

DECLARATION OF COVENANTS, CONDITIONS  
AND RESTRICTIONS  
FOR  
SABINO ESTATES

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DECLARATION OF COVENANTS, CONDITIONS AND RESTRICTIONS  
FOR  
SABINO ESTATES.

This Declaration of Covenants, Conditions, and Restrictions for Sabino Estates (this "Declaration") is made this 31st day of May, 1995, by Sabino Estates Limited Partnership, an Arizona limited partnership (the "Declarant").

ARTICLE 1

DEFINITIONS

1.1 "Annual Assessment" means the assessments levied against each Lot, and the Owner thereof, pursuant to Section 6.2 of this Declaration.

1.2 "Architectural Committee" means the committee of the Association to be created pursuant to Section 5.10 of this Declaration.

1.3 "Architectural Committee Rules" means the rules and guidelines adopted by the Architectural Committee pursuant to Section 5.10 of this Declaration, as they may from time to time be amended or supplemented.

1.4 "Areas of Association Responsibility" means (i) all Common Area; (ii) all land, and the Improvements situated thereon, situated within the boundaries of a Lot which the Association acknowledges in a recorded document is land which is to be improved, maintained, repaired and replaced by the Association, and (iii) all real property, and the Improvements situated thereon, within the Project located within dedicated rights-of-way with respect to which the State of Arizona or any county or municipality has not accepted responsibility for the maintenance thereof, but only until such time as the State of Arizona or any county or municipality has accepted all responsibility for the maintenance, repair and replacement of such areas.

1.5 "Articles" means the Articles of Incorporation of the Association, as they may from time to time be amended.

1.6 "Assessment" means an Annual Assessment or Special Assessment.

1.7 "Assessment Lien" means the lien created and imposed by Article 6 of this Declaration.

1.8 "Assessment Period" means the period set forth in Section 6.5 of this Declaration.

1.9 "Association" means Sabino Estates Homeowners Association, an Arizona nonprofit corporation, and its successors and assigns.

1.10 "Association Rules" means the rules adopted by the Board pursuant to Section 5.3 of this Declaration, as they may from time to time be amended.

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

1.12 "Bylaws" means the Bylaws of the Association, as they may from time to time be amended.

1.13 "Common Area" means Tracts A through D, Sabino Estates, according to the plat recorded in Book 396, page 23, records of Maricopa County, Arizona, and any other real property, together with all Improvements situated thereon, which the Association at any time owns in fee or in which the Association has a leasehold interest for as long as the Association is the owner of the fee or leasehold interest.

1.14 "Common Expenses" means expenditures made by or financial liabilities of the Association, together with any allocations to reserves.

1.15 "Declarant" means Sabino Estates Limited Partnership, an Arizona limited partnership, its successors and any person or entity to whom it may expressly assign any or all of its rights under this Declaration.

1.16 "Declaration" means this Declaration of Covenants, Conditions, and Restrictions, as it may be amended from time to time.

1.17 "First Mortgage" means any mortgage or deed of trust on a Lot which has priority over all other mortgages or deeds of trust on the same Lot.

1.18 "First Mortgagee" means the holder of any First Mortgage.

1.19 "Improvement" means any building, fence, wall or other structure or any swimming pool, road, driveway, parking area or any trees, plants, shrubs, grass or other landscaping improvements of every type and kind.

1.20 "Lessee" means the lessee or tenant under a lease, oral or written, of any Lot including an assignee of a lease.

1.21 "Lot" means each parcel of real property designated as a lot on the Plat and, where the context indicates or requires, shall include any Residential Unit, building, structure or other Improvements situated on the Lot.

1.22 "Maintenance Standard" means the standard of maintenance of Improvements established from time to time by the Board or, in the absence of any standard established by the Board, the standard of maintenance of Improvements generally prevailing throughout the Project.

1.23 "Member" means any Person who is a Member of the Association.

1.24 "Owner" means the record owner, whether one or more Persons, of beneficial or equitable title (and legal title if the same has merged with the beneficial or equitable title) to the fee simple interest of a Lot. Owner shall not include (i) Persons having an interest in a Lot merely as security for the performance of an obligation, or (ii) a Lessee. Owner shall include a purchaser under a contract for the conveyance of real property subject to the provisions of A.R.S. § 33-741 *et. seq.* Owner shall not include a purchaser under a purchase contract and receipt, escrow instructions or similar executory contracts which are intended to control the rights and obligations of the parties to the executory contracts pending the closing of a sale or purchase transaction. In the case of Lots the fee simple title to which is vested in a trustee pursuant to Arizona Revised Statutes, Section 33-801, *et seq.*, the Trustor shall be deemed to be the Owner. In the case of the Lots the fee simple title to which is vested in a trustee pursuant to a subdivision trust agreement or similar agreement, the beneficiary of any such trust who is entitled to possession of the trust property shall be deemed to be the Owner.

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

1.26 "Plat" means the plat of Sabino Estates recorded in Book 396, page 23, records of Maricopa County, Arizona, and all amendments, supplements and corrections thereto

1.27 "Property" or "Project" means the real property described on Exhibit A attached to this Declaration together with all Improvements located thereon.

1.28 "Project Documents" means this Declaration, the Articles, the Bylaws, the Association Rules and the Architectural Committee Rules.

1.29 "Purchaser" means any Person, other than the Declarant, who by means of a voluntary transfer becomes the Owner of a Lot, except for (i) a Person who purchases a Lot and then leases it to the Declarant for use as a model in connection with the sale or lease of other Lots or (ii) a Person who, in addition to purchasing a Lot, is assigned any or all of the Declarant's rights under this Declaration.

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

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

1.32 "Residential Unit" means any building, or portion of a building, situated upon a Lot and designed and intended for independent ownership and for use and occupancy as a residence.

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

1.34 "Special Assessment" means any assessment levied and assessed pursuant to Section 6.4 of this Declaration.

1.35 "Visible From Neighboring Property" means, with respect to any given object, that such object is or would be visible to a person six feet tall, standing at ground level on any part of such neighboring property; provided, however that an object shall not be considered as being Visible From Neighboring Property if the object is visible to a person six feet (6') tall, standing at ground level on any part of neighboring property only by such person being able to see the object through a wrought iron fence and such object would not be visible to such person if the wrought iron fence were a solid fence.

## ARTICLE 2

### PLAN OF DEVELOPMENT

2.1 Property Initially Subject to the Declaration. This Declaration is being recorded to establish a general plan for the development and use of the Project in order to protect and enhance the value and desirability of the Project. The Declarant declares that all of the property within the Project shall be held, sold and conveyed subject to this Declaration. By acceptance of a deed or by acquiring any interest in any of the property subject to this Declaration, each person or entity, for himself or itself, his heirs, personal

representatives, successors, transferees and assigns, binds himself, his heirs, personal representatives, successors, transferees and assigns, to all of the provisions, restrictions, covenants, conditions, rules, and regulations now or hereafter imposed by this Declaration and any amendments thereof. In addition, each such person by so doing thereby acknowledges that this Declaration sets forth a general scheme for the development and use of the Property and hereby evidences his interest that all the restrictions, conditions, covenants, rules and regulations contained in this Declaration shall run with the land and be binding on all subsequent and future Owners, grantees, purchasers, assignees, lessees and transferees thereof. Furthermore, each such person fully understands and acknowledges that this Declaration shall be mutually beneficial, prohibitive and enforceable by the Association and all Owners. Declarant, its successors, assigns and grantees, covenants and agrees that the Lots and the membership in the Association and the other rights created by this Declaration shall not be separated or separately conveyed, and each shall be deemed to be conveyed or encumbered with its respective Lot even though the description in the instrument of conveyance or encumbrance may refer only to the Lot.

2.2 Disclaimer of Representations. Declarant makes no representations or warranties whatsoever that (i) the Project will be completed in accordance with the plans for the Project as they exist on the date this Declaration is recorded; (ii) any Property subject to this Declaration will be committed to or developed for a particular use or for any use; or (iii) the use of any Property subject to this Declaration will not be changed in the future.

## ARTICLE 3

### USE RESTRICTIONS

#### 3.1 Architectural Control.

3.1.1 All Improvements constructed on Lots shall be of new construction, and no buildings or other structures shall be removed from other locations on to any Lot.

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

3.1.3 No Improvement shall be constructed or installed on any Lot without the prior written approval of the Architectural Committee.

3.1.4 No addition, alteration, repair, change or other work which in any way alters the exterior appearance, including but without limitation, the exterior color scheme, of any Lot, or the Improvements located thereon, from their appearance on the date this

Declaration is Recorded shall be made or done without the prior written approval of the Architectural Committee.

3.1.5 Any Owner desiring approval of the Architectural Committee for the construction, installation addition, alteration, repair, change or replacement of any Improvement which would alter the exterior appearance of his Lot, or the Improvements located thereon, shall submit to the Architectural Committee a written request for approval specifying in detail the nature and extent of the addition, alteration, repair, change or other work which the Owner desires to perform. Any Owner requesting the approval of the Architectural Committee shall also submit to the Architectural Committee any additional information, plans and specifications which the Architectural Committee may request. In the event that the Architectural Committee fails to approve or disapprove an application for approval within thirty (30) days after the application, together with all supporting information, plans and specifications requested by the Architectural Committee have been submitted to it, approval will not be required and this Section will be deemed to have been complied with by the Owner who had requested approval of such plans.

3.1.6 The approval by the Architectural Committee of any construction, installation, addition, alteration, repair, change or other work pursuant to this Section shall not be deemed a waiver of the Architectural Committee's right to withhold approval of any similar construction, installation, addition, alteration, repair, change or other work subsequently submitted for approval.

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

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

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

3.1.10 The provisions of this Section do not apply to, and approval of the Architectural Committee shall not be required for, the construction, erection, installation,

addition, alteration, repair, change or replacement of any improvements made by, or on behalf of, the Declarant.

3.1.11 The approval required of the Architectural Committee pursuant to this Section shall be in addition to, and not in lieu of, any approvals or permits which may be required under any federal, state or local law, statute, ordinance, rule or regulation.

3.1.12 The Architectural Committee may require that an Owner, before commencing construction of any Improvements approved by the Architectural Committee, pay to the Association a deposit in an amount determined by the Architectural Committee to be used by the Association to ensure compliance with this Declaration, including, without limitation, repair of broken curbs and removal of any construction debris from a Lot which is permitted to accumulate in violation of Section 3.4 of this Declaration. The Architectural Committee shall also have the right to determine which portion, if any, of the deposit will be nonrefundable. Any portion of the deposit which is refundable shall be refunded to the Owner by the Association upon the completion of construction of the Improvements and the removal of all construction debris from the Lot.

3.2 Temporary Occupancy and Temporary Buildings. No trailer, basement of any incomplete building, tent, shack, garage or barn, and no temporary buildings or structures of any kind, shall be used at any time for a residence, either temporary or permanent. Temporary buildings, trailers or other structures used during the construction of Improvements approved by the Architectural Committee shall be removed immediately after the completion of construction, and in no event shall any such buildings, trailer or other structures be maintained or kept on any property for a period in excess of twelve months without the prior written approval of the Architectural Committee.

3.3 Maintenance of Lawns and Plantings. Each Owner of a Lot shall keep all shrubs, trees, hedges, grass and plantings of every kind located on (i) his Lot, (ii) any public right-of-way or easement area which abuts or adjoins the Owner's Lot and which is located between the boundary line of his Lot and the paved area of any street, sidewalk, bike-path or similar area, and (iii) any non-street public right-of-way or easement area adjacent to his Lot, neatly trimmed, and shall keep all such areas properly cultivated and free of trash, weeds and other unsightly material; provided, however, that such Owner shall not be responsible for maintenance of any area over which (i) the Association assumes the responsibility in writing; (ii) the Association has been given such responsibility by this Declaration; or (iii) Maricopa County or any municipality having jurisdiction over such property assumes responsibility, for so long as the Association, Maricopa County or such municipality assumes or has responsibility.

3.4 Nuisances; Construction Activities. No rubbish or debris of any kind shall be placed or permitted to accumulate upon or adjacent to any Lot or other property, and no

odors or loud noises shall be permitted to arise or emit therefrom, so as to render any such property or any portion thereof, or activity thereon, unsanitary, unsightly, offensive or detrimental to any other property in the vicinity thereof or to the occupants of such other property. No other nuisance shall be permitted to exist or operate upon any Lot or other property so as to be offensive or detrimental to any other property in the vicinity thereof or to its occupants. Normal construction activities and parking in connection with the building of Improvements on a Lot or other property shall not be considered a nuisance or otherwise prohibited by this Declaration, but Lots and other property shall be kept in a neat and tidy condition during construction periods, trash and debris shall not be permitted to accumulate, and supplies of brick, block, lumber and other building materials will be piled only in such areas as may be approved in writing by the Architectural Committee. In addition, any construction equipment and building materials stored or kept on any Lot or other property during the construction of Improvements may be kept only in areas approved in writing by the Architectural Committee, which may also require screening of the storage areas. The Architectural Committee in its sole discretion shall have the right to determine the existence of any such nuisance. The provisions of this Section shall not apply to construction activities of the Declarant.

**3.5 Diseases and Insects.** No Person shall permit any thing or condition to exist upon any Lot or other property which shall induce, breed or harbor infectious plant diseases or noxious insects.

**3.6 Repair of Building.** No Residential Unit, building or structure on any Lot or other property shall be permitted to fall into disrepair and each such Residential Unit, building and structure shall at all times be kept in good condition and repair and adequately painted or otherwise finished. In the event any Residential Unit, building or structure is damaged or destroyed, then, subject to the approvals required by Section 3.2 of this Declaration, such Residential Unit, building or structure shall be immediately repaired or rebuilt or shall be demolished.

**3.7 Antennas.** No antenna or other device for the transmission or reception of television or radio signals or any other form of electromagnetic radiation including, without limitation, satellite or microwave dishes, shall be erected, used, or maintained on any Lot without the prior written approval of the Architectural Committee.

**3.8 Mineral Exploration.** No Lot or other property shall be used in any manner to explore for or to remove any water, oil or other hydrocarbons, minerals of any kind, gravel, earth or any earth substance of any kind.

**3.9 Trash Containers and Collection.** No garbage or trash shall be placed or kept on any Lot or other property, except in covered containers of a type, size and style which are approved by the Architectural Committee. In no event shall such containers be

maintained so as to be Visible From Neighboring Property except to make the same available for collection and then only for the shortest time reasonably necessary to effect such collection. All rubbish, trash, or garbage shall be removed from Lots and other property and shall not be allowed to accumulate thereon. No outdoor incinerators shall be kept or maintained on any Lot or other property.

**3.10 Clothes Drying Facilities.** No outside clotheslines or other outside facilities for drying or airing clothes shall be erected, placed or maintained on any Lot or other property so as to be Visible From Neighboring Property.

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

**3.12 Overhead Encroachments.** No tree, shrub, or planting of any kind on any Lot or other property shall be allowed to overhang or otherwise to encroach upon any sidewalk, street, pedestrian way or other area from ground level to a height of eight (8) feet without the prior approval of the Architectural Committee.

**3.13 Health, Safety and Welfare.** In the event additional uses, activities, and facilities are deemed by the Board to be a nuisance or to adversely affect the health, safety or welfare of Owners, Lessees and Residents, the Board may make rules restricting or regulating their presence in the Project as part of the Association Rules or may direct the Architectural Committee to make rules governing their presence on Lots or other property as part of the Architectural Committee Rules.

**3.14 Residential Use.** All Residential Units shall be used, improved and devoted exclusively to residential use by a Single Family. No trade or business may be conducted on any Lot or in or from any Residential Unit, except that an Owner or other Resident of a Residential Unit may conduct a business activity within a Residential Unit so long as (i) the existence or operation of the business activity is not apparent or detectable by sight, sound or smell from outside the Residential Unit, (ii) the business activity conforms to all applicable zoning ordinances or requirements for the Project, (iii) the business activity does not involve persons coming on to the Lot or the door-to-door solicitation of Owners or other Residents in the Project, and (iv) the business activity is consistent with the residential character of the Project and does not constitute a nuisance or a hazardous or offensive use or threaten security or safety of other residents in the Project, as may be determined from

time to time in the sole discretion of the Board. The terms "business" and "trade" as used in this Section shall be construed to have ordinary, generally accepted meanings, and shall include, without limitation, any occupation, work or activity undertaken on an ongoing basis which involves the provision of goods or services to persons other than the provider's family and for which the provider receives a fee, compensation or other form of consideration, regardless of whether (i) such activity is engaged in full or part time, (ii) such activity is intended or does generate a profit, or (iii) a license is required for such activity. The leasing of a Residential Unit by the Owner thereof shall not be considered a trade or business within the meaning of this Section.

**3.15 Animals.** No animal, bird, fowl, poultry, reptile or livestock may be kept on any Lot, except for two dogs, cats, parakeets or similar household birds may be kept on a Lot if they are kept, bred or raised thereon solely as domestic pets and not for commercial purposes. All dogs, cats or other pets permitted under this Section shall be confined to an Owner's Lot except that a dog or cat may be permitted to leave an Owner's Lot if such dog or cat is at all times kept on a leash not to exceed six feet (6') in length and is not permitted to enter upon any other Lot. No animal, bird, fowl, poultry or livestock shall be allowed to make an unreasonable amount of noise or to become a nuisance. No structure for the care, housing or confinement of any animal, bird, fowl, poultry, or livestock shall be maintained so as to be Visible From Neighboring Property. Upon the written request of any Owner, Lessee or Resident, the Architectural Committee shall conclusively determine, in its sole and absolute discretion, whether, for the purposes of this Section, a particular animal, bird, fowl, poultry, or livestock is a nuisance or making an unreasonable amount of noise. Any decision rendered by the Architectural Committee shall be enforceable in the same manner as other restrictions set forth in this Declaration.

**3.16 Machinery and Equipment.** No machinery or equipment of any kind shall be placed, operated or maintained upon or adjacent to any Lot, except (i) such machinery or equipment as is usual and customary in connection with the use, maintenance or construction (during the period of construction) of a building, appurtenant structures, or other Improvements; (ii) that which Declarant or the Association may require for the operation and maintenance of the Project.

**3.17 Signs.** No signs whatsoever (including, but not limited to, commercial, political, "for sale", "for rent" and similar signs) which are Visible From Neighboring Property shall be erected or maintained on any Lot except:

3.17.1 Signs required by legal proceedings.

3.17.2 Residence identification signs provided the size, color, content and location of such signs have been approved in writing by the Architectural Committee.

3.17.3 One (1) "For Sale" sign provided the size, color, design, message content, location and type has been approved in writing by the Architectural Committee.

**3.18 Restriction on Further Subdivision, Property Restrictions and Rezoning.** No Lot shall be further subdivided or separated into smaller lots or parcels by any Owner other than the Declarant, and no portion less than all of any such Lot shall be conveyed or transferred by any Owner other than the Declarant, without the prior written approval of the Architectural Committee. No further covenants, conditions, restrictions or easements shall be recorded by any Owner, Lessee, or other Person other than the Declarant against any Lot without the provisions thereof having been first approved in writing by the Architectural Committee. No application for rezoning, variances or use permits pertaining to any Lot shall be filed with any governmental authority by any Person other than the Declarant unless the application has been approved by the Architectural Committee and the proposed use otherwise complies with this Declaration.

**3.19 Trucks, Trailers, Campers and Boats.** No truck, mobile home, travel trailer, tent trailer, trailer, camper shell, detached camper, recreational vehicle, boat, boat trailer, or other similar equipment or vehicle may be parked, maintained, constructed, reconstructed or repaired on any Lot or Common Area or on any street so as to be Visible From Neighboring Property without the prior written approval of the Architectural Committee; except for (i) temporary construction trailers or facilities maintained during, and used exclusively in connection with, the construction of any Improvement approved by the Architectural Committee; (ii) boats and vehicles parked in garages on Lots so long as such vehicles are in good operating condition and appearance and are not under repair; (iii) motor vehicles not exceeding seven (7) feet in height and eighteen (18) feet in length which are not used for commercial purposes and which do not display any commercial name, phone number or message of any kind; or (iv) boats and boat trailers which are parked on a Lot for a period of less than thirty-six (36) hours within any seven (7) day period.

### **3.20 Motor Vehicles.**

3.20.1 Except for emergency vehicle repairs, no automobile or other motor vehicle shall be constructed, reconstructed or repaired upon a Lot or other property in the Project, and no inoperable vehicle may be stored or parked on any such Lot so as to be Visible From Neighboring Property or to be visible from any Common Area or any street.

3.20.2 No motorcycle, motorbike, all-terrain vehicle, off-road vehicle or any similar vehicle shall be parked, maintained or operated on any portion of the Project except in garages on Lots.

3.20.3 No automobile or other motor vehicle shall be parked on any road or street in the Project, except for automobiles or motor vehicles or guests of Owners which

may be parked on a road or street in the Project for a period of not more than forty-eight (48) hours.

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

**3.22 Variances.** The Architectural Committee may, at its option and in extenuating circumstances, grant variances from the restrictions set forth in this Article 3 if the Architectural Committee determines in its discretion that (i) a restriction would create an unreasonable hardship or burden on an Owner, Lessee or Resident or a change of circumstances since the recordation of this Declaration has rendered such restriction obsolete and (ii) that the activity permitted under the variance will not have any substantial adverse effect on the Owners, Lessees and Residents of the Project and is consistent with the high quality of life intended for residents of the Project.

**3.23 Change of Use.** Upon (i) adoption of a resolution by the Board stating that in the Board's opinion the then present use of a designated part of the Area of Association Responsibility is no longer in the best interests of the Owners and (ii) the approval of such resolution by Members casting more than fifty percent (50%) of the votes entitled to be cast by Members who are present in person or by proxy at a meeting duly called for such purpose and who are entitled to use such Area of Association Responsibility under the terms of this Declaration, the Board shall have the power and right to change the use thereof (and in connection therewith, construct, reconstruct, alter or change the buildings, structures and improvements thereon in any manner deemed necessary by the Board to accommodate the new use), provided such new use shall be for the benefit of the Owners and shall be consistent with any zoning regulations restricting or limiting the use of the Area of Association Responsibility.

**3.24 Drainage.** No Residential Unit, structure, building, landscaping, fence, wall or other Improvement shall be constructed, installed, placed or maintained in any manner that would obstruct, interfere with or change the direction or flow of water in accordance with the drainage plans for the Project, or any part thereof, or for any Lot as shown on the drainage plans on file with the county or municipality in which the Project is located.

**3.25 Garages and Driveways.** The interior of all garages or carports shall be maintained in a neat, clean and sightly condition. Garages and carports shall be used only for the parking of vehicles and shall not be used or converted for living or recreational activities without the prior written approval of the Architectural Committee.

**3.26 Rooftop Air Conditioners Prohibited.** No air conditioning units or appurtenant equipment may be mounted, installed or maintained on the roof of any Residential Unit or other building so as to be Visible From Neighboring Property.

**3.27 Tennis Courts and Sport Courts.** No tennis court, sport court and similar Improvements shall be constructed without the prior written approval of the Architectural Committee which may require that the tennis court, sport court or similar Improvement be screened in such a manner as to not be Visible From Neighboring Property and may prohibit or restrict the lighting of such tennis court, sport court or similar Improvement.

**3.28 Height Restriction.** All Residential Units in the Project shall be one-story with a maximum height of twenty-four (24) feet measured from existing natural grade on each Lot.

## ARTICLE 4

### EASEMENTS

#### 4.1 Owners' Easements of Enjoyment.

4.1.1 Subject to the rights and easements granted to the Declarant in Section 4.4 and 4.5 of this Declaration, every Member, and any person residing with such Member, shall have a right and easement of enjoyment in and to the Common Area which right shall be appurtenant to and shall pass with the title to every Lot, subject to the following provisions:

(i) The right of the Association to dedicate, convey, transfer or encumber the Common Area as provided in Section 5.11 of this Declaration.

(ii) The right of the Association to regulate the use of the Common Area through the Association Rules and to prohibit access to such portions of the Common Area, such as landscaped areas, not intended for use by the Owners, Lessees or Residents.

(iii) The right of the Association to suspend the right of an Owner and such Owner's family, tenants and guests to use the Common Area if such owner is more than fifteen (15) days delinquent in the payment of Assessments or other amounts due to

the Association or if the Owner has violated any other provisions of the Project Documents and has failed to cure such violation within fifteen (15) days after the Association notifies the Owner of the violation.

4.1.2 If a Lot is leased or rented by the Owner thereof, the Lessee and the members of his family residing with such Lessee shall have the right to use the Common Area during the term of the lease, and the Owner of such Lot shall have no right to use the Common Area until the termination or expiration of such lease.

4.2 Utility Easement. There is hereby created an easement upon, across, over and under the Common Area and the Lots for reasonable ingress, egress, installation, replacing, repairing or maintaining of all utilities, including, but not limited to, gas, water, sewer, telephone, cable television and electricity. By virtue of this easement, it shall be expressly permissible for the providing utility company to erect and maintain the necessary equipment on the Common Area or Lots but no sewers, electrical lines, water lines, or other utility or service lines may be installed or located on the Common Area or Lots except as initially designed, approved and constructed by the Declarant or as approved by the Board.

4.3 Declarant's Use for Sales and Leasing Purposes. Declarant shall have the right and an easement to maintain sales or leasing offices, management offices and models throughout the Project and to maintain one or more advertising signs on the Common Area while the Declarant is selling Lots. Declarant reserves the right to place models, management offices and sales and leasing offices on any Lots owned by Declarant and on any portion of the Common Area in such number, of such size and in such locations as Declarant deems appropriate.

#### 4.4 Declarant's Easements.

4.4.1 Declarant shall have the right and an easement on and over the Areas of Association Responsibility to construct all Improvements the Declarant may deem necessary and to use the Areas of Association Responsibility and any Lots and other property owned by Declarant for construction or renovation related purposes including the storage of tools, machinery, equipment, building materials, appliances, supplies and fixtures, and the performance of work respecting the Project.

4.4.2 The Declarant shall have the right and an easement upon, over, and through the Areas of Association Responsibility as may be reasonably necessary for the purpose of discharging its obligations and exercising the rights granted to or reserved by the Declarant by this Declaration.

**4.5 Easement in Favor of Association.** The Lots are hereby made subject to the following easements in favor of the Association and its directors, officers, agents, employees and independent contractors:

4.5.1 For inspection of the Lots in order to verify the performance by Owners of all items of maintenance and repair for which they are responsible;

4.5.2 For inspection, maintenance, repair and replacement of the Areas of Association Responsibility accessible only from such Lots;

4.5.3 For correction of emergency conditions in one or more Lots;

4.5.4 For the purpose of enabling the Association, the Board, the Architectural Committee or any other committees appointed by the Board to exercise and discharge their respective rights, powers and duties under the Project Documents;

4.5.5 For inspection of the Lots in order to verify that the provisions of the Project Documents are being complied with by the Owners, their guests, tenants, invitees and the other occupants of the Lot.

## ARTICLE 5

### THE ASSOCIATION; ORGANIZATION; MEMBERSHIP AND VOTING RIGHTS

**5.1 Formation of Association.** The Association shall be a nonprofit Arizona corporation charged with the duties and invested with the powers prescribed by law and set forth in the Articles, Bylaws, and this Declaration. In the event of any conflict or inconsistency between this Declaration and the Articles, Bylaws, Association Rules or Architectural Rules, this Declaration shall control.

**5.2 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 the Bylaws. Unless the Project Documents specifically require the vote or written consent of the Members, approvals or actions to be given or taken by the Association shall be valid if given or taken by the Association.

**5.3 The Association Rules.** The Board may, from time to time, and subject to the provisions of this Declaration, adopt, amend and repeal rules and regulations pertaining to (i) the management, operation and use of the Areas of Association Responsibility including, but not limited to, any recreational facilities situated upon the Areas of Association

Responsibility, (ii) minimum standards for any maintenance of Lots, or (iii) any other subject within the jurisdiction of the Association. In the event of any conflict or inconsistency between the provisions of this Declaration and the Association rules, the provisions of this Declaration shall prevail.

**5.4 Personal Liability.** No member of the Board or of any committee of the Association, no officer of the Association, and no manager or other employee of the Association shall be personally liable to any Member, or to any other person or entity, including the Association, for any damage, loss or prejudice suffered or claimed on account of any act, omission, error, or negligence of the Association, the Board, the manager, any representative or employee of the Association, or any committee, committee member or officer of the Association; provided, however, the limitations set forth in this Section shall not apply to any person who has failed to act in good faith or has engaged in wilful or intentional misconduct.

**5.5 Implied Rights.** The Association may exercise any right or privilege given to the Association expressly by the Project Documents and every other right or privilege reasonably to be implied from the existence of any right or privilege given to the Association by the Project Documents or reasonably necessary to effectuate any such right or privilege.

**5.6 Identity of Members.** Membership in the Association shall be limited to Owners of Lots. An Owner of a Lot shall automatically, upon becoming the Owner thereof, be a member of the Association and shall remain a member of the Association until such time as his ownership ceases for any reason, at which time his membership in the Association shall automatically cease.

**5.7 Classes of Members.** The Association shall have two classes of voting membership:

**5.7.1 Class A.** Class A members shall be all Owners, with the exception of the Declarant until the termination of the Class B membership, of Lots. Each Class A member shall be entitled to one (1) vote for each Lot owned.

**5.7.2 Class B.** The Class B member shall be the Declarant. The Class B member shall be entitled to three (3) votes for each Lot owned. The Class B membership shall cease and be converted to Class A membership on the earlier of (i) the date on which the votes entitled to be cast by the Class A members equals or exceeds the votes entitled to be cast by the Class B member; or (ii) when the Declarant notifies the Association in writing that it relinquishes its Class B membership.

**5.8 Voting Procedures.** No change in the ownership of a Lot shall be effective for voting purposes unless and until the Board is given actual written notice of such change and

is provided satisfactory proof thereof. The vote for each such Lot must be cast as a unit, and fractional votes shall not be allowed. In the event that a Lot is owned by more than one person or entity and such Owners are unable to agree among themselves as to how their vote or votes shall be cast, they shall lose their right to vote on the matter in question. If any Member casts a vote representing a certain Lot, it will thereafter be conclusively presumed for all purposes that he was acting with the authority and consent of all other Owners of the same Lot unless objection thereto is made at the time the vote is cast. In the event more than one vote is cast by a Class A Member for a particular Lot, none of the votes shall be counted and all of the votes shall be deemed void.

**5.9 Transfer of Membership.** The rights and obligations of any Member other than the Declarant shall not be assigned, transferred, pledged, conveyed or alienated in any way except upon transfer of ownership of an Owner's Lot, and then only to the transferee of ownership to the Lot. A transfer of ownership to a Lot may be effected by deed, intestate succession, testamentary disposition, foreclosure of a mortgage of record, or such other legal process as now in effect or as may hereafter be established under or pursuant to the laws of the State of Arizona. Any attempt to make a prohibited transfer shall be void. Any transfer of ownership to a Lot shall operate to transfer the Membership appurtenant to said Lot to the new Owner thereof. Each Purchaser of a Lot shall notify the Association of his purchase within ten (10) days after he becomes the Owner of a Lot.

**5.10 Architectural Committee.** The Association shall have an Architectural Committee to perform the functions of the Architectural Committee set forth in this Declaration. The Architectural Committee shall be a Committee of the Board. The Architectural Committee shall consist of such number of regular members and alternate members as may be provided for in the Bylaws. So long as the Declarant owns any Lot, the Declarant shall have the sole right to appoint and remove the members of the Architectural Committee. At such time as the Declarant no longer owns any Lot, the members of the Architectural Committee shall be appointed by the Board. The Declarant may at any time voluntarily surrender its right to appoint and remove the members of the Architectural Committee, and in that event the Declarant may require, for so long as the Declarant owns any Lot, that specified actions of the Architectural Committee, as described in a recorded instrument executed by the Declarant, be approved by the Declarant before they become effective. The Architectural Committee shall promulgate architectural guidelines and standards to be used in rendering its decisions which guidelines and standards may include, among other things, guidelines and standards covering the location, design, appearance and material for perimeter walls in the Project. The decision of the Architectural Committee shall be final on all matters submitted to it pursuant to this Declaration. The Architectural Committee may establish a reasonable processing fee to defer the costs of the Association in considering any requests for approvals submitted to the Architectural Committee, which fee shall be paid at the time the request for approval is submitted.

5.11 Conveyance or Encumbrance of Common Area. The Common Area shall not be mortgaged, transferred, dedicated or encumbered without the prior written consent or affirmative vote of Owners representing at least eighty percent (80%) of the votes entitled to be cast by members of the Association.

5.12 Suspension of Voting Rights. If any Owner fails to pay any Assessments or other amounts due to the Association under the Project Documents within fifteen (15) days after such payment is due or if any Owner violates any other provision of the Project Documents and such violation is not cured within fifteen (15) days after the Association notifies the Owner of the violation, the Board of Directors shall have the right to suspend such Owner's right to vote until such time as all payments, including interest and attorneys' fees, are brought current, and until any other infractions or violations of the Project Documents are corrected.

## ARTICLE 6

### COVENANT FOR ASSESSMENTS AND CREATION OF LIEN

6.1 Creation of Lien and Personal Obligation of Assessments. The Declarant, for each Lot owned by it, hereby covenants and agrees, and each Owner, other than the Declarant, by becoming the Owner of a Lot, is deemed to covenant and agree, to pay Assessments to the Association in accordance with this Declaration. All Assessments shall be established and collected as provided in this Declaration. The Assessments, together with interest, late charges and all costs, including but not limited to reasonable attorneys' fees, incurred by the Association in collecting or attempting to collect delinquent Assessments, whether or not suit is filed, shall be a charge on the Lot and shall be a continuing lien upon the Lot against which each such Assessment is made. Each Assessment, together with interest and all costs, including but not limited to reasonable attorneys' fees, incurred by the Association in collecting or attempting to collect delinquent Assessments, whether or not suit is filed, shall also be the personal obligation of the person who was the Owner of the Lot at the time when the Assessment became due. The personal obligation for delinquent Assessments shall not pass to the successors in title of the Owner unless expressly assumed by them.

#### 6.2 Annual Assessments.

6.2.1 In order to provide for the operation and management of the Association and to provide funds for the Association to pay all Common Expenses and to perform its duties and obligations under the Project Documents, including the establishment of replacement and maintenance reserves, the Board, for each Assessment Period shall assess against each Lot an Annual Assessment.

6.2.2 The Board shall give notice of the Annual Assessment to each Owner at least thirty (30) days prior to the beginning of each Assessment Period, but the failure to give such notice shall not affect the validity of the Annual Assessment established by the Board nor relieve any Owner from its obligation to pay the Annual Assessment. If the Board determines during any Assessment Period that the funds budgeted for that Assessment Period are, or will, become inadequate to meet all Common Expenses for any reason, including, without limitation, nonpayment of Assessment by Members, it may increase the Annual Assessment for that Assessment Period and the revised Annual Assessment shall commence on the date designated by the Board.

6.3 Rate of Assessment. The amount of the Annual Assessment for each Lot other than Lots owned by the Declarant shall be the amount obtained by dividing the total budget of the Association for the Assessment Period for which the Annual Assessment is being levied by the total number of Lots subject to the Assessment at the time the Annual Assessment is levied by the Board. The Annual Assessment for Lots owned by the Declarant shall be an amount equal to twenty-five percent (25%) of the Annual Assessment levied against Lots owned by Persons other than the Declarant until such time as a Residential Unit has been constructed on the Lot and the Residential Unit has been occupied for Single Family Residential Use. After a Residential Unit has been constructed on a Lot owned by the Declarant and the Residential Unit has been occupied for Single Family Residential Use, the amount of the Annual Assessment for such Lot shall be the same as the Annual Assessment levied against Lots owned by Persons other than the Declarant. If a Lot ceases to qualify for the reduced twenty-five percent (25%) rate of assessment during the period to which an Annual Assessment is attributable, the Annual Assessment shall be prorated between the applicable rates on the basis of the number of days in the Assessment Period that the Lot qualified for each rate. So long as there is a Class B membership in the Association, the Declarant shall pay to the Association any amounts which, in addition to the Annual Assessments levied by the Association, may be required by the Association in order for the Association to fully perform its duties and obligations under the Project Documents, including the obligation to maintain adequate reserve accounts.

6.4 Special Assessments. The Association may levy against each Lot which is then subject to assessment, in any Assessment Period, a Special Assessment for the purpose of defraying, in whole or in part, the cost of any construction, reconstruction, repair or replacement of an Improvement upon the Common Area, including fixtures and personal property related thereto, provided that any Special Assessment shall have the assent of two-thirds (2/3) of the votes entitled to be cast by Members who are voting in person or by proxy at a meeting duly called for such purpose.

6.5 Assessment Period. The period for which the Annual Assessment is to be levied (the "Assessment Period") shall be the calendar year, except that the first Assessment

Period, and the obligation of the Owners to pay Annual Assessments shall commence upon the conveyance of the first Lot to a Purchaser and terminate on December 31 of such year. The Board in its sole discretion from time to time may change the Assessment Period.

6.6 Lots Subject to Assessment. All Lots shall be subject to assessment upon the conveyance of the first Lot to a Purchaser.

6.7 Rules Regarding Billing and Collection Procedures. Annual Assessments shall be collected on a quarterly basis or such other basis as may be selected by the Board. Special Assessments may be collected as specified by the Board. The Board shall have the right to adopt rules and regulations setting forth procedures for the purpose of making Assessments and for the billing and collection of the Assessments provided that the procedures are not inconsistent with the provisions of this Declaration. The failure of the Association to send a bill to a Member shall not relieve any Member of his liability for any Assessment or charge under this Declaration, but the Assessment Lien therefor shall not be foreclosed or otherwise enforced until the Member has been given not less than thirty (30) days written notice prior to such foreclosure or enforcement that the Assessment or any installment thereof is or will be due and of the amount owing. Such notice may be given at any time prior to or after delinquency of such payment. The Association shall be under no duty to refund any payments received by it even though the ownership of a Lot changes during an Assessment Period; successor Owners of Lots shall be given credit for prepayments, on a prorated basis, made by prior Owners.

6.8 Effect of Nonpayment of Assessments; Remedies of the Association.

6.8.1 Any Assessment, or any installment of an Assessment, not paid within five (5) days after the Assessment, or the installment of the Assessment, first became due shall bear interest from the due date at the rate of interest established from time to time by the Board. In addition, the Board of Directors may establish a late fee to be charged to any Owner who has not paid any Assessment, or any installment of an Assessment, within five days after such payment was due.

6.8.2 The Association shall have a lien on each Lot for (i) all Assessments levied against the Lot, (ii) all interest, lien fees, late charges and other fees and charges assessed against the Lot or payable by the Owner of the Lot, (iii) all fines levied against the Owner of the Lot, and (iv) all attorney fees, court costs, title report fees, costs and fees charged by any collection agency either to the Association or to an Owner and any other fees or costs incurred by the Association in attempting to collect Assessments or other amounts due to the Association by the Owner of a Lot. Recording of this Declaration constitutes record notice and perfection of the Assessment Lien. The Association may, at its option, record a Notice of Lien setting forth the name of the delinquent owner as shown in the records of the Association, the legal description or street address of the Lot against

which the Notice of Lien is recorded and the amount claimed to be past due as of the date of the recording of the Notice, including interest, lien recording fees and reasonable attorneys' fees. Before recording any Notice of Lien against a Lot, the Association shall make a written demand to the defaulting Owner for payment of the delinquent Assessments, together with interest, late charges and reasonable attorneys' fees, if any. The demand shall state the date and amount of the delinquency. Each default shall constitute a separate basis for a demand, but any number of defaults may be included within the single demand. If the delinquency is not paid within ten (10) days after delivery of the demand, the Association may proceed with recording a Notice of Lien against the Lot.

6.8.3 The Assessment Lien shall have priority over all liens or claims except for (i) tax liens for real property taxes, (ii) assessments in favor of any municipal or other governmental body and (iii) the lien of any First Mortgage. Any First Mortgagee or other Person acquiring title or coming into possession of a Lot through foreclosure of the First Mortgage, purchase at a foreclosure sale or trustee sale, or through any equivalent proceedings, such as, but not limited to, the taking of a deed in lieu of foreclosure shall acquire title free and clear of any claims for unpaid assessments and charges against the Lot which became payable prior to the acquisition of such Lot by the First Mortgagee or other Person. Any Assessments and charges against the Lot which accrue prior to such sale or transfer shall remain the obligation of the defaulting Owner of the Lot.

6.8.4 The Association shall not be obligated to release the Assessment Lien until all delinquent Assessments, interest, lien fees, fines, reasonable attorneys' fees, court costs, collection costs and all other sums payable to the Association by the Owner of the Lot have been paid in full.

6.8.5 The Association shall have the right, at its option, to enforce collection of any delinquent Assessments together with interest, lien fees, reasonable attorneys' fees and any other sums due to the Association in any manner allowed by law including, but not limited to, (i) bringing an action at law against the Owner personally obligated to pay the delinquent Assessments and such action may be brought without waiving the Assessment Lien securing the delinquent Assessments or (ii) bringing an action to foreclose the Assessment Lien against the Lot in the manner provided by law for the foreclosure of a realty mortgage. The Association shall have the power to bid in at any foreclosure sale and to purchase, acquire, hold, lease, mortgage and convey any and all Lots purchased at such sale.

6.9 Evidence of Payment of Assessments. Upon receipt of a written request by a Member or any other Person, the Association, within a reasonable period of time thereafter, shall issue to such Member or other Person a written certificate stating (i) that all Assessments, interest, and other fees and charges have been paid with respect to any specified Lot as of the date of such certificate, or (ii) if all Assessments have not been paid,

the amount of such Assessments, interest, fees and charges due and payable as of such date. The Association may make a reasonable charge for the issuance of such certificates, which charges must be paid at the time the request for any such certificate is made. Any such certificate, when duly issued as herein provided, shall be conclusive and binding with respect to any matters therein stated as against any bona fide Purchaser of, or lender on, the Lot in question.

**6.10 Purposes for which Association's Funds may be Used.** The Association shall apply all funds and property collected and received by it (including the Assessments, fees, loan proceeds, surplus funds and all funds and property received by it from any other source) for the common good and benefit of the Project and the Owners and Residents by devoting said funds and property, among other things, to the acquisition, construction, alteration, maintenance, provision and operation, by any manner or method whatsoever, of any and all land, properties, improvements, facilities, services, projects, programs, studies and systems, within or without the Project, which may be necessary, desirable or beneficial to the general common interests of the Project, the Owners and the Residents. The following are some, but not all, of the areas in which the Association may seek to aid, promote and provide for such common benefit: social interaction among Members and Residents, maintenance of landscaping on Common Areas and public right-of-way and drainage areas within the Project, recreation, liability insurance, communications, ownership and operation of vehicle storage areas, education, transportation, health, utilities, public services, safety and indemnification of officers and directors of the Association. The Association may also expend its funds under the laws of the State of Arizona or such municipality's charter.

**6.11 Surplus Funds.** The Association shall not be obligated to spend in any year all the Assessments and other sums received by it in such year, and may carry forward as surplus any balances remaining. The Association shall not be obligated to reduce the amount of the Annual Assessment in the succeeding year if a surplus exists from a prior year, and the Association may carry forward from year to year such surplus as the Board in its discretion may determine to be desirable for the greater financial security of the Association and the accomplishment of its purposes.

**6.12 Working Capital Fund.** To insure that the Association shall have adequate funds to meet its expenses or to purchase necessary equipment or services, each Purchaser of a Lot from the Declarant shall pay to the Association immediately upon becoming the Owner of the Lot a sum equal to one-sixth (1/6th) of the Annual Assessment on the Lot. Funds paid to the Association pursuant to this Section may be used by the Association for payment of operating expenses or any other purpose permitted under the Project Documents. Payments made pursuant to this Section shall be nonrefundable and shall not be considered as an advance payment of any Assessments levied by the Association pursuant to this Declaration.

6.13 Transfer Fee. Each Purchaser of a Lot shall pay to the Association immediately upon becoming the Owner of the Lot a transfer fee in such amount as is established from time to time by the Board, except that no transfer fee shall be payable with respect to the purchase of a Lot with respect to which a payment would be due and owing to the Association pursuant to Section 6.12 of this Declaration.

6.14 Fines. In addition to any other rights or remedies which the Association may have under this Declaration or at law or in equity as a result of the violation of this Declaration, the Association shall have the right to levy reasonable fines against an Owner for any violation of this Declaration by the Owner, any other Residents of the Owner's Lot or any of the Owner's contractors or agents. The amount of the fine for each violation shall be established by the Board and shall be payable by the Owner within ten (10) days after notice of the fine is given to the Owner by the Association. Any fine levied by the Association shall be secured by the Assessment Lien.

## ARTICLE 7

### MAINTENANCE

#### 7.1 Areas of Association Responsibility and Public Right of Way.

7.1.1 The Association, or its duly delegated representative, shall manage, maintain, repair and replace the Areas of Association Responsibility, and all Improvements located thereon, except the Association shall not maintain areas which any governmental entity is maintaining or is obligated to maintain.

7.1.2 The Board shall be the sole judge as to the appropriate maintenance of all Areas of Association Responsibility and other properties maintained by the Association. Any cooperative action necessary or appropriate to the proper maintenance and upkeep of said properties shall be taken by the Board or by its duly delegated representative.

7.2 Lots. Each Owner of a Lot shall be responsible for maintaining, repairing or replacing his Lot, and all buildings, Residential Units, landscaping or other Improvements situated thereon, except for any portion of the Lot which is an Area of Association Responsibility. All buildings, Residential Units, landscaping and other Improvements shall at all times be kept in good condition and repair. All grass, hedges, shrubs, vines and plants of any type on a Lot shall be irrigated, mowed, trimmed and cut at regular intervals so as to be maintained in a neat and attractive manner. Trees, shrubs, vines, plants and grass which die shall be promptly removed and replaced with living foliage of like kind, unless different foliage is approved in writing by the Architectural Committee. No yard equipment,

wood piles or storage areas may be maintained so as to be Visible From Neighboring Property or streets. All Lots upon which no Residential Units, buildings or other structures, landscaping or Improvements have been constructed shall be maintained in a weed free and attractive manner.

**7.3 Assessment of Certain Costs of Maintenance and Repair.** In the event that the need for maintenance or repair of an Area of Association Responsibility is caused through the willful or negligent act of any Member, his family, tenants, guests or invitees, the cost of such maintenance or repairs shall be added to and become a part of the Assessment to which such Member and the Member's Lot is subject and shall be secured by the Assessment Lien. Any charges or fees to be paid by the Owner of a Lot pursuant to this Section in connection with a contract entered into by the Association with an Owner for the performance of an Owner's maintenance responsibilities shall also become a part of such Assessment and shall be secured by the Assessment Lien.

**7.4 Improper Maintenance and Use of Lots.** In the event any portion of any Lot is so maintained as to present a public or private nuisance, or as to substantially detract from the appearance or quality of the surrounding Lots or other areas of the Project which are substantially affected thereby or related thereto, or in the event any portion of a Lot is being used in a manner which violates this Declaration; or in the event the Owner of any Lot is failing to perform any of its obligations under the Project Documents, the Board may make a finding to such effect, specifying the particular condition or conditions which exist, and pursuant thereto give notice thereof to the offending Owner that unless corrective action is taken within fourteen (14) days, the Board may cause such action to be taken at said Owner's cost. If at the expiration of said fourteen day period of time the requisite corrective action has not been taken, the Board shall be authorized and empowered to cause such action to be taken and the cost thereof shall be added to and become a part of the Assessment to which the offending Owner and the Owner's Lot is subject and shall be secured by the Assessment Lien.

**7.5 Common Walls.** The rights and duties of Owners of Lots with respect to common walls shall be as follows:

7.5.1 The Owners of contiguous Lots who have a common wall shall both equally have the right to use such wall provided that such use by one Owner does not interfere with the use and enjoyment of same by the other Owner;

7.5.2 In the event that any common wall is damaged or destroyed through the act of an Owner, it shall be the obligation of such Owner to rebuild and repair the common wall without cost to the other Owner or Owners;

7.5.3 In the event any such common wall is damaged or destroyed by some cause other than the act of one of the adjoining Owners, his agents, tenants, licensees, guests or family (including ordinary wear and tear and deterioration from lapse of time), then, in such event, both such adjoining Owners shall proceed forthwith to rebuild or repair the same to as good condition as formerly at their joint and equal expense;

7.5.4 Notwithstanding any other provision of this Section, an Owner who, by his negligent or willful act, causes any common wall to be exposed to the elements shall bear the whole cost of furnishing the necessary protection against such elements;

7.5.5 The right of any Owner to contribution from any other Owner under this Section shall be appurtenant to the land and shall pass to such Owner's successors in title;

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

7.5.7 In the event any common wall constructed by or with the consent of Declarant encroaches upon a Lot, a valid easement for such encroachment and for the maintenance of the common wall by the Association as required by Section 7.6.2 of this Declaration shall and does exist in favor of the Association. In the event any common wall constructed by or with the consent of Declarant encroaches upon the Common Area, a valid easement for such encroachment and for the maintenance of the common wall by the Owner of the Lot as required by Section 7.6.2 of this Declaration shall and does exist in favor of the Owner of the Lot, and the Owner of such Lot shall be responsible for the repair and maintenance of the side of the wall which faces the Owner's Lot.

7.5.8 As adjacent Lot Owners tie into any previously constructed wall, the new adjacent Owner must immediately pay to the Owner of the wall previously constructed one-half (1/2) of the actual cost of the wall or if the actual cost exceeds the then in effect market cost of such wall, one-half (1/2) of the then in effect market cost. The Owner responsible for construction shall issue a lien release to the adjoining Owner upon receipt of payment for construction costs from such Owner.

#### 7.6 Maintenance of Walls other than Common Walls.

7.6.1 Walls (other than common walls) located on a Lot shall be maintained, repaired and replaced by the Owner of the Lot.

7.6.2 Any wall which is placed on the boundary line between a Lot and the Common Area shall be maintained, repaired and replaced by the Owner of the Lot, except that the Association shall be responsible for the repair and maintenance of the side of the wall which faces the Common Area.

7.6.3 Any wall which is placed within a perimeter fence and landscape easement, as shown on the Plat, shall be maintained by (i) the Association, if such maintenance pertains to the structural integrity and exterior appearance of the wall and (ii) the Owner of the Lot on which the wall is situated, if such maintenance pertains to the interior appearance of the wall.

## ARTICLE 8

### INSURANCE

8.1 Scope of Coverage. Commencing not later than the time of the first conveyance of a Lot to a Purchaser, the Association shall maintain, to the extent reasonably available, the following insurance coverage:

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

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

8.1.3 Workmen's compensation insurance to the extent necessary to meet the requirements of the laws of Arizona;

8.1.4 Such other insurance as the Association shall determine from time to time to be appropriate to protect the Association or the Owners;

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

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

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

(iii) That the coverage afforded by such policy shall not be brought into contribution or proration with any insurance which may be purchased by Owners or their mortgagees or beneficiaries under deeds of trust;

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

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

(vi) For policies of hazard insurance, a standard mortgagee clause providing that the insurance carrier shall notify the first mortgagee named in the policy at least ten (10) days in advance of the effective date of any substantial modification, reduction or cancellation of the policy;

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

**8.3 Payment of Premiums.** The premiums for any insurance obtained by the Association pursuant to Section 8.1 of this Declaration shall be included in the budget of the Association and shall be paid by the Association.

**8.4 Payment of Insurance Proceeds.** With respect to any loss to any Area of Association Responsibility covered by property insurance obtained by the Association in accordance with this Article, the loss shall be adjusted with the Association, and the insurance proceeds shall be payable to the Association and not to any mortgagee or beneficiary

under a deed of trust. Subject to the provisions of Section 8.5 of this Declaration, the proceeds shall be disbursed for the repair or restoration of the damage to the Area of Association Responsibility.

**8.5 Repair and Replacement of Damaged or Destroyed Property.** Any portion of the Areas of Association Responsibility which is damaged or destroyed shall be repaired or replaced promptly by the Association unless (i) repair or replacement would be illegal under any state or local health or safety statute or ordinance, or (ii) Owners representing at least eighty percent (80%) of the total authorized votes in the Association vote not to rebuild. The cost of repair or replacement in excess of insurance proceeds and reserves shall be paid by the Association. If all of the Areas of Association Responsibility are not repaired or replaced, insurance proceeds attributable to the damaged Areas of Association Responsibility shall be used to restore the damaged area to a condition which is not in violation of any state or local health or safety statute or ordinance and the remainder of the proceeds shall either (i) be retained by the Association as an additional capital reserve, or (ii) be used for payment of operating expenses of the Association if such action is approved by the affirmative vote or written consent, or any combination thereof, of Members representing more than fifty percent (50%) of the votes in the Association.

## ARTICLE 9

### GENERAL PROVISIONS

**9.1 Enforcement.** The Association or any Owner shall have the right to enforce the Project Documents and/or any and all covenants, restrictions, reservations, charges, servitudes, assessments, conditions, liens or easements provided for in any contract, deed, declaration or other instrument which (i) shall have been executed pursuant to, or subject to, the provisions of this Declaration, or (ii) otherwise shall indicate that the provisions of such instrument were intended to be enforced by the Association or by Declarant. The failure of the Association or an Owner to take enforcement action with respect to a violation of the Project Documents shall not constitute or be deemed a waiver of the right of the Association or any Owner to enforce the Project Documents in the future. In the event of any litigation or arbitration by or against the Association, the prevailing party in such litigation or arbitration shall be entitled to recover from the nonprevailing party all attorneys' fees, costs and expert witness fees incurred by the prevailing party.

**9.2 Term; Method of Termination.** This Declaration shall continue in full force and effect for a term of twenty (20) years from the date this Declaration is recorded. After which time, this Declaration shall be automatically extended for successive periods of ten (10) years each. This Declaration may be terminated at any time if such termination is approved by the affirmative vote or written consent, or any combination thereof, of the

Owners representing ninety percent (90%) or more of the votes in each class of membership and by the holders of First Mortgages on Lots, the Owners of which have seventy-five percent (75%) or more of the votes in the Association. If the necessary votes and consents are obtained, the Board shall cause to be recorded with the County Recorder of Maricopa County, Arizona, a Certificate of Termination, duly signed by the President or Vice President and attested by the Secretary or Assistant Secretary of the Association, with their signatures acknowledged. Thereupon this Declaration shall have no further force and effect, and the Association shall be dissolved pursuant to the terms set forth in its Articles.

### 9.3 Amendments.

9.3.1 Except for amendments made pursuant to Subsection 9.3.2 of this Declaration, the Declaration may only be amended by the written approval or the affirmative vote, or any combination thereof, of Owners of not less than seventy-five percent (75%) of the Lots.

9.3.2 The Board may amend this Declaration or the Plat, without obtaining the approval or consent of any Owner or First Mortgagee, in order to conform this Declaration or the Plat to the requirements or guidelines of the Federal National Mortgage Association, the Federal Home Loan Mortgage Corporation, the Federal Housing Administration, the Veterans Administration or any federal, state or local governmental agency whose approval of the Project, the Plat or the Project Documents is required by law or requested by the Declarant or the Board.

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

9.3.4 Any amendment approved pursuant to Subsection 9.3.1 of this Declaration or by the Board pursuant to Subsection 9.3.2 of this Declaration shall be signed by the President or Vice President of the Association and shall be recorded with the County Recorder of Maricopa County, Arizona. Any such amendment shall certify that the amendment has been approved as required by this Section.

9.4 Interpretation. Except for judicial construction, the Association shall have the exclusive right to construe and interpret the provisions of this Declaration. In the absence of any adjudication to the contrary by a court of competent jurisdiction, the Association's construction or interpretation of the provisions hereof shall be final, conclusive and binding as to all persons and property benefitted or bound by this Declaration. In the event of any conflict between this Declaration and the Articles, Bylaws, Association Rules or Architectural Committee Rules, this Declaration shall control. In the event of any conflict between the Articles and the Bylaws, the Articles shall control. In the event of any conflict between the

Bylaws and the Association Rules or the Architectural Committee Rules, the Bylaws shall control.

9.5 Severability. Any determination by any court of competent jurisdiction that any provision of this Declaration is invalid or unenforceable shall not affect the validity or enforceability of any of the other provisions hereof.

9.6 Rule Against Perpetuities. If any interest purported to be created by this Declaration is challenged under the Rule against Perpetuities or any related rule, the interest shall be construed as becoming void and of no effect as of the end of the applicable period of perpetuities computed from the date when the period of perpetuities starts to run on the challenged interest; the "lives in being" for computing the period of perpetuities shall be (i) those which would be used in determining the validity of the challenged interest, plus (ii) those of the issue of the Board who are living at the time the period of perpetuities starts to run on the challenged interest.

9.7 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.

9.8 Rules and Regulations. In addition to the right to adopt rules and regulations on the matters expressly mentioned elsewhere in this Declaration, the Association shall have the right to adopt rules and regulations with respect to all other aspects of the Association's rights, activities and duties, provided said rules and regulations are not inconsistent with the provisions of this Declaration.

9.9 Laws, Ordinances and Regulations.

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

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

9.10 References to this Declaration in Deeds. Deeds to and instruments affecting any Lot or any part of the Project may contain the covenants, conditions and restrictions herein set forth by reference to this Declaration; but regardless of whether any such reference is made in any Deed or instrument, each and all of the provisions of this Declaration shall be binding upon the grantee-Owner or other person claiming through any instrument and his heirs, executors, administrators, successors and assignees.

9.11 Gender and Number. Wherever the context of this Declaration so requires, words used in the masculine gender shall include the feminine and neuter genders; words used in the neuter gender shall include the masculine and feminine genders; words in the singular shall include the plural; and words in the plural shall include the singular.

9.12 Captions and Titles. All captions, titles or headings of the Articles and Sections in this Declaration are for the purpose of reference and convenience only and are not to be deemed to limit, modify or otherwise affect any of the provisions hereof or to be used in determining the intent of context thereof.

9.13 Notices. If notice of any action or proposed action by the Board or any committee or of any meeting is required by applicable law, this Declaration or resolution of the Board to be given to any Owner, Lessee or Resident then, unless otherwise specified herein or in the resolution of the Board, such notice requirement shall be deemed satisfied if notice of such action or meeting is published once in any newspaper in general circulation within Maricopa County. This Section shall not be construed to require that any notice be given if not otherwise required and shall not prohibit satisfaction of any notice requirement in any other manner.

9.14 Condemnation of Common Area. If all or any part of the Common Area is taken or condemned, or conveyed by the Association in lieu of or under threat of such condemnation with the written consent or affirmative vote of Owners representing at least eighty percent (80%) of the votes in the Association, by or to any authority having the power of condemnation or eminent domain, the award or other compensation paid as a result of such taking or conveyance shall be paid to the Association. If the taking involves a portion of the Common Area upon which Improvements have been constructed, then the Association shall construct replacement Improvements on the remaining Common Area to the extent land is available for such construction, unless within sixty (60) days after such taking the Owners having at least eighty percent (80%) of the votes in the Association, by written consent or affirmative vote, or any combination thereof, instruct the Board not to build replacement Improvements. If such replacement Improvements are to be constructed, then the Association shall be entitled to use the award or other compensation made for such taking solely for the purpose of such construction. If the taking does not involve any Improvements on the Common Area or if the Owners representing more than eighty percent (80%) of the votes in the Association decide not to construct any replacement Improvements

or if there are any net funds remaining after such construction is completed, then such awarded net funds may either be disbursed by the Association to the Owners with an equal share being disbursed to each Lot or retain such funds as additional operating or capital reserves.

#### **9.15 Rights of First Mortgagees.**

9.15.1 Any First Mortgagee will, upon written request, be entitled to: (i) inspect the books and records of the Association during normal business hours; (ii) receive within ninety (90) days following the end of any fiscal year of the Association, a financial statement of the Association for the immediately preceding fiscal year of the Association, free of charge to the requesting party; and (iii) receive written notice of all meetings of the Members of the Association and be permitted to designate a representative to attend all such meetings.

9.15.2 No Lot shall be partitioned or subdivided without the prior written approval of the holder of any First Mortgage on such Lot.

9.15.3 Unless at least two-thirds (2/3) of the First Mortgagees (based upon one vote for each First Mortgage owned) or Owners (other than the sponsor, developer or builder) of at least two-thirds (2/3) of the Lots have given their prior written approval, the Association shall not be entitled to:

(i) Seek to abandon, partition, subdivide, sell or transfer the Common Area owned, directly or indirectly, by the Association for the benefit of the Lots. The granting of easements for public utilities or for other public purposes consistent with the intended use of such Common Area shall not be deemed a transfer within the meaning of this Subsection;

(ii) Change the method of determining the obligations, assessments, dues or other charges which may be levied against an Owner;

(iii) Change, waive or abandon any scheme or regulations, or enforcement thereof, pertaining to the architectural design or the exterior appearance of Lots or the maintenance of the Common Area;

(iv) Fail to maintain fire and extended coverage on insurance common area on current replacement cost basis in an amount of at least 100 percent of insurable value;

(v) Use hazard insurance proceeds for losses to any Common Area, other than the repair, replacement or reconstruction of such Common Area.

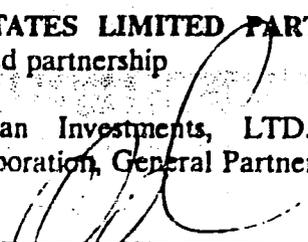
9.15.4 No provision of this Declaration gives or shall be construed as giving any owner or other Person priority over any rights of a First Mortgagee of a Lot in the case of the distribution to such Owner of insurance proceeds or condemnation awards for losses to or taking of the Common Area.

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

9.15.6 In the event of any conflict or inconsistency between the provisions of this Section and any other provision of the Project Documents, the provisions of this Section shall prevail; provided, however, that in the event of any conflict or inconsistency between the provisions of this Section and any other provisions of the Project Documents with respect to the number or percentage of Owners or First Mortgagees that must consent to (i) an amendment of the Declaration, Articles or Bylaws, (ii) a termination of the Project, or (iii) certain actions of the Association as specified in Subsection 9.15.3 of this Declaration, the provision requiring the consent of the greatest number or percentage of Owners or First Mortgagees shall prevail; provided, however, that the Declarant, so long as the Declarant owns any Lot, and thereafter, the Board, without the consent of any Owner or First Mortgagee being required, shall have the right to amend this Declaration, the Articles of the Bylaws in order to conform this Declaration, the Articles or the Bylaws to the requirements or guidelines of the Federal National Mortgage Association, the Federal Home Loan Mortgage Corporation, the Federal Housing Administration, the Veterans Administration or any federal, state or local governmental agency whose approval of the Project, the Plat or the Project Documents is required or requested by the Declarant or the Board.

**SABINO ESTATES LIMITED PARTNERSHIP, an  
Arizona limited partnership**

By: **Cavan Investments, LTD., an Arizona  
corporation, General Partner**

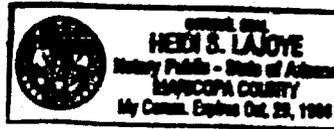
By:   
Its: **President**

State of Arizona )  
 ) ss.  
County of Maricopa )

The foregoing instrument was acknowledged before me this 31<sup>st</sup> day of May, 1995, by David V. Cuvare, the President of Cavan Investments, LTD., an Arizona corporation, General Partner of Sabino Estates Limited Partnership, an Arizona limited partnership, on behalf of the corporation.

Heidi S. LaJoye  
Notary Public

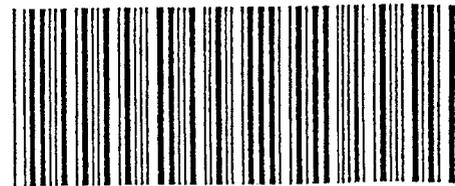
My commission expires: October 29, 1996



**EXHIBIT A**

Lots 1 through 70 and Tracts A through D, **SABINO ESTATES**, according to the plat recorded in Book 396 of Maps, page 23, records of Maricopa County, Arizona.

RETURN TO  
BEACOM - SAUTER  
ATTORNEY SERVICE



OFFICIAL RECORDS OF  
MARICOPA COUNTY RECORD  
HELEN PURCELL

When recorded return to:  
Ekmark & Ekmark  
6710 N. Scottsdale Road, Suite 225  
Scottsdale, Arizona 85253

99-0278384 03/24/99

YEZENA 1

## TRACT DECLARATION

### SABINO ESTATES

#### PARCEL A

THIS TRACT DECLARATION is made this 23<sup>rd</sup> day of MARCH, 1999, by SABINO ESTATES HOMEOWNERS' ASSOCIATION, an Arizona non-profit corporation (hereinafter referred to as the "Association").

#### WITNESSETH:

WHEREAS, Declarant executed and caused to be recorded the Declaration of Covenants, Conditions and Restrictions for Sabino Estates, dated June 1, 1995 and recorded as document number 95-0315172, records of Maricopa County, Arizona, as amended by that Certificate of First Amendment to the Declaration of Covenants, Conditions, and Restrictions dated March 22, 1999 and recorded March 22, 1999, as document number 99-0269075, records of Maricopa County, Arizona, as thereafter amended from time to time (the "Master Declaration"), which covered property is known as Sabino Estates; and

WHEREAS, Article 5, Section 5.6(a) of the Master Declaration permits the Association, through its Board of Directors to annex additional properties into the Association for the purpose of obtaining title to the roads within the Association; and

WHEREAS, Article 5, Section 5.6(a) of the Master Declaration permits the Association to annex in these additional properties as a separate class of membership; and

WHEREAS, the owners of these additional properties agree to be annexed into the Association as a separate class of membership in accordance with the terms of this Tract Declaration, as attested to by their signatures hereto attached; and

WHEREAS, these additional properties are identified in the document attached hereto as Exhibit A.

WHEREAS, the Association and the owners of these additional properties wish to record a Tract Declaration for these properties;

NOW, THEREFORE, the Association and the owners of these additional properties hereby declare, covenant, and agree as follows:

1. Definitions. Capitalized terms used in this Tract Declaration shall have the meaning set forth for such terms in the Master Declaration unless otherwise defined herein.
  - a. Areas of Association Responsibility - Areas of Association Responsibility of the Association shall include all roads adjacent to the property belonging to the Class C Members that are located within the boundaries encompassed by the Master Declaration and the properties annexed into the Association through this Tract Declaration.
  - b. Class C Members - Class C Members shall be the owners of these additional properties that are annexed into the Association by this Tract Declaration.
2. The Board of Directors of the Association, by the power given to it pursuant to Article 5, Section 5.6(a) of the Master Declaration, hereby annexes the properties into the Association as identified on Exhibit A attached hereto (hereinafter referred to collectively as the "Tracts").
3. The owners of the Tracts, and their successors and assigns, shall be a separate class of membership within the Association, denoted as Class C Members. Class C Members shall have only the rights, obligations, and responsibilities to the Association as set forth in this Tract Declaration. Class C Members shall not have the rights, obligations, and responsibilities given to Class A members or Class B members under the Master Declaration unless said right, obligation, or responsibility is also specified in this Tract Declaration.
4. Class C members shall have the right to use the roads located within the Association for purposes of ingress and egress and for normal purposes associated with the use of roads. "Normal purposes" shall include the operation of licensed, motorized vehicles operated by licensed drivers and the operation of non-motorized vehicles, but shall not include the use of non-licensed motorized vehicles. This right extends to public and emergency vehicles, and to all of Class C Members' occupants, tenants, guests, invitees and persons lawfully conducting business on the Tracts. This right shall run with the land, and shall extend to and bind all heirs, assigns, subsequent purchasers or purchasers of any portion of any of the parcels herein described. This right may not be revoked without one hundred percent (100%) written consent of all Class C Members and the written consent of the Board of Directors of the Association, as evidenced by the signatures of the President and Secretary of the Board of Directors. Pursuant to this right, Class C members shall abide by the rules and regulations established by the Association governing the use of the roads. Said rules and regulations that shall apply to Class C members shall not be more restrictive than the ordinances that would be imposed by the City of Scottsdale if the roads were public.
5. The Association shall have the right to assess each Class C Member \$10.00 per year for each lot owned. Said assessment shall be used for the purpose of maintaining and repairing the roads located within the Association.

6. The Association shall provide Class C Members with all rights of access through the Association in the same manner as Class A Members, including any required codes or other security devices to access through any gates or security devices installed by the Association. Such security devices or codes shall be provided to Class C Members in the same manner as they are provided to Class A Members. Class C Members shall follow the same procedures implemented for Class A Members for obtaining any security devices or codes that are necessary.

7. Class C Members shall be entitled to vote only on amendments to this Tract Declaration. When voting on any amendments to this Tract Declaration, Class C Members shall be entitled to one vote per lot owned.

8. This Tract Declaration may not be amended without one hundred percent (100%) written consent of the Class C Members and the written consent of the Board of Directors of the Association, as evidenced by the signatures of the President and the Secretary of the Board of Directors. Any amendment to this Tract Declaration shall be recorded.

9. If the roads that are adjacent to the Tracts are abandoned by the City of Scottsdale, said roads shall become Areas of Association Responsibility of the Association. The Association shall thereafter be responsible for the maintenance and upkeep of said roads as Areas of Association Responsibility of the Association. The Association shall not be responsible for maintaining any portion of any Tracts owned by the Class C Members. Class C Members shall not allow vegetation to encroach upon or over the roadways to the extent that such encroachment is prohibited by the City of Scottsdale for public roads.

10. If any roads adjacent to the Tracts of the Class C Members have not been built at the time this Tract Declaration becomes effective, the Class C Members with responsibility to the City of Scottsdale to construct the roads retain the responsibility to construct the roads. The Association does not assume responsibility to construct any roads. After the roads are constructed and approved pursuant to the requirements of the City of Scottsdale, the Association will assume responsibility for the maintenance of the roads as Areas of Association Responsibility.

11. This Tract Declaration shall be effective until 2018, and shall be automatically renewed for ten year periods unless one hundred percent (100%) of the Class C Members and the Board of Directors for Sabino Estates sign and record a document denoting the termination of this Tract Declaration.

12. This Tract Declaration may be executed in any number of counterparts, each of which shall be deemed an original, with the same force and effect as if all signatures were appended to one instrument.

Arthur T. Doyle  
President, Sabino Estates Homeowners' Association

Joe C. Ward  
Secretary, Sabino Estates Homeowners' Association

Ken H. Adams  
Owner of LOT 6 SAGURO ACRES

Owner of \_\_\_\_\_

Owner of \_\_\_\_\_

Owner of \_\_\_\_\_

Owner of \_\_\_\_\_

\_\_\_\_\_  
President, Sabino Estates Homeowners' Association

\_\_\_\_\_  
Secretary, Sabino Estates Homeowners' Association

*THE S Development Company*  
*Pat Simone, President*  
Owner of Lot 9 Sabino Assoc.

*Pat Simone*  
Owner of Lot 20 Sabino Assoc.

\_\_\_\_\_  
Owner of \_\_\_\_\_

\_\_\_\_\_  
Owner of \_\_\_\_\_

\_\_\_\_\_  
Owner of \_\_\_\_\_

\_\_\_\_\_  
President, Sabino Estates Homeowners' Association

\_\_\_\_\_  
Secretary, Sabino Estates Homeowners' Association

\_\_\_\_\_  
Owner of Jerry A. Volo  
Lot 61

\_\_\_\_\_  
Owner of Jeanne Volo  
Lot 61

\_\_\_\_\_  
Owner of \_\_\_\_\_

\_\_\_\_\_  
Owner of \_\_\_\_\_

\_\_\_\_\_  
Owner of \_\_\_\_\_

\_\_\_\_\_  
President, Sabino Estates Homeowners' Association

\_\_\_\_\_  
Secretary, Sabino Estates Homeowners' Association

*John J. Malenaar*

\_\_\_\_\_  
Owner of Lot 52 Sabuaro Acres

*Michelle J. Malenaar*

\_\_\_\_\_  
Owner of Lot 52 Sabuaro Acres

\_\_\_\_\_  
Owner of \_\_\_\_\_

\_\_\_\_\_  
Owner of \_\_\_\_\_

\_\_\_\_\_  
Owner of \_\_\_\_\_

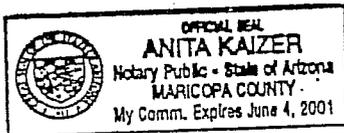
STATE OF ARIZONA )  
 ) ss.  
County of Maricopa )

On this 22<sup>nd</sup> day of March, 1999, before me, the undersigned officer, personally appeared Arthur T. Degliane, President, known to me (or proved to me on the basis of satisfactory evidence) to be the person whose name is subscribed to the foregoing instrument, who acknowledged before me that he/she is the President of Sabino Estates Homeowners Association, and that he/she, in such capacity, being authorized so to do, executed the foregoing instrument, for the purposes therein stated, on behalf of the Association, and that the instrument is the act of the Association for the purposes therein stated.

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

Anita Kaizer  
Notary Public

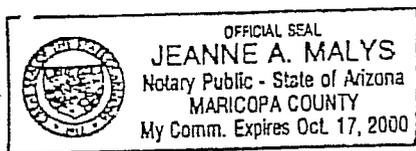
My Commission Expires:



STATE OF ARIZONA )  
 ) ss.  
County of Maricopa )

On this 20<sup>th</sup> day of March, 1999, before me, the undersigned officer, personally appeared Jay C. Warden, Secretary, known to me (or proved to me on the basis of satisfactory evidence) to be the person whose name is subscribed to the foregoing instrument, who acknowledged before me that he/she is the Secretary of Sabino Estates Homeowners Association, and that he/she, in such capacity, being authorized so to do, executed the foregoing instrument, for the purposes therein stated, on behalf of the Association, and that the instrument is the act of the Association for the purposes therein stated.

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



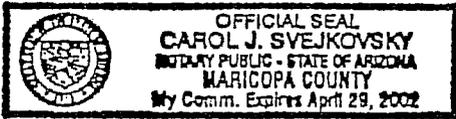
Jeanne A. Malys  
Notary Public

My Commission Expires:

STATE OF ARIZONA )  
 ) ss.  
County of Maricopa )

On this 18 day of MARCH, 1999, before me, the undersigned officer, personally appeared Frank H. Adams, known to me (or proved to me on the basis of satisfactory evidence) to be the person whose name is subscribed to the foregoing instrument.

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



Carol J. Svejkovsky  
Notary Public

My Commission Expires:

STATE OF ARIZONA )  
 ) ss.  
County of Maricopa )

On this \_\_\_\_\_ day of \_\_\_\_\_, 1999, before me, the undersigned officer, personally appeared \_\_\_\_\_, known to me (or proved to me on the basis of satisfactory evidence) to be the person whose name is subscribed to the foregoing instrument.

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

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

My Commission Expires:

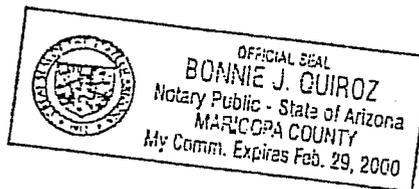
STATE OF ARIZONA )  
 ) ss.  
County of Maricopa )

On this 4 day of March, 1999, before me, the undersigned officer, personally appeared Pat Simone, President, known to me (or proved to me on the basis of satisfactory evidence) to be the person whose name is subscribed to the foregoing instrument, who acknowledged before me that he/she is the President of Sabino Estates Homeowners Association, and that he/she, in such capacity, being authorized so to do, executed the foregoing instrument, for the purposes therein stated, on behalf of the Association, and that the instrument is the act of the Association for the purposes therein stated.

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

Bonnie J Quiroz  
Notary Public

My Commission Expires:

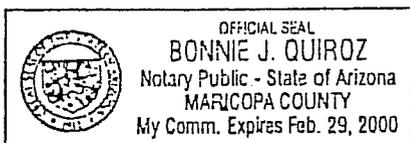


STATE OF ARIZONA )  
 ) ss.  
County of Maricopa )

On this 4 day of March, 1999, before me, the undersigned officer, personally appeared Pat Simone, Secretary, known to me (or proved to me on the basis of satisfactory evidence) to be the person whose name is subscribed to the foregoing instrument, who acknowledged before me that he/she is the Secretary of Sabino Estates Homeowners Association, and that he/she, in such capacity, being authorized so to do, executed the foregoing instrument, for the purposes therein stated, on behalf of the Association, and that the instrument is the act of the Association for the purposes therein stated.

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

Bonnie J Quiroz  
Notary Public



My Commission Expires:

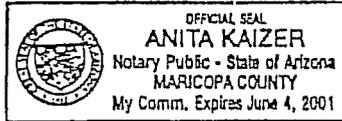
STATE OF ARIZONA )  
-- ) ss.  
County of Maricopa )

On this 25<sup>th</sup> day of February, 1999, before me, the undersigned officer, personally appeared Jerry G. Polo, known to me (or proved to me on the basis of satisfactory evidence) to be the person whose name is subscribed to the foregoing instrument.

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

Anita Kaizer  
Notary Public

My Commission Expires:



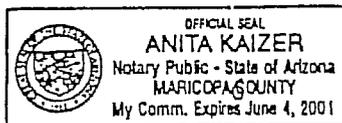
STATE OF ARIZONA )  
 ) ss.  
County of Maricopa )

On this 25<sup>th</sup> day of February, 1999, before me, the undersigned officer, personally appeared Jeanne Polo, known to me (or proved to me on the basis of satisfactory evidence) to be the person whose name is subscribed to the foregoing instrument.

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

Anita Kaizer  
Notary Public

My Commission Expires:



**Exhibit A**

Lots 6, 9, 20, 52, and 61 of Sahuaro Acres, as depicted on the plat map located at Book 80, Page 24 of Maps, Maricopa County Recorder's Office.

*Oklahoma*  
STATE OF ~~ARIZONA~~ )  
*Tulsa* ) ss.  
County of ~~Maricopa~~ )

-- On this 1st day of March, 1999, before me, the undersigned officer, personally appeared Jean A. & Nicole F. Malenkar, President, known to me (or proved to me on the basis of satisfactory evidence) to be the person whose name is subscribed to the foregoing instrument, who acknowledged before me ~~that he/she is the President of Sabino Estates Homeowners Association~~, and that he/she, in such capacity, being authorized so to do, executed the foregoing instrument, for the purposes therein stated, on behalf of the Association, and that the instrument is the act of the Association for the purposes therein stated.

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

*Patricia J. Harris*  
Notary Public

My Commission Expires:  
March 6, 2003

STATE OF ARIZONA )  
 ) ss.  
County of Maricopa )

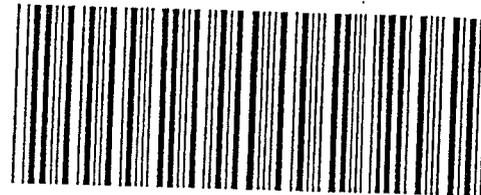
On this \_\_\_\_ day of \_\_\_\_\_, 1999, before me, the undersigned officer, personally appeared \_\_\_\_\_, Secretary, known to me (or proved to me on the basis of satisfactory evidence) to be the person whose name is subscribed to the foregoing instrument, who acknowledged before me that he/she is the Secretary of Sabino Estates Homeowners Association, and that he/she, in such capacity, being authorized so to do, executed the foregoing instrument, for the purposes therein stated, on behalf of the Association, and that the instrument is the act of the Association for the purposes therein stated.

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

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

Exhibit A

Lots 6, 9, 20, 52, and 61 of Sahuaro Acres, as depicted on the plat map located at Book 80, Page 24 of Maps, Maricopa County Recorder's Office.



When recorded return to:

Curtis S. Ekmark  
6710 N. Scottsdale Road, Suite 225  
Scottsdale, Arizona 85253

OFFICIAL RECORDS OF  
MARICOPA COUNTY RECORDER  
HELEN PURCELL  
99-0269075 03/22/99 04

JORNN 2 OF

**CERTIFICATE OF  
FIRST AMENDMENT TO THE  
DECLARATION OF COVENANTS, CONDITIONS AND RESTRICTIONS FOR  
SABINO ESTATES**

SABINO ESTATES HOMEOWNERS ASSOCIATION ("Association") hereby amends the Declaration of Covenants, Conditions and Restrictions for Sabino Estates, recorded on June 1, 1995, recording number 95-0315172, records of Maricopa County, Arizona ("Declaration") so as to amend the Declaration as follows:

Article 5 is hereby amended to add the following provisions:

**5.6(a) Annexation of Additional Properties.** The Board of Directors of the Association may annex additional properties into the Association. The owners of the additional properties annexed into the Association pursuant to this provision will form a separate class of membership known as Class C Members. The Board of Directors and Class C Members shall adopt a Tract Declaration that shall apply to all Class C Members and shall be recorded against all of the properties of Class C Members and against the Association. Class C Members shall have the rights and obligations set forth in the Tract Declaration. The provisions of this Declaration shall not apply to Class C Members except as specified in the Tract Declaration.

**5.7 Classes of Members.** The Association shall have three classes of voting membership:

**5.7.1 Class A.** Class A members shall be all Owners of Lots. Each Class A member shall be entitled to one (1) vote for each Lot owned.

**5.7.2 Class B.** Because the Declarant no longer owns Lots, Class B membership has ceased.

**5.7.3 Class C.** Class C members shall be the Owners of properties annexed into the Association pursuant to Section 5.6(a). Class C members shall not have any voting rights for any matters relating to the provision of this Master Declaration. Furthermore, Class C members shall not have any voting rights for the members of the Board of Directors of the Association. Class C members shall have voting rights for any provisions or amendments to the Tract Declaration. Said voting rights are specified in the Tract Declaration.

The President of the Association hereby certifies that the Association has obtained the written approval of Owners of not less than seventy-five percent (75%) of the Lots to pass this Amendment, pursuant to Article 9, Section 9.3 of the Declaration.

DATED this 22 day of March, 1999.

SABINO ESTATES,  
an Arizona nonprofit corporation

By Arthur T. Deglione  
Its President

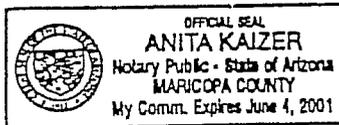
STATE OF ARIZONA        )  
  ) ss.  
County of Maricopa        )

On this 22<sup>nd</sup> day of March, 1999, before me, the undersigned officer, personally appeared Arthur T. Deglione, President, known to me (or proved to me on the basis of satisfactory evidence) to be the person whose name is subscribed to the foregoing instrument, who acknowledged before me that he/she is the President of Sabino Estates, and the he/she, in such capacity, being authorized so to do, executed the foregoing instrument, for the purposes therein stated, on behalf of the Association, and that the instrument is the act of the Association for the purposes therein stated.

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

Anita Kayser  
Notary Public

My Commission Expires:  
6/4/2001





OFFICIAL RECORDS OF  
MARICOPA COUNTY RECORDER  
HELEN PURCELL  
99-0269074 03/22/99 04:36  
JOHN 1 OF 2

When recorded return to:

Curtis S. Ekmark  
6710 N. Scottsdale Road, Suite 225  
Scottsdale, Arizona 85253

**CERTIFICATE OF  
SECOND AMENDMENT TO THE  
DECLARATION OF COVENANTS, CONDITIONS AND RESTRICTIONS FOR  
SABINO ESTATES**

In the event that title to the roadways located within, and adjoining to, SABINO ESTATES, as denoted on the plat of record No. 95-0315172, recorded on June 1, 1995, in the records of the Maricopa County Recorders Office, become vested in SABINO ESTATES HOMEOWNERS ASSOCIATION ("Association"), the Association hereby passes the following amendment to the Declaration of Covenants, Conditions and Restrictions for Sabino Estates, recorded on June 1, 1995, recording number 95-0315172, records of Maricopa County, Arizona ("Declaration"), and any amendments thereto. Said amendment will only become effective if title to the roadways is vested in the Association:

Article 7 is amended as follows:

7.1.3 Maintenance of Roadways. The Association shall maintain all roadways to which it is vested title as part of the Association's Areas of Association Responsibility. The cost of maintaining the roadways, including establishing reserves for future maintenance, shall be included in the annual budget for the Association, and shall be assessed against the Owners of Lots as part of their regular assessments.

The President of the Association hereby certifies that the Association has obtained the written approval of Owners of not less than seventy-five percent (75%) of the Lots to pass this Amendment, pursuant to Article 9, Section 9.3 of the Declaration.

DATED this 22 day of March, 1999.

SABINO ESTATES,  
an Arizona nonprofit corporation

By [Signature]  
Its President

STATE OF ARIZONA        )  
  ) ss.  
County of Maricopa        )

On this 22<sup>nd</sup> day of March, 1999, before me, the undersigned officer, personally appeared Arthur T. Dogliene, President, known to me (or proved to me on the basis of satisfactory evidence) to be the person whose name is subscribed to the foregoing instrument, who acknowledged before me that he/she is the President of Sabino Estates, and the he/she, in such capacity, being authorized so to do, executed the foregoing instrument, for the purposes therein stated, on behalf of the Association, and that the instrument is the act of the Association for the purposes therein stated.

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

Anita Kaizer

Notary Public

My Commission Expires:

6/4/2001

