

LOS OLIVOS HERMOSO – TOWNHOME ASSOCIATION

**AMENDED AND RESTATED DECLARATION
OF
COVENANTS, CONDITIONS, AND RESTRICTIONS**

LOS OLIVOS HERMOSO
AMENDED AND RESTATED
DECLARATION OF COVENANTS, CONDITIONS, AND RESTRICTIONS

TABLE OF CONTENTS

	Page
RECITALS	1
 ARTICLE 1. DEFINITIONS	
1.1 Annual Assessment	2
1.2 Area of Common Responsibility.....	2
1.3 Architecture Committee	2
1.4 Articles and Restated Articles	2
1.5 Assessment	2
1.6 Assessment Lien.....	2
1.7 Association	2
1.8 Association Rules and Regulations	3
1.9 Board	3
1.10 Bylaws and Restated Bylaws	3
1.11 City	3
1.12 Common Area and Common Elements.....	3
1.13 Common Expenses.....	3
1.14 Community Documents.....	3
1.15 Declaration and Restated Declaration	3
1.16 Duly Designated Representative	3
1.17 Eligible Insurer or Guarantor	3
1.18 Eligible Member.....	3
1.19 Eligible Mortgage Holder.....	4
1.20 Eligible Votes	4
1.21 Emergency Situation	4
1.22 First Mortgage	4
1.23 First Mortgagee	4
1.24 Improvement	4
1.25 Improvements and Betterments.....	4
1.26 Limited Shared Elements	4
1.27 Lot	4
1.28 Majority	4
1.29 Member	4
1.30 Member's Designated Representative.....	4
1.31 Multifamily Building.....	5
1.32 Owner	5
1.33 Person	5
1.34 Plat.....	5
1.35 Property or Properties.....	5
1.36 Purchaser	5
1.37 Quorum.....	5

1.38	Recording	5
1.39	Resident	5
1.40	Residential Unit, Unit, and Townhome	5
1.41	Shared Elements	6
1.42	Single Family	6
1.43	Suspended Member	6
1.44	Transfer and Disclosure Fees	6
1.45	Use Privileges	6
1.46	Visible From Public View	6

ARTICLE 2. PLAN FOR THE PROPERTY

2.1	Property Subject to This Declaration	6
2.2	The Plan	7
2.3	Adoption and Approval of the Plan for the Property	7
2.4	Adoption and Approval of the Plan for Reserves	7
2.5	Adoption and Approval of the Annual Budget	7
2.6	Responsibility for The Plan	7

ARTICLE 3. COMMUNITY STANDARDS AND RESTRICTIONS

ARCHITECTURAL STANDARDS AND PROCEDURES

3.1	Architectural Control	8
3.2	Architectural Approval Procedures	8
3.3	Architectural Enforcement	8
3.4	Antennas	9
3.5	Arbors, Trellises, Shade Covers, and Awnings; Sunshades and Umbrellas	10
3.6	Color Schemes	10
3.7	Decorations, Displays, Accessories, and Devices	10
3.8	Diligent Completion	11
3.9	Government Approval	11
3.10	Lighting	11
3.11	Maintenance of Buildings	11
3.12	Maintenance of Roofs	11
3.13	No Architecture Waiver	12
3.14	Nuisances and Construction Activities	12
3.15	Rooftop Coolers and Solar Equipment	12
3.16	Security Iron (Doors, Windows, and Gates), and Screen Doors	12
3.17	Temporary Occupancy and Temporary Buildings	12
3.18	Utility Service	12

COMMUNITY STANDARDS FOR USE OF LOTS, FACILITIES, AND STREETS

3.19	Animals	13
3.20	Cloths Drying Facilities	13
3.21	Diseases and Insects	13
3.22	Drainage	13
3.23	Health, Safety, and Welfare	13

3.24	Maintenance of Lawns and Plantings.....	13
3.25	Non-Owner Occupied Property.....	14
3.26	Overhead Encroachments.....	14
3.27	Pressure Reducing Valve	14
3.28	Resident Parking	14
3.29	No Commercial Use	14
3.30	Residential Use.....	14
3.31	Rubbish, Trash, Containers, and Collection.....	15
3.32	Security Systems	15
3.33	Signs	15
3.34	Spas, Pools, Tubs, and Fountains.....	15
3.35	Storage and Parking of Vehicles	15
3.36	Towing of Vehicles	16
3.37	Trespassing Policy.....	16
3.38	Use of Areas of Limited Shared Element.....	16
3.39	Use of Guest Parking.....	16
3.40	Use of Lots	17
3.41	Use of the Recreational Facilities.....	17
3.42	Use of Streets	17
3.43	Grandfathered Conditions	17

ARTICLE 4. THE ASSOCIATION: ORGANIZATION, MEMBERSHIP, AND VOTING

4.1	Name	17
4.2	Governing Body	18
4.3	Powers of the Association.....	18
4.4	Membership.....	18
4.5	Transfer of Membership.....	18
4.6	Voting by Members.....	18
4.7	Cumulative Voting	19
4.8	Suspension of Member's Voting Rights and Use Privileges	19
4.9	Liability of Members to Third Parties.....	19
4.10	Liability of Members of the Board, Officers, and Agents	19

ARTICLE 5. COVENANT FOR ASSESSMENTS

5.1	Creation of Lien of Assessments.....	20
5.2	Creation of Personal Obligation of Assessments	20
5.3	Annual Assessment	20
5.4	Special Assessment	20
5.5	Specific Assessment.....	21
5.6	Common Area Assessment	21
5.7	Adoption and Approval of Assessments and Budgets	21
5.8	Computation of Assessment.....	21
5.9	Assessment Increase.....	22
5.10	Assessment Period.....	22
5.11	Lots Subject to Assessment.....	22

5.12	Failure to Assess.....	22
5.13	Rules Regarding Payment and Collection Procedures.....	22
5.14	Effect of Nonpayment of Assessments: Remedies of the Association	23
5.15	Exempt Property.....	23
5.16	Mortgagee Not Liable for Prior Assessment.....	23
5.17	Subordination of Certain Liens to Mortgagee.....	24
5.18	Lien for Assessments	24
5.19	Evidence of Status of Assessment Payments	24
5.20	Purposes for Which Association's Funds May Be Used.....	24
5.21	Surplus Funds.....	24
5.22	Transfer and Disclosure Fees	25

ARTICLE 6. AREAS OF RESPONSIBILITY FOR COMMUNITY MAINTENANCE

6.1	Areas of Responsibility	25
6.2	Owner Responsibility	25
6.3	Association Responsibility	26
6.4	Elements of the Residential Unit and the Lot	26
6.5	Party Walls	27
6.6	Neglect or Disrepair of Property	28
6.7	Damage or Destruction of Property	28
6.8	Resolution of Payment of Repair, Neglect, Disrepair, Damage, or Destruction of Property.....	29

ARTICLE 7. INSURANCE

7.1	Association Responsibility.....	29
7.2	Individual Insurance	31
7.3	Certificates of Insurance.....	31
7.4	Payment of Insurance Premiums.....	31
7.5	Disbursement of Insurance Proceeds	31
7.6	Repair and Reconstruction	31
7.7	Insufficient Insurance Proceeds.....	32
7.8	Failure to Repair or Replace.....	32

ARTICLE 8. RIGHTS AND OBLIGATIONS OF THE ASSOCIATION

8.1	Area of Common Responsibility.....	32
8.2	Enforcement	32
8.3	Member's Right to Hearing.....	33
8.4	Suspension of Rights and Privileges of Owners	33
8.5	Equal Treatment of Owners	33
8.6	Shared Elements	33
8.7	Services	33
8.8	Borrowing.....	34
8.9	Personal Property and Real Property for Common Use.....	34
8.10	Implied Rights.....	34

8.11	Rules and Regulations	34
8.12	Fines and Penalties	34

ARTICLE 9. RIGHTS AND OBLIGATIONS OF MEMBERS OF THE ASSOCIATION

9.1	Right to Hearing	35
9.2	Right to Appeal	35
9.3	Right to Challenge the Validity of Corporate Action	35
9.4	Member's Delegation of Use	35
9.5	Member's Easements of Enjoyment	35
9.6	Owner's Right to Enforce	36
9.7	Owner's Right to Ingress, Egress, and Support	36
9.8	Security	36

ARTICLE 10. APPLICATION OF PROJECT DOCUMENTS TO GUESTS AND OTHERS

10.1	Guests Subject to Project Documents	37
10.2	Community Documents Incorporated in Lease	37
10.3	Notice to Lessee	37
10.4	Action by Association	37
10.5	Cost of Action by Association	37

ARTICLE 11. RIGHTS OF FIRST MORTGAGEES

11.1	Notification to First Mortgagees	37
11.2	First Mortgagee's Right of Inspection of Records	38
11.3	No Priority Over First Mortgagees	38
11.4	Failure of First Mortgagee to Respond	38

ARTICLE 12. EASEMENTS

12.1	Easement of Utilities	38
12.2	Easement for Encroachments	39
12.3	Easements for Ingress and Egress	39
12.4	Limitation on Transfer	39

ARTICLE 13. GENERAL PROVISIONS

13.1	Binding Effect	39
13.2	Interpretation	40
13.3	Laws, Ordinances, and Regulations	40
13.4	Equal Treatment of Owners	40
13.5	Remedies Cumulative	40
13.6	Restrictions Construed Together	40
13.7	Variances	40
13.8	Non-Waiver	41

13.9	Change of Circumstances.....	41
13.10	Severability.....	41
13.11	Rule Against Perpetuities.....	41
13.12	Restriction on Further Subdivision, Property Restrictions, and Rezoning	41
13.13	No Partition	41
13.14	Change of Use	41
13.15	Estoppel Certificate	42
13.16	Indemnification	42
13.17	Amendment	42
13.18	Term of This Declaration	42
13.19	Captions.....	43
13.20	Governing Law.....	43
EXHIBIT A - PROPERTY DESCRIPTION.....		45

AMENDED AND RESTATED

DECLARATION OF COVENANTS, CONDITIONS, AND RESTRICTIONS FOR
LOS OLIVOS HERMOSO – TOWNHOME ASSOCIATION

RECITALS

This Amended and Restated Declaration of Covenants, Conditions, and Restrictions for Los Olivos Hermoso (the "Declaration") is made April 1, 2005.

A. Under the Declaration of Covenants, Conditions, and Restrictions duly recorded February 24, 1974, in Docket 10530, Pages 42-58 of the official records of Maricopa County, Arizona, (the "Original Declaration"), the Declarant imposed certain conditions, covenants, restrictions and created other property and contract rights burdening and benefiting the real property described in the Declaration (the "Property"). The Original Declaration was amended by that certain Amendment to Covenants, Conditions, and Restrictions recorded February 20, 1975, in Docket 11040, Page 43, in the official records of Maricopa County, Arizona, and was further amended by that certain Amendment to Covenants, Conditions, and Restrictions duly recorded June 4, 1975, in Docket 11187, Pages 1-2, in the official records of Maricopa County, Arizona, and was further amended by those certain Amendments to Covenants, Conditions, and Restrictions recorded July 14, 1980, in Docket 14542, Pages 1248 through 1259, in the official records of Maricopa County, Arizona, and was further amended by that certain Second Amendment to Covenants, Conditions, and Restrictions duly recorded February 27, 1989, in Docket 89-08429, et seq., in the official records of Maricopa County, Arizona, (the Original Declaration, together with those certain Amendments recorded February 20, 1975; June 4, 1975; and July 14, 1980; and that certain Second Amendment recorded February 27, 1989, are collectively known as the "Prior Declaration").

B. Article XV, Section 5 of the Second Amendment, recorded February 27, 1989, provided that the Declaration may be amended at any time by an instrument signed by the then Owners representing in the aggregate not less than three-fourths (3/4) of the total number of units on said property, and such instrument must be recorded with the Maricopa County Recorder's Office.

C. Twenty-nine years since the recording of the Original Declaration having expired, by the execution of an instrument signed by not less than seventy-five percent (75%) of the Owners, the Owners of the Property have approved this Amended and Restated Declaration of Covenants, Conditions, and Restrictions for Los Olivos Hermoso.

D. The Owners desire that the entire Property subject hereto be held, conveyed, hypothecated, encumbered, leased, occupied, built upon, and otherwise used, improved, or transferred in whole or in part, subject to this Restated Declaration as amended or modified from time to time.

NOW THEREFORE, the Declaration (as Amended) is hereby amended and revoked in its entirety and the provisions of this Restated Declaration are hereby imposed upon the Property.

ARTICLE 1.

DEFINITIONS

1.1 Annual Assessment means the assessment levied against each Lot and the Owner thereof, pursuant to this Declaration.

1.2 Area of Common Responsibility shall mean and refer to the Common Area, together with those areas (the Unit, Limited Shared Elements, and Shared Elements) within or upon a Lot, the management of which is the responsibility of the Association and the maintenance, repair, and replacement of which are divided between the Owner and the Association. Divisions of the Area of Common Responsibility may be changed from time to time by the vote of a majority of the eligible Members of the Association.

1.3 Architecture Committee means the committee of the Association created pursuant to this Declaration.

1.4 Articles and Restated Articles shall mean the Articles of Incorporation, the instrument by which an incorporated unit owners' association is formed and organized under the state's corporation statutes. The Restated Articles of Incorporation of Los Olivos Hermoso - Townhome Association, were filed in the office of the Corporation Commission of the State of Arizona, which Articles are incorporated herein by this reference, as said Articles may from time to time be amended.

1.5 Assessment means an Annual Assessment, Special Assessment, Specific Assessment, or Common Area Assessment.

1.6 Assessment Lien means the lien created and imposed by this Declaration.

1.7 Association shall mean and refer to Los Olivos Hermoso - Townhome Association, an Arizona nonprofit corporation, its successor, and assigns composed of Members who are the Owners of the Lots and the Residential Units located on the Lots.

1.8 Association Rules and Regulations means the provisions adopted by the Board of Directors pursuant to the Restated Declaration and the Restated Bylaws governing use and maintenance of the Units, Lots, and the Common Areas, as such provisions may be amended from time to time and which are incorporated herein by this reference.

1.9 Board shall mean the Board of Directors of the Association.

1.10 Bylaws and Restated Bylaws shall mean the code of rules adopted for the regulation and management of the affairs of the Corporation, Los Olivos Hermoso - Townhome Association, as may from time to time be amended and which are incorporated herein by this reference.

1.11 City means the City of Phoenix, Arizona.

1.12 Common Area and Common Elements shall be synonymous and shall mean all real and personal property controlled by the Association, and held for the common use and enjoyment of all Members of the Association, including, but not limited to, all of the referred to premises on the plat of record (Exhibit A) except the land specifically designated as a "Lot" or "Unit" and all recorded amendments thereto. The Common Elements shall also include, but not be limited to all recreational facilities, Property buildings, and commercial facilities, if any; swimming pools, pumps; trees, shrubs, lawns, ground covers; pavements, sidewalks, streets, curbs, guest parking areas; pipes, wires, glass, conduits, control and delivery systems; and other public and private utility lines, such as water, sewer,

electricity, gas, telephone, cable, etc. Each Lot Owner shall have an undivided interest in the Common Area and title to this interest shall pass with each Lot and may not be separated there from.

1.13 Common Expenses mean expenditures made by the Association, and financial liabilities of the Association, together with any allocations to reserves.

1.14 Community Documents shall mean the Restated Declaration of Covenants, Conditions, and Restrictions; the Restated Articles of Incorporation; the Restated Bylaws; and the Association Rules and Regulations.

1.15 Declaration and Amended and Restated Declaration shall mean the Declaration of Covenants, Conditions, and Restrictions (CC&R's) herein set forth in this entire document, as same may from time to time be amended.

1.16 Duly Designated Representative shall mean that person or entity designated to act on behalf of the Association in the performance of duties and responsibilities.

1.17 Eligible Insurer or Guarantor means an insurer or governmental guarantor of a First Mortgage who has requested notice of certain matters from the Association in accordance with this Declaration.

1.18 Eligible Member shall mean a Member who is qualified to vote for election of a Director or Directors; such qualification includes Lot Ownership as of the record date for the event, a clear financial status with the Association, and no violations or breaches of the Community Documents.

1.19 Eligible Mortgage Holder shall mean a holder, insurer, or guarantor of a First Mortgage on a Unit who has requested notice of certain matters from the Association as is provided hereinafter and in the Association's Restated Bylaws.

1.20 Eligible Votes shall mean those votes available to be cast on the issue at hand. A vote, which for any reason is suspended, is not available to be cast.

1.21 Emergency Situation means an unforeseen combination of circumstances or the resulting state that calls for immediate action.

1.22 First Mortgage means any mortgage or deed of trust on one or more Lots with first priority over any other mortgage or deed of trust.

1.23 First Mortgagee means the holder of any First Mortgage.

1.24 Improvement means any building, fence, wall, or other structure; any swimming pool, street, driveway, or parking area; any trees, shrubs, lawns, ground covers, or other landscaping improvements of every type and kind.

1.25 Improvements and Betterments mean the additions and upgrades made to the Lot and Unit that are in addition to those features as originally planned and specified for the Unit.

1.26 Limited Shared Elements are those elements located on each Lot in the Area of Common Responsibility and specifically designated in this Declaration as Limited Shared Elements. Limited Shared Elements are for the use of one Unit, but are shared with all residents of the Property due to their physical location and visual impact on the aesthetic quality of the Properties.

1.27 Lot shall mean and refer to a separately designated and legally described freehold estate consisting of any plot of land and the improvements thereon shown upon any recorded Map of the Properties with the exception of the Common Area, whether presently improved or unimproved. Each Lot Owner shall have an undivided interest in the Common Area and title to this interest shall pass with each Lot and may not be separated therefrom.

1.28 Majority means fifty-one (51%) percent of the total eligible votes of Owners, Members, or other groups as the context may indicate.

1.29 Member shall mean any person or persons who are the Owner(s) of a Lot in the Property, and pursuant to provisions of the Corporation's Restated Articles of Incorporation or Restated Bylaws, have the right to vote for the election of a Director or Directors. A person is not a Member by virtue of any rights that person has by being referred to as a Member in the Amended and Restated Articles of Incorporation, this Declaration, or the Amended and Restated Bylaws, if the person does not have the right to vote for election of a Director or Directors. The Owner of a Lot whose right to vote has been suspended by the Board of Directors shall be a Suspended Member.

1.30 Member's Designated Representative shall mean the person designated in writing by a Member as the Member's Representative to attend an open meeting and to speak during the meeting deliberations, at appropriate times; such Member representation shall not include the right to vote for the Member nor to be representative of the Member for the purpose of determining the presence of a quorum.

1.31 Multifamily Building shall refer to the building formed by the joining, by party walls, of a number of Residential Units.

1.32 Owner means the Record Owner, whether one or more Persons, of beneficial or equitable title (and legal title if the same has merged with the beneficial or equitable title) to the fee simple interest of a Lot and including a 1/76 interest in all Common Areas, but excluding any (i) persons having an interest in a Lot merely as security for the performance of an obligation, or (ii) a Lessee. Owner shall include a purchaser under a contract for the conveyance of real property subject to the provisions of A.R.S. 33-741, et seq.; Owner shall not include a purchaser under a purchase contract and receipt, escrow instructions, or similar executory contracts pending the closing of a sale or purchase transaction. In the case of Lots, the fee simple title to which is vested in a trustee pursuant to Arizona Revised Statutes, Section 33-801, et seq., the Trustor shall be deemed to be the Owner. In the case of the Lots, the fee simple title to which is vested in a trustee pursuant to a subdivision trust agreement or similar agreement, the beneficiary of any such trust who is entitled to possession of the trust property shall be deemed to be the Owner.

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

1.34 Plat means the Parcel Map of Los Olivos Hermoso in Book 163 of Maps, Page 224, records of Maricopa County, Arizona, and all amendments, supplements, and corrections thereto.

1.35 Property or Properties means the real property described in Exhibit A attached to this Declaration together with all Improvements located thereon and such additional real property as may be added.

1.36 Purchaser means any Person who by means of a voluntary transfer becomes the Owner of a Lot.

1.37 Quorum is the number of eligible Members required to be represented for the legal transaction of business; such representation may be in person or by absentee ballot or both and with or without a meeting.

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

1.39 Resident means each individual occupying or residing in any Residential Unit.

1.40 Residential Unit, Unit, and Townhome shall mean a structure situated upon a portion (Lot) of the Properties intended for any type of independent ownership for use and occupancy as a residence by a single family. The terms shall include all portions of the Lot owned as a part of any structure thereon and shall be synonymous.

1.41 Shared Elements are those elements, located on each Lot in the Area of Common Responsibility, designated as Shared Elements in this Declaration.

1.42 Single Family means a group of one or more persons each related to the other by blood, marriage, or legal adoption, or a group of not more than three (3) persons not all so related, who maintain a common household in a Residential Unit.

1.43 Suspended Member shall mean a Member whose rights to vote and to use the Common Areas and Common Elements have been suspended due to delinquent assessments or an action taken by the Board of Directors due to a violation or breach of any of the provisions of the Community Documents.

1.44 Transfer and Disclosure Fees are the fees established to provide the reports required by mortgage lenders and title companies, and the disclosures to prospective purchasers required by State Statutes for the transfer of title for a property.

1.45 Use Privileges shall mean the Member's right to use the Common Areas and recreational facilities, and the Member's right to delegate the use thereof to family, tenants, social invitees, or a contract purchaser who may reside on the property. Such use privileges are automatically suspended for delinquent assessments and are subject to suspension by the Board of Directors for violations of the Community Documents.

1.46 Visible From Public View means, with respect to any given object, that such object is or would be visible to a person six feet tall, standing at ground level on any part of neighboring properties.

ARTICLE 2. PLAN FOR THE PROPERTY

This Declaration is being recorded to preserve and maintain the general Plan for the development and use of the Properties in order to protect and enhance the value, desirability, and attractiveness of Los Olivos Hermoso.

2.1 Property Subject to This Declaration. All of the Properties within Los Olivos Hermoso shall be held, sold, and conveyed subject to the following easements, restrictions, covenants, and conditions, all

of which are for the purpose of enhancing and protecting the value, desirability, and attractiveness of the real property, and all of which are hereby declared to be for the benefit of all of the Property described herein and the Owners thereof, their heirs, successors, grantees, and assigns. These easements, restrictions, covenants, and conditions shall run with the real property and shall be binding on all parties having or acquiring any right, title, or interest in the described properties or any part thereof, and shall inure to the benefit of each Owner thereof.

2.2 The Plan. This Declaration hereby establishes a Plan for the individual ownership of property, both real and personal, and the shared ownership of common amenities. The restrictions establish and impose a general Plan for the maintenance, improvement, and development of said Property described herein and the adoption and establishment of covenants, conditions, and restrictions upon said land and upon any and all Townhome Units constructed or to be constructed thereon, and upon the use, occupancy, and enjoyment thereof.

2.3 Adoption and Approval of the Plan for the Property. The Board of Directors shall prepare and maintain a Plan for the Property to be approved by a majority vote of the eligible Owners of the properties. The Plan shall secure the unique physical layout, character, and visual identity of the Property within the Community Objectives of enhancing the value of the property, its attractiveness, and maintaining the desirability of a quality lifestyle. The Plan for the Property shall be supported by the Plan for Reserves, both of which shall form the basis for the preparation of the annual budget. The Plan for the Property shall be reviewed in detail during each succeeding fifth year of existence; any proposed changes in the Plan shall be submitted to the Owners for approval.

2.4 Adoption and Approval of the Plan for Reserves. The Board of Directors shall prepare and maintain a Plan for Reserves that shall secure the quality of the physical property by providing a plan for the future repair or replacement of the major physical elements of the common areas and facilities. The Plan for Reserves shall also include any changes approved by the Owners for future redevelopment of the Property or allocation of funds necessary for the time when Owners will have to make such decisions. The various Committees and the Board of Directors shall review the Plan for Reserves annually. The items scheduled for the next fiscal year shall form the basis for planning the Major Maintenance Budget each year. The Committees or the Board of Directors may not use the money allocated to each item in the Plan for Reserves for any other purposes without the approval of a majority of the eligible Members of the Association. The Plan for Reserves shall be updated each succeeding fifth year.

2.5 Adoption and Approval of the Annual Budget. The Annual Budget for the Association shall consist of two divisions: the Operations Budget and the Major Maintenance Budget. The Operations Budget shall control the income, expenses, management of the organization, the services required for maintenance of the property, and an operation reserve for emergency use only. The Major Maintenance Budget shall project for each year the work required to maintain, repair, replace, or redevelop the facilities and systems of the areas of Association responsibility identified in Section 6.3, paragraphs (a), (b), and (c). The budget shall also include a reserve item designated for emergency use only. The proposed Major Maintenance Budget for the next fiscal year shall be based on (i) a review of the items in the Plan for Reserves that are scheduled for the year, (ii) items that may need to be moved forward or delayed on the reserve cycle, (iii) emergency items needing attention, and (iv) current bids for all work proposed for the next fiscal year. If the committees and the Board of Directors are proposing changes in the order of items in the Plan for Reserves, such changes must be reported to the Members and receive the approval of a majority of the eligible Members of the Association.

2.6 Responsibility for the Plan. This Declaration designates the Association with the responsibility for the direction, management, and enforcement of the Plan for the Property. However, the fundamental responsibility for implementing the Plan rests directly with each Owner of a Lot. Adherence to the restrictions, covenants, and conditions of the Plan requires that each Owner give up a certain degree of personal freedom of choice in the interest of securing the ultimate goal of the Plan: a community with a unique physical character and visual identity that, in its totality, is far greater and more valuable than could ever be achieved by each Unit acting independently. Such an identity begins with each Owner's attention to the details of his or her own Unit in conjunction with the overall Plan and the contribution such details make to the visual unity and attractiveness of the whole. Ultimately, the highest value to be achieved by each Unit will be attained due to the identity of that Unit in a cohesive community, which clearly demonstrates that residents work together to maintain its unique physical setting and quality of life. With this Plan as a goal, every conveyance of any said Townhome, or property, or portion thereof shall be and is subject to the easements, covenants, conditions, and restrictions contained in this document.

ARTICLE 3. COMMUNITY STANDARDS AND RESTRICTIONS

ARCHITECTURAL STANDARDS AND PROCEDURES

3.1 Architectural Control. No excavation or grading work shall be performed on any Lot and no improvements of any kind shall be constructed or installed on any Lot without the prior written approval of the Board. This directive includes, but is not limited to work on an addition, exterior alteration, structural alteration, repair, change of the exterior appearance (including paint color) of a Unit or the lot in any way after the date this Restated Declaration is recorded without the prior written authorization of the Board of Directors.

3.2 Architectural Approval Procedures. Any Owner desiring approval of the Board of Directors for the construction, installation, addition, alteration, repair, change, or replacement of any improvement that would alter the exterior appearance of his or her Lot or the improvements located thereon shall submit to the Architecture Committee a written request for approval. Such request shall include plans and specifications showing the nature, kind, shape, color, size, materials, and location of such modification, additions, or alterations that the Owner desires to perform. Any Owner requesting the approval of the Board of Directors shall also submit to the Committee any additional information that either the Board or Committee may reasonably request. The Architecture Committee shall review the plans as to conformity and harmony of external design and location with existing structures in the Property. The Committee may not recommend approval of any additions, modifications, or alterations that are in violation of the Community Documents; such approval may be granted only by a majority vote of the Board of Directors. In the event that the Architecture Committee fails to recommend approval or disapproval of an application within forty-five (45) days of the application, together with all supporting information, plans, and specifications reasonably requested by the Architecture Committee that have been submitted to it, approval will not be required and this Section shall be deemed to have been satisfied by the Owner who requested approval of such plans.

3.3 Architectural Enforcement. Any construction, alteration, or other work done in violation of Sections 3.1 – 3.18 shall be deemed to be nonconforming and the Owner of the Lot shall be given notification and an opportunity to be heard at the next Meeting of the Board of Directors (Bylaws Article 7.). Such nonconformance is subject to the following terms and conditions: (i) the Owner shall appear at the hearing of the Board of Directors, or the Owner shall, at his or her own cost and expense, remove such nonconforming construction, alteration, or other work; (ii) should an Owner fail to

respond to the written notice or to remove the violation and restore the property as requested, the Board shall have the authority, on behalf of the Association, to pursue all legal and equitable remedies available to enforce the provisions of this Section and the decisions of the Board of Directors to remove the violation, and to restore the property to substantially the same condition as existed prior to the construction, alteration, or other work; (iii) all costs may be assessed against the Owner and or the subject Lot and collected as a specific assessment pursuant to Section 5.5. The Board of Directors may exclude any contractor, subcontractor, agent, employee, or other invitee of an Owner who fails to comply with the terms and provisions of these Sections and the Architecture and Landscape Rules and Regulations of the Association, subject to the notice and hearing procedures contained in the Bylaws Article 7. In any event, neither the Association, its Directors, nor its officers shall be held liable to any person for exercising the rights granted by this paragraph

3.4 Antennas. Antennas one meter or less in diameter or diagonal measurement which are designed for over-the-air reception of signals from direct broadcast satellites (DBS), multi-channel multi-point distribution (wireless cable) providers (MMDS) or television broadcast stations (TVBS), together with their associated mounting hardware and mast, if applicable (an "Antenna System") and which are placed, installed, or kept on a Lot must comply with the following restrictions, unless the particular restriction would impair the user's ability to receive signals from a provider of DBS, MMDS, or TVBS (a "Provider"):

(a) An Antenna System must be placed on the Lot in such a manner as to not be visible from any other Lot, the common area, or any street.

(b) If an Antenna System cannot be placed on the Lot in such a manner as to not be visible from any other Lot, the common area, or any street without impairing the user's ability to receive signals from a Provider, an Antenna System must be screened by landscaping or by some other means so that it is not visible from any other Lot, the common area, or any street, unless screening would impair the user's ability to receive signals from a Provider, in which case an Antenna System must be screened by landscaping or by some other means to reduce the greatest extent possible its visibility from other Lots, the common area, or street without impairing the user's ability to receive signals from a Provider.

(c) If no other location is available without impairing the user's ability to receive signals from a Provider and an Antenna System must be mounted on a residence or other structure and is visible from any Lot, the common area, or any street, the Antenna System must be painted a color which will blend into the background against which the Antenna System is mounted.

(d) Antenna Systems designed to receive video program services from MMDS or TVBS which require masts to receive an acceptable signal must be mounted on masts which do not exceed twelve feet (12') in height above the roofline, provided that no mast shall be higher than the height necessary to establish line of sight contact with the transmitter.

A restriction contained in this Section 3.4 shall be deemed to impair the user's ability to receive signals from a Provider if compliance with the restriction would unreasonably delay or prevent installation, maintenance, or use of an Antenna System; unreasonably increase the cost of installation, maintenance, or use of an Antenna System; or preclude reception of an acceptance quality signal. No dish that exceeds one meter in diameter or diagonal measurement, or any television or radio antenna, or any mast that exceeds twelve feet (12') in height above the roofline may be placed, installed, constructed, or kept on any Lot without the prior written approval of the Board of Directors. For the installation of all other antennas or dishes for the transmission or reception of television or radio signals including without limitation, satellite or microwave dishes, or support thereof, that are smaller than these measurement, Owners are required to notify the Board of Directors when the installation of such equipment takes place.

3.5 Arbors, Trellises, Shade Covers, and Awnings; Sunshades and Umbrellas. Plans for the addition of arbors, trellises, shade covers, awnings, and rollup shades must have approval of the Board of Directors prior to construction or installation and shall conform to the Architectural Guidelines for such additions. When umbrellas are planned they must be selected in plain designs or subtle patterns and neutral colors that coordinate with the architectural colors and materials of the Property.

3.6 Color Schemes. By vote of a majority of the Members who are eligible to vote, the Association shall establish from time to time a paint color scheme for the exterior of all buildings, which, to the extent possible, shall be colors that blend with the natural surroundings. All projections above the roof, including firewalls, chimneys, plumbing vents, attic ventilators, or other apparatus, shall be painted to match the stucco material.

3.7 Decorations, Displays, Accessories, and Devices. Anything added to the Lot that is not part of the original plans and specifications shall be considered a decoration, display, accessory, or device. The addition or replacement of accessories or devices of any type requires the approval of the Board of Directors. Where decorations and displays are allowed they should be planned to enhance the individual architectural design features of each Unit within the following guidelines:

(a) Materials. Natural flowers and foliage may be used in architectural pottery on a seasonal basis and should be selected so that both the container and the plants are an aesthetic addition to the property; dead plants and empty containers should be removed from public display. Dried natural materials and artificial floral and foliage materials may be used on front door, entry court, and entry gate decorations during the year and anywhere on the front of the Unit/Carport (except the carport parking slab) in holiday decorations.

(b) Seasonal Decorations. Natural flowers and foliage may be displayed in containers any time of the year on the Lot sidewalk slabs from the curb to the front door, on the block wall of the front patio, and on the freestanding block wall at the corner of the carport. Seasonal decorations with dried or artificial materials may be placed on the front door, in the entry court, and on the entry gate anytime of the year. Seasonal decorations should be changed or removed in a timely manner.

(c) Holiday Decorations. Such decorations may be displayed for one month before the holiday and should be removed within two weeks following the holiday. Holiday decorations may include lights, and natural and artificial materials. Holiday decorations may be placed anywhere on the Lot landscape and the Unit/Carport except the carport parking slab.

(d) Images. No reproductions, imitations, likenesses, or caricatures, etc., of birds, animals, insects, deities, or fictional characters, etc. shall be placed outside of the entry court of the Unit at any time except when used in holiday decorations.

(e) Displays. One flag (United States of America or State of Arizona) not to exceed fifteen (15) square feet may be flown from the front of the carport on a staff fixed to the carport or to the supporting column. The flag is to be mounted at an angle of approximately forty-five (45°) degrees to the carport. No other bunting or pendants may be displayed. Members who wish to install a flagpole must have the prior approval of the Board of Directors regarding the size and location of the pole.

It is expressly acknowledged and agreed by all parties concerned that this Section is for the mutual benefit of all Owners and is necessary for the protection of the rights of all Owners.

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

of Directors. After approval by the Board of Directors, any change, deletion, or addition to the approved plans and specifications must also be submitted to the Board of Directors for approval.

3.9 Governmental Approval. The approval required by the Architecture Committee pursuant to this Section shall be in addition to, and not in lieu of, any approvals or permits which may be required under any federal, state, or local law, statute, ordinance, rule or regulation, including, but not limited to the ordinance requirements of the City.

3.10 Lighting. No exterior lighting fixture other than standard fixtures approved by the Architecture Committee shall be installed within or upon any Lot without adequate and proper shielding of the fixture so as not to be an annoyance or a nuisance to Owners or occupants of adjacent properties. The Board of Directors must approve all modifications of exterior lighting, in writing.

3.11 Maintenance of Buildings. No Residential Unit, building, structure, or element on any Lot or other property shall be permitted to fall into disrepair, and each such Residential Unit, building, and structure shall at all times be kept in good condition and repair, and adequately painted or otherwise finished. Any additions, accessories, or devices which have been added must also be maintained and require Board approval when replaced or altered in any manner. In the event any Residential Unit, building, or structure is damaged or destroyed, then, subject to the approvals required by this Declaration, such Residential Unit, building, or structure shall immediately be repaired, rebuilt, or shall be demolished.

3.12 Maintenance of Roofs. The Owner of each Lot is responsible for the maintenance, repair, and replacement of all roof finishes, materials, and structural members. The Association requires that the sloping roof on the back of each Unit be the color "tile-red". Those Units with roof tiles on the back sloping roof shall make repairs or replace with matching tiles. When replacement is necessary on the back sloping roof of all other Units, Owners are required to replace the existing materials with shingles the color of red tile. The Lot Owner may select the material and color used for the other roof sections of the Unit as long as the Owner complies with the guidelines for roof maintenance provided by the Architecture Committee. Roof debris should be removed periodically and visible roof debris at least annually.

3.13 No Architecture Waiver. The approval by the Board of any construction, installation, addition, alteration, repair, change, or other work pursuant to Sections 3.1-3.18 shall not be deemed a waiver of the Board's right to withhold approval of any similar construction, installation, addition, alteration, repair, change, or other work subsequently submitted for approval.

3.14 Nuisances and Construction Activities. Normal construction activities and parking in connection with the building of improvements on a Lot or other Property shall not be considered a nuisance or otherwise prohibited by this Declaration, but Lots and other Property shall be kept in a neat and tidy condition during construction periods; trash and debris shall not be permitted to accumulate; and supplies of brick, block, lumber, and other building materials will be piled only in such areas as may be approved in writing by the Board of Directors. In addition, any construction equipment and building materials stored, or kept on any Lot, or other Property during the construction of improvements may be kept only in areas approved in writing by the Board of Directors, which may also require screening of the storage areas. The Board of Directors in its sole discretion shall have the right to determine the existence of any such nuisance.

3.15 Rooftop Coolers and Solar Equipment. The proposed plans for installation of solar panels or other solar heating devices, any appurtenant equipment, or replacement units and equipment must be reviewed by the Architecture Committee and receive written approval from the Board of Directors

prior to installation. Evaporative coolers are allowed; the Board of Directors prior to installation must approve the placement. The installation of all such equipment must minimize the view of the equipment from surrounding properties (Section 1.46).

3.16 Security Iron (Doors, Windows, and Gates) and Screen Doors. Proposed additions or replacements of such accessories and devices to the Unit require the prior written approval of the Board of Directors and should be selected not simply for the functional purpose of the item, but also for the very significant potential each has for being the most important architectural design feature of the Unit.

3.17 Temporary Occupancy and Temporary Buildings. No trailer, basement, or any incomplete building, tent, shack, garage, or barn, and no temporary buildings or structures of any kind, shall be used at any time for a residence, either temporary or permanent. Temporary buildings, trailers, or other structures used during the construction of improvements approved by the Board of Directors shall be removed immediately after the completion of construction, and in no event shall any such buildings, trailers, or other structures be maintained or kept on any property for a period in excess of six months without the prior written approval of the Board of Directors. No temporary structure shall be placed on any Lot until a dwelling shall have been erected or until a contract with a reliable and responsible contractor shall have been entered into for the construction of a dwelling that shall comply with the restrictions herein. No outbuilding shall be used for residential purposes.

3.18 Utility Service. No lines, wires, or other devices for the communication or transmission of electric current or power, including telephone, television, and radio signals, shall be erected, placed, or maintained anywhere in, or upon any Lot, or other property unless the same shall be contained in conduits or cables installed and maintained underground, or concealed in, under, or on buildings, or other structures in a manner approved by the Board. Any conduits, cables, or wires approved by the Board must be attached firmly to the structure and painted to match the surface to which they are attached. No provision of this Declaration shall be deemed to forbid the erection of temporary power or telephone service incident to the construction of buildings or structures approved by the Board.

COMMUNITY STANDARDS FOR USE OF LOTS, FACILITIES, AND STREETS

3.19 Animals. Owners, tenants, and other occupants shall be permitted to keep dogs, cats, or other common household pets on Residential Lots provided that such animals are not kept, bred, or maintained for any commercial purpose. No livestock or poultry of any kind shall be raised, bred, or kept on any Lot. Residents shall maintain their pets so they do not cause, create, or contribute to, or become a nuisance due to noise, presence of flies, insects, vermin, rodents, odors, or cause damage to property and landscape. All animals must be controlled in compliance with City of Phoenix Codes, as amended from time to time, when outside the Residential Unit. Occupants shall clean up after a pet when the pet is outside the Residential Unit and shall otherwise maintain their pets so that they do not create a health or safety hazard, or unreasonably interfere with the peace, quiet, and comfort of other residents. Failure of any occupant to adhere to such conditions shall be cause for the Board of Directors to declare that such occupant's pet is in violation of this Declaration and must be removed from the Property.

3.20 Clothes Drying Facilities. No outside clotheslines or other outside facilities for washing, drying, or airing clothes shall be erected, placed, or maintained on any Lot, or other property so as to be visible or heard from any neighboring property.

3.21 Diseases and Insects. No Person shall permit any thing or condition to exist upon any Lot or other property that shall induce, breed, or harbor infectious diseases, or noxious plants, or insects.

3.22 Drainage. No Residential Unit, structure, building, landscaping, fence, wall, or other improvement shall be constructed, invaded, placed, or maintained in any manner that would obstruct, interfere with, or change the direction or flow of water in accordance with the drainage plans for the Properties, or any part thereof, or for any Lot as shown on the drainage plans on file with the county or the City in which the Property is located.

3.23 Health, Safety, and Welfare. In the event additional uses, activities, and facilities are deemed by the Board to be a nuisance or to adversely affect the health, safety, or welfare of Owners, lessees, and residents, the Board may make rules restricting or regulating their presence in the Property as part of the Association Rules and Regulations.

3.24 Maintenance of Lawns and Plantings. The Association shall maintain all shrubs, trees, hedges, lawns, ground covers, and plantings of every kind located on (i) the Common Areas, (ii) the Areas of Shared Elements, and (iii) any non-street public or private right-of-ways, and drainage or easement areas adjacent to an Owner's Lot. Plantings shall be neatly trimmed and properly cultivated; and areas shall be free of trash, weeds, and other unsightly material. All landscape material maintained by the Association and Owners shall be pruned to prevent overhead encroachments and damage to buildings. Lot Owners shall maintain landscape material in the Area of Limited Shared Elements so that trees and shrubs do not damage walls, and vines do not reach the roof or hang over walls into adjacent property. Planting and maintenance in the Area of Shared Elements shall be within the guidelines of the Landscape Committee or have the prior approval of the Board of Directors.

3.25 Non-Owner Occupied Property. The Owner of a Lot occupied by persons other than the Owner of Record shall maintain with the Secretary of the Association information required on the Non-Owner Registration Form. The Owner shall update the required information within ten (10) days after a change in the information occurs. Units that are offered for occupancy by tenants shall require a minimum occupancy term of one (1) year. All Owners of residential rental property are required by State Statute to maintain with the office of the county assessor, current information regarding the identity of the Owner of the property and the Owner's correct address (A.R.S. 33-1902).

3.26 Overhead Encroachments. No tree, shrub, or planting of any kind on any Lot or other property shall be allowed to overhang or otherwise to encroach upon any sidewalk, street, pedestrian way, or other area from ground level to a height of eight feet without the prior approval of the Board.

3.27 Pressure Reducing Valve. Due to the high pressure of the water provided by the utility service, the Association requires that the water service line to each Lot be equipped with a valve that reduces such pressure on the residential service lines to the level that these lines were designed and installed to accommodate.

3.28 Resident Parking. Each Residential Unit is allocated two (2) parking spaces for its occupants and these two spaces are located on the parking slab in the carport area of the respective Unit; parking is not allowed on the driveway slab of the Unit. Residents may not park overnight in guest parking areas except when they are allowing a guest to park in their carport. Residents and guests may not park on any street, even on a temporary basis. Contractors with service vehicles for the Residential Unit shall not park on any street unless they are loading, unloading, or need continuous access to their vehicles.

3.29 No Commercial Use. No store, office, or other place of business, and no child care service, hospital, or sanitarium shall be erected or permitted on any Lot. No garage sales, yard sales, estate sales, or craft sales of any type are permitted on any Lot.

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

3.31 Rubbish, Trash, Containers, and Collection. All rubbish, trash, and garbage shall be regularly removed from the Residential Units, Lots, and the Common Areas and shall not be allowed to accumulate thereon. Items for disposal must be contained in covered containers (size and style to be approved by the Architecture Committee), trash bags and boxes, or bundled and tied for scheduled collection. In no event shall such containers, boxes, bags, or bundles be maintained so as to be visible from public view, except to make the same available for collection and then only for the shortest time reasonably necessary to effect such collection. Leaves and clippings shall not be discarded outside the block walls or in the Common Areas. No outdoor incinerators shall be kept or maintained on any Lot or other Property.

3.32 Security Systems. Each Owner, Lessee, or Resident may contract for security services that shall be paid for by the contracting party. All security devices shall be kept in good working order so as to prevent false alarms or other disturbances to neighbors. Security company signs may not be placed in the area of the Shared Elements; however, they may be placed in the carport planter, the front patio, or the entry court.

3.33 Signs. No signs of any kind (except one sign of not more than five square feet "for rent" or "for sale" per Lot), billboards, unsightly objects, or nuisances shall be erected, placed, or displayed to the public view, or be permitted to remain on the premises subject to this Declaration. No sign or directional indicators may be left at the Property entrance except those used during the hours that an open house is scheduled for the purpose of showing a property for sale or lease. The foregoing restrictions shall not apply to the requirements for signage to carry out the responsibilities of the Association for health, safety, directions, numerals, or the construction and maintenance of buildings and facilities.

3.34 Spas, Pools, and Tubs. No outdoor pools, spas, or tubs, may be installed, placed, or maintained on any Lot. Outdoor water features on individual Lots have the potential to attract insects and pests

that induce, breed, or harbor infectious diseases. An outdoor water feature installed, placed, or maintained on any Lot shall be maintained so that it does not create a health or safety hazard (Section 3.21), or unreasonably interfere with the quiet enjoyment of other residents (Section 3.40). The replacement of current spas, pools, and tubs shall not be allowed (Section 3.43).

3.35 Storage and Parking of Vehicles. There shall be no parking or storage upon any Lot or the Common Area of any commercial vehicle, tractor, mobile home or trailer (either with or without wheels), camper, camper trailer, boat, or other watercraft, or boat trailer. Vehicles parked in the carport shall be parked in such a manner that they do not extend beyond the joint of the carport slab and the driveway slab. No Owners, tenants, or other occupants shall repair or restore any vehicle of any kind upon any Lot or Common Area, except for emergency repairs, and then only to the extent necessary to enable movement thereof to a proper repair facility. Parking on any street within the Association Property is specifically prohibited.

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

3.37 Use of Area of Common Responsibility. Except in the individual, wall-enclosed rear yard, the front entry court (between the front door and the location of entry gates), and the front patio, no planting or gardening shall be done, and no fences, hedges, or walls shall be erected, or maintained upon any Lot, or the Common Area, that is not in accordance with the initial construction of the improvements located thereon or has not been approved by the Association's Board of Directors. Planting in the Area of Shared Elements shall be within the guidelines of the Landscape Committee or approval of the Board. Except for the right of ingress and egress, the Owners of Lots may use the property outside their respective Lots only in accordance with reasonable regulations as may be adopted by the Association's Board of Directors or as is expressly provided herein. It is expressly acknowledged and agreed by all parties concerned that this Section is for the mutual benefit of all Owners and is necessary for the protection of the rights of all Owners.

3.38 Use of Areas of Limited Shared Elements. Activities and items in Areas of Limited Shared Elements are in the public view at all times and thus their design, use, and upkeep may contribute significantly to the visual quality of the Property. The Owners who desire to individualize the Unit with patio furniture and container plantings should consider their selection in the context of the architectural colors and materials of the Property. These areas shall not be used as service yards or storage areas (equipment, tools, toys, bicycles, trash containers, woodpiles, etc.) unless the Unit block walls or community landscaping block such items from public view. Clotheslines and storage sheds shall be confined to the wall-enclosed rear yards and shall not be visible to public view. When not in active use, all furniture, equipment, tools, toys, bicycles, etc., shall be removed from the carport slab. The Board of Directors shall be consulted about appropriateness of activities and items in the Areas of Limited Shared Elements.

3.39 Use of Guest Parking. Use of guest parking areas is limited to short term guest parking. Guest vehicles may not be parked in guest parking for more than seven (7) consecutive days nor more than fourteen (14) days in a month without the written permission of the Board of Directors.

3.40 Use of Lots. Any activity constituting an unreasonable source of annoyance shall not be conducted on any Lot, or on the Common Area, or any part thereof; such activity is designated as a nuisance and the Association shall have standing to initiate legal proceedings to abate such activity. Each Owner shall refrain from any act or use of his or her Lot that could cause discomfort, embarrassment, or annoyance to other residents. No rubbish or debris of any kind shall be placed or permitted to accumulate upon, or adjacent to any Lot, or other Property, and no odors or loud noises shall be permitted to arise or emit there from, nor any activity that would render the Property unsanitary, unsightly, offensive, or detrimental to any other Property in the vicinity thereof or to its occupants. Without the prior written consent of the Association's Board of Directors, nothing shall be done or kept on any Lot, or on the Common Areas, or any part thereof to increase the rate of insurance on the Properties or any part thereof over what the Association, but for such activity, would pay.

3.41 Use of Recreational Facilities. Use of the pools and tennis court is limited to Members, and their family, tenants, and social invitees and use must be within the rules of the facilities. State Laws impose strict restrictions on access to pools; the potential of liability to the Association from misuse is so great that all residents, whether using the pools or not, must share responsibility for monitoring the activities at the pools and requiring responsible behavior at all times.

3.42 Use of Streets. The streets in the Property are privately owned and maintained by the Association; due to the narrow width of the streets, the parking and speed restrictions must be observed by users and enforced by the Board of Directors to ensure clear access at all times for emergency vehicles and protection for pedestrians.

3.43 Grandfathered Conditions. Any constructed improvement, added element, or condition in existence on any Lot on April 1, 2005, shall not be in violation of this Declaration, or any rules, regulations, or guidelines adopted pursuant to this Declaration, except for such conditions for which the Owner of a Lot has received a notice of violation from the Association. Any replacement of the above items shall be required to conform to this Declaration and any rules, regulations, and guidelines in effect at the time of such replacement. This paragraph does not affect the requirement that all Owners comply with all city, county, state, or federal laws, statutes, or ordinances.

ARTICLE 4.

THE ASSOCIATION: ORGANIZATION, MEMBERSHIP, AND VOTING

Each Owner of a Lot in the Property, by virtue of being an Owner and for so long as he or she remains an Owner, shall be a Member of the Association. The rights, duties, privileges, and obligations of a Member and the powers, rights, and duties of the Association shall be those set forth in the Restated Articles of Incorporation, this Declaration, the Restated Bylaws, and the Association Rules and Regulations.

4.1 Name. The name of the Association shall be Los Olivos Hermoso - Townhome Association hereinafter sometimes referred to as the Association or the Corporation. The Association is an Arizona nonprofit membership Corporation charged with the duties and invested with the powers set forth herein. It was created by the Articles, and its affairs shall be governed by the Restated Articles and Restated Bylaws which shall not for any reason be amended, or otherwise changed, or interpreted so as to be inconsistent with this Declaration. The powers, rights, and duties of the Association and

Board of Directors shall be contained in this Declaration and in the Restated Articles of Incorporation, and the Restated Bylaws not inconsistent herewith.

4.2 Governing Body. The affairs of the Association shall be conducted by a Board of Directors and such officers as the Directors may elect or appoint, in accordance with the Restated Articles and Restated Bylaws of the Association, as same may be amended from time to time.

4.3 Powers of the Association. By a majority vote of the Board, the Association may from time to time and subject to the provisions of this Declaration amend, and repeal its Rules and Regulations. The Association Rules and Regulations may, among other things, restrict and govern the use of any area by any Owner, by the family of such Owner, or by any invitee, licensee, or lessee of such Owner; provided, however, that the Association Rules and Regulations may not unreasonably discriminate among Owners and shall not be inconsistent with this Declaration, the Restated Articles, or the Restated Bylaws.

4.4 Membership. Membership in the Association shall be limited to Owners of Lots located in the Property described in Exhibit A. An Owner of a Lot shall automatically, upon becoming the Owner of a Lot, be a Member of the Association, and shall remain a Member of the Association, until such time his or her Membership in said Association shall cease upon conveyance of the title thereto or may be suspended by the Board of Directors. Ownership of a Lot shall be the sole qualification and criteria for Membership. The foregoing is not intended to include persons or entities that hold an interest merely as security for the performance of an obligation. The Owner(s) of each Lot shall be entitled to one (1) Membership in the Association, and such Membership shall be subject to all of the provisions of the Association's Restated Articles of Incorporation, this Declaration, the Restated Bylaws, and the Association Rules and Regulations, as now in effect, or duly adopted, and amended.

4.5 Transfer of Membership. A Membership in the Association, or any right, or obligation arising from that Membership may not be assigned, transferred, pledged, conveyed, or alienated in any way, except upon the transfer of title to the Owner's Lot, and then only to the transferee of title, or by intestate succession, testamentary disposition, foreclosure of a mortgage of record, or other legal process as not in effect or as may hereinafter be established. Any attempt to make a prohibited transfer is void and will not be reflected upon the books and records of the Association. In the event the Owner of any Lot should fail or refuse to transfer the Membership registered in his or her name to the purchaser of such Lot, the Association shall have the right to record the transfer upon the books of the Association and to issue a new Membership to the purchaser and thereupon the old Membership outstanding in the name of the Seller shall be null and void as though the same had been surrendered.

4.6 Voting by Members. The Association Members who are entitled to vote shall be all those Owners as defined in Section 1.32 and whose voting rights have not been suspended as defined in Section 4.8. In Association voting, there shall be one (1) vote for each Lot, regardless of the number of Owners having an interest therein. The vote for each Lot 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. In the event more than one vote is cast for a particular Lot, none of said votes shall be counted, as the votes shall be deemed void. If any Owner or Owners cast a vote representing a certain Lot, it will thereafter be conclusively presumed for all purposes that he, she, or they were acting with the authority and consent of any other Owners of the same Lot. Every Owner entitled to vote on any action presented for Members' approval, may vote by written ballot (without a meeting), by written absentee ballot (with a meeting), or in person depending on whether a meeting of Members is scheduled for the approval action. The Association may also use the voting form written consent (without a meeting) to record the votes of the Members.

4.7 Cumulative Voting. Every Owner entitled to vote at any election of the Members of the Board of Directors may cumulate the votes which he or she is entitled to cast and give them to one candidate, or divide among the candidates, a number of votes equal to the number of Directors to be elected, multiplied by the number of votes to which he or she is entitled in accordance with the number of Lots owned.

4.8 Suspension of Member's Voting Rights and Use Privileges. The rights and privileges of Members are subject to suspension as follows: (i) in the event any Lot Owner shall be in arrears in the payment of any amounts due under any of the provisions of the Community Documents for a period of thirty (30) days, the Owner's rights to vote as a Member and to use the common facilities shall automatically be suspended, or (ii) if the Lot Owner shall be in default in the performance of, or in the breach of any of the terms of the Community Documents, other than delinquent assessments, for a period of thirty (30) days, said Owner's right to vote as a Member and to use the common facilities shall be subject to suspension by the Board of Directors. Prior to any decision to impose sanctions for a breach other than delinquent assessments, the Board of Directors shall give to the Lot Owner notice and an opportunity to be heard. If any of the Member's rights are suspended, such action shall continue until all payments and penalties are brought current and all defaults and breaches remedied, and such Member shall be considered a Suspended Member. A Member whose voting rights and use privileges are suspended continues to be liable to the Corporation for assessments and fees as a result of obligations and commitments made prior to the suspension.

4.9 Liability of Members to Third Parties. No Member of the Association is personally liable for the acts, debts, liabilities, or obligations of the Corporation (A.R.S. 10-3612) except as herein set forth.

4.10 Liability of Members of the Board, Officers, and Agents. No Member of the Board, or any agent, or any officer of the Association shall be personally liable to any Owner, or to any other person, including the Association for negligence; or for any error, or omission of the Board, the Association, its representatives, employees, or any agent; except for the willful and intentional misconduct of any such person.

ARTICLE 5. COVENANT FOR ASSESSMENTS

5.1 Creation of Lien of Assessments. Each Owner, on becoming the Owner of a Lot by acceptance of a deed therefore, whether or not it shall be so expressed in such deed, is deemed to covenant and agree to pay the following assessments to the Association in accordance with and subject to the limitations of this Declaration: (i) annual assessments or charges; (ii) special assessments, which may be established and collected as hereinafter provided; (iii) specific assessments against any particular Lot which are established pursuant to the terms of this Declaration; and (iv) common area assessments which may be assessed as hereinafter provided. All such assessments, together with charges for late payment of such assessments, reasonable attorney's fees, and costs actually incurred, shall be a charge on the land and shall be a continuing lien upon the Lot against which each assessment is made. If an assessment is payable in installments, the full amount of the assessment is a lien from the time the first installment of the assessment becomes due. No Owner of a Lot may exempt himself or herself from liability for his or her contribution toward the common expenses by waiver of the use or enjoyment of any of the common elements, services of the Association, or by abandonment of his or her Residential Unit. Each Lot Owner, for himself or herself, his or her heirs, successors, grantees, and assigns, covenants that with respect to charges so determined during the period that he or she is an Owner, he

or she will remit these charges directly to the Association, or to such other party or parties as directed by the Association's Board of Directors.

5.2 Creation of Personal Obligation of Assessments. Each assessment, together with charges for late payment of the assessment, reasonable attorney's fees, and costs incurred, in addition to being a charge on the land and a continuing lien upon the Lot, shall be the personal obligation of the person who was the Owner of such Lot at the time the assessment arose. This personal obligation shall not pass to his or her successor Owner unless it is expressly assumed by the successor or unless prior to such transfer of Ownership, a lien for such assessment shall have been filed in writing with the County Recorder; in which case, his or her grantee shall be jointly and severally liable for such portion thereof as may be due and payable at the time of conveyance, except no first mortgagee who obtains title to a Residential Unit pursuant to the remedies provided in the mortgage shall be liable for unpaid assessments which accrued prior to such acquisition of title.

5.3 Annual Assessment. In order to provide for the operation and management of the Association, and to provide funds for the Association to pay all common expenses, and to perform its duties and obligations under the Community Documents, including the establishment of replacement and maintenance reserves, the Board, for each assessment period shall recommend an annual assessment for the approval of the Members pursuant to Section 5.7. Annual assessments must be set at a uniform rate for all Lots and shall be paid in such manner and on such dates as may be fixed by the Board of Directors which may include, without limitation, acceleration of the annual assessment for delinquents. Unless the Board otherwise provides, the assessments shall be paid in monthly installments.

5.4 Special Assessment. In addition to the annual assessment authorized by Section 5.3, the Board of Directors may levy a special assessment against all Lot Owners provided, however, such assessment shall have the approval of a majority of the eligible votes of the Members of the Association. Special assessments shall be paid as determined by the Board, and the Board may permit special assessments to be paid in installments extending beyond the fiscal year in which the special assessment is imposed.

5.5 Specific Assessment. The Board of Directors may levy a specific assessment against a Member to reimburse the Association for actual costs plus reasonable attorney's fees incurred in bringing a Member and his or her Lot into compliance with the provisions of the Community Documents. The Board shall also have the power specifically to assess pursuant to this Section as, in its discretion, it shall deem appropriate. Failure of the Board to exercise its authority under this Section shall not be grounds for any action against the Association or the Board and shall not constitute a waiver of the Board's right to exercise its authority under this Section in the future with respect to any expenses, including an expense for which the Board has not previously exercised its authority under this Section. The Board may specifically assess Residential Units for the following expenses, except for expenses incurred for maintenance and repair of items that are the maintenance responsibility of the Association as provided herein:

(a) Expenses of the Association that benefit less than all of the Residential Units may be specifically assessed equitably among those Residential Units which are benefited according to the benefit received.

(b) Expenses of the Association which benefit all Residential Units, but which do not provide an equal benefit to all, may be specifically assessed equitably among all Residential Units according to the benefit received.

(c) Expenses associated with the maintenance, repair, or replacement of a Limited Shared Element shall be equally assessed against the Residential Units to which the Limited Shared Element is assigned (A.R.S. 33-1255).

(d) Expenses for repair and reconstruction of insured property that exceed the insurance proceeds, exclusive of items normally excluded from a property policy (Section 7.7).

5.6 Common Area Assessment. Any delinquent assessments, which are extinguished through the process of foreclosure or equivalent legal proceedings, may be reallocated by the Board of Directors and assessed equally to all Lots as a common area assessment (Section 5.16).

5.7 Adoption and Approval of Assessments and Budgets. After the annual audit of the Corporation's financial records for the preceding fiscal year has been completed by a certified public accountant, the Board shall prepare an annual report for the current year and a proposed annual budget and a proposed annual assessment for the next fiscal year, all of which shall be submitted to the Members at the annual meeting of the Association. If the proposed budget and/or the annual assessment are adopted, notice of the approval of the budget and/or the assessment shall be given to Members within thirty (30) days. If either the proposed budget or the proposed assessment is approved-as-amended or not approved, the Board of Directors shall provide to all Lot Owners within thirty (30) days (i) a summary of the amended budget or the budget that is currently in effect, and (ii) the amount of the approved annual assessment for the next fiscal year. The Board shall each month collect for each Lot one-twelfth (1/12) of said Lot's proportional share of the said annual assessment.

5.8 Computation of Assessment. It shall be the duty of the Board, at least one hundred (100) days before the beginning of the fiscal year and forty-five (45) days prior to the annual meeting of Members at which the budget shall be presented to the Members, to prepare a budget covering the estimated costs of operating the Association during the next fiscal year. The budget shall include a capital contribution establishing a reserve fund in accordance with a capital budget separately prepared and shall separately list general and Lot expenses, if any. In addition to the actual cost to the Association for the operation and capital expenses, the budget may contain such additional entries, as the Board of Directors shall determine necessary to meet and perform the purposes and duties of the Association. The prorata share for each Lot shall be 1/76 of the total amount determined. The Board shall cause a copy of the proposed budget, and the amount of the assessment to be levied against each Lot for the next fiscal year to be delivered to each Owner no less than fifteen (15) days nor more than thirty (30) days prior to the membership meeting. The budget and the assessment shall become effective when approved at the meeting by a vote, in person or by written absentee ballot, of at least a majority of the eligible votes of the total Association membership. In the event the membership disapproves the proposed budget or the Board fails for any reason to determine the budget for the next fiscal year, then and until such time as a budget shall have been determined as provided herein, the budget in effect for the then current year shall continue for the next fiscal year.

5.9 Assessment Increase. Notwithstanding any provisions contained to the contrary, the Board may establish an annual assessment that is not more than five percent (5%) greater than the immediately preceding fiscal year's annual assessment, if and only if, a majority of the eligible votes by the Membership is not available to either pass or reject a proposed annual assessment for the following year.

5.10 Assessment Period. The period for which the annual assessment is to be levied shall be the calendar year or a fiscal year as established by the Board.

5.11 Lots Subject to Assessment. All Lots as designated on the Plat shall be subject to assessment, such assessments to be in accordance with and subject to the limitations of this Declaration.

5.12 Failure to Assess. The omission or failure of the Board to fix the assessment amount or rate, or to deliver, or mail to each Owner an assessment notice shall not be deemed a waiver, modification, or

release of any Owner from the obligation to pay an annual assessment on the same basis as for the last year for which an assessment was made until a new assessment is made, at which time any shortfalls in collections may be assessed retroactively by the Board of Directors.

5.13 Rules Regarding Payment and Collection Procedures. Annual assessments shall be collected on a monthly basis. Special assessments, specific assessments, and common area assessments shall be collected as specified by the Board. The Board shall have the right to adopt rules and regulations setting forth procedures for the purpose of making assessments and for the payment and collection of the assessments, provided that the procedures are not inconsistent with the provisions of this Declaration. The failure of the Association to send a bill to a Member shall not relieve any Member of his or her liability for any assessment or charge under this Declaration, but the assessment lien therefore shall not be foreclosed or otherwise enforced until the Board of Directors has followed the procedure for notification and hearing (Section 5.14). The Association shall be under no duty to refund any payments received by it even though the ownership of a Lot changes during an assessment period; successor Owners of Lots shall be given credit for prepayments, on a prorated basis, made by prior Owners.

5.14 Effect of Nonpayment of Assessments: Remedies of the Association. Any assessments that are not paid when due shall be delinquent. Any assessment delinquent for a period of more than fifteen (15) days shall incur a late charge in an amount as the Board may determine annually according to current State Law. The Board of Directors shall cause a notice of delinquency to be given to any Member who has not paid within fifteen (15) days following the due date. If both the assessment and the late charge are not paid within thirty (30) days following the due date, the Member's rights to vote and to use privileges shall automatically be suspended, and the Member shall be given written notice of the suspension of rights and an opportunity to be heard at the next meeting of the Board of Directors. If both the assessment and late charges are not paid within forty-five (45) days following the date due, a Notice of the Pending Filing of Lien shall be given to the delinquent Member containing notification that a lien is to be filed within fifteen (15) days if payment of the assessment and all late charges are not received. If the assessment and all late charges are not paid within sixty (60) days following the date due, the Board of Directors shall cause a lien to be placed on the Lot, and, in addition the lien shall include the late charges from the date first due and payable, all costs of collection, reasonable attorney's fees actually incurred, and any other amounts permitted by law. In addition, the Board shall give Notice of the Pending Action to Foreclose its Lien if the payment of the assessment, late charges, and attorney's fees are not received within thirty (30) days. In the event that the assessment remains unpaid after ninety (90) days, the Association may, as the Board shall determine, institute suit to collect such amounts and to foreclose its lien (A.R.S. 33-1256). Each Owner, by acceptance of a deed or as a party to any other type of a conveyance, vests in the Association or its agents the right and power to bring all actions against him or her, personally, for the collection of such charges as a debt or to foreclose the aforesaid lien in the same manner as other liens for the improvement of real property. The Lien provided in this Article shall be in favor of the Association and shall be for the benefit of all other Owners. The Association, acting on behalf of the Owners, shall have the power to bid on the Unit at any foreclosure sale or to acquire, hold, lease, mortgage, or convey the Unit. No Owner may waive or otherwise except liability for the assessments provided for herein, including, by way of illustration, but not limitation, abandonment of the Unit. Any monies paid by the Member for an unpaid assessment shall be applied first to the principal amount unpaid and then to the costs accrued. Charges for late payment of assessments are enforceable as assessments under this Article. A judgment in any action brought under this section shall include costs and reasonable attorney's fees for the prevailing party.

5.15 Exempt Property. The following property subject to this Declaration shall be exempt from assessments created herein: (i) all properties dedicated to and accepted by local public authority; (ii)

the Common Areas; and (iii) all properties owned by a charitable or nonprofit organization exempt from taxation by the laws of the State of Arizona. However, no land or improvements devoted to dwelling use shall be exempt from said assessments.

5.16 Mortgagee Not Liable for Prior Assessment. Any mortgagee or any other party acquiring title or coming into possession of a Lot through foreclosure, purchase at a foreclosure sale or trustee's sale, or through any equivalent proceedings, such as, but not limited to, the taking of a deed in lieu of foreclosure, shall acquire title free and clear of any claims for unpaid assessments and charges against the Lot which became payable prior to such sale or transfer. Any such delinquent assessments, which are extinguished pursuant to this Section, may be reallocated and assessed to all Lots as a common area assessment (Section 5.6). Any assessments and charges against the Lot, which accrue prior to such sale or transfer, shall remain the obligation of the defaulting Owner of the Lot.

5.17 Subordination of Certain Liens to Mortgagee. Any lien which the Association may have on a Lot for the payment of assessments or other charges becoming payable on or after the date of the recording of a mortgage on the Residential Unit shall be subordinated to such mortgage. Such Association liens are also subordinate to liens for real estate taxes and other governmental assessments or charges against the Unit.

5.18 Lien for Assessments. All sums assessed against any Lot pursuant to this Declaration, together with late charges, costs, and reasonable attorney's fees actually incurred, as provided herein, shall be secured by a lien on such Lot in favor of the Association. Such lien shall be superior to all other liens and encumbrances on such Lot, except for (i) liens of ad valorem taxes, or (ii) liens for all sums unpaid on a first mortgage. All other persons acquiring liens or encumbrances on any Lot after this Declaration shall have been recorded shall be deemed to consent that such liens or encumbrances shall be inferior to future liens for assessments, as provided herein, whether or not prior consent is specifically set forth in the instruments creating such liens or encumbrances. A lien for unpaid assessments is extinguished unless proceedings to enforce the lien are instituted within three (3) years after the full amount of the assessments become due.

5.19 Evidence of Status of Assessment Payments. Upon receipt of a written request from an Owner, lien holder, escrow agent, or any other authorized person, the Association, within fifteen (15) days thereafter, shall issue to such Owner, lien holder, or other authorized person a certificate showing either: (i) that all assessments, late charges, and costs have been paid with respect to any specified Lot as of the date of such certificate, or (ii) if all assessments have not been paid, the amount of such assessments, late charges, and costs due and payable as of such date. The certificate is binding on the Association, the Board of Directors, and every Lot Owner if the certificate is requested by an escrow agency that is licensed (A.R.S. 33-1256). Failure to provide the certificate to the escrow agent within the time provided for in this Section shall extinguish any lien for any unpaid assessment then due. The Association may make a reasonable charge for the issuance of such certificates, which charges must be paid at the time the request for any such certificate is made. Any such certificate, when duly issued as herein provided, shall be conclusive and binding with respect to any matters therein stated as against any bona fide purchaser of, or lender on, the Lot in question.

5.20 Purposes for Which Association's Funds May Be Used. The Association shall apply all funds and property collected and received by it (including the assessments, fees, surplus funds, and all funds and property received by it from any other source) for the common good and benefit of the Properties, the Owners, and the residents by devoting said funds and property, among other things, to the acquisition, construction, alteration, maintenance, provision, and operation, by any manner or method whatsoever, of any and all land, properties, improvements, facilities, services, projects, programs, studies, and systems, within or without the Properties, which may be necessary, desirable, or beneficial

to the general common interests of the Properties, the Owners, and the residents. The Association may also expend its funds as authorized by laws of the State of Arizona or the charter of the City of Phoenix.

5.21 Surplus Funds. The Association shall not be obligated to spend, in any year, all the assessments and other sums received by it in such year, and may carry forward any balances remaining. The Association may establish reserves and may carry forward from year to year reserves as the Board in its discretion may determine to be desirable for the greater financial security of the Association and the accomplishment of its purposes.

5.22 Transfer and Disclosure Fees. The Board shall have the authority, on behalf of the Association, to establish and collect a transfer fee and a disclosure fee from the transferring Owner upon each transfer of title to a Lot in the Property. Both fees shall normally be payable to the Association at the closing of the transfer of the title to the Lot in the Property; however, if the sale of the property to the purchaser fails to take place, the Owner of the property shall pay to the Association, upon notification by the Board, only the disclosure fee. An Owner shall notify the Association's Secretary immediately upon the acceptance of a sale contract or an agreement to transfer the title. Such notice shall include the name of the purchaser, the current mailing address of the purchaser, the anticipated date of the transfer, and such other information as the Board may reasonably require. The Board shall within ten (10) days of notification send to the purchaser the Association Resale Disclosure Package. The Board shall have the sole discretion to set the amount and method of determining any such fees; the amount of such fees shall be set at a fixed dollar amount, determined each year at the time of the preparation of the annual budget, and shall be based on the Association's requirements for property inspection prior to transfer; preparation of the Association's Resale Disclosure Report; completion of mortgage company and title company Association Information Forms; and preparation of copies of all Community Documents, the Plan for Reserves, and Budget Sheets. The following transfers of property are exempt from the transfer and disclosure fee assessments: transfer of title to heirs arising due to the death of the Owner, creation of a trust, or the transfer of title to a mortgage lien holder due to a foreclosure proceeding.

ARTICLE 6.

AREAS OF RESPONSIBILITY FOR COMMUNITY MAINTENANCE

6.1 Areas of Responsibility. The Residential Units are constructed on various Lots within the Property and the ownership of an individual Unit (Section 1.32) is evidenced by a deed of a Lot, together with the improvements thereon, thus constituting a Townhome or Unit. Townhomes are joined by party walls to form multifamily buildings. Maintenance, upkeep, repair, and replacement of the individual Unit and the Limited Shared Elements (Section 1.26) shall be the sole responsibility of the individual Owners thereof. Maintenance, upkeep, repair, and replacement of party walls shall be governed by general rules of law regarding party walls (Section 6.5). Maintenance, upkeep, repair, and replacement of all Shared Elements (Section 1.41) and the Common Areas (Section 1.12) shall be the responsibility of the Association. Such divisions of responsibility for the Lot/Unit may be changed by a vote of a majority of the eligible Members of the Association.

6.2 Owner Responsibility. The individual Owners of Residential Units shall have the sole obligation and expense for the maintenance, repair, and replacement for the Residential Unit and elements located on the Lot except to the extent that any maintenance is provided by the Association (Section 6.3). The Owner's responsibility shall include elements located inside the Boundaries of the Residential Unit, the Limited Shared Elements (Section 6.4), as well as all structures, individual walls enclosing the rear yard and the carport slab. The Owner shall perform such maintenance in a manner consistent with the

Property standards, rules and regulations, and applicable covenants. An Owner shall do no act nor any work that will impair the structural soundness or integrity of the multifamily building (A.R.S. 33-1221), lessen the support of any portion of the Unit, impair any easement or hereditament, nor do any act, nor allow any condition to exist which will adversely affect the other Units or their Owners. The Owner is responsible for pest control treatment, and structural repair or replacement resulting from damage due to termites, insects, fungus, mold, dry rot, etc.

6.3 Association Responsibility. The Association shall manage all property and improvements in the Property and the Area of Common Responsibility, and shall use a reasonably high standard of care in directing the maintenance, repair, and replacement of said property so that the Property will reflect a high pride of ownership. Such management shall include:

(a) In the Common Area, and subject to the insurance and casualty loss provisions contained herein, the Association is responsible for the maintenance, repair, and replacement of all elements of the Common Area up to the exterior of the block wall fences enclosing rear yards, and up to the exterior of the side walls of buildings. The Association shall also maintain, repair, and replace those elements defined in this Declaration as Shared Elements (Section 6.4).

(b) In the Area of Lots, the Association shall provide the same maintenance upon all Lots, when determined by the Board of Directors to be in the best interest of the entire complex as follows: stucco repair and painting; painting only of the wood trim, fascia, siding, and posts; painting only of the carport ceilings, beams, and rafters. The Board may from time to time determine that additional maintenance of the buildings is in the best interest of the Association and the Owners. The Association shall also maintain, repair, and replace those elements on each Lot defined in this Declaration as Shared Elements (Section 6.4).

(c) At the interface between the Common Area and the Lot, the Association shall provide maintenance to the exterior surface of the block wall fences enclosing rear yards by painting only, and to the exterior surface of the side walls of buildings as follows: stucco repair and painting.

(d) The Association shall manage any accumulation of rubbish and trash in the Property and be responsible for the rubbish removal from all Common Areas and Shared Elements.

6.4 Elements of the Residential Unit and the Lot

(a) **Unit Boundaries.** If the exterior surfaces of the concrete-block firewalls, concrete floor slab, roof, and the front and back walls of the Unit are designated as Boundaries of the Unit, then all of these (firewalls, floor slabs, framing of roof and walls) as well as all of the following elements are identified as part of the Unit:

(i) Lath, furring, wallboard, plasterboard, plaster, paneling, tiles, wallpaper, paint, finished flooring, finished ceiling, and any other materials constituting any part of the interior finished surfaces of the Unit; and (ii) all spaces, interior partitions, fixtures, interior windows and doors, improvements and betterments, equipment, and utility and communication service lines and systems within the Boundaries of the Unit.

(b) **Limited Shared Elements.** Elements located outside the Unit Boundaries and in the Area of Common Responsibility bounded by and including, in the front of the Unit: the block walls or slump block walls of the front patio, the freestanding wall at the front corner of the carport, and the joint between the carport parking slab and the driveway slab; and in the back of the Unit: the block walls surrounding the rear yards are identified as Limited Shared Elements. Limited Shared Elements are designated to serve a single Unit, but are shared with all residents of the Property due to their physical location and visual impact on the aesthetic quality of the Properties. Limited Shared Elements include the following:

(i) Awnings, window boxes, doorsteps, stoops, porches, entryways, gates, patios, sidewalk slabs from the front patio wall to the front door, all exterior doors and windows, electrical

fixtures, security equipment, address numbers, and shade covers (fabric, plastic, wood, metal, vines); (ii) landscaping inside front patios, carports, and entry courts; landscaping, shade covers, and storage units in rear yards; (iii) roof finished materials, flashings, parapet walls; carports, carport posts, beams, rafters, piers, and parking slab; stucco and paint; wood fascia, siding, and trim; block walls, patio and carport slump block walls; walls enclosing rear yards and patios; (iv) electrical and communication service lines and equipment; and (v) water service and waste removal lines and equipment.

(c) **Shared Elements.** Elements located in the Area of Common Responsibility outside the line defined by the walls of the front patio, the freestanding wall at the front corner of the carport, and the joint between the driveway slab and the carport-parking slab, but inside the curb are Shared Elements. Such elements include the sidewalk slab from the curb to the front patio wall, driveway slab, and mailbox; landscaping between the front patio wall and the curb, between sidewalk slab and driveway slab, and between driveway slabs.

6.5 Party Walls. The rights and duties of the Owners of Townhomes within this Property with respect to Party Walls shall be governed by the following:

(a) **General Rules of Law to Apply.** Each wall, including walls enclosing rear yards, which is constructed as part of the original construction of the Townhome multifamily building and part of which is placed on the dividing line between separate Townhomes, shall constitute a Party Wall. With respect to any such Wall, each of the adjoining Owners shall assume the burdens and be entitled to the benefits of these restrictive covenants and, to the extent not inconsistent herewith, the general rules of law regarding Party Walls and liability for property damage due to negligence, or willful acts, or omissions shall be applied thereto.

(b) **Damage and Destruction of Party Walls**

(i) **Negligence or Willful Act of Occupant.** In the event any such Party Wall is damaged or destroyed through the act of one adjoining Owner, or any of his or her guests, tenants, licensees, agents, or members of his or her family (whether or not such act is negligent or otherwise culpable) so as to deprive the other adjoining Owner of the full use and enjoyment of such Wall, then the first of such Owners shall forthwith rebuild and repair the same to its prior good condition without cost to the adjoining Owner. Notwithstanding any other provisions of this Section, the Owner who by his negligence or willful act causes any Party Wall to be exposed to the elements shall bear the whole cost of furnishing the necessary protection against such elements.

(ii) **Deterioration.** In the event any such Party Wall is damaged or destroyed by some cause other than the act of one of the adjoining Owners, his agents, tenants, licensees, guests or family (including ordinary wear and tear and deterioration from lapse of time) then in such event both such adjoining Owners shall rebuild or repair the same to its prior good condition at their joint and equal expense.

(iii) **Fire or Other Casualty.** If a Party Wall is destroyed or damaged by fire or other casualty, then to the extent that such damage is not covered by insurance and repaired out of the proceeds of insurance, any Owner who has used the wall may restore it, and if another Owner or Owners have made use of the wall, they shall contribute to the cost of restoration thereof in equal proportions without prejudice; however, it is 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.

(c) **Right to Contribution Runs with Land.** The right of any Owner to contribution from any other Owner under this Section shall be appurtenant to the land and shall pass to such Owner's successors in title or interest.

(d) **Prior Approval Required.** In addition to meeting the other requirements of these restrictive covenants and of any building codes, or similar regulations, or ordinances, any Owner proposing to modify, make additions to, or rebuild his or her Townhome in any manner which requires the

extension or other alteration of any Party Wall shall first obtain the written consent of the Board of Directors and the adjoining Owner(s).

(e) Resolution of Differences. In the event of a dispute between Owners with respect to the repair, or rebuilding of a Party Wall, or with respect to the sharing of the cost thereof, then upon written request of one of such Owners addressed to the Association, the matter shall be submitted to arbitration under such rules as may from time to time be adopted by the Association. If no such rules have been adopted, then the rules of the American Arbitration Association shall govern. A determination of the matter by arbitration shall be binding upon the Owners, which arbitration may also determine and apportion the costs of the arbitration.

(f) Binding Effect. 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 such as took place while an Owner.

6.6 Neglect or Disrepair of Property. Each Owner shall be liable to the Association to the extent provided for by Arizona Law, for any neglect, deferred maintenance, or lack of repairs for the Residential Unit, landscape, equipment, or property not otherwise maintained by the Association. In the event any Unit is cited by the Board of Directors to be in need of repair and maintenance, the Owner shall be given written notice and an opportunity to be heard at the next meeting of the Board of Directors. The Owner shall, within ten (10) days of notification, either request a hearing at the next Board meeting or inform the Board that the repairs will be made. Within thirty (30) days from the date of notification, if the original request by the Board for correction of conditions is upheld, the Owner shall begin and proceed with diligence through completion of the maintenance or repair of said Unit in a good workmanlike manner in conformance with the original plans and specifications used in the construction of said Units.

6.7 Damage or Destruction of Property.

(a) Common Areas. Notwithstanding anything contained in this Declaration to the contrary, each Owner shall be liable to the Association, to the extent provided for by Arizona Law, for any damage to the Common Area and Common Elements, including, without limitation, any and all improvements, landscaping, or equipment, which results from the negligence or willful conduct of the Owner, any of his or her guests, tenants, licensees, agents, or members of his or her family. The Owner to the Association shall pay the cost to the Association of any such repair, maintenance, or replacement, required by such act or conduct, upon demand.

(b) Residential Unit(s). In the event any Unit is substantially damaged or destroyed by an Owner or any of his or her guests, tenants, licensees, agents, or members of his or her family, such Owner shall, within thirty (30) days from the date of the occurrence of the damage or destruction, begin and proceed with diligence through completion to repair and rebuild said Unit and any damage to adjacent Units or property in a good workmanlike manner in conformance with the original plans and specifications used in the construction of said Residential Units.

6.8 Resolution of Payment of Repair, Neglect, Disrepair, Damage, or Destruction of Property.

(a) In the event an Owner refuses or fails to repair or rebuild any and all damage to the Common Property, Unit, or adjacent property within the thirty (30) days period (Sections 6.6 and 6.7), the Association, by and through the Board of Directors, is hereby irrevocably authorized by such Owner to repair or rebuild any such Common Property, Unit and/or adjacent property in a good workmanlike manner in conformance with the original plans and specifications. The Owner shall then repay, upon demand, the Association in the amount actually expended for such repairs. The Association may enforce collection of any such amounts in the same manner and to the same extent as provided for in this Declaration for the collection of assessments (Section 5.14).

(b) Specific Assessment. Each Lot Owner agrees that the charges for repairs made by the Association, if not paid within thirty (30) days after demand, shall be delinquent and shall become a specific assessment against said Lot and Owner, which shall be enforced in a like manner as other assessments as referred in this Declaration.

(c) Insurance. Nothing contained in this Article 6 shall be construed in any way so as to relieve any insurance company from the payment of any and all amounts which would be payable under any policy or policies had not this Article been inserted.

(d) Dispute Resolution. In the event of a dispute between an Owner and the Board of Directors with respect to the cause of damage, or the extent of repairs necessitated, or with respect to the cost thereof, then upon written request of the Owner addressed to the Association, the matter shall be submitted to arbitration under such rules as may from time to time be adopted by the Association or its Board of Directors. If no such rules have been adopted, then the matter shall be submitted to arbitration under the rules of the American Arbitration Association. A determination shall be binding upon the Owner and the Association, which determination may also apportion the costs of the arbitration.

ARTICLE 7. INSURANCE

7.1 Association Responsibility. The Association shall maintain insurance for all the buildings, including all Townhomes, against loss or damage by fire or other hazards in an amount sufficient to cover the full replacement cost, including improvements and betterments installed by the Unit Owners, of any repair or reconstruction work in the event of damage or destruction from any hazard, and shall also obtain a broad form public liability policy covering all Common Elements, and all property damage, bodily injury, or death arising out of or in connection with the use, ownership, or maintenance of the common elements. Said insurance may include coverage against vandalism. Premiums for all such insurance, including that on individual Townhomes, shall be a common expense to the Association. All such insurance coverage, including insurance on individual Townhomes obtained by the Association, shall be written in the name of the Association as trustee for each of the Townhome Owners. In the event of damage or destruction by fire or casualty to any property covered by insurance written in the name of the Association, the individual Owners shall be responsible for payment of the deductible applicable to the insurance claim. The scope of this coverage shall be as follows:

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

(b) Comprehensive General Liability Insurance, including medical insurance, in an amount determined by the Board of Directors. Such insurance shall cover occurrences commonly insured against for death, bodily injury, and property damage arising out of or in connection with the use, ownership, or maintenance of the Areas of Common Responsibility and all other portions of the Property that the Association is obligated to maintain under this Declaration. Such insurance shall also include hired automobile and non-owner automobile coverage with cost liability endorsements to cover liabilities of the Owners as a Group to an Owner.

(c) Workman's Compensation insurance to the extent necessary to meet the requirement of the laws of Arizona.

(d) The insurance maintained under Section 7.1, paragraph (a) of this section shall include the Units and shall include improvements or betterments installed by Lot Owners, but shall not include the personal property of Lot Owners or any other persons possessing, occupying, or using the Property.

(e) If the insurance described in Section 7.1, paragraph (a) of this Section is not reasonably available, the Association promptly shall cause notice of that fact to be hand-delivered or sent prepaid by United States mail to all Lot Owners.

(f) The Association may carry any other insurance it deems appropriate to protect the Association or the Lot Owners.

(g) Insurance policies purchased by the Association shall, to the extent reasonably available, contain the following provisions:

(i) Each Lot Owner is an insured person under the policy with respect to liability arising out of his or her interest in the common elements or membership in the Association;

(ii) The insurer waives its right to subrogation under the policy against any Lot Owner or members of his or her household;

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

(iv) If, at the time of a loss under the policy there is other insurance in the name of a Unit Owner covering the same property covered by the policy, the Association's policy provides primary insurance (A.R.S. 33-1253);

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

(vi) Statement that the name of the insured is the Association;

(vii) For policies of hazard insurance, a standard mortgagee clause providing that the insurance carrier shall notify the first mortgagee named in the policy at least thirty (30) days in advance of the effective date of any substantive modification, reduction, or cancellation of the policy.

7.2 Individual Insurance. In addition to the aforesaid insurance required to be carried by the Association, any Owner may, if he wishes and at his own expense, obtain homeowner's hazard insurance, liability insurance, theft, and other insurance covering personal property damage and loss, provided, however, that no Owner shall be entitled to exercise his or her right to maintain insurance coverage in such a way as to decrease the amount which the Association, on behalf of all the Owners and their mortgagees, may realize under any insurance policy which the Association's Board of Directors may have in force on the property at any particular time. Insurance on the individual Unit obtained by such Lot Owner may be written in the name of the individual Owner.

7.3 Certificates of Insurance. An insurer that has issued an insurance policy under this Article shall issue a certificate or a memorandum of insurance to the Association and, upon request, to any Owner, mortgagee, or beneficiary under a deed of trust. Any insurance obtained pursuant to this Article may not be cancelled nor may the insurer refuse to renew the policy until thirty (30) days after notice of the proposed cancellation or nonrenewal has been mailed to the Association, each Owner, and each mortgagee or beneficiary under deed of trust to whom certificates of insurance have been issued.

7.4 Payment of Insurance Premiums. The premiums for any insurance obtained by the Association pursuant to this Declaration shall be included in the annual budget of the Association and shall be paid as a common expense by the Association.

7.5 Disbursement of Insurance Proceeds. With respect to any loss to any Area of Common Responsibility covered by the property policy under Section 7.1, paragraph (a), such loss shall be adjusted with the Association, but the insurance proceeds for that loss are payable to any insurance

trustee designated for that purpose, or otherwise to the Association, and not to any mortgagee or beneficiary under a deed of trust. The insurance trustee or the Association shall hold any insurance proceeds in trust for Lot Owners and lien holders as their interests may appear (A.R.S. 33-1253). All such insurance proceeds shall be deposited in a bank or other financial institution, the account of which bank or institution is insured by a federal governmental agency, with the provisions agreed to by said bank or institution that such funds may be withdrawn only by two signatures of Members of the Board of Directors, or by an agent duly authorized by the Board. The Board shall, upon receipt of the insurance proceeds, contract to rebuild or repair such damaged or destroyed portions of the property to as good a condition as formerly. The Board shall contract only with a licensed contractor who shall be required to provide full performance and payment bond for the repair, reconstruction, or rebuilding of such destroyed building or buildings. Subject to provisions of Section 7.6, the proceeds shall be disbursed first for the repair or restoration of the damaged property; Lot Owners and lien holders are not entitled to receive payment of any portion of the proceeds unless there is a surplus of proceeds after the property has been completely repaired or restored.

7.6 Repair and Reconstruction. Any portion of the Property for which insurance is required which is damaged or destroyed shall be repaired or replaced promptly by the Association unless any of the following apply:

- (a) The condominium is terminated, or
- (b) Repair or replacement would be illegal under any state or local statutes and ordinances regarding health and safety, or
- (c) Owners representing at least eighty (80%) percent of the Lot Owners, including every Owner of a Unit, or Limited Shared Element, or Shared Element, which will not be rebuilt, vote within sixty (60) days after the casualty not to rebuild (A.R.S. 33-1253).

7.7 Insufficient Insurance Proceeds. In the event the insurance proceeds are insufficient to pay all the costs of repairing and/or rebuilding the insured property, exclusive of items normally excluded from a property policy, to the same condition as formerly, the Board shall levy a specific assessment against all Unit Owners, as established by Section 5.5 above, to make up any deficiency for repair or rebuilding. In the event such insurance proceeds exceed the cost of repair and reconstruction, such excess shall be paid over to the respective mortgagees and Owners of the damaged Units, as their interests may then appear. Such payments shall be made to all such Owners and their mortgagees in proportion to their percentage interests.

7.8 Failure to Repair or Replace. If the entire damaged or destroyed area is not repaired or replaced: (i) the insurance proceeds attributable to the damaged Common Elements and the damaged Shared Elements, in proportion to their common element interest or as provided in this Declaration, shall be used to restore the damaged area to a condition which is compatible with the remainder of the Property, and (ii) the insurance proceeds attributable to damaged Units and damaged Limited Shared Elements which are not rebuilt shall be distributed in proportion to their common element interests or as otherwise provided in this Declaration to the Owners of those Units and those Limited Shared Elements, or to lien holders as their interests may appear, and (iii) the remainder of the proceeds shall be distributed to all the Unit Owners or lien holders as their interests may appear in proportion to the common element interests of all the Units (A.R.S. 33-1253).

ARTICLE 8.
RIGHTS AND OBLIGATIONS OF THE ASSOCIATION

8.1 Area of Common Responsibility. The Association, subject to the rights of the Owners set forth in this Declaration, shall be responsible for the exclusive management and control of the Area of Common Responsibility which includes the Common Area and all improvements thereon (including furnishings and equipment related thereto, if any), and the Shared Elements and Limited Shared Elements of each Lot. The Association shall manage such areas and elements so as to keep them in good order and repair, and in a clean, attractive, and sanitary condition pursuant to the terms and conditions of this Declaration, the Restated Articles of Incorporation, the Restated Bylaws, and the Association Rules and Regulations.

8.2 Enforcement. The Association shall have the right and duty to enforce, by any proceedings at law or in equity, all restrictions, conditions, covenants, reservations, charges, assessments, servitudes, liens, or easements now or hereafter provided for in any contract, deed, declaration, or other instrument which (i) shall have been executed pursuant to, or subject to, the provisions of this Declaration, or (ii) otherwise shall indicate that the provisions of such instrument were intended to be enforced by the Association. The Association shall have the right to expend Association money in enforcement of such provisions; and the Owner of any Lot or anyone of more of said parties shall also have the right to enforce said provisions. Failure by the Association or by any Owner to enforce any covenant or restriction contained in this Declaration, the Restated Bylaws, or the Association Rules and Regulations shall in no event be deemed a waiver of the right to do so thereafter.

8.3 Member's Right to Hearing. A Membership in the Association may not be suspended and no fines, or penalties against a Member for violations of the Community Documents, other than delinquent assessments, may be imposed, except pursuant to a procedure that is set forth in the Restated Bylaws giving notice and an opportunity to be heard by the Board of Directors. Any proceeding challenging suspension or other sanctions, including the proceedings for which defective notice is alleged, shall begin within six (6) months after the effective date of such suspension or sanctions. Any Member who has been suspended shall remain liable to the Association for dues, assessments, or fees as a result of the obligations incurred or commitments made prior to suspension.

8.4 Suspension of Rights and Privileges of Owners. In the event any Owner fails to perform, or breaches, or violates any provision, restriction, or requirement contained in this Declaration, the Restated Bylaws, or the Association Rules and Regulations, the Board may, without in any way limiting any of its other rights, and in its sole discretion, initiate the procedures as outlined in the Restated Bylaws to suspend the rights and privileges of the Owner in the Association or take any other action deemed appropriate by the Board, including, but not limited to, the following:

- (a) Deprive said Owner of all rights to vote and to use privileges;
- (b) Identify said Owner as a Suspended Member or as delinquent and not in good standing in any directory listing the names and addresses of the Owners and Members of the Association;
- (c) Impose fines and penalties.

8.5 Equal Treatment of Owners. The Association or the Board of Directors that in any manner would discriminate against any Owner or Owners in favor of the other Owners shall at any time take no action.

8.6 Shared Elements. The Association has the responsibility to manage, maintain, repair, and replace those elements on each Lot identified in this Declaration as Shared Elements.

8.7 Services. The Association may obtain and pay for the services of any person or entity to manage its affairs or any part thereof, to the extent it deems advisable, as well as such other personnel as the Association shall determine to be necessary or desirable for the proper operation of the Properties, whether such personnel are furnished or employed directly by the Association or by any person or entity with whom or with which it contracts. The Association may obtain and pay for legal, management, secretarial, accounting services, and consultants necessary or desirable in connection with the operation of the Properties and the enforcement of Community Documents; and to the extent not inconsistent with the laws of the State of Arizona and upon conditions as are deemed advisable to the Board, to delegate to any said persons its rights, powers, and duties except those powers and duties specifically reserved to the Board of Directors by the Restated Bylaws of the Association. The Association shall arrange as an Association expense with third parties to furnish water, sewer service, trash collection, and other common services to each Lot; and shall provide insurance (Article 7) or promptly inform Lot Owners that such insurance is not reasonably available (Section 7.1).

8.8 Borrowing. The Board of Directors shall have the power to borrow money within the limits cited in the Restated Articles of Incorporation and the Restated Bylaws for the purpose of repair, restoration, or redevelopment of the Common Area and facilities with the approval of a majority of the eligible votes of the Members of the Association.

8.9 Personal Property and Real Property for Common Use. The Association, through action of the Board of Directors, may acquire, hold, and dispose of tangible and intangible personal property and real property with the approval of a majority of the eligible votes of the Members of the Association.

8.10 Implied Rights. The Association may exercise any other right or privilege given to it expressly by this Declaration, the Restated Articles of Incorporation, or the Restated Bylaws, and every other right or privilege reasonably to be implied from the existence of any right or privilege given to it herein or reasonably necessary to effectuate any such right or privilege.

8.11 Rules and Regulations. In addition to the right to adopt and enforce reasonable rules and regulations on the matters expressly mentioned in this Declaration, the Association through its Board of Directors, shall have the right to adopt and enforce rules and regulations with respect to all other aspects of the Association's rights, activities, and duties, provided said rules and regulations are not inconsistent with the provisions of this Declaration. Copies of the rules and regulations and any amendments thereto shall be furnished to all Owners prior to the effective date of such rules. Sanctions may include reasonable monetary fines and suspension of the right to vote, and the right to use the common area and recreation facilities. The Board shall, in addition, have the power to seek relief in any court for violations of such rules and regulations or to abate nuisances. Imposition of sanctions shall follow the procedure of notification and hearing as provided in the Restated Bylaws, and as provided for in Fines and Penalties (Section 8.12). In addition, the Association, through the Board of Directors, may, by contract or other agreement, enforce city, county, and state laws or permit authorities of such jurisdictions to enforce such laws on the Properties for the benefit of the Owners and residents.

8.12 Fines and Penalties. The Association shall have the power to impose monetary penalties upon the Owner(s) of Lots for violations of this Declaration, the Restated Bylaws, and the Association Rules and Regulations (A.R.S. 33-1242). This power shall apply to violations by the Owner(s), and the Owner(s) shall be liable for any violation committed by a family member, guest, tenant, or other occupant of the Owner's Unit. The amount of monetary penalties shall be determined based on the nature of the offense and the number of violations. A schedule of the range of monetary penalties for the next fiscal year shall be presented by the Board of Directors at the Annual Meeting for the approval of a majority of the eligible Members of the Association. The amount so established by the

Association's Board of Directors shall range from a minimum of \$20.00 to a maximum of \$500.00 per occurrence. Prior to imposition of any sanction, except those for delinquent assessments, the Board of Directors shall serve the Owner(s) of the Lot with written notice of the violation, the proposed sanction, and an opportunity to be heard at the next Board Meeting. Notice shall be given at least fifteen (15) days in advance of the Board Meeting by hand delivery, or registered, or certified mail, return receipt requested. Unless the Owner(s) notify the Board within ten (10) days that they do request a hearing before the Board, the sanctions shall be imposed at that meeting of the Board. If it is subsequently determined that the Owner is guilty of a continuing violation, the Board may impose reasonable monetary penalties for each subsequent day of the violation and such continuing penalties shall remain in effect until the Owner notifies the Board that the violation has ceased and the Board has confirmed that this, in fact, is the case. The Association seeking a judgment lien against the Owner may enforce any penalties assessed against the Owner against the Lot of the Owner. The Association shall have a judgment lien for the fines, charges, and monetary penalties, after entry of a judgment lien in a civil suit for those fees, fines, charges, and penalties from a court of competent jurisdiction and the recording of that judgment lien in the office of the county recorder. The Association's judgment lien for monies other than those for assessments (charges for late payment of assessment, reasonable attorney's fees, and costs incurred for those assessments) may not be foreclosed and is effective only on conveyance of any interest in the real property.

ARTICLE 9.

RIGHTS AND OBLIGATIONS OF MEMBERS OF THE ASSOCIATION

9.1 Right to Hearing. An Owner receiving a written notice from the Board of Directors describing an alleged violation of the Community Documents, other than delinquent assessments, and the sanction proposed to be imposed is entitled to an opportunity to be heard at the next meeting of the Board of Directors. It is imperative that the Member request the hearing within ten (10) days or the stated sanction will be imposed at that meeting of the Board (Restated Bylaws).

9.2 Right to Appeal. Any Owner aggrieved by any action taken by the Board of Directors or by any committee shall have a right to appeal to the Association to consider same, as the Association Members have the final right to approve, rescind, or modify any action taken by the Board, or by any committee, if by a majority of the eligible votes entitled to be cast by the Members at any regular meeting or special meeting called for that purpose. Any aggrieved Owner desiring a special meeting of the Association to consider such action may call for such a meeting in the manner set forth in the Restated Bylaws of the Association.

9.3 Right to Challenge the Validity of Corporate Action. Any Member of the Association may challenge the Corporation's power to act by requesting a special meeting of the Members of the Association to present such a challenge (Bylaws 2.2), and/or by initiating a proceeding against the Corporation to enjoin the act.

9.4 Member's Delegation of Use. Any Member, whose use privileges have not been suspended, may delegate, in accordance with the Restated Bylaws, the Association Rules and Regulations, and limitations as may be adopted in accordance therewith, his or her right of enjoyment to the Common Areas and facilities to the members of his or her family, tenants, or social invitees and shall be deemed to have made a delegation of all such rights to the occupants of any leased Lot or to contract purchasers who reside on the Property. The Member who delegates such use privileges shall be liable for any violation of the Community Documents by a family member, guest, tenant, or other occupant of the Member's Unit.

9.5 Member's Easements of Enjoyment. Every Member shall have a right and easement of enjoyment in and to the Common Areas, and such easement shall be appurtenant to and shall pass with the title to each Lot. It is expressly acknowledged and agreed by all parties concerned that this paragraph is for the mutual benefit of all the Owners and is necessary for the protection of said Owners. Such right and easement of enjoyment shall be subject to this Declaration, the Restated Bylaws, and the Association Rules and Regulations as from time to time may be promulgated by the Board of Directors, and which may include, but shall not be limited to:

- (a) The right of the Association to limit the number of guests and Members;
- (b) The right of the Association to charge reasonable admission and other fees for the use of any recreational facility situated upon the Common Areas;
- (c) The right of the Association to dedicate or transfer all or any part of the Common Areas to any public agency, authority, or utility for such purposes and subject to such conditions as may be agreed to by the Members. No such dedication or transfer shall be effective unless: (i) an instrument agreeing to such dedication or transfer (A.R.S. 33-1252) and signed by Members representing eighty (80%) percent of the votes entitled to be cast by the Members has been recorded, and (ii) written notice of the proposed action is sent to every Member not less than thirty (30) days nor more than sixty (60) days in advance.
- (d) The right of the Association to suspend a Member's right to use the Common Areas for any period during which any assessment, late charge, or penalty of the Association against the Member's Lot remains unpaid, and for any period during which there exists any infraction of the Community Documents by a Member, the guests or tenants of the Member, or the persons possessing, occupying, or using the property of the Member.

9.6 Owner's Right to Enforce. The Owner of any Lot shall have the right to enforce all provisions, restrictions, conditions, covenants, reservations, charges, assessments, servitudes, liens, or easements now or hereafter provided for in any contract, deed, declaration, or other instrument which (i) shall have been executed pursuant to, or subject to, the provisions of this Declaration, or (ii) otherwise shall indicate that the provisions of such instrument were intended to be enforced by the Association.

9.7 Owner's Right to Ingress, Egress, and Support. Each Owner shall have the right to ingress and egress over, upon, and across the Common Area necessary for access to his or her Lot and shall have the right to lateral support for his or her Lot, and such rights shall be appurtenant to and pass with the title to each Lot.

9.8 Security. The Association may, but shall not be obligated to, maintain or support certain activities with the Properties designed to make the Properties safer than they otherwise might be. The Association shall not in any way be considered insurer or guarantor of security within the Properties, however, and the Association shall not be held liable for any loss or damage by reason of failure to provide adequate security or ineffectiveness of security measures undertaken. All Owners, tenants, guests, and invitees of any Owner, as applicable, acknowledge that the Association, its Board of Directors, and committees do not represent or warrant that any measures or guidelines for security such as increased lighting or adherence to parking restrictions will prevent loss by fire, smoke, burglary, theft, hold-up, or otherwise. Each Owner, tenant, guest, or invitee of an Owner, as applicable, acknowledges and understands that the Association, its Board of Directors, and committees are not insurers, and that each Owner, tenant, guest, and invitee assumes all risks for the loss or damage to said persons, to Units, and to the contents of Units, and further acknowledges that the Association, its Board of Directors, and committees have made no representation or warranties, nor has any Owner, tenant, guest, or invitee relied upon any representations or warranties, expressed or implied, including any warranty of merchantability or fitness for any particular purpose, relative to any security measures undertaken within the Properties.

ARTICLE 10.
APPLICATION OF COMMUNITY DOCUMENTS TO GUESTS AND OTHERS

10.1 Guests Subject to Community Documents. The provisions of this Declaration, the Restated Bylaws, and the Association Rules and Regulations are binding upon all Owners and also upon all other persons possessing, occupying, or using the Property, or any portion thereof, and the Association may enforce this Declaration, the Restated Bylaws, and the Association Rules and Regulations against all such other persons.

10.2 Community Documents Incorporated in Lease. The Declaration, Restated Bylaws, and the Association Rules and Regulations, shall be deemed incorporated within and made a part of every lease, rental, sublease, or other agreement, or understanding (collectively the "Lease") whereby an Owner or other person allows possession, use, or occupancy of any portion of the Property by another.

10.3 Notice to Lessee. No Owner shall allow that Owner's Lot to be occupied by persons other than the Owner and the Owner's immediate family, without first notifying the proposed Lessee or occupant in writing that use of the premises is subject to the Community Documents. The Owner shall secure from the Lessee a written agreement to abide by all the covenants, conditions, and restrictions contained in this Declaration, the Restated Bylaws, and the Association Rules and Regulations. The Lease shall also expressly condition the Lessee's right to occupy the Lot upon the observance by Lessee and the Lessee's Guests of the provisions of this Declaration, the Restated Bylaws, and the Association Rules and Regulations.

10.4 Action by Association. Any breach of the Community Documents by Lessee or any Guests of Lessee shall entitle the Association to initiate all available action in the name of the Association, or in the name of the Owner, or both, to enforce this Declaration, the Restated Bylaws, Association Rules and Regulations, and the Lease, including the termination of the Lease, and to be awarded exclusive possession of the Lot with respect to the Lessee.

10.5 Cost of Action by Association. In the event the Association institutes any legal action or takes other action to enforce this Declaration, the Restated Bylaws, or the Association Rules and Regulations, the judgment in such action shall include costs and reasonable attorney's fees for the prevailing party.

ARTICLE 11.
RIGHTS OF FIRST MORTGAGEES

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

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

(b) Any delinquency in the payment of assessments or charges owed by an Owner of a Lot subject to a First Mortgage held, insured, or guaranteed by such Eligible Mortgage Holder, Eligible Insurer, or Guarantor, or any other default in the performance by the Owner of any obligation under the Community Documents, which delinquency remains uncorrected for the period of sixty (60) days;

(c) Any lapse, cancellation, or material modification of any insurance policy or fidelity bond maintained by the Association;

11.2 First Mortgagee's Right of Inspection of Records. Any First Mortgagee will, upon written request, be entitled to (i) inspect the books and records of the Association, subject to the limitations cited in the Restated Bylaws, during normal business hours, (ii) receive within ninety (90) days following the end of any fiscal year of the Association, a financial statement of the Association for the immediately preceding fiscal year of the Association, and (iii) receive written notice of all meetings of the Members of the Association and be permitted to designate a representative to attend all such meetings.

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

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

ARTICLE 12. EASEMENTS

12.1 Easement for Utilities. There is hereby reserved to the Association blanket easements upon, across, over, and under the Property described in Exhibit A of this Declaration for access, ingress, egress, installation, replacing, repairing, and maintaining all utilities, including, but not limited to, water, sewer, gas, telephone, electricity, storm drainage, cable television system, or security system which the Association might decide to have installed to serve the Properties. By virtue of this easement, it shall be expressly permissible for the providing utility or service provider to erect, bury, and maintain the necessary equipment on said property, and to affix and maintain electrical and/or telephone wires, circuits, and conduits on, or under the roofs and exterior wall of Residential Units. It shall also be permissible for the Association or its designee, as the case may be, to install, repair, replace, and maintain or to authorize the installation, repairing, replacing, and maintaining of wires, conduits, cables, and other equipment related to the providing of any such utility or service. Should any party furnishing any such utility or service request a specific license or easement by separate, recordable document, the Board shall have the right to grant such easement. Notwithstanding anything to the contrary contained in this paragraph no sewers, electrical lines, water lines, or other utilities may be installed or relocated on said premises except as initially programmed and approved by the Board. This easement shall in no way affect any other recorded easements on said premises.

12.2 Easement for Encroachments. Each Unit and the Common Elements shall be subject to an easement for encroachments created by construction, settling, air conditioning equipment, overhangs, etc., as designed or originally constructed. A valid easement for said encroachments and for the maintenance of same, so long as it stands, shall and does exist. In the event the multifamily building is partially or totally destroyed and then rebuilt, the Owners of Residential Units agree that minor encroachments of parts of the adjacent Units or Common Elements due to construction shall be permitted and that a valid easement for said encroachment and the maintenance thereof shall exist.

12.3 Easements for Ingress and Egress. There are hereby created easements for ingress and egress for pedestrian traffic over, through, and across sidewalks, paths, walks, and lanes that from time to time may exist upon the Common Area. There is also created an easement for ingress and egress for pedestrian and vehicular traffic over, through, and across such driveways and parking areas as from time to time may be paved as intended for such purposes. Such easements shall run in favor of and be for the benefit of the Owners and occupants of the Units and their guests, families, tenants, and invitees.

12.4 Limitation on Transfer. An Owner's right and easement of enjoyment in and to the Common Area shall not be conveyed, transferred, alienated, or encumbered separate and apart from an Owner's Lot. Such right and easement of enjoyment in and to the Common Area shall be deemed to be conveyed, transferred, alienated, or encumbered upon the sale of any Owner's Lot, notwithstanding that the description in the instrument of conveyance, transfer, alienation, or encumbrance may not refer to such right and easement, or to the Common Area. An Owner's use privileges are, however, automatically suspended due to delinquent assessments and may be suspended by the Board of Directors for violations or breaches of the provisions of the Community Documents.

ARTICLE 13. GENERAL PROVISIONS

13.1 Binding Effect. The covenants, conditions, restrictions, and reservations contained herein shall run with the land and shall be binding upon all persons purchasing, leasing, subleasing, or occupying any Residential Unit on said Property, their heirs, executors, administrators, successors, grantees, and assigns. Said covenants, conditions, restrictions, and reservations shall be binding upon and effective against any Owner of said premises, including one whose title thereto is acquired by foreclosure of a mortgage and the sheriff's sale, or any procedure or proceeding in lieu of foreclosure of a mortgage, or by other operation of law. All instruments of conveyance of any interest of all or any part of said Lot shall contain reference to this instrument and shall be subject to the covenants, conditions, reservations, and restrictions herein as fully as though set forth in full, however, the terms and conditions of this instrument shall be binding upon all persons affected by its terms, whether express reference is made to this instrument or not.

13.2 Interpretation. Except for judicial construction, the Association shall have the exclusive right to construe and interpret the provisions of this Declaration. In the absence of any adjudication to the contrary by a court of competent jurisdiction, the Association's construction or interpretation of the provisions hereof shall be final, conclusive, and binding as to all persons and property benefited or bound by this Declaration. In the event of any conflict between the provisions of the Community Documents, the provisions of this Declaration, the Restated Articles of Incorporation, the Restated Bylaws, and the Association Rules and Regulations (in that order) shall prevail.

13.3 Laws, Ordinances, and Regulations.

(a) Every act or omission whereby a covenant, condition, or restriction 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 the Association, in the discretion of the Board of Directors.

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

(c) In the event any of the provisions of this Declaration are in conflict with applicable ordinances of the municipality in which the Property is located that are in effect as of the date this Declaration is recorded, such conflict shall be resolved and this Declaration interpreted so as to be consistent and in compliance with any such applicable ordinances.

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

13.4 Equal Treatment of Owners. The Association or the Board of Directors that in any manner would discriminate against any Owner or Owners in favor of the other Owners shall at any time take no action.

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

13.6 Restrictions Construed Together. All of the covenants, conditions, and restrictions of this Declaration shall be liberally construed together to promote and effectuate the fundamental concepts of the Properties as set forth in the Plan of Development, Article 2, of this Declaration.

13.7 Variances. The Association may grant to any Owner a right of variance or modification of and from any of the provisions of this Declaration, the Restated Articles, or the Restated Bylaws, and the Association Rules and Regulations, upon the unanimous approval of the Board, whenever it is determined by the Board that this would be in the best interests of the Association.

13.8 Non-Waiver. The delay, failure, or omission to enforce the provisions of any covenant, condition, or restriction contained in this Declaration in the event of any breach thereof shall not constitute a waiver of any right to enforce any such provision, or any other provisions of this Declaration, or acquiescence therein, and no right of action shall accrue, nor shall any action be brought or maintained by anyone whatsoever against the Board, the Association, or any Owner for or on account of the failure to bring any action or take any steps as to any breach hereof.

13.9 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.

13.10 Severability. Whenever possible, each provision of this Declaration shall be interpreted in such manner as to be effective and valid, but if the application of any provision of this Declaration to any person or to any property shall be prohibited or held invalid, such prohibition or invalidity shall not affect any other provision or the application of any provision which can be given effect without the invalid provision or application, and, to this end, the provisions of this Declaration are declared to be severable.

13.11 Rule Against Perpetuities. 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 (i) those which would be used in determining the validity

of the challenged interest, plus (ii) those of the issue of the Board who are living at the time the period of perpetuities starts to run on the challenged interest.

13.12 Restriction on Further Subdivision, Property Restrictions, and Rezoning. No Lot shall be further subdivided, or separated into smaller lots, or parcels. Any Owner, Lessee, or other Person against any Lot shall record no further covenants, conditions, restrictions, or easements without the provisions thereof having been first approved in writing by the Board of Directors. No application for rezoning variances or use permits pertaining to any Lot shall be filed with any governmental authority by any Person unless the Board of Directors and the proposed use have approved the application otherwise complies with this Declaration.

13.13 No Partition. Except as is permitted in this Declaration or amendments thereto, there shall be no physical partition of the Common Area or any part thereof, nor shall any person acquiring any interest in the Properties or any part thereof seek any such judicial partition until the happening of the conditions set forth in Section 7.6 in the case of repair and reconstruction, or unless the Properties have been removed from the provisions of this Declaration. This Section shall not be construed to prohibit the Board of Directors, with the approval of a majority of the eligible Members of the Association, from acquiring and disposing of tangible personal property nor from acquiring title to real property which may or may not be subject to this Declaration.

13.14 Change of Use. Upon (i) adoption of a resolution by the Board stating that in the Board's opinion the then present use of a designated part of the Common Area is no longer in the best interests of the Owners, and (ii) the approval of such resolution by Members casting more than eighty (80%) percent of the votes entitled to be cast by Members who are present in person or by absentee ballot at a meeting duly called for such purpose and who are entitled to use such Common Areas under the terms of this Declaration, the Board shall have the power and right to change the use thereof (and in connection therewith, construct, reconstruct, alter, or change the buildings, structures, and improvements thereon in any manner deemed necessary by the Board to accommodate the new use), provided such new use shall be for the benefit of the Owners and shall be consistent with any zoning regulations restricting or limiting the use of the Common Area.

13.15 Estoppel Certificate. Upon such terms and conditions as a majority of the Board of Directors may determine, the Association may issue an Estoppel Certificate binding the Association to the position or determination stated herein, and anyone interested therein shall be entitled to rely on the matters stated therein. Said certificate to be valid and binding on the Association shall be executed with the signatures of at least two (2) Members of the Board, or the President of the Board of Directors, and such other person or persons as the Board in its discretion may determine and designate.

13.16 Indemnification. The Association shall indemnify every Director and officer against any and all expenses, including counsel fees, reasonably incurred by or imposed upon any Director or officer in connection with any action, suit, or other proceeding (including settlement of any suit or proceeding, if approved by the then Board of Directors) to which he or she may be a party by reason of being or having been a Director or an officer. The Directors and officers shall not be liable for any mistake of judgment, negligent or otherwise, except for their own individual willful misfeasance, malfeasance, misconduct, or bad faith. The Directors and officers shall have no personal liability with respect to any contract or other commitment made by them, in good faith, on behalf of the Association (except to the extent that such Directors or officers may also be Members of the Association), and the Association shall indemnify and forever hold each such Director and officer free and harmless against any and all liability to others on account of any such contract or commitment. Any right to indemnification provided for herein shall not be exclusive of any other rights to which the Director or officer, or former Director or officer, may be entitled. The Association shall, as a common expense, maintain adequate

general liability and Directors' and officers' liability insurance to fund this obligation, if such insurance is reasonably available.

13.17 Amendment. These covenants, conditions, and restrictions may be amended at any time by an instrument signed by the then Owners representing in the aggregate not less than sixty-seven percent (67%) of the total number of Lots on said Property described in Exhibit A. Within thirty (30) days after adoption of any amendment pursuant to this Section, the Association shall prepare, execute and record a written instrument setting forth the amendment. An amendment to this Declaration is effective only on recordation in the same manner as required for this Declaration (A.R.S. 33-1227).

13.18 Term of This Declaration. This Declaration shall continue in full force and effect for a term of twenty (20) years from the date this Declaration is recorded. After which time, this Declaration shall be automatically extended for successive periods of ten (10) years each. This Declaration may be terminated at any time if such termination is approved by the affirmative vote, or written consent, or any combination thereof, of the Owners representing ninety (90%) percent or more of the votes of the Owners of Lots and by the holders of First Mortgages on seventy-five (75%) percent of the Lots upon which there are recorded First Mortgages.

13.19 Captions. The captions of each Article and Section hereof, as to the contents of each Article and Section, are inserted only for convenience and are in no way to be construed as defining, limiting, extending, or otherwise modifying, or adding to the particular Article or Section to which they refer.

13.20 Gender and Grammar. The singular, wherever used herein, shall be construed to mean the plural, when applicable, and the use of the masculine pronoun shall include the neuter and feminine.

13.21 Governing Law. This Declaration and all of its terms and conditions shall be governed by and construed in accordance with the laws of the State of Arizona.

IN WITNESS WHEREOF, the undersigned, being the President and the Secretary of the Association, hereunto set their hands as of the date first above written, and certify that by a duly held vote of the Association, as evidenced by the signatures of not less than seventy-five percent (75%) of the Owners, a copy of which signatures is attached hereto as Exhibit B, this Amended and Restated Declaration is approved.

LOS OLIVOS HERMOSO - TOWNHOME
ASSOCIATION

By: _____
Its: President

Attested: _____
Its: Secretary

STATE OF ARIZONA)
) ss.
County of Maricopa)

On this ____ day of _____, 2004, before me, the undersigned notary public, personally appeared _____ and _____ of Los Olivos Hermoso – Townhome Association, and that as such officers being authorized to do so, executed the foregoing instrument for the purposes therein contained, by signing the name of the Corporation.

Notary Public _____

MY COMMISSION EXPIRES: _____

EXHIBIT A

Property Description

Parcels One (1) through Seventy-Six (76) inclusive and Tracts A through J, LOS OLIVOS HERMOSO, according to the plat of record in the office of the County Recorder of Maricopa County, Arizona, in Book 170 of Maps, page 9.