up to the Maximum Annual Assessment for that year and the revised Annual Assessment for that Assessment Period shall commence on the date designated by the Board.

6.2.3 The maximum Annual Assessment (the ***"Maximum Annual Assessment"***) for each fiscal year of the Association shall be as follows:

(i) Until January 1 of the year immediately following the conveyance of the first Lot to a Purchaser, the Maximum Annual Assessment for each Lot shall be Six Hundred Dollars ($600.00).

(ii) From and after January 1 of the year immediately following the conveyance of the first Lot to a Purchaser, Maximum Annual Assessment during each fiscal year of the Association shall automatically increase by the greater of: (a) five percent (5%) of the Maximum Annual Assessment for the immediately preceding fiscal year or (b) an amount based upon the percentage increase in the Consumer Price Index for All Urban Consumers (CPI-U) U.S. City Average (1982-1984=100), issued by the United States Department of Labor, Bureau of Labor Statistics (the "Consumer Price Index"), which amount shall be computed in the last month of each fiscal year in accordance with the following formula:

X=Consumer Price Index for September of the calendar year immediately preceding the year in which the Annual Assessments commenced.

Y= Consumer Price Index for September of the calendar year immediately preceding the calendar year for which the Maximum Annual Assessments is to be determined.

$\frac{Y-X}{X}$ multiplied by the Maximum Annual Assessment for the then current fiscal year

= the amount by which the Maximum Annual Assessment may be increased.

In the event the Consumer Price Index ceases to be published, then the index which shall be used for computing the increase in the Maximum Annual Assessment permitted under this Section 6.2.3 shall be the substitute recommended by the United States government for the Consumer Price Index or, in the event no such successor index is recommended by the United States government, the index selected by the Board.

(iii) From and after January 1 of the year immediately following the conveyance of the first Lot to a Purchaser, the Maximum Annual Assessment may be increased by an amount greater than the amount established under Section 6.2.3(ii) above, only by a majority vote of each class of Members who are voting in person or by proxy at a meeting duly called for such purpose.

(iv) Irrespective of the Maximum Annual Assessment established pursuant to this Section 6.2.3, in no event may the Association impose an Annual Assessment for any Assessment Period that is more than twenty percent (20%) greater than the immediately

preceding Assessment Period's Annual Assessment without the approval of a majority of the Members of the Association.

6.3 ***Rate of Assessment.*** Except for Lots owned by Declarant, the Owner of each Lot shall bear an equal share of each Annual or Special Assessment. The Annual Assessment for Lots owned by Declarant shall be an amount equal to twenty-five percent (25%) of the Annual Assessment levied against Lots owned by Owners other than Declarant. If a Lot ceases to qualify for the twenty-five percent (25%) rate of assessment during the period to which an Annual Assessment is attributable, the Annual Assessment shall be prorated between the applicable rates on the basis of the number of days in the Assessment Period that the Lot qualified for each rate.

6.4 ***Obligation of Declarant for Deficiencies.*** So long as there is a Class B membership in the Association, and unless Declarant elects to pay full Assessments for its Lots, in which event this obligation to pay Common Expense shortfall shall not apply to such Lots, Declarant shall pay and contribute to the Association, within thirty (30) days after the end of each fiscal year of the Association, or at such other times as may be requested by the Board, such funds as may be necessary when added to the Annual Assessments levied by the Association to pay all Common Expenses of the Association as they become due.

6.5 ***Special Assessments.*** In any Assessment Period, the Association may levy a Special Assessment against each Lot for the purpose of defraying, in whole or in part, the cost of any construction, reconstruction, repair or replacement of an Improvement on the Common Area or in an Area of Association Responsibility, including fixtures and personal property related thereto, provided that any Special Assessment shall have the assent of Declarant, while Class B membership exists, and two-thirds (2/3) of the votes entitled to be cast by Class A Members who are voting in person or by proxy at a meeting duly called for this purpose.

6.6 ***Assessment Period.*** The period for which the Annual Assessment is to be levied shall be the calendar year, except that the first Assessment Period, and the obligation of the Owners to pay an Annual Assessment shall commence upon the conveyance of the first Lot to a Purchaser and terminate on December 31 of such year. The Board in its sole discretion from time to time may change the Assessment Period.

6.7 ***Commencement Date of Assessment Obligation.*** All Lots shall be subject to assessment upon the conveyance of the first Lot to a Purchaser.

6.8 ***Rules Regarding Billing and Collection Procedures.*** Annual Assessments shall be collected on a monthly basis or such other basis as may be selected by the Board (but no less frequently than quarterly). Special Assessments may be collected as specified by the Board. The Board shall have the right to adopt Rules setting forth procedures for levying Assessments and for the billing and collection thereof provided that the procedures are not inconsistent with the provisions of this Declaration, the Articles or Bylaws. The failure of the Association to send a bill to a Member shall not relieve any Member of his liability for any Assessment or charge under this the Project Documents, but the Assessment Lien therefor shall not be foreclosed until the Member has been given not less than thirty (30) days' written notice prior to such foreclosure

that the Assessment or any installation thereof is or will be due and of the amount owing. Such notice may be given at any time prior to or after delinquency of such payment. The Association shall be under no duty to refund any payments received by it even though the ownership of a Lot changes during an Assessment Period, but successor Owners of Lots shall be given credit for prepayments, on a prorated basis, made by prior Owners.

6.9 Effect of Nonpayment of Assessments; Association Remedies.

6.9.1 Any Assessment, or any installment of an Assessment, not paid within thirty (30) days after the Assessment or any installment thereof first became due, shall bear interest from the original due date at the rate of twelve percent (12%) per annum or the prevailing VA/FHA interest rate for new homes, whichever is higher. In addition to or in lieu of delinquent interest, the Board may establish a late fee to be charged to any Owner who has not paid any Assessment or installment thereof or any other charges payable to the Association pursuant to the Project Documents. In said event, the late charge shall automatically attach to the Assessment within thirty (30) days after such Assessment was first due in an amount not to exceed the limitations of A.R.S. §33-1803, as amended from time to time.

6.9.2 The Association shall have an Assessment Lien on each Lot for: (i) all Annual or Special Assessments levied against the Lot; (ii) all interest, lien fees, late charges, fines, penalties and other fees and charges assessed against the Lot or payable by the Owner of the Lot; (iii) all attorney fees, court costs, title report fees, costs and fees charged by any collection agent either to the Association or to an Owner and any other fees or costs incurred by the Association in attempting to collect Assessments or other amounts due to the Association by the Owner of a Lot; (iv) any amounts payable to the Association pursuant to Section 7.3 or 7.4 of this Declaration; and (v) any other amounts payable to the Association pursuant to the Project Documents. The Recording of this Declaration constitutes record notice and perfection of the Assessment Lien. The Association may, at its option, record a Notice of Lien setting forth the name of the delinquent Owner as shown in the records of the Association, the legal description or street address of the Lot against which the Notice of Lien is Recorded and the amount claimed to be past due as of the date of the Recording of the Notice, including interest, late charges, lien recording fees and reasonable attorneys' fees. Before Recording any Notice of Lien against a Lot, the Association shall make a written demand to the defaulting Owner for payment of the delinquent amounts. The demand shall state the date and amount of the delinquency and a statement as to the nature of the amounts due. Each default shall constitute a separate basis for a demand, but any number of defaults may be included within a single demand. If the delinquency is not paid within thirty (30) days after delivery of the demand, the Association may proceed with Recording a Notice of Lien against the Lot. If the Association Records a Notice of Lien, the Association may charge the Owner of the Lot against which the Notice of Lien is Recorded a lien fee in an amount to be set from time to time by the Board.

6.9.3 Except as may be otherwise provided by Arizona law, the Assessment Lien shall have priority over all liens or claims except for: (i) tax liens for real property taxes; (ii) assessments in favor of any municipal or other governmental body; and (iii) the lien of any First Mortgage. Any First Mortgagee or other Person acquiring title or coming into possession of a Lot through foreclosure of the First Mortgage, purchase at a foreclosure sale or trustee sale,

or through any equivalent proceedings, such as, but not limited to, the taking of a deed in lieu of foreclosure, shall acquire title free and clear of any claims for unpaid Assessments and charges against the Lot which became payable prior to the acquisition of such Lot by the First Mortgagee or other Person. Any Assessments and charges against the Lot which accrue prior to such sale or transfer shall remain the obligation of the defaulting Owner of the Lot.

6.9.4 Except as may be otherwise provided by Arizona law or in this Declaration, the Association shall not be obligated to release the Assessment Lien until all delinquent Assessments, including, without limitation, interest, late charges, lien fees, fines, penalties, reasonable attorneys' fees, court costs, collection costs and all other sums payable to the Association by the Owner of the Lot have been paid in full.

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

6.10 ***Evidence of Payment of Assessments.*** Upon receipt of a written request by a Member or other Person, and within a reasonable period of time thereafter (but not to exceed fifteen (15) days or such earlier time period as may be established under A.R.S. §33-1807 from time to time), the Association shall issue to such Member or other Person a written certificate stating that all Assessments, interest, late charges, lien fees, fines, penalties, and other fees and costs have been paid with respect to any specified Lot as of the date of such certificate, or if all Assessments or other charges have not been paid, the amount of such Assessments or other charges due and payable as of such date. The Association may make a reasonable charge for the issuance of such certificates, which charges must be paid at the time the request for any such certificate is made. Any such certificate, when duly issued as herein provided, shall be conclusive and binding with respect to any matters therein stated as against the Association, every Owner, and the bona fide Purchaser or Person acquiring the Lot in question, and any First Mortgagee thereof, if the statement is requested by an escrow agency that is licensed pursuant to Title 6, Chapter 7. In addition to the foregoing information, the Association shall also provide such information to prospective Purchasers as may be requested by a Member for purposes of complying with A.R.S. §33-1806, as amended from time to time, in the event of a resale of a Lot, and the Association may charge a reasonable fee for such services as determined by the Board from time to time.

6.11 ***Purposes for which Association's Funds May Be Used.*** The Association shall apply all funds and property collected and received by it (including Assessments, fees, loan proceeds, surplus funds and property from any other source) for the common good and benefit of the Project and the Owners and Residents by devoting said funds and property, among other things, to the acquisition, construction, alteration, maintenance, provision and operation, by any manner or method whatsoever, of any and all land, properties, Improvements, facilities, services,

projects, programs, studies and systems, within or without the Project, which may be necessary, desirable or beneficial to the general common interests of the Project, the Owners and Residents. The following are some, but not all, of the areas in which the Association may seek to aid, promote and provide for such common benefit: social interaction among the Residents, maintenance of landscaping in Areas of Association Responsibility, recreation, insurance, communication, education, transportation, health, utilities, public services, safety and indemnification of officers and directors of the Association. The Association may also expend its funds for any purpose for which a nonprofit corporation may expend funds under the laws of the State of Arizona.

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

6.13 ***Working Capital Fund.*** To insure that the Association shall have adequate funds to meet its expenses or to purchase necessary equipment or services, each Purchaser of a Lot from the Declarant shall pay to the Association immediately upon becoming the Owner of the Lot a sum equal to one-sixth (1/6th) of the current Annual Assessment for the Lot. Funds paid to the Association pursuant to this Section 6.13 may be used by the Association for payment of operating expenses or any other purpose permitted under the Project Documents. Payments made pursuant to this Section shall be nonrefundable and shall not be considered as an advance payment of any Assessments levied by the Association pursuant to this Declaration.

6.14 ***Transfer Fee.*** Each Purchaser of a Lot from any Owner other than Declarant shall pay to the Association immediately upon becoming the Owner a transfer fee in such amount as is established from time to time by the Board.

6.15 ***No Offsets.*** All Assessments and other amounts payable to the Association shall be payable in accordance with the provision of the Project Documents, and no offsets against such Assessments or other amounts shall be permitted for any reason, including, without limitation, a claim that the Association is not properly exercising its duties and powers as provided in the Project Documents.

6.16 ***No Exemption of Owners.*** No Owner of a Lot may exempt himself from liability for Assessments levied against his Lot or for other amounts which he may owe to the Association under the Project Documents by waiver and non-use of any of the Common Area facilities or by abandonment of his Lot.

6.17 ***Maintenance of Reserve Fund.*** Out of the Annual Assessments, the Association shall establish and maintain an adequate reserve fund for the periodic maintenance, repair and replacement of Improvements to the Common Area and other Areas of Association Responsibility.

6.18 ***Notice and Quorum for any Action Under Sections 6.2 or 6.5.*** Written notice of any meeting called for the purpose of obtaining the consent of the Members for any action for which the consent of Members is required under Sections 6.2 or 6.5 of this Declaration shall be sent to all Members not less than thirty (30) days nor more than fifty (50) days in advance of the meeting. At the first such meeting called, the presence of Members or of proxies entitled to cast sixty percent (60%) of all the votes of each class of membership shall constitute a quorum. If the required quorum is not present, another meeting may be called subject to the same notice requirement, and the required quorum at the subsequent meeting shall be one-half (1/2) of the required meeting at the preceding meeting. No such subsequent meeting shall be held more than fifty (50) days following the preceding meeting without the quorum requirements reverting back to the original level.

6.19 ***Unallocated Taxes.*** In the event that any taxes are assessed against the Common Area or the personal property of the Association rather than against the Lots, said taxes shall be included in the Assessments made under the provisions of this Article 6, and, if necessary, a Special Assessment may be levied on a pro rata basis to each of the Lots.

ARTICLE 7 MAINTENANCE

7.1 ***Maintenance of Areas of Association Responsibility.*** The Association, or its duly designated representatives, without any approval of the Owners or First Mortgagees being required, shall undertake all of the following for the benefit of the Project and its Owners and Residents:

7.1.1 Maintain, reconstruct, repair, replace, or refinish in first class condition in accordance with the standards of the Project and community as a whole any Improvements on the Common Area or in an Area of Association Responsibility to the extent that such work is not being done by a governmental entity, if any, responsible for such maintenance or upkeep. Such maintenance shall include any Project perimeter wall regardless of whether located on a portion of a Lot or Common Area and any Project recreational facilities or equipment.

7.1.2 Construct, reconstruct, repair, replace or refinish any portion of the Common Area used as a walk, driveway and parking area.

7.1.3 Maintain and replace all landscaping and plantings in the Common Area, in rights-of-way and on the Public Yards of Lots between the street and the exteriors of Project perimeter walls to the extent the Board deems necessary for the conservation of water and soil, to replace damaged or injured trees, and for aesthetic purposes; provided, however, that the Board shall not vary the landscape plan installed by the Declarant and approved by the City of Phoenix without the prior written approval of the City of Phoenix.

7.1.4 Place and maintain upon any such area such signs as the Board may deem appropriate for the proper identification, use and regulation thereof.

7.1.5 Do all such other and further acts which the Board deems necessary to preserve and protect the Common Area and other Areas of Association Responsibility and the appearance thereof, in accordance with the Project Documents.

7.1.6 The City of Phoenix is not responsible for and will not accept maintenance of any private utilities, streets, facilities, and landscaped areas within this Project.

7.2 ***Maintenance of Lots by Owners.*** Each Owner of a Lot shall be responsible for maintaining, repairing or replacing his Lot, and/or all Improvements thereon, as applicable, including his Residential Dwelling, except for any Areas of Association Responsibility established in accordance with this Declaration. All such Improvements shall be kept in good condition and repair. All Public Yard landscaping shall be irrigated, moved, trimmed and/or cut, as appropriate, at regular intervals so as to be maintained in a neat and attractive manner. Any such landscaping which dies shall be promptly removed and replaced with living foliage of like kind unless different foliage is approved in writing by the Board and in accordance with any approved plant list established by the City of Phoenix. No yard equipment, wood piles or storage areas may be maintained so as to be Visible from Neighboring Property. Any Lots without Residential Dwellings thereon shall be maintained in a weed free manner.

7.3 ***Assessment of Certain Costs of Maintenance and Repair.*** In the event that the need for maintenance, repair or replacement of Common Area or other Area of Association Responsibility is caused through the willful or negligent act of any Owner or Resident of a Lot, or their contractors, agents, guests, invitees, licensees or animals for whom the Owner or Resident is legally responsible under Arizona law, the Association shall cause the maintenance, repairs or replacement to be performed and the cost of such work shall be paid by the Owner of the Lot to the Association upon demand to the extent the Owner is liable under Arizona law. Payment of such amounts shall be secured by the Assessment Lien and the Association may enforce collection of any such amounts in the same manner and to the same extent as provided elsewhere in this Declaration for the collection and enforcement of Assessments.

7.4 ***Improper Maintenance and Use of Lots.*** In the event any portion of a Lot is so maintained as to present a public or private nuisance, or as to substantially detract from the appearance or quality of the surrounding Lots or other areas of the Project which are substantially affected thereby or related thereto, or in the event any portion of a Lot is being used in any manner which violates the Project Documents, or in the event an Owner or any Resident of any Owner's Lot is failing to perform any obligations under the Project Documents, the Board may make a finding to that effect. The Board shall specify the particular condition or conditions which exist, and pursuant thereto, give notice of such findings to the offending Owner that unless corrective action is taken within thirty (30) days, the Board may cause such action to be taken at said Owner's expense. If, at the expiration of said thirty (30) day period, the requisite action has not been taken, the Board shall be authorized and empowered to cause such action to be taken and the cost thereof (including, without limitation, reasonable attorneys' fees for enforcement of the Association's rights plus interest on such costs and fees at the then legal rate for judgments in Arizona) shall be paid by such Owner to the Association upon demand

regardless of whether such costs were caused by the Owner directly or any other Resident of the Lot. Payment of such amounts shall be secured by the Assessment Lien.

7.5 ***Boundary Walls.*** Each wall or fence which is located between two Lots shall constitute a boundary wall ("Boundary Wall") and, to the extent not inconsistent with this Section 7.5, the general rules of law regarding boundary or "party" walls shall apply. The Owners or Residents of contiguous Lots who share a Boundary Wall shall both equally have the right to use such wall provided that such use by one Owner or Resident does not interfere with the use and enjoyment of the same by the other Owner or Resident. In the event that any Boundary Wall is damaged or destroyed through the act of an Owner or Resident of a Lot, or their contractors, agents, guests, invitees, licensees or animals, it shall be the obligation of the Lot Owner to rebuild and repair the Boundary Wall without cost to the other Owner of the adjoining Lot sharing the Boundary Wall. In the event any such Boundary Wwall is damaged or destroyed by some other cause (including ordinary wear and tear and deterioration through lapse of time), then, in such event, both adjoining Owners shall proceed forthwith to rebuild or repair the same to as good condition as formerly existed at their joint and equal expense. The right of an Owner to contribution from any other Owner under this Section 7.5 shall be appurtenant to the land and shall pass to such Owner's successors in title. In addition to meeting the other requirements of this Declaration and of any other building code or similar regulations or ordinances, any Owner proposing to modify, make additions to or rebuild a Boundary Wall shall first obtain the written consent of the adjoining Owners and the Board. In the event any Boundary Wall encroaches upon a Lot, pursuant to the provisions of Section 4.6, a valid easement for such encroachment and for the maintenance of the Boundary Wall shall and does exist in favor of the Owners of the Lots which share the Boundary Wall. To the extent necessary for an Owner to construct Improvements in the Private Yard of his Lot, an Owner may remove all or part of a Boundary Wall, provided the Owner gives reasonable notice to the adjoining Owners and Residents that all or part of the Boundary Wall will be removed and the Owner desiring to temporarily remove a portion of the wall makes appropriate arrangements (including the erection of a temporary fence or barrier) or pays appropriate compensation for the protection of children and pets on the adjoining Lot. Any Owner removing all or part of a Boundary Wall pursuant to this Section 7.5 shall rebuild and restore the Boundary Wall to its prior condition at such Owner's sole cost and expense within a reasonable time after entry through the Boundary Wall is no longer necessary in connection with the construction of Improvements. In the event of a dispute between Owners with respect to the construction, repair or rebuilding of a Boundary Wall or with respect to the sharing of the cost thereof, such adjoining Owners shall submit the dispute to the Board, the decision of which shall be binding.

7.6 ***Maintenance of Walls Other than Boundary Walls.*** Walls or fences (other than Boundary Walls as described in Section 7.5 above) located on a Lot shall be maintained, repaired and replaced by an Owner of the Lot. Any wall which is placed on the boundary line between a Lot and the Common Area shall be maintained, repaired and replaced by the Owner of the Lot, except that the Association shall be responsible for the repair and maintenance of the side of the wall which faces the Common Area. In the event any such wall encroaches upon the Common Area or a Lot, an easement for such encroachment shall exist in favor of the Association or the Owner as the case may be, pursuant to Section 4.6 above. Any wall which is placed on the boundary line between a Lot and public right-of-way (including all Project

perimeter walls) shall be maintained, repaired and replaced by the Association, except that the Owner of the Lot shall be responsible for the repair, painting and stuccoing or retexturing of the surface of the wall which faces the Private Yard or interior of the Lot and is Not Visible from Neighboring Property. To the extent necessary for an Owner to construct Improvements in the Private Yard of his Lot, an Owner may remove all or part of a wall separating his Lot from Common Area or public right-of-way with the prior written consent of the Board and the City of Phoenix, as applicable. Such approval may be conditioned on the erection of a temporary fence or barrier.

7.7 ***Payment of Utility Charges.*** Each Residential Dwelling shall be separately metered for water, sewer, electrical and cable TV service, and all charges for such service to the Residential Dwellings shall be the sole obligation and responsibility of the Owner of each Lot. All bills for water, sewer and electrical service to the Common Area shall be billed to the Association, and the Association shall be responsible for the payment of such charges as a Common Expense to be included in the budget of the Association.

ARTICLE 8 INSURANCE

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

8.1.1 Comprehensive General Liability insurance, including medical payments insurance, in an amount determined by the Board, but not less than $1,000,000 for any single occurrence and $2,000,000 general aggregate. Such insurance shall cover all occurrences commonly insured against for death, bodily injury and property damage arising out of or in connection with the use, ownership or maintenance of Areas of Association Responsibility.

8.1.2 Property insurance for all Areas of Association Responsibility insuring against all risk of direct physical loss, in an amount equal to the maximum insurable replacement value of the Areas of Association Responsibility, as determined by the Board; provided, however, that the total amount of insurance after application of any deductibles shall not be less than one hundred percent (100%) of the current replacement cost of the insured property, exclusive of land, excavations, foundations and other items normally excluded from a property policy. If the Common Area or other Areas of Association Responsibility are located in an area identified by the Secretary of Housing and Urban Development as an area having special flood hazards, the Association shall also maintain a "blanket" policy of flood insurance on those areas. Such policy shall be in form and amount as determined by the Board, but, in any event, shall always satisfy the requirements of the Federal National Mortgage Association and the Federal Home Loan Mortgage Corporation, as amended from time to time.

8.1.3 Workmen's compensation insurance to the extent necessary to meet the requirements of Arizona law.

8.1.4 Such other insurance as the Association shall determine from time to time to be appropriate to protect the Association, the Board, or the Owners and Residents or as is required by the Federal National Mortgage Association or the Federal Home Loan Mortgage Corporation, including, without limitation, directors' and officers' errors and omissions coverage and fidelity coverage against dishonest acts by directors, managing agents, officers, trustees, employees or volunteers of the Association who are responsible for handling funds belonging to or administered by the Association. The fidelity insurance shall name the Association as the insured and shall provide coverage in an amount not less than one and one-half times the Association's estimated annual operating expenses and reserves.

8.2 ***Contents of Policies.*** The insurance policies purchased by the Association shall, to the extent reasonably available, contain the following provisions: (i) that there will be no subrogation with respect to the Association, its agents, servant, and employees, with respect to Owners and Residents; (ii) no act or omission by any Owner or Resident, unless acting within the scope of his authority on behalf of the Association, will void the policy or be a condition to recovery on the policy; (iii) that the coverage afforded by such policy shall not be brought into contribution or proration with any insurance which may be purchased by Owners or Residents, their First Mortgagees, or other mortgagees or beneficiaries; (iv) a "severability of interest" endorsement which shall preclude the insurer from denying the claim of an Owner because of the negligent acts of the Association or other Owners; (v) a statement of the name of the insured as the Association; and (vi) for policies of hazard insurance, a standard mortgagee clause providing that the insurance carrier shall notify all First Mortgagees named in the policy at least ten (10) days in advance of the effective date of any substantial modification, reduction or cancellation of the policy.

8.3 ***Limitation of Liability.*** Neither the Declarant nor the Association, or any member, director, officer, shareholder, employee, or agent thereof, shall be liable to any Owner or Resident or any other Person if any risk or hazard is not covered by insurance or the amount thereof is inadequate. Without limiting the foregoing, each Owner shall be responsible for obtaining insurance for his own benefit and at his own expense insuring his Lot and the Improvements thereon against loss and providing personal liability coverage. Each Owner is responsible for ascertaining the Association's coverage and for procuring such additional coverage as such Owner deems necessary. First Mortgagees may pay overdue premiums and may secure new insurance coverage upon the lapse of any policy with respect to any insurance required to be maintained by the Association or any Owner under this Declaration, and any First Mortgagee making such expenditure shall be entitled to immediate reimbursement from the Association or Owner on whose behalf the expenditure was made.

8.4 ***Certificates of Insurance.*** An insurer that has issued an insurance policy under this Article 8 shall issue a certificate or a memorandum of insurance to the Association and, upon request, to any Owner, First Mortgagee or other mortgagee or beneficiary of a deed of trust. Any insurance obtained pursuant to this Article 8 may not be canceled until thirty (30) days after notice of the proposed cancellation has been mailed to the Association, each Owner and each First Mortgagee or other mortgagee or beneficiary of a deed of trust to whom certificates of insurance have been issued.

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

8.6 ***Payment of Insurance Proceeds.*** With respect to any loss to any Area of Association Responsibility covered by property insurance obtained by the Association in accordance with this Article 8, the loss shall be adjusted with the Association, and the insurance proceeds shall be payable to the Association and not to any mortgagee or beneficiary under a deed of trust. Subject to the provisions of Section 8.7 of this Declaration, the proceeds shall be disbursed for the repair or restoration of the damage to the Area of Association Responsibility.

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

Subject to other provisions of this Declaration, in the event of damage to or destruction of any part of a Residential Dwelling or Lot, the Owner of each Lot shall reconstruct the same as soon as reasonably practicable and substantially in accordance with the plans and specifications therefor or shall remove all debris from the Lot such that the Lot does not have an unsightly appearance or otherwise constitute a nuisance. Each Owner shall have an easement of reasonable access into any adjacent Lot for purposes of repair or reconstruction of his Residential Dwelling as provided in this Section 8.7.

ARTICLE 9 GENERAL PROVISIONS

9.1 ***Enforcement.*** Subject to the further provisions of Article 10 below, the Association or any Owner shall have the right to enforce the Project Documents in any manner provided for in the Project Documents or by law or in equity, including, but not limited to, an action to obtain an injunction to compel removal of any Improvements constructed in violation of this Declaration or to otherwise compel compliance with the Project Documents. To the extent that this Declaration grants Declarant, the Association or any Unit Owner the right to use summary abatement or similar means to enforce the restrictions set forth in this Declaration, a judgment of the court or decree of a court of appropriate jurisdiction must be obtained before any Improvement can be altered or demolished other than by action or direction of the Person

who owns the Improvement. The failure of the Association or an Owner to take enforcement action with respect to a violation of the Project Documents shall not constitute or be deemed a waiver of the right of the Association or any Owner to enforce the Project Documents in the future. If any law suit is filed by the Association or any Owner to enforce the provisions of the Project Documents or in any other manner arising out of the Project Documents or the operations of the Association, the prevailing party in such action shall be entitled to recover from the other party all attorneys' fees incurred by the prevailing party in the action. In addition to any other rights or remedies available to the Association pursuant to the Project Documents or at law or in equity, the Association shall have the power to levy reasonable monetary fines or penalties against an Owner for a violation of the Project Documents by the Owner or by any Resident of the Owner's Lot, or their guests and invitees under their control.

9.2 ***Term; Method of Termination.*** This Declaration shall continue in full force and effect for a term of twenty (20) years from the date this Declaration is Recorded. After which time, this Declaration shall be automatically extended for successive periods of ten (10) years each. This Declaration may be terminated at any time during the initial term of this Declaration or any extension or renewal term, if such termination is approved by the affirmative vote or written consent, or any combination thereof, of the Owners representing ninety percent (90%) or more of the votes in each class of membership and by the holders of First Mortgages on Lots, the Owners of which have seventy-five percent (75%) or more of the votes in the Association. If the necessary votes and consents are obtained, the Board shall cause to be Recorded with the County Recorder of Maricopa County, Arizona, a Certificate of Termination, duly signed by the President or Vice President and attested by the Secretary or Assistant Secretary of the Association, with their signatures acknowledged. Thereupon, this Declaration shall have no further force or effect and the Association shall be dissolved pursuant to the provisions set forth in the Articles.

9.3 ***Amendments.***

9.3.1 Except for amendments made pursuant to Sections 9.1.3, 9.3.2, 9.3.5 or 9.3.7 of this Declaration, the Declaration may be amended at any time during the initial term of this Declaration or any renewal or extension term, without regard to whether such amendments are of uniform effect as to the Owners or the Lots, by the written approval or the affirmative vote, or any combination thereof, of Owners of not less than seventy-five percent (75%) of the Lots, with one vote per Lot.

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

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

9.3.4 So long as there is a Class B Membership in the Association, any amendment to this Declaration must have the prior written approval of the Veterans Administration or the Federal Housing Administration as further provided in Section 9.18 below.

9.3.5 Declarant, so long as Declarant owns any Lot, and thereafter the Board, may amend this Declaration without the consent of any other Owner or First Mortgagee to correct any error or inconsistency in the Declaration.

9.3.6 So long as Declarant owns the requisite number of Lots under this Section 9.3 to effect an amendment hereunder, any amendment to this Declaration shall be signed by Declarant and Recorded in the records of the County Recorder of Maricopa County, Arizona. At any time Declarant does not own the requisite number of Lots, any amendment approved by the Board pursuant to Sections 9.3.1, 9.3.2 or 9.3.5 shall be signed by the President or Vice President of the Association and shall be Recorded with the County Recorder of Maricopa County, Arizona, and any such amendment shall certify that the amendment has been approved as required by this Section 9.3. Unless a later effective date is specified in the amendment, any amendment to this Declaration shall be effective upon the Recording of the instrument.

9.3.7 While Class B Membership exists, Declarant may amend the Plat at any time without the consent of any other Owner to alter the size of and boundaries between any Lots so long as all such altered Lots are owned by Declarant, all First Mortgagees then encumbering the Lots to be altered consent in writing, and such alterations do not modify or change the size, the boundaries of any other Lot or the Common Area and do not increase the share of Common Expenses payable by Owners.

9.3.8 All amendments to Section 7.1 of this Declaration or otherwise affecting or amending any provisions related to landscaping maintenance, or which have been required by the City of Phoenix in its stipulations for development of the Project, shall be approved in advance by the City of Phoenix.

9.4 ***Additional Requirements for Amendment of Certain Provisions.*** The following provisions do not apply to amendments to the Project Documents or termination of the Project as a result of destruction, damage or condemnation:

9.4.1 The consent of the Owners of Lots to which at least sixty-seven percent (67%) of the votes in the Association are allocated and the approval of Eligible Mortgage Holders holding First Mortgages on Lots which have at least sixty-seven percent (67%) of the votes of Lots subject to First Mortgages held by Eligible Mortgage Holders shall be required to terminate the legal status of the Project as a subdivision under Arizona law; and

9.4.2 The consent of the Owners of Lots to which at least sixty-seven percent (67%) of the votes in the Association are allocated and the approval of Eligible Mortgage Holders holding First Mortgages on Lots which have at least fifty-one percent (51%) of the votes of Lots subject to First Mortgages held by Eligible Mortgage Holders shall be required to add to or amend any "material" provisions of the Project Documents which establish, provide for,

govern or regulate any of the following: (i) voting; (ii) Assessments, Assessment liens or subordination of such liens; (iii) reserves for maintenance, repair and replacement of the Common Area and other Areas of Association Responsibility; (iv) hazard insurance or fidelity bonds; (v) rights to use of the Common Area or interests in the Common Area; (vi) responsibility for maintenance and repair of the various portions of the Project; (vii) expansion or contraction of the Project or the addition, annexation or withdrawal of property to or from the Project; (viii) boundaries of any Lot; (ix) convertibility of Lots into Common Area or of Common Area into Lots or any change in each Owner's respective interest in the Common Area as a Member of the Association; (x) leasing of Lots; (xi) imposition of any right of first refusal or similar restriction on the right of an Owner to sell, transfer or otherwise convey his Lot (subject to the further provisions of Section 9.5.12 below); and (xii) any provisions which are for the express benefit of First Mortgagees, Eligible Mortgage Holders or Eligible Insurers or Guarantors of First Mortgages on Lots.

9.4.3 An addition or amendment to the Project Documents shall not be considered "material" if it is for the purpose of correcting technical errors or for clarification only. An Eligible Mortgage Holder which receives a written request to approve additions or amendments under this Section 9.4 and does not deliver or post to the requesting party a negative response within thirty (30) days shall be deemed to have approved such request.

9.5 Certain Mortgage Holder, Insurer and Guarantor Rights.

9.5.1 Any First Mortgagee will, upon written request identifying the name and address of the First Mortgagee for any Lot or the insurer or guarantor of such First Mortgagee and the Lot number or address, shall be entitled Eligible Mortgage Holders and/or Eligible Insurers or Guarantors and entitled to receive timely written notice of: (i) all meetings of the Members and be permitted to designate a representative to attend all such meetings; (ii) any condemnation loss or any casualty loss which affects a material portion of the Project or any Lot subject to a First Mortgage held, insured or guaranteed by such Eligible First Mortgagee or Eligible Insurer or Guarantor, as applicable; (iii) any delinquency in the payment of Assessments or other charges owed or any other default in the performance of obligations under the Project Documents by an Owner of a Lot subject to a First Mortgage held, insured or guaranteed by such Eligible First Mortgagee or Eligible Insurer or Guarantor, as applicable, which remains uncured for a period of sixty (60) days; (iv) any lapse, cancellation or material modification of any insurance policy or fidelity bond maintained by the Association; and (v) any proposed action which would require the consent of a specified percentage of Eligible Mortgage Holders under this Declaration.

9.5.2 No Lot shall be partitioned or subdivided without the prior written approval of the First Mortgagee of a Lot subject to a First Mortgage.

9.5.3 Unless at least two-thirds (2/3) of the First Mortgagees (based upon one vote for each First Mortgage owned by the First Mortgagee in the Project) or Owners (other than Declarant or any developer of Residential Dwellings for resale) of at least two-thirds (2/3) of the Lots have given their prior written approval, the Association shall not be entitled to:

(i) seek to abandon, partition, subdivide, sell or transfer the Common Area owned, directly or indirectly, by the Association. The granting of easements for public utilities or for other public purposes consistent with the intended use of such Common Area shall not be deemed a transfer within the meaning of this Section 9.5.

(ii) change the method of determining the obligations, Assessments, dues or other charges which may be levied against any Owner.

(iii) change, waive or abandon any scheme or regulations, or enforcement thereof, pertaining to the architectural design or the exterior appearance of the Lots or the maintenance of Areas of Association Responsibility.

(iv) fail to maintain fire and extended insurance coverage on a current replacement cost basis for the Areas of Association Responsibility in an amount of at least one hundred percent (100%) of insurable value.

(v) use hazard insurance proceeds for losses to Project Improvements other than for the repair, replacement or reconstruction of such Project Improvements.

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

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

9.5.6 To the extent permitted by applicable law, Eligible Mortgage Holders shall have the following rights:

(i) When professional management previously has been required by an Eligible Mortgage Holder or any Eligible Insurer or Guarantor, whether such entity became an Eligible Mortgage Holder or Eligible Insurer or Guarantor at that time or later, any decision to establish self-management by the Association shall require the prior consent of the Owners of Lots to which at sixty-seven percent (67%) of the votes in the Association are allocated and the approval of Eligible Mortgage Holders holding First Mortgages on Lots the Owners of which have at least fifty-one percent (51%) of the votes in the Association allocated to Owners of Lots subject to First Mortgages held by Eligible Mortgage Holders. Declarant shall not, and shall not have authority or power to, bind the Association prior to termination of Class B membership, either directly or indirectly to, contracts or leases (including management contracts) unless the Association is provided with a right of termination of any such contract or lease, without cause, which is exercisable without penalty at any time after such termination upon not more than ninety (90) days' notice to the other party thereto.

(ii) Any election to terminate the legal status of the Project after substantial destruction or a substantial taking in condemnation of the Project shall not be effective unless approved by Eligible Mortgage Holders holding First Mortgages on Lots the Owners of which have at least fifty-one percent (51%) of the votes in the Association allocated to Owners of Lots subject to First Mortgages held by Eligible Mortgage Holders.

(iii) Any restoration or repair of the Project after a partial condemnation or damage due to an insurable hazard shall be performed substantially in accordance with the Declaration and the original plans and specifications of the Project unless other action is approved by Eligible Mortgage Holders holding First Mortgages on Lots the Owners of which have at least fifty-one percent (51%) of the votes in the Association allocated to Owners of Lots subject to First Mortgages held by Eligible Mortgage Holders.

9.5.7 No breach of any of the covenants, conditions and restrictions contained in this Declaration, and no enforcement of any lien provisions herein shall render invalid the lien of any First Mortgage, but all of said covenants, conditions and restrictions shall be binding upon and effective against any Owner whose title is derived through foreclosure, trustee's sale or otherwise.

9.5.8 All amenities pertaining to the Project and located thereon (such as parking, recreation and service areas) are a part of the Project and shall be covered by and subject to a First Mortgage on a Lot to the same extent as is the Common Area.

9.5.9 An action to abate the breach of any of these covenants, conditions and restrictions may be brought against the First Mortgagee or other Person who has acquired title through foreclosure of a First Mortgage and subsequent sheriff's sale (or through any equivalent proceedings) and the successor in interest to said First Mortgagee or other Person, if the breach continues to exist after the time said First Mortgagee or other Person acquires an interest in such Lot.

9.5.10 During the pendency (including any period of redemption) of any proceedings to foreclose a First Mortgage (or from the time a trustee under a first deed of trust has given notice of sale pursuant to the power of sale conferred under the deed of trust and pursuant to law), the First 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 of the Lot 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, irrespective of whether the Member's voting rights have been suspended for nonpayment of Assessments.

9.5.11 Notwithstanding anything contained herein to the contrary, at such time as the First Mortgagee shall become record Owner of a Lot, the First Mortgagee shall be subject to all of the terms and conditions of this Declaration, including, but not limited to, the obligations to pay all Assessments and charges accruing thereafter in the same manner as any other Owner.

9.5.12 The right of any Owner to sell, transfer or otherwise convey his Lot shall not be subject to any right of first refusal or any similar restriction in favor of the Association and no such right of first refusal or similar restriction shall be hereinafter imposed by amendment of this Section 9.5.12 without the prior written consent of all First Mortgagees of record at the time the requested amendment is proposed.

9.5.13 In the event of any conflict or inconsistency between the provisions of this Section 9.5 and any other provision of the Project Documents, the provisions of this Section 9.5 shall prevail; provided, further, that in the event of any conflict or inconsistency between the provisions of this Section 9.5 and any other provisions of the Project Documents with respect to the number or percentage of Owners or First Mortgagees that must consent to: (i) an amendment of the Declaration, Articles or Bylaws, (ii) a termination of the Project, or (iii) certain actions of the Association as specified in Section 9.5.3 of this Declaration, the provision requiring the consent of the greatest number or percentage of Owners or First Mortgagees shall prevail; provided, however, that the Declarant, so long as Declarant owns any Lot, and thereafter the Board, shall have the right to amend the Declaration as provided in Sections 9.3.2 and 9.3.5 without the consent of any other Owners or First Mortgagees and to amend the Declaration pursuant to Section 9.3.7 with the consent of only those Owners or First Mortgagees so affected.

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

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

9.8 ***Rule Against Perpetuities.*** If any interest, privilege, covenant or right created by this Declaration shall be unlawful, void or voidable for violation of the Rule against Perpetuities or any related rule, then such interest, privilege, covenant or right shall continue until twenty-one (21) years after the death of the last survivor of the now living descendants of the President of the United States in office on the date this Declaration is Recorded.

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

9.10 ***Notice of Violation.*** The Association shall have the right to record a written notice of a violation by any Owner or Resident of any restriction or other provision of the Project Documents. The notice shall be executed by an officer of the Association and shall contain

substantially the following information: (i) the name of the Owner or Resident violating, or responsible for the violation of, the Project Documents; (ii) the legal description of the Lot against which the notice is being Recorded; (iii) a brief description of the nature of the violation; (iv) a statement that the notice is being Recorded by the Association pursuant to this Declaration; (v) a statement of the specific steps which must be taken by the Owner or Resident to cure the violation. Recordation of a notice of violation shall serve as notice to the Owner and Resident, and any subsequent Purchaser or other Person who may acquire the Lot, that there is such a violation. If, after the recordation of such notice, it is determined by the Association that the violation referred to in the notice does not exist or that the violation referred to in the notice has been cured, the Association shall record a notice of compliance which shall state the legal description of the Lot against which the notice of violation was Recorded, and the Recording data of the notice of violation, and shall state that the violation referred to in the notice of violation has been cured or that the violation does not exist. Failure by the Association to record a notice of violation shall not constitute a waiver of any such violation, constitute any evidence that no violation exists with respect to a particular Lot or constitute a waiver of any right of the Association to enforce the Project Documents.

9.11 ***Laws, Ordinances and Regulations.*** The covenants, conditions and restrictions set forth in this Declaration and the provisions requiring Owners and other Persons to obtain the approval of the Board or the Architectural Committee, as applicable, with respect to certain actions are independent of the obligation of the Owners and other Persons to comply with all applicable laws, ordinances and regulations. Compliance with this Declaration shall not relieve an Owner or any other Person from the obligation to also comply with all applicable laws, ordinances and regulations. Any violation of any state, municipal or local law, ordinance or regulation pertaining to the ownership, occupation or use of any property within the Project is hereby declared to be a violation of this Declaration and subject to any or all of the enforcement procedures set forth herein.

9.12 ***Right to Inspect Documents.*** The Association shall make available to Owners, mortgagees and insurers or guarantors of First Mortgagees, current copies of the Project Documents and the books, records and financial statements of the Association. ***"Available"*** means available for inspection (and copying at the expense of the requesting party), upon request, during normal business hours or under other reasonable circumstances. Any First Mortgagee or any holder or insurer of any First Mortgage shall be entitled to receive, upon written request, an audited financial statement for the immediately preceding fiscal year at the expense of the requesting party. Any such financial statement so requested shall be furnished within a reasonable time following receipt by the Association of the request.

9.13 ***Condemnation.***

9.13.1 ***Common Area.*** Upon receipt of notice of intention or notice of proceedings whereby all or any part of the Common Area or other Area of Association Responsibility is to be taken by any governmental body by exercise of the power of condemnation or eminent domain, all Owners shall be immediately notified by the Association thereof. The Association shall represent the Owners in any condemnation or eminent domain proceedings or in negotiations, settlements and agreements with the condemning authority for

acquisition of any part of the Common Area or other Area of Association Responsibility, and every Owner appoints the Association as his attorney-in-fact for this purpose. The entire award made as compensation for such taking, including, but not limited to, any amount awarded as severance damages or the entire amount received and paid in anticipation and settlement for such taking, after deducting therefrom, in each case, reasonable and necessary costs and expenses, including, but not limited to, attorneys' fees, appraisers' fees and court costs (which net amount shall hereinafter be referred to as the ***"Award"***), shall be paid to the Association as trustee for the use and benefit of the Owners and their First Mortgagees as their interests may appear. The Association shall, as it is practicable, cause the Award to be utilized for the purpose of repairing and restoring the Project, including, if the Association deems it necessary or desirable, the replacement of any Improvements so taken or conveyed.

9.13.2 Lots. In the event of any taking of any Lot in the Project by eminent domain, the Owner of such Lot shall be entitled to receive the award for such taking, and after acceptance thereof he and all of his mortgagees shall be divested of all interest in the Project if such Owner shall vacate his Lot as a result of such taking. The remaining Owners shall decide by majority vote whether to rebuild or repair the Project or take other action. The remaining portion of the Project shall be resurveyed, if necessary, and the Declaration shall be amended to reflect such taking. In the event of a taking by eminent domain of more than one Lot at the same time, the Association shall participate in the negotiations and shall propose the method of division of the proceeds of condemnation where Lots are not valued separately by the condemning authority or by the court. In the event any Owner disagrees with the proposed allocation, he may have the matter submitted to arbitration under the rules of the American Arbitration Association.

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

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

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

9.17 Notices. If notice of any action or proposed action by the Board or any committee thereof or of any meeting is required by applicable law, this Declaration or resolution of the Board, to be given to any Owner or Resident, then, unless otherwise specified herein or in the resolution of the Board, such notice requirement shall be deemed satisfied if notice of such

action or meeting is published in any newspaper of general circulation within Maricopa County. This Section 9.17 shall not be construed to require that any notice be given if not otherwise required and shall not prohibit satisfaction of any notice requirement in any other manner.

9.18 FHA/VA Approval. So long as there is Class B membership in the Association, the following actions shall require the prior written approval of the Federal Housing Administration or the Veterans Administration: annexation of additional properties, dedication, mortgaging or conveyance of Common Area, and amendment of this Declaration.

9.19 No Absolute Liability. No provision of the Project Documents shall be interpreted or construed as imposing on Owners absolute liability for damage to the Common Area or the Lots. Owners shall only be responsible for damage to the Common Area or Lots caused by the negligence or intentional acts of the Owners or Residents of the Lots or their family members, guests, invitees or pets.

9.20 References to VA and FHA. In various places throughout the Project Documents, references are made to the Department of Veterans Affairs (***"VA"***) and the Federal Housing Administration (***"FHA"***) and, in particular, to various consents or approvals required of either or both of such agencies. Such references are included so as to cause the Project Documents to meet certain requirements of such agencies should Declarant, in its discretion, request approval of the Project by either or both of those agencies. Unless and until FHA or VA have approved the Project as acceptable for insured or guaranteed loans and at any time during which such approval, once given, has been revoked, withdrawn, canceled or suspended and there are no outstanding mortgages or deeds of trust Recorded against a Lot to secure payment of an insured or guaranteed loan by either of such agencies, all references herein to required approvals of consents of such agencies shall be deemed null and void and of no force and effect.

9.21 Declarant's Right to Use Similar Name. The Association hereby irrevocably consents to the use by any other corporation or other entity which may be formed or incorporated by Declarant of an entity name which is the same or deceptively similar to the name of the Association, provided, however, one or more words are added to the name of such other entity to make the name of the Association distinguishable from the name of such other entity. Within five (5) days after being requested to do so by Declarant, the Association shall sign such letters, documents or other writings as may be required by the Arizona Corporation Commission or the Arizona Secretary of State in order for any other corporation or other entity formed or incorporated by the Declarant to use a name which is similar to the name of the Association.

9.22 Attorneys' Fees. In the event the Declarant, the Association or any Owner employs an attorney or attorneys to enforce an Assessment Lien or to collect any amounts due from another Owner or to enforce compliance with or recover damages for any violation or noncompliance with the Project Documents or in any other manner arising out of the Project Documents or the operations of the Association, the prevailing party in any such action shall be entitled to recover from the other party his reasonable attorneys' fees incurred in the action.

ARTICLE 10 CONSTRUCTION CLAIMS PROCEDURES

10.1 Right to Cure Alleged Defects. It is Declarant's intent that the Common Area, each Lot and all Improvements constructed on the Property be built in compliance with all applicable building codes and ordinances and that they be of a quality that is consistent with good construction and development practices for production housing of this type. Nevertheless, due to the complex nature of construction and the subjectivity involved in evaluating such quality, disputes may arise as to whether a defect exists and Declarant's (or any agent or contractor's) responsibility therefor. It is Declarant's intent to resolve all disputes and claims regarding "Alleged Defects" (as defined below) amicably, and without the necessity of time-consuming and costly litigation. However, it is expressly acknowledged by all parties that because the individual Residential Dwellings are located on separate Lots and are not part of a common building or structure, neither the Association nor the Members as a group or class have any jurisdiction over the construction of the Residential Dwellings, except to the extent any such construction is alleged to affect the Common Area in some adverse manner. Alleged Defects (as defined below) within a Residential Dwelling shall be governed by the contract of purchase and sale between Declarant and its Purchaser. To the extent an Alleged Defect is governed by this Declaration, the Association, Board and all Owners shall be bound by the following claim resolution procedure:

10.1.1 In the event that the Association, Board, or any Owner or Owners (collectively, ***"Claimant"***) claim, contend or allege that: (i) any portion of the Common Area or Improvements constructed thereon are defective, (ii) Residential Dwellings or other Improvements on a Lot are constructed in such a manner as to adversely affect the Common Area; or (iii) that Declarant, its agents, consultants, brokers, contractors or subcontractors (collectively, ***"Agents"***) were negligent in the planning, design, engineering, grading, construction, selling or other development of any Improvement within the Project such that the Common Area is adversely affected or damaged (with items i, ii, and iii collectively referred to herein as an ***"Alleged Defect"***), Declarant hereby reserves the right for itself and any Agent of Declarant to inspect, repair and/or replace such Alleged Defect as set forth herein. In the event that a Claimant discovers any Alleged Defect, Claimant shall notify Declarant in writing within thirty (30) days of discovery of the Alleged Defect of the specific nature of such Alleged Defect (***"Notice of Alleged Defect"***). Within a reasonable time after the receipt by Declarant of a Notice of Alleged Defect, or the independent discovery of any Alleged Defect by Declarant, as part of Declarant's reservation of rights hereunder, Declarant, and any of its Agents, shall have the right, upon reasonable notice to Claimant and during normal business hours, to enter onto or into, as applicable, the Common Area, any Lot, including any Residential Dwelling constructed thereon, and/or any Improvements for the purposes of inspecting and/or conducting testing and, if deemed necessary by Declarant, repairing and/or replacing such Alleged Defect. In conducting such inspection, testing, repairs and/or replacements, Declarant shall be entitled to take any actions as it shall deem reasonable and necessary under the circumstances.

10.1.2 Nothing set forth in this Section 10.1 shall be construed to impose any obligation on Declarant or any of its Agents to inspect, test, repair or replace any item or Alleged Defect for which Declarant or such other Person is not otherwise obligated under applicable law or any limited warranty provided by Declarant in connection with the sale of Lots and/or the

or use reserve funds or other monies that are collected for specific Association obligations other than legal fees. In the event that the Association commences any legal proceedings, all Owners must notify prospective purchasers of such legal proceedings and must provide such prospective purchasers with a copy of the notice received from the Association in accordance with Section 10.2 above.

10.4 ***Binding Arbitration.*** In the event of a dispute between Declarant or its Agents, and any Owner(s) or the Association regarding any controversy or claim, including any claim based on contract, tort or statute, arising out of or in any way related to the rights or duties of the parties under this Declaration, or an Alleged Defect, the matter will be resolved by binding arbitration which shall be conducted in accordance with the following rules:

10.4.1 The arbitration shall be initiated by either party delivering to the other a Notice of Intention to Arbitrate as provided for in the American Arbitration Association (***"AAA"***) Commercial Arbitration Rules, as amended from time to time (the ***"AAA Rules"***). The arbitration shall be conducted in accordance with the AAA Rules and A.R.S. §12-1501 et seq. In the event of a conflict between the AAA Rules and this Article 10, the provisions of this Article 10 shall govern.

10.4.2 The parties shall appoint a single arbitrator by mutual agreement; provided, however, if the amount of the Alleged Defect exceeds $500,000, then the matter shall be arbitrated by a panel of three arbitrators, with one Arbitrator each selected by the plaintiff(s) and defendant(s) and the third Arbitrator selected by the two Arbitrators chosen by the parties. If the parties have not agreed within ten (10) days of the date of the Notice of Intention to Arbitrate on the selection of an arbitrator (or arbitrators) willing to serve, the AAA shall appoint a qualified arbitrator (or arbitrators) to serve. Any arbitrator chosen in accordance with this Article 10 is referred to herein as the ***"Arbitrator."*** The Arbitrator shall be neutral and impartial. The Arbitrator shall be fully active in such Arbitrator's occupation or profession, knowledgeable as to the subject matter involved in the dispute, and experienced in arbitration proceedings. The foregoing shall not preclude otherwise qualified retired lawyers or judges. Any candidate for the role of Arbitrator shall promptly disclose to the parties all actual or perceived conflicts of interest involving the subject matter of the dispute or the parties. If an Arbitrator resigns or becomes unwilling to continue to serve as an Arbitrator, a replacement shall be selected in accordance with the procedure set forth in this Article 10. The Arbitrator shall be fully compensated for all time spent in connection with the arbitration proceedings in accordance with the Arbitrator's hourly rate not to exceed Three Hundred Dollars ($300.00) per hour, unless otherwise agreed to by the parties, for all time spent by the Arbitrator in connection with the arbitration proceeding. Pending the final award, the Arbitrator's compensation and expenses shall be advanced equally by the parties.

10.4.3 The Arbitrator shall actively manage the proceedings as the Arbitrator deems best so as to make the proceedings expeditious, economical and less burdensome than litigation. All papers, documents, briefs, written communications, testimony and transcripts, as well as any arbitration decisions, shall be confidential and not disclosed to anyone other than the Arbitrator, the parties or the parties' attorneys and expert witnesses (where applicable to their testimony), except that upon prior written consent of all parties, such information may be

divulged to additional third parties. All third parties shall agree in writing to keep such information confidential. Hearings may be held at any place within the State of Arizona designated by the Arbitrator and, in the case of particular witnesses not subject to subpoena at the usual hearing site, at a place where such witnesses can be compelled to attend. All statutes of limitation applicable to claims which are subject to binding arbitration pursuant to this Section 10.4 shall apply to the commencement of arbitration proceedings under this Section 10.4. If arbitration proceedings are not initiated within the applicable period, the claim shall forever be barred.

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

10.4.5 The Arbitrator shall promptly (within sixty (60) days of the conclusion of the proceedings or such longer period as the parties mutually agree) determine the claims of the parties and render a final award in writing. The Arbitrator may award the prevailing party in the proceeding all or part of such party's reasonable attorneys' fees and expert witness fees, taking into account the final result of arbitration, the conduct of the parties and their counsel in the course of the arbitration, and other relevant factors. The Arbitrator shall not award any punitive damages nor any indirect, consequential or special damages regardless of whether the possibility of such damages or loss was disclosed to, or reasonably foreseen by the party against whom the claim is made; provided, however, that such damages may be deemed by the Arbitrator to be direct damages in an award reimbursing payments made by a party therefor to a third party. The Arbitrator shall assess the costs of the proceedings (including, without limitation, the fees of the Arbitrator) against the non-prevailing party, but each party shall bear the cost of its own attorneys' fees and expert witness fees.

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IN WITNESS WHEREOF, the undersigned, being the Declarant herein, has hereunto set its hand to be effective as of the date first set forth above.

DECLARANT:

PECAN PARK II, LLC,
an Arizona limited liability company

By Miller Family Homes, LLC, an Arizona limited liability company, Member

By _____
Janice K. Miller

STATE OF ARIZONA)
)ss.
COUNTY OF MARICOPA)

On this 19 day of February, 2002, before me, the undersigned notary public, in and for said county and state, personally appeared JANICE K. MILLER, the Member of Miller Family Homes, L.L.C., an Arizona limited liability company, a Member of Pecan Park II, LLC, an Arizona limited liability company, personally known (or proved) to me to be the person whose name is subscribed to the above instrument and who acknowledged that he executed the above instrument for and on behalf of the limited liability company, in her capacity as an authorized member thereof.

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

_____
NOTARY PUBLIC

My Commission Expires:

_____

OFFICIAL SEAL
RUTH GILMORE
Notary Public - State of Arizona
MARICOPA COUNTY
My Comm. Expires Feb. 25, 2003

EXHIBIT A

Lots 1 through 69, inclusive, and Common Area Tracts A, B, C, D, E, F, and G, according to the Final Plat of PECAN PARK, recorded on December 7, 2000, in Book 549 of Maps, page 46, records of Maricopa County, Arizona.

RATIFICATION OF DECLARATION AND PLAT

THIS RATIFICATION OF DECLARATION AND PLAT is made and entered into to be effective as of the 24th day of February, 2002, by First Horizon Home Loan Corporation (**"Lender"**), the beneficiary of a Deed of Trust, Assignment of Rents and Security Agreement recorded on March 28, 2001 at Instrument No. 2001-0243668, Official Records of Maricopa County, Arizona and other security documents (collectively, the **"Loan Documents"**) concerning certain real property affected by the Declaration (defined below). The undersigned hereby acknowledges that it has reviewed, read and/or approved the Declaration of Covenants, Conditions, Restrictions and Easements for Pecan Park to which this Ratification is attached and the Plat thereof recorded in Book 549 of Maps and Plats, page 46 in the Official Records of the Maricopa County, Arizona Recorder. Lender agrees that the Loan Documents shall be subject and subordinate to the Declaration and the Plat, provided, however, that the Lender's execution of this Ratification shall not be deemed a waiver or relinquishment of the Lender's rights and remedies under the Loan Documents.

IN WITNESS WHEREOF, the Lender has executed this Ratification to be effective as of the date first set forth above.

FIRST HORIZON HOME LOAN CORPORATION,
a Kansas corporation

By _____

Its SVP

STATE OF ARIZONA)
)ss.
COUNTY OF MARICOPA)

On this 24th day of February, 2002, before me, the undersigned notary public in and for said county and state, personally appeared THOMAS L. WASSON, who acknowledged him/herself to be the SVP of FIRST HORIZON HOME LOAN CORPORATION, a Kansas corporation, and that s/he as such OFFICER, being authorized so to do, executed the foregoing instrument on behalf of the corporation for the purposes therein contained.

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

_____
NOTARY PUBLIC

My commission expires:
4-19-2003

"OFFICIAL SEAL"
Traci L. Jesko
Notary Public-Arizona
Maricopa County
My Commission Expires 4/19/2003