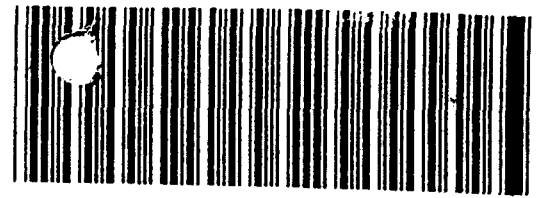


Recording Requested By And  
When Recorded Mail To:

FireRock, LLC  
P.O. Box 19840  
Fountain Hills, AZ 85269  
Attention: Greg Bielli



OFFICIAL RECORDS OF  
MARICOPA COUNTY RECORDER  
HELEN PURCELL

99-0587829 06/21/99 10:27

MARIA 1 OF 1

DECLARATION OF COVENANTS, CONDITIONS,  
RESTRICTIONS, AND EASEMENTS  
FOR FIREROCK COUNTRY CLUB

"Any provision herein which restricts the sale, rental, or use of the described real property because of familiar status is invalid and unenforceable under federal law"

THIS DECLARATION of Covenants, Conditions, Restrictions and Easements for FireRock Country Club (the "Declaration") is made this June 18, 1999, by FireRock, LLC, a Delaware limited liability company ("Declarant").

A. Declarant is the fee simple owner and developer of approximately eight hundred eight (808) acres of land in the Town of Fountain Hills, Maricopa County, Arizona, known as FireRock Country Club and described on Exhibit "A" attached hereto and made a part hereof by reference (together with the development to be completed thereon, "FireRock");

B. Declarant intends to develop FireRock in stages into a planned residential community, which may include, without obligation, a golf course, private country club and associated facilities and a membership organization owning and operating such facilities;

C. When fully developed it is intended, without obligation, that FireRock will have open spaces, walkways, private roads, lakes, landscaped areas, entry improvements and entryways;

D. As part of the various stages of development of FireRock, Declarant intends, without obligation, to record various subdivision plats; to restrict portions of FireRock for drainage and flood control, effluent transportation and storage and similar uses; and to dedicate certain areas to the Association or the Club (as such terms are defined below);

E. Declarant desires to form a nonprofit corporation for the maintenance, social and recreational purposes of benefitting FireRock, the Declarant, the Owners, the Lessees and the Residents (as such terms are defined below), which non-profit corporation will (i) acquire, construct, operate, manage and maintain Common Areas (as defined below) in FireRock; (ii) establish, levy, collect and disburse the Assessments (as defined below) and other charges imposed hereunder; and (iii) as the agent and representative of the Members (as defined below) of the Association and Residents of FireRock administer and enforce all provisions hereof and enforce use and other restrictions imposed on various parts of FireRock;

F. Declarant is preparing the necessary documents for the incorporation and organization of the Association;

G. Declarant therefore wishes to subject all of FireRock to the covenants, conditions, restrictions and easements hereinafter set forth;

H. In order to cause the Covenants (as defined below) to run with FireRock and to be binding upon FireRock and the Owners, Lessees, and Residents thereof from and after the date of Recording of this Declaration, Declarant hereby makes all conveyances of FireRock, whether or not so provided in instruments of conveyance, subject to the Covenants herein set forth; and by accepting Deeds, Leases, easements or other grants or conveyances to any portion of FireRock the Owners, Lessees, and other transferees for themselves and their heirs, executors, administrators, trustees, personal representatives, successors and assigns, agree that they personally shall be bound by all of the Covenants (including but not limited to the obligation to pay Assessments) hereinafter set forth except to the extent such persons are specifically excepted therefrom.

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

## ARTICLE I

### DEFINITIONS

The following words, phrases or terms used in this Declaration shall have the following meanings:

1. "Annual Assessment" shall mean the charge levied and assessed each year against each Lot, Unit, Parcel, or Owner pursuant to Article VII, Section 2, hereof.
2. "Architectural Committee" shall mean the committee of the Association to be created pursuant to Article XI below.
3. "Articles" shall mean the Articles of Incorporation of the Association as the same may from time to time be amended or supplemented.
4. "Assessable Property" shall mean any Lot, Unit, or Parcel, except such part or parts thereof as may from time to time constitute Exempt Property.
5. "Assessment" shall mean an Annual Assessment, Special Assessment, Specific Assessment, and/or Maintenance Charge.
6. "Assessment Lien" shall mean the lien created and imposed by Article VII.
7. "Assessment Period" shall mean the term set forth in Article VII, Section 7.

8. "Association" shall mean the Arizona nonprofit corporation to be organized by Declarant to administer and enforce the Covenants and to exercise the rights, powers and duties set forth in this Declaration, its successors and assigns. Declarant hereby reserves the exclusive right to cause such Association to be incorporated and intends to name the Association "The FireRock Community Association, Inc."

9. "Association Land" shall mean such part or parts of FireRock, together with the buildings, structures and improvements thereon, and other real property which the Association may at any time own in fee or in which the Association may at any time have a leasehold interest, for as long as the Association is the owner of the fee or leasehold interest.

10. "Board" shall mean the Board of Directors of the Association.

11. "Bylaws" shall mean the Bylaws of the Association as the same may from time to time be amended or supplemented.

12. "Club Documents" shall have the meaning set forth in Article III, Section 3.

13. "Club" shall mean the FireRock Country Club, including the Golf Course and other recreational, social or other facilities associated therewith, generally operating and located at the real property comprising the Club Property, as it may be organized and operated from time to time.

14. "Club Property" shall mean all real and personal property owned or leased by the Club, including the real property shown on Exhibit "A," as designated for Golf Course and Club use, the Golf Course, the Club and other recreational, social or other facilities associated therewith, as further described in Article III, Section 4.

15. "Club Property Owner" shall mean Declarant, its successors and assigns.

16. "Common Area" and "Common Areas" shall mean (a) all Association Land; (b) all land within FireRock which the Declarant, by this Declaration or other Recorded instrument, makes available for use by Members of the Association and evidences its intent to convey to the Association at a later date; and (c) all land within FireRock which the Declarant indicates on a Recorded subdivision plat is to be used for private roads, landscaping, drainage, lakes, effluent transportation and storage, and/or flood control for the benefit of the Association and/or the general public; provided, however, in no event shall Common Areas include the Club Property.

17. "Covenants" shall mean the covenants, conditions, restrictions, assessments, charges, servitudes, liens, reservations and easements set forth herein.

18. "Declarant" shall mean FireRock, LLC (a Delaware limited liability company), and the successors and assigns of Declarant's rights and powers hereunder.

19. "Declaration" shall mean this Declaration of Covenants, Conditions, Restrictions, and Easements, as amended or supplemented from time to time.

20. "Deed" shall mean a deed or other instrument conveying a fee simple title in a Lot, Unit, or Parcel.

21. "Design Guidelines" shall mean the FireRock Country Club Architectural Guidelines dated June 1, 1999, as they may be amended from time to time.

22. "Exempt Property" shall mean the following parts of FireRock:

(a) All land and improvements owned by or dedicated to and accepted by the United States, the State of Arizona, Maricopa County, the Town of Fountain Hills, the Fountain Hills Sanitary District, or any other governmental entity, for as long as any such entity is the owner thereof or for so long as said dedication remains effective;

(b) All Club Property, for as long as it is subject to that certain Agreement and Covenant to Share Costs, dated as of June 1, 1999, between Declarant and the Association (the "Covenant to Share Costs"), or successor agreement whereby the Club bears a portion of the expenses of the Association; and

(c) All Association Land, for as long as the Association is the owner or tenant thereof.

23. "Exterior Lots" shall mean that certain real property more particularly described on Exhibit "B" attached hereto.

24. "FireRock" shall mean the real property described on Page 1 of this Declaration and Exhibit "A" and the development to be completed thereon.

25. "FireRock Rules" shall mean the rules for FireRock adopted by the Board pursuant to Article V, Section 3.

26. "Golf Course" shall mean the golf course located within the real property shown on Exhibit "A" as designated for Golf Course and Club use, as it may be reconfigured from time to time.

27. "Land Use Classification" shall mean the designation of the type of improvements which may be constructed on a Lot, Unit, Parcel or Association Land and the purposes for which such improvements and surrounding land may be utilized as established under Article IV hereof.

28. "Lease" shall mean a lease, whether oral or written and regardless of the term thereof, whereby the Owner of a Rental Unit lets such Rental Unit to a Lessee. A Lease (when

the term is so capitalized) shall not, for purposes of this Declaration, include any subleases or any leasing arrangements involving property other than a Rental Unit.

29. "Lessee" shall mean the lessee under a Lease, including an assignee of a Lease but excluding any person who has assigned all of such person's interest in a Lease.

30. "Lot" shall mean any area of real property within FireRock designated as a lot on any subdivision plat recorded or approved by Declarant and limited to Single Family Residential use as such term is defined in Article IV (but excluding any such lot on which a Unit exits).

31. "Maintenance Charges" shall mean any and all costs assessed pursuant to Article X, Sections 2 or 3.

32. "Member" shall mean any person holding a Membership in the Association pursuant to this Declaration.

33. "Membership" shall mean a membership in the Association and the rights granted to the Owners and Declarant pursuant to Article VI to participate in the Association. "Membership" shall include "Class A Membership" and "Class B Membership" as set forth in Article VI.

34. "Multifamily Development" shall mean a Parcel or portion thereof which is comprised of Units which are intended, as shown by (i) the site plan therefor approved by the Town of Fountain Hills and the Architectural Committee and (ii) the Land Use Classification for such Parcel, as one integrated multifamily development.

35. "Owner" shall mean (when so capitalized) the record holder of legal title to the fee simple interest in any Lot, Unit, or Parcel, but excluding lienholders who hold such title merely as security. In the case of Lots, Units, or Parcels the fee simple title to which is vested of record in a trustee pursuant to Arizona Revised Statutes §33-801 et seq., legal title shall be deemed to be in the Trustor. An Owner shall include any person who holds record title to a Lot, Unit, or Parcel in joint ownership with any other person or holds an undivided fee interest in any Lot, Unit, or Parcel.

36. "Parcel" shall mean an area of real property within FireRock with one of the following Land Use Classifications: (i) Multifamily Development use, (ii) Single Family Residential use which has not yet been subdivided into Lots or Units and related amenities and rights-of-way, but any such area shall cease to be a Parcel upon the recordation of a subdivision plat or other instrument covering the area and creating Lots or Units and related amenities, or (iii) Club Property. A Parcel shall not include a Lot, Unit, or any Association Land but, in the case of staged or phased developments, shall include areas not yet included in a subdivision plat, horizontal property regime or other recorded instrument creating Lots, Units, and related amenities.

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

38. "Rental Unit" shall mean a Unit which is utilized, otherwise than on some transient basis, for rental or leased residential purposes to nonowners on a non-cooperative basis.

39. "Resident" shall mean:

(a) Each Owner and Lessee of any part of the Assessable Property, excluding the Golf Course, and each Tenant actually residing or conducting a business on any part of the Assessable Property, excluding the Golf Course; and

(b) Members of the immediate family of each Owner, Lessee and Tenant referred to in Subsection (a) actually living in the same household with such Owner, Lessee or Tenant.

Subject to such rules and regulations as the Association may hereafter specify (including the imposition of special nonresident fees for use of the Association Land if the Association shall so direct), the term "Resident" also shall include the guests or invitees of any such Owner, Lessee, or Tenant, if and to the extent the Board in its absolute discretion by resolution so directs.

40. "Single Family" shall mean 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.

41. "Special Assessment" shall mean any assessment levied and assessed pursuant to Article VII, Section 6.

42. "Special Services" shall have the meaning set forth in Article VII, Section 3.

43. "Special Use Fees" shall mean special fees authorized by this Declaration which an Owner, Lessee, Resident or any other person is obligated to pay to the Association over, above and in addition to any Assessments imposed or payable hereunder.

44. "Specific Assessment" shall mean any assessment levied and assessed pursuant to Article VII, Section 3.

45. "Tenant" shall mean any person who occupies property located in FireRock under any type of rental or letting arrangement but is not included in the definition of a Lessee.

46. "Unit" shall mean any building or portion of a building situated upon a Lot or Parcel designed and intended for use and occupancy as a residence by one family.

47. "Visible From Adjacent Property" shall mean, 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 property immediately adjacent to the property upon which said object is located.

## ARTICLE II

### PROPERTY SUBJECT TO FIREROCK DECLARATION

Section 1. General Declaration Creating FireRock. Declarant intends to develop FireRock by subdivision into various Lots and Parcels and to sell and convey such Lots and Parcels, and intends that the acquirers of such Parcels shall subdivide and improve such Parcels into Units. Declarant hereby declares that all of the real property within FireRock described on Exhibit "A" is and shall be held, conveyed, hypothecated, encumbered, leased, occupied, built upon or otherwise used, improved or transferred, in whole or in part, subject to this Declaration, as amended or modified from time to time; provided, however, property which is not part of a Lot or Parcel and which is dedicated to the public or to a governmental entity for public purposes shall not be subject to this Declaration and the Covenants herein contained while owned by the public or the governmental entity, although restrictions imposed in this Declaration upon the Owners and Residents concerning the use and maintenance of such public areas shall at all times apply to the Owners and Residents. This Declaration is declared and agreed to be in furtherance of a general plan for the subdivision, improvement and sale of FireRock and is established for the purpose of enhancing and protecting the value, desirability and attractiveness of FireRock and every part thereof. All of this Declaration shall run with all Lots, Units, Parcels and Association Land for all purposes and shall be binding upon and inure to the benefit of Declarant, the Association, all Owners and Residents and their successors in interest. Nothing in this Declaration shall be construed to prevent the Declarant from dedicating or conveying portions of FireRock, including streets or roadways, for uses other than as a Lot, Unit, Parcel or Association Land.

Section 2. Association Bound. Upon issuance of a Certificate of Incorporation by the Arizona Corporation Commission to the Association, the Covenants shall be binding upon and shall benefit the Association.

## ARTICLE III

### EASEMENTS AND RIGHTS OF ENJOYMENT IN COMMON AREAS; CLUB PROPERTY

#### AND EASEMENTS

Section 1. Easements of Enjoyment. Each Declarant, Owner, Resident, and Member of the Association shall have a right and easement of enjoyment in and to the Common Areas which shall be appurtenant to and shall pass with the title to each Lot, Unit, Parcel and Lease, subject to the following provisions:

(a) The right of the Association to charge reasonable Special Use Fees as determined by the Board for the use of any facility situated upon the Common Areas. Special Use Fees shall be uniform among Members.

(b) The right of the Association to suspend any Member's voting rights and rights to use Common Area facilities (i) for any period during which any Assessment against such Member's Lot, Unit, or Parcel remains delinquent; (ii) for a period not to exceed 60 days for any infraction of this Declaration or the FireRock Rules, and (iii) for successive 60-day periods if any such infraction is not corrected during any prior 60-day suspension period.

(c) The right of the Association to dedicate or transfer all or any part of the Common Areas to any public agency, entity, authority, or utility for such purposes and subject to such conditions as may be agreed to by the Association. No such dedication or transfer shall be effective unless an instrument signed by the Owners of a majority of the Memberships in each class of Members agreeing to such dedication or transfer has been recorded, except that the Board, without joinder of such Members, shall have authority to dedicate or transfer to such public agencies, entities, authorities or utilities (i) matters specified on a recorded subdivision plat, (ii) easements and rights-of-way which are intended to benefit FireRock and which do not have any substantial adverse effect on the overall enjoyment of the Common Areas by the Members, and (iii) effluent transportation and storage facilities and the land to which such facilities are appurtenant.

(d) The right of the Association to regulate the use of the Common Areas through the FireRock Rules, including the right to prohibit access to those Common Areas, such as landscaped rights-of-way, not intended for use by the Owners and Residents. The FireRock Rules shall be intended, in the absolute discretion of the Board, to enhance the preservation of the Common Areas for the safety and convenience of the users thereof and to promote the best interests of the Owners and Residents.

Section 2. Delegation of Use. Any Member may, in accordance with the FireRock Rules and the limitations contained therein and in this Declaration (a) delegate his right of enjoyment in the Common Areas and facilities to such Member's family, Tenants, guests, or invitees; or (b) designate another person to exercise all of such Member's rights (not including liabilities or voting rights), which other person shall, during the period of such designation, have the sole right to delegate rights of enjoyment pursuant to Subsection (a) of this Section.

### Section 3. Club Property

(a) The Club Property is not a part of the Common Areas. The Club Property is private property owned and operated by the Club Property Owner and administered according to membership policies and rules and regulations adopted by the Club Property Owner from time to time. The Club Property may include, without limitation or obligation, golf courses, practice facilities, clubhouses, tennis courts, swimming pools, and such other recreational, social or other facilities typically associated with such use and which are separate from the Common Areas. These facilities shall be developed and provided at the



discretion of the Club Property Owner. The Club Property Owner has the exclusive right to determine from time to time, in its sole discretion and without notice or approval of any change, what facilities, if any, shall be included within the Club and how and by whom these facilities shall be used, if at all. By way of example, but not limitation, the Club Property Owner has the right to approve users and determine eligibility for use, to reserve use rights, to terminate any or all use rights, to change, eliminate or cease operation of any or all of the facilities, to transfer any or all of the Club Property or the operation thereof to anyone (including without limitation a member-owned or equity club) and on any terms, to limit the availability of use privileges, and to require the payment of a purchase price, membership contribution, initiation fee, membership deposit, dues, use charges and other charges for use privileges. Ownership of a Lot, Unit, Parcel or any other portion of FireRock or Membership in the Association does not give any vested right or easement, prescriptive or otherwise, to use the Club Property, and does not grant any ownership or membership interest therein.

(b) By acquisition of title to, or rental of a Lot, Unit, or Parcel, each Owner and Lessee acknowledges and agrees that the Club Property is owned and operated by the Club Property Owner. Privileges to use the Club Property shall be subject to the terms and conditions of the membership documents for the Club, as the same may be amended from time to time (the "Club Documents"). Acquisition of a membership in the Club requires the payment of a membership purchase price, and membership dues, fees and charges. These amounts shall be determined by the Declarant and/or the Club Property Owner as set forth in the Club Documents. Each Owner by acquisition of title to, and Lessee by lease of, a Lot, Unit, or Parcel releases and discharges forever the Declarant, the Club, the Club Owner, and their members, partners, officers, directors, employees, agents and affiliates, from: (1) any claim that the Club Property is, or must be, owned and/or operated by the Association, Owners, or Residents and/or (2) any claim that the Owners or Residents are entitled to use the Club Property by virtue of their Membership in the Association or ownership or lease of a Lot, Unit, or Parcel without acquiring a membership in the Club, paying the applicable membership purchase price, and dues, fees and charges established by the Club from time to time, and complying with the terms and conditions of the Club Documents.

(c) Each Owner and the Association shall indemnify, defend, and hold harmless the Declarant, its members, partners, employees, agents, directors, officers and affiliates and their successors and assigns, against and in respect of, and to reimburse the Declarant, its members, partners, employees, agents, directors, officers and affiliates on demand for, any and all claims, demands, losses, costs, expenses, obligations, liabilities, damages, recoveries, and deficiencies, including, but not limited to, interest, penalties, attorney and paralegal fees and disbursements (even if incident to any appeals), that the Declarant, its partners, employees, agents, contractors, directors, officers and affiliates shall incur or suffer, which arise out of, result from, or relate to any claim that the Club Property must be owned and/or operated by the Association, Owners, or Residents and/or that Owners or Residents may use the Club Property without acquiring a membership in the Club pursuant to the Club Documents and paying the membership purchase price and dues, fees and charges established by the Club from time to time.

#### Section 4. Easements for Club Property

(a) All Lots, Units, Parcels, and Common Areas in FireRock are burdened with an easement permitting golf balls to unintentionally come upon such Lots, Units, Parcels, and Common Areas of FireRock and for golfers at reasonable times and in a reasonable manner to come upon the Common Areas, or the exterior portions of a Lot, Unit, or Parcel, to retrieve errant golf balls; provided, however, if any Lot, Unit, or Parcel is fenced or walled, the golfer shall seek the Owner's or Lessee's permission before entry. The existence of this easement shall not relieve golfers of liability for damage caused by errant golf balls. UNDER NO CIRCUMSTANCES SHALL ANY OF THE FOLLOWING PERSONS BE HELD LIABLE FOR ANY DAMAGE OR INJURY RESULTING FROM ERRANT GOLF BALLS OR THE EXERCISE OF THIS EASEMENT: THE DECLARANT; THE ASSOCIATION OR ITS MEMBERS (IN THEIR CAPACITY AS SUCH); FIREROCK, L.L.C., ITS MEMBERS, ITS SUCCESSORS, SUCCESSORS-IN-TITLE TO THE GOLF COURSE, OR ASSIGNS; ANY BUILDER OR CONTRACTOR WORKING IN CONNECTION WITH THE GOLF COURSE OR CLUB PROPERTY; THE ARCHITECT OF THE GOLF COURSE; AND ANY OFFICER, DIRECTOR, PARTNER, MEMBER, EMPLOYEE, AGENT, CONTRACTOR OR AFFILIATE OF ANY OF THE FOREGOING.

(b) The Club Property Owner, its employees, agents, contractors and designees, successors and assigns, shall at all times have a right and non-exclusive easement of access and use over those portions of the Common Areas reasonably necessary to the development, operation, maintenance, repair and replacement of the Club Property.

(c) Any portion of FireRock immediately adjacent to the Golf Course is hereby burdened with a non-exclusive easement in favor of the Golf Course for overspray of water and effluent from the irrigation system serving the Golf Course and for runoff from the Golf Course. Under no circumstances shall the Association or the owner of the Golf Course be held liable for any damage or injury resulting from such overspray or the exercise of this easement.

(d) The owner of the Golf Course, its successors and assigns, shall have a perpetual, exclusive easement of access over FireRock for the purpose of retrieving golf balls from any bodies of water within the Common Areas lying reasonably within range of golf balls hit from the Golf Course.

(e) The Club Property Owner, the employees, agents, contractors and designees of the Club Property Owner, the Club and the persons permitted to use the Club Property by the Club Property Owner (regardless of whether such persons are Owners hereunder) and their guests shall at all times have a right and non-exclusive easement of access and use over all roadways, whether by automobile, golf cart or other means, located within FireRock reasonably necessary to travel to and from the entrances to FireRock from and to the Club Property, respectively, and, further, over those portions of FireRock (whether Common Area or otherwise) reasonably necessary to the use, operation, maintenance, repair and replacement of the Club Property. Without limiting the generality of the foregoing, persons

who are permitted use of the Club Property and permitted members of the public, if any, shall have the right to travel over and park their vehicles on the roadways located within FireRock at reasonable times before, during, and after golf tournaments or other functions held by or at the Club Property.

(f) A non-exclusive easement is hereby reserved to the Club, its successors and assigns, and its employees, agents, contractors, and designees, upon over, in, upon and across the roadways and those portions of the Common Areas reasonably necessary to travel, with storage and maintenance equipment, chemicals, and other items, to and from the maintenance area from and to the Club Property, and the right to take all action reasonably necessary to use the maintenance area for the storage and maintenance of equipment, chemicals and all other items in its or their discretion.

Section 5. Assumption of Risk and Indemnification. Each Owner and Resident in the vicinity of the Club Property hereby expressly assumes the risk of noise, personal injury or property damage caused by maintenance and operation of the Club Property, including, without limitation: (a) noise from maintenance equipment at any time, (b) noise caused by golfers, (c) use of pesticides, herbicides and fertilizers, (d) view restrictions caused by maturation of vegetation, (e) reduction in privacy caused by golf traffic on the Golf Course or the removal or pruning of vegetation on the Golf Course, and (f) design of the Golf Course, and agrees that neither Declarant, the Association, the Club, the Club Property Owner nor any of their respective affiliates or agents nor any other entity owning or managing the Club Property shall be liable to Owner, Resident or any other person claiming any loss of damage, including, without limitation, indirect, special or consequential loss or damage arising from personal injury, destruction of property, trespass, loss of enjoyment or any other alleged wrong or entitlement to remedy based upon, due to, arising from or otherwise related to the proximity to the Club Property, including, without limitation, any claim arising in whole or in part from the negligence of Declarant, the Association, FireRock, LLC, the Club, the Club Property Owner, any builder or contractor working in connection with the Golf Course or other Club Property, the architect of the Golf Course, and any officer, director, partner, member, employee, agent, contractor, or affiliate of any of the foregoing. Each Owner and Resident hereby agrees to indemnify and hold harmless Declarant, the Association, FireRock, LLC, the Club, the Club Property, Owner, any builder or contractor working in connection with the Golf Course or other Club Property, the architect of the Golf Course, and any officer, director, partner, member, employee, agent, contractor, or affiliate of any of the foregoing, from and against any and all claims by such Owner or Resident arising in connection with maintenance and operation of the Club Property.

Section 6. Amendments Affecting Club Property. No amendments may be made to this Article or any other provisions of this Declaration which adversely affect the Club Property Owner, the Club Property, or access to the Club Property without the prior written consent of the Club Property Owner.

Section 7. Jurisdiction and Cooperation. It is Declarant's intention that the Association, and the Club Property Owner cooperate to the maximum extent possible in the operation of

the Association and the Club Property. Notwithstanding any other provisions of this Declaration to the contrary, the Association (including the Board, the Architectural Committee and any other committees) shall have no power to promulgate rules and regulations affecting the Club Property or activities on or use of the Club Property without the prior written consent of the Club Property Owner.

Section 8. Easements for Storm water Drainage and Retention. Every Lot, Unit, and Parcel of FireRock is hereby subjected to a non-exclusive easement appurtenant to and for the benefit of each other Lot, Unit, and Parcel for the purpose of stormwater drainage and runoff, which easement shall include, but shall not be limited to, the right to tie in to existing stormwater drainage facilities and to divert stormwater runoff into such stormwater drainage facilities at such points and in such manner as approved by the Declarant, and for the flow of stormwater runoff over FireRock to such points and from such points through the stormwater drainage facilities into arroyos, ponds or retention facilities within or outside FireRock. The foregoing easements shall be subject to any and all restrictions regarding quantity, rate and quality of discharge which the Declarant may hereafter impose or which may be imposed on FireRock, the Declarant or any Owner by any governmental entity having jurisdiction.

#### ARTICLE IV

##### LAND USE CLASSIFICATIONS; PERMITTED USES AND RESTRICTIONS

Section 1. Land Use Classifications. The following portions of FireRock are hereby restricted as follows:

(a) The real property shown on Exhibit "A" as designated for Single Family Residential use, excluding any Common Areas, shall be used only for Single Family Residential use, as defined and further described in Section 3 of this Article, and real estate brokerage and sales services related to property located within FireRock.

(b) The real property shown on Exhibit "A" as designated for Multifamily Residential use, excluding any Common Areas, shall be used only for Multifamily Development use, as defined and further described in Section 4 of this Article, and real estate brokerage and sales services related to property located within FireRock.

(c) The real property shown on Exhibit "A" as designated for Golf Course and Club use shall be operated only as the Golf Course and Club, together with such recreational, social and other facilities contemplated in Section 3 of Article III or as are otherwise typically associated with such use. In addition, subject to approval by the Club Property Owner, such property may also be used for retail and commercial uses associated with the Club, including by way of example but not limitation, restaurants and pro shops, and real estate brokerage and sales services related to property located within FireRock.

(d) Notwithstanding any other provisions in this Declaration, so long as Declarant holds the Class B Membership, Declarant shall be entitled to construct, maintain

and operate one or more sales, information and marketing centers on any property then owned by Declarant, Club Property Owner, or the Association (or on any other property within FireRock with the consent of the Owner thereof) in connection with the marketing and sale of property in FireRock, and such use by Declarant shall be a permissible use under any and all Land Use Classifications.

(e) Notwithstanding any other provisions in this Declaration, so long as Declarant holds the Class B Membership, Declarant reserves the right and shall be entitled without approval or consent by any other party, including any other Owner, Resident or Member, to change the Land Use Classification of all or any part of any Lot, Parcel or Association Land to any other Land Use Classification (whether or not such other classification is currently designated herein); provided, however, that Declarant shall not change the Land Use Classification of any FireRock property not then owned by Declarant without the consent of the Owner thereof. In the event of any such change by Declarant in the Land Use Classifications, Declarant shall Record with the County Recorder of Maricopa County, Arizona, a Certificate of Amendment, duly signed and acknowledged by Declarant reflecting such change.

Section 2. Covenants, Conditions, Restrictions and Easements Applicable to Lots, Units, and Parcels Within All Land Use Classifications. The following covenants, conditions, restrictions and reservations of easements and rights shall apply to all Lots, Units, Parcels and Leases, the Owners and Lessees thereof; and all Residents, regardless of Land Use Classifications:

(a) Architectural Control.

(i) All properties at FireRock other than the Club Property, so long as the Club Property is used for Club purposes, are subject to the Design Guidelines and any other guidelines, standards and rules as adopted by the Architectural Committee, to be established in accordance with Article XI, or the Board. The Association shall establish procedures where possible to prevent any duplication of effort on the part of Members and Owners when obtaining architectural approval; however, notwithstanding anything to the contrary contained herein, Owners of property at FireRock, other than the Club Property, so long as the Club Property is used for Club purposes, and Members, Residents and others using property at FireRock, other than the Club Property, are subject to requirements of the Architectural Committee created herein;

(ii) No improvements, alterations, repairs, excavation, grading, landscaping or other work which in any way alters the exterior appearance of any property within FireRock, or the improvements located thereon, from its then-existing natural or improved state shall be made or done without prior approval of the Architectural Committee, except as otherwise expressly provided in this Declaration. No building, fence, wall, residence or other structure shall be commenced, erected, maintained, improved, altered, or made without the prior written approval of the Architectural Committee. All subsequent additions to or changes or alterations in any building, fence, wall or other structure, including but not

limited to exterior color scheme and materials, and all changes in the grade of Lots or Parcels, shall be subject to the prior written approval of the Architectural Committee. No changes or deviations in or from the plans and specifications approved by the Architectural Committee shall be made without prior written approval of the Architectural Committee. Notwithstanding the foregoing, the foregoing provisions of this subsection 2(a)(ii) shall not apply to the Club Property so long as the Club Property is used for Club purposes.

(b) Animals. No animal, other than a reasonable number of generally recognized house or yard pets; shall be maintained on any Lot, Unit, or Parcel and then only if they are kept, bred or raised thereon solely as domestic pets and not for commercial purposes. No animal 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 shall be maintained so as to be Visible From Adjacent Property. Upon the written request of any Owner or Resident, the Board shall conclusively determine, in its sole and absolute discretion, whether, for purposes of this Section, a particular animal is a generally recognized house or yard pet, whether such a pet is a nuisance, and whether the number of animals on any such property is reasonable. Any decision rendered by the Board shall be enforceable in the same manner as other restrictions contained herein.

(c) Temporary Occupancy and Temporary Buildings. No trailer, basement of any incomplete building, tent, shack, garage, barn, or temporary buildings or structures of any kind shall be used at any time for a residence, either temporary or permanent. Temporary buildings or structures used during and in connection with the construction of a permanent building or structure on any property except the Club Property so long as it is used for Club purposes, shall be approved by the Architectural Committee and shall be removed immediately after the completion of construction.

(d) Maintenance of Plantings. Each Owner of a Lot, Unit or Parcel shall keep irrigated and neatly trimmed all vegetation and plantings of every kind located on:

(i) such Owner's Lot, Unit, or Parcel (including set back areas and Common Areas);

(ii) planted public or private right-of-way areas between sidewalks (or bike paths) and the street curb in front of such Owner's property, if any;

(iii) any other public or private right-of-way or easement area which abuts the Owner's Lot, Unit, or Parcel and which is located between the boundary line of such Owner's Lot, Unit, or Parcel and the paved area of any street, sidewalk, bike path or similar area; and

(iv) any non-street public or private right-of-way or easement area abutting such Owner's Lot, Unit, or Parcel;

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, and for so long as, (i) the Association assumes the responsibility in writing; (ii) the Association has been given such responsibility by a Recorded instrument as provided in Article X, Section 1 of this Declaration; or (iii) the Town of Fountain Hills or another governmental entity assumes responsibility, or requires be kept undisturbed, to the extent of such requirement. The Architectural Committee may require the Owner of the areas described in Subsections (i), (ii) or (iii) above to provide and pay for landscaping of such areas.

(e) Nuisances; Construction Activities. No rubbish or debris of any kind shall be placed or permitted to accumulate upon or adjacent to any Lot, Unit, or Parcel, 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, Unit, or Parcel so as to be offensive or detrimental to any other property in the vicinity thereof or to its occupants. Without limiting the generality of any of the foregoing provisions, no exterior speakers, horns, whistles, firecrackers, bells or other sound devices, except security devices used exclusively for security purposes, shall be located, used or placed on any Lot, Unit, or Parcel, and except with respect to the Club Property, so long as it is used for Club purposes and only as is customary for facilities such as the Club. Normal construction activities and parking in connection with the building of improvements on a Lot, Unit or Parcel shall not be considered a nuisance or otherwise be prohibited by this Declaration, but Lots, Units, and Parcels shall be kept in a neat and tidy condition during construction periods, and trash and debris shall not be permitted to accumulate and shall be removed immediately during the course of construction. In addition, any construction equipment and building materials stored or kept on any Lot, Unit or Parcel during construction of improvements may be kept only in areas approved by the Architectural Committee, which may also require screening of the storage areas. The Board in its sole discretion shall have the right to determine the existence of any violation of or nuisance covered by this Subsection.

(f) Repair of Building. No building or structure on any Lot, Unit or Parcel shall be permitted to fall into disrepair and each such building and structure shall at all times be kept in good condition and repair and adequately painted or otherwise finished. In the event any building or structure is damaged or destroyed, then, subject to the approvals required by Subsection (a) above, such building or structure shall immediately be repaired, rebuilt, or demolished.

(g) Antennas. No antenna or other device (including but not limited to satellite dish receiver) for the transmission or reception of television or radio signals or any other form of electromagnetic radiation shall be erected, used or maintained outdoors on any Lot, Unit, or Parcel, whether attached to a building or structure or otherwise, except on the Club Property, so long as it is used for Club purposes, or unless approved by the Architectural Committee.

(h) Excavation. No Lot, Unit, or Parcel 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, without the prior written consent of the Board.

(i) Trash Containers and Collection. No garbage or trash shall be placed or kept on any Lot, Unit or Parcel, except in covered containers of a type, size and style approved by the Architectural Committee. In no event shall such containers be maintained so as to be Visible From Adjacent Property except to make the same available for collection and then only for the shortest time reasonably necessary to effect such collection. All trash, or garbage shall be removed from the Lots, Units, and Parcels and shall not be allowed to accumulate or be incinerated thereon.

(j) Clothes Drying Facilities. Outside clotheslines or other outside facilities for drying or airing clothes shall not be erected, placed or maintained on any Lot, Unit, or Parcel unless they are erected, placed and maintained exclusively within a fenced service yard or otherwise concealed and shall not be Visible From Adjacent Property.

(k) Machinery and Equipment. No machinery or equipment of any kind shall be placed, operated or maintained upon or adjacent to any Lot, Unit, or Parcel 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 FireRock, or (iii) that used in connection with any business permitted under the applicable Land Use Classification.

(l) Signs. No signs (including, but not limited to, commercial, political and similar signs) which are Visible From Adjacent Property shall be erected or maintained on any Lot, Unit, or Parcel except:

(i) Signs required by legal proceedings;

(ii) Not more than two (2) identification signs for individual residences, each having a surface area of seventy-two square inches or less;

(iii) Signs of builders on any Lot, Unit, or Parcel, approved from time to time by Declarant as to number, size, colors, design, message content, location and type;

(iv) Signs on the Club Property, so long as it is used for Club purposes;  
and

(v) Such other signs (including but not limited to construction job identification signs, builder signs, and subdivision and business identification signs) which are in conformance with the requirements of the Town of Fountain Hills and which have been approved in advance in writing by the Architectural Committee as to size, colors, design, message content, location and type.



(m) Restriction on Further Subdivision, Property Restrictions and Rezoning.

No Lot, Unit, or Parcel shall be further subdivided or separated into smaller lots or parcels by any Owner, and no portion less than all of any such Lot, Unit, or Parcel, nor any easement or other interest therein, shall be conveyed or transferred by any Owner, without the prior written approval of the Board, which approval must be evidenced on the plat or other instrument creating the subdivision, easement or other interest. This provision shall not, in any way, limit Declarant from subdividing or separating into Lots, Units, or Parcels any property at any time owned by Declarant and which has not previously been platted or subdivided into Lots or Units. If a Lot or Unit is rented, only the entire Lot or Unit, together with improvements thereon, may be rented, and then only to a Single Family. Portions of Lots or Units may not be rented. No further covenants, conditions, restrictions or easements shall be recorded by any Owner, Lessee, or other person against any Lot, Unit, or Parcel without the provisions thereof having been first approved in writing by the Board and, so long as Declarant holds the Class B Membership, by Declarant, and any covenants, conditions, restrictions or easements recorded without such approval being evidenced thereon shall be null and void. No application for rezoning of any Lot, Unit, or Parcel, and no applications for variances or use permits, shall be filed with any governmental authority unless the proposed use of the Lot, Unit, or Parcel has been approved by Declarant, so long as Declarant holds the Class B Membership, and thereafter by the Board, and the proposed use otherwise complies with this Declaration.

(n) Utility Easements. There is hereby created a blanket easement upon, across, over and under each Lot, Unit, and Parcel for ingress to, egress from, and the installation, replacement, repair and maintenance of, all utility and service lines and systems, including, but not limited to water, sewer, gas, telephones, electricity, effluent, television cable or communication lines and systems, and the like, as such utilities are installed in connection with the initial development of each Lot, Unit, or Parcel and the construction of the first building thereon. Pursuant to this easement, a providing utility or service company may install and maintain facilities and equipment on the property and affix and maintain wires, circuits and conduits on, in and under the roofs and exterior walls of buildings on the Lots, Units, and Parcels. Notwithstanding anything to the contrary contained in this Subsection, no sewers, electrical lines, water or effluent lines, or other utilities or service lines may be installed or relocated on any Lot, Unit, or Parcel except as initially programmed and approved by the Declarant or the Architectural Committee, or, as approved by the Owner and the Architectural Committee.

(o) Party Walls and Fences. Except as hereinafter provided, the rights and duties of Owners with respect to party walls or party fences between Lots, Units, and Parcels shall be as follows:

(i) The Owners of contiguous Lots, Units or Parcels who have a party wall or party fence shall have equal rights to use such wall or fence, provided that such use by one Owner does not interfere with the use and enjoyment of same by the other Owners.

(ii) In the event that any party wall or party fence is damaged or destroyed through the act of an Owner or any of its Tenants, Lessees, agents, guests, or members of his family (whether or not such act is negligent or otherwise culpable), it shall be the obligation of such Owner to rebuild and repair the party wall or party fence without cost to the Owner(s) of the adjoining Lot(s), Unit(s), or Parcel(s). Any dispute over liability imposed on an Owner hereunder shall not prevent the Owner from seeking indemnity therefor from the persons causing such damage.

(iii) In the event any party wall or party fence is destroyed or damaged (including deterioration from ordinary wear and tear and lapse of time), other than by the act of an Owner, its Tenants, Lessees, agents, guests or family, it shall be the obligation of all Owners whose Lots, Units, or Parcels adjoin such party wall or party fence, at their joint expense, to repair or replace such party wall or party fence. Such expense shall be allocated among the Owners in accordance with the frontage of their Lots, Units, or Parcels on the party wall or party fence.

(iv) Notwithstanding anything to the contrary herein contained, no person shall impair the structural integrity of any party wall or party fence without the prior consent of all Owners of any interest therein (regardless of whether ownership is by means of easement or in fee).

(v) In the event of a dispute between Owners with respect to the construction, repair or rebuilding of a party wall or party fence, or with respect to the sharing of the cost thereof, such Owners shall submit the dispute to the Board, the decision of which shall be binding, anything in the foregoing to the contrary notwithstanding.

(vi) In the case of party walls or party fences (1) between Common Areas and Lots, Units, or Parcels, or (2) constructed by the Declarant or the Association on Common Areas within a Lot, Unit, or Parcel, the Association shall be responsible for all maintenance thereof, subject to the provisions of Article X, Sections 2 and 3, except that each Owner of a Lot, Unit, or Parcel shall be responsible for painting the portion of the party wall or party fence facing his Lot, Unit, or Parcel or the portion thereof which is not a portion of the Common Area.

(vii) The provisions of this Subsection shall not apply to any party wall which separates the interiors of two Units, in the event that the rights of the Owners of such Units with respect to such party walls are governed by plats or declarations recorded by the developer of the Units.

(p) Common Driveways. Except as hereinafter provided, the rights and duties of Owners and the Association with respect to common driveways serving two or more Lots, Units, and Parcels shall be as follows:

(i) The Owners of contiguous Lots, Units or Parcels who have a common driveway shall have equal rights to use such driveway, provided that such use by one Owner does not interfere with the use and enjoyment of same by the other Owners.

(ii) In the event that any common driveway is damaged or destroyed through the act of an Owner or any of its Tenants, Lessees, agents, guests, or members of its family (whether or not such act is negligent or otherwise culpable), the Association shall rebuild and repair the common driveway, subject to the provisions of Article X, Sections 2 and 3. The Owner of the such Lot, Unit, or Parcel shall bear the cost thereof. Any dispute over liability imposed on an Owner hereunder shall not prevent the Owner from seeking indemnity therefor from the persons causing such damage.

(iii) In the event any common driveway is destroyed or damaged (including deterioration from ordinary wear and tear and lapse of time), other than by the act of an Owner, its Tenants, Lessees, agents, guests or family, the Association shall repair or replace such common driveway. The Owners of contiguous Lots, Units or Parcels who have a common driveway shall equally bear the cost thereof.

(iv) In the event of a dispute between Owners with respect to the common driveway, such Owners shall submit the dispute to the Board, the decision of which shall be binding, anything in the foregoing to the contrary notwithstanding.

(v) In the case of common driveways (1) between Common Areas and Lots, Units, or Parcels, or (2) constructed by the Declarant or the Association on Common Areas within a Lot, Unit, or Parcel, the Association shall be responsible for all maintenance thereof, subject to the provisions of Article X, Sections 2 and 3.

(q) 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, Unit, or Parcel 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 hereof 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. This section shall not preclude lines, wires, or other devices in existence as of the date this Declaration is recorded.

(r) Overhead Encroachments. No planting of any kind on any Lot, Unit, or Parcel, except on the Club Property, so long as the Club Property is used for Club purposes, shall be allowed to overhang or otherwise to encroach upon any sidewalk, street, pedestrian way or similar area from ground level to a height of eight (8) feet without the prior approval of the Architectural Committee.

(s) Trucks, Trailers, Campers and Boats. No motor vehicle classified by manufacturer rating as exceeding 3/4-ton, trucks, mobile home, trailer, camper, boat, or other

similar equipment or vehicle may be parked, maintained, constructed, reconstructed or repaired on any Lot, Unit, or Parcel or on any street in FireRock so as to be Visible From Adjacent Property, or visible from the Common Areas or the streets; provided, however, the provisions of this Subsection shall not apply to (i) pickup trucks of less than 3/4-ton capacity, which may be fitted with camper shells not exceeding 7 feet in height measured from ground level, and mini-motor homes not exceeding 7 feet in height and 18 feet in length, which are parked as provided in Subsection (t) below and which are used on a regular and recurring basis for basic transportation, and (ii) trucks, trailers and similar equipment and vehicles parked in areas designated for parking in non-residential Land Use Classifications in connection with permitted activities conducted in such non-residential Land Use Classifications.

(t) Motor Vehicles. Motor vehicle as used in this Subsection (t) and Subsection (u) below shall include without limitation automobiles, trucks, sport utility vehicles, boats, trailers, motorcycles, campers, vans, and recreational vehicles. No motor vehicle shall be maintained, constructed, reconstructed or repaired upon any Lot, Unit, Parcel or street in FireRock, and no inoperable vehicle may be stored or parked on any such Lot, Unit, Parcel or street, so as to be Visible From Adjacent Property or to be visible from Common Areas or streets; provided, however, that the provisions of this Section shall not apply to (i) emergency vehicle repairs or temporary construction shelters or facilities maintained during, and used exclusively in connection with, the construction of any improvement approved by the Architectural Committee; (ii) parking permitted by Subsection (u) below and (iii) golf carts on the Club property.

(u) Parking. It is the intent of the Declarant to restrict on-street parking as much as possible. Motor vehicles of all Owners and Residents, and of their employees, guests and invitees, are to be kept in garages, carports, residential driveways of the Owner, and other designated parking areas as approved by the Architectural Committee, wherever and whenever such facilities are sufficient to accommodate the number of vehicles at a Lot, Unit, or Parcel; provided, however, this Subsection shall not be construed to permit the parking in the above described areas of any vehicle the parking of which in FireRock is otherwise prohibited or the parking of any inoperable vehicle. In no event shall any vehicle be parked on site outside of designated parking areas more than twenty-four (24) hours continuously.

(v) Right of Entry. During reasonable hours and upon reasonable notice to the Owner or other occupant of a Lot, Unit, or Parcel, any member of the Architectural Committee, any member of the Board, or any authorized representative of either of them, shall have the right to enter upon and inspect any Lot, Unit, or Parcel, and the improvements thereon, except for the interior portions of any completed residence, for the purpose of ascertaining whether or not the provisions of this Declaration have been or are being complied with and such persons shall not be deemed guilty of trespass by reason of such entry.

(w) Declarant's Exemption. Nothing contained in this Declaration shall be construed to prevent the erection or maintenance by Declarant, or its duly authorized agents, of structures, improvements, signs or other sales-related items necessary or convenient to the development or sale of property in FireRock.

(x) 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 or Residents, the Board may make rules restricting or regulating their presence in FireRock as part of the FireRock Rules or may direct the Architectural Committee to make and adopt rules governing their presence on Lots, Units, or Parcels.

(y) Model Homes. The provisions of this Declaration which prohibit non-residential use of Lots, Units, and Parcels and regulate parking of vehicles shall not prohibit the construction and maintenance of model homes by persons engaged in the construction of residential dwellings in FireRock and parking incidental to the visiting of such model homes so long as the locations of such model homes are approved by the Architectural Committee, the opening and closing hours are approved by the Board, and the construction, operation and maintenance of such model homes otherwise comply with all of the provisions of this Declaration. The Architectural Committee may also permit Lots and other areas to be used for parking in connection with the showing of model homes so long as such parking and parking areas are in compliance with rules established by the Architectural Committee. Any homes constructed as model homes shall cease to be used as model homes within a reasonable time after the Owner or builder thereof is no longer actively engaged in the construction and/or sale of residential dwellings in FireRock and no home shall be used as a model home for the sale of homes located outside FireRock.

(z) Incidental Uses. The Board may approve uses of property within a Land Use Classification which are incidental to the full enjoyment of such property by its Owners and still consistent with the applicable Land Use Classification. Such approval may be subject to such regulations, limitations and restrictions, including termination of the use, as the Board may wish to impose, in its sole discretion, for the benefit of FireRock as a whole. By way of example and not of limitation, the uses which the Board may permit are private roadways and streets, recreation facilities intended primarily for the benefit of all or certain Owners and Residents within areas having a Land Use Classification of Multifamily Development use, recreational facilities intended for usage by the Residents or Owners of more than a single Lot, Unit or Parcel within any area classified for Single Family Residential use, and one or more sales, information and marketing centers operated by Declarant.

Section 3. Covenants, Conditions, Restrictions and Easements Applicable to the Single Family Residential Land Use Classification. The following covenants, conditions, restrictions and reservations of easements and rights shall apply only to Lots, Units, and Parcels lying within a Single Family Residential Land Use Classification and the Owners and Residents thereof:

(a) General. Property with a Land Use Classification of "Single Family Residential" may be used only for the construction and occupancy of single family detached dwellings and typical residential improvements incidental thereto, such as the construction and use of a family swimming pool. All property within such Land Use Classification shall be used, improved, and devoted exclusively to Single Family Residential use. No gainful occupation, profession, trade or other nonresidential use shall be conducted on any such property to the

extent such use would entail employees, clients or customers coming onto the property or persons entering into any Lot for the purpose of receiving or delivering products or services arising out of such usage except on approval of the Board. No structure whatever, other than one private, Single Family residence, together with a private garage and a guest house or servant quarters or similar structure, shall be erected, placed or permitted to remain on any Lot except on approval of the Board.

(b) Tenants. The entire Unit on a Lot may be let to a single family tenant from time-to-time by the Owner, subject to the provisions of this Declaration and the FireRock Rules.

Section 4. Covenants, Conditions, Restrictions and Easements Applicable the Multifamily Development Land Use Classification. The following covenants, conditions, restrictions and reservations of easements and rights shall apply only to Lots, Units, and Parcels lying within a Multifamily Development Land Use Classification and the Owners and Residents thereof:

(a) General. Property with a Land Use Classification of "Multifamily Development" may be used only for the construction and occupancy of multifamily residences and typical residential improvements incidental thereto, such as the construction and use of a swimming pool. All property within such Land Use Classification shall be used, improved, and devoted exclusively to Multifamily Development use. No gainful occupation, profession, trade or other nonresidential use shall be conducted on any such property to the extent such use would entail employees, clients or customers coming onto the property or persons entering into any Unit for the purpose of receiving or delivering products or services arising out of such usage except on approval of the Board.

(b) Tenants. An entire Unit may be let to a single family tenant from time-to-time by the Owner, subject to the provisions of this Declaration and the FireRock Rules.

## ARTICLE V

### ORGANIZATION OF ASSOCIATION

Section 1. Formation of Association. The Association shall be a nonprofit Arizona corporation charged with the duties and vested with the powers prescribed by law and set forth in the Articles, Bylaws, and this Declaration. Neither the Articles nor Bylaws shall, for any reason, be amended or otherwise changed or interpreted so as to be inconsistent with this Declaration.

Section 2. Board of Directors and Officers. The affairs of the Association shall be conducted by the Board and such officers as the Board may elect or appoint in accordance with the Articles and Bylaws. The initial Board shall be composed of three members. The Board may also appoint various committees and appoint a manager (the "Manager") who shall, subject to the direction of the Board, be responsible for the day-to-day operation of the

Association. The Board shall determine the compensation, if any, to be paid to the Manager or any other employee of the Association. Declarant shall appoint the initial Board members.

Section 3. The FireRock Rules. By a majority vote of the Board, the Association may, from time to time and subject to the provisions of this Declaration, adopt, amend and repeal rules and regulations to be known as the FireRock Rules. The FireRock Rules may restrict and govern the use of any area except on the Club Property, so long as the Club Property is used for Club purposes, by any Owner or Resident, and any of their family, Tenants, guests or invitees; provided, however, that the FireRock Rules shall not be inconsistent with this Declaration, the Articles, or Bylaws. Upon adoption, the FireRock Rules shall have the same force and effect as if they were set forth in and were a part of this Declaration.

Section 4. Personal Liability. No member of the Board or of any committee of the Association, no officer of the Association, no Manager or other employee of the Association, nor Declarant, nor FireRock, LLC, nor any officer, director, partner, member, employee, agent, contractor, or affiliate of Declarant or FireRock, LLC, personally shall be liable to any Member, or to any other person, 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 4 shall not apply to any person who has engaged in willful or intentional misconduct.

Section 5. Ancillary Associations. In the event any homeowners or similar association is to be formed by a developer (other than the Declarant) of a Parcel or subdivision in FireRock, the articles of incorporation and bylaws or other governing documents for such association shall not be effective unless the contents thereof have been approved by the Board and the governing documents specify that such association and the rights of its members are subject and subordinate to the provisions of this Declaration, the provisions of the Articles and Bylaws of the Association, and the provisions of the FireRock Rules.

## ARTICLE VI

### MEMBERSHIPS AND VOTING

Section 1. Owners of Lots, Units and Parcels. Each and every Owner of a Lot, Unit, or Parcel which is subject to Assessment shall be a Member of the Association. Each such Owner shall have the following number of Memberships:

(a) One Membership for each Lot or Unit owned by the Member:

(b) In the case of the Owner of a Parcel designated for use as an Multifamily Development but as to which construction has not been completed, one Membership for every Unit permitted upon the Parcel, pursuant to a site plan for the Parcel as approved by the Architectural Committee and the Town of Fountain Hills; and

(c) In the case of the Owner of the Club Property, one Membership, in the event the Club Property is no longer Exempt Property.

Memberships shall be shared by any joint Owners of, or Owners of undivided interests in, a Lot, Unit or Parcel. No fractional Memberships shall be allowed.

Section 2. Declarant. The Declarant shall be a Member of the Association for so long as it holds a Class B Membership pursuant to Section 3 below or owns any Lot, Unit or Parcel in FireRock.

Section 3. Voting. The Association shall have two classes of voting Memberships:

Class A. Class A Memberships shall be all Memberships, except the Class B Membership held by the Declarant pursuant to this Section 3. Each Owner of a Lot or Unit within a Single Family Residential area shall be entitled to one vote for each Class A Membership held by the Owner thereof. Each Owner of a Unit within a Multifamily Residential area shall be entitled to one-half ( $\frac{1}{2}$ ) vote for each Class A Membership held by the Owner thereof. Each Owner of a Parcel within a Multifamily Residential area shall be entitled to one-half ( $\frac{1}{2}$ ) vote for each Unit entitled to be constructed on such Parcel as approved by the Town of Fountain Hills. The Owner of the Club Property shall be entitled to ten (10) votes for the Class A Membership it holds in the event the Club Property is no longer Exempt Property. Notwithstanding the foregoing, the Board shall have the authority to suspend the voting rights of any Owner for violations of this Declaration in accordance with the provisions hereof.

Class B. There shall be one Class B Membership which shall be held by the Declarant (in addition to any Class A Memberships which may be held by the Declarant). The Class B Membership shall be entitled to five (5) votes for each Class A Membership entitled to one (1) vote, and two and one-half ( $2\frac{1}{2}$ ) votes for each Class A Membership entitled to one-half ( $\frac{1}{2}$ ) vote. The Class B Membership shall cease on the happening of the first of the following events:

- (a) When the Declarant no longer owns property in FireRock, or
- (b) When Declarant notifies the Board in writing that the Class B Membership is extinguished and records such notice, or,
- (c) January 1, 2020.

Section 4. Right to Vote. No change in the ownership of a Membership 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 Membership must be cast as a unit. Fractional votes shall not be allowed except as otherwise provided herein. In the event that a Membership 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 Membership, it will thereafter conclusively be presumed for all purposes that said Member was acting with the authority and consent of all other owners of the same Membership unless objection thereto is made at the time the vote is cast. In the event more than one vote is cast for a particular Membership, none of the said votes shall be counted and all said votes shall be deemed void.

Section 5. Membership Rights. Each Member shall have the rights, duties and obligations set forth in this Declaration and such other rights, duties and obligations as are set forth in the Articles and Bylaws, as the same may be amended from time to time.

Section 6. Transfer of Membership. The rights and obligations of Class A Membership in the Association shall not be assigned, transferred, pledged, conveyed or alienated in any way except upon transfer of ownership to an Owner's Lot, Unit or Parcel. A transfer of ownership to a Lot, Unit or Parcel 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, Unit, or Parcel also shall operate to transfer the Membership(s) appurtenant to said Lot, Unit, or Parcel to the new Owner thereof.

## ARTICLE VII

### COVENANT FOR ASSESSMENTS AND CREATION OF LIEN

Section 1. Creation of Lien and Personal Obligation of Assessments and Maintenance Charges. The Declarant and other developers in FireRock, for each Lot, Unit and Parcel hereafter established within FireRock, hereby covenant and agree, and each Owner by acceptance of a Deed therefor (whether or not it shall be so expressed in such Deed) is deemed to covenant and agree, to pay to the Association the following assessments and charges: (1) Annual Assessments established by this Article VII, (2) Special Assessments for capital improvements or other extraordinary expenses or costs established by this Article VII, (3) Specific Assessments established by this Article VII, and (4) Maintenance Charges established by Article X, Sections 2 and 3, all such Assessments to be established and collected as hereinafter provided. The Annual Assessments, Special Assessments, Specific Assessments, and Maintenance Charges, together with interest, costs, and reasonable attorney's fees, shall be a charge on the Lot, Unit or Parcel and shall be a continuing servitude and lien upon the Lot, Unit or Parcel against which each such Assessment is made. Except as otherwise set forth herein, the Annual Assessments and Special Assessments against each Lot, Unit or Parcel shall be proportional to the number of votes attributable to the Class A Memberships appurtenant to the Lot, Unit or Parcel. Each such Annual Assessment, Special Assessment, Specific Assessment, and Maintenance Charge, together with interest, costs and reasonable attorney's fees, shall also be the personal obligation of the person who is the Owner of the Lot, Unit or Parcel at the time the Assessment falls due. The personal obligation for delinquent

Assessments shall not pass to the successors in title of the Owner unless expressly assumed by them.

Section 2. Annual Assessments. In order to provide for the uses and purposes specified in Article IX hereof, including the establishment of replacement and maintenance reserves, the Board in each year, commencing with the year in which this Declaration is recorded, shall assess against each Lot, Unit and Parcel, other than Exempt Property, an annual assessment ("Annual Assessment"). The amount of the Annual Assessment, subject to the provisions of Section 4 hereof, shall be in the sole discretion of the Board and shall be determined with the objective of fulfilling the Association's obligations under this Declaration and providing for the uses and purposes specified in Article IX.

Section 3. Specific Assessments. In order to cover the costs, including overhead and administrative costs, of providing benefits, items, or services to a Lot or Unit or occupants thereof, upon request of its Owner, the Board may assess specific assessments ("Specific Assessments") against such Lot or Unit. Such benefits, items or services, if any, shall be offered from a menu of special services which the Board may from time to time authorize ("Special Services"), and may include without limitation landscape maintenance, janitorial service, and pest control. Specific Assessments may be levied in advance of the requested Special Services, as a deposit against charges to be incurred with respect thereto.

Section 4. Rate of Assessment. The amount of any Annual Assessment or Special Assessment against each Lot, Unit or Parcel shall be fixed at a uniform rate, in proportion to the Class A Membership vote accruing to such Lot, Unit or Parcel (which amount shall not be affected by any suspension or waiver of voting rights), provided that in no event shall the Maximum Annual Assessment (as defined below) for each Class A Membership appurtenant to an Exterior Lot exceed one half (1/2) the Maximum Annual Assessment for each Class A Membership appurtenant to a Lot which is not an Exterior Lot. Notwithstanding the foregoing, Declarant may annually elect either to (i) pay the Annual Assessment on any Lot, Unit or Parcel owned by Declarant, or (ii) pay the difference between (a) the amount of Annual Assessment levied on all other Assessable Property not owned by Declarant and (b) the amount of actual expenditures by the Association during the Assessment Period (as defined below). The Declarant may make such election at any time prior to the end of the calendar year; provided, however, if Declarant fails to notify the Board in writing of its election prior to the end of any calendar year, the Declarant shall be deemed to have elected to continue paying on the same basis as elected for the immediately preceding calendar year. The Declarant's obligations hereunder may be satisfied in the form of cash or by "in kind" contributions of services or materials, or by a combination of these.

Section 5. Maximum Annual Assessment. The Annual Assessment to be established by the Board may not exceed a certain amount, hereinafter referred to as the "Maximum Annual Assessment", which Maximum Annual Assessment shall be determined and shall vary in accordance with the following provisions:

(a) Until January 1 of the year following the recordation of this Declaration, the Maximum Annual Assessment against each Owner or Lessee shall be the following:

(i) Nine Hundred Sixty Dollars (\$960.00) for each Class A Membership appurtenant to a Lot, excepting Exterior Lots;

(ii) Four Hundred Eighty Dollars (\$480.00) for each Class A Membership appurtenant to an Exterior Lot; and

(iii) Four Hundred Eighty Dollars (\$480.00) for each Class A Membership appurtenant to a Unit, including such Units permitted for a Parcel, as provided in Article VI, Section 3 above.

(b) The Maximum Annual Assessment may be increased effective January 1 of each year following the recordation of this Declaration, by a maximum of twenty percent (20%) of the previous Maximum Annual Assessment.

(c) The Maximum Annual Assessment may be increased above the Maximum Annual Assessment otherwise determined under Subsection (b) above by a majority of the votes of Members who are voting in person or by proxy at a meeting duly called for such purpose, provided that in no event shall the Maximum Annual Assessment for each Class A Membership appurtenant to an Exterior Lot exceed one half ( $\frac{1}{2}$ ) the Maximum Annual Assessment for each Class A Membership appurtenant to a Lot which is not an Exterior Lot.

Section 6. Special Assessments for Capital Improvements and Extraordinary Expenses. In addition to the Annual Assessments authorized above, in any Assessment Period, the Association may levy against each Lot, Unit and Parcel, other than the Exempt Property, a Special Assessment ("Special Assessment") applicable only to that period for the purpose of defraying, in whole or in part, the cost of any construction, reconstruction, repair or replacement of a capital improvement upon the Association Land, including fixtures and personal property related thereto, or for the purpose of defraying other extraordinary expenses, provided that any such assessment shall have the assent of a majority of the votes of the Members who are voting in person or by proxy at a meeting duly called for such purpose. In no event shall the Special Assessment for each Class A Membership appurtenant to an Exterior Lot or Unit exceed one half ( $\frac{1}{2}$ ) the Special Assessment for each Class A Membership appurtenant to a Lot which is not an Exterior Lot. The provisions of this Section are not intended to preclude or limit the assessment, collection or use of Annual Assessments for the aforesaid purposes.

Section 7. Notice and Quorum for Any Action Authorized Under Sections 5(c) and 6. Written notice of any meeting called for the purpose of taking any action authorized under Sections 5(c) or 6 of this Article shall be sent to all Members not less than thirty (30) days nor more than sixty (60) days in advance of the meeting. At the first such meeting called, the presence of Members and proxies entitled to cast at least a majority of all the votes (exclusive of suspended voting rights) of all Memberships shall constitute a quorum. If the required

quorum is not present, subsequent meetings may be called subject to the same notice requirement, and the required quorum at each subsequent meeting shall be one-half (½) of the required quorum at the preceding meeting. No such subsequent meeting shall be held more than sixty (60) days following the preceding meeting.

Section 8. Establishment of Annual Assessment Period. The period to which the Annual Assessment is to be levied (the "Assessment Period") shall be the calendar year, except that the first Assessment Period shall commence upon the filing of this Declaration and terminate on December 31 of such year. The Board in its sole discretion from time to time may change the Assessment Period by recording with the County Recorder of Maricopa County, Arizona, an instrument specifying the new Assessment Period.

Section 9. Rules Regarding Billing and Collection Procedures. The Board shall have the right to adopt rules and regulations setting forth procedures for the purpose of making the Assessments provided herein and for the billing and collection of the Assessments, provided that said procedures are not inconsistent with the provisions hereof. The failure of the Association to send a bill to a Member shall not relieve any Member of 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, at the address of the Member on the records of the Association, 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 Membership changes during an Assessment Period; successor Owners of Lots, Units, or Parcels shall be given credit for prepayments, on a prorated basis, made by prior Owners.

Section 10. Collection Costs and Interest on Delinquent Assessments. Any assessment or installment thereof not paid when due shall be deemed delinquent fifteen (15) days after its due date and shall incur the maximum late payment penalty as permitted under Arizona Revised Statutes §33-1803, or successor statute thereto, provided however that in the event no such penalty amount is provided therein, such delinquent installment shall bear interest from fifteen (15) days after the due date until paid at a rate equal to the greater of (a) eighteen percent (18%) per annum or (b) the then prevailing interest rate on loans insured by the Federal Housing Association, or (c) the then prevailing interest rate on loans guaranteed by the Veterans Administration. The Member shall be liable for all costs, including attorneys' fees, which may be incurred by the Association in collecting the same. The applicable interest rate on delinquent Assessments shall be determined on a monthly basis. The Board also may record a Notice of Delinquent Assessment against any Lot, Unit or Parcel as to which an Assessment is delinquent and constitutes a lien and may establish a fixed fee to reimburse the Association for the Association's cost in recording such Notice, processing the delinquency and recording a notice of payment, which fixed fee shall be treated as a collection cost of the Association and shall be secured by the Assessment Lien.

Section 11. Evidence of Payment of Assessments and Maintenance Charges. 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 (a) that all Assessments (including interest, costs and attorneys' fees, if any, as provided in Section 9 above) have been paid with respect to any specified Lot, Unit or Parcel as of the date of such certificate, or (b) if any Annual Assessments, Special Assessments, Specific Assessments and Maintenance Charges have not been paid, the amount of such Assessments (including interest, costs and attorney's fees, if any) due and payable as of such date. The Association may make a reasonable charge for the issuance of such certificates, which charge 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 matter therein stated as against any bona fide purchaser of, or lender on, the Lot, Unit or Parcel in question.

Section 12. Property Exempted from the Annual Assessments, Special Assessments and Assessment Lien. Exempt Property shall be exempted from the assessment of the Annual Assessments and Special Assessments and, except as provided in Article X, Section 3, from Maintenance Charges and the Assessment Lien; provided, however, that in the event any change of ownership of Exempt Property results in all or any part thereof becoming Assessable Property in any year, the same shall, upon the occurrence of such event, be subject to the assessment of the Annual Assessments and Special Assessments and, if previously exempt therefrom, Maintenance Charges (prorated as of the date of becoming Assessable Property) and the Assessment Lien. In the event the Club Property is no longer designated Exempt Property, the initial Annual Assessment (prorated as of the date the Club Property is classified as Assessable Property) shall equal the greater of (i) the amount set forth in Article VII, Section 4 above or (ii) the amount payable by the Club Property for the last year that the Covenant to Share Costs was in effect.

## ARTICLE VIII

### ENFORCEMENT OF PAYMENT OF ASSESSMENTS AND OF ASSESSMENT LIEN

Section 1. Association as Enforcing Body. The Association, as the agent and representative of the Members, shall have the exclusive right to enforce the provisions of this Declaration. However, if the Association shall fail or refuse to enforce this Declaration or any provision hereof for an unreasonable period of time after written request to do so, then any Member may undertake enforcement on behalf of the Association (but not at the expense of the Association) by any appropriate action, whether in law or in equity.

Section 2. Association's Remedies to Enforce Payment of Assessments. If any Member fails to pay the Assessments or installments when due, the Association may enforce the payment of the Assessments and/or the Assessment Lien by taking either or both of the following actions, concurrently or separately (and, by exercising either of the remedies

hereinafter set forth, the Association does not prejudice or waive its right to exercise the other remedy):

(a) Bring an action at law and recover judgment against the Member personally obligated to pay the Assessments;

(b) Foreclose the Assessment Lien against the Lot, Unit or Parcel in accordance with the then prevailing Arizona law relating to the foreclosure of real property mortgages (including the right to recover any deficiency), and the Lot, Unit or Parcel may be redeemed after foreclosure sale as provided by law.

Section 3. Subordination of Assessment Lien to First Mortgage or Deed of Trust; Priority of Lien. The Assessment Lien provided for herein shall be subordinate to any first mortgage lien held by, or deed of trust of which the beneficiary is, a lender who has lent funds with the Lot, Unit or Parcel as security, or held by the lender's successors and assigns, and shall also be subject and subordinate to liens for taxes and other public charges which by applicable law are expressly made superior. Except as above provided, the Assessment Lien shall be superior to any and all charges, liens or encumbrances which hereafter in any manner may arise or be imposed upon each Lot, Unit or Parcel. Sale or transfer of any Lot, Unit, or Parcel shall not affect the Assessment Lien; provided, however, that if the sale or transfer is pursuant to foreclosure of a mortgage or deed of trust to which the Assessment Lien is subordinate, or pursuant to any sale or proceeding in lieu thereof, the purchaser at the mortgage foreclosure or deed of trust sale, or any grantee taking by Deed in lieu of foreclosure, shall take the Lot, Unit, or Parcel free of the Assessment Lien for all Assessments and Maintenance Charges that have accrued up to the date of issuance of a sheriff's or trustee's Deed or Deed in lieu of foreclosure; but upon the date of issuance of a sheriff's or trustee's Deed or Deed in lieu of foreclosure, the Assessment Lien immediately shall become and remain superior to any and all other charges, liens or encumbrances (except liens for taxes or other public charges which by applicable law are expressly made superior), and such mortgage or deed of trust foreclosure sale purchaser or grantee shall take subject to all Assessments and the Assessment Lien thereof accruing subsequent to the date of issuance of a sheriff's or trustee's Deed or Deed given in lieu of foreclosure.

Section 4. Costs to be Borne by Member in Connection with Enforcement of Payment of Assessments. In any action taken pursuant to Section 2 of this Article, the Member shall be personally liable for, and the Assessment Lien shall be deemed to secure the amount of, the Assessments together with interest and the Association's collection costs and attorney's fees, including those costs and fees specified in Article VII, Section 9.

## ARTICLE IX

### USE OF FUNDS; BORROWING POWER

Section 1. 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, including without limitation funds collected pursuant to the Covenant to Share Costs) for the common good and benefit of FireRock and the Owners, Members, 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 out side of FireRock, which may be necessary, desirable or beneficial to the general common interests of FireRock, the Owners, Members and 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 Owners, Members and Residents, maintenance of Common Areas and public and private rights of way and drainage areas within FireRock, recreation, insurance (including liability insurance), communications, transportation, health, utilities (including effluent storage, transportation, and reuse), public services (including trash collection), safety (including security services), services of a Manager, and indemnification of officers and directors of the Association. The Association may expend funds collected from Specific Assessments for the provision of properly authorized and requested Special Services. The Association also may expend its funds for any purposes which any municipality may expend its funds under the laws of the State of Arizona or such municipality's charter.

Section 2. Borrowing Power. The Association may borrow money in such amounts, at such rates, upon such terms and security, and for such period of time as is necessary or appropriate, as determined by the Board.

Section 3. Association's Rights in Spending Funds From Year to Year. The Association shall not be obligated to spend in any year all the sums received by it in such year (whether by way of Assessments, fees or otherwise), 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 provided such surplus does not exceed the total amount collected in the most recent one year period for Annual Assessments and Special Assessments and fees.

Section 4. Administration of Special Use Fees. The Association is authorized to bill for, sue for, collect, administer and disburse all Special Use Fees and the payment thereof shall be secured by the Assessment Lien; provided, however, that all Special Use Fees collected shall, if imposed in connection with a particular improvement, be separately accounted for as to each separate improvement pertaining to which they are collected and shall be expended on the particular improvement to which they pertain.

Section 5. Insurance. The Association shall maintain insurance against liability incurred as a result of death or injury to persons or damage to property located in the Common Areas. The Association may maintain such other policies of insurance as the Board deems appropriate to the activities of the Association.

## ARTICLE X

### MAINTENANCE

Section 1. Common Areas and Public and Private Rights of Way. The Association, or its duly delegated representative, shall maintain and otherwise manage all Common Areas, including, but not limited to, the landscaping, walkways, paths, parking areas, private rights of way, common driveways, lakes and recreational facilities; provided however, the Association shall not be responsible for providing or maintaining the landscaping or structures on any Common Areas which are part of Lots, Units or Parcels unless (i) such landscaping or structures are available for use by all Owners and Residents or are within easements intended for the general benefit of FireRock and (ii) the Association assumes in writing the responsibility for such maintenance or such responsibility is set forth in a recorded instrument as hereinafter provided. The Association shall also maintain any landscaping and other improvements not on Lots, Units, and Parcels which are within the exterior boundaries of FireRock, which are within areas shown on a subdivision plat or other plat of dedication for FireRock, and which are intended for the general benefit of the Owners and Residents of FireRock, except the Association shall not maintain areas which (i) the Town of Fountain Hills or other governmental entity is maintaining or (ii) are to be maintained by the Owners of a Lot, Unit or Parcel pursuant to Article VI, Section 2(d), of this Declaration unless the Association elects to maintain such areas. Specific areas to be maintained by the Association may be identified on subdivision plats recorded or approved by the Declarant and in Deeds from the Declarant to a transferee of a Lot, Unit or Parcel, but the failure to so identify such areas shall not affect the Association's rights or responsibilities with respect to such Common Areas and other areas intended for the general benefit of FireRock.

The Association shall use a reasonably high standard of care in providing for the repair, management and maintenance of said property so that the FireRock development will reflect a high pride of ownership. In this regard, the Association may, subject to any applicable provisions on Special Assessments for capital improvements, in the discretion of the Board:

(a) Reconstruct, repair, replace, maintain or refinish any improvement or portion thereof upon Association Land, including any Common Area used as a road, street, walk, driveway, lakes, or flood control area; except that no permanent improvements shall be made by the Association on any Common Area that is not Association Land or within easements intended for the general benefit of FireRock;

(b) Replace injured and diseased vegetation in any Common Area, and plant vegetation to the extent that the Board deems necessary for the conservation of water and soil and for aesthetic purposes;

(c) Place and maintain upon any Common Area such signs as the Board may deem appropriate for the proper identification, use and regulation thereof;



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

The Board shall be the sole judge as to the appropriate maintenance of all Common Areas 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.

In the event any subdivision plat, deed restriction or this Declaration permits the Board to determine whether or not Owners of certain Lots, Units, or Parcels will be responsible for maintenance of certain Common Areas or public or private right-of-way areas, the Board shall have the sole discretion to determine whether or not it would be in the best interest of the Owners and Residents of FireRock for the Association or an individual Owner to be responsible for such maintenance, considering cost, uniformity of appearance, location and other factors deemed relevant by the Board. The Board may cause the Association to contract with others for the performance of the maintenance and other obligations of the Association under this Article X and, in order to promote uniformity and harmony of appearance, the Board may also cause the Association to contract to provide maintenance services to Owners of Lots, Units, and Parcels having such responsibilities in exchange for the payment of such fees as the Association and Owner may agree upon.

Section 2. Assessment of Certain Costs of Maintenance and Repair of Common Areas and Public Areas. If the need for maintenance or repair of Common Areas and other areas maintained by the Association is caused through the willful or negligent act of any Owner or such Owner's family, guests, invitees or Designees, the cost of such maintenance or repairs shall be added to and become a part of the Assessment to which such Owner and the Owner's Lot, Unit or Parcel is subject and shall be secured by the Assessment Lien. Any charges or fees to be paid by the Owner of a Lot, Unit or Parcel pursuant to Section 1 of this Article X 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.

Section 3. Improper Maintenance and Use of Lots, Units, and Parcels. If any portion of any Lot, Unit or Parcel is maintained so as to present a public or private nuisance, or so as to substantially detract from the appearance or quality of the surrounding Lots, Units, or Parcels or other areas of FireRock which are substantially affected thereby or related thereto, or if any portion of a Lot, Unit or Parcel is being used in a manner which violates this Declaration, or if the Owner of any Lot, Unit or Parcel fails to perform any of its obligations under this Declaration or the Design Guidelines and standards of the Architectural Committee, the Board may by Resolution 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 expense. If, at the expiration of said 14-day period, the requisite corrective action has not been taken, the Board is hereby authorized and

empowered to cause such action to be taken and the expense thereof shall be added to and become a part of the Assessment to which the offending Owner and the Owner's Lot, Unit or Parcel is subject and shall be secured by the Assessment Lien.

Section 4. Transfer of Responsibilities to Governmental Entity. If at any time a community facilities district is formed under State of Arizona law, the boundaries of which encompass all or any portion of FireRock, or any other governmental entity offers to acquire and maintain any or all of the Common Area or assume any or all of the Association's responsibilities under Article X of this Declaration, the Association shall have the right, acting through the Board and with the approval of Members representing a majority of the total Class A Membership votes in the Association and the consent of the holder of the Class B Membership, if outstanding, to convey to such district or entity any or all of the Common Area owned by the Association and/or to transfer and assign to such district or entity any or all of the Association's responsibilities under Article X of this Declaration, provided that such district or entity accepts and assumes the transfer and/or assignment of such properties and/or responsibilities, respectively.

## ARTICLE XI

### FIREROCK ARCHITECTURAL CONTROL COMMITTEE

Section 1. Establishment. Declarant shall establish an Architectural Committee to perform the functions of the Architectural Committee as set forth in this Declaration and shall adopt procedural rules and regulations for the performance of such duties by the Architectural Committee, including procedures for the preparation, submission and determination of the applications for any approvals required by this Declaration. The Architectural Committee shall consist of three members, who shall be appointed by Declarant. The appointees need not be architects, Owners or Residents and need not possess any special qualifications except as Declarant may, in its sole discretion, require. The Architectural Committee shall hold regular meetings, a quorum for which shall consist of a quorum of members, and the concurrence of a majority of the members shall be necessary for any decision of the Architectural Committee. The Architectural Committee shall follow the Design Guidelines and its other standards in rendering its decisions, which may be supplemented or amended from time to time by the Architectural Committee or the Board. Subject to the provisions of Section 2 of this Article, the decision of the Architectural Committee shall be final on all matters submitted to it pursuant to this Declaration.

Section 2. Appeal. Any Owner or Resident aggrieved by a decision of the Architectural Committee may appeal the decision to the Committee in accordance with procedures to be established by the Architectural Committee. Such procedures are to include the requirement that the party appealing shall have modified the requested action or has new information which would in the Architectural Committee's opinion warrant a reconsideration. If the Architectural Committee fails to allow an appeal or if the Architectural Committee, after appeal, again rules in a manner aggrieving the appellant, the decision of the Architectural Committee is final.

Section 3. Fee. The Board may establish a reasonable processing fee to defer the costs of the Association in considering any requests for approvals submitted to it, which fee shall be paid at the time the request for approval is submitted.

Section 4. Appointment of Architectural Committee Members. Architectural Committee members shall be appointed by Declarant and may be replaced at the discretion of Declarant. Declarant's right to appoint Architectural Committee members shall cease and the Board shall be vested with the right of appointment and all other rights of Declarant pertaining to the Architectural Committee as stated in this Article XI upon the earlier of the following events: (i) five (5) years after the date upon which Declarant's Class B membership expires, or (ii) when such right is expressly relinquished by Declarant to the Board in writing.

Section 5. No Waiver of Future Approvals. Each Owner acknowledges that the persons reviewing proposed improvements under this Article will change from time to time and that opinions on aesthetic matters, as well as interpretation and application of the Design Guidelines and standards of the Architectural Committee, may vary accordingly. In addition, each Owner acknowledges that it may not always be possible to identify objectionable features of proposed work until such work is completed, but the reviewer may refuse to approve similar proposals in the future. Approval of proposals, plans and specifications, or drawings for any work done or proposed, or in connection with any matter requiring approval, shall not be deemed a waiver of the right to withhold approval as to any similar proposals, plans and specifications, drawings or other matters whatever subsequently or additionally submitted for approval.

Section 6. Limitation of Liability. The Design Guidelines are intended to provide a mechanism for maintaining and enhancing the overall aesthetics of FireRock but shall not create any duty to any Owner or Resident. NEITHER THE DECLARANT NOR THE ARCHITECTURAL COMMITTEE SHALL BEAR ANY RESPONSIBILITY FOR ENSURING THE STRUCTURAL INTEGRITY OR SOUNDNESS OF APPROVED CONSTRUCTION OR MODIFICATIONS, NOR FOR ENSURING COMPLIANCE WITH BUILDING CODES AND OTHER GOVERNMENTAL REQUIREMENTS, NOR FOR ENSURING THAT ALL STRUCTURES AND IMPROVEMENTS CONSTRUCTED WITHIN THE PROPERTIES ARE OF COMPARABLE QUALITY, VALUE, OR SIZE, OR OF SIMILAR DESIGN. NEITHER THE DECLARANT, FIREROCK, LLC, THE ASSOCIATION, THE BOARD, THE ARCHITECTURAL COMMITTEE, NOR ANY OFFICER, DIRECTOR, PARTNER, MEMBER OR AFFILIATE OF ANY OF THE FOREGOING SHALL BE HELD LIABLE FOR SOIL CONDITIONS, DRAINAGE PROBLEMS OR OTHER GENERAL SITE WORK, NOR FOR DEFECTS IN ANY PLANS OR SPECIFICATIONS SUBMITTED, REVISED OR APPROVED HEREUNDER, NOR FOR ANY STRUCTURAL OR OTHER DEFECTS IN WORK DONE ACCORDING TO APPROVED PLANS, NOR FOR ANY INJURY, DAMAGES, OR LOSS ARISING OUT OF THE MANNER, DESIGN OR QUALITY OF APPROVED CONSTRUCTION ON OR MODIFICATIONS TO ANY LOT, UNIT, OR PARCEL.

## ARTICLE XII

### RIGHTS AND POWERS OF ASSOCIATION

Section 1. Association's Rights and Powers as Set Forth in Articles and Bylaws. In addition to the rights and powers of the Association set forth in this Declaration, the Association shall have such rights and powers as are set forth in its Articles and Bylaws. Such rights and powers, subject to the approval thereof by any agencies or institutions deemed necessary by Declarant, may encompass any and all things which a natural person could do or which now or hereafter may be authorized by law, provided such Articles and Bylaws are not inconsistent with the provisions of this Declaration and are necessary, desirable or convenient for effectuating the purposes set forth in this Declaration. After incorporation of the Association, a copy of the Articles and Bylaws of the Association shall be available for inspection at the office of the Association during reasonable business hours.

Section 2. Association's Rights of Enforcement of Provisions of this and Other Instruments. The Association, as the agent and representative of the Owners, shall have the right to enforce the Covenants set forth in this Declaration 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 (a) shall have been executed pursuant to, or subject to, the provisions of this Declaration, or (b) otherwise shall indicate that the provisions of such instrument were intended to be enforced by the Association or by Declarant.

Section 3. Contracts with Others for Performance of Association's Duties. Subject to the restrictions and limitations contained herein, the Association may enter into contracts and transactions with others, including Declarant and its affiliated companies, and such contracts or transactions shall not be invalidated or in any way affected by the fact that one or more directors or officers of the Association or members of any committee are employed by or otherwise connected with Declarant or its affiliates, provided that the fact of such interest shall be disclosed or known to the other directors acting upon such contract or transaction, and provided further that the transaction or contract is fair and reasonable. Any such director, officer or committee member may be counted in determining the existence of a quorum at any meeting of the Board or committee of which such person is a member and which authorizes any contract or transaction described above or grants or denies any approval sought by Declarant, its affiliated companies or any competitor thereof. Such director, officer or committee member may vote at such meeting to authorize any such contract, transaction or approval with like force and effect as if such person were not so interested.

Section 4. Change of Use of Association Land and Procedure Therefor. Upon (a) adoption of a resolution by the Board stating that in the Board's opinion the then present use of a designated part of the Association Land or of the Association's interest in other Common Areas is no longer in the best interests of the Owners and Residents and (b) the approval of such resolution by a majority of the votes of the Memberships who are voting in person or by proxy at a meeting duly called for such purpose, the Board shall have the power and right to

change the use thereof (and in connection therewith, construct, reconstruct, alter or change the improvements thereon in any manner deemed necessary by the Board to accommodate the new use), provided such new use (i) shall be for the benefit of the Owners and Residents, and (ii) shall be consistent with any deed restrictions (or zoning regulations) restricting or limiting the use of the Association Land.

## ARTICLE XIII

### TERM; AMENDMENTS; TERMINATION

Section 1. Term; Method of Termination. This Declaration shall be effective upon the date of recordation hereof and, as amended from time to time, shall continue in full force and effect for a term of twenty (20) years from the date this Declaration is recorded. From and after said date, this Declaration, as amended, shall be automatically extended for successive periods of ten (10) years each, unless there is an affirmative vote to terminate this Declaration by the then Members casting a majority of the total Membership votes cast at an election held for such purpose within six (6) months prior to the expiration of the initial effective period hereof or any ten (10) year extension period. The Declaration may be terminated at any time if a majority of the votes cast by each class of Memberships shall be cast in favor of termination at an election held for such purpose. Anything in the foregoing to the contrary notwithstanding, no vote to terminate this Declaration shall be effective unless and until the written consent to such termination has been obtained, within a period from six (6) months prior to such vote to six (6) months after such vote, from the holders of Recorded first mortgages or deeds of trust to which the Assessment Lien is subordinate pursuant to Article VIII, Section 3 above, on a majority of the Lots, Units, and Parcels upon which there are such Recorded first mortgages and deeds of trust. 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 (or, if such officers shall not have been appointed by the Board, signed and attested by members of the Board), with their signatures acknowledged. Thereupon these Covenants shall have no further force and effect, and the Association shall be dissolved pursuant to the terms set forth in its Articles.

Section 2. Amendments. This Declaration may be amended by recording with the County Recorder of Maricopa County, Arizona, a Certificate of Amendment, duly signed and acknowledged as required for a Certificate of Termination in Section 1 of this Article. The Certificate of Amendment shall set forth in full the amendment adopted, and, except as provided in Section 3 of this Article, shall certify that at an election duly called and held pursuant to the provisions of the Articles and Bylaws the Members casting a majority of the votes cast by all Memberships voting as a single class, and if the Class B Membership is outstanding, a majority of the Class B Membership voting as a class, shall be cast in favor of adoption of the amendment at an election held for such purpose.

Section 3. Right of Amendment to Deannex Certain Real Property. Notwithstanding the foregoing, Declarant reserves the right to amend this Declaration to deannex and remove

the Exterior Lots from the encumbrance of this Declaration. Any such amendment shall be effected by the Recording, by Declarant, of a Certificate of Amendment duly signed by or on behalf of the members, authorized agents, or authorized officers of Declarant, as applicable, setting forth the description of the real property to be so deannexed. Such Certificate, when Recorded, shall be binding upon all of FireRock and all persons having an interest therein.

Section 4. Right of Amendment if Requested by Governmental Agency or Federally Chartered Lending Institutions. Anything in this Article to the contrary notwithstanding, Declarant reserves the right to amend all or any part of this Declaration to such an extent and with such language as may be requested by any federal, state or local governmental agency which requests such an amendment as a condition precedent to such agency's approval of this Declaration, or by any federally chartered lending institution as a condition precedent to lending funds upon the security of any Lot(s), Unit(s), or Parcel(s) or any portions thereof. Any such amendment shall be effected by the Recording, by Declarant, of a Certificate of Amendment duly signed by or on behalf of the members, authorized agents, or authorized officers of Declarant, as applicable, with their signatures acknowledged, specifying the federal, state or local governmental agency or the federally chartered lending institution requesting the amendment and setting forth the mandatory language requested by such agency or institution. Recordation of such a Certificate shall be deemed conclusive proof of the agency's or institution's request for such an amendment, and such Certificate, when Recorded, shall be binding upon all of FireRock and all persons having an interest therein.

Section 5. Amendments Affecting Declarant. It is the desire of Declarant to retain control of the Association and its activities during the anticipated period of planning and development. If any amendment requested pursuant to the provisions of this Article deletes, diminishes or alters such control, Declarant shall have the right to prepare, provide for and adopt as an amendment hereto, other and different control provisions. Except as provided in Section 3 or Section 4 above or in Article IV, Section 1(e), Declarant shall not have any right to amend this Declaration other than in accordance with and pursuant to the provisions of Section 2 of this Article.

## ARTICLE XIV

### MISCELLANEOUS

Section 1. Interpretation of the Covenants. Except for judicial construction the Association, by its Board, shall have the exclusive right to construe and interpret the provisions of this Declaration. In the absence of any adjudication to the contrary by a court of competent jurisdiction, the Association's construction or interpretation of the provisions hereof shall be final, conclusive and binding as to all persons and property benefitted or bound by the Covenants and provisions hereof.

Section 2. 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.

Section 3. 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 (a) those which would be used in determining the validity of the challenged interest, plus (b) those of the issue of the members of the Board who are living at the time the period of perpetuities starts to run on the challenged interest.

Section 4. Change of Circumstances. Except as otherwise expressly provided in this Declaration, no change of conditions or circumstances shall operate to extinguish, terminate or modify any of the provisions of this Declaration.

Section 5. 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 right, activities and duties, provided said rules and regulations are not inconsistent with the provisions of this Declaration.

Section 6. Declarant's Disclaimer of Representations. Anything to the contrary in this Declaration notwithstanding, and except as otherwise may be expressly set forth on a recorded plat or other instrument recorded in the office of the County Recorder of Maricopa County, Arizona, Declarant makes no warranties or representations whatsoever that the plans presently envisioned for the complete development of FireRock can or will be carried out, or that any land now owned or hereafter acquired by it is or will be subjected to this Declaration, or that any such land (whether or not it has been subjected to this Declaration) is or will be committed to or developed for a particular (or any) use, or that if such land is once used for a particular use, such use will continue in effect.

Section 7. References to the Covenants in Deeds. Deeds to and instruments affecting any Lot, Unit or Parcel or any part of FireRock may contain the Covenants 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 Covenants shall be binding upon the grantee, Owner or other person claiming through any instrument and his heirs, executors, administrators, successors and assigns.

Section 8. Successors and Assigns of Declarant. Any reference in this Declaration to Declarant shall include any successors or assigns of Declarant's rights and powers hereunder.

Section 9. 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.

Section 10. 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 or context thereof.

Section 11. Notices. If notice of (i) any action or proposed action by the Board or any committee, or (ii) any meeting, is required by applicable law, this Declaration or resolution of the Board to be given to any Owner 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 the Town of Fountain Hills or FireRock. 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.

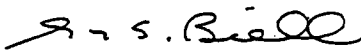
Section 12. FHA/VA Approval. If this Declaration has been initially approved by the FHA or the VA in connection with any loan program made available by FHA or VA and any loans have been made which are insured or guaranteed by FHA or VA, then as long as there is a Class B Membership, the following actions will require the prior approval of the FHA or the VA, as applicable, unless the need for such approval has been waived by FHA or VA: Dedications of Common Areas (except where such dedication is required as of the date hereof to the Town of Fountain Hills); and amendment to this Declaration.

Section 13. Use of the Words "FireRock" or "FireRock Country Club". No person shall use the words "FireRock" or "FireRock Country Club" or any derivative in any printed or promotional material without the Declarant's prior written consent. However, Owners may use the term "FireRock" in printed or promotional matter where such term is used solely to specify that particular property is located within FireRock and the Association shall be entitled to use the words "FireRock" in its name.

IN WITNESS WHEREOF, the undersigned, being the Declarant herein has hereunto caused its name to be signed by the signature of its duly authorized official as of the day and year first above written.

FireRock, LLC, a Delaware limited liability company

By MCO FireRock L.L.C., a Delaware limited liability company, Administrative member

By:   
Name: GREGORY S. BIELLI  
Title: VICE-PRESIDENT



STATE OF ARIZONA                    )  
  ) ss.  
COUNTY OF MARICOPA            )

On this the 18 day of June, 1999, before me, the undersigned Notary Public, personally appeared Gregory S. Biele who acknowledged himself to be the Vice President of MCO FireRock L.L.C. (a Delaware limited liability company), as administrative member on behalf of FireRock, LLC (a Delaware limited liability company) and that he, as such officer, being authorized so to do, executed the foregoing instrument for the purposes therein contained, for and on behalf of the such administrative member.

Laura Petersen  
\_\_\_\_\_  
Notary Public

My Commission expires:

9-17-2001



**Exhibit "A"**

**FireRock (Schedule A-1)**

**Single Family Residential property (Schedule A-2)**

**Multifamily Residential property (Schedule A-3)**

**Golf Course and Club property (Schedule A-4)**

Schedule A-1

FireRock Country Club

All of the real property, commonly referred to as "FireRock Country Club", as more particularly described on that certain plat titled "Master Plat of FireRock", recorded in Book 503 of Maps, Page 20 at Instrument No. 99-0510378 of the office of the County Recorder of Maricopa County, Arizona.

EXCEPT that certain real property more particularly described as follows:

LAKE 27 - 1, WEST PARCEL FOUNTAIN HILLS

A PORTION OF THE EAST HALF OF SECTION 27, TOWNSHIP 3 NORTH, RANGE 6 EAST OF THE GILA AND SALT RIVER BASE AND MERIDIAN, MARICOPA COUNTY, ARIZONA, MORE PARTICULARLY DESCRIBED AS FOLLOWS:

**BEGINNING** AT A POINT ON THE SOUTHERLY RIGHT OF WAY OF SHEA BOULEVARD, FROM WHICH THE SOUTHEAST CORNER OF LOT 1, BLOCK 6 OF FOUNTAIN HILLS ARIZONA, FINAL PLAT No. 403-B AS RECORDED ON NOVEMBER 8, 1972, LOCATED ON THE NORTHERLY RIGHT OF WAY OF SHEA BOULEVARD, BEARS NORTH 14 DEGREES 04 MINUTES 10 SECONDS EAST A DISTANCE OF 200.00 FEET, AND THE NORTH QUARTER CORNER OF SAID SECTION 27 BEARS NORTH 12 DEGREES 42 MINUTES 30 SECONDS WEST A DISTANCE OF 1756.57 FEET AND THE EAST QUARTER CORNER OF SAID SECTION 27 BEARS SOUTH 67 DEGREES 48 MINUTES 32 SECONDS EAST A DISTANCE OF 2439.01 FEET;  
THENCE SOUTH 75 DEGREES 55 MINUTES 50 SECONDS EAST ALONG THE SOUTHERLY RIGHT OF WAY LINE OF SHEA BOULEVARD A DISTANCE OF 427.55 FEET AS RECORDED IN BOOK 15, PAGES 54 AND 55 OF THE RECORDS OF MARICOPA COUNTY TO THE BEGINNING OF A TANGENT CURVE CONCAVE SOUTHWESTERLY AND HAVING A RADIUS OF 6797.49 FEET;  
THENCE ALONG THE ARC OF SAID CURVE THROUGH A CENTRAL ANGLE OF 02 DEGREES 06 MINUTES 40 SECONDS AN ARC LENGTH OF 250.45 FEET;  
THENCE DEPARTING SHEA BOULEVARD SOUTH 41 DEGREES 14 MINUTES 55 SECONDS WEST A DISTANCE OF 265.53 FEET;  
THENCE SOUTH 55 DEGREES 23 MINUTES 26 SECONDS WEST A DISTANCE OF 89.88 FEET;  
THENCE SOUTH 79 DEGREES 57 MINUTES 46 SECONDS WEST A DISTANCE OF 227.88 FEET;  
THENCE SOUTH 69 DEGREES 22 MINUTES 35 SECONDS WEST A DISTANCE OF 207.88 FEET;  
THENCE NORTH 77 DEGREES 45 MINUTES 07 SECONDS WEST A DISTANCE OF 220.83 FEET;  
THENCE NORTH 78 DEGREES 12 MINUTES 38 SECONDS WEST A DISTANCE OF 165.27 FEET;  
THENCE SOUTH 85 DEGREES 24 MINUTES 44 SECONDS WEST A DISTANCE OF 166.91

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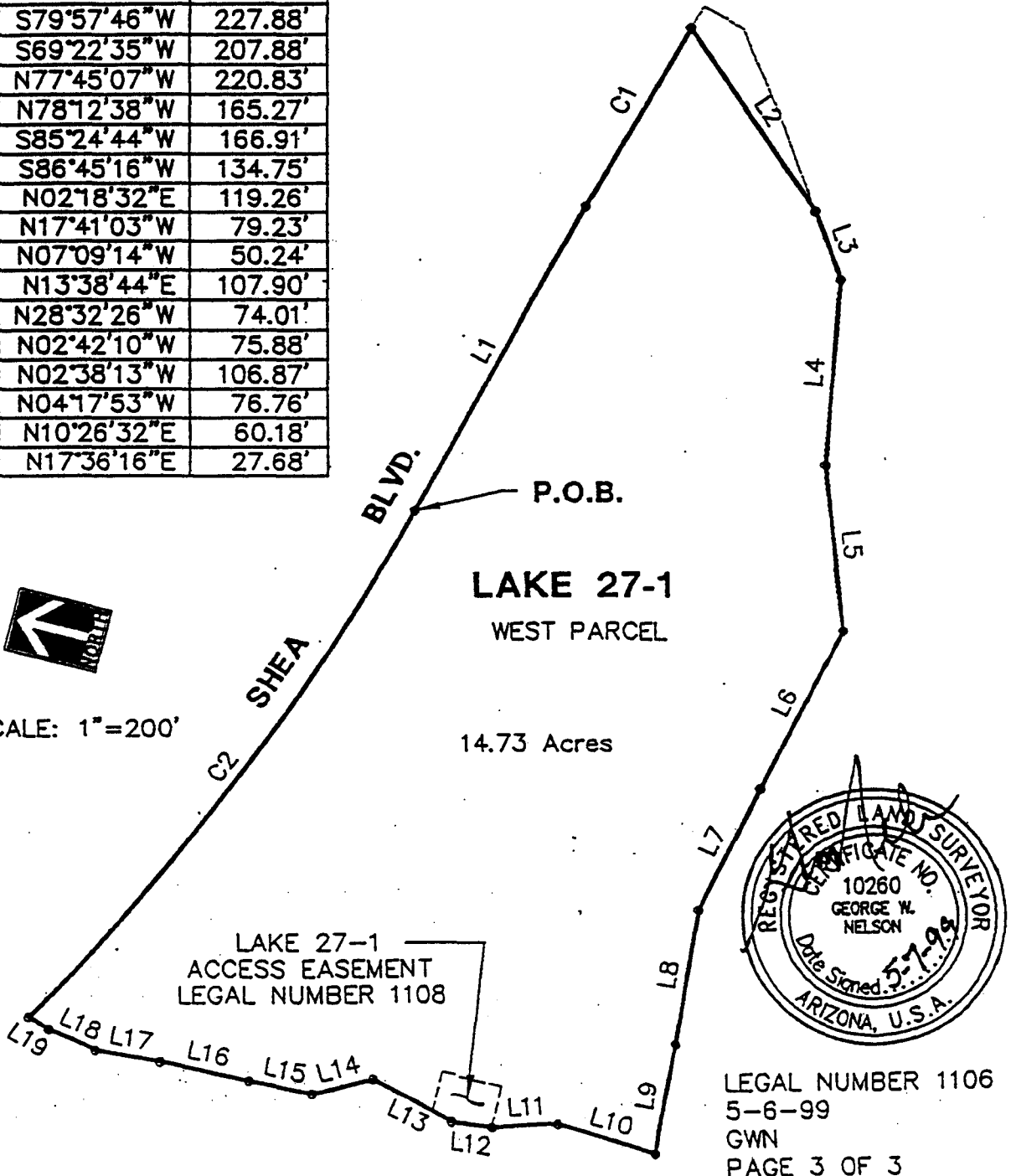
FEET;  
THENCE SOUTH 86 DEGREES 45 MINUTES 16 SECONDS WEST A DISTANCE OF 134.75  
FEET;  
THENCE NORTH 02 DEGREES 18 MINUTES 32 SECONDS EAST A DISTANCE OF 119.26  
FEET;  
THENCE NORTH 17 DEGREES 41 MINUTES 03 SECONDS WEST A DISTANCE OF 79.23  
FEET;  
THENCE NORTH 07 DEGREES 09 MINUTES 14 SECONDS WEST A DISTANCE OF 50.24  
FEET;  
THENCE NORTH 13 DEGREES 38 MINUTES 44 SECONDS EAST A DISTANCE OF 107.91  
FEET;  
THENCE NORTH 28 DEGREES 32 MINUTES 26 SECONDS WEST A DISTANCE OF 74.01  
FEET;  
THENCE NORTH 02 DEGREES 42 MINUTES 10 SECONDS WEST A DISTANCE OF 75.88  
FEET;  
THENCE NORTH 02 DEGREES 38 MINUTES 13 SECONDS WEST A DISTANCE OF  
106.87 FEET;  
THENCE NORTH 04 DEGREES 17 MINUTES 53 SECONDS WEST A DISTANCE OF 76.76  
FEET;  
THENCE NORTH 10 DEGREES 26 MINUTES 32 SECONDS EAST A DISTANCE OF 60.18  
FEET;  
THENCE NORTH 17 DEGREES 36 MINUTES 16 SECONDS EAST A DISTANCE OF 27.68  
FEET TO A POINT ON CURVE ON THE SOUTHERLY RIGHT OF WAY LINE OF SAID  
SHEA BOULEVARD, SAID CURVE BEING CONCAVE NORTHEASTERLY AND HAVING  
A RADIUS OF 2942.79 FEET, A RADIAL LINE PASSING THROUGH SAID POINT BEARS  
SOUTH 29 DEGREES 12 MINUTES 09 SECONDS WEST;  
THENCE SOUTHEASTERLY ALONG SAID CURVE AND SAID RIGHT OF WAY  
THROUGH A CENTRAL ANGLE OF 15 DEGREES 07 MINUTES 59 SECONDS AN ARC  
LENGTH OF 777.26 FEET TO THE POINT OF BEGINNING

THIS PARCEL CONTAINS AN AREA OF 14.73 ACRES MORE OR LESS.

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LINE	DIRECTION	DISTANCE
L1	S75°55'50"E	427.55'
L2	S41°14'55"W	265.53'
L3	S55°23'26"W	89.88'
L4	S79°57'46"W	227.88'
L5	S69°22'35"W	207.88'
L6	N77°45'07"W	220.83'
L7	N78°12'38"W	165.27'
L8	S85°24'44"W	166.91'
L9	S86°45'16"W	134.75'
L10	N02°18'32"E	119.26'
L11	N17°41'03"W	79.23'
L12	N07°09'14"W	50.24'
L13	N13°38'44"E	107.90'
L14	N28°32'26"W	74.01'
L15	N02°42'10"W	75.88'
L16	N02°38'13"W	106.87'
L17	N04°17'53"W	76.76'
L18	N10°26'32"E	60.18'
L19	N17°36'16"E	27.68'

CURVE	RADIUS	LENGTH	DELTA
C1	6797.49'	250.45'	02°06'40"
C2	2942.79'	777.26'	15°07'59"



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LAKE 28 - 6 FOUNTAIN HILLS

A PORTION OF THE NORTHWEST QUARTER OF SECTION 28, TOWNSHIP 3 NORTH, RANGE 6 EAST OF THE GILA AND SALT RIVER BASE AND MERIDIAN, MARICOPA COUNTY, ARIZONA, MORE PARTICULARLY DESCRIBED AS FOLLOWS:

**BEGINNING** AT A POINT ON THE SOUTHERLY RIGHT OF WAY OF SHEA BOULEVARD AS SHOWN ON EXHIBIT A, RESOLUTION 1998-46, TOWN OF FOUNTAIN HILL AS RECORDED AT 98-1138563, FROM WHICH THE NORTHWEST CORNER OF SAID SECTION 28 BEARS NORTH 76 DEGREES 46 MINUTES 56 SECONDS WEST A DISTANCE OF 1956.85 FEET AND THE NORTH QUARTER CORNER OF SAID SECTION 28 BEARS NORTH 58 DEGREES 40 MINUTES 49 SECONDS EAST A DISTANCE OF 865.08 FEET;

THENCE NORTH 84 DEGREES 55 MINUTES 47 SECONDS EAST ALONG THE SOUTHERLY RIGHT OF WAY LINE OF SHEA BOULEVARD A DISTANCE OF 819.97 FEET;

THENCE DEPARTING SHEA BOULEVARD SOUTH 24 DEGREES 16 MINUTES 11 SECONDS EAST A DISTANCE OF 82.84 FEET;

THENCE SOUTH 47 DEGREES 59 MINUTES 17 SECONDS WEST A DISTANCE OF 99.73 FEET;

THENCE SOUTH 80 DEGREES 00 MINUTES 12 SECONDS WEST A DISTANCE OF 215.97 FEET;

THENCE SOUTH 56 DEGREES 07 MINUTES 13 SECONDS WEST A DISTANCE OF 302.89 FEET;

THENCE NORTH 85 DEGREES 38 MINUTES 21 SECONDS WEST A DISTANCE OF 105.49 FEET;

THENCE NORTH 54 DEGREES 59 MINUTES 01 SECONDS WEST A DISTANCE OF 93.02 FEET;

THENCE NORTH 63 DEGREES 26 MINUTES 53 SECONDS WEST A DISTANCE OF 127.60 FEET;

THENCE NORTH 06 DEGREES 10 MINUTES 24 SECONDS WEST A DISTANCE OF 158.62 FEET TO THE POINT OF BEGINNING.

THIS PARCEL CONTAINS AN AREA OF 3.91 ACRES MORE OR LESS.

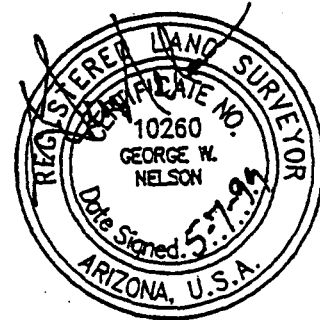
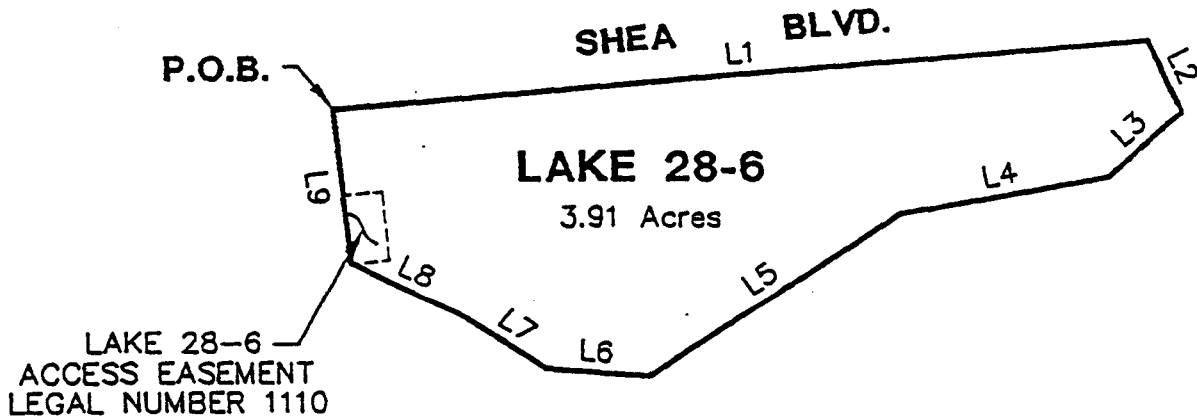
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LINE	DIRECTION	DISTANCE
L1	N84°55'47"E	819.97'
L2	S24°16'11"E	82.84'
L3	S47°59'17"W	99.73'
L4	S80°00'12"W	215.97'
L5	S56°07'13"W	302.89'
L6	N85°38'21"W	105.49'
L7	N54°59'01"W	93.02'
L8	N63°26'53"W	127.60'
L9	N06°10'24"W	158.62'



SCALE: 1"=200'



**Schedule A-2**

**Single Family Residential**

Parcels D, F, G, H-1, H-2, I, J-1, J-2, K, L-1, L-2, L-3, M-1, M-2, N, O-1, O-2, P-1, P-2, Q-1, Q-2, and Q-3 as more particularly described on that certain plat titled "Master Plat of FireRock", recorded in Book 503 of Maps, Page 20 at Instrument No. 99-0510378 of the office of the County Recorder of Maricopa County, Arizona.

## Schedule A-3

### Muliti-Family Residential

Parcels A-1, A-2, B and C as more particularly described on that certain plat titled "Master Plat of FireRock", recorded in Book 503 of Maps, Page 20 at Instrument No. 99-0510378 of the office of the County Recorder of Maricopa County, Arizona.

## Schedule A-4

### Golf Course and Club Property

Parcels OSR-1, OSR-2, OSR-3, OSR-4 and OSR-5, as more particularly described on that certain plat titled "Master Plat of FireRock", recorded in Book 503 of Maps, Page 20 at Instrument No. 99-0510378 of the office of the County Recorder of Maricopa County, Arizona.

Exhibit "B"

Exterior Lots

Tract I

Lots 1, 2, 3, 4, 5, 6, 7, 8 and 9 of Parcel F as shown on that certain plat titled "A Replat of Master Plat of FireRock", recorded in Book 503 of Maps, Page 43 at Instrument No. 99-0536066 of the office of the County Recorder of Maricopa County, Arizona.

Tract II

Lots 14, 15, 16, 17, 18 and 19 portion of Parcel G as shown on that certain plat titled "A Replat of Master Plat of FireRock", recorded in Book 503 of Maps, Page 41 at Instrument No. 99-0536064 of the office of the County Recorder of Maricopa County, Arizona.