or equivalent proceedings. Further, any such unpaid Assessment shall nevertheless continue to exist as the 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 of the Association.

Section 7.12. Written Notification. A First Mortgagee, upon written request and upon payment of a reasonable fee to be established from time to time by the Board, shall be entitled to written notification from the Association of any default in the performance by the Owner of any Lot (who is the borrower) of any obligation under the Constituent Documents which is not cured within sixty (60) days.

ARTICLE VIII

COMMON AREA

Section 8.01. Permitted Uses. The permitted uses for the Common Area shall be as follows:

(a) Access for vehicles and pedestrians between public streets and any parking areas situated on the Property and any Owner's Lot, Unit or garage; limited, however, for purposes connected with or incidental to any use being made of any portion of any Owner's Lot or Unit;

(b) Access for pedestrians on any sidewalks or walkways; limited, however, for purposes connected with or incidental to any use being made of any portion of any Owner's Lot or Unit;

(c) Access for persons engaged in maintaining any portion of the Common Area or any Owner's Lot or Unit;

(d) Specific recreational uses, such as pool areas, picnic areas, open or greenbelt areas and the like, in areas so designated on the Plat or subsequently designated by the Board;

(e) Such other uses as may be adopted from time to time by the Board and set forth in the Rules; and

(f) In general, the Common Area shall be used for the benefit of the Owners, for the furnishing of services and facilities for which the same are reasonably intended and for the enjoyment to be derived from such reasonable and proper use, without hindering the exercise of or encroaching upon the right of any other Owner to utilize the Common Area; provided that no unlawful use thereof shall be permitted.

Section 8.02. Restricted Uses.

(a) The Common Area shall not be used by Owners for storage of supplies, materials or personal property of any kind;

(b) The use of the Common Area shall be subject to such other restrictions as may be adopted by the Board and set forth in the Association Rules;

(c) Common Area use shall also be restricted as set forth in the Master Declaration; and

(d) In general, no activity shall be carried on nor condition maintained by any Owner upon the Common Area which, in the judgment of the Association, spoils or detracts from the appearance of the Property, the Common Area or any Lot or Unit, or hinders or encroaches upon the right of any other Owner to utilize the Common Area as reasonably intended.

Section 8.03. Maintenance by Association. The Association shall take, cause or suffer to be taken the following activities as to any Common Area designated herein or on the Plat, which are conveyed, leased or transferred to it or which are otherwise placed under its jurisdiction, without any approval of the Owners being required.

(a) Reconstruct, repair, replace or refinish any Improvement or portion thereof upon any such Common Area (to the extent that such work is not done by a governmental entity, if the same shall be responsible for the maintenance and upkeep of such area) in accordance with: (i) the last plans thereof approved by the Board; (ii) the original plans for such Improvement; or (iii) if neither of the foregoing is applicable and if such Improvement was previously in existence, then in accordance with the original design, finish or standard of construction of such Improvement as same existed prior to the damage or destruction which necessitated the actions set forth above;

(b) Construct, reconstruct, repair, replace or refinish any road improvement or surface upon any portion of such area used as a road, street, walk or parking area (including, but not limited to, guest parking facilities), if any;

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

(d) Place and maintain upon any such area, such signs, markers and lights as the Board may deem appropriate for the proper identification, use and regulation thereof, subject to the approval of the Architectural Committee;

(e) Unless otherwise provided by the Master Association, provide landscaping and maintenance of: (i) any Master Common Areas located on the Property available for use by all Owners and residents of The Islands or within easements intended for the general benefit of The Islands, and (ii) other landscaped public right-of-way areas adjacent to the Property;

(f) Remove all papers, debris, filth and refuse from the Common Area and wash or sweep paved areas as required and clean and relamp lighting fixtures as needed;

(g) Pay all real estate taxes and assessments relating to the Common Area (if any) as the same become due and payable;

(h) Pay all electrical, water, gas and other utility charges or fees for services furnished to the Common Area as the same become due and payable;

(i) Pay for and keep in force, at the Association's expense, the types of insurance required or

permitted hereby, and with limits of liability required or permitted hereby, desired by the Board or required of the Owners pursuant to any Matter of Record, such as insurance to name the Association or the Owners (or appropriate lenders or mortgagees), or both, as named insureds as the Board may from time to time determine;

(j) Maintain and pay for all landscaping and other items located on, upon or about the Common Area;

(k) Maintain and pay for all repairs and replacements to Common Area lighting facilities not maintained by others;

(l) To the extent not maintained by any governmental agency, maintain and make all repairs and replacements to the sewer system and all changes in connection with any private sewer facilities, except for any damage caused by the negligence or acts of any Owner which will be the obligation of that particular Owner;

(m) Do all such other and further acts which the Board deems necessary to preserve and protect the Common Area and the beauty thereof, in accordance with the general purposes specified in this Declaration; and

(n) The Board shall be the sole judge as to the appropriate maintenance of all grounds and other items within the Common Area.

Section 8.04. Damage or Destruction of Common Areas By Owners. Except to the extent covered by insurance, in the event any of the Common Areas are damaged or destroyed by the negligence or willful acts of an Owner or of a member of his family or any of his guests, tenants, licensees or agents, or in the event a charge or expense to the Association results from any such act of an Owner, said Owner does hereby authorize the Association to repair said damaged area, and the Association shall so repair said damaged area in a good, workmanlike manner in conformance with the original plans and specifications for the area involved, or as the area may have been modified or altered subsequently by the Association, at the discretion of the Association. The amount necessary for such repairs in excess of any insurance proceeds shall be paid by said Owner upon demand, to the Association and the Association may enforce collection of same in the same manner as provided elsewhere in this Declaration for collection and enforcement of Individual Assessments.

ARTICLE IX

MAINTENANCE

Section 9.01. Rights and Obligations of Association. The Board, acting for and on behalf of the Association, shall have the obligation to maintain, repair and replace the Common Area (except any portion now or hereafter maintained by any governmental agency with jurisdiction over said portion), in accordance with the terms and conditions hereof. The appropriate governmental agency may assume responsibility for maintenance of the Streets and Roadways located within the Development and the Board is authorized to enter into any such maintenance agreement, as it may, from time to time, deem advisable. Any cooperative action necessary or appropriate for the proper maintenance and upkeep of the Common Area, including but not limited to the driveways and sidewalks located thereon, shall be taken by the Board, acting for and on behalf of the Association.

In addition to the maintenance of the Common Area, the Board, acting for and on behalf of the Association, shall provide

exterior maintenance of each Lot (and its corresponding Unit) which is subject to assessment as follows: paint, repair, replacement and care of roofs, gutters, downspouts, exterior building surfaces, sidewalks, driveways and other exterior improvements. Such exterior maintenance shall include maintenance of the landscaping, if any, installed by the Declarant or Association in the front yard portion and any other unfenced yard area of each Lot, but shall not include maintenance of any landscaping located in rear yards, on patios and balconies or maintenance of glass surfaces. The Board, acting for and on behalf of the Association, shall also provide maintenance of those portions of any master antenna system installed by Declarant or the Association which are located upon individual lots, including the improvements thereon.

Section 9.02. Rights and Obligations of Owners.

Except for those items for which the duty to maintain or repair is imposed on the Association in accordance with Section 9.01 of this Article, all fixtures and equipment (including all plumbing and fire sprinklers, electrical wiring and conduits and heating and air conditioning units) installed within a Unit or a Lot, including without limitation on a patio or balcony, and all windows which are a part of any Unit, and all landscaping on patios and balconies shall be maintained and kept in repair by the Owner thereof at his sole cost and expense, except that the Association shall have the right to promulgate reasonable Rules and Regulations as aforesaid, and the Association shall have the right at any time to maintain and repair utility lines, pipes, wires, conduits, or similar systems or facilities up to the point where they enter the exterior walls of a Unit. Terminate control shall be the responsibility of the Owner as shall be all interior maintenance of individual Units. An Owner shall do no act nor any work that will impair the structural soundness or integrity of the Development or impair any easement, nor do any act nor allow any condition to exist which will adversely affect the other Units or their Owners.

ARTICLE X

PARTY WALLS

Section 10.01. General Rules of Law to Apply. Each wall which is built as a part of the original construction of the Units (including patio walls) upon the Property and placed on the dividing line between the Lots shall constitute a Party Wall, and, to the extent not inconsistent with the provisions of this Article, the general rules of law regarding party walls and liability for property damage due to negligence or willful acts or omissions shall apply thereto. With respect to each such Wall, each of the adjoining Owners shall assume the obligation and be entitled to the benefits of the provisions of this Article X.

Section 10.02. Common Use. The Owners of contiguous Units who have a Party Wall shall both equally have the right to use such Wall, provided that such use by one Owner does not materially interfere with the use of enjoyment of same by the other Owner.

Section 10.03. Property Rights. Party Walls shall be the equal property of such abutting Unit Owners but may not be conveyed, hypothecated or otherwise disposed of except in connection with the conveyance, hypothecation or other disposition of the Units to which said Party Walls relate.

Section 10.04. Sharing of Repair and Maintenance. The cost of reasonable repair and maintenance of a Party Wall shall be shared by the Owners who make use of the wall in proportion to such use.

Section 10.05. Destruction by Fire or Other Casualty. Subject to the provisions of Articles XI and XII, if a Party Wall is destroyed or damaged by fire or other casualty, any Owner who has used the wall may restore it, and if the other Owners thereafter make use of the wall, they shall contribute to the cost of restoration thereof in proportion to such use without prejudice, however, to the right of any such Owners to call for a larger contribution from the others under any rule of law regarding liability for negligent or willful acts or omissions.

Section 10.06. Destruction by Adjoining Owner. Notwithstanding any other provision of this Article, in the event a Party Wall is damaged or destroyed as a result of the negligent or willful act or omission of an adjoining Owner, his agents, tenants, licensees, guests or family, then, in such event, such Owner shall bear the whole cost of rebuilding and/or repairing such Party Wall.

Section 10.07. Structural Integrity to be Maintained. Notwithstanding anything to the contrary herein contained, there shall be no impairment of the structural integrity of any Party Wall without the prior consent of all Owners of any interest therein, whether by way of easement or in fee.

No Party Wall shall be used for the purpose of attaching anything to said Party Wall which produces noise or sound in any way whatsoever, nor shall any said Party Wall be penetrated by nails, screws or other objects in excess of two (2) inches from the finished surface of said Party Wall.

Section 10.08. Right to Contribution Runs With Land. 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 10.09. Extension or Alteration. In addition to meeting the other requirements of this Declaration and of any building code or similar regulations or ordinances, any Owner proposing to modify, make additions to or rebuild his Unit in any manner which requires the extension or other alteration of any Party Wall shall first obtain the written consent of the adjoining Owner or Owners and of the Architectural Committee.

Each Owner shall permit, and there is hereby reserved an easement for, the Owners of adjoining Units, or their representatives, when reasonably required, to enter his Unit for the purpose of repairing or maintaining a Party Wall, provided that requests for entry be made in advance and that such entry is at a time reasonably convenient to the Owner who is to provide entry. In case of an emergency, notice of such right of entry pursuant to the terms of this subsection shall be waived. An adjoining Owner making entry pursuant to the terms of this section shall not be deemed guilty of trespass by reason of such entry. Disputes regarding such rights of entry shall be resolved by arbitration.

Section 10.10. Arbitration. In the event of any dispute arising concerning a Party Wall, or under the provisions of this Article, each Owner shall choose one arbitrator, and such arbitrators shall choose one additional arbitrator, or if the two arbitrators cannot agree as to the selection of the third arbitrator within five (5) days, then any Judge of the Superior Court of Maricopa County, Arizona shall choose the additional arbitrator. A determination of the latter signed by any two (2) of the three (3) arbitrators shall be binding upon the Owners, who shall share the cost of arbitration equally. In the event one Owner fails to choose an arbitrator within ten (10) days after receipt of a request in writing for arbitration from the

other Owner, then said other Owner shall have the right and power to choose both arbitrators.

Section 10.11. Covenants Binding. These covenants shall be binding upon the heirs and assigns of any Owners, but no person shall be liable for any act or omission respecting any Party Wall except as took place while an Owner.

ARTICLE XI

INSURANCE

Section 11.01. Property Insurance. The Board shall have the authority to, and shall, obtain a blanket policy of insurance insuring the entire Property, including the Units and the Improvements and personal property located on the Common Area, against loss or damage by fire, hazards covered by a standard extended coverage endorsement, and such other hazards as are customarily insured against in similar projects in the Maricopa County, Arizona area, including all perils normally covered by the standard "all risk" endorsement, to the extent any such coverage is available. Such insurance shall be in an amount sufficient to provide full replacement of any damage in an amount not less than one hundred percent (100%) of the full replacement value of the Units, the improvements located on the Common Area and all Association-controlled personal property, as determined at least once each year by the Board, and covered by an "Agreed Amount" or "Inflation Guard" endorsement, if available. All insurance coverage shall be written in the name of and the proceeds thereof shall be payable to the Association or to its authorized representative as trustee for the use and benefit of the Association, the individual Lot Owners and the holders of Mortgages covering each of the Lots or Units, as their interests may appear. All such insurance proceeds shall be deposited in a bank or other financial institution, the accounts of which bank or institution are insured by a federal governmental agency, with the provision agreed to by said bank or institution that such funds may be withdrawn only by signature of at least one-third (1/3) of the members of the Board or by an agent duly authorized by the Board. Such policy of insurance shall contain a waiver of subrogation rights by the insurer against individual Owners, shall provide that the insurance is not prejudiced by any act or neglect of individual Owners which is not in the control of all of the Owners and shall provide that the policy is primary in the event an Owner has other insurance covering the same loss.

In addition, the Association shall maintain the following forms of insurance:

- (a) Workmen's compensation insurance, if necessary to meet the requirements of law;
- (b) Steam boiler and machinery coverage endorsement providing a per occurrence limit of at least (i) \$2,000,000.00; or (ii) the reasonable value of the buildings housing the boiler or machinery;
- (c) Such other insurance as the Board shall determine from time to time to be desirable.

Notwithstanding the duty of the Association to obtain insurance coverage as stated herein neither the Association nor any Board member shall be liable to any Owner or any other party if any risks or hazards are not covered by insurance or if the amount of insurance is not adequate, and it shall be the responsibility of each Unit Owner to ascertain the coverage and protection afforded by the Association's insurance and to procure and pay for such additional insurance coverage and protection as such Unit Owner may desire.

Section 11.02. Liability Insurance. The Board shall have the authority to, and shall, obtain public liability insurance covering the Common Area and those portions of the Lots on which is located a sidewalk or driveway intended for the benefit of more than one Owner. Such insurance policies shall contain a "severability of interest" endorsement which shall preclude the insurer from denying the claim of an Owner because of negligent acts of the Association or of other Owners. The scope of coverage shall be in the kinds and amounts required by private institutional mortgage investors for similar projects in Maricopa County, Arizona, but must include coverage for property damage, bodily injury and death in connection with the operation, maintenance or use of the Common Area and those portions of the Lots on which is located a sidewalk intended for the benefit of more than one Owner. Coverage shall be for not less than One Million Dollars (\$1,000,000.00) per occurrence, for personal injury and/or property damage. In addition, the Board shall obtain liability insurance, if available, covering any legal liability that results from lawsuits related to employment contracts in which the Association is a party.

Section 11.03. Fidelity Bonds. The Board shall have the authority to, and shall, obtain and carry a fidelity bond or insurance coverage against dishonest acts of its directors, management agent, management agent's employees, trustees, employees or volunteers responsible for handling Association funds, regardless of whether such individuals serve with or without compensation. A management agent that handles funds for the Association shall also be covered by its own fidelity bond. Except for fidelity bonds that a management agent obtains for its personnel, all other bonds shall name the Association as an obligee. The fidelity bond or insurance shall be written in an amount sufficient to provide protection as determined by the Board, but in no event less than the insured's estimated annual operating expenses and reserves and shall contain a provision requiring ten days notice be given to the Association and to any Mortgage Holder who requests such notice before cancellation or substantial modification thereof.

Section 11.04. Flood Insurance. If the Property is located within an area identified by any agency of the Federal Government as having special flood hazards, the Board shall maintain a blanket policy of flood insurance on the entire Property, including the Units and the improvements and personal property located on the Common Area, in an amount aggregating the lesser of (i) the maximum limit of coverage available under the national Flood Insurance Program, or any successor thereto, or (ii) one hundred percent (100%) of the current replacement cost of all buildings and other property covered by such policy; provided, however, that in no event shall the amount of such policy be less than the outstanding principal balances of all Mortgage loans on the Units covered thereby.

Section 11.05. Additional Insurance. Premiums for all of the above referenced insurance shall be common expenses included in the Annual Assessments. In addition, the Board may, from time to time, purchase or procure other forms, types and coverages of insurance, including without limitation, officers and directors liability insurance. Each Owner shall be responsible for his own insurance on the personal property contents of his Unit, any additions, decorating or other improvements placed therein following purchase, and all furnishings and personal property therein or stored elsewhere on the Property. Each Owner shall further be responsible to provide his own personal liability insurance to the extent deemed appropriate by such owner. No Association-sourced insurance coverage, as required under this Article XI, shall be brought into contribution with insurance purchased by individual Owners, their mortgagees, or other Board directed insurance.

Section 11.06. Mortgages Held by Governmental Entities. Notwithstanding any provision of this Article XI, if at any time any of the Lots are covered by mortgages which are insured or guaranteed by the Federal Housing Administration ("FHA") or the Veterans Administration ("VA") (or any successor to such entities which performs their present functions) or which are purchased or held by the Federal National Mortgage Association ("Fannie Mae"), the Board shall at all times carry all casualty, flood and liability insurance and a fidelity bond or bonds in such amounts and containing such provisions as are required from time to time by such entities or such successors, including without limitation, standard mortgage clauses, unless such coverage is unavailable or waived by them in writing. If such entities require less coverage or other protection than is specifically required by this Article XI, the Board shall be free to provide such lesser coverage and such substitute protection. All insurance policies provided pursuant to this Article XI must contain a provision requiring not less than ten (10) days prior written notice of cancellation or material modification, such notice to be sent to the Association, each Mortgage Holder and all Insureds. Further, all Insurers and Guarantors, including FHA and VA, that have filed with the Association a written request for notice shall be entitled to receive written notification from the Association of any lapse, cancellation or material modification of any insurance policy or bond provided pursuant to this Article XI.

ARTICLE XII

DAMAGE AND DESTRUCTION

Section 12.01. Use of Insurance Proceeds. In the event the Property or any Unit or any portion thereof is damaged or destroyed by fire or other hazard covered by insurance pursuant to the provisions of Article XI above, the Board shall contract with a licensed contractor or contractors to rebuild or repair such damaged or destroyed portions of the Property or of such Units in conformance with their original plans and specifications, or, if the Board determines that adherence to such original plans and specifications is not in conformance with applicable laws, ordinances, building codes, or other governmental rules or regulations then in effect, such repairs or rebuilding shall be of a kind and quality substantially equivalent to the original construction of such improvements. The Association shall obtain reliable and detailed estimates of the cost of the repair or reconstruction. The contract with such licensed contractor or contractors shall provide for payment to the contractor or contractors of a specified sum for performance and execution of the work therein described. Disbursements to the contractor shall be made subject to the prior approval of the Architectural Committee as may be appropriate in the circumstances and deemed suitable by the Board. The Board may employ a licensed architect to supervise the repair and rebuilding to insure that all work, services and supplies are in conformity with the requirements of the construction contract. The Board shall use insurance proceeds for the purpose set forth in this paragraph.

Section 12.02. Insufficient and Excessive Insurance Proceeds. If the Insurance proceeds are insufficient to pay all costs of repair and rebuilding, the Board shall levy a Special Assessment to make up any deficiency. If the insurance proceeds exceed the costs of repair and reconstruction, then following completion of such repair and rebuilding, the excess shall be paid over to the owners and the holders of Mortgages on their Lots as their respective interests may appear. Each payment to

an Owner and his Mortgagee shall be by joint payee check or draft.

Section 12.02. Notice to Holders. In the event of damage to or destruction of any Unit or any material portion of the Common Area, the Holder, Insurer or Guarantor of the First Mortgage on any such Unit(s), and the Holders, Insurers or Guarantors of the First Mortgages on all Units in the case of Common Area damage, shall be entitled to timely written notice from the Association of such damage or destruction, provided such Holder, Insurer or Guarantor has filed with the Association a written request for such notice.

ARTICLE XIII

CONDEMNATION

Section 13.01. Payment of Award. If a portion of the Common Area should be taken by exercise of the power of eminent domain, or should be transferred and conveyed to a condemning authority in anticipation of such exercise, the entire award made as compensation for such taking, including, but without limitation, any amount awarded as severance damages, or the entire amount received and paid in anticipation of such taking, after deducting therefrom, in each case, reasonable and necessary costs and expenses, including, but without limitation, attorneys' fees, appraiser's fees and court costs (which net amount is hereinafter in this Article XIII referred to as the "Award") shall be paid to the Association, as trustee for all Owners and the owners and holders of First Mortgages then encumbering the Units. The Association shall, as soon as practicable, cause the Award to be utilized for the purpose of repairing, replacing and restoring the affected area, including, if the Association deems it necessary or desirable, the replacement of any Common Area improvements so taken or conveyed. Any such repair, replacement and restoration shall be performed to the extent reasonably possible following such condemnation, substantially in accordance with the original plans and specifications.

Section 13.02. Special Assessment for Deficiency. If the cost of any repair and restoration shall exceed the amount of the Award, a Special Assessment shall be levied against the remaining Owners to the extent necessary to make up such deficiency.

Section 13.03. Notice to Holders. If the Common Area or any material portion thereof is made the subject matter of any condemnation or eminent domain proceedings or is otherwise sought to be acquired by a condemning authority, the Holders, Insurers or Guarantors of the First Mortgages on all Units will be entitled to timely written notice of such proceedings or proposed acquisition, provided such Holders, Insurers or Guarantors have filed with the Association a written request for such notice. No provision of any Constituent Document will entitle the Owner of a Unit or other party to priority over such Holder, Insurer or Guarantor with respect to the distribution of the proceeds of any award or settlement.

ARTICLE XIV

REMEDIES

In the event of any default by any Owner under the provisions of this Declaration, the Articles of Incorporation, the Bylaws, or the Rules and Regulations of the Association, the Association, or its successors or assigns, or the Board, or its agents, shall have such and all of the rights and remedies which may be provided for may be provided for in the Articles of

Incorporation, the Bylaws or said Rules and Regulations, or which may be available by law, and may prosecute any action or other proceedings against such defaulting Owner and others for enforcement or foreclosure of the Association's Lien and the appointment of a receiver for the defaulting Lot without notice, without regard to the value of such Lot or the solvency of such Owner; or for damages or injunction, or specific performance, or for a judgment for payment of money and collection thereof, or the right to sell the Lot as hereinafter in this paragraph provided, or for any combination of remedies or for any other relief. The proceeds of any such judicial sale shall first be paid to discharge court costs, other litigation or collection costs, including but without limitation reasonable attorneys' fees, and all other expenses of the proceeding and sale, and all such items shall be taxed against the defaulting Owner in a final judgment. Any balance of proceeds after satisfaction of such charges and any unpaid assessments hereunder or any liens shall be paid to the Owner. Upon the confirmation of the sale, the purchasers thereupon shall be entitled to a deed to the Lot and to immediate possession of the Lot and may apply to the court for a writ of restitution for the purpose of acquiring such possession, and it shall be a condition of any such sale, and the judgment shall so provide, that the purchaser shall take the interest in the property sold subject to this Declaration. All expenses of the Association in connection with any such action or proceeding, including court costs and reasonable attorneys' fees and other fees and expenses, and all damages, liquidated or otherwise, together with interest thereon at the rate of eighteen percent (18%) per annum until paid, shall be charges to and assessed against such defaulting Owner and shall be added to and deemed part of said default in Owner's respective share of the Assessments payable to the Association, and the Association shall have a lien for all of the same, as well as for nonpayment of said default in Owner's respective share of the Assessments, upon the Lot of such defaulting Owner and upon all of his additions and improvements thereto. In the event of any such default by any Owner, the Association and the Board, or its Manager or Managing Agent, if so authorized by the Board, shall have the authority to correct such default and to do whatever may be necessary for such purpose, and all expenses in connection therewith shall be charged to and assessed against such defaulting Owner, and such Assessment shall constitute an Individual Assessment and Lien against the defaulting Owner's Lot. Any and all such rights and remedies may be exercised at any time and from time to time, cumulatively or otherwise, by the Association or the Board. The liens provided for in this Article XV shall be junior to prior First Mortgages to the same extent as provided in Article VII of this Declaration, and shall be foreclosed in the same manner as the lien provided for in Article VII.

If any Owner (either by his conduct or by the conduct of any other Occupant of his Lot or Unit) shall violate any of the provisions of this Declaration, the Articles of Incorporation, the Bylaws or the Rules, as then in effect, and such violation shall continue for ten (10) days after notice in writing from the Board or shall occur repeatedly during any ten-day period after written notice or request to cure such violation, the Association, Board or any aggrieved Owner shall have the power to file an action against the defaulting Owner or Occupant requiring the defaulting Owner to comply with the provisions of this Declaration, the Articles of Incorporation, the Bylaws or the Rules, and granting other appropriate relief, including money damages. If the Association, its successors or agents or the Board or its agents shall violate or fail to comply with any of the provisions of this Declaration, the Articles of Incorporation, the Bylaws or the Rules, as then in effect, then any aggrieved Owner shall have the power to file an action against the Association or Board to comply with the Declaration, the Articles of Incorporation, the Bylaws or the

Rules, and granting other appropriate relief, including money damages. Anything to the contrary herein notwithstanding, any breach of any of the covenants, restrictions, reservations, conditions and servitudes provided for in this Declaration, or any right of re-entry by reason thereof, shall not defeat or adversely affect the lien of any Mortgage made in good faith and for value upon any Lot but, except as herein specifically provided, each and all of said covenants, restrictions, reservations, conditions and servitudes shall be binding upon and effective against any Owner whose title thereto is acquired by foreclosure, trustee's sale, deed in lieu of foreclosure or otherwise.

The rights reserved in this Article in favor of Declarant, or its assignee, to enforce the provisions of this Declaration shall be limited to the period of time during which Declarant owns one or more Lots in the Development.

ARTICLE XV

RIGHTS OF FIRST MORTGAGE HOLDERS

Section 15.01. Rights of First Mortgage Holders. No breach of any of the covenants, conditions and restrictions herein contained, nor the enforcement of any lien provisions herein, shall render invalid the lien of any First Mortgage on any Lot made in good faith and for value, but all of said covenants, conditions and restrictions shall be binding upon and effective against any Owner whose title is derived through foreclosure, trustee's sale, or otherwise. Notwithstanding any provision in the Constituent Documents to the contrary, First Mortgage holders shall have the following rights:

(a) All holders of First Mortgages that have filed with the Association a written request for notice of default shall be entitled to receive written notice from the Association of any default by the Mortgagor of any First Mortgage on a Unit (the beneficial interest in which is held by said holder) in the performance of such mortgagor's obligations under the constituent Documents, which is not cured within sixty (60) days. All holders of First Mortgages that have filed with the Association a written request therefor shall be entitled to receive written notice of any proposed action that would require the prior approval of a specified percentage of Mortgage holders as set forth in subparagraph (c) of this Article XV, Section 15.01. Insurers and Guarantors shall also, upon written request therefor to the Association, be entitled to receive such written notices as provided for in this subparagraph (a).

(b) The Association shall discharge its obligation to notify Mortgage holders, Insurers and Guarantors by sending written notices required herein to such parties requesting notice, at the address given on the current request for notice, in the manner prescribed by Article XX.

(c) Unless at least sixty-seven percent (67%) of the Owners of all Lots (other than Declarant), at least sixty-seven percent (67%) of the Mortgage holders (based upon one vote for each First Mortgage owned) and Declarant and the BHA and VA (if Declarant then owns any Lots in the Property) have given their prior written approval, neither the Association nor the Owners shall be entitled to:

(1) By act or omission change, waive or abandon any scheme of regulations, or enforcement thereof, pertaining to the architectural design or the exterior appearance of Units, the maintenance of the Common Area and the upkeep of the Lots, including, without limitation, landscaping;

(2) By amendment to the Declaration, to the Articles of Incorporation, to the Bylaws, to any of the other Constituent Documents or otherwise, change the method of determining the obligations of Owners, levying Assessments or charges or allocating distributions of hazard insurance proceeds or condemnation awards;

(3) Make any material amendment to the Declaration, to the Articles, to the Bylaws or to any of the other Constituent Documents concerning any of the following: voting rights; Assessments, Assessment Liens or subordination of such Liens; reserves for maintenance, repair and replacement of the Common Area; insurance or fidelity bond requirements; use of hazard insurance proceeds; boundaries of any Lot or of the Common Area; rights to use the Common Area; responsibility for maintenance and repair of the Units, the Lots or the Common Area; leasing of Lots; or any provision which is for the express benefit of Mortgage Holders, Insurers or Guarantors;

(4) By act or omission, seek to abandon, partition, subdivide, encumber, sell or transfer the Common Area; provided, however, that the granting of easements for public utility or other public purposes in accordance with the provisions of this Declaration shall not be considered a transfer for purposes of this subparagraph;

(5) Impose any right of first refusal or similar restriction on the right of an Owner to sell, transfer or otherwise convey the Lot; it being understood, however, that if the TEA and/or the VA have approved the Development for FHA and/or VA loans, neither the Association nor the Owners shall have any right whatsoever to impose any such right of first refusal or similar restriction;

(6) Expand or contract the Project or annex to or withdraw property from the Project except as specifically provided for herein; or

(7) Effectuate any decision by the Association to terminate professional management and assume self-management, if such professional management was previously required by a First Mortgage Holder, Insurer or Guarantor.

Any Mortgage Holder, Insurer or Guarantor who receives a written request to approve any such change, modification or amendment and who does not notify the requesting party in the manner provided herein within thirty (30) days after receipt of such request shall be deemed to have approved such change, modification or amendment.

(8) Any First Mortgage Holder, Insurer or Guarantor and any Owner will, upon request, be entitled to (i) inspect the Declaration, the Articles, the Bylaws, the Rules and Regulations, books and records of the Association during normal business hours; (ii) receive written notice of all meetings of the Association and to designate a representative to attend all such meetings; and (iii) receive an annual audited financial statement of the Association within ninety (90) days following the end of the fiscal year of the Association. With respect to said audited statements, they shall be prepared at the cost of the Mortgage Holder, Insurer or Guarantor requesting the same until Phases 2 through 22 of the Project have been annexed. At such time as Phases 2 through 22 have been annexed, said statements shall be prepared at the cost of the Association.

(9) Any provision of the Constituent Documents which gives an Owner, or any other party, priority over any rights of First Mortgages of Lots pursuant to their First Mortgages in the case of a distribution to Owners of insurance proceeds or condemnation awards for losses to or taking of Units

and/or Common Area shall not be enforceable against such Mortgagees.

(f) Any First Mortgage holder who obtains title to a Lot pursuant to a foreclosure of the Mortgage on the Lot will not be liable for such unpaid dues and Assessments against the Lot which accrued prior to acquisition of the Lot by the Mortgage Holder.

(g) Partition or subdivision of the Common Area is prohibited.

(h) First Mortgage Holders may, but shall not be required to, jointly or singularly, pay taxes or other charges which are in default and which may or have become a charge against the Common Area and may pay overdue premiums on hazard insurance policies, or secure new hazard insurance coverage on the lapse of a policy and First Mortgage Holders making such payments shall be entitled to immediate reimbursement therefor from the Association.

Section 15.02. Voting Rights. During the pendency of any proceedings to foreclose a First Mortgage (including any period of redemption) or from the time a trustee under a first deed of trust has given notice of sale pursuant to power of sale conferred under a deed of trust and pursuant to law, the First Mortgagee, or a receiver appointed in any such action, may, but need not, exercise any or all of the rights and privileges of the Owner in default of a Unit including, but not limited to, the right to vote as a Member of the Association in the place and stead of the defaulting Owner.

Section 16.03. First Mortgagees to Pay Assessment After Delivery of Deed. At such time as the First Mortgagee shall become record Owner of a Unit (or upon execution and delivery of a sheriff's or trustee's deed or deed in lieu of foreclosure only in the case of Assessments) and entitled to possession, the First Mortgagee shall be subject to all of the terms and conditions of this Declaration including, but not limited to, the obligations to pay all Assessments and charges accruing thereafter, in the same manner as any other Owner.

ARTICLE XVI

COMPLIANCE WITH FHA AND VA REGULATIONS

Compliance with FHA and VA Regulations. It is the intent of the Declarant that the Project shall comply with all requirements of the FHA and of the VA pertaining to the insurance by FHA and VA of mortgages on individual Lots. In furtherance of that intent and notwithstanding any other provisions of this Declaration or any provision of the other Constituent Documents, Declarant expressly reserves the right and shall be entitled by unilateral amendment as long as Declarant owns more than twenty-five percent (25%) of the Lots in the Development to incorporate any provisions that are, in the opinion of FHA or VA, required to conform this Declaration, the Articles, the Bylaws or the Project to the requirements of FHA or VA. Each Owner and each First Mortgagee by acceptance of a deed or encumbrance consents to the incorporation in the Constituent Documents of any such provisions and agrees to be bound by any such provisions as if they were originally contained in the Constituent Documents. The Board, each Owner and each First Mortgagee shall take any action or shall adopt or consent to any resolutions required by FHA or VA to conform this Declaration, the other Constituent Documents or the Project to the requirements of FHA or VA.

Any such amendment shall be effected by the recordation, by Declarant, of a Certificate of Amendment duly

signed by or on behalf of Declarant with requisite formalities, specifying the federal, state or local governmental agency or the federally-chartered lending institution requesting the amendment and setting forth the amendatory language requested by such agency or institution. Recordation 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 all of The Cove at the Islands and all persons having an interest therein.

ARTICLE XVII

ANNEXATION

Section 17.01. Right of Annexation. The additional land comprised of the Phases referred to in Section 17.02 below (hereinafter cumulatively referred to as the "Additional Property") may be annexed to the Property by Declarant without the consent of the Owners, First Mortgage Holders or Insurers or Guarantors within seven (7) years of the date of recordation of this Declaration. Declarant shall in no way be obligated to annex the Additional Property but if, when and at such time as one or more Phases comprising the Additional Property are annexed in accordance with the provisions of this Article XVII, the Phase or Phases so annexed shall, in addition to and together with the Property which is the subject of the Declaration (hereinafter in this Article referred to as the "Initial Property"), be referred to as the "Development," the "Property", or the "Project".

Section 17.02. Phases. The Additional Property shall be divided into separate Phases. The legal description of each Phase comprising the Additional Property is set forth on Exhibit "B". The numbering of the Phases is for convenience of reference only as Declarant may annex Phases in any order, together or separately, as it may, from time to time, judge to be appropriate. If, due to the order in which Phases are to be annexed, Common Tracts listed in a particular Phase on Exhibit "B" shall, in Declarant's judgement, be appropriate to be annexed at an earlier time, with another Phase, Declarant, without any other consent, may do so in the Phase annexation documents described below and the description of all Phases-affected thereby shall be deemed modified accordingly.

Section 17.03. Method of Annexation. The annexation of a Phase shall become effective upon the earlier to occur of the following: (a) the recording of a certificate of annexation signed and acknowledged by Declarant which: (1) describes the Initial Property and such Phase; (2) refers to this Declaration; and (3) declares that the provisions of this Section shall become effective and affect such Phase; or (b) the recording of a deed conveying fee title to a Lot in such Phase to an Owner by Declarant; provided that the conveyance of a Lot by Declarant to a grantee in connection with an assignment of the Declarant's rights under this Declaration or a deed out and back for purposes of creating an encumbrance shall not, in and of itself, cause the Phase to be annexed.

Section 17.04. Effect of Annexation. Upon annexation of a Phase, whether achieved pursuant to subparagraph (a) or to subparagraph (b) of Section 17.03 above, this Declaration shall apply to and affect such Phase, all of the Lots and Common Area located therein, and the then and future Owners of such Lots, with the same effect as if said Phase was originally subjected to the provisions of this Declaration and to the same extent and degree as this Declaration shall and does apply to the Initial Property, the Association, the Board, all of the Lots and Common Area located in the Initial Property, and the then and future Owners of said Lots. Thereupon, the powers and responsibilities of the Association and the Board shall be co-extensive with

regard to all Property included within the Development; the Association shall, pursuant to the provisions of this Declaration, constitute the homeowners' association for the Development and shall own all of the Common Area in the Development, and the rights and obligations of the Owners of Lots in said Phase shall be the same and identical to the rights and obligations of the Owners of the Lots in the Initial Property.

Upon the annexation of Phase(s) 2 through 22, the relative voting strength of Declarant and the Owners will change and control of the Association, even though vested in Owners other than Declarant at the time of the annexation of Phase(s) 2 through 22 may revert to the Declarant by virtue of the provisions of Section 6.03 hereof upon the annexation of Phase(s) 2 through 22 of THE COVE AT THE ISLANDS.

Section 17.05. Rights of Declarant. Notwithstanding any of the provisions regarding annexation set forth in Section 17.01 of this Article XVII, Declarant shall have the following rights with regard to the Additional Property:

(a) Declarant may, at its option, at any time hereafter, without requesting or receiving the consent of the Owners of any portion of the Initial Property or of any other property constituting a part of the Development, on of any First Mortgagees of any Lot located therein, elect to permanently remove the Additional Property, or any portion thereof, from the right of Declarant to include the Additional Property, or such portion thereof, in the Development, by recording a written notice of such removal, signed by Declarant, in the Office of the Maricopa County Recorder. Upon such recording, the Additional Property, or such portion thereof as described in the notice, shall no longer be eligible for inclusion in the Development as contemplated under Section 17.01 of this Article XVII.

(b) Declarant reserves the right at any time and from time to time, without requesting or receiving the consent of the Owners of any portion of the Initial Property or of any other property constituting a part of the Development, or of any First Mortgagees of any Lot located therein, to resubdivide, amend the subdivision map, modify, alter or otherwise change the legal or other status or configuration of the Additional Property, or any portion thereof, to enter into any written agreement with Maricopa County, Arizona or the Town of Gilbert, changing the location of any easements previously granted to said County or Town with respect to the Additional Property, and to grant easements to other third parties in connection with the development and/or improvement of the Additional Property; provided that no Lot on the property which is the subject of such change, modification, amendment or easement has previously been sold by Declarant to an Owner. The power herein granted to Declarant shall be and is a power coupled with an interest and shall be irrevocable; each Owner of a Lot in the Development appoints Declarant as his attorney-in-fact for the purpose of effecting any such change, modification or amendment or of granting such easement.

Section 17.06. Limitations on Annexation. Notwithstanding the rights of Declarant contained in this Article XVII; in the event all of the Phases comprising the Additional Property become part of the Development, the total number of Lots to be permitted on the Additional Property, in its entirety, shall not exceed One Hundred and Sixty-One (161) Lots, with the result that the total number of Lots in the Development shall not exceed one hundred seventy-three (173) Lots. All improvements on annexed Phases shall be substantially completed prior to annexation. In addition, all improvements constructed on annexed Phases shall be consistent in terms of quality of construction with the improvements constructed on the Initial Property. Further, so long as there is a Class B membership and provided

the FHA and/or the VA have approved the Development for FHA and/or VA loans, any annexation in accordance with the provisions of this Article shall require a determination by the FHA and/or VA that said annexation is in accord with the general plan previously approved by the FHA and/or VA.

ARTICLE XVIII

COVENANTS, CONDITIONS AND RESTRICTIONS APPLICABLE TO LAKE AREA

Section 18.01. Lake Areas. The use and operation of Lake Areas shall be governed by the Master Declaration, the Tract Declaration and this Article XVIII.

Section 18.02. Swimming. There shall be no swimming in Lake Areas except in case of an emergency or as provided by the Rules promulgated by the Master Board for The Islands.

Section 18.03. Boats and Other Watercraft. The only boats or other watercraft permitted in Lake Areas shall be those permitted under the Master Declaration, and only under the circumstances described therein.

Section 18.04. Waterfront Facilities. No Owner of a Waterfront Facility shall locate, construct, maintain or operate and/or cause to be located, constructed or maintained any Waterfront Facility, without approval from the Board or the Architectural Committee.

Section 18.05. Right of Way. The Board, the Master Board or their respective designees is hereby granted and does reserve the right to enter upon and use any Waterfront Facility for any lawful purpose during daylight hours, or at any time in case of emergency in connection with the creation, use, operation, maintenance and repair of the Lake Areas which does not unreasonably interfere with the use of the Master Common Areas, Common Area, Lake Areas or such Waterfront Facility.

ARTICLE XIX

TERM AND AMENDMENT

The covenants and restrictions of this Declaration shall run with and bind the land for a term of twenty (20) years from the date the Master Declaration was recorded, after which time they shall be automatically extended for successive periods of ten (10) years, unless revoked at the end of any such respective period by written instrument requiring the same approval as amendment below and the written consent of all First Mortgagees. Any amendment during the first thirty (30) year period, or thereafter during any successive ten (10) year period, shall require an instrument signed by the Owners of at least two-thirds (2/3) of individual Lots, together with that of Declarant, so long as Declarant owns one or more Lots. Prior to sale of the first Lot by the Developer to a bona fide purchaser (being defined as the delivery and recordation of a deed to a Lot), the Developer shall have the right to amend this Declaration. In addition, before Declarant has sold all Lots in the Development, this Declaration may be amended by Declarant without seeking the consent of the Class A Members to cure any formal defect, omission, inconsistency or ambiguity in this Declaration. To the

extent set forth in the Tract Declaration, this Declaration shall be deemed modified to the extent that the Master Board amends the Tract Declaration as set forth in Paragraph 12 thereof, and any change, modification or deletion pursuant thereto shall be effective as to all persons acquiring any interest in any Lot or

Unit on or after the date of the Tract Declaration. No amendment shall be made which will alter or modify the rights of the First Mortgagee of any Lot without the consent of the affected First Mortgagee or affect the rules, regulations or restrictions of any governmental agency or instrumentality acquiring any mortgage of participation interest therein on any Lot. All amendments must be recorded.

ARTICLE XX

GENERAL PROVISIONS

Section 20.01. Enforcement. Any Owner shall have the right to enforce, by any proceeding at law or in equity, all restrictions, conditions, covenants, reservations, liens and charges now or hereafter imposed by the provisions of this Declaration. Failure by any Owner or the Board to enforce any covenant or restriction herein contained shall in no event be deemed a waiver of the right to do so thereafter. Nothing contained in this Declaration shall be deemed to constitute or create a reverter or to create or vest in any person or entity any rights in the nature of a reversion or right of entry, the Owners' several rights and remedies hereunder being limited to injunctive relief (as the same may be further limited hereby) and to suits for damage sustained by reason of a breach hereof or under the Master Declaration or to enforce Assessments against a Lot or Unit under the terms hereof or of the Master Declaration. Except as provided in the Master Declaration or herein, any judgments for damages against an Owner shall be enforceable against his Lot or Unit in the manner of any other judgment lien.

Section 20.02. Incorporation of Recitals. The Recitals set forth above are incorporated by reference into the body of this Declaration and this Declaration shall be construed in light of said Recitals as though the same were a part hereof.

Section 20.03. Severability. Invalidation of any one of the covenants or restrictions herein contained by judgment or court order shall in no way affect any other provisions of this Declaration which shall remain in full force and effect.

Section 20.04. Violations and Nuisance. Every act or omission whereby any provision of this Declaration is violated in whole or in part is hereby declared to be a nuisance and may be enjoined or abated, whether or not the relief sought is for negative or affirmative action, by Declarant or any Owner or Owners of Lots within the Property or any other party having a proprietary interest in the Property.

Section 20.05. Violation of Law. Any violation of any state, municipal or local law, ordinance or requisition, pertaining to the ownership, occupation or use of any property within the Property is hereby declared to be a violation of this Declaration and subject to any or all of the enforcement procedures set forth in this Declaration.

Section 20.06. Remedies Cumulative. Each remedy provided by this Declaration is cumulative and not exclusive.

Section 20.07. Delivery of Notices and Documents. Any written notice or other documents relating to or required by this Declaration may be delivered either personally or by mail. If by mail, it shall be deemed to have been delivered forty-eight (48) hours after a copy of same has been deposited in the United States mail, postage prepaid, addressed if to an Owner, to the address of any Lot within the Property owned, in whole or in part, by him or to any other address last furnished by an Owner to the Association; and if to Declarant, to V.L. Crow

Development, Inc., 8502 Via de Ventura, Suite 101, Scottsdale, Arizona 85258; provided, however, that any such address may be changed at any time by the party concerned recording a written notice of change of address and delivering a copy thereof to the Association. Each Owner of a Lot shall file the correct mailing address of such Owner with the Association, and shall promptly notify the Association in writing of any subsequent change of address.

Section 20.08. Public Dedication. Nothing contained in this Declaration shall be deemed to constitute a dedication for public use or to create any rights in the general public. Nothing contained in this Declaration shall be construed as creating an obligation on the part of the Town of Gilbert or any other governmental authority having jurisdiction over the Property and the Common Area to maintain, repair or replace any portion of the Property, the Common Area or the appurtenances thereto.

Section 20.09. Copy of Declaration to New Members. The Board shall give each new Owner of a Lot a copy of this Declaration and any and all amendments hereto within sixty (60) days notice of the conveyance of a Lot to such new Owner. However, the failure of the Board to provide such copy shall not relieve the new Owner from complying with this Declaration nor waive any of the rights, conditions or restrictions stated herein or create any liability on the part of the Association, the Board or their agents.

Section 20.10. Purchase of Lot by Association. Upon consent or approval of a majority of Owners present and voting at a general or special meeting of the Members of the Association or in such other manner as may be deemed by the Board to be necessary or expedient, the Board shall have the power and authority to bid for and purchase any Lot at a sale pursuant to a mortgage foreclosure, trustee's sale under a trust deed, or a foreclosure of any lien for assessments or other charges provided for in this Declaration, or at a sale pursuant to an order or direction of a court, or other involuntary sale, and the Board shall have the power and authority to finance such purchase of a Lot by Mortgage, Special Assessment or any other financing arrangement that the Board may deem necessary or expedient.

Section 20.11. Perpetuity Savings. If any interest purported to be created by this Declaration is challenged under the Rule Against Perpetuities or any related rule, the interest shall be construed as becoming void and of no effect as of the end of the applicable period of perpetuities computed from the date when the period of perpetuities starts to run on the challenged interest; the "lives in being" for computing the period of perpetuities shall be: (a) those which would be used in determining the validity of the challenged interest; plus (b) those of the issue of Ronald Regan, President of the United States or Bruce E. Babbitt, Governor of Arizona who are living at the time the period of perpetuities starts to run on the challenged interest.

Section 20.12. Change of Circumstances. Except as otherwise expressly provided in this Declaration, no change of conditions or circumstances shall operate to extinguish, terminate or modify any of the provisions of this Declaration.

Section 20.13. Interpretation.

(a) Except for judicial construction, the Association shall have the exclusive right to construe and interpret the provisions of this Declaration. In the absence of any adjudication to the contrary by a court of competent jurisdiction, the Association's construction or interpretation of the provisions hereof shall be final, conclusive and binding as

to all persons and property benefited or bound by these Restrictions.

(b) Unless the context otherwise indicates, words used in the singular shall include the plural and vice versa and the use of the neuter, masculine or feminine gender is for convenience of reference only and shall be deemed to mean and include any and all other genders as the context may require.

(c) Headings of Articles and Sections herein and the Index hereof are solely for convenience of reference, do not constitute a part hereof and shall not affect the meaning, construction or effect hereof.

(d) All accounting terms not otherwise defined herein shall have the meanings assigned to them under generally accepted accounting principles at the time such term is being construed.

Section 20.14. No Warranties. Declarant, in setting forth this Declaration and the restrictive covenants set forth therein, makes no warranty as to its or their present or future validity or enforceability and any Owner, acquiring a Lot or Unit in reliance on any one or more such restrictive covenants, shall assume all risks of the validity and enforceability and, by acquiring a Lot or Unit, agrees, now and in the future, to hold Declarant harmless therefrom.

Section 20.15. Approval By Lender. Continental Bank, designated as "Lender" hereinafter, and its trustee under a deed of trust presently encumbering the Property, has executed and agreed to and approved this Declaration for the purpose of allowing the conveyance, free and clear of its lien, of the real property underlying certain Lake Areas and other certain real properties to the Master Association, and the conveyance of the Common Area to the Association by virtue of the execution and delivery of the Plat and to agree to and confirm all of the terms and conditions hereof.

Section 20.16. Jurisdiction. All Owners agree that any matter arising under this Declaration may be finally adjudged or determined in any court or courts of the State of Arizona or of the United States of America having jurisdiction in the State of Arizona, and such Owners hereby submit generally and unconditionally to the jurisdiction of such courts and of any of them in respect to any such matter; provided, however, as to those matters, if any, to be submitted to arbitration pursuant to the provisions hereof, said provisions shall be deemed to be controlling and shall prevail.

Section 20.17. The Declaration. By acceptance of a deed or by acquiring any ownership interest in any of the real property included within this Declaration, each person or entity, for himself or itself, his heirs, personal representatives, successors, transferees and assigns, binds himself, his heirs, personal representatives, successors, transferees and assigns, to all of the provisions, restrictions, covenants, conditions, rules and regulations now or hereafter imposed by this Declaration and any amendments thereof. In addition, each such person by so doing thereby acknowledges that this Declaration sets forth a general scheme for the improvement and development of the real property covered hereby and hereby evidences his interest that all the restrictions, conditions, covenants, rules and regulations contained herein shall run with the land and be binding on all subsequent and future Owners, grantees, purchasers, assignees and transferees thereof. Furthermore, each such person fully understands and acknowledges that this Declaration shall be mutually beneficial, prohibitive and enforceable by the various subsequent and future Owners.

IN WITNESS WHEREOF, the undersigned, being the Declarant herein, has hereunto set its corporate name this 13th day of August, 1986.

AGREED TO AND ACCEPTED:

CONTINENTAL BANK,
a Arizona corporation
(Lender)

By [Signature]
Its VICE PRESIDENT

THE ISLANDS COMMUNITY ASSOCIATION,
an Arizona nonprofit corporation

By [Signature]
Its Secretary

V.L. CROW DEVELOPMENT, INC.,
an Arizona corporation

By [Signature]
Its Secretary

FIRST AMERICAN TITLE INSURANCE
COMPANY OF ARIZONA, an Arizona
corporation, as Trustee pursuant
to Deed of Trust Recorded
(December 31, 1984), Records of
Maricopa County, Arizona, as
Instrument No. 84-561304
February 13, 1985 in 85-062314) and re-recorded

By [Signature]
Its Plant Vice President

STATE OF ARIZONA)
) ss.
County of Maricopa)

The foregoing instrument was acknowledged before me this 13th day of August, 1986 by R.G. Howland as VICE PRESIDENT of Continental Bank, an Arizona corporation, for the purposes therein stated.

[Signature]
Notary Public

OFFICIAL SEAL
JEAN GRESS
My commission expires June 30, 1990
MARICOPA COUNTY

STATE OF ARIZONA)
) ss.
 County of Maricopa)

The foregoing instrument was acknowledged before me this 12th day of August, 1986 by Richard C. Chappis as Secretary of V.L. Crow Development, Inc., an Arizona corporation, for the purposes therein stated.

[Signature]
 Notary Public

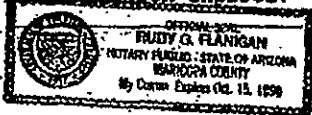
My commission expires:
My Commission Expires Oct. 16, 1988

STATE OF ARIZONA)
) ss.
 County of Maricopa)

The foregoing instrument was acknowledged before me this 29th day of August, 1986 by James H. Kippen as President of First American Title Insurance Company of Arizona, an Arizona corporation, for the purposes therein stated.

[Signature]
 Notary Public

My commission expires:



STATE OF ARIZONA)
) ss.
 County of Maricopa)

The foregoing instrument was acknowledged before me this 13th day of August, 1986 by Jac F. Graham as Secretary of The Islands Community Association, an Arizona nonprofit corporation, for the purposes therein stated.

[Signature]
 Notary Public

My commission expires:
My Commission Expires Sept. 2, 1989

92-0542706

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PAGE 25 OF 48

RECORDED AT THE REQUEST OF
LAWYERS TITLE OF ARIZONA, INC.
D. F. K. E.

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**FIRST AMENDMENT TO DECLARATION OF COVENANTS,
CONDITIONS AND RESTRICTIONS FOR
THE COVE AT THE ISLANDS**

This First Amendment to Declaration of Covenants, Conditions and Restrictions for The Cove at The Islands (this "First Amendment") is made this 12 day of September, 1992, by The New Cove Properties Limited Partnership, an Arizona limited partnership ("Declarant") and Lawyers Title of Arizona, Inc., an Arizona corporation, as Trustee under Trust No. 1532 ("Trustee"):

RECITALS

A. Pursuant to Declaration of Covenants, Conditions and Restrictions for The Cove at The Islands dated August 26, 1986, as made by V. L. Crowe Development, Inc., an Arizona corporation as "Declarant" (Initial Declarant) and recorded August 29, 1986 as Instrument No. 86-469514, Office of the Maricopa County Recorder, Arizona (the "Declaration"), the "Property", as described in the Declaration, was subjected to the terms of the Declaration by Initial Declarant.

B. Declarant has succeeded to the interests of Initial Declarant as "Declarant" under the Declaration.

C. Declarant desires to amend the terms of the Declaration in the manner set forth in this First Amendment.

D. Declarant and Trustee together own all of the Property, including the Lots comprising a part thereof, subject to the Declaration and therefore, have the authority to amend the Declaration pursuant to Article XXIX of the Declaration.

NOW, THEREFORE, Trustee, as the Owner of all or a portion of the Property, and Declarant, as the Owner of all or a portion of the Property, hereby amend the Declaration as follows:

1. **Declarant.** The "Declarant", as defined in and used in the Declaration, shall mean and refer to The New Cove Properties Limited Partnership, an Arizona limited partnership, its successors and assigns.

2. **Initial Annual Assessments.** Section 7.03(c) of the Declaration is hereby deleted in its entirety and the following substituted therefor:

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"(c) Until January 1, of the year immediately following the conveyance of the first Lot to an Owner, the maximum Annual Assessment shall be \$1,020.00 per Lot, payable at the rate of \$85.00 per month."

3. Annexation. Section 17.01 of the Declaration is hereby amended to delete the first sentence thereof and to substitute the following therefor:

"The additional land comprised of the Phases referred to in Section 17.02 below (hereinafter cumulatively referred to as the "Additional Property") may be annexed to the Property by Declarant without the consent of the Owners, First Mortgage Holders or Insurers or Guarantors (1) within three years following conveyance of the First Lot to an Owner by Declarant in the event Additional Property has not been annexed and become subject to this Declaration within such three (3) year period; or, (2) in the event Additional Property has been annexed and become subject to this Declaration within such three (3) year period within seven (7) years following conveyance of the first Lot to an Owner by Declarant."

4. Declarant's Address. Section 20.07 of the Declaration is hereby amended to change Declarant's address to:

THE NEW CORK PROPERTIES LIMITED PARTNERSHIP
P.O. Box 736, GILBERT,
ARIZONA, 85234

5. Miscellaneous. Except as expressly set forth in this forth Amendment, all terms in this First Amendment shall have the same meanings as set forth in the Declaration. In the event the provisions of this First Amendment shall conflict with any provisions of the Declaration, the provisions of this First Amendment shall control. This First Amendment may be executed in counterparts, all of which together shall constitute one First Amendment.

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IN WITNESS WHEREOF, this Declaration has been entered into on the day and year first set forth above.

THE NEW COVE PROPERTIES LIMITED PARTNERSHIP, an Arizona limited partnership

By: MABBOTT DEVELOPMENT CORPORATION, a California corporation, its General Partner

By: [Signature]
Its: PRESIDENT

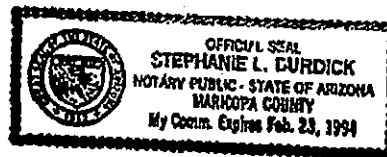
STATE OF ARIZONA)
) ss
COUNTY OF MARICOPA)

On this 16th day of September, 1992, before me, the undersigned Notary Public, personally appeared LESLIE D. MABBOTT, who acknowledged himself to be the President of MABBOTT DEVELOPMENT CORPORATION, a California corporation, general partner of The New Cove Properties Limited Partnership, an Arizona limited partnership, and that he, as such officer, being authorized so to do, executed the foregoing instrument on behalf of the corporation for the purposes therein contained.

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

Stephanie L. Durdick
Notary Public

My commission expires:



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LAWYERS TITLE OF ARIZONA, INC., an Arizona corporation, as Trustee under its Trust No. 1532 and not otherwise.

By: *Kenneth W. Pond*
Its: President

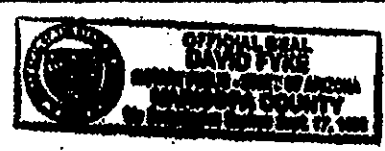
STATE OF ARIZONA }
COUNTY OF MARICOPA } ss

On this 28 day of September, 1992, before me, the undersigned Notary Public, personally appeared Kenneth W. Pond, who acknowledged himself to be the President of LAWYERS TITLE OF ARIZONA, INC., an Arizona corporation, as Trustee under its Trust No. 1532 and not otherwise, and that he, as such officer, being authorized so to do, executed the foregoing instrument on behalf of the corporation for the purposes therein contained.

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

David Pyke
Notary Public

My commission expires:



19920542706

OFFICIAL RECORDS OF
MARICOPA COUNTY RECORDER
HELEN PURCELL

The foregoing instrument is
a full, true and correct
copy of the original record
in this office.

Attest: 6/16/2004 01:27:01 PM



By  Recorder

When recorded, return to:

Lawyers Title of Arizona, Inc.,
40 E. Mitchell Drive
Phoenix, AZ 85012
Attn: David Fyke

VI



OFFICIAL RECORDS OF
MARICOPA COUNTY RECORDER
HELEN PURCELL

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LJLTH 28 OF 37

(for recording information only)

**SECOND AMENDMENT TO DECLARATION OF COVENANTS,
CONDITIONS AND RESTRICTIONS FOR
THE COVE AT THE ISLANDS**

This Second Amendment to Declaration of Covenants, Conditions and Restrictions for The Cove at The Islands (this "Second Amendment") is made this 29 day of July, 1993, by The New Cove Properties Limited Partnership, an Arizona limited partnership ("Declarant") and Lawyers Title of Arizona, Inc., an Arizona corporation, as Trustee under Trust No. 1532 ("Trustee").

A. Pursuant to Declaration of Covenants, Conditions and Restrictions for The Cove at The Islands dated August 26, 1985 (this "Initial Declaration") and recorded August 29, 1986 as Instrument No. 86-469514 (the "Initial Declaration") and recorded August 29, 1986 as Instrument No. 86-469514 (the "Initial Declaration") and recorded August 29, 1986 as Instrument No. 86-469514 (the "Initial Declaration"), the property, as described in the Declaration, was subjected to the terms of the Initial Declaration by Initial Declarant.

B. Declarant has succeeded to the interest of Initial Declarant as "Declarant" under the Initial Declaration.

C. The Initial Declaration was amended by First Amendment to Declaration of Covenants, Conditions and Restrictions for The Cove at The Islands dated September 16, 1992, and recorded September 29, 1992 as Instrument No. 92-542706 (the "First Amendment"), with the Initial Declaration, as amended by the First Amendment, referred to herein as the "Declaration").

D. Declarant desires to amend the terms of the Declaration in the manner set forth in this Second Amendment.

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2. Common Area Change. Notwithstanding portions of Tract W, comprising a portion of the Common Areas, may be conveyed by Declarant to Owners together with Lots but not separate from Lots,, as follows:

A. Declarant shall have the right to convey each of the portions of Tract W, as described on Exhibit "A" attached hereto, with the Lot with the corresponding Lot number (the "Additional Parcel"). As an example, the conveyance by Declarant of Lot 138 may also include conveyance of that portion of Tract W described as Parcel 138 A on Exhibit "A" attached hereto as the Additional Parcel for Lot 138.

B. To the extent Declarant so conveys any Lot with an "Additional Parcel, the Additional Parcel shall in all respects be deemed a part of the Lot so conveyed, with the Owner thereof, its successors and assigns, to have full right to use, enjoyment and ownership of the Additional Parcel to the same extent as if the Additional Parcel had been and were at all times a part of the corresponding Lot.

3. Conveyance Documents. To the extent Tract W has previously been conveyed to the Association, the Association is hereby authorized and directed to convey the Additional Parcels to Declarant, upon request by Declarant. From and after any such conveyances by the Association to Declarant, such Additional Parcels shall not be deemed parts of the Common Area, with the Declaration amended to delete the Additional Parcels from the Common Areas.

4. Recordation. All references to recordation in this Second Amendment shall mean and refer to recordation in the Office of the Maricopa County Recorder, Arizona.

5. Miscellaneous. Except as expressly set forth in this forth Amendment, all terms in this Second Amendment shall have the same meanings as set forth in the Declaration. In the event the provisions of this Second Amendment shall conflict with any provisions of the Declaration, the provisions of this Second Amendment shall control. This Second Amendment may be executed in counterparts, all of which together shall constitute one Second Amendment.

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IN WITNESS WHEREOF, this Declaration has been entered into effective on the day and year first set forth above.

THE NEW COVE PROPERTIES LIMITED PARTNERSHIP, an Arizona limited partnership

By: COHEN ARIZONA, INC., an Arizona corporation, its General Partner

By: Max H. Cohen
Its: Director

STATE OF ARIZONA

COUNTY OF MARICOPA

)
) ss
)

On this 29th day of July, 1993, before me, the undersigned Notary Public, personally appeared Max H. Cohen, who acknowledged himself to be the Director of COHEN ARIZONA, INC., an Arizona corporation, general partner of The New Cove Properties Limited Partnership, an Arizona limited partnership, and that he, as such officer, being authorized so to do, executed the foregoing instrument on behalf of the corporation for the purposes therein contained.

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

Theresa R. Ruiz
Notary Public

My



