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**DECLARATION OF COVENANTS, CONDITIONS, RESTRICTIONS
AND EASEMENTS FOR
ROGERS RANCH UNIT 2**

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RESTRICTIONS AND EASEMENTS FOR
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**DECLARATION OF COVENANTS, CONDITIONS, RESTRICTIONS
AND EASEMENTS
FOR ROGERS RANCH UNIT 2**

THIS DECLARATION OF COVENANTS, CONDITIONS, RESTRICTIONS AND EASEMENTS FOR ROGERS RANCH UNIT 2 (this "Declaration") is executed to be effective as of the 14th day of January, 2004, by THE RYLAND GROUP, INC, a Maryland corporation ("Declarant").

RECITALS:

A. Declarant is the owner of certain real property located in the City of Phoenix, Maricopa County, Arizona described on *Exhibit A* attached hereto and incorporated herein by this reference (the "Property"), to be developed as a community known as "Rogers Ranch Unit 2" (the "Project").

B. Declarant intends to form an Arizona nonprofit corporation for the purposes of, among other things, (i) holding title in fee to the Common Areas; (ii) constructing, administering, operating, repairing and maintaining the Areas of Association Responsibility; (iii) enforcing this Declaration; and (iv) establishing, collecting, disbursing and enforcing the Assessments provided for or created herein.

C. Declarant desires and intends that the Property shall be held, sold, leased and/or otherwise conveyed subject to the easements, restrictions, covenants, conditions, servitudes, assessments, liens and reservations in this Declaration, which: (i) are for the purpose of protecting the desirability and attractiveness of the Property; (ii) shall run with all of the real property comprising the Property; (iii) shall be binding on all parties having any right, title or interest in the Property, or any part thereof; and (iv) shall inure to the benefit of said parties and their successors and assigns.

NOW, THEREFORE, Declarant, as the present fee owner of the Property, hereby declares, covenants and agrees as follows:

ARTICLE 1

DEFINITIONS

As used in this Declaration, the following terms shall have the following meanings:

"Affiliate" of a Person means a Person that controls, is controlled by or is under common control with such other Person.

"Agency" means FHA, VA, Federal National Mortgage Corp., Federal Home Loan Mortgage Corp., or other governmental, quasi-governmental or private agency providing residential loan financing, guarantees or other accommodations.

"Annexable Property" means the real property described on **Exhibit "A-1"** attached hereto and incorporated herein by this reference.

"**Articles**" means the Articles of Incorporation of the Association, as amended or restated from time to time, on file with the Arizona Corporation Commission.

"**Areas of Association Responsibility**" means (a) all Common Areas; (b) all landscaping located between the back of the curb and the sidewalk along public rights-of-way adjacent to Common Areas unless responsibility for such areas is accepted by the City; (c) all signage within medians located in public rights-of-way within the Project unless responsibility for such areas is accepted by the City; (d) all cluster mailbox units for the Project; and (e) all land, and the Improvements thereon, which the Association is obligated to maintain, repair and replace pursuant to the terms of this Declaration or other Recorded instrument executed by Declarant or the Association.

"**Annual Assessments**" means the Assessments levied by the Board pursuant to *Section 8.4*.

"**Assessments**" means all assessments levied pursuant to *Article 8* and all fees, fines, penalties and charges due under this Declaration or the Association Rules.

"**Association**" means "Rogers Ranch Unit 2 Homeowners Association", an Arizona nonprofit corporation, and its successors and assigns; however, if such name is not available, Declarant reserves the right to use such other available name that it chooses.

"**Association Rules**" means the reasonable rules and regulations adopted by the Association pursuant to *Section 6.3*.

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

"**Builder**" means a Person in the business of, or a Person which has an Affiliate in the business of, constructing and selling homes or in the business of acting as a landbanker that sells lots to Persons who construct and sell homes, which purchases a Lot or Lots without Dwelling Units constructed thereon for the purpose of constructing Dwelling Units thereon and selling such Lots and Dwelling Units.

"**Bylaws**" means the Bylaws of the Association, as amended or restated from time to time.

"**City**" means the City of Phoenix or other municipality within which a portion of the Property may be located now or in the future.

"**Class A Member**" has the meaning given to it in *Section 7.2*.

"**Class B Member**" has the meaning given to it in *Section 7.2*.

"**Committee**" means the Design Review Committee formed pursuant to *Article 4*

"**Common Areas**" means (a) those portions of the Project, together with the buildings, structures and Improvements thereon, which the Association may, from time to time, own in fee, for as long as the Association holds fee title, except that Common Areas shall not include any Lot the Association acquires by foreclosure of the Assessment lien.

"**Common Expenses**" means the expenses of operating the Association, including all expenses listed in *Section 8.1* or *Section 9.1*.

"**Declarant**" means The Ryland Group, Inc., a Maryland corporation and each Affiliate thereof, and any assignee of Declarant's rights. Declarant may assign its rights by express Recorded instrument to a subsequent Owner of all or part of the Property.

"**Declaration**" means this Declaration of Covenants, Conditions, Restrictions and Easements, as amended or supplemented from time to time as herein permitted.

"**Design Guidelines**" has the meaning given to it in *Section 4.1*.

"**Designated Builder**" means any Builder that is designated by the Declarant as a "Designated Builder" in a supplemental declaration or in a written notice given by the Declarant to the Association and by such designation receives certain rights as expressly provided in this Declaration.

"**Dwelling Unit**" means any building, or part thereof, situated upon a Lot and intended for use and occupancy as a residence.

"**FHA**" means the Federal Housing Administration.

"**First Mortgage**" means a deed of trust or mortgage recorded against a Lot which has priority over all other deeds of trust or mortgages recorded against the same Lot.

"**Improvement**" means any building, wall, structure, landscaping, equipment or other item and any addition, alteration, repair, change or other work regarding any such item, including exterior paint, which in any way alters the exterior appearance of any part of a Lot and is Visible From Neighboring Property.

"**Lot**" means a lot created by a Recorded plat for the Property upon which a Dwelling Unit can be constructed and occupied pursuant to applicable law.

"**Member**" means any Person who is a member of the Association hereunder as provided in *Article 2*.

"**Membership**" means the combination of rights and duties of Members in the Association.

"**Occupant**" means any Person, other than an Owner, occupying or in possession of a Lot, or any portion thereof or any building or structure thereon, whether as a lessee under a lease or otherwise.

"**Owner**" (when capitalized) means (and any reference in this Declaration to "own", "owned" or "ownership" when used in reference to a portion of the Property shall be deemed to include) the Record holder of legal title to the fee simple interest in any Lot or, in the case of a Recorded "contract," as that term is defined in A.R.S. § 33-741(2), then the holder, of Record, of the purchaser's or vendee's interest under said contract, but excluding others who hold such title merely as security. If fee simple title to a Lot is vested of Record in a trustee pursuant to A.R.S. § 33-801 *et seq.*, then for purposes of this Declaration legal title shall be deemed to be held by the trustor (or the trustor's successor of Record), and not by the trustee.

"**Person**" means a natural person, corporation, partnership, limited liability company, trustee or any other legal entity.

"Project" means the planned community known as "Rogers Ranch Unit 2" to be developed on the Property.

"Property" means the real property more particularly described on *Exhibit A* attached hereto and incorporated by this reference.

"Record" "Recording" and "Recorded" means placing or having placed a document of public record in the Official Records of the County Recorder of Maricopa County, Arizona.

"Special Assessments" means the assessments, if any, levied by the Board pursuant to *Section 8.7*.

"VA" shall mean the United States Veterans' Administration.

"Visible From Neighboring Property" means, with respect to any given object, that all or a part of such object is or would be visible to an individual six (6) feet tall, standing at ground level on any portion of any Lot, tract or street within or adjacent to the Project.

ARTICLE 2

PROPERTY AND PERSONS BOUND BY THIS DECLARATION

2.1 General Declaration. This Declaration is established for the purpose of enhancing the value, desirability and attractiveness of the Property. Declarant hereby declares that all of the Property is and shall be held, conveyed, hypothecated, encumbered, leased, occupied, built upon or otherwise used, improved or transferred, in whole or in part, subject to this Declaration, as the same may be amended or modified from time to time. Subject to the terms hereof, this Declaration shall run with the Property for all purposes and shall be binding upon and inure to the benefit of Declarant, the Association, and all Owners and Occupants of the Property, any Person having an interest in all or a portion of the Property, and their successors in interest.

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

ARTICLE 3

EASEMENTS AND RIGHTS OF ENJOYMENT IN THE COMMON AREAS

3.1 Easements and Rights of Enjoyment. Each Owner shall have a nonexclusive easement for use and enjoyment in and to the Common Areas, which is appurtenant

to and shall pass with the title to each Owner's Lot. All Occupants shall have a nonexclusive, nontransferable temporary license to use and enjoy the Common Areas so long as they remain Occupants. The foregoing grant and rights are subject, among other things, to the following limitations:

- (a) The right of the Association to suspend the voting rights and the right to use and enjoy the Common Areas of any Owner or the Owner's Occupant:
 - (i) for any period during which an Assessment remains delinquent;
 - (ii) for a period not to exceed sixty (60) days for any infraction of this Declaration or the Association Rules; or,
 - (iii) for successive 60-day periods if any such delinquency or infraction is not corrected during any preceding suspension period;
- (b) The right of the Association to regulate and control use of the Common Areas pursuant to the Association Rules or otherwise in accordance with this Declaration; and,
- (c) The right of the Association to dedicate or transfer 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 Association in accordance with *Section 10.5*.

Notwithstanding the foregoing limitations, if ingress or egress to any Lot is through any part of the Common Areas, in no event shall an Owner or Occupant be denied access to such Owner's or Occupant's Lot.

3.2 Delegation of Use. Any Owner or Occupant, in accordance with the Association Rules and this Declaration, may delegate his rights of use and enjoyment in the Common Areas to the members of his family or his Occupants, employees, customers or guests subject to the limitations set forth herein and in the Association Rules. Each Owner or Occupant shall cause his family members, tenants, other Occupants, employees, invitees, permittees and guests to comply with this Declaration, the Articles, the Bylaws, and the Association Rules and, to the extent permitted by applicable law, shall be responsible and liable for all violations and losses caused by such family members, tenants, other Occupants, employees, invitees, permittees and guests, notwithstanding the fact that such family members, tenants, other Occupants, employees, invitees, permittees and guests are also fully liable for any violation of each and all of those documents.

3.3 Easement for Common Areas Maintenance. The Association shall have an easement upon, over, under and across all Lots and other property within the Project (except property owned by Declarant) for the purpose of (a) repairing, maintaining and replacing the Common Areas and other Areas of Association Responsibility and all Improvements thereon, and (b) performing all other rights, duties and obligations of the Association under this Declaration.

3.4 Utility Easements. All utility installations including, without limitation, electrical installations, must be placed underground unless the prior written consent is given by

the Declarant while there is a Class B Membership, or by the Association after the Class B Membership ceases to exist. All easements located in, on or under a Common Areas must be specifically agreed to by Declarant while there is a Class B Membership, or by the Association after the Class B Membership ceases to exist. Until the Class B Membership ceases to exist, Declarant may cause the Association to grant easements and licenses over, under and across the Common Areas as reasonably needed for development of the Project.

3.5 Access. If ingress or egress to any Lot is through Common Areas, an easement for such ingress and egress is hereby created. Any easement created by this *Section 3.5* is subordinate to all vehicular non-access easements and other easements created by a recorded subdivision plat for the Property, regardless of whether such plat was recorded before or after this Declaration.

ARTICLE 4

DESIGN CONTROL

4.1 Design Review Committee. Declarant shall establish the Committee to perform the functions of the Committee set forth in this Declaration. The Committee shall adopt procedural rules and regulations for its performance of such duties, including procedures for the preparation, submission and consideration of the application for any approvals required by this Declaration. The Committee shall make its decision on an application for approval within sixty (60) days of the submission of such application. If the Committee fails to respond to an application, the application shall be deemed disapproved. The Committee shall consist of such number of regular members and alternate members as Declarant may designate. At such time as Declarant no longer owns any property with the Project, the members of the Committee shall be appointed by the Board. The Committee and/or the Board of Directors shall promulgate design guidelines (herein, as amended from time to time, "Design Guidelines") to be used by the Committee in rendering its decisions. The Committee shall have all the powers, duties and authority conferred upon it by this Declaration and the Design Guidelines. The decisions of the Committee shall be final on all matters submitted to it pursuant to this Declaration.

4.2 Variances. The Committee may grant variances from the standards set forth in the Design Guidelines if the Committee determines the matter permitted under the requested variance will not have a substantially adverse affect on other Owners and Occupants and is consistent with the high quality of life intended for the Project.

4.3 Fee. The Committee may establish a reasonable fee from time to time to defer the costs of the Committee in considering any requests for approvals submitted to the Committee, which fee shall be paid at the time the request for approval is submitted. The Committee may also authorize supplemental fees to cover the cost of retaining consultants and other professional services needed to evaluate properly any matter submitted to the Committee for review.

4.4 Personal Liability. No Committee member, Declarant, or officer or director of the Association (subject to any mandatory limitations imposed by A.R.S. § 10-3202, § 10-3851, § 10-3856 or other applicable law) shall be personally liable to the Association, any Owner, or to any other Person, for any damages, losses, costs, fees (including reasonable attorneys' fees), or any prejudice suffered or claimed on account of any of their acts or omissions

(including, without limitation, errors and negligence) except to the extent such Person intentionally inflicts harm on the Association or its Members, intentionally violates criminal law, receives a financial benefit to which such person was not entitled, or is liable for an unlawful distribution under A.R.S. § 10-3833 or other applicable law.

4.5 Provisions if No Committee. In the event there is no Committee in existence, then the Board shall undertake the Committee's responsibilities hereunder, including without limitation approvals required by this Declaration.

4.6 Construction of Improvements. Upon receipt of approval from the Design Review Committee for any Improvement, the Owner who had requested such approval shall proceed with the Improvement approved by the Design Review Committee as soon as practicable and shall diligently pursue such Improvement so that it is completed as soon as reasonably practicable and within such time as may be prescribed by the Design Review Committee.

4.7 No Changes Without Approval. Any Improvement approved by the Design Review Committee must be done or performed in accordance with the plans and specifications approved by the Design Review Committee. No change, deletion or addition to the plans and specifications approved by the Design Review Committee may be made without the prior written approval of the Design Review Committee.

4.8 No Warranty. The approval by the Design Review Committee of any Improvement shall not be deemed a warranty or representation by the Design Review Committee as to the quality of such Improvement or that such Improvement conforms to drainage plans for the Project or to any applicable building codes or other federal, state or local law, statute, ordinance, rule or regulation.

4.9 Conditional Approval. The Design Review Committee may condition its approval of plans and specifications upon the agreement by the Owner submitting such plans and specifications to furnish to the Association a bond or other security acceptable to the Design Review Committee in an amount determined by the Design Review Committee to be reasonably sufficient to: (a) assure the completion of the proposed Improvements or the availability of funds adequate to remedy any nuisance or unsightly conditions occurring as a result of the partial completion of such Improvement, and (b) repair any damage which might be caused to any Area of Association Responsibility by the Owner or its agents or contractors, any such bond shall be released or security shall be fully refundable to the Owner upon the completion of the Improvements in accordance with the plans and specifications approved by the Design Review Committee, and the Owner's written request to the Design Review Committee.

4.10 Improvements to Areas of Association Responsibility. If plans and specifications submitted to the Design Review Committee pertain to an Improvement which is within an Area of Association Responsibility so that the Association is responsible for the maintenance, repair and replacement of such Improvement, the Design Review Committee may condition its approval of the plans and specifications for the proposed Construction or Modification with respect to the Improvement on the agreement of the Owner to reimburse the Association for the future cost of the repair, maintenance or replacement such Improvement.

ARTICLE 5

PERMITTED USES AND RESTRICTIONS

5.1 Residential Purposes. All Dwelling Units shall be used, improved and devoted exclusively to residential use. No gainful occupation, profession, business, trade or other nonresidential use shall be conducted on or in any Dwelling Unit, provided that an Owner or Occupant may conduct limited business activities in a Dwelling Unit so long as (a) the existence or operation of the business activity is not apparent or detectable by sight, sound or smell from outside the Dwelling Unit; (b) the business activity conforms to all applicable zoning requirements; (c) the business activity does not involve door-to-door solicitation of other Owners and Occupants; (d) the business activity does not generate drive-up traffic or customer or client parking; and (e) the business activity is consistent with the residential character of the property, does not constitute a nuisance or a hazardous or offensive use, and does not threaten the security or safety of other Owners, as may be determined in the sole discretion of the Board.

5.2 Animals. No animal, bird, livestock, poultry or fowl of any kind, other than a reasonable number of generally recognized house pets (as determined by the Board and set forth in the Association Rules) shall be maintained on or in any Lot and then only if they are kept or raised thereon solely as domestic pets and not for commercial purposes. Notwithstanding the foregoing, no pets may be kept upon the Property or on or in any Lot which, in the opinion of the Board, result in any annoyance or are obnoxious to Owners or Occupants of other Lots in the vicinity.

5.3 Garbage. No garbage, trash or debris shall be allowed, stored or placed on a Lot except in sanitary, covered containers. In no event shall such containers be Visible From Neighboring Property, except for a reasonable time immediately prior to and after collection. All trash and garbage shall be regularly removed from each Lot and shall not be allowed to accumulate thereon. No incinerator shall be maintained on any Lot and no trash, garbage or debris shall be burned thereon by open fire or otherwise. The Board shall have the right to require all Owners and Occupants to place trash and garbage in containers located in areas designated from time to time by the Board or the City.

5.4 Clothes Drying Facilities. No outside clotheslines or other facilities for drying or airing clothes shall be placed on any Lot unless they are not Visible From Neighboring Property.

5.5 Window Coverings. Within sixty (60) days of the initial conveyance of a Lot with a house constructed thereon to an Owner from the Declarant or a Designated Builder (or by a trustee, for the benefit of the Declarant or a Designated Builder), the Owner or Occupant shall install permanent window coverings. All window coverings (temporary or permanent) shall be white or cream from the exterior of the home, where Visible From Neighboring Property. In no event shall the interior or exterior of any windows be covered with reflective material, such as foil, or with paper, bed sheets or other temporary coverings.

5.6 Garages and Driveways. The garages situated on a Lot shall be used for parking vehicles and storage only, and shall not be used or converted for living or recreational activities. Garage doors shall be kept closed at all times except to the limited extent reasonably necessary to permit the entry or exit of vehicles or persons. All driveways on Lots shall be of concrete construction. Detached garages shall not be permitted.

5.7 Improvements and Construction. The design, size, color, location and elevation of any Improvement or landscaping which are Visible From Neighboring Property, and all changes thereto, must be approved by the Committee prior to installation. All Improvements and landscaping constructed or installed by or for Declarant and all changes thereto done by or for Declarant shall be conclusively deemed approved by the Committee. A storage shed, other equipment and other Improvements which is/are Visible From Neighboring Property may not be placed or installed on a Lot unless approved by the Committee and such approval may be withheld in the Committee's sole discretion. Only houses constructed on the Property in accordance with this *Section 5.7* shall be occupied as residences.

5.8 Heating, Ventilating and Air Conditioning Units. No heating, air conditioning or evaporative cooling units or equipment shall be placed, constructed or maintained upon the Property, including, but not limited to, upon the roof or exterior walls of any structure on any part of the Property unless: (a) where such unit or equipment is installed upon the roof of any structure upon the Property, such unit or equipment is fully screened from view from any adjacent Lots by a parapet wall which conforms architecturally with such structure; or (b) in all other cases, such unit or equipment is attractively screened or concealed and is not Visible From Neighboring Property, which means of screening or concealment shall (in either case (a) or (b)) be subject to the regulations and approval of the Committee.

5.9 Solar Collection Panels or Devices. Declarant recognizes the benefits to be gained by permitting the use of solar energy as an alternative source of electrical power for residential use. At the same time, Declarant desires to promote and preserve the attractive appearance of the Property and the Improvements thereon, thereby protecting the value generally of the Property and the various portions thereof, and of the various Owners' respective investments therein. Therefore, subject to prior approval of the plans therefor by the Committee, solar collecting panels and devices may be placed, constructed or maintained upon any Lot within the Property (including upon the roof of any structure upon any Lot), so long as either: (a) such solar collecting panels and devices are placed, constructed and maintained so as not to be Visible From Neighboring Property; or (b) such solar collecting panels and devices are placed, constructed and maintained in such location(s) and with such means of screening or concealment as the Committee may reasonably deem appropriate to limit, to the extent possible, the visual impact of such solar collecting panels and devices when viewed by a person six (6) feet tall standing at ground level on adjacent properties. The restrictions in this *Section 5.9* shall be subject to any limitations imposed by law.

5.10 Antennas, Poles and Towers. No antenna, aerial, satellite dish or other device for the transmission or reception of television or radio (including amateur or ham radio) signals of any kind (collectively referred to herein as "antennas") will be allowed outside the Dwelling Unit, except:

- (a) Those antennas whose installation and use is protected under federal law or regulations (generally, certain antennas under one meter in diameter), provided that an application for such an antenna must be submitted to the Committee and such application will be approved only if:

(i) the antenna is designed to assure the minimal visual intrusion possible (i.e., is located in a manner that minimizes visibility from the street or other Lots); and

(ii) the antenna complies to the maximum extent feasible with the Design Guidelines within the confines of applicable federal regulations (i.e., without precluding reception of an acceptable quality signal, or unreasonably increasing the cost of installation, maintenance or use of the antenna).

Upon the written request of the Owner when submitting the application, the Committee shall consider such an application on an expedited basis and shall strive to render a decision within seven days, but in no event later than fourteen days, from the date the applicant submits a complete application.

or

(b) Dishes 18" in diameter or smaller in locations approved by the Committee for rear or side yard locations and appropriately screened.

Any transmission cable for a receiver to the house must be underground. The restrictions in this *Section 5.10* shall be subject to any limitations imposed by law.

5.11 Basketball Goals. Except to the extent such may be permitted by the Association Rules and Design Guidelines adopted and amended by the Committee from time to time, no basketball goal or similar structure or device shall be placed, constructed or attached on any Lot unless written approval is received from the Committee or the Board.

5.12 Vehicles. Private, non-commercial, passenger automobiles or pickup trucks which, when including all attachments (including, without limitation, racks and shells), do not exceed one (1) ton in carrying load or cargo capacity, eighty-four (84) inches in height or width or two hundred twenty-eight (228) inches in length, may be parked on the Property within a garage or in a private driveway appurtenant to a Dwelling Unit but except as provided in the next sentence may not be parked elsewhere on the Property or streets adjoining the Property. The preceding sentence shall not preclude occasional overflow parking in a street right-of-way for guests or other reasonable purposes provided that no inconvenience is imposed on the Owners or Occupants of other Lots. No other vehicle (including, but not limited to, mobile homes, motor homes, boats, recreational vehicles, trailers, trucks, campers, permanent tents, or similar vehicles or equipment, commercial vehicles, or vehicles exceeding one (1) ton in carrying load or cargo capacity, eighty-four (84) inches in height or width, or two hundred twenty-eight (228) inches in length or similar vehicles or equipment) shall be kept, placed or maintained upon the Property or any roadway adjacent thereto, except: (a) within a fully-enclosed garage appurtenant to a Dwelling Unit; or (b) in such areas and subject to such rules and regulations as the Board may designate and adopt in its sole discretion (and the Board in its sole discretion may prohibit such other vehicles and equipment completely). No vehicle (including, but not limited to, those enumerated in the preceding sentences) shall be constructed, reconstructed or repaired on the Property or any roadway therein or adjacent thereto except within a fully enclosed garage. No motor vehicles of any kind that are not in operating condition shall be parked in any unenclosed parking areas (including, but not limited to, private driveways appurtenant to a Dwelling Unit). The provisions of this *Section 5.12* shall not apply to (a) vehicles of Declarant or any Designated

Builder or their respective employees, agents, Affiliates, contractors or subcontractors during the course of construction activities or sales activities upon or about the Property, or (b) vehicles used by the Association in repairing, maintaining and replacing the Common Areas and all Improvements thereon, and in performing all other rights, duties and obligations of the Association under this Declaration.

5.13 Fences, Interferences and Obstructions. Unless otherwise shown on the Recorded plat for the Property, no fence, wall, hedge, shrub or other plant which obstructs sight lines at elevations between two (2) feet and six (6) feet above adjacent public streets shall be permitted on any corner Lot within the triangular area formed by the streets and a straight line connecting those property lines at points twenty-five (25) feet from the intersection of those property lines (or, in the case of a rounded Lot corner, from the intersection of those property lines as extended). No tree shall be permitted to remain within such area unless the foliage line is maintained a sufficient height to prevent obstruction of such sight lines.

5.14 Leasing; Obligations of Tenants and Other Occupants. All tenants shall be subject to the terms and conditions of this Declaration, the Articles, the Bylaws and the Association Rules. Each Owner shall cause his, her or its tenants or other Occupants to comply with this Declaration, the Articles, the Bylaws and the Association Rules and, to the extent permitted by applicable law, shall be responsible and liable for all violations and losses caused by such tenants or Occupants, notwithstanding the fact that such tenants or Occupants are also fully liable for any violation of each and all of those documents. No Owner may lease less than his, her or its entire Lot. No Lot may be leased for a period of less than thirty (30) days. The provisions of this *Section 5.14* shall not apply to Declarant's or any Designated Builder's use of Lots owned by (or leased to) Declarant or a Designated Builder, as applicable, as a model home or for marketing purposes.

5.15 Landscaping and Maintenance; Reconstruction. Within ninety (90) days of acquiring an improved Lot, each Owner (other than Declarant or a Designated Builder) shall landscape (if not already landscaped) such Lot and any public right-of-way areas (other than sidewalks or bicycle paths) lying between the front or side boundaries of such Lot and an adjacent street. Declarant and each Designated Builder, as applicable, will install front yard landscaping on Lots sold by such Declarant or Designated Builder to a residential home purchaser if and to the extent required by any applicable City zoning ordinances or stipulations. Each Owner shall maintain the landscaping on such Owner's Lot and any public right-of-way areas lying between the front or side boundaries of such Lot and an adjacent street (except to the extent the Association has expressly undertaken the obligation to maintain any such landscaping), and shall keep the land free of debris and weeds at all times and promptly repair portions of the landscaping which have been damaged. Landscaping plans shall be approved by the Committee prior to installation and landscaping to be installed in compliance with applicable Design Guidelines and the approved plans. Each Owner shall maintain the aforementioned landscaping and exterior of the Owner's Dwelling Unit in a neat, clean and attractive condition consistent in appearance with other properly maintained, improved Lots within the Property. As provided in *Section 13.3*, each Owner or Occupant is encouraged, but is not obligated, to obtain for such Person's benefit property and casualty insurance insuring such Person's real or personal property interests on or within the Property. However, notwithstanding the fact that an Owner or Occupant maintains, or fails to maintain, insurance on his real or personal property interests on or

within the Property, in the event any Dwelling Unit or other structure is totally or partially damaged or destroyed by fire, Act of God or any other cause, the Owner shall fully repair the damage and complete reconstruction of the Dwelling Unit or other structure within eighteen (18) months after occurrence of the damage or destruction. The provisions of this *Section 5.15* shall not apply to any Lot or other property owned by Declarant.

5.16 Signs. No signs of whatever nature shall be placed on any Lot or Common Area which are Visible From Neighboring Property except (a) signs required by legal proceedings; (b) a maximum of two (2) street address identification signs for each individual residence, each with a maximum face area of 72 square inches or less; (c) "for sale" and "for lease" signs no larger than five (5) square feet placed on a Lot by the Owner of that Lot; and (d) signs used by Declarant to advertise the Property during the construction and sales period.

5.17 Prohibited Uses. No use which is offensive by reason of odor, fumes, dust, smoke, noise, glare, heat, sound, vibration, radiation or pollution, or which constitutes a nuisance or unreasonable source of annoyance, or which is hazardous by reason of risk of fire or explosion, or which is injurious to the reputation of any Owner shall be permitted on any Lot. No use which is in violation of the laws (after taking into account the application of any validly granted or adopted variance, exception or special use ordinance or regulation) of the United States, the State of Arizona, the City or any other governmental entity having jurisdiction over the Property shall be conducted on any Lot. The provisions of this *Section 5.17* shall not apply to any activity of Declarant or any Designated Builder or their respective employees, agents, Affiliates, contractors or subcontractors during the course of construction activities or sales activities upon or about the Property.

5.18 Dust Control. After the sale of a Lot by Declarant or a Designated Builder to a Person other than a Designated Builder, the areas on each Lot that are not improved with buildings ("Clear Areas") shall be landscaped as provided in *Section 5.15*. After a sale of the Lot by Declarant or a Designated Builder, until such landscaping is installed, the Clear Areas shall be maintained in a neat and attractive condition, free of weeds and debris and the Owner thereof shall take necessary and appropriate measures to prevent and control the emanation of dust and dirt from the Clear Areas, which may include the use of gravel, grass, ground cover, or the sealing of the ground surface. After landscaping has been installed, each Owner shall continue to maintain its Lot in a manner that minimizes the possibility of dust being transmitted into the air and over adjacent properties. Nothing in this *Section 5.18* shall be interpreted to require Declarant to landscape a Lot before a sale of such Lot by Declarant.

5.19 Nuisances. No rubbish or debris of any kind shall be placed or permitted to accumulate upon any portion of the Property for any unreasonable time, and no odors shall be permitted to arise therefrom, so as to render the Property or any portion thereof unsanitary, unsightly, offensive or detrimental to any other portion of the Property in the vicinity thereof or to its Owners or Occupants. No loud, noxious or offensive activity shall be carried on or permitted on any Lot, nor shall anything be done thereon which may be, or may become, an annoyance or nuisance to Persons or property in the vicinity of such Lot, or which shall interfere with the quiet enjoyment of each of the Owners and Occupants. The Board shall have the right, but not the obligation, to determine, in its sole discretion, whether the provisions of this *Section 5.19* have been violated. Any decision rendered by the Board shall be conclusive and shall be enforceable in the same manner as other restrictions in this Declaration. The provisions of this

Section 5.19 shall not apply to any activity of Declarant or any Designated Builder or their respective employees, agents, Affiliates, contractors or subcontractors during the course of construction activities or sales activities upon or about the Property.

5.20 Drainage. No Owner or Occupant shall interfere with the drainage established for his Lot, the Property or any other property adjacent to his Lot as shown on the drainage plans for the Project.

5.21 Party Walls. Except as provided in **Section 11.2**, the rights and duties of Owners of contiguous Lots that have shared walls or fences ("Party Walls") shall be as follows:

(a) each Owner shall have an equal right to use the Party Walls to the extent such use does not interfere with the other Owner's use and enjoyment thereof;

(b) if a Party Wall is damaged or destroyed through the act or omission of an Owner or the Owner's Occupants, agents, contractors, invitees, guests or family (whether or not such act is negligent or otherwise culpable), such Owner shall be obligated to rebuild and repair the Party Wall at the Owner's sole expense (provided that this shall not bar such Owner from recovering, or seeking to recover, all or any part of such expense from any insurer, Occupant, agent, guest or other Person who otherwise may be liable to such Owner);

(c) if any portion of a Party Wall is damaged or destroyed other than by the act of an adjoining Owner or the Owner's Occupants, agents, contractors, invitees, guests or family, or deteriorates from ordinary wear and tear, it shall be the joint obligation of all Owners whose Lots adjoin such portion of the Party Wall to immediately rebuild and repair it, and the expense shall be ratably divided among such Owners based on the amount of linear footage of their respective Lots located along such portion of the Party Wall;

(d) if a dispute occurs between Owners regarding a Party Wall or the sharing of the cost thereof, such Owners shall submit the dispute to the Committee, whose decision shall be binding unless appealed to the Board, in which event the Board's decision shall be binding and final. Notwithstanding any such decision, no Owner is prohibited from seeking indemnity from the party causing the damage;

(e) The Association shall have the right, but not the obligation, to perform any work which an Owner or Owner(s) fails to do in a timely manner. The Owner(s) responsible for such work shall upon demand pay all costs incurred by the Association together with interest at twelve percent (12%) per annum and an administrative fee at ten percent (10%) of the amount incurred by the Association.

5.22 Exemption of Declarant and Designated Builders. Nothing contained in this Declaration shall be construed to prevent the construction, installation or maintenance by Declarant (or its designated agents and contractors) and each Designated Builder (subject to approval by Declarant) during the period of development, construction, performance of warranty work, sales and marketing on the Property, of any production homes, model homes and sales offices and parking incidental thereto, construction trailers, landscaping or signs deemed necessary or convenient by Declarant and each Designated Builder (subject to the approval of Declarant), in their sole discretion, to the development, construction, sale and marketing of

property within the Property. Any actions taken by a Designated Builder pursuant to this Section shall require the prior approval of Declarant, which shall not be unreasonably withheld.

5.23 Miscellaneous. The Board, in its good-faith discretion, may grant such waivers of the restrictions contained in this *Article 5* as it shall deem appropriate, so long as the use permitted by such waiver shall not result in an unsafe, unsanitary or aesthetically displeasing condition and shall not result, in the Board's discretion, in a substantial departure from the common plan of development contemplated by this Declaration. In addition, the Property shall continue at all times to be subject to applicable zoning laws and ordinances; provided, however, that where the provisions of this Declaration are more restrictive than such laws or ordinances, the provisions of this Declaration shall control.

ARTICLE 6

ORGANIZATION OF ASSOCIATION

6.1 Formation of Association. The Association shall be a nonprofit Arizona corporation charged with the duties and vested with the powers prescribed by law and as set forth in the Articles, the Bylaws and this Declaration. Neither the Articles nor the Bylaws shall be amended or interpreted so as to be inconsistent with this Declaration.

6.2 Board of Directors and Officers. The affairs of the Association shall be conducted by the Board and such officers as the Board may elect or appoint in accordance with the Articles and Bylaws. Until termination of the Class B Membership, Declarant, will have the right to appoint and remove members of the Board for so long as Declarant owns any Lot. After termination of the Class B Membership, the Board shall be elected by the Members as provided in the Bylaws. The Board may appoint various committees at its discretion. The Board may also appoint or engage a manager and/or other staff members to be responsible for the day-to-day operation of the Association. The Board shall determine the compensation to be paid to each such employee.

6.3 Association Rules. By a majority vote of the Board, the Association may, from time to time and subject to the provisions of this Declaration, adopt, amend and repeal the Association Rules. The Association Rules, among other things, may restrict and govern the use of the Common Areas and Lots, including, without limitation, on street and on Lot parking, provided that the Association Rules shall not discriminate among Owners and Occupants except to reflect their different rights and obligations as provided herein, and shall not be inconsistent with this Declaration, the Articles or the Bylaws. Upon adoption, the Association Rules shall have the same force and effect as if they were set forth herein. A copy of the Association Rules, as adopted or amended, shall be available for inspection at the office of the Association.

6.4 Personal Liability. Subject to any mandatory limitations imposed by A.R.S. § 10-3202, § 10-3851, § 10-3856 or other applicable law, no Board member, officer, committee member, employee or representative of the Association, nor the Association, shall be personally liable to any Owner, or to any other Person, including the Association, for any damages, losses, costs, fees (including reasonable attorneys' fees), or any prejudice suffered or claimed on account of any of their acts, omissions, errors or negligence, unless such person has engaged in willful or intentional misconduct.

ARTICLE 7

MEMBERSHIPS AND VOTING

7.1 **Membership.** Every Owner, including Declarant, automatically shall be a Member of the Association with voting rights as provided in this Declaration for so long as such ownership continues. A Person's Membership in the Association shall close and terminate immediately when such Person is no longer an Owner. Each Owner's Membership in the Association shall be appurtenant to, and may not be separated from ownership of, the Lot to which the Membership is attributable. In the event any Lot is owned by two or more Persons, whether by joint tenancy, tenancy in common, community property or otherwise, each such Person shall be considered a Member but the Membership as to such Lot shall be joint, and such Persons shall jointly designate to the Association in writing one of their number who shall have the power to vote said Membership; provided, however, that if any one of such Persons casts a vote or votes representing a Lot without objection from any other Person sharing ownership of such Lot, that Person will thereafter be conclusively presumed to be acting with the authority and consent of all other Persons sharing ownership of such Lot unless and until objection thereto is made to the Board, in writing, at or prior to the time the vote or votes are cast. Neither Membership in the Association nor a Member's share, right, title or interest in and to the funds and assets of the Association can be transferred, assigned or hypothecated except as an appurtenance to the Member's ownership of a Lot. Membership may be evidenced by an official list of Owners, which list shall be kept by the Secretary of the Association and as provided by applicable law.

7.2 **Votes.** The Association shall have two classes of voting Members. Class A Members shall be all Owners, except Declarant and each Designated Builder while the Class B Membership is in effect. A Class A Member shall have one (1) vote for each Lot owned by such Member. The Class B Members shall be Declarant and each Designated Builder. The Class B Members shall have three (3) votes for each Lot owned by Declarant and each Designated Builder. No change in the ownership of a Lot shall be effective for voting purposes until the Board receives satisfactory evidence thereof. Fractional votes shall not be allowed. Subject to any record dates for meetings or other actions which record dates occur prior to the following, the Class B Membership shall automatically cease and be converted to a Class A Membership upon the happening of the first of the following events:

- (a) the date seventy-five percent (75%) of the Lots have been conveyed to a Person other than Declarant or a Designated Builder;
- (b) the date which is ten (10) years after the date this Declaration is Recorded; or
- (c) the date on which Declarant and each Designated Builder relinquishes the Class B Membership by notifying the Class A Members in writing.

If a record date occurs prior to one of the preceding events, the Class B Membership shall remain in existence only for the action or meeting that relates to such record date.

ARTICLE 8

ASSESSMENTS

8.1 Creation of Assessment Right; Covenants to Pay. In order to provide funds to enable the Association to meet its obligations and to create and maintain appropriate reserves, there is hereby created a right of assessment exercisable on behalf of the Association by the Board. Assessments (herein "Assessments") shall be for Common Expenses and shall be allocated equally among all Lots. Each Owner, by acceptance of his, her or its deed with respect to a Lot, is deemed to covenant and agree to pay the Assessments with respect to such Owner's Lot. Each Owner failing to pay an Assessment within fifteen (15) days of the date that the Assessment is due shall also pay a late charge as set by the Board from time to time. The initial late charge shall be the greater of fifteen dollars (\$15.00) per month or ten percent of the unpaid Assessment. The fifteen-day delinquency period and late charges shall be subject to any limitations imposed by A.R.S. § 33-1803 or other law as amended from time to time. The Owner shall also pay all costs and reasonable attorneys' fees incurred by the Association in seeking to collect such Assessments and other amounts. The Assessments with respect to a Lot, together with interest, costs and reasonable attorneys' fees as provided in this *Section 8.1*, shall also be the personal obligation of the Person who was the Owner of such Lot at the time such Assessments arose with respect to such Lot; provided, however, that the personal obligation for delinquent Assessments shall not pass to a successor in title of such Owner unless expressly assumed by such successor. No Owner shall be relieved of the obligation to pay any of the Assessments by abandoning or not using his, her or its Lot or the Common Areas, or by leasing or otherwise transferring occupancy rights with respect to his, her or its Lot. However, upon transfer by an Owner of fee title to such Owner's Lot, such transferring Owner shall not be liable for any Assessments thereafter levied against such Lot. The obligation to pay Assessments is a separate and independent covenant on the part of each Owner. No diminution or abatement of Assessments or set-off shall be claimed or allowed by reason of the alleged failure of the Association or Board to take some action or perform some function required to be taken or performed by the Association or Board under this Declaration, the Articles or the Bylaws.

8.2 Lien for Assessments; Remedies; Foreclosure. There is hereby created and established a lien in favor of the Association against each Lot which shall secure payment of all present and future Assessments assessed or levied against such Lot or the Owner thereof (together with any other amounts levied against such Lot or the Owner thereof pursuant to the Declaration or the Articles, the Bylaws or the Association Rules). Such lien shall be prior and superior to all other liens affecting the Lot in question, except: (a) taxes, bonds, assessments and other levies which, by law, are superior thereto; and (b) the lien or charge of any First Mortgage. Nothing in this Declaration shall be construed as requiring any holder of a mortgage on a Lot to collect any Assessments. Recording of this Declaration constitutes record notice and perfection of the liens established hereby, and further Recordation of any claim of a lien for Assessments or other amounts hereunder shall not be required, whether to establish or perfect such lien or to fix the priority thereof, or otherwise (although the Board shall have the option to Record written notices of claims of lien in such circumstances as the Board may deem appropriate). The Board may invoke any or all of the sanctions provided for herein, or any other reasonable sanction, to compel payment of any Assessment or installment thereof, not paid when due (a "Delinquent Amount"). Such sanctions include, but are not limited to, the following:

(a) Interest and Late Fees. The Board may impose late fees and interest in such amounts as it determines are appropriate from time to time, subject to any limitations stated in the Declaration or imposed by law;

(b) Suspension of Rights. The Board may suspend for the entire period during which a Delinquent Amount remains unpaid the obligated Owner's voting rights and rights to use and enjoy the Common Areas;

(c) Collection of Delinquent Amount. The Board may institute an action at law to recover a money judgment or any other proceeding to recover the Delinquent Amount, rent, interest and attorneys' fees without foreclosing or waiving the lien securing same;

(d) Recording of Notice. The Board may record a notice of lien covering the Delinquent Amount plus interest and accrued collection costs as provided in the Declaration. The Board may establish a fixed fee to reimburse the Association or its representative for the cost of recording the notice, processing the delinquency and recording a notice of satisfaction of the lien; and

(e) Foreclosure of Lien. The Board may foreclose the Recorded lien against the Lot in accordance with then prevailing Arizona law relating to the foreclosure of realty mortgages (including any right to recover any deficiency). The sale or transfer of any Lot pursuant to a mortgage foreclosure or any proceeding in lieu thereof shall extinguish the lien of the Assessments as to payments which became due prior to such sale or transfer, but shall not relieve such Lot from liability for any Assessments becoming due after such sale or transfer, or from the lien thereof. The Association shall have the power to bid for any Lot at any sale to foreclose the Association's lien on the Lot, and to acquire and hold, lease, mortgage and convey the same. During the period the Lot is owned by the Association, no right to vote shall be exercised with respect to that Lot and no Assessment shall be assessed or levied on or with respect to that Lot; provided, however, that the Association's acquisition and ownership of a Lot under such circumstances shall not be deemed to convert the same into Common Areas.

8.3 Dates Assessments Commence; Declarant's and Designated Builders' Obligations. Assessments shall be payable with respect to all Lots commencing with the earlier of: (a) initial conveyance of a Lot to a purchaser (other than a Designated Builder or Declarant) by Declarant or by a Designated Builder (or by a trustee, for the benefit of Declarant or a Designated Builder); or (b) termination of the Class B Membership. Assessments with respect to a Lot shall be prorated as of the date of commencement. Until the Class B Membership is terminated, the Annual Assessment shall be the same for each Lot which is not owned by Declarant or a Designated Builder, and the Annual Assessment for each Lot owned by Declarant or a Designated Builder shall be equal to 25% of the Annual Assessment for a Lot that is not Owned by Declarant or a Designated Builder. After termination of the Class B Membership, the Annual Assessment shall be the same amount for each Lot. Until the Class B Membership is terminated, Declarant and each Designated Builder shall pay or contribute to the Association cash, goods or services (as Declarant may elect) as may be necessary to make up any shortfalls in the budget of the Association resulting from such Person's exemption from Assessments (but in no event shall Declarant be required to make such payments or contributions which, together

with the reduced Annual Assessment payable to Declarant, are in excess of the Assessments Declarant would be required to pay, in the absence of the right to reduced Annual Assessments provided for by this **Section 8.3**, with respect to Lots owned by Declarant and in no event shall any Designated Builder be required to make such payments or contributions which, together with the reduced Annual Assessment payable by such Designated Builder, are in excess of the Assessments such Designated Builder would be required to pay in the absence of the right to reduced Annual Assessments provided for by this **Section 8.3**, with respect to Lots owned by such Designated Builder). Shortfalls shall be allocated between Declarant and each Designated Builder prorata based on the relative number of Lots owned at either the beginning of the period for which the shortfall occurred or at the time the shortfall is determined and notice is given, as selected by Declarant. Any Person who becomes an Owner of a Lot shall pay the Annual Assessment applicable to such Owner's Lot as such becomes due, and shall pay any Special Assessment levied on or after the date the Person becomes an Owner. The previous Owner of such Lot shall remain liable for all unpaid and delinquent Assessments levied against the Owner of the Lot prior to such transfer of ownership.

8.4 Computation of Assessments; Annual Budget. The Board shall adopt a budget for each fiscal year of the Association, which budget shall serve as the basis for determining the annual Assessments (herein the "Annual Assessments") for the applicable fiscal year (subject to the limitations of **Section 8.6**). Annual Assessments shall be payable annually or in installments as set by the Board. Within a reasonable period following the meeting of the Board at which it adopts the budget for the year in question, the Board shall make available, upon request by any Owner, a copy of the budget and a statement of the amount of the Annual Assessments to be levied against such Owner's Lot for that year. The failure to request or to receive such a statement shall not relieve any Owner of his obligation to pay such an Assessment on or before the due date. All Assessments shall be payable to the Association. In the event the Board fails to adopt a budget for any fiscal year prior to commencement of such fiscal year or fails to determine the Annual Assessments for any year, then until and unless such budget is adopted or the determination is made (as applicable), the budget (and the amount of the Assessments provided for therein) for the year immediately preceding shall remain in effect. Except as provided in **Section 8.6**, neither the budget nor any Annual Assessment levied pursuant thereto shall be required to be approved by the Owners. The Board may increase the Annual Assessments to meet the Association's expenses which exceed the amounts previously budgeted, if the Board determines that such Assessments become necessary or desirable during the fiscal year.

8.5 Due Dates. Assessments shall be due and payable as determined by the Board. Assessments shall be deemed "paid" when actually received by the Association or by its designated manager or agent (but if any Assessments are paid by check and the bank or other institution upon which such check is drawn thereafter dishonors and refuses to pay such check, those Assessments shall not be deemed "paid" and shall remain due and payable with interest accruing from the date such Assessments were originally due).

8.6 Maximum Annual Assessment. The Annual Assessments provided for herein shall not at any time exceed the "Maximum Annual Assessment," as determined in accordance with this **Section 8.6**. Except as provided below, unless a greater increase is approved by a vote of two-thirds (2/3) of the votes of each class of Members represented in

person or by proxy at a meeting of Members called for such purpose, the Maximum Annual Assessment for any fiscal year shall be equal to the Maximum Annual Assessment for the immediately preceding fiscal year increased at a rate equal to the greater of: (a) the percentage increase for the applicable fiscal year over the immediately preceding fiscal year in the Consumer Price Index -- All Urban Consumers -- All Items (1982-1984 Average = 100 Base) published by the Bureau of Labor Statistics of the U.S. Department of Labor (or its successor); or (b) twenty percent (20%). Further, notwithstanding the foregoing, the Board may, without the approval of the Members, increase the Maximum Annual Assessment for any fiscal year by an amount sufficient to permit the Board to meet any increases over the preceding fiscal year in: (i) premiums for any insurance coverage required by this Declaration to be maintained by the Association; and (ii) charges for utility services necessary to the Association's performance of its obligations under this Declaration, notwithstanding the fact that the resulting increase in the Maximum Annual Assessment is greater than otherwise permitted under the third sentence of this **Section 8.6**. Increases in Annual Assessments shall be subject to any limitations imposed by A.R.S. § 33-1803 or other law as such may be amended from time to time. The Board shall determine whether the Annual Assessment shall be due in one payment or in monthly, quarterly or other installments.

8.7 Special Assessments. In addition to levying Annual Assessments, the Board may levy a Special Assessment, but only for the purpose of defraying, in whole or in part, the cost of any construction, reconstruction, repair or replacement of a capital Improvement owned by the Association or for defraying other extraordinary expenses, provided, however, that such Special Assessment must be approved by at least two-thirds (2/3rds) of the votes of each class of Members voting in Person or by proxy at a meeting of the Association duly called for such purpose. Special Assessments shall be assessed uniformly among the Owners. Special Assessments shall not be subject to the Maximum Annual Assessment limitations set forth in **Section 8.6**.

8.8 Working Capital Fund. To insure that the Association shall have adequate funds to meet its expenses or to purchase necessary equipment or services, each Person, with the exception of Declarant and each Designated Builder who as a result of a purchase obtains title to a Lot shall pay to the Association immediately upon becoming the Owner of a Lot a sum equal to one-sixth (1/6) of the current Annual Assessment for the Lot. Funds paid to the Association pursuant to this **Section 8.8** may be used by the Association for any purpose permitted under this Declaration. Payments made pursuant to this **Section 8.8** shall be nonrefundable and shall not be offset or credited against or considered as advance payment of any Assessments levied pursuant to this Declaration. Assessments pursuant to this **Section 8.8** shall not be subject to the Maximum Annual Assessment pursuant to **Section 8.6**, but are secured by the lien created by **Section 8.2**. The Board may from time to time adjust the fee payable pursuant to this **Section 8.8** without a vote of the Members or an amendment to this Declaration.

8.9 Transfer Fee. Each Person, other than Declarant and each Designated Builder, who as a result of a purchase obtains title to a Lot shall pay to the Association or its agent immediately upon becoming the Owner of the Lot a transfer fee in such amount as is established from time to time by the Board. Assessments pursuant to this **Section 8.9** shall not be subject to the Maximum Annual Assessment pursuant to **Section 8.6**, but are secured by the lien created by **Section 8.2**.

8.10 Records and Statements of Payment. The Treasurer shall cause to be kept detailed and accurate records, in chronological order, of the receipts and expenditures affecting the Common Areas and any other property owned or controlled by the Association, specifying and itemizing the expenses incurred and expenditures made. All records authorizing such expenditures shall be available for examination by Owners at convenient hours designated by the Board. Within fifteen (15) days following the Board's receipt of a written request from any Owner, or such shorter time as may be required by applicable law, the Board shall issue to the requesting party (or to the person designated by such requesting party) a written statement stating that, as of the date of the statement: (a) all Assessments (including collection fees, interest, costs and attorneys' fees, if any) have been paid with respect to the Lot of such Owner; or (b) if any such amounts have not been paid, the amount(s) then due and payable. Subject to the limitations of applicable law, the Association may impose a reasonable charge for the issuance of such a statement that must be paid at the time the request for such certificate is made.

8.11 Discharge of Liens. The Board may cause the Association or any Owner or Occupant (by Assessment) to discharge any mechanics' or materialmen's liens or other encumbrances that in the opinion of the Board may constitute a lien against the Common Areas. When less than all of the Owners are responsible for any such lien or encumbrance, those Owners that are responsible shall be jointly and severally liable for the amount necessary to discharge the same, and for all costs and expenses, including but not limited to attorneys' fees, incurred in connection with such lien or encumbrance.

ARTICLE 9

USE OF ASSOCIATION FUNDS

9.1 Use of Association Funds. In addition to the powers enumerated in the Articles and Bylaws, the Association shall apply all funds and property collected and received by the Association from any source ("Funds") for the common good and benefit of the Property, the Owners and the Occupants. The Funds may be used, among other things, to insure, acquire, construct, alter, clean, maintain, supervise, provide and operate, in any manner whatsoever, any and all land, properties, Improvements, services, projects, programs, studies and systems within the Property and the Common Areas as may be necessary, desirable or beneficial to the general common interests of the Owners and Occupants. In connection with the foregoing, the Funds may be used for the administration, office expenses, salaries and other personnel costs of the Association. The Association may in its discretion collect and maintain Funds to be held in reserve for any of the uses referred to in this *Section 9.1*.

9.2 Borrowing Power. The Association may borrow money in such amounts, at such rates, upon such terms and security, and for such periods of time as the Board deems necessary or appropriate, and may utilize Funds to repay any such loans.

9.3 Association's Rights in Spending Funds From Year to Year. The Association shall not be obligated to spend in any year all Funds received by it in such year, and the Board may carry forward as surplus or hold in reserve (for general purposes or for specified future expenditures) any balances remaining. The Association shall not be obligated to reduce the amount of the Annual Assessments in any succeeding year if a surplus or reserves exist from a prior year or years.

ARTICLE 10

RIGHTS AND POWERS OF ASSOCIATION

10.1 Rights, Powers and Duties of the Association. In addition to the rights and powers of the Association set forth in this Declaration, the Association shall have such rights and powers as are set forth in the Articles and Bylaws, together with such rights, powers and duties as are granted by law or as may be reasonably necessary in order to effect all of the objectives and purposes of the Association as set forth herein. A copy of the Articles and Bylaws shall be available for inspection at the office of the Association during reasonable business hours. The Association may enforce this Declaration in any manner provided for in this Declaration, the Articles or Bylaws, or by law or in equity, including, but not limited to:

- (a) imposing reasonable monetary fines after notice and an opportunity to be heard is given to the Owner or other violator. An Owner shall be responsible for payment of any fine levied or imposed against an Occupant of the Owner's Lot or by any guest or invitee of the Owner or any Occupant;
- (b) suspending an Owner's right to vote;
- (c) suspending any Person's right to use any recreational facilities within the Common Area; provided, however, nothing herein shall authorize the Board to limit ingress or egress to or from a Lot; and
- (d) exercising self-help or taking action to abate any violation of the Declaration, Articles or Bylaws.

10.2 Association's Rights of Enforcement. The Association, as the agent and representative of the Owners, shall have the right, but not the obligation, to enforce the provisions of this Declaration. Further, Declarant and any other Owner, so long as Declarant and such other Owner owns property within the Project, shall have the right and authority, but not the obligation, to enforce the provisions of this Declaration; provided that, any Owner, other than Declarant, desiring to enforce any provision of this Declaration shall first request that the Association enforce such provision, and if the Association fails to act upon such Owner's request within a reasonable time, then such Owner may pursue enforcement of the provisions on its own.

10.3 Contracts with Others. Subject to the restrictions and limitations contained herein, or in the Articles, the Bylaws, and the laws of the State of Arizona, the Association may enter into contracts or other transactions with other parties, including Declarant or its affiliated companies. Such contracts or other transactions shall not be void or voidable because one or more directors or officers of the Association are employed by, have a financial interest in or are otherwise affiliated with such other parties, including Declarant or its Affiliates (even if such officer(s) or director(s) is present and/or votes at the meeting of the Board or committee which authorizes the contract or transaction), if (a) the fact of such interest has been previously disclosed or made known to the other members of the Board or the committee acting upon such contract or transaction, and (b) the transaction or contract is fair and reasonable. Notwithstanding the foregoing, any management contract entered into by the Association must be terminable, without penalty, by the Association for cause at any time and without cause upon reasonable notice.

10.4 Procedure for Change of Use of Common Areas. Upon adoption of a resolution by the Board stating that the then current use of a specified part of the Common Areas is no longer in the best interests of the Owners and Occupants, and the approval of such resolution by not less than two-thirds (2/3rds) of the votes of all Members entitled to vote and voting in person or by proxy at a meeting duly called for such purpose, the Board shall have the power and right to change the use thereof (and in connection therewith to take whatever actions are required to accommodate the new use), provided such new use: (a) also shall be for the common benefit of the Owners and Occupants; and (b) shall be consistent with any Recorded deed and zoning regulations. The consents required by this section shall not be required in order for the Association, pursuant to resolution of the Board, and consent of the Declarant, for as long as Declarant is an Owner, to grant utility, drainage and other appropriate easements over, under, across or through the Common Area.

10.5 Procedure for Transfers of Common Areas. The Association shall not dedicate or otherwise convey title to the Common Areas, or mortgage or otherwise encumber Common Areas except upon: (i) the adoption of a resolution by the Board stating that the transaction would be in the best interests of the Owners and Occupants, (ii) the approval of such resolution by Owners of at least sixty-seven percent (67%) of the Lots (excluding Declarant and Designated Builders) and by Declarant; and (iii) approval of the proposed action by VA or FHA, if required under *Section 14.10*. Notwithstanding anything to the contrary herein contained, if ingress or egress to any Lot is through Common Area to be dedicated, conveyed or encumbered, such dedication, conveyance or encumbrance shall be subject to an easement for ingress and egress benefiting such Lot. The consents required by this section shall not be required in order for the Association, pursuant to resolution of the Board, and consent of the Declarant, for as long as Declarant is an Owner, to grant utility, drainage and other appropriate easements over, under, across or through the Common Area.

ARTICLE 11

MAINTENANCE

11.1 Areas of Association Responsibility.

11.1.1 Areas of Association Responsibility. The Association, or its duly designated representative, shall maintain manage and control the Areas of Association Responsibility and shall keep the Areas of Association Responsibility in good, clean, attractive and sanitary condition, order and repair, pursuant to the terms and conditions hereof. The Association's costs of doing so shall be Common Expenses of the Association.

11.1.2 Delegation of Responsibilities. The Board shall have the sole discretion to determine whether the Association or an individual Owner should be responsible for maintenance of certain Common Areas or other Areas of Association Responsibility considering cost, uniformity of appearance, location and other relevant factors.

11.1.3 Standard of Care; Disclaimer of Liability. The Association shall use a reasonably high standard of care in providing for the repair, management and maintenance of the Areas of Association Responsibility so that the Project will reflect a

high degree of pride of ownership. The Board, however, shall be the sole judge as to the appropriate level of maintenance of all Areas of Association Responsibility by the Association. Notwithstanding any duty the Association may have to maintain and repair the Areas of Association Responsibility, the Association and Declarant shall not be liable for any injury or damage caused by a latent condition or by any Member, Owner, Occupant or other Person. Neither the Association nor Declarant shall be liable to any Person for any claim, injury or damage arising from the use of the Areas of Association Responsibility, which shall be used at the risk of the user. Declarant has no duty or obligation to maintain, operate, manage or repair the Areas of Association Responsibility.

11.2 Walls and Fences Between Lots and Common Areas. If a wall is located on the boundary line between Common Areas and a Lot, then the Association shall be responsible for the painting and maintenance and repair of the surface on the side thereof that faces the Common Areas and the top of such wall, and the Owner or Owners owning the opposite side of the wall shall be responsible for the maintenance, repair, painting and replacement of such opposite side. In the case of destruction of both sides of such wall or structural damage, the Owner(s) owning Lots adjacent to the wall shall be responsible for one-half of the cost of replacement or repair of the wall and the Association shall be responsible for the other one-half. Unless originally constructed by or for Declarant or otherwise approved in writing by the Board or Committee, a wall may not be located on the Common Areas unless it is part of the Common Areas.

11.3 Maintenance and Repair. Every Owner and Occupant shall perform promptly all maintenance and repair work required by this Declaration, the Association Rules, the Design Guidelines and the Bylaws. If (a) any portion of any Lot is maintained so as to present a nuisance, or substantially detracts from or affects the appearance or quality of any neighboring Lot or other area, or is used in a manner which violates this Declaration, or (b) the Owner of any Lot or the Occupant of such Owner's Lot, or contractor, guest, invitee or permittee of any Owner or Occupant, damages any Area of Association Responsibility, or (c) the Owner of any Lot or the Occupant of such Owner's Lot fails to perform such Owner's obligations under this Declaration, the Association Rules, the Design Guidelines, the Articles and the Bylaws, the Association, by Board resolution, may make a finding to such effect, specifying the particular condition(s) that exist, and thereafter give notice to the Owner of such Lot that unless specified corrective action is taken within a specified time period the Association, at such Owner's expense, may take whatever action is appropriate to compel compliance including, without limitation, appropriate legal action. If at the expiration of the specified time period the requisite corrective action has not been taken by the Owner, the Association shall have the right, but not the obligation, at its sole discretion, to cause corrective action to be taken and to enter upon an Owner's Lot to do so with or without commencing appropriate legal action and/or to commence appropriate legal action. The cost thereof, including court costs and attorneys' fees, including an administrative charge equal to ten percent (10%) of the amount incurred by the Association, together with all damages resulting from such Owner's or Occupant's, or other Person's listed above, acts or failure to act, plus interest at twelve percent (12%) per annum on all amounts from the date incurred by the Association until the date paid to the Association by the Owner, shall be added to and become a part of the Assessments to which the offending Owner and the Owner's

Lot is subject and shall be secured by the lien described in *Section 8.2*. The foregoing shall not limit the right of others to enforce the provisions of this Declaration as described in *Section 14.1*

11.4 Assessment of Certain Costs of Maintenance and Repair of Areas of Association Responsibility. In the event that the need for maintenance or repair of Common Areas and other Areas of Association Responsibility is caused through the willful or negligent act of any Owner, his or her family, guests or invitees, the cost of such maintenance or repairs shall be added to, and become a part of, the Assessment to which such Owner and the Owner's Lot is subject, and shall be secured by the Assessment lien described in *Section 8.2*.

ARTICLE 12

TERM; AMENDMENTS; TERMINATION

12.1 Term. The covenants, conditions and restrictions of this Declaration as it may be amended from time to time: (a) shall run with and bind the Property, (b) shall inure to the benefit of and shall be enforceable by the Association or by the owner of any property subject to this Declaration, their respective legal representatives, heirs, successors and assigns; and (c) shall remain in full force and effect (as amended, if applicable) until 25 years after this Declaration is Recorded, at which time said conditions, covenants and restrictions shall automatically be extended for successive periods of twenty-five (25) years each, unless revoked (subject to any zoning ordinances or other applicable laws) by an affirmative vote of: (i) Members owning not less than sixty-seven percent (67%) of all Lots; and (ii) Declarant, so long as Declarant is an Owner.

12.2 Amendment. Except as otherwise provided herein, this Declaration may be amended only by the vote or written consent of: (i) Members owning not less than sixty-seven percent (67%) of all Lots; and (ii) Declarant, so long as Declarant is an Owner. No amendment to this Declaration shall be effective until such amendment is Recorded. An amendment shall be effective immediately upon Recording unless a delayed effective date is expressly stated in the amendment. Anything in this *Article 12* to the contrary notwithstanding, Declarant reserves the right to unilaterally amend this Declaration to correct minor errors and omissions.

12.3 Right of Amendment if Requested by Governmental Agency or Federally Chartered Lending Institution. Anything in this *Article 12* to the contrary notwithstanding, Declarant reserves the right to amend this Declaration as may be requested or required by the FHA, VA or any other agency with whom Declarant elects to do business as a condition precedent to such agency's approval of this Declaration. Any such amendment shall be effected by Declarant recording an amendment duly executed and acknowledged by Declarant specifying the agency requesting the amendment and setting forth the requested or required amendment(s). Recordation of such Amendment shall be deemed conclusive proof of the agency's or institution's request or requirement and such Certificate, when Recorded, shall be binding upon all of the Property and all persons having an interest therein.

ARTICLE 13

EMINENT DOMAIN AND INSURANCE

(COMMON AREAS)

13.1 Eminent Domain. The term "Taking" as used in this *Section 13.1* shall mean condemnation by eminent domain or sale under threat of condemnation. In the event of a threatened Taking of all or any portion of the Common Areas, the Owners hereby appoint the Board and such persons as the Board may designate to represent all of the Owners in connection with the Taking. The Board shall act, in its sole discretion, with respect to any awards made or to be made in connection with the Taking and shall be entitled to make a voluntary sale to the condemnor in lieu of engaging in a condemnation action. Any awards received on account of the Taking shall be paid to the Association and shall constitute Funds of the Association.

13.2 Association's Authority to Purchase Insurance. The Association shall purchase and maintain such property damage and liability insurance upon the Common Areas and such other insurance as the Board, in its absolute discretion, may determine. The Association shall be the named insured in all policies providing such insurance. Neither the Association nor the Board, nor any Member of the Board or officer or agent of the Association, shall be liable to any Person for failure of the Association to secure and maintain any such insurance coverage where such insurance coverage is not available in the State of Arizona at a reasonable cost and on other reasonable terms and conditions. Notwithstanding the foregoing, the Association shall obtain and maintain at all times, at the Association's expense, directors' and officers' liability insurance covering all officers and directors of the Association, as well as all regular and alternate members of the Committee, in amounts and on terms adequate to permit the Association to meet its obligations to indemnify such persons pursuant to the Articles and Bylaws.

13.3 Individual Responsibility; Disclaimer of Liability. It shall be the responsibility of each Owner or Occupant to provide insurance for himself on his real or personal property interests on or within the Property, including, but not limited to, additions and Improvements thereto, furnishings and personal property thereon, and for his personal liability. No Person shall maintain any insurance that would limit or reduce in any manner the insurance proceeds payable under the insurance maintained by the Association in the event of damage to the Improvements or fixtures on the Common Areas. The Association, any Board member and Declarant shall not be liable to any Person or mortgagee if any risks or hazards are not covered by the insurance obtained by the Association or if the amount of such insurance is not adequate.

13.4 Insurance Claims. The Association is hereby irrevocably appointed and authorized by the Owners to adjust all claims arising under insurance policies purchased by the Association and to execute and deliver releases upon the payment of claims, and to do all other acts reasonably necessary to accomplish any of the foregoing. The Board has full and complete power to act for the Association in this regard and may, at its discretion, appoint an authorized representative or committee, or enter into an insurance trust agreement wherein the trustee shall have authority, to negotiate losses under any policy purchased by the Association. All proceeds from insurance acquired by the Association shall be payable to the Association. Any proceeds resulting from damage to the Common Areas shall be used to repair the damage unless otherwise approved by a majority of the votes of each class of Members at a meeting called for such

purpose. Any proceeds remaining upon repair of such damage may be retained by the Association as reserves or to reduce future Assessments.

ARTICLE 14

ADDITIONAL TERMS

14.1 Enforcement. The Association shall have the standing and power to enforce the provisions of this Declaration, the Articles, the Bylaws and the Association Rules and to obtain injunctive relief and damages, and its costs in doing so, including, but not limited to, reasonable attorneys' fees, together with interest thereon from the date the costs are expended at the rate of twelve percent (12%) per annum, shall constitute a lien on all Lots owned by the Owner or Owners against whom the action is taken (or against whose Occupants the action is taken), which lien shall have the priority and may be enforced in the manner described in *Section 8.2*. In addition, any Owner or Owners shall have the standing and power to enforce the provisions of this Declaration, the Articles and the Bylaws, and the prevailing party or parties in any action by an Owner or Owners to enforce any such provisions shall be entitled to recover from the other party or parties its or their costs in such action (including reasonable attorneys' fees), together with interest thereon at the rate equal of twelve percent (12%) per annum, and shall further be entitled to have all such costs (including such interest) included in any judgment awarded to the prevailing party or parties in such action. Failure by the Association or by any Owner to take any such enforcement action shall in no event be deemed a waiver of the right to do so thereafter. While Declarant has no reason to believe that any of the restrictive covenants contained in this Declaration are or may be invalid or unenforceable for any reason or to any extent, Declarant makes no warranty or representation as to the present or future validity or enforceability of any such restrictive covenant. Any Owner or other Person acquiring title or an interest in a Lot in reliance on one or more of such restrictive covenants shall assume all risks of the validity and enforceability thereof and by accepting a deed to the Lot agrees to hold Declarant harmless therefrom.

14.2 Notice of Violation. The Association shall have the right, but not the obligation, to Record a written notice of a violation by any Owner or Occupant of any restriction or provision of this Declaration, the Articles, the Bylaws or the Association Rules. Recordation of a notice of violation shall serve as a notice to the Owner and Occupant, and to any subsequent purchaser of the Lot, that there is such a violation. Notwithstanding the foregoing, failure by the Association to Record a notice of violation shall not constitute a waiver of any existing violation or evidence that no violation exists.

14.3 No Partition. No Person acquiring any interest in the Property or any part thereof shall have a right to, nor shall any person seek, any judicial partition of the Common Areas, nor shall any Owner sell, convey, transfer, assign, hypothecate or otherwise alienate all or any of such Owner's interest in the Common Areas or any funds or other assets of the Association except in connection with the sale, conveyance or hypothecation of such Owner's Lot (and only appurtenant thereto).

14.4 Interpretation of the Covenants. Except for judicial construction and as hereinafter provided, the Association, by its Board, 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.

14.5 Severability. If any provision of this Declaration or any application thereof shall be invalid or unenforceable, the remainder of this Declaration and any other application of such provision shall not be affected thereby.

14.6 Rule Against Perpetuities. If any of the interests, privileges, covenants or rights created by this Declaration shall be unlawful, void or voidable for violation of the Rule against Perpetuities or any related rule, then such provision shall continue until twenty-one (21) years after the death of the survivor of the descendants of the President of the United States living on the date this Declaration is Recorded.

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

14.8 Gender and Number. Wherever the context of this Declaration so requires, words used in the masculine, feminine or neuter genders, or the singular or plural number, shall each include the others.

14.9 Captions; References to Articles or Sections. All captions, titles or headings of all *Articles* and *Sections* are for the purpose of reference and convenience only and are not to be deemed to limit, modify or otherwise affect any of the provisions hereof or to be used in determining the intent or context thereof. References to an *Article* or a *Section* without further attribution shall be deemed to refer to an article or a section, as the case may be, of this Declaration.

14.10 Approvals Required. For as long as there is a Class B Member and if VA or FHA certification is desired by Declarant, the following actions will require the prior approval of the VA or FHA, unless such agencies have waived such requirements or unless the last sentence of this *Section 14.10* applies: (i) annexation of additional properties into the Project other than annexation of the Annexable Property pursuant to *Article 16* (unless such annexation is in accordance with a plan of annexation or expansion previously approved by such agencies); (ii) mergers and consolidations; (iii) mortgaging or otherwise encumbering Common Area; (iv) dedication or other transfer of Common Areas; (iv) dissolution of the corporation; and (vi) amendment of provisions in the Articles, this Declaration or the Bylaws to the extent required to be approved by the FHA or VA pursuant to their rules and regulations. Consent of the FHA and VA to the foregoing will not be required if the FHA and VA have elected not to approve the Project for certification or if such approval has been revoked, withdrawn, canceled or suspended.

14.11 No Absolute Liability. Nothing in this Declaration shall be construed as imposing on any Owner absolute liability for damage to Common Areas or Lots within the Project, but each Owner shall have such liability as is expressly imposed by this Declaration.

ARTICLE 15

DISPUTE RESOLUTION

15.1 Agreement to Resolve Certain Disputes Without Litigation. As used in this *Article 15* the term "Claim" shall mean: (a) any claim or cause of action arising out of or related in any way to the planning, design, engineering, grading, construction or development of the Common Area or any Lot or any Improvements situated thereon, including, without limitation, any claim or cause of action that the Common Areas are defective or that the Declarant or a Designated Builder or their agents, contractors, employees, subcontractors, architects, engineers or consultants were negligent in the planning, design, engineering, grading, construction or development thereof; of (b) any claim or cause of action against the Declarant or any employee, agent, director, member or officer of Declarant arising out of or in any way related to the development of the Project or the management or operation of the Association, including, without limitation, any claim for negligence, fraud, intentional misconduct or breach of fiduciary duty. The Association, the Declarant, all Owners, Occupants and other Persons bound by this Declaration, and any Person not otherwise bound by this Declaration who agrees to submit to this Article (collectively, the "Bound Parties") agree that the dispute resolution procedures set forth in this Article shall apply to all Claims.

15.2 Notice of Claim. Any Bound Party having a Claim (a "Claimant") against any other Bound Party (a "Respondent") shall notify each Respondent in writing of the Claim (the "Notice"), stating plainly and concisely: (a) the nature of Claim, including, date, time, location, Persons involved, and Respondent's role in the Claim; (b) the factual and legal basis of the Claim; and (c) what Claimant wants Respondent to do or not do to resolve the Claim.

In the event the Claimant is the Association and the Claim involves an Alleged Defect (as defined in *Section 15.5*), the Association must provide written notice to all Members prior to delivery a Claim Notice or commencing any legal action, cause of action, proceeding, reference or arbitration against a Bound Party which notice shall (at a minimum) include: (a) a description of the Claim, (b) a description of the attempts of the Declarant or other Bound Parties to correct such Alleged Defect and the Opportunities provided to Declarant or other Bound Parties to correct such Alleged Defect, (c) the estimated cost to repair such Alleged Defect, (d) the name and professional background of the attorney retained by the Association to pursue the Claim and a description of the relationship between such attorney and member(s) of the Board (if any), (e) a description of the fee arrangement between such attorney and the Association, (f) the estimated attorneys' fees and expert fees and costs necessary to pursue the Claim and the source of the funds which will be used to pay such fees and expenses, (g) the estimated time necessary to conclude the action, (h) a description of the manner in which the action will be funded and a description of any demands, notices, offers to settle or response to offers to settle made either by the Association or a Bound Party, and (i) an affirmative statement from the Board that the action is in the best interest of the Association and its Members. If the Alleged Defect is alleged to be the result of an act or omission of a person licensed by the State of Arizona under Title 20 or Title 32 of the Arizona Revised Statutes (a "Licensed Professional"), then the notice from the Association must be accompanied by an affidavit from a Licensed Professional in the same discipline as the Licensed Professional alleged to be responsible for the Alleged Defect. The affidavit must contain the information required to be contained in a preliminary expert opinion affidavit submitted pursuant to Section 12-2602B of the Arizona Revised Statutes.

15.3 Mediation. If the Parties do not resolve the Claim through negotiation within thirty (30) days after the date of the Notice or within such longer period as may be agreed upon by the Parties ("Termination of Negotiations"), Claimant shall have thirty (30) additional days within which to submit the Claim to mediation under the auspices of an independent mediation service designated by the Declarant.

If Claimant does not submit the Claim to mediation within thirty (30) days after Termination of Negotiations, Claimant shall be deemed to have waived the Claim, and Respondent shall be released and discharged from any and all liability to Claimant on account of such Claim; provided, nothing herein shall release or discharge Respondent from any liability to any Person not a Party to the foregoing proceedings.

If the Parties do not settle the Claim within thirty (30) days after submission of the matter to the mediation process, or within such time as determined reasonable or appropriate by the mediator, the mediator shall issue a notice of termination of the mediation proceedings ("Termination of Mediation"). The Termination of Mediation notice shall set forth when and where the Parties met, that the Parties are at an impasse, and the date that mediation was terminated.

15.4 Binding Arbitration. In the event a Claim is not resolved by Mediation, the Claimant shall have fifteen (15) days after the Termination of Mediation to submit the Claim to binding arbitration in accordance with this *Section 15.4*. If the Claimant fails to timely submit the Claim to arbitration, then the Claim shall be deemed waived and abandoned and the Respondent shall be relieved of any and all liability to Claimant arising out of the Claim. If the Claimant submits the Claim to binding arbitration in accordance with this *Section*, the arbitration shall be conducted in accordance with the following rules:

(a) **Initiation of Arbitration.** The arbitration shall be initiated by either party delivering the other a Notice of Intention to Arbitrate as provided for in the American Arbitration Association ("AAA") Commercial Arbitration Rules, as amended from time to time (the "AAA Rules").

(b) **Governing Procedures.** The arbitration shall be conducted in accordance with the AAA Rules and A.R.S. § 12-1501, *et seq.* In the event of a conflict between the AAA Rules and this *Section 15.4*, the provisions of this *Section 15.4* shall govern.

(c) **Appointment of Arbitrator.** The parties shall appoint a single Arbitrator by mutual agreement. If the parties have not agreed within ten (10) days of the date of the Notice of Intention to Arbitrate on the selection of an arbitrator willing to serve, the AAA shall appoint a qualified Arbitrator to serve. Any arbitrator chosen in accordance with this *Subsection (c)* is referred to in this *Section 15.4* as the "Arbitrator".

(d) **Qualifications of Arbitrator.** The Arbitrator shall be neutral and impartial. The Arbitrator shall be fully active in such Arbitrator's occupation or profession, knowledgeable as to the subject matter involved in the dispute, and experienced in arbitration proceedings. The foregoing shall not preclude otherwise qualified retired lawyers or judges.

(e) **Disclosure.** Any candidate for the role of Arbitrator shall promptly disclose to the parties all actual or perceived conflicts of interest involving the dispute or the parties. No Arbitrator may serve if such person has a conflict of interest involving the subject matter of the dispute or the parties. If an Arbitrator resigns or becomes unwilling to continue to serve as an Arbitrator, a replacement shall be selected in accordance with the procedure set forth in *Subsection (c)* above.

(f) **Compensation.** The Arbitrator shall be fully compensated for all time spent in connection with the arbitration proceedings in accordance with the Arbitrator's usual hourly rate, unless otherwise agreed to by the parties, for all time spent by the Arbitrator in connection with the arbitration proceeding. Pending the final award, the Arbitrator's compensation and expenses shall be advanced equally by the parties.

(g) **Preliminary Hearing.** Within thirty (30) days after the Arbitrator has been appointed, a preliminary hearing among the Arbitrator and counsel for the Parties shall be held for the purpose of developing a plan for the management of the arbitration, which shall then be memorialized in an appropriate order. The matters which may be addressed include, in addition to those set forth in the AAA Rules, the following: (i) definition of issues; (ii) scope, timing and types of discovery, if any; (iii) schedule and place(s) of hearings; (iv) setting of other timetables; (v) submission of motions and briefs; (vi) whether and to what extent expert testimony will be required, whether the Arbitrator should engage one or more neutral experts, and whether, if this is done, engagement of experts by the Parties can be obviated or minimized; (vii) whether and to what extent the direct testimony of witnesses will be received by affidavit or written witness statement; and (viii) any other matters which may promote the efficient, expeditious, and cost-effective conduct of the proceeding.

(h) **Management of the Arbitration.** The Arbitrator shall actively manage the proceedings as the Arbitrator deems best so as to make the proceedings expeditious, economical and less burdensome than litigation.

(i) **Confidentiality.** All papers, documents, briefs, written communication, testimony and transcripts as well as any and all arbitration decisions shall be confidential and not disclosed to anyone other than the Arbitrator, the parties or the parties' attorneys and expert witnesses (where applicable to their testimony), except that upon prior written consent of all parties, such information may be divulged to additional third parties. All third parties shall agree in writing to keep such information confidential.

(j) **Hearings.** Hearings may be held at any place within the State of Arizona designated by the Arbitrator and, in the case of particular witnesses not subject to subpoena at the usual hearing site, at a place where such witnesses can be compelled to attend.

(k) **Final Award.** The Arbitrator shall promptly (within sixty (60) days of the conclusion of the proceedings or such longer period as the parties mutually agree) determine the claims of the parties and render a final award in writing. The Arbitrator may award the prevailing party in the proceeding all or a part of such party's reasonable attorneys' fees and expert witness fees, taking into account the final result of

arbitration, the conduct of the parties and their counsel in the course of the arbitration, and other relevant factors. The Arbitrator shall not award any punitive damages. The Arbitrator shall not award indirect, consequential or special damages regardless of whether the possibility of such damage or loss was disclosed to, reasonably foreseen by the party against whom the claim is made; provided, however, that such damages may be deemed by the Arbitrator to be direct damages in an award reimbursing payments made by a party therefor to a third party. The Arbitrator shall assess the costs of the proceedings (including, without limitation, the fees of the Arbitrator) against the non-prevailing party.

15.5 Right to Enter, Inspect, Repair and/or Replace. Within a reasonable time after the receipt by Declarant or a Designated Builder, as applicable, of a Notice, the Declarant or a Designated Builder, as applicable, shall have the right, upon reasonable notice to Claimant and during normal business hours, to enter onto or into, as applicable, the Common Area, any Lot, including any Dwelling Unit constructed thereon, and/or any Improvements for the purposes of inspecting and/or conducting testing to determine the validity of the Claim and, if deemed necessary by the Declarant, or a Designated Builder, as applicable, to correct, repair and/or replace the alleged deficiency in the planning, design, engineering, grading, construction or development of the Common Area or any Lot, or any Improvement constructed on the Common Area or a Lot which is the basis for the Claim (the "Alleged Defect"). In conducting such inspection, testing, repairs and/or replacement, the Declarant or a Designated Builder, as applicable, shall be entitled to take any action as it shall deem reasonable and necessary under the circumstances.

Nothing set forth in this *Section* shall be construed to impose any obligation on Declarant or a Designated Builder, as applicable, to inspect, test, repair, or replace any item or Alleged Defect for which Declarant or a Designated Builder, as applicable, is not otherwise obligated under applicable law or any limited warranty provided by Declarant or a Designated Builder, as applicable, in connection with the sale of the Lots and/or the Improvements constructed thereon. The right of Declarant or a Designated Builder, as applicable, to enter, inspect, test, repair and/or replace reserved hereby shall be irrevocable and may not be waived or otherwise terminated except by a writing, in recordable form, executed and Recorded by Declarant. In no event shall any statutes of limitations be tolled during the period in which Declarant or a Designated Builder, as applicable, conducts any inspection or testing of any Alleged Defects.

15.6 Use of Funds. In the event the Association recovers any funds from the Declarant or any other Person as a result of a claim involving an Alleged Defect, the funds shall first be used to correct and or repair the Alleged Defect or to reimburse the Claimant for any costs actually incurred by such Claimant in correcting and/or repairing the Alleged Defect, and any excess funds shall be paid into the Association's reserve fund.

15.7 Approval of Litigation. The Association shall not issue a Claim Notice, institute any legal action or arbitration proceeding involving a Claim or incur legal expenses (including without limitation, attorneys' fees), in connection with a Claim without the written approval of Owners entitled to cast more than seventy-five percent (75%) of the total votes in the Association, excluding the voting power of any Owner who would be a defendant in such proceedings. The Association must pay for any such legal action or arbitration proceeding with

monies that are specifically collected for such purposes and may not borrow money or use reserve funds or other monies collected for specific Association obligations other than legal fees. In the event that the Association commences any legal action or arbitration proceeding involving a Claim, all Owners must notify prospective purchaser of such legal action or arbitration proceedings and must provide such prospective purchasers such a copy of the notice received from the Association in accordance with *Section 15.2*.

15.8 Admissibility of Certain Actions and Omissions.

Claimant's failure to allow a reasonable inspection requested by a Declarant or a Designated Builder pursuant to *Section 15.5* is admissible in any arbitration of a Claim and creates a rebuttable presumption that the Claimant's damages could have been mitigated.

ARTICLE 16

ANNEXATION

16.1 Reservation of Certain Annexation Rights.

Declarant hereby reserves the right, privilege and option from time to time hereafter to add and annex to the Property (and thereby to subject to the provisions of this Declaration) any part(s) or all of the Annexable Property, without the vote of the Members and without notice to or approval of any holder, insurer or guarantor of any mortgage or of any other Person. Notwithstanding the foregoing sentence, no portion of the Annexable Property may be annexed to the Property unless at the time of each and any such annexation the portion of the Annexable Property to be annexed is owned by Declarant or by a trustee for the benefit of Declarant.

16.2 Recordation of Annexation Instrument.

Any annexation of Annexable Property by Declarant pursuant to this *Article 16* will be evidenced by Declarant executing, acknowledging and Recording an instrument effecting and evidencing such annexation (which instrument shall also be duly executed and acknowledged by each owner of all or any part of the property being annexed), and such annexation shall be deemed effective only upon such Recordation.

16.3 Effect of Annexation.

Upon the effective date of an annexation pursuant to this *Article 16*: (a) the property so annexed shall immediately be and become a part of the Property and subject to all of the provisions hereof; (b) any Lot then or thereafter constituting a part of the annexed property, and the Owner of any such Lot, shall thereupon be subject to all of the provisions of this Declaration; (c) any part or parts of the property annexed which is or are designated or declared to be Common Area shall thereupon be subject to the provisions of this Declaration; and (d) improvements then or thereafter situated upon the annexed property shall be subject to the provisions of this Declaration and shall be reasonably consistent, in terms of quality of construction, with the improvements situated upon other portions of the Property prior to such annexation.

16.4 No Obligation to Annex.

Nothing herein shall constitute a representation warranty or covenant that Declarant, any successor or assign of Declarant, or any other Person will subject any part of the Annexable Property to the provisions of the Declaration, nor shall Declarant, any successor or assign of Declarant, or any other Person be obligated so to do, and Declarant may, by Recorded instrument executed by Declarant, waive its rights so to do, in whole or in part, at any time or from time to time.

16.5 De-Annexation.

Notwithstanding any other provision of this Declaration, Declarant shall have the right from time to time, at Declarant's sole option and without the consent of any other Person (except as provided in this *Section 16.5*) to delete from the Property and remove from the effect of this Declaration one or more portions of the Property, provided, however, that: (a) a portion of the Property may not be so deleted and removed unless at the time of such deletion and removal such portion is either (i) owned by Declarant, or (ii) the Designated Builder or Owner holding title to such property executes and Records an instrument approving such deletion and removal; (b) a portion of the Property may not be so deleted and removed unless at the time of such deletion and removal no Dwelling Units or Common Area recreational facilities have been (or are planned to be) constructed thereon (unless the deannexation is for purposes of accomplishing minor adjustments to the boundaries of one or more Lots, any Common Area or another portion of the Property); (c) a portion of the Property may not be so deleted and removed if such deletion and removal would deprive Owners and Occupants of other parts of the Property of access or other easements or rights-of-way necessary to the continued use of their respective parts of the Property (unless at the same time provision is made for reasonably adequate replacement easements or rights-of-way); and (d) all of the Designated Builders owning any portion of the Property consent in writing to the proposed deannexation. Declarant may exercise its rights under this *Section 16.5* in each case by executing and causing to be Recorded an instrument which identifies the portion of the Property to be so deleted and removed and which is executed by each Owner of such portion, and the deletion and removal of such portion of the Property shall be deemed effective upon the later of: (i) the date such instrument is Recorded; or (ii) the effective date specified in such instrument, if any, whereupon, except as otherwise expressly provided in this *Section 16.5*, the portion of the Property so deleted and removed shall thereafter for all purposes be deemed not a part of the Property and not subject to this Declaration, and the owner(s) thereof (of interests therein) shall not be deemed to be Owners or Members with respect to the deleted portion of the Property or have any other rights or obligations hereunder with respect to the deleted portion of the Property except as members of the general public. No such deletion and removal of a portion of the Property shall act to release such portion from the lien for Assessments or other charges hereunder which have accrued prior to the effective date of such deletion and removal, but all such Assessments or other charges shall be appropriately prorated to the effective date of such deletion and removal, and no Assessments or other charges shall thereafter accrue hereunder with respect to the portion of the Property so deleted and removed.

[SIGNATURE PAGE FOLLOWS]

IN WITNESS WHEREOF, Declarant has caused this Declaration to be duly executed.

THE RYLAND GROUP, INC., a Maryland corporation

By *[Signature]*
Its: OPERATIONAL VICE PRESIDENT.

STATE OF ARIZONA)
) ss.
County of Maricopa)

On this 20th day of January, 2004, before me, Melissa Baker, the undersigned notary public, personally appeared Robert M. Cross who acknowledged himself to be the Ops. V.P. of THE RYLAND GROUP, INC, a Maryland corporation, and that he, in such capacity, being authorized so to do, executed the foregoing instrument for the purposes therein contained.

Notary Public
[Signature]

My Commission Expires:
May 20, 2006



EXHIBIT A
LEGAL DESCRIPTION

Lots 1 through 159 inclusive, Lots 201 through 204, inclusive, Lots 261 through 312, inclusive and Tracts of A, B, C, D, E, F, G, H, K, L, M and N of Rogers Ranch Unit 2, according to the plat of record in the office of the County Recorder of Maricopa County, Arizona, recorded as Book 623 of Maps, Page 28 and affidavit of correction recorded at 2003-0648377 of official records and December 12, 2003 as 2003-1683553 of official records.

EXHIBIT A-1

ANNEXABLE PROPERTY LEGAL DESCRIPTION

Lots 160 through 200, inclusive, Lots 205 through 260, inclusive, of Rogers Ranch Unit 2, according to the plat of record in the Office of the County Recorder of Maricopa County, Arizona, recorded in Book 623 of Maps, Page 28 and affidavit of correction recorded May 21, 2003 as 2003-0648377 of official records and December 12, 2003 as 2003-1683553 of official records.