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SECURITY TITLE AGENCY

DECLARATION OF COVENANTS, CONDITIONS AND RESTRICTIONS FOR ESTANCIA

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**DECLARATION OF COVENANTS, CONDITIONS
AND RESTRICTIONS
FOR
ESTANCIA**

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**DECLARATION OF COVENANTS, CONDITIONS AND RESTRICTIONS
FOR
ESTANCIA**

THIS DECLARATION OF COVENANTS, CONDITIONS AND RESTRICTIONS (the "Declaration") is made and entered into as of the 17th day of April, 1995, by ESTANCIA DEVELOPMENT ASSOCIATES, L.L.C., an Arizona limited liability company (herein called "Developer").

This Declaration provides for an extensive degree of control by Developer including, but not limited to, (i) control of the Association, the type and design of improvements which may be built upon Lots with fines up to \$10,000 for non-compliance, and the use, and limitations upon use, of the Common Areas; (ii) the right to amend this Declaration; and (iii) substantial flexibility in developing the Property. Developer's control is an integral Unofficial Document is Declaration and the general scheme of development and operation of the Property. Section 17.6 contains a limitation on the liability of Developer and its members. Each Owner, by accepting title to a Lot, and all other Persons hereafter acquiring any other interest in any of the Property subject to this Declaration, acknowledge, agree to and accept Developer's control of the Property and the limited liability of Developer and its members as provided in this Declaration. Capitalized terms used in this paragraph are defined in this Declaration.

RECITALS

A. Developer is the record owner of that parcel of real property situated in Maricopa County, Arizona, described on Exhibit "A" attached hereto and by reference made a part hereof (the "Parcel").

B. Developer desires to submit and subject the Parcel, together with all buildings, improvements and other permanent fixtures of whatever kind now or hereafter located thereon, and all easements, rights, appurtenances and privileges belonging or in any way pertaining thereto (all of which comprise a part of the "Property" as hereinafter defined), to the covenants, conditions, restrictions, liens, assessments, easements, privileges and rights contained herein.

C. Developer desires that the Property be developed in accordance with a master plan and general scheme of development as part of a master planned community to be known as "Estancia" containing residential lots, a golf course and related recreational facilities (the "Project").

D. Developer deems it desirable to establish covenants, conditions and restrictions applicable to the Property and each and every portion thereof, and certain mutually beneficial restrictions and obligations with respect to the proper use, occupancy and enjoyment thereof, all for the purpose of enhancing and protecting the value, desirability and attractiveness of the Property and enhancing the quality of life within the Property.

E. It is desirable for the efficient management of the Property to create an owners association and to delegate to it the powers of (i) managing, maintaining and administering the Common Areas within the Property, (ii) administering and enforcing these covenants, conditions and restrictions and (iii) collecting and disbursing funds pursuant to the assessments and charges hereinafter created and performing other acts provided for in this Declaration or which generally benefit its members, the Property, and the owners of any interests therein.

F. Estancia Community Association, Inc., a nonprofit corporation, has been, or will be, incorporated under the laws of the State of Arizona for the purpose of exercising the foregoing powers and functions.

G. Developer intends, but is not obligated, to annex real property to the Property in addition to the Parcel, thereby subjecting ^{Unofficial Document} the annexed property to the plan of this Declaration, and binding the owners of any interests therein to the covenants, conditions and restrictions contained in this Declaration. Owners of any property annexed to the Property and subjected to the Declaration will automatically become members of the Association as provided herein.

H. Developer desires and intends that the owners, mortgagees, beneficiaries and trustees under trust deeds, occupants and all other persons hereafter acquiring any interest in the Property shall at all times enjoy the benefits of, and shall hold their interests subject to, the covenants, conditions, restrictions, liens, assessments, easements, privileges and rights hereinafter set forth, all of which are declared to be in furtherance of a plan to promote and protect the Property.

DECLARATIONS

NOW, THEREFORE, Developer, for the purposes above set forth, declares that the Property shall hereafter be held, transferred, sold, conveyed, leased, occupied and used subject to the covenants, conditions, restrictions, liens, assessments, easements, privileges and rights hereinafter set forth, all of which shall run with the land and be binding upon the Property and all parties having or acquiring any right, title or interest in or to the Property, or any part thereof, and shall inure to the benefit of each owner thereof, the Association and each member of the Association.

1. DEFINITIONS.

Unless the context clearly requires otherwise, the following terms used in this Declaration are defined as follows. Defined terms appear throughout this Declaration with the initial letter of the term capitalized.

1.1 "Annexation Property" means any additional real property which is annexed to the Property in accordance with Section 15, thereby becoming a part of the Property and subject to this Declaration.

1.2 "Articles" means the Articles of Incorporation of the Association, as they may be amended from time to time, or of any successor thereto.

1.3 "Assessments" shall include the following:

1.3.1 "Regular Assessment" means the amount which is to be paid by each Owner as the Owner's Proportionate Share of the Common Expenses of the Association, as provided in Section 7.3 and any applicable Neighborhood Assessments.

1.3.2 "Special Assessment" means a charge against a particular Owner or a Lot, directly attributable to the Owner or Lot, to reimburse the Association for costs incurred in bringing the Owner or the Lot into compliance with the provisions of this Declaration, the Articles, Bylaws, Association Rules or Design Guidelines, or any other charge designated as a Special Assessment in this Declaration, ^{Unofficial Document} the Articles, Bylaws, Association Rules or Design Guidelines, together with attorneys' fees and other charges payable by the Owner or chargeable to the Lot pursuant to the provisions of this Declaration, as provided in Section 7.4.

1.3.3 "Reconstruction Assessment" means the amount which is to be paid by each Owner representing the Owner's Proportionate Share of the cost to the Association for reconstruction of any portion of the Common Areas, as provided in Section 9.

1.3.4 "Capital Improvement Assessment" means the amount which is to be paid by each Owner representing the Owner's Proportionate Share of the cost to the Association for the installation or construction of any capital improvements on any of the Common Areas which the Association may from time to time authorize pursuant to the provisions of Section 7.5.

1.4 "Association" means Estancia Community Association, Inc., an Arizona nonprofit corporation, its successors and assigns.

1.5 "Association Rules" means the rules and regulations adopted by the Board pursuant to Section 3.10.

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

1.7 "Bylaws" means the bylaws of the Association adopted in accordance with the Articles, as the Bylaws may be amended from time to time, or of any successor thereto.

1.8 "City" means the City of Scottsdale, Arizona, a municipal corporation of the State of Arizona.

1.9 "Common Areas" means all real property (and the improvements or amenities thereon) which may from time to time be owned by the Association expressly for the common use and enjoyment of the Owners. The Common Areas include, but are not limited to, the Private Roads. Any real property, and improvements or amenities thereon, which are described as "common areas" in a Supplemental Declaration or a Plat shall be deemed to be "Common Areas" as that term is defined herein for the common use and enjoyment of the Owners, as may be provided, and shall, for all purposes, be integrated into and deemed to be a part of the Common Areas subject to this Declaration. Common Areas may be abandoned as provided in Section 13.14.

1.10 "Common Expenses" means the actual and estimated costs incurred by the Association in administering, maintaining and operating the Property, and in owing or leasing any portions thereof, and in otherwise performing its rights and responsibilities including, but not limited to, the following:

(a) The costs of maintenance, management, operation, repair and replacement of the Common Areas including the Private Roads, and all other areas in the Property which are managed or maintained ^{Unofficial Document} by the Association other than those areas being managed or maintained through a Special Assessment;

(b) Unpaid Assessments;

(c) The costs of maintenance by the Association of areas within the right-of-way of public streets in the vicinity of the Property which may be provided for in this Declaration or pursuant to agreements with the City;

(d) The costs of managing and administering the Association including, but not limited to, compensation paid by the Association to managers, accountants, attorneys and employees;

(e) The costs of utilities including, but not limited to, water, electricity, gas, sewer, trash pick-up and disposal services which are provided to the Association or the Property and not individually metered or assessed by Lot, landscaping maintenance and other services which generally benefit and enhance the value and desirability of the Property and which are provided by the Association;

(f) The costs of insurance maintained by the Association as permitted herein;

(g) Reasonable reserves, as required or permitted herein, including the Reserve for Capital Improvements, for contingencies, replacements and other proper purposes to meet anticipated costs and expenses including, but not limited to, repair and replacement of those Common Areas which must be repaired or replaced on a periodic basis;

(h) The costs which the Board may elect to incur to bond the members of the Board, officers of the Association, any professional managing agent or any other Person handling the funds of the Association;

(i) Taxes paid by the Association;

(j) Amounts paid by the Association for discharge of any lien or encumbrance levied against the Common Areas or portions thereof;

(k) Costs incurred by the Design Review Committee or Developer in exercising its rights under Section 12.7;

(l) Costs incurred by any other committees established by the Board or the President;

(m) The costs of any security guards, and operation of guard gates, key gates and like gates at entrances to the Property, and any other security systems or services installed, operated or contracted for by the Association other than security service to individual Lots;

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(n) The costs of, or the subsidization of, recreation, cultural, health-related or similar facilities or enterprises available to or for the benefit of all Owners; and

(o) Other expenses incurred by the Association for any reason whatsoever in connection with the Common Areas (excepting reconstruction costs and capital improvements as otherwise provided herein), or the costs of any other item or items designated by, or to be provided or performed by the Association pursuant to, this Declaration, the Articles, Bylaws, Association Rules or Design Guidelines, or in furtherance of the purposes of the Association or in the discharge of any duties or powers of the Association.

Common Expenses do not include costs of owning, administering, maintaining and operating the Golf Club Facilities or the public park site described in Section 2.4.

1.11 "Compound" means a consolidation of Lots by re-platting, or a re-platting of two or more contiguous Lots to permit a clustering or other relocation of dwellings. A Compound may have commonly owned amenities as permitted in Section 13.14 and in accordance with the Design Guidelines.

1.12 "Declaration" means this instrument, as from time to time amended.

1.13 "Default Rate of Interest" means 12% per annum, or a different rate as may be specified by the Board from time to time. Notwithstanding anything herein to the contrary, if, during any periods, the highest lawful rate of interest which may, under applicable law, be paid by the Person required to pay the Default Rate of Interest hereunder, despite the provisions hereof, is less than the rate provided above, the Default Rate of Interest payable during those periods shall be the highest lawful rate.

1.14 "Design Guidelines" means the rules, regulations, restrictions, architectural standards and design guidelines from time to time adopted by the Design Review Committee or, prior to the Transition Date, Developer, pursuant to Section 12.2.

1.15 "Design Review Committee" means the committee provided for in Section 12.

1.16 "Developer" means Estancia Development Associates, L.L.C., an Arizona limited liability company, its successors and assigns, or any Person to whom Developer's rights hereunder are hereafter assigned in whole or in part by recorded instrument, or any Mortgagee of Developer which acquires title to or succeeds to the interest of Developer in any Lot or other portion of the Property by reason of the foreclosure (or conveyance in lieu of foreclosure) or trustee's sale under the Mortgage of said Mortgagee. The term "Developer," as used herein, shall include not only the named Developer but also any of the foregoing successors, assigns, assignees of right(s) and Mortgagees. An assignment by recorded instrument of all of Developer's rights shall vest in the assignee all of Developer's rights hereunder (including, but not limited to, all of Developer's easements, rights of consent or approval and voting rights) on the same terms that they were held by ^{Unofficial Document} Developer hereunder. An assignment by recorded instrument of part of Developer's rights shall vest in the assignee the specific Developer's right(s) named in the instrument of assignment on the same terms that they were held by Developer hereunder. Notwithstanding anything to the contrary herein, an assignment of all or any portion of Developer's rights shall not deprive the assignor of any protection, indemnity or freedom from liability that would otherwise exist under this Declaration if the assignor had retained all of Developer's rights hereunder.

1.17 "Golf Club Facilities" means the golf course (the "Golf Course") and related facilities (including the any golf practice facilities, tennis facilities, swimming pool and related recreational and social facilities) to be constructed within the boundaries of the Project, and all improvements thereto, including any maintenance or other buildings constructed thereon.

1.18 "Golf Club Owner" means The Estancia Club, Inc. an Arizona nonprofit corporation, and its successors and assigns who from time to time own the Golf Club Facilities.

1.19 "Lot" means a subdivided lot as shown on a Plat. A "Lot" includes the residential dwelling unit, garages, structures and other improvements constructed thereon.

1.20 "Majority of Members" means the Members holding more than 50% of the total votes entitled to be cast with respect to a given matter. Any specified fraction or percentage of

the Members means the Members holding that fraction or percentage of the total votes entitled to be cast with respect to a given matter. A specified fraction or percentage "of all of the Members" means that fraction or percentage of the total votes of all Members other than Developer. Unless otherwise specified, any provision herein requiring the approval of the Members means the approval of a Majority of Members.

1.21 **"Member"** means every Person who is a member of the Association.

1.22 **"Membership"** means a membership in the Association but does not in any manner imply or refer to membership rights which may exist by contract with respect to the Golf Club Facilities.

1.23 **"Mortgage"** means any recorded, filed or otherwise perfected instrument given in good faith and for valuable consideration (which is not a fraudulent conveyance under Arizona law) as security for the performance of an obligation including, but not limited to, a deed of trust, but shall not include any instrument creating or evidencing solely a security interest arising under the Uniform Commercial Code.

1.24 **"Mortgagee"** means the holder of a note secured by a Mortgage, including the trustee and beneficiary under any deed of trust.

1.25 **"Mortgagor"** means the party executing a Mortgage as obligor.

1.26 **"Neighborhood Assessment"** Unofficial Document charge against each Lot within a particular portion of the Property (a "Neighborhood"), representing the Lot's share of incremental costs incurred by the Association in connection with a particular feature or characteristic of the Neighborhood which is substantially different from other Lots not within the Neighborhood.

1.27 **"Occupant"** means any Person, other than an Owner, in rightful possession of a Lot, whether an Owner's immediate family member, guest, tenant or other individual.

1.28 **"Owner"** means the record owner, whether one or more Persons, of fee simple title, whether or not subject to any Mortgage, to any Lot which is a part of the Property, including contract sellers, but excluding those having an interest in a Lot merely as security for the performance of an obligation. If a Lot is subject to a deed of trust as described in Arizona Revised Statutes, Section 33-801 et seq., legal title shall be deemed to be in the trustor under the deed of trust.

1.29 **"Parcel"** means that parcel of real property referred to in the recitals hereof and described in Exhibit "A" hereto.

1.30 **"Person"** means an individual, corporation, partnership, limited liability company, trustee or other entity capable of holding title to real property, and their respective heirs, successors and assigns.

1.31 "Plat" means the plat of subdivision of the Parcel as first recorded in the official records of Maricopa County, Arizona, and as thereafter from time to time amended or supplemented, together with all subsequent recorded plats of subdivision for real property annexed to the Property.

1.32 "President" means the duly elected or appointed president of the Association.

1.33 "Private Roads" and "Private Streets" are synonymous and mean any street or roadway within the Property which has not expressly been dedicated to public use.

1.34 "Project" means the master planned development of the property, as described in the recitals hereof, to be called "Estancia". The Property is located within the Project. The Project includes the Golf Club Facilities, the Visitor Center and Developer's sales office.

1.35 "Property" means the Parcel and any additional real property made subject to this Declaration by annexation pursuant to Section 15, together with all buildings, improvements and other permanent fixtures of whatever kind now or hereafter located thereon, and all easements, rights, appurtenances and privileges belonging or in any way pertaining thereto. The Property shall not include the Golf Club Facilities, the Visitor Center or any other property (other than the Parcel), unless and until the property is annexed hereto pursuant to Section 15.

1.36 "Proportionate Share" means (a) in the case of Neighborhood Assessments, that fraction wherein the numerator is one and the denominator is the total number of Lots in the applicable Neighborhood, and (b) in all other Unofficial Document cases, that fraction wherein the numerator is one and the denominator is the sum of (i) the total number of Lots, and (ii) ten.

1.37 "Related Party" means any member in Developer and any member, partner, trustee, officer, director, shareholder, employee or similar Person holding an interest or position in Developer or in any member in Developer, and their successors and assigns.

1.38 "Reserve for Capital Improvements" means a reserve established pursuant to Section 7.13 for repair and replacement of capital assets and similar property, and other proper purposes to meet anticipated costs and expenses including, but not limited to, repairs and replacement of those Common Areas which must be repaired or replaced on a periodic basis.

1.39 "Retail Purchaser" means a Person who purchases a Lot in a retail transaction and shall not include Developer, any Related Party or any other Person who acquires a Lot (i) in a bulk sale transaction, or (ii) by distribution (as distinguished from purchase), or (iii) in any similar transaction.

1.40 "Supplemental Declaration" means a declaration of covenants, conditions and restrictions, or similar instrument, annexing additional real property to the Property and subjecting the annexed real property to this Declaration as provided in Section 15.

1.41 "Transition Date" means the date upon which seventy-five percent (75%) of the Lots within the Property have been conveyed to Retail Purchasers or such earlier date as Developer turns over control of the Association to the Owners.

1.42 "Visitor Center" means the real property described on Exhibit "B" attached hereto and all appurtenances thereto.

2. RIGHTS OF ENJOYMENT.

2.1 Owners' Right of Enjoyment. Every Owner and Occupant shall have a non-exclusive easement for use and enjoyment in and to the Common Areas and to all of the easements, covenants, conditions, restrictions and other provisions contained in this Declaration including, but not limited to, the following provisions:

2.1.1 The right of the Association to limit the number of guests of Owners and Occupants and to limit the use of the Common Areas by Persons who are not Owners, but who are in possession of a Lot or own a portion of, or less than the entire ownership interest of, a Lot.

2.1.2 The right of the Association to establish reasonable rules and regulations pertaining to or restricting the use of the Common Areas by Owners, Occupants or other Persons including restricting certain areas to drainage, utility or similar uses.

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2.1.3 The right of the Association to borrow money for the purpose of improving, replacing, restoring or expanding the Common Areas or adding new Common Areas and the right to mortgage the Common Areas, provided that the rights of any lender shall be subordinated to the rights of the Owners.

2.1.4 The rights of the Association to suspend the right of an Owner, Occupant and any other Person (including, but not limited to, a member of the family of an Owner or Occupant) to use the Common Areas or any designated portion thereof during any time in which any Assessment attributable to the Owner or the Owner's Lot remains unpaid and delinquent, or for a period not to exceed 60 days for any single infraction of the Association Rules or breach of this Declaration, and up to one year for any subsequent violation of the same or similar provision of the Association Rules or this Declaration, provided that any suspension of any Person's right to use the Common Areas, except for failure to pay Assessments, shall be made only by the Board or a duly appointed committee thereof, after notice and hearing given and held in accordance with the Bylaws. Notwithstanding the foregoing, the Association shall not have the right to suspend any Owner's right to use any portion of the Property including Private Roads necessary for the Owner to gain access to his Lot.

2.2 Delegation of Use. No Owner may delegate his right of use and enjoyment of the Common Areas to any Person, to Occupants of his Lot, or to his guests as permitted by the

Association Rules. An Owner's right of use and enjoyment of the Common Areas shall be appurtenant to and shall pass with title to his Lot.

2.3 Waiver of Use. No Owner may exempt himself, and no Owner shall be exempt, from personal liability for Assessments or release any Lot owned by him from the liens, charges and other provisions of this Declaration, the Articles, Bylaws, Association Rules or Design Guidelines, by voluntary waiver of, or suspension or restriction of the Owner's right to, the use and enjoyment of the Common Areas, or the abandonment of the Owner's Lot.

2.4 DISCLOSURE REGARDING PARK SITE. Each Owner, by acceptance of a deed or other conveyance of an interest in a Lot, is deemed to acknowledge that certain property adjacent to the Project at the base of Pinnacle Peak is expected to be developed and dedicated as a public park site. It is contemplated that trails and paths will be constructed within the park site and that the public will have access to the park site and the trails and paths. Each Owner, by acceptance of a deed or other conveyance of an interest in a Lot, is also deemed to agree and covenant not to make any claim or institute any action whatsoever against Developer or the Association arising or resulting from the development or use of the park site including, but not limited to, any claim arising or resulting from the public's use of the park site and the trails and paths within the park site.

3. ASSOCIATION.

3.1 Purpose of Association. The ^{Unofficial Document} Association has been, or will be, incorporated as a nonprofit corporation to serve as the governing body for all of the Owners for the protection, improvement, alteration, maintenance, repair, replacement, administration and operation of the Property, the assessment of expenses, payment of losses, disposition of casualty insurance proceeds, and other matters as provided in this Declaration, the Articles, Bylaws, Association Rules or Design Guidelines. The Association shall not be deemed to be conducting a business of any kind and all funds received by the Association shall be held and applied by it for the Owners in accordance with the provisions of this Declaration, the Articles and the Bylaws.

3.2 Membership in Association. Except as provided in Sections 3.5 and 3.17, there shall be one Membership in the Association with one Membership vote for each Lot. Each Membership shall be entitled to one vote on each matter to be decided by the Members. If the Owner of a Lot is other than one individual, each individual and entity comprising the Owner shall be considered a Member but the number of Memberships or votes attributable to the Lot shall not be increased by the fact of multiple ownership. In the case of multiple ownership, the Owner shall give the Association written notice identifying the individual who is entitled to cast the Membership vote for the Lot. In the absence of written notice, Assessments shall nevertheless be charged against the Lot and the Owner thereof but there shall be no right to cast the Membership vote. The individual entitled to cast the Membership vote must be an Owner, or, if the Owner is or includes a Person other than an individual, must be an individual who is (i) a member of the limited liability company, if the Owner is or includes a limited liability

company, or (ii) a partner in the partnership, if the Owner is or includes a partnership, or (iii) an officer of the corporation, if the Owner is or includes a corporation, or (iv) a beneficiary of the trust, if the Owner is or includes a trust, or (v) an owner of the entity, if the Owner is or includes a Person other than an individual, a limited liability company, a partnership, a corporation or a trust. The individual, as so specified, shall be the only Person entitled to vote for the Owner of the Lot at Association meetings and elections. An Owner may change the individual who is designated for his Lot, provided the individual is eligible to cast the Membership vote hereunder. The Board may establish reasonable processing fees and reasonable procedures for changing the designated individual including rules governing the manner and frequency in which designations can be made. An Owner shall remain a member of the Association until he ceases to be an Owner, at which time his membership in the Association shall automatically cease.

3.3 Suspension of Voting Rights. No Owner shall be entitled to exercise any voting rights as a Member in the Association during any period in which the Owner is delinquent in the payment of any Assessments.

3.4 Pledge of Voting Rights. Notwithstanding the foregoing, in the event that an Owner has granted an irrevocable proxy or otherwise pledged the voting right appurtenant to his Lot to a Mortgagee as additional security, only the vote of the Mortgagee will be recognized in regard to the special matters if a copy of the proxy or other instrument pledging the vote has been filed with the Association. In the event that more than one irrevocable proxy or pledge has been filed, the Association shall recognize the rights of the first Mortgagee to so file, regardless of the priority of the Mortgages themselves.Unofficial Document

3.5 Assignment of Developer's Voting Rights. If any lender to whom Developer has assigned, or hereafter assigns, all or substantially all of its rights under this Declaration as security succeeds to the interests of Developer by virtue of the assignment, the absolute voting rights of Developer provided for in Section 3.17 shall not be terminated by the assignment, and the lender shall hold Developer's memberships and voting rights on the same terms as they were held by Developer pursuant hereto.

3.6 Board of Directors.

3.6.1 The affairs of the Association shall be conducted by the Board as provided herein and in accordance with the Articles and Bylaws. Except for directors appointed by Developer, each director shall be an individual qualified under Section 3.2 to be designated to cast votes for a Membership (whether or not actually so designated). If a Director ceases to meet the foregoing qualifications during his term, he will thereupon cease to be a director and his place on the Board shall be deemed vacant. Unless the vote or consent of the Members is expressly required hereunder, any action required or permitted to be taken by the Association, shall be satisfied or taken by the Board.

3.6.2 Developer shall have the absolute power and right to appoint and remove the members of the Board until the Transition Date. After the Transition Date, the Members of the Association shall have the power and right to appoint and remove the members of the Board as provided in the Articles and Bylaws. Developer may (but shall not be required to) relinquish its rights under this Section prior to the Transition Date by recording a notice of relinquishment.

3.7 Board's Determination Binding. Subject to the provisions of Section 16, in the event of any dispute or disagreement between or among any Owners, Members, or any other Persons subject to this Declaration, relating to the Property, or any question of interpretation or application of the provisions of this Declaration, the Articles, Bylaws, Association Rules or Design Guidelines, then (subject to any judicial decision by a court of competent jurisdiction) the determination thereof by the Board shall be final and binding on each Owner, Member or other Person subject to this Declaration. The Board, at its election, may delegate the resolution of any such dispute or disagreement to the President or a committee appointed by the Board.

3.8 Approval of Members. Unless elsewhere otherwise specifically provided in this Declaration, the Articles or Bylaws, any provision of this Declaration, the Articles or Bylaws which requires the vote or written assent of the Members of the Association shall be deemed satisfied by the following:

(a) The vote in person or by proxy of the specified percentage of Members at a meeting duly called and noticed pursuant to the provisions of the Articles or Bylaws dealing with annual or special meetings of the Merit^{Unofficial Document}

(b) Written consents signed by the specified percentage of Members as provided in the Bylaws.

(c) If no percentage of Members is otherwise specified then the vote or written assent of a Majority of Members shall be required.

3.9 Additional Provisions in Articles and Bylaws. The Articles and Bylaws may contain any provision relating to the conduct of the affairs of the Association and the rights and powers of its directors, officers, employees, agents and members not inconsistent with law or this Declaration.

3.10 Association Rules. Except as provided in Section 5, the Board shall be empowered to adopt, amend or repeal rules and regulations which it deems reasonable and appropriate (the "Association Rules"), binding upon all Persons subject to this Declaration and governing the use and/or occupancy of the Common Areas or any other part of the Property. The Association Rules may establish a system of fines and penalties enforceable as Special Assessments. The Association Rules shall govern all matters pertaining to the purposes of the Association including, but not limited to, the use of the Common Areas; provided, however, that the Association Rules may not discriminate among similarly situated Owners except as expressly

provided or permitted herein, and shall not be inconsistent with this Declaration, the Articles, Bylaws or Design Guidelines. A copy of the Association Rules as they may from time to time be adopted, amended or repealed or a notice setting forth the adoption, amendment or repeal of specific portions of the Association Rules shall be delivered to each Owner in the same manner established in this Declaration for the delivery of notices. Upon completion of the notice requirements, the Association Rules shall have the same force and effect as if they were set forth in and were part of this Declaration and shall be binding on the Owners, and all other Persons having any interest in, or making any use of, the Property, whether or not actually received thereby. The Association Rules, as adopted, amended or repealed, shall be available at the principal office of the Association to each Owner or other Person reasonably entitled thereto, upon request. In the event of any conflict between any provision of the Association Rules and any Provisions of this Declaration, or the Articles, Bylaws or Design Guidelines, the provisions of the Association Rules shall be deemed to be superseded by the provisions of this Declaration, the Articles, Bylaws or Design Guidelines to the extent of the conflict.

3.11 Indemnification. To the fullest extent permitted by law, every director and every officer of the Association, and the members of the Design Review Committee, and Developer (to the extent a claim may be brought against Developer by reason of its appointment, removal or control over members of the Board or the Design Review Committee) shall be indemnified by the Association, and every other individual serving as an employee or direct agent of the Association, or on behalf of the Association as a member of a committee or otherwise, may, in the discretion of the Board, be indemnified by the Association, against all expenses and liabilities, including attorneys' fees, reasonably incurred by or imposed upon him in connection with any proceeding to which he may be ^{Unofficial Document} or in which he may become involved, by reason of his being or having served in such capacity on behalf of the Association (or in the case of Developer by reason of having appointed, removed or controlled or failed to control members of the Board or the Design Review Committee), or any settlement thereof, whether or not he is a director, officer or member of the Design Review Committee or serving in such other specified capacity at the time the expenses are incurred, provided that the Board shall determine, in good faith, that the officer, director, member of the Design Review Committee or other individual, or Developer, did not act, fail to act, or refuse to act willfully or with gross negligence or fraudulent or criminal intent in the performance of his duties. The foregoing rights of indemnification shall be in addition to and not exclusive of all other rights to which those individuals may be entitled at law or otherwise.

3.12 Non-Liability of Officials. To the fullest extent permitted by law, neither Developer, the Board, the Design Review Committee or any other committees of the Association nor any member thereof, nor any directors or officers of the Association, shall be liable to any Member, Owner, Occupant, the Association or any other Person for any damage, loss or prejudice suffered or claimed on account of any decision, approval or disapproval of plans or specifications (whether or not defective), course of action, act, inaction, omission, error, negligence or the like made in good faith and which Developer, the Board, or any committees or other individuals reasonably believed to be within the scope of their respective duties.

3.13 Easements. In addition to the other easements granted hereunder, the Association is authorized and empowered to grant upon, across or under real property owned or controlled by the Association permits, licenses, easements and rights-of-way for sewer lines, water lines, underground conduits, storm drains, television cable and other similar public or private utility purposes, roadways or other purposes as may be reasonably necessary and appropriate or for the development, maintenance or preservation of the Common Areas or for the preservation of the health, safety, convenience and welfare of the Owners, provided that any damage to a Lot resulting from a grant of any of the foregoing rights shall be repaired by the grantee at its expense.

3.14 Accounting. The Association, at all times, shall keep, or cause to be kept, true and correct records of account in accordance with generally accepted accounting principles, and shall have available for the inspection of all Owners at reasonable times during regular business hours at the principal office of the Association, books or other records specifying in reasonable detail all expenses incurred and funds accumulated from Assessments or otherwise. The Association shall cause the books and records of the Association to be audited on an annual basis by an accounting firm selected by the Board.

3.15 Records. The Association shall, upon reasonable written request and during reasonable business hours, make available for inspection by each Owner, at the Association's office, the books, records and financial statements of the Association together with current copies, as amended from time to time, of this Declaration and the Articles, Bylaws, Association Rules and Design Guidelines. Notwithstanding the foregoing to the contrary, until the Transition Date, the Association shall not be required to ^{Unofficial Document} make its books and records available for inspection except as required by law. Developer shall be under no obligation to make its own books and records available for inspection by any Owner or other Person.

3.16 Managing Agent. All powers, duties and rights of the Association, the President or the Board, as provided by law and herein, may be delegated to a managing agent under a management agreement; provided, however, that no delegation shall relieve the Association of its obligation to perform any the delegated duty. Any agreement for professional management, or any other contract providing for services of Developer or any other party, shall not exceed a term of three years, subject to renewal by agreement of the parties for successive one-year periods, and shall further provide for termination by either party with or without cause and without payment of a termination fee upon 90 days' written notice.

3.17 Developer's Control of Association. Notwithstanding anything in this Declaration to the contrary, Developer shall maintain absolute control over the Association, including appointment of the President and the members of the Board, until the Transition Date. In addition, until the Transition Date, Developer shall have exclusive jurisdiction over architectural and design matters and shall be entitled to exercise the architectural and design review powers reserved to Developer under this Declaration as provided in Section 12. Until the Transition Date, only Developer will be entitled to cast any vote with respect to the election of directors to the Board, removal of directors or any other matter requiring the approval of the Members

except referendums of the Members with respect to certain provisions of this Declaration as set forth in Sections 7.17 and 18.4. Developer voluntarily may (but shall not be required to) permit the Members to assume control of the Association at any time.

4. EASEMENTS.

4.1 Blanket Easements. There is hereby created a blanket easement upon, across, over and under the Property for ingress and egress (over roadways existing from time to time), installing, constructing, replacing, repairing, maintaining and operating all utilities including, but not limited to, water, sewer, gas, telephone, electricity, television cable, security systems, and communication lines and systems, and in addition thereto for the use of emergency vehicles of all types. By virtue of the easement, it shall be expressly permissible for the providing utility company to erect (including, but not limited to, underground installation) and maintain the necessary facilities, wires, circuits, conduits, cables and related appurtenances, facilities and equipment on the Property. Notwithstanding anything to the contrary contained in this Section, no easements shall be created nor shall any sewers, electrical lines, water lines or other facilities for utilities be installed or relocated except as initially created and approved by Developer or thereafter created or approved by the Association. This provision shall in no way affect any other recorded easements on the Property.

4.2 Use of Common Areas. Except for the use limitations provided in this Section and in Section 4.3 each Owner shall have the non-exclusive right to use the Common Areas in common with all other Owners as required for the purposes of access and ingress and egress to (and use, occupancy and enjoyment of) any ^{Unofficial Document} ~~lot~~ owned by the Owner or other Common Areas available for the use of the Owner. This right to use the Common Areas for purposes of access and ingress and egress shall, subject to the Association Rules, extend to each Owner, Occupant and the agents, servants, tenants, family members and invitees of each Owner. The right to use the Common Areas shall be perpetual and appurtenant to each Lot, but shall be subject to and governed by the provisions of this Declaration, the Articles, Bylaws and Association Rules and the reasonable limitations and restrictions as are from time to time be contained therein. The Board may limit or restrict the right of Owners and other Persons to use portions of the Common Area which exist for the benefit of the Association, but which by their nature are not intended for access and ingress and egress including, but not limited to drainage, utility or similar easements or rights.

4.3 Exclusive Use Rights. Certain portions of the Common Areas may be reserved by the Board for the exclusive control, possession and use of the Owner of a Lot. If any portion of the Common Area serves as access to and from two Lots, the Owners of the two Lots shall have joint control, possession and use of the portion of the Common Area as reasonably serves both Lots. The exclusive use rights created herein are subject to the blanket easement, maintenance, and architectural and landscape control provisions contained in this Declaration and to any reasonable rules and regulations with respect to possession, control, use and maintenance as the Board may from time to time promulgate. Easements are hereby created in favor of and running with each Lot having a portion of the reserved Common Area, for the exclusive control

and use of the applicable portion of the Common Area. Each Owner, by accepting title to a Lot, shall be deemed to have further ratified the easements and rights to exclusive use created by this Section 4.3.

4.4 Perimeter Wall Easement. There is hereby created an affirmative easement in favor of Developer, each Related Party, the Association, and their employees and agents, upon, over and across each Lot adjacent to the perimeter boundaries of the Property for reasonable ingress, egress, installation, replacement, maintenance and repair of any perimeter wall located along a perimeter boundary of the Property.

4.5 Developer Easement. There is hereby created an affirmative, nonexclusive easement in favor of Developer, Related Parties, the Golf Club Owner, and their employees, agents, invitees, licensees, contractors and guests, and appurtenant to the Golf Club Facilities and portions of the Project owned by Developer or a Related Party for ingress and egress over, and unrestricted right of entry and use of, all Common Areas, including, but not limited to Private Streets (including access through any security guard gates), and for the right to go over, under and across, and to enter and remain upon all Common Areas and all unoccupied Lots for all purposes reasonably related to Developer's rights and obligations hereunder and to the development, management, administration, operation, maintenance, advertisement and sale or rental of the portions of the Property and the Project owned by Developer or any Related Party and for all purposes reasonably related to the development, maintenance, preservation, administration, advertisement or operation of the Golf Club Facilities and the sale of memberships to the Golf Club Facilities. The easement created in this Section 4.5 shall continue until the day upon which neither Developer Unofficial Document Related Party has any interest in any portion of the Project, including the Golf Club Facilities.

5. GOLF CLUB FACILITIES.

5.1 General. The Golf Club Facilities are not Common Areas and are not subject to this Declaration, and no provision of this Declaration gives, or shall be deemed to give, any Owner or Occupant the right to use the Golf Club Facilities. Rights to use the Golf Club Facilities will be granted only to those Persons, and on those terms and conditions, as may be determined from time to time by the Golf Club Owner. By way of example, but not limitation, the Golf Club Owner shall have the right to approve users and determine eligibility for use, to reserve use rights, to transfer any or all of the Golf Club Facilities or operation thereof to anyone and on any terms, to limit availability of use privileges, and to require the payment of a purchase price, a membership contribution, an initiation fee, a membership deposit, dues, and/or use charges. Each Owner and Occupant hereby acknowledges that no right to the use or enjoyment of the Golf Club Facilities arises from ownership or occupancy of a Lot but arises, if at all, only from a membership agreement or other similar agreement with the Golf Club Owner. The Golf Club Owner shall have the right, from time to time in its sole and absolute discretion and without notice, to amend or waive the terms and conditions of use of the Golf Club Facilities including, but not limited to, eligibility for and duration of use rights, categories of use, extent of use privileges, and number of users. The Golf Club Owner shall also have the

right, in its sole and absolute discretion and without notice, to reserve use rights and to terminate use rights altogether, subject to the provisions of any outstanding membership documents.

5.2 Jurisdiction and Cooperation. It is Developer's intention that the Association and the Golf Club Owner cooperate to the maximum extent possible in the operation of the Property and the Golf Club Facilities. Neither Developer, the Design Review Committee nor the Association shall approve or permit any construction, addition, alteration, change or installation on or to any portion of the Property which is adjacent to, or otherwise in the direct line of sight of the Golf Club Facilities, without the prior written consent of the Golf Club Owner. If any requiring the consent of the Golf Club Owner is proposed, written notice of thereof shall be delivered to the Golf Club Owner. If the Gold Club Owner does not approve the proposed construction, addition, alteration, change or installation within fifteen (15) business days of receipt of the notice, the request for approval shall be deemed denied. The Association shall have no power to promulgate rules and regulations affecting activities on or use of the Golf Club Facilities without the prior written consent of the Golf Club Owner.

5.3 Ownership of Golf Club Facilities. Each Owner and Occupant hereby acknowledges that no representations or warranties have been or are made by Developer or any other Person with regard to the use of, or the nature or size of improvement to, or the continuing ownership or operation of the Golf Club Facilities. No representation or warranty of Developer regarding the foregoing matters, shall be effective unless in writing and signed by Developer. It is not contemplated that the Golf Club Facilities will be annexed to the Property and thereby subjected to this Declaration.

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5.4 Voting Rights. The Golf Club Owner shall be deemed a Member of the Association for purposes of casting votes as provided in this Section 5.4. The Golf Club Owner shall be entitled to cast ten votes on each matter for which each other Member has one vote.

5.5 No Assessments: Golf Club Charges. Notwithstanding any other provision of this Declaration, the Golf Club Owner shall not pay any Assessments under this Declaration and the Golf Club Facilities shall be completely exempt from any of the provisions of this Declaration pertaining to the payment of Assessments and liens in favor of the Association. The Golf Club Owner shall pay to the Association charges (the "Golf Club Charges") equal to ten times each Regular Assessment, each Reconstruction Assessment and each Capital Improvement Assessment payable by each Owner. The Golf Club Charges, together with interest thereon, late charges, attorneys' fees and court costs, and other costs of collection thereof, as hereinafter provided, shall be the obligation of the Golf Club Owner, but this Declaration shall not create any lien or other interest in the Golf Club Facilities. In the event the Golf Club Owner fails to pay any Golf Club Charge, interest, late charge, attorneys' fees and court costs, or any other costs of collection thereof, the Association's sole remedy shall be to pursue legal action against the Golf Club Owner personally. Golf Club Charges shall be used solely for the purposes set forth in Section 7.2.

5.6 Time and Manner of Payment: Late Charges and Interest. Golf Club Charges shall be due and payable by the Golf Club Owner in the manner and at the times Regular Assessments, Reconstruction Assessments or Capital Improvement Assessments, as applicable, are payable by the Owners. Concurrent with each written notice of Regular Assessments, Reconstruction Assessments and Capital Improvement Assessments sent to the Owners as provided herein, the Association shall send the Golf Club Owner a written notice of the Golf Club Charges. The Association may, in its discretion, charge late fees and interest on any Golf Club Charge not paid by its due date, at the same rate charged Owners on Assessments not paid by their due date. The Association may, in its discretion and without waiving the imposition of a late charge or interest in any other instance, waive the late charge and/or interest in any particular instance. If the Golf Club Owner is delinquent in the payment of Golf Club Charges, it shall also be liable for attorneys' fees and other related costs incurred by the Association as a result of any delinquency, and if any suit, action or other proceeding is brought to collect any Golf Club Charge, then the costs of suit and reasonable attorneys' fees, as fixed by the court and included in any judgment or award rendered thereon, shall be added to the amount thereof.

5.7 No Offsets. All Golf Club Charges shall be payable in the amount specified in the notice of Golf Club Charge and no offsets against the amount set shall be permitted for any reason including, but not limited to, a claim that (a) the Association, the Board, the President or Developer is not properly exercising its duties and powers as provided in this Declaration; (b) Golf Club Charges together with Assessments for any period exceed Common Expenses; or (c) the Golf Club Owner has made, and elects to make, no use of the Common Areas.

5.8 Golf Club Facilities Easements Unofficial Document

5.8.1 (a) There are hereby established easements over the Common Areas for ingress and egress, utilities, and other purposes reasonably necessary or convenient to the development, maintenance, preservation, administration, advertisement, or operation of the Golf Club Facilities and the sale of memberships to the Golf Club Facilities. The easements created by this Section 5.8.1 shall be in favor of the Golf Club Owner, the members of the Golf Club Facilities (regardless of whether the members are Owners), their guests and invitees and the employees, agents, contractors and designees of the Golf Club Owner, and appurtenant to the Golf Club Facilities. The easements created by this Section 5.8.1 shall include, but are not limited to, easements for the installation, operation, maintenance, repair, replacement, monitoring and controlling of irrigation systems and equipment (including wells, pumps and pipelines), utility lines, wires, and drainage pipelines and for ingress and egress for storage and maintenance vehicles and equipment, including transportation of chemicals and other items.

(b) The easement for ingress and egress established by this Section 5.8.1 shall include the use of the Common Areas (including access through security guard gates) as reasonably necessary to travel from the entrance to the Property to the Golf Club Facilities and to and from portions of the Golf Course to other portions of the Golf Course including in connection with public or private functions held at the Golf Club

Facilities. Without limiting the generality of the foregoing, the Golf Club Owner, members of the Golf Club Facilities and their guests and invitees and permitted members of the public shall have the right to park their vehicles on the Private Roads at reasonable times before, during, and after tournaments and other similar functions held at the Golf Club Facilities. The easement created in this Section includes the right of golfers playing the Golf Course to drive their golf carts along or across the Private Roads within the Property during play (but not as transportation to or from a Lot in the Property prior to or after play).

(c) In no event shall the Association exercise its authority over the Common Areas (including, but not limited to, security guard gates and similar controls on access to the Property) in any manner that would deny or impede access to the Golf Club Facilities including through guard gates and other security points or to otherwise materially frustrate the rights of the Golf Club Owner and its guests, invitees, employees, agents, contractors, and designees to use the Common Areas as provided in this Declaration. Except as otherwise provided in Section 5.5, no fees or other charges shall be imposed on the Golf Club Owner for the use by the Golf Club Owner and its guests, invitees, employees, agents, contractors, and designees of the Common Areas. The Association shall not establish or change the hours of operation of any security gates without the prior written consent of the Golf Club Owner.

5.8.2 The Golf Club Facilities shall have an easement over, upon and across every Lot and the Common Area permitting golf balls to pass over or land upon the Lots and Common Areas and for golfers at reasonable Unofficial Document and in a reasonable manner to enter upon the Common Areas or the exterior portions of a Lot to retrieve errant golf balls; provided, however, if any Lot or Common Area is fenced or walled the golfer shall seek the Owner's (in the case of a Lot) or the Association's (in the case of Common Area) permission before entry. The existence of the foregoing easement shall not relieve golfers of liability, if any, which may exist under Arizona Law for damage caused by errant golf balls. Neither the Association, its Members, the Golf Club Owner nor Developer, any Related Party or their respective members, partners, officers, directors or shareholders shall be liable for any damage or injury resulting from errant golf balls or the exercise of this easement. Each Owner, by acceptance of a deed or other conveyance of an interest in a Lot, is deemed to agree and covenant not to make any claim or institute any action whatsoever against Developer, the Association, the Golf Course Owner, or the Golf Course designer arising or resulting from any errant golf balls, any damage that may be caused thereby, or for negligent design of the Golf Course or the location of any Lot.

5.8.3 The Lots and Common Areas adjacent to the Golf Club Facilities are hereby subjected to a non-exclusive easement in favor of the Golf Club Facilities for overspray of water from any irrigation system serving the Golf Club Facilities. Under no circumstances shall the Association, Developer, any Related Party or the Golf Club Owner be held liable for any damage or injury resulting from overspray or the exercise of the foregoing easement.

5.9 Assumption of Risk. Each Owner and Occupant expressly assumes the risk of noise, personal injury or property damage or any other condition caused by the existence of the Golf Club Facilities or caused by the maintenance and operation of the Golf Club Facilities including, but not limited to: (a) noise from maintenance equipment, (b) noise caused by golfers, (c) use of pesticides, herbicides, fertilizers and effluent, (d) view restrictions caused by maturation of trees and shrubbery, (e) reduction in privacy caused by golf traffic on the golf course or the removal or pruning of shrubbery or trees on the golf course, (f) design of the golf course, and (g) the possibility of golf balls entering the property adjacent to the Golf Club Facilities and causing damage to property and injury to persons. Each Owner and Occupant acknowledges that maintenance of the Golf Course typically takes place around sunset or sunrise. Each Owner and Occupant agrees that neither Developer, the Association, any Related Party, any agents of Developer nor any other entity owning or managing the Golf Course or supplying equipment, materials or services to the Golf Course shall be liable to Owner or any other Person claiming any loss or damage including, without limitation, indirect, special or consequential loss or damage arising from personal injury, destruction or 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 of Owner's Lot to the Golf Club Facilities including, but not limited to, any claim arising in whole or in part from the negligence of Developer, the Association, the Golf Club Owner or any other entity owning or managing the golf course.

5.10 Visitor Center. Developer may, in its sole and absolute discretion (but with the consent of the owner of the Visitor Center if Developer is not the owner of the Visitor Center), elect to annex all or any portions of the Visitor Center to the Property as Common Areas and convey the Visitor Center to the Association ^{Unofficial Document} ~~at least~~, time prior to the fifth anniversary of the Transition Date.

6. INSPECTION AND TURNOVER OF COMMON AREAS.

6.1 Inspection of Common Area Improvements. Not later than each date upon which Developer conveys any Common Areas to the Association and as a condition to the conveyance, Developer shall select experts to inspect any completed buildings, rights-of-way, sidewalks or other improvements to those Common Areas to determine whether the improvements have been constructed in substantial compliance with the plans and specifications, as modified by any change orders, and to inspect for defects in materials and workmanship and for governmental code violations. In addition, upon Developer's completion of any building, right-of-way, sidewalk or other improvement in the Common Areas previously conveyed to the Association (costing in excess of \$10,000), Developer shall select experts to inspect the completed improvements to determine whether the improvements have been constructed in substantial compliance with the plans and specifications, as modified by any change orders, and to inspect for defects in materials and workmanship and for governmental code violations. The Association shall pay the cost of the inspections and the cost shall be a Common Expense. Each Owner, by acceptance of a deed or other conveyance of an interest in a Lot, is deemed to agree to the

inspectors selected by Developer and the inspection process set forth in this Section and to agree to abide by the inspectors' determinations. Developer shall, at its sole cost and expense, make all repairs to the improvements which the inspectors deem necessary to cause the improvements to substantially comply with the plans and specifications, as modified by any change orders, to be free from defects in materials and workmanship and to be in compliance with applicable governmental codes. Except as provided in Section 6.3, Developer shall have no obligation to make any additional repairs to the improvements other than the repairs which the inspectors deem necessary as provided in the preceding sentence. The Association and each Owner, by acceptance of a deed or other conveyance of an interest in a Lot, release Developer from any further obligations with respect to repairs to any Common Area improvements except any repairs required to be made by Developer pursuant to Section 6.3. At such time as Developer has completed all repairs required to be made by Developer under this Section 6.1 and the inspectors selected by Developer have certified that all required repairs have been completed, the Association shall be deemed to own and to have accepted (and shall have no right to refuse to accept) the improvements. Thereafter, the Association shall have no right to require Developer to make any further repairs to the Common Area improvements (except as provided in Section 6.3) and shall have no right to bring any claim or action against Developer relating to the improvements.

6.2 Conveyance of Common Areas to Association. On or before the Transition Date, Developer shall convey the Common Areas to the Association by special warranty deed or other appropriate instrument, subject to this Declaration and all matters of record. The Association shall accept title to the Common Areas transferred to it by Developer. All costs and expenses of any conveyance of the Common Area by Unofficial Document Developer to the Association shall be paid by the Association. **SUBJECT TO ANY REPAIRS REQUIRED UNDER SECTION 6.3, THE ASSOCIATION SHALL ACCEPT THE COMMON AREAS "AS IS" AND WITHOUT ANY REPRESENTATION OR WARRANTY, EXPRESS OR IMPLIED, IN FACT OR BY LAW WITH RESPECT THERETO, OR WITH RESPECT TO THE IMPROVEMENTS, INCLUDING, BUT NOT LIMITED TO, REPRESENTATIONS OR WARRANTIES OF MERCHANTABILITY OR FITNESS FOR THE ORDINARY OR ANY PARTICULAR PURPOSE, AND WITHOUT ANY REPRESENTATIONS OR WARRANTIES REGARDING FUTURE REPAIRS OR REGARDING THE CONDITION, CONSTRUCTION, ACCURACY, COMPLETENESS, DESIGN, ADEQUACY OF THE SIZE OR CAPACITY IN RELATION TO THE UTILIZATION, DATE OF COMPLETION OR THE FUTURE ECONOMIC PERFORMANCE OR OPERATIONS, EXCEPT AS SET FORTH HEREIN. THE ASSOCIATION AND EACH OWNER, BY ACCEPTANCE OF A DEED OR OTHER CONVEYANCE OF AN INTEREST IN A LOT, RELEASE DEVELOPER FROM ANY CLAIMS AND WARRANT THAT NO CLAIM SHALL BE MADE BY THE ASSOCIATION OR ANY OWNER RELATING TO THE CONDITION OR COMPLETENESS OF THE COMMON AREAS OR FOR INCIDENTAL OR CONSEQUENTIAL DAMAGES ARISING THEREFROM.**

6.3 Turnover upon Transition Date. Prior to the Transition Date, Developer shall select experts to inspect the Common Areas and improvements constructed thereon to determine

whether the improvements contain any defects in materials or workmanship and to review and evaluate the level of reserves of the Association to determine whether the Association's reserves for capital improvements are sufficient based on the age and condition of any improvements to the Common Areas. The Association shall pay the cost of the inspections and the cost shall be a Common Expense. Each Owner, by acceptance of a deed or other conveyance of an interest in a Lot, is deemed to agree to the inspectors selected by Developer and the inspection process set forth in this Section and to agree to abide by the inspectors' determinations. Developer shall, at its sole cost and expense, make all repairs to the improvements which the inspectors deem necessary to cause the improvements to be free of defects in materials and workmanship. Nothing in this Section shall require Developer to make any repairs to the Common Areas or the improvements thereto necessitated by ordinary wear and tear. Developer shall also deposit with the Association the amount of funds, if any, determined by the inspectors to be necessary to provide the Association with sufficient reserves for capital improvements. Developer shall have no obligation to make any additional repairs to the improvements other than the repairs which the inspectors deem necessary as provided herein or to fund the Association's reserves for capital improvements. The Association and each Owner, by acceptance of a deed or other conveyance of an interest in a Lot, release Developer from any further obligations to repair the Common Area improvements and to fund reserves for capital improvements. At such time as Developer has completed all repairs required to be made by Developer to the Common Area improvements, Developer has deposited with the Association any funds deemed necessary by the inspectors to provide sufficient reserves as provided herein, and the inspectors selected by Developer have certified that all required repairs have been completed and all required funds have been deposited, the Owners shall be deemed to have accepted the condition of the Common Areas and improvements thereto and the amount of the reserves for capital improvements, and, thereafter, the Owners and the Association shall have no right to require Developer to make any further repairs to the improvements to the Common Areas or to contribute to the reserves of the Association and shall have no right to bring any claim or action against Developer relating to the condition of the Common Areas, the Common Area improvements and the level of the Association's reserves for capital improvements.

7. ASSESSMENTS.

7.1 Creation of Lien and Personal Obligation. Each Owner, by acceptance of a deed or other conveyance of an interest in a Lot, is deemed to covenant and agree to pay to the Association: Regular Assessments, Special Assessments, Capital Improvement Assessments, if applicable, and Reconstruction Assessments, if applicable. All Assessments shall be established and collected from time to time as provided in this Declaration. The Assessments, together with interest thereon, late charges, attorneys' fees and court costs, and other costs of collection thereof, as hereinafter provided, shall be a continuing lien upon the Owner's Lot (or combined Lots as provided in Section 13.14) against which the Assessments are made. Each Assessment, together with interest and other costs, shall also be the personal obligation of the Owner to whom the Assessment relates. The personal obligation for delinquent payments shall not pass to an Owner's successor unless expressly assumed by him.

7.2 Purpose of Assessments. The Assessments levied by the Association shall be used to promote the recreation, health, safety, and welfare of the Owners, to enhance the quality of life within the Property, to preserve the value of the Property, to pay the costs of administration of the Association and all other Common Expenses. Where a Lot has separate gas, electrical, sewer, CATV or other similar utility service, the cost of the service shall be the personal obligation of the Owner of the Lot. Maintenance of sewer lines serving a single Lot shall be the responsibility of the Owner of the Lot.

7.3 Regular Assessments.

7.3.1 Except as otherwise specifically provided herein, each Owner shall pay as his Regular Assessment the Owner's Proportionate Share of the Common Expenses and any applicable Neighborhood Assessments.

7.3.2 Not later than 60 days prior to the beginning of each fiscal year of the Association, the Association shall make available for review by each Owner at the Association's office during reasonable times a pro forma operating statement or budget for the upcoming fiscal year which shall, among other things, estimate the total Common Expenses to be incurred for the fiscal year. The Association shall at that time determine the amount of the Regular Assessment to be paid by each Owner and notify the Owner thereof. Each Owner shall thereafter pay to the Association his Regular Assessment in monthly installments. Each monthly installment shall be due and payable on the date set forth in the written notice sent to Owners. Notwithstanding the foregoing to the contrary, the Association shall not be required to prepare, or distribute to the Owners, any operating Unofficial Document or budget.

7.3.3 If the Association determines that the total Regular Assessments for the current year are, or will become, inadequate to meet all Common Expenses for whatever reason, including Common Expenses in excess of the estimated Common Expenses used in preparation of the Association's budget for that year, the Association shall then immediately determine the approximate amount of the inadequacy and issue a supplemental estimate of the Common Expenses and determine the revised amount of Regular Assessments to be paid by each Owner for the balance of the year, and the date or dates when due. If the estimated total Regular Assessments for the current year prove to be excessive in light of the actual Common Expenses, the Association may, at the discretion of the Board, retain the excess as additional working capital or reserves, reduce the amount of the Regular Assessments for the succeeding year, or abate collection of Regular Assessments for a period of time deemed appropriate by the Board. No reduction or abatement of Regular Assessments because of any anticipated surplus may diminish the quantity or quality of services upon which the Common Expenses for the year in question are based.

7.3.4 In no event shall the board increase Regular Assessments payable by Lots by more than the greater of (a) 10% or (b) the increase during the preceding year of the Consumer Price Index for All Urban Consumers - U.S. Cities Average - All Items (the "CPI") published by the United States Department of Labor, Bureau of Labor Statistics (1982-84 =

100), from one fiscal year to the next without a vote or written consent by a Majority of Members except Developer and by Developer (so long as Developer owns any Lot within the Property). In the event the Bureau of Labor Statistics shall cease to publish the CPI and such information is not available from any other source, public or private, then a new formula for determining the maximum annual increase without a vote or written consent of the Members shall be adopted by the Board.

7.4 Special Assessments. Special Assessments shall be levied by the Association against an Owner and his Lot to reimburse the Association for:

7.4.1 Costs incurred in bringing an Owner and his Lot into compliance with the provisions of this Declaration, or the Articles, Bylaws, Association Rules or Design Guidelines;

7.4.2 Any increased maintenance costs to the Association caused by an Owner's use or treatment of the Owner's Lot;

7.4.3 Any other charge designated as a Special Assessment in this Declaration, the Articles, Bylaws, Association Rules or the Design Guidelines;

7.4.4 Fines levied or fixed by the Board under Section 12.9 or as otherwise provided herein; and

7.4.5 Attorneys' fees, ^{Unofficial Document} other costs or charges provided to be paid as, or which are incurred in connection with, a Special Assessment in accordance with this Declaration, the Articles, Bylaws, Association Rules or Design Guidelines.

In the event the Association undertakes to provide materials or services which benefit individual Owners or Lots and which can be accepted or not by individual Owners, the Owners, in accepting such materials or services, agree that the costs thereof shall be a Special Assessment.

7.5 Capital Improvement Assessments. In addition to the Regular Assessments, the Association may levy in any calendar year a Capital Improvement Assessment applicable to that year only, for the purpose of defraying, in whole or in part, any action or undertaking on behalf of the Association in connection with, or the cost of, any construction or replacement of a described capital improvement upon the Common Areas, including the necessary fixtures and personal property related thereto, to the extent not covered by the provisions affecting Reconstruction Assessments in Section 9. Without the vote of a Majority of Members (and, if prior to the Transition Date, the written consent of Developer), the Association shall not impose a Capital Improvement Assessment in an amount which in any one year exceeds five percent of the estimated annual Common Expenses. Any reserves collected by the Association for the future maintenance and repair of the Common Areas, or any portion thereof, pursuant to Section 7.13 shall not be included in determining the foregoing limitation on any annual Capital Improvement Assessment. All amounts collected as Capital Improvement Assessments may be

used only for capital improvements (including any related fixtures and personal property) and shall be deposited by the Association in a separate bank account to be held in trust for those purposes. Those amounts shall not be commingled with any other funds of the Association and shall be deemed a contribution to the capital account of the Association by the Members.

7.6 Neighborhood Assessments. If the Association determines in the exercise of its reasonable judgment that a Neighborhood benefits in a substantial way from a particular feature or characteristic and other Lots outside the Neighborhood do not benefit from the feature or character, the Association may levy against each Lot within the Neighborhood, as part of the Regular Assessment, a Neighborhood Assessment to reimburse the Association for the incremental cost incurred in connection with the feature or characteristic, including maintenance, repair or replacement costs.

7.7 Uniform Assessment. Subject to Section 7.6, the Regular Assessment and Capital Improvement Assessment for each Lot shall be uniform. The Neighborhood Assessment for each Lot in the affected Neighborhood shall be uniform.

7.8 Exempt Property. All properties dedicated to and accepted by, or otherwise owned or acquired by, a public authority shall be exempt from the Assessments created herein.

7.9 Date of Commencement of Regular Assessments. Regular Assessments as to Lots within the Parcel subject to Assessment shall commence on the first day of the month following the date of conveyance of the first Lot to be conveyed to a Retail Purchaser. Regular Assessments as to Lots within any Annexat^{Unofficial Document}ion Property subject to Assessment shall commence upon the effective date of the annexation.

7.10 Time and Manner of Payment; Late Charges and Interest. The manner and timing of payment of Assessments shall be designated by the Board. The Board may, in its discretion, establish late fees and charge interest on any Assessment not paid by its due date. The Board may, in its discretion and without waiving the imposition of a late charge or interest in any other instance, waive the late charge and/or interest in any particular instance. A Member who is delinquent in payment of Assessments shall also be liable for attorneys' fees and other related costs incurred by the Association as a result of the delinquency, and if any suit, action or other proceeding is brought to collect any delinquent Assessment or charge, then there shall be added to the amount thereof costs of suit and reasonable attorneys' fees to be fixed by the court and included in any judgment or award rendered thereon.

7.11 No Offsets. All Assessments shall be payable in the amount specified in the Assessment or notice of Assessment and no offsets against the specified amount shall be permitted for any reason including, but not limited to, a claim that (a) the Association, the Board, the President or Developer is not properly exercising its duties and powers as provided in this Declaration; (b) Assessments for any period exceed Common Expenses; or (c) a Member has made, and elects to make, no use of the Common Areas.

7.12 Homestead Waiver. Each Owner, to the extent permitted by law, hereby waives, to the extent of any liens created pursuant to this Declaration, whether the liens are now in existence or are created at any time in the future, the benefit of any homestead or exemption laws of the State of Arizona now in effect, or in effect from time to time hereafter.

7.13 Reserves. Upon the initial transfer of record title to a Lot by Developer to a Retail Purchaser, Developer may require the new Owner of the Lot to make a contribution to the capital of the Association in an amount to be determined from time to time by Developer to establish reserves of the Association. Notwithstanding the foregoing, Developer shall have no obligation to collect or contribute to the reserves of the Association. In addition, the Board may, but shall not be required to, annually prepare a reserve budget which shall take into account the number and nature of replaceable assets, the useful life of each asset and the anticipated repair and replacement cost. If the Board establishes a reserve budget, the Board shall establish a required contribution to the Reserve for Capital Improvements, in an amount sufficient to permit the Association to meet its projected needs, as shown on the reserve budget, with respect both to amount and timing of annual Assessments over the period of the budget. Any required contributions to the Reserve for Capital Improvements shall be assessed as a portion of the Regular Assessment on each Lot. Any reserves collected upon the initial sale of a Lot as described above and any additional reserves included in the Common Expenses which are collected as part of the Regular Assessments shall be deposited by the Association in a separate bank account to be held in trust for the purposes for which they are collected and are to be segregated from and not commingled with any other funds of the Association, except to the extent that the Association's regularly employed accountant deems it desirable to do otherwise on the basis of standard accounting principles. Unofficial Document Similar contexts or the laws, tax or otherwise, of the State of Arizona or the United States relating to nonprofit corporations or homeowners associations. All reserves shall be deemed a contribution to the capital account of the Association by the Members. The responsibility of the Board (whether while controlled by Developer or the Members) shall be only to provide for an amount of reserves as the Board in good faith deems reasonable, and neither Developer, the Board nor any member thereof shall have any liability to any Owner, to the Association, or to any other Person if the reserves prove to be inadequate.

7.14 Subordination of Lien. Any lien which arises against a Lot by reason of the failure or refusal of an Owner to make timely payment of any Assessment shall be subordinate to the lien of a prior recorded Mortgage on the Lot, acquired in good faith and for value, except for the amount of the unpaid Assessment which accrues from and after the date on which a Mortgagee comes into possession of or acquires title to the Lot, whichever occurs first (together with any interest, costs, reasonable attorneys' fees and any late charges related thereto). If any lien for unpaid Assessments prior to the date the Mortgagee comes into possession of or acquires title to the Lot has not been extinguished by the process by which the Mortgagee came into possession of or acquired title to the Lot, the Mortgagee shall not be liable for unpaid Assessments arising prior to the foregoing date and, upon written request to the Association by the Mortgagee, the lien shall be released in writing by the Association. Any unpaid Assessments which are extinguished pursuant to the foregoing sentence shall continue to be the personal

obligation of the delinquent Owner and may also be reallocated by the Association among all Members as part of the Common Expenses.

7.15 Certificate of Payment. Any Person acquiring an interest in any Lot shall be entitled to a certificate from the Association setting forth the amount of due but unpaid Assessments relating to the Lot, if any, and that Person shall not be liable for, nor shall any lien attach to the Lot in excess of, the amount set forth in the certificate, except for Assessments which occur or become due after the date thereof and any interest, costs, attorneys' fees and any late charges related to those Assessments.

7.16 Enforcement of Lien. The lien provided for in this Section 7 may be foreclosed by the Board in any manner provided or permitted for the foreclosure of realty mortgages or deeds of trust in the State of Arizona. All of the provisions of this Section 7 relating to the enforcement of the lien provided for herein (including, but not limited to, the subordination provisions in Section 7.14 or the provisions of this Section 7.16) shall apply with equal force in each other instance provided for in this Declaration, the Association Rules or Design Guidelines wherein it is stated that payment of a particular Assessment, charge or other sum shall be secured by the lien provided for in this Section 7. Nothing in this Section shall be construed as requiring that the Association take any action in any particular instance, and the failure of the Association to such take action at any time shall not constitute a waiver of the right to take action at a later time or in a different instance.

7.17 Pledge of Assessment Rights as Security. The Board shall have the power to pledge the right to exercise the Association's ^{Unofficial Document} assessment powers and rights provided for in this Declaration as security for any obligation of the Association; provided, however, that any pledge of the Association's assessment powers and rights shall require the prior affirmative vote or written assent of a Majority of Members and, so long as Developer or any Related Party owns any portion of the Property, Developer. The Board's power to pledge the Association's assessment powers shall include, but not be limited to, the ability to make an assignment of Assessments which are then payable to, or which will become payable to, the Association; provided the assignment, although presently effective, allows Assessments to continue to be paid to the Association and used by the Association as set forth in this Declaration, unless and until the Association defaults on its obligations secured by the assignment.

7.18 Exemption of Unsold Lots. Notwithstanding anything in this Section 7 to the contrary, prior to the Transition Date, no Assessments shall be levied upon, or payable with respect to, any Lot owned by Developer, any Related Party or an affiliate of Developer or any Related Party, or any member (or the member's successors, heirs or devisees) in Developer to whom the Lot has been distributed by Developer (as distinguished from having been purchased by the member), until the Lot has been conveyed by Developer (or said affiliate or member) to a non-affiliated purchaser thereof.

8. INSURANCE.

8.1 Authority to Purchase. The Association shall purchase and maintain certain insurance including, but not limited to, the insurance described in Section 8.3. All policies maintained by the Association, and endorsements thereon, or copies thereof shall be deposited with the Association. The Association shall advise the Owners of the coverage of any policies purchased by the Association in order to permit the Owners to determine which particular items are included within the coverage so that the Owners may insure themselves as they see fit if certain items are not insured by the Association.

8.2 Owner's Responsibility. Each Owner shall be responsible for providing insurance on his own Lot, and, if any, his additions and improvements thereto, his furnishings and personal property therein, his personal property stored elsewhere within the Property, his personal liability to the extent not covered by the public liability insurance obtained by the Association and any other insurance as the Owner desires. No Owner shall maintain any insurance, whether on his Lot or otherwise, which would limit or reduce the insurance proceeds payable under the casualty insurance maintained by the Association in the event of damage to the improvements or fixtures on the Common Areas.

8.3 Coverage. The Association shall maintain and pay for policies of insurance as follows:

8.3.1 A blanket property insurance policy covering "risks of direct physical loss" on a "special form" basis (or Unofficial Document comparable coverage) covering all of the Common Areas providing, as a minimum, fire and extended coverage, and all other coverage in kinds and amounts customarily acquired or required for projects similar in construction, location and use including, but not limited to, perils normally covered by an "all-risk" policy, in an amount determined by the Board, but in all events an amount sufficient to cover the full replacement cost of any insured improvements. If "special form" coverage is not generally available at a reasonable cost, then "broad form" coverage may be substituted.

8.3.2 A policy of commercial general liability insurance covering all of the Common Areas and acts for which the Association might be responsible in an amount determined by the Board but not less than \$1,000,000.00 per occurrence, for personal injury or death and/or property damage. The scope of coverage shall include all other coverage in the kinds and amounts customarily acquired or required for projects similar in construction, location and use including, but not limited to, liability for nonowned and hired automobiles, liability for property of others, liability arising in connection with the operation, maintenance or use of the Common Areas, liability assumed by contract or contractual liability, and liability arising out of any employment contracts of the Association.

8.3.3 The Association shall, at the Board's election, obtain fidelity insurance coverage against dishonest acts on the part of directors, officers, managers, trustees, agents, employees or other individuals responsible for handling funds belonging to or administered by

the Association. If funds of the Association are handled by a management agent, fidelity insurance coverage shall also be obtained for the officers, employees or agents thereof handling or responsible for Association funds. The fidelity insurance must name the Association as the named insured and shall be written to provide protection in an amount not less than the lesser of (a) one-half times the Association's estimated annual operating expenses and reserves, (b) a sum equal to three months' aggregate Regular Assessments plus reserves, or (c) the estimated maximum amount of funds, including reserves, in the custody of the Association (and its management agent) at any one time. In connection with the coverage, an appropriate endorsement to the policy to cover any individual who serves without compensation shall be added if the policy would not otherwise cover volunteers. Any such coverage must also name the Association as an obligee.

8.3.4 A worker's compensation policy, if necessary to meet the requirements of law.

8.3.5 A policy of "directors and officers" liability insurance, including errors and omissions coverage.

8.3.6 Other insurance, and in amounts, as the Board may determine from time to time to be desirable.

If at any time any of the foregoing types of coverage are not reasonably available, the Association shall maintain the most nearly equivalent coverages that are available.

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8.4 Required Provisions. The insurance policies purchased by the Association shall, to the extent reasonable and available, contain the following provisions:

8.4.1 The coverage afforded by the policies purchased by the Association shall not be brought into contribution or proration with any insurance which may be purchased by any Owner or Mortgagee.

8.4.2 The conduct of any one or more Owners shall not constitute grounds for avoiding liability on any of the policies.

8.4.3 There shall be no subrogation with respect to the Association, its agents or employees, Owners or members of their households or families and employees, and each Mortgagee of all or any part of the Property or of any Lot, or the policies should name those Persons as additional insureds. Each policy must also contain a waiver of any defenses based on co-insurance or on invalidity arising from the acts of the insured.

8.4.4 A "severability of interest" endorsement shall be obtained which shall preclude the insurer from denying the claim of an Owner because of the conduct or negligent acts of the Association and its agents or other Owners.

8.4.5 Any "other insurance" clause shall exclude insurance purchased by Owners or Mortgagees.

8.4.6 Coverage must not be prejudiced by (a) any act or neglect of Owners when the act or neglect is not within the control of the Association or (b) any failure of the Association to comply with any warranty or condition regarding any portion of the Property over which the Association has no control.

8.4.7 Coverage may not be cancelled or substantially modified without at least 30 days' (or a lesser period as the Board may reasonably deem appropriate) prior written notice to the Association.

8.4.8 Any policy of property insurance which gives the carrier the right to elect to restore damage in lieu of a cash settlement must provide that the election is not exercisable without the prior written approval of the Board, or when in conflict with the insurance trust provisions contained herein, or any requirement of law.

8.4.9 A recognition of any insurance trust agreement entered into by the Association.

8.4.10 Each hazard insurance policy shall be written by a hazard insurance carrier which has a Best's Key Rating Guide rating of A or better and is assigned a financial size category of IX or larger as established by A. M. Best Company Inc., or if that rating service is discontinued, an equivalent rating by a Unofficial Document hereto or a similar rating service.

8.4.11 Each insurance carrier must be specifically licensed or authorized by law to transact business within the State of Arizona.

8.4.12 Policies shall not be utilized where, under the terms of the carrier's charter, bylaws or policy, contributions or assessments may be required from the Owners or the Association or loss payments are contingent upon action by the carrier's board of directors, policyholders, or members.

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

8.6 Premiums. Premiums for insurance policies purchased by the Association shall be paid by the Association as a Common Expense, except that the amount of increase over any annual or other premium arising from the use, misuse, occupancy or abandonment of a Lot or

its appurtenances, or of the Common Areas, by an Owner shall be assessed against that particular Owner.

8.7 Insurance Claims. The Board, acting for the Association, is hereby irrevocably appointed and authorized, subject to the provisions contained herein, to adjust all claims arising under insurance policies purchased by the Association and to execute and deliver releases upon the payment of claims, and to do all other acts reasonably necessary to accomplish any of the foregoing. The Board has full and complete power to act for the Association in this regard and may, at its discretion, appoint an authorized representative, or enter into an insurance trust agreement wherein the trustee shall have authority, to negotiate losses under any policy purchased by the Association.

8.8 Benefit. Except as otherwise provided herein, all insurance policies purchased by the Association shall be for the benefit of, and any proceeds of insurance received by the Association or any insurance trustee shall be held or disposed of in trust for, the Association or the Owners, as their interests may appear.

9. DAMAGE AND DESTRUCTION OF COMMON AREAS.

9.1 Duty of Association. In the event of partial or total destruction of the Common Areas, or any improvements thereon, it shall be the duty of the Association to restore and repair or clear and landscape the destroyed area as promptly as practical pursuant to this Section 9. The proceeds of any casualty insurance mai^{Unofficial Document} pursuant to this Declaration shall be used for that purpose, subject to the prior rights of Mortgagees whose interest may be protected by said policies.

9.2 Automatic Reconstruction. If the amount available from the proceeds of any insurance policies for restoration and repair, together with any uncommitted or unreserved capital of the Association, is at least seventy-five percent (75%) of the estimated cost of restoration and repair, a Reconstruction Assessment against each Owner in his Proportionate Share for each Lot he owns, shall be levied by the Association to provide any necessary funds for reconstruction in excess of the amount of the funds available for that purpose. The Association shall thereupon cause the damaged or destroyed Common Areas to be restored to substantially the condition the Common Areas were in prior to the destruction or damage.

9.3 Vote of Members. If the amount available from the proceeds of any insurance policies for restoration and repair, together with any uncommitted or unreserved capital of the Association, is less than seventy-five (75%) of the estimated cost of restoration and repair, the Common Areas shall be replaced or restored unless two-thirds of the Members, at a special meeting held for that purpose, disapprove the replacement or restoration. If the Members do not disapprove the proposed replacement or restoration, the Association shall levy a Reconstruction Assessment against each Owner in his Proportionate Share, and cause the damaged or destroyed Common Areas to be restored as closely as practical to their condition

prior to the destruction or damage. If the Owners disapprove the repair or restoration of the damaged or destroyed Common Areas as provided above, the Common Areas so damaged or destroyed shall be cleared and landscaped for community park use or other community use determined by the Board and the costs thereof shall be paid with the insurance proceeds.

9.4 Excess Insurance Proceeds. In the event any excess insurance proceeds remain after any reconstruction by the Association pursuant to this Section, the Board, in its sole discretion, may retain those sums in the general funds of the Association or may distribute all or a portion of the excess to the Owners in their Proportionate Shares, subject to the prior rights of Mortgagees whose interests may be protected by the insurance policies carried by the Association. The rights of an Owner or the Mortgagee of a Lot to such a distribution shall be governed by the provisions of the Mortgage encumbering the Lot.

9.5 Use of Reconstruction Assessments. All amounts collected as Reconstruction Assessments shall be used only for the purposes set forth in this Section 9 and shall be deposited by the Association in a separate bank account to be held in trust for those purposes. Those amounts shall not be commingled with any other funds of the Association and shall be deemed a contribution to the capital account of the Association by the Owners. Any Reconstruction Assessment shall be secured by the lien provided for in Section 7.

9.6 Contract for Reconstruction. In the event the Association undertakes the repair and restoration of the Common Areas, the Association shall contract with a licensed contractor or contractors who may be required to post a suitable performance or completion bond. The contract with the contractor or contractors Unofficial Document
SMBL PRO shall provide for the payment of a specified sum for completion of the work described therein and shall provide for periodic disbursements of funds, subject to the prior presentation of an architect's, or similar, certificate containing such provisions as may be appropriate in the circumstances and deemed suitable by the Association.

9.7 Insurance Proceeds Trust. Upon receipt by the Association of any insurance proceeds, the Association may cause the insurance proceeds to be paid directly to a bank, savings and loan association, or trust company located in Maricopa County, Arizona, designated by the Association to be a trustee (the "Insurance Trustee"). The insurance proceeds shall be received, held and administered by the Insurance Trustee subject to a trust agreement consistent with the provisions of this Declaration and which shall be entered into between the Insurance Trustee and the Association. Disbursements to contractors performing any repair or reconstruction upon the Property shall be made periodically as the work progresses in a manner consistent with procedures then followed by prudent lending institutions in Maricopa County, Arizona.

10. EMINENT DOMAIN.

10.1 Definition of Taking. The term "taking" as used in this Section 10 shall mean condemnation by eminent domain or sale under threat of condemnation of all or any portion of the Common Areas.

10.2 Representation in Condemnation Proceedings. In the event of a threatened taking of all or any portion of the Common Areas, the Owners hereby appoint the Association (through individuals designated by the Board) to represent all of the Owners in connection therewith. The Board shall act in its sole discretion with respect to any awards being made in connection with the taking and shall be entitled to make a voluntary sale to the condemnor in lieu of engaging in a condemnation action.

10.3 Award for Common Areas. Any awards received by the Association on account of the taking of Common Areas shall be paid to the Association. The Board may, in its sole discretion, retain any award in the general funds of the Association or distribute all or any portion thereof to the Owners as their interests may appear. The rights of an Owner and the Mortgagee of his Lot to any distribution shall be governed by the provisions of the Mortgage encumbering the Lot.

11. MAINTENANCE, REPAIRS AND REPLACEMENTS.

11.1 Owner's Responsibility. Each Owner shall furnish and be responsible for, at his own expense, all of the maintenance, repairs, ^{Unofficial Document} replacements within his own Lot. In the event of damage to or destruction of structures on or comprising any Lot, the Owner of the Lot shall proceed promptly to repair or to reconstruct the structures in a manner consistent with the original construction or other plans and specifications approved in accordance with Section 12.4.

11.2 Maintenance of Common Areas. Except as otherwise provided herein to the contrary, maintenance, repairs and replacements of the Common Areas shall be furnished by the Association as part of the Common Expenses, subject to the Bylaws and Association Rules. If, due to the act or neglect of an Owner, or the invitee, guest or other authorized visitor of an Owner, or an Occupant of the Owner's Lot, damage is caused to the Common Areas or to a Lot or Lots owned by others, or maintenance, repairs or replacement are required which would otherwise be a Common Expense, then the Owner shall pay for the damage and for maintenance, repairs and replacements determined necessary or appropriate by the Association, to the extent not covered by the Association's insurance. The foregoing obligation shall be a Special Assessment secured by the lien provided for in Section 7.

11.3 Right of Access. An authorized representative of the Association, and all contractors, repairmen or other agents employed or engaged by the Association, shall be entitled to reasonable access to each of the Lots as may be required in connection with maintenance, repairs or replacements of or to the Common Areas or any equipment, facilities or fixtures

affecting or serving other Lots and the Common Areas, or to perform any of the Association's duties or responsibilities hereunder.

12. ARCHITECTURAL AND LANDSCAPE CONTROL.

12.1 Appointment of Design Review Committee. Subject to Section 12.7, the Association shall have a Design Review Committee consisting of not less than three nor more than five individuals, as specified from time to time by resolution of the Board. After the Transition Date or such earlier date as Developer elects to delegate the design review powers to the Design Review Committee, members of the Design Review Committee shall be appointed by the Board. Individuals appointed to the Design Review Committee must be Owners or satisfy any other requirements as may be designated by the Board.

12.2 Design Guidelines. Subject to Section 5.1, the Design Review Committee shall establish reasonable procedural rules, regulations, restrictions, architectural standards and design guidelines (the "Design Guidelines"), which the Design Review Committee may, from time to time in its sole discretion, amend, repeal or augment. The Design Guidelines are hereby incorporated herein and shall be deemed to be a part of this Declaration and shall be binding on all Owners and other Persons having any interest in the Property as if expressly set forth herein. A copy of the current Design Guidelines shall at all times be a part of the Association's records. The Design Guidelines may include, among other things, those restrictions and limitations set forth below:

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12.2.1 Time limitations for the completion, within specified periods after approval, of the improvements for which approval is required pursuant to the Design Guidelines.

12.2.2 Designation of a "building envelope" within a Lot, thereby establishing the maximum developable area of the Lot.

12.2.3 Conformity of completed improvements to plans and specifications approved by the Design Review Committee. For purchasers and encumbrancers in good faith and for value, however, unless (a) a notice of noncompletion or nonconformance identifying the violating Lot and specifying the reason for the notice, executed by the Design Review Committee, is recorded with the County Recorder of Maricopa County, Arizona, and (b) the notice is given to the Owner of the Lot within one year following the expiration of the time limitation described in Section 12.2.1, or, if later, within one year following completion of the improvement, or (c) legal proceedings are instituted to enforce compliance or completion within the foregoing one-year period, the completed improvements shall be deemed to be in compliance with plans and specifications approved by the Design Review Committee and in compliance with the architectural standards of the Association and this Declaration.

12.2.4 Additional limitations and restrictions as the Design Review Committee in its reasonable discretion may adopt including, but not limited to, the regulation of all landscaping (including, but not limited to, absolute prohibition of certain types of landscaping, trees and plants), construction, reconstruction, exterior addition, change or alteration to or maintenance of any building, structure, wall or fence (including, but not limited to, limitation on the nature, kind, shape, height, materials, exterior color, surface texture, and location of any improvements).

12.3 General Provisions.

12.3.1 The Design Review Committee may assess reasonable fees in connection with its review of plans and specifications.

12.3.2 The Design Review Committee may delegate its plan review responsibilities, except final review and approval required by the Design Guidelines, to one or more of its members or architectural consultants retained by the Design Review Committee. Upon any delegation of responsibilities, the approval or disapproval of plans and specifications by the member or consultants shall be equivalent to approval or disapproval by the entire Design Review Committee.

12.3.3 The address of the Design Review Committee shall be the address established for giving notice to the Association, unless otherwise specified in the Design Guidelines. That address shall be the place for the submittal of plans and specifications and the place where the current Design Guidelines Unofficial Document are kept.

12.3.4 The establishment of the Design Review Committee and the procedures herein for architectural approval shall not be construed as changing any rights or restrictions upon Owners to maintain or repair their Lots otherwise specified in this Declaration, the Bylaws or Association Rules.

12.3.5 The Design Review Committee shall approve or disapprove any plans and specifications submitted to it in accordance with the Design Guidelines within any period as may be specified in the Design Guidelines.

12.4 Approval and Conformity of Plans. No building, fence, wall or other structure or improvement of whatever type shall be commenced, erected or maintained upon the Property, nor shall there be any addition to or change to the exterior of any residence or other structure or improvement upon a Lot or the landscaping, grading or drainage thereof, including, but not limited to, the painting (other than painting with the same color of paint as previously existed) of exterior walls, patio covers and fences, except in compliance with plans and specifications therefor which have been submitted to and approved by the Design Review Committee in accordance with the Design Guidelines as to harmony of external design and location in relation to surrounding structures and topography.

12.5 Non-Liability for Approval of plans. Plans and specifications shall be approved by the Design Review Committee as to style, exterior design, appearance and location, and are not approved for engineering design or for compliance with zoning and building ordinances (or other governmental requirements), and by approving the plans and specifications neither the Design Review Committee, the members thereof, the Association, any Owner, the President nor the Board assumes any liability or responsibility therefor, or for any defect in any structure constructed from the plans and specifications. Neither the Design Review Committee, any member thereof, the Association, the President, nor the Board shall be liable to any Owner or other Person for any damage, loss or prejudice suffered or claimed on account of (a) the approval or disapproval of any plans, drawings and specifications, whether or not defective, (b) the construction or performance of any work, whether or not pursuant to approved plans, drawings and specifications, (c) the development, or manner of development of any property within Estancia, or (d) the execution and filing of an estoppel certificate pursuant to the Design Guidelines, whether or not the facts therein are correct; provided, however, that the action, with the actual knowledge possessed by him, was taken in good faith. Approval of plans and specifications by the Design Review Committee is not, and shall not be deemed to be, a representation or warranty that said plans or specifications comply with applicable governmental ordinances or regulations including, but not limited to, zoning ordinances and building codes.

12.6 Inspection and Recording of Approval. Any member or authorized consultant of the Design Review Committee, or any authorized officer, director, employee or agent of the Association, may at any reasonable time enter, without being deemed guilty of trespass, upon any Lot after reasonable notice as provided herein to the Owner in order to inspect improvements constructed or being constructed on the Lot to ascertain that the improvements have been or are being built in compliance with the Design Guidelines and this Declaration. The Design Review Committee shall cause an inspection to be undertaken within 30 days of a request therefor from any Owner as to his Lot, and if the inspection reveals that the improvements located on the Lot have been completed in compliance with this Section 12 and the Design Guidelines, the Design Review Committee shall provide the Owner a notice of approval in recordable form which, when recorded, shall be conclusive evidence of compliance with the provisions of this Section 12 and the Design Guidelines as to the improvements described in the recorded notice, but as to the described improvements only.

12.7 Developer Review. Each Owner acknowledges that Developer, as the developer of the Property and as an owner of significant portions of the Property and the Project, Developer has a substantial interest in ensuring that the improvements within the Property enhance Developer's reputation as a community developer and do not impair Developer's ability to market, sell or lease its property. Notwithstanding anything contained herein to the contrary, until the Transition Date, Developer shall exercise all of the powers granted hereunder to the Design Review Committee through individuals appointed by Developer for such purpose including, but not limited to establishment of the Design Guidelines. Until the Transition Date or such earlier time as Developer delegates all or a portion of its design review powers to the Design Review Committee, the Association shall have no jurisdiction over architectural or design review matters. If Developer delegates all or a portion of its design review powers to the

Design Review Committee prior to the Transition Date, Developer shall give the Association at least thirty (30) days prior written notice of the delegation. Upon the expiration or relinquishment of Developer's rights under this Section, the Association, acting through the Design Review Committee, shall assume jurisdiction over architectural and design review matters. In exercising its powers under this Section 12.7, Developer shall be acting in its own interest as developer of the Project.

12.8 Reconstruction of Common Areas. The reconstruction of any Common Areas after destruction by casualty or otherwise which is accomplished in substantial compliance with "as built" plans for the Common Areas, shall not require compliance with the provisions of this Section 12 or the Design Guidelines.

12.9 Additional Powers of the Design Review Committee. The Design Review Committee may promulgate as a part of the Design Guidelines additional architectural and landscape standards, rules and regulations as it deems appropriate; provided the standards, rules and regulations are not in conflict with this Declaration or the architectural and landscape standards, rules and regulations promulgated by Developer in the exercise of its powers under Section 12.7. **WITHOUT LIMITING THE GENERALITY OF THE PRECEDING SENTENCE, THE DESIGN REVIEW COMMITTEE MAY FIX A FINE OF UP TO \$10,000 FOR FAILURE TO OBTAIN REQUIRED APPROVAL FROM THE DESIGN REVIEW COMMITTEE OR FOR FAILURE TO COMPLY WITH ANY APPROVAL OF THE DESIGN REVIEW COMMITTEE.**

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13. USE AND OCCUPANCY RESTRICTIONS.

13.1 Residential Use. Each Lot may be used only for residential purposes and none other. No business or commercial building may be erected on any Lot and no business or commercial enterprise or other non-residential use may be conducted on any part thereof. No temporary buildings, structures or trailers may be erected, placed or maintained on any Lot except as expressly permitted by, and in compliance with, the Design Guidelines. Nothing herein contained shall be deemed to limit Developer's rights as set forth in Section 16. The restriction on use of any Lot for business or commercial enterprise shall not prohibit an activity if it meets all of the following requirements: (a) is not apparent or detectable by sight, sound or smell from outside the Lot on which it occurs, (b) does not involve individuals coming onto the Lot who do not reside on the Lot or solicitation of residents of the Property by anyone, whether or not a resident, and (c) is consistent with the residential character of the Lot and the Property and not a nuisance, or a hazardous or offensive use, as may be determined in the sole discretion of the Board. By way of illustration, but not limitation, activities conducted from within a residence solely by telephone, facsimile, or computer, without the use of employees other than those who reside on the Lot, to outside parties off of the Property (or wholly without communication to outside parties) are not considered prohibited but the activity shall be prohibited if it involves or requires visits to the Lot by actual or prospective customers, clients, or patients, or by others (excluding once a day document delivery services such as Federal

Express), as a result of business activities by the Owner or Occupant of the Lot. Similarly, the fact that family members or other occupants of a residence are employed in business affairs within the Lot will not make such employment a prohibited business use of the Lot but visits to the Lot by employees who do not reside there shall be prohibited if the individuals are employed for the business purposes of the Owner or Occupant of the Lot. The scope of the types of activities that are prohibited by this Section may be clarified, supplemented and interpreted by the Board (or by Developer, prior to the Transition Date) from time to time, as it may choose in its sole discretion, so long as not materially inconsistent with the terms set forth above.

13.2 Violation of Law or Insurance. No Owner or Occupant shall permit anything to be done or kept in his Lot or in or upon any Common Areas which will result in the cancellation of insurance thereon or which would be in violation of any law.

13.3 Signs. No sign of any kind shall be displayed to the public view or from any Lot or any Common Areas without the approval of the Association or the Design Review Committee, except: (a) signs used by Developer or any Related Party in connection with the development and sale of Lots in the Property; (b) directional or promotional signs used by the Golf Club Owner in connection with the Golf Club Facilities; (c) signs required by legal proceedings, or the prohibition of which is precluded by law; or, (d) signs required for traffic control and regulation of Common Areas. No "For Sale" or "For Rent" sign may be posted on any Lot; provided, however, an Owner may, in accordance with applicable provisions of the Association Rules, be permitted to post or keep on record one "For Sale" or "For Rent" notice in a form approved by the Board in a location specified for that purpose by the Board, which may be in a Common Area, at the guard gate Unofficial Document Property, at the Visitor Center or any other location specified by the Board, rather than on the Owner's Lot. It is expected, but not required, that the Board will cause "For Sale" and "For Rent" notices to be kept on record at the gatehouse at the entrance to the Property.

13.4 Animals. No animals, including horses or other domestic farm animals, fowl or poisonous reptiles of any kind may be kept, bred or maintained in any Lot or in or upon any Common Area, except a reasonable number of commonly accepted household pets in accordance with the Association Rules. No animals shall be kept, bred or raised within the Property for commercial purposes. In no event shall any domestic pet be allowed to run free away from its owner's Lot without a leash, or so as to create a nuisance. Owners, Occupants or other Persons shall immediately clean up their animals' waste from the Common Areas and other portions of the Property. All domestic pets must be registered with the Association and shall have proof of proper immunization presented with their registration.

13.5 Nuisances. No Owner or Occupant shall permit or suffer anything to be done or kept about or within his Lot, or on or about the Property, which will obstruct or interfere with the rights of other Owners, Occupants or other individuals holding the right to use and enjoy the Common Areas, or annoy them by unreasonable noises or otherwise, nor will any Owner or Occupant commit or permit any nuisance or commit or suffer any illegal act to be committed

therein. Each Owner and Occupant shall comply with the Association Rules, the requirements of all health authorities and other governmental authorities having jurisdiction over the Property.

13.6 Boats and Motor Vehicles. Except as specifically permitted by the Association Rules, (a) no boats, trailers, buses, motor homes, campers or other vehicles shall be parked or stored in or upon the Common Areas or upon a Lot except within an enclosed garage or as permitted by the Design Guidelines; (b) no vehicle shall be repaired or rebuilt in any Lot or upon the Common Areas; and, (c) nothing shall be parked on the Private Streets except in parking areas designated by the Board. The Board may remove, or cause to be removed, any unauthorized vehicle at the expense of the owner of the vehicle in any manner consistent with law.

13.7 Lights. No spotlights, flood lights or other high intensity lighting shall be placed or utilized upon any Lot, which in any manner will allow light to be directed or reflected on the Common Areas, or any part thereof, or any other Lot, except as may be expressly permitted by the Association Rules or the Design Guidelines. No tennis courts may be lighted, except in accordance with the Design Guidelines and any rules and regulations by the Design Review Committee.

13.8 Antennas. No radio, television or other antennas of any kind or nature, or device for the reception or transmission of radio, microwave or other similar signals, shall be placed or maintained upon any Lot except as may be permitted by the Association Rules or in accordance with the Design Guidelines.

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13.9 Garbage. No garbage or trash shall be kept, maintained or contained in any Lot so as to be visible from another Lot or the Common Areas. No incinerators shall be kept or maintained in any Lot. No refuse pile, garbage or unsightly objects shall be allowed to be placed, accumulated or suffered to remain anywhere on a Lot.

13.10 Mining. No portion of the Property shall be used in any manner to explore for or remove any water, oil or other hydrocarbons or minerals of any kind or earth substance of any kind.

13.11 Safe Condition. Without limiting any other provision in this Section, each Owner shall maintain and keep his Lot at all times in a safe, sound and sanitary condition and repair and shall correct any condition or refrain from any activity which might interfere with the reasonable enjoyment by other Owners of their respective Lots or the Common Areas.

13.12 Fires. Other than barbecues, in properly constructed barbecue pits or grills, and firepits in compliance with the Association Rules and the Design Guidelines, or as otherwise expressly permitted in the Association Rules, no open fires shall be permitted on the Lots nor shall any other similar activity or condition be permitted which would tend to increase the insurance rates for the Common Area, or for other Owners.

13.13 Clothes Drying Area. No portion of any Lot shall be used as a drying or hanging area for laundry of any kind. All laundry facilities shall be provided within the buildings to be constructed on each Lot.

13.14 No Further Subdivision; Compounds. No Lot shall be divided or subdivided. An Owner may own more than one Lot which, if contiguous, may be combined into a single homesite with the consent of the City and the Design Review Committee; provided, however, that any combination of Lots shall not reduce or alter the voting rights obtained by ownership of each Lot nor shall it reduce or otherwise alter the amount which would have been assessed against the Owner of the Lots pursuant to the terms hereof in the absence of combination. The Owner of any combined Lots will be entitled to the rights of membership of one Membership for each such Lot. The Assessments attributable to each Lot shall be a lien, as provided in Section 7, upon the entire combination of Lots held by the Owner. Notwithstanding anything herein to the contrary, the Owners of two or more contiguous Lots may, with the consent of the City and the Design Review Committee, replat the Owners' Lots as a Compound which may include and provide for the construction of common recreation facilities on such Lots, including, for example, a tennis court or swimming pool, in accordance with the Design Guidelines. The lien provided in Section 7 as to each replatted Lot shall also extend to the Owner's interest in any common facilities constructed on the Lots. If one Owner wishes to combine Lots, or if two or more Owners wish to replat Lots as a Compound, in such manner that it eliminates the need for a portion of the Common Areas owned by the Association (for example, where a cul-de-sac is no longer necessary), and if the combination or Compound and abandonment of Common Areas is approved by the Design Review Committee and the City, then that portion of the Common Areas may be deeded by the Association to the Owner or Owners as the Association (and the City, if its consent is required) may specify. Notwithstanding the foregoing, Developer may amend any Plat prior to the date when any Lot within the Plat has been sold by Developer and may adjust the Lot boundaries on any Plat (even after a Lot within the Plat has been sold) for any Lots not yet sold, provided the adjustment does not materially affect the total number of Lots on the affected Plat.

13.15 No Obstructions to Drainage. No Owner shall erect, construct, maintain, permit or allow any fence or other improvement or other obstruction which would interrupt the normal drainage of the land or within any area designated on a Plat, or other binding document, as a "drainage easement" or similar designation, except that, with the prior consent of the City and the Design Review Committee, non-permanent structures, including fences, may be erected in those areas which contain only underground closed conduit storm drainage facilities.

13.16 Entrance Gates. Subject to the easements created in Section 5, the Association shall from time to time determine who may have access through the entrance gates to the Project onto the Private Roads. Developer reserves the unrestricted right of entry and use of such roads for its successors in interest as to any other property in the Project owned by Developer or a Related Party and for their employees, agents, invitees, licensees, and guests. Subject to Section 5, the Association may make reasonable rules relating to the right of entry through the entrance gates, but none restricting entry to Owners or Occupants or their tenants and guests or to

prospective purchasers of homes or Lots invited by an Owner. Subject to Section 5, any entrance gate may be abandoned, or its hours of manned operation reduced to less than 24 hours per day, at the discretion of the Association.

13.17 Use of Lots. An Owner shall be responsible for assuring compliance by any Occupants of his Lot including, but not limited to, any lessee or other Person who the Owner allows to use his Lot with all of the provisions of this Declaration, the Articles, Bylaws, Association Rules or Design Guidelines, all as amended and supplemented from time to time, and shall be jointly and severally responsible for any violations of this Declaration, the Articles, Bylaws, Association Rules or Design Guidelines by the lessee or other Person.

13.18 Golf Carts. The use of golf carts and similar vehicles is prohibited on the Private Roads (other than incidentally crossing the Private Roads in the course of play on the Golf Course).

13.19 Enforcement. The Association and its authorized agents may enter any Lot in which a violation of these restrictions exists and may correct the violation at the expense of the Owner of the Lot. Any expenses, and any fines imposed pursuant to the Bylaws, Association Rules or Design Guidelines, shall be a Special Assessment secured by a lien upon the Lot enforceable in accordance with the provisions of Section 7. All remedies described in Section 17 and all other rights and remedies available at law or equity shall be available in the event of any breach by any Owner, Occupant or other Person of any provision of this Section 13.

13.20 Recycling Programs. The Board Unofficial Document shall establish a recycling program and recycling center within the Property. The Association may, but shall have no obligation to, purchase recyclable materials in order to encourage participation in the recycling program and any income received by the Association as a result of the recycling efforts shall be used to reduce Common Expenses.

13.21 Modification. Subject to Section 5, the Board may modify or waive the foregoing restrictions or otherwise restrict and regulate the use and occupancy of the Property and the Lots by reasonable rules and regulations of general application adopted by the Board from time to time which shall be incorporated into the Association Rules.

14. RIGHTS OF MORTGAGEES.

14.1 General Provisions. Notwithstanding and prevailing over any other provisions of this Declaration, the Articles, Bylaws, Association Rules or Design Guidelines, the following provisions shall apply to and benefit each holder of a Mortgage upon a Lot.

14.2 Liability for Assessments. A Mortgagee who comes into possession or becomes record Owner of a mortgaged Lot by virtue of foreclosure of the Mortgage, or through any equivalent proceedings such as but not limited to the taking of a deed or assignment in lieu of

foreclosure or acquiring title at a trustee's sale under a first deed of trust, and any third-party purchaser at a foreclosure sale or trustee's sale (a "Successor Owner"), will not be liable for the Lot's unpaid dues, charges or Assessments which accrued prior to the time the Successor Owner comes into possession of the Lot or becomes record Owner of the Lot, whichever occurs first. In addition, a Successor Owner shall acquire title free and clear of any lien authorized by or arising out of the provisions of this Declaration which secures the payment of any dues, charges or Assessments accrued prior to the time the Successor Owner either comes into possession of the Lot or becomes record Owner of the Lot. Any unpaid dues, charges or Assessments against the foreclosed Lot shall be deemed to be a Common Expense charged proratably against all of the Owners. Nevertheless, in the event the Owner against whom the original Assessment was made is the purchaser or redemptionor, the lien shall continue in effect and may be enforced by the Board, for the Lot's Assessment that was due prior to the final conclusion of the foreclosure or equivalent proceedings. Further, any unpaid Assessment shall continue to exist as the personal obligation of the defaulting Owner of the Lot, and the Board may use reasonable efforts to collect unpaid Assessments from the Owner even after he is no longer the Owner of the Lot.

14.3 No Personal Liability. A Mortgagee shall not in any case or manner be personally liable for the payment of any Assessment or charge, nor the observance or performance of any covenant, restriction, or rule and regulation of the Association, or any provision of the Articles or Bylaws, or any management agreement, except for those matters which are enforceable by injunctive or other equitable actions, not requiring the payment of money, except as specifically provided in this Section 14.

14.4 Enforcement After Foreclosure Unofficial Document An action to abate the breach of any of these covenants, conditions, restrictions, and reservations may be brought against any purchaser who has acquired title through foreclosure of a Mortgage and the subsequent foreclosure or trustee's sale (or through any equivalent proceedings), and the successors in interest to the purchaser, even though the breach existed prior to the time the purchaser acquired an interest in the Lot.

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

14.6 Subject to Declaration. At such time as a Mortgagee comes into possession of or becomes record Owner of a Lot, the Mortgagee shall be subject to all of the terms and conditions of this Declaration including, but not limited to, the obligation to pay all Assessments and charges accruing thereafter, in the same manner as any other Owner.

15. ANNEXATION OF ADDITIONAL PROPERTY.

Additional real property may be annexed to and become subject to this Declaration as hereinafter set forth in this Section 15.

15.1 Development of the Project. Developer intends to develop the Project sequentially on a phased basis. Developer may, however, elect not to develop all or any part of the additional real property anticipated to be included within the Project, to annex the real property to this Declaration in increments of any size whatsoever, or to develop more than one such increment at any given time and in any given order. Moreover, Developer reserves the right to subject all or any portion of the Project (other than the Property) to the plan of this Declaration or to one or more separate declarations of covenants, conditions and restrictions which subjects said property to the jurisdiction and powers of a homeowner association or other entity with powers and obligations similar to the Association and which is not subject to the provisions of this Declaration. Although Developer shall have the ability to annex additional property as provided in this Section 15, Developer shall not be obligated to annex all or any portion of any property presently contemplated or intended to be included within the Project, and such property shall not become subject to this Declaration except as provided in this Section 15.

15.2 Supplemental Declarations. A Supplemental Declaration shall be a writing in recordable form which annexes additional real property (the "Annexation Property") to the plan of this Declaration and which incorporates by reference all of the covenants, conditions, restrictions, easements and other provisions of this Declaration. Supplemental Declarations may contain such complementary additions and Unofficial Document modifications of the covenants, conditions and restrictions contained in this Declaration as may be necessary to reflect the different character, if any, of the Annexation Property and as are not materially inconsistent with the plan of this Declaration. In no event, however, shall any Supplemental Declaration revoke, modify or add to the covenants established by this Declaration with respect to any portions of the Property already subject to this Declaration. The recordation of a Supplemental Declaration shall constitute and effectuate the annexation of the Annexation Property described therein, making the Annexation Property subject to this Declaration and subject to the functions, powers and jurisdiction of the Association. After annexation, the Annexation Property shall be part of the Property for all intents and purposes of this Declaration and all of the Owners of Lots in the Annexation Property shall automatically be Owners and Members in accordance with Section 3.

15.3 Annexation Without Approval of Association. Developer shall have the sole right (with the consent of the other owner(s) of the additional property if Developer does not own the additional property) to annex additional property to this Declaration as provided in this Section 15, whether or not the additional property is part of the property anticipated to be part of the Project. Developer may annex additional real property to this Declaration without the approval, assent or vote of the Association or its Members by recordation of a Supplemental Declaration covering the property.

16. EXEMPTION OF DEVELOPER FROM RESTRICTIONS.

Notwithstanding anything contained in this Declaration to the contrary, none of the restrictions contained in this Declaration shall be construed or deemed to limit or prohibit any act of Developer, any Related Party, the Golf Club Owner, or their employees, agents and subcontractors, or parties designated by them in connection with the construction, completion, sale or leasing of the Lots, Common Areas, the Property or other property owned by Developer (whether or not annexed to this Declaration) or in connection with the construction or completion of the Golf Club Facilities or promotion and sales of memberships to the Golf Club Facilities.

17. REMEDIES.

17.1 General Remedies. In the event of any default by any Owner, Occupant or other Person under the provisions of this Declaration, the Articles, Bylaws, Association Rules or Design Guidelines, the Association, and its successors or assigns, and its agents, and Developer, shall have each and all of the rights and remedies which may be provided for in this Declaration, the Articles, Bylaws, Association Rules or Design Guidelines, or which may be available at law or equity, and may prosecute any action or other proceedings against the defaulting Owner, Occupant or other Persons for an injunction, whether affirmative or negative, or for enforcement or foreclosure of the lien herein provided and the appointment of a receiver for the Lot, or for damages, or specific performance, or for judgment for payment of money and collection thereof, or the right to take possession of the Lot and to rent the Lot and apply the rents received to payment of unpaid Assessments and interest Unofficial Document thereon, and to sell the Lot as provided in this Section 17.1, or for any combination of remedies or for any other relief, all without notice and without regard to the value of the Lot or the solvency of the Owner. The proceeds of any such rental or sale shall first be paid to discharge court costs, other litigation costs including, but not limited to, reasonable attorneys' fees, and all other expenses of the proceeding and sale, and all such items shall be taxed against the defaulting Owner in a final judgment. Any balance of proceeds after satisfaction of charges and any unpaid Assessments hereunder or any liens shall be paid to the Owner. Upon the confirmation of the sale, the purchasers thereupon shall be entitled to a deed to the Lot and to immediate possession of the Lot, and it shall be a condition of any such sale, and the judgment shall so provide, that the purchaser shall take the interest in the property sold subject to this Declaration.

17.2 Rights of Golf Club Owner. Developer and each Owner and Occupant acknowledge that this Declaration is intended to be relied upon by the Golf Club Owner and the Golf Club Owner is an express beneficiary of this Declaration. In the event of any default by any Owner, Occupant or other Person of Section 5 or any other provisions which materially affect the Golf Club Owner, the Golf Club Owner shall have each and all of the rights and remedies which may be available to the Golf Club Owner hereunder or at law or equity, including, but not limited to, an action or other proceedings for an injunction, whether affirmative or negative, or for damages, or specific performance. If the Golf Club Owner prevails in any action or proceeding to enforce this Declaration described or permitted by this

Section 17.2, all expenses of the Golf Club Owner in connection with the action or proceeding, including court costs and reasonable attorneys' fees and other fees and expenses together with interest thereon until paid at the Default Rate of Interest, shall be charged to the defaulting Owner.

17.3 Expenses of Enforcement. All expenses, if any, of the Association and Developer in connection with any action or proceeding described or permitted by this Section 17, including court costs and reasonable attorneys' fees and other fees and expenses, and all damages, liquidated or otherwise, together with interest thereon until paid at the Default Rate of Interest, shall be charged to and assessed against the defaulting Owner and shall be a Special Assessment against such Owner and the Association shall have a lien as provided in Section 7 therefor. In the event of any such default by any Owner the Association and Developer, and the manager or managing agent of the Association, if so authorized by the Board, shall have the authority to correct the default and to do whatever may be necessary to correct the default, and all expenses in connection therewith shall be charged to and assessed against such defaulting Owner as a Special Assessment, which shall constitute a lien against the defaulting Owner's Lot as provided in Section 7. Any and all such rights and remedies may be exercised at any time and from time to time, cumulatively or otherwise, by the Association and Developer.

17.4 Legal Action. In addition to any other remedies available under this Section 17, if any Owner (either by his conduct or by the conduct of any Occupant of his Lot or family member, guest, invitee or agent) shall violate any of the provisions of this Declaration, or the Articles, Bylaws, Association Rules or Design Guidelines, as then in effect, then the Association and Developer, shall have the power to file ^{Unofficial Document} against the defaulting Owner or Member for a judgment or injunction against the Owner requiring the defaulting Owner to comply with the provisions of this Declaration, or the Articles, Bylaws, Association Rules or Design Guidelines, and granting other appropriate relief, including money damages.

17.5 Effect on Mortgage. Anything to the contrary herein notwithstanding, any breach of any of the covenants, restrictions, reservations, conditions and servitudes provided for in this Declaration, or any right of re-entry by reason thereof, shall not defeat or adversely affect the lien of any Mortgage upon any Lot but, except as herein specifically provided, each and all of said covenants, restrictions, reservations, conditions and servitudes shall be binding upon and effective against any lessee or Owner of a Lot whose title thereto is acquired by foreclosure, trustee's sale, sale, deed in lieu of foreclosure or otherwise.

17.6 Limitation on Developer's Liability. Notwithstanding anything to the contrary herein, it is expressly agreed that neither Developer (including, but not limited to, any assignee of the interest of Developer hereunder) nor any member in Developer (or in any such assignee) shall have any personal liability to the Association, or any Owner or other Person, arising under, in connection with, or resulting from (including, but not limited to, resulting from action or failure to act with respect to) this Declaration except, in the case of Developer (or its assignee) to the extent of its interest in the Property, and, in the case of a member in Developer (or in any such assignee), his interest in Developer (or such assignee), and, in the event of a judgment

against Developer (or any member or assignee thereof), no execution or other action shall be sought or brought thereon against any other assets, nor be a lien upon the other assets, of the judgment debtor.

18. AMENDMENT.

18.1 Amendment to Declaration. Amendments to this Declaration shall be made by an instrument in writing entitled "Amendment to Declaration" which sets forth the entire amendment. Except as otherwise specifically provided for in this Declaration, any proposed amendment must be approved by a majority of the Board prior to its adoption by the Members. Amendments may be adopted at a meeting of the Members upon the approval thereof of two-thirds of all of the Members or without any meeting if all Members have been duly notified and if two-thirds of all of the Members consent in writing to such amendment. In all events, the amendment when adopted shall bear the signature of the President and shall be attested by the secretary, who shall verify that the amendment was properly adopted, and shall be acknowledged by them as officers of the Association. Amendments once properly adopted shall be effective upon recording in the Maricopa County Recorder's office.

18.2 Effect of Amendment. It is specifically covenanted and agreed that any amendment to this Declaration properly adopted will be completely effective to amend any and all of the covenants, conditions and restrictions contained herein which may be affected and any or all clauses of this Declaration, unless otherwise specifically provided in the Section being amended or the amendment itself.

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18.3 Required Approvals. Notwithstanding the provisions of the foregoing sections of this Section 18:

(a) If this Declaration or any applicable provision of law requires the consent or agreement of all Members and/or all Owners and/or all lienholders and all trustees and/or beneficiaries under trust deeds, or a specified percentage thereof, for any action specified in this Declaration, then any instrument changing, modifying or rescinding any provision of this Declaration with respect to the action shall be signed by all of the Members and/or all Owners and/or all lienholders and trustees and/or beneficiaries under trust deeds, or the specified percentage thereof, as required by this Declaration or by law.

(b) Until the Transition Date, this Declaration may not be amended by the Members pursuant to Section 18.1 without the written consent of Developer, which may be withheld for any reason.

(c) The following provisions of this Declaration may not be amended at any time without the consent of Developer: Sections 4.5, 16, and 18.4.

(d) The following provisions of this Declaration may not be amended at any time in any manner which materially changes or reduces any rights of the Golf Club Owner without the approval of the Golf Club Owner: Sections 4.5 (to restrict the easement rights created thereunder to the extent the rights benefit the Golf Club Facilities), 5.1 through 5.8 (in any manner which restricts or materially alters any rights granted thereunder appurtenant to the Golf Club Facilities), 16 (to subject the Golf Club Facilities or the Golf Club Owner to any restrictions contained in this Declaration), this Section 18.3 and any other Sections which materially affect the Golf Club Facilities (in any manner which restricts or materially alters any rights granted thereunder appurtenant to the Golf Club Facilities).

18.4 Developer's Right to Amend. Notwithstanding any other provision of this Section 18, until the Transition Date, Developer reserves the right to amend this Declaration without the approval of the Board or the Members; and provided, further, that after the conveyance of the first Lot to an Owner, Developer may not amend the following provisions of this Declaration without the approval of the Members as provided in Section 18.1: Sections 3.2 (to change the number of Memberships attributable to each Lot or to change the number of votes for each Lot or Membership), 7.3.4 (to increase the cap on increases in Regular Assessments), the second sentence of Section 7.5, and this Section 18.4 (to delete any references to Sections which require the approval of the Members to amend).

19. GENERAL PROVISIONS.

19.1 Notices. Notices provided for ^{Unofficial Document} Declaration, or the Bylaws or Association Rules, shall be in writing and shall be addressed to the Association at the address specified in the Bylaws. The Association may designate a different address or addresses for notice by giving written notice of change of address to all Owners and the Golf Club Owner. All notices to Owners shall be to their respective Lots or to the last address shown on the records of the Association. All notices to the Golf Club Owner shall be to its last address shown on the records of the Association. Notices addressed as above shall be deemed delivered when mailed by United States mail, or when delivered in person with written acknowledgement of the receipt thereof.

19.2 Captions and Exhibits; Construction. Captions given to various Sections herein, and the Table of Contents for this Declaration, are for convenience only and are not intended to modify or affect the meaning of any of the substantive provisions hereof. The various exhibits referred to herein are incorporated as though fully set forth where such reference is made. The provisions of this Declaration shall be liberally construed to effectuate its purpose of creating a uniform plan for the development and operation of the Property as hereinabove set forth.

19.3 Severability. If any provision of this Declaration, the Articles, Bylaws, Association Rules or Design Guidelines, or any section, clause, sentence, phrase or word, or the application thereof in any circumstance, is held invalid, the validity of the remainder of this

Declaration, the Articles, Bylaws, Association Rules or Design Guidelines, and of the application of any such provision, section, sentence, clause, phrase or word in any other circumstances, shall not be affected thereby, and the remainder of this Declaration, the Articles, Bylaws, Association Rules or Design Guidelines shall be construed as if such invalid part were never included therein.

19.4 Rule Against Perpetuities. If any of the options, privileges, covenants or rights created by this Declaration shall be unlawful, void or voidable for violation of the rule against perpetuities, then the provision shall continue until 21 years after the death of the survivor of the now living descendants of President William Clinton, United States Senator John McCain and United States Senator Jon Kyl.

19.5 Mortgage of Lots. Each Owner shall have the right, subject to the provisions hereof, to make separate Mortgages for his respective Lot.

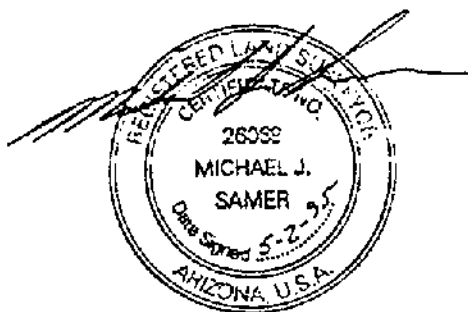
19.6 Power of Attorney. Whenever the Association is granted rights, privileges or duties in this Declaration, the Board shall have the authority to act for the Association. Further, unless otherwise specifically restricted by the provisions of this Declaration, wherever the Association is empowered to take any action or do any act including, but not limited to, actions in connection with the Common Areas or sale thereof, which may at any time be deemed to require the act of an Owner, the Owners and each of them hereby constitute and appoint the Association as their attorney-in-fact, as may be appropriate, for the purposes of taking such action or doing such acts including, but not limited to, executing, acknowledging and delivering any instruments or documents necessary, ^{Unofficial Document} appropriate or helpful for such purposes. It is acknowledged that this power of attorney is irrevocable and coupled with an interest and by the acceptance of a deed for a Lot or by signing a contract for purchase of a Lot or by succeeding in any other manner to the ownership of a Lot, or any interest therein, each Owner and Member shall be deemed and construed to have ratified and expressly granted the above power of attorney.

20. RIGHTS AND OBLIGATIONS.

Each grantee of Developer, by the acceptance of a deed of conveyance, and each purchaser under any contract for a deed of conveyance, and each purchaser under any agreement of sale, and the heirs, successors and assigns of the foregoing Persons, accepts the grant, conveyance or agreement subject to all restrictions, conditions, covenants, reservations, liens and charges, and the jurisdiction, rights and powers created or reserved by this Declaration, and all rights, benefits and privileges of every character hereby granted, created, reserved or declared. Further, all impositions and obligations imposed by this Declaration shall be deemed and taken to be covenants running with the land and equitable servitudes, and shall bind any Person having at any time any interest or estate in the Property, and shall inure to the benefit of any such Person in like manner as though the provisions of this Declaration were recited and stipulated

EXHIBIT "A"

Lots 1 through 75, inclusive, and Tracts "A" through "C", inclusive, and Tracts "CA1" through "CA13", inclusive, of Estancia-Phase 1 as shown on the plat recorded in Book 398, at page 06, Instrument No. 95-317355 in the Official Records of Maricopa County, Arizona.



Project: 1100060
May 2, 1995

ESTANCIA - VISITORS CENTER DESCRIPTION

A portion of the Southwest 1/4 of Section 29, T.5N., R.5E., G.&S.R.B.&M., Maricopa County, Arizona, more particularly described as follows:

Commencing at the South 1/4 corner of said Section 29;
 thence N.89°57'56"E., 908.80 feet along the South section line of said Section 29;
 thence N.00°02'04"W., 50.20 feet to the True Point of Beginning;
 thence N.75°58'36"W., 71.19 feet to a Point of Curve, the central point bears
 S.14°01'24"W., 845.00 feet from said Point of Curve;
 thence westerly along said curve being concave to the south through a central angle of
 19°11'18", an arc length of 282.99 feet, having chord data of N.85°34'15"W.,
 281.67 feet to its Point of Tangency;
 thence S.84°50'06"W., 209.83 feet to a Point of Curve, the central point bears
 N.05°09'54"W., 205.17 feet from said Point of Curve;
 thence northwesterly along said curve being concave to the northeast through a central angle
 of 90°59'54", an arc length of 325.86 feet, having chord data of N.49°39'57"W.,
 292.67 feet to its Point of Tangency;
 thence N.04°10'00"W, 0.50 feet to a Point of Curve, the central point bears N.85°50'00"E.,
 20.00 feet from said Point of Curve;
 thence northeasterly along said curve being concave to the southeast through a central angle
 of 85°41'56", an arc length of 29.91 feet, having chord data of N.38°40'58"E.,
 27.20 feet;
 thence N.04°10'00"W., 40.11 feet to a Point on a Curve, the central point bears
 N.00°08'05"E., 20.00 feet from said Point on a Curve;
 thence northwesterly along said curve being concave to the northeast through a central angle
 of 85°41'55", an arc length of 29.91 feet, having chord data of N.47°00'58"W.,
 27.20 feet to its Point of Tangency;
 thence N.04°10'00"W., 26.71 feet to a point on the southern right-of-way line of Dynamite
 Boulevard as platted in Book 312, Page 43, Records of Maricopa County, Arizona;
 thence N.85°50'00"E., along said southern right-of-way line, 791.63 feet;
 thence S.00°02'04"E., 373.69 feet to the True Point of Beginning.

Containing 239,528 square feet or 5.50 acres and being subject to any easements, restrictions or right-of-way of record or otherwise.