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WHEN RECORDED, RETURN TO:

Lars O. Lagerman, Esq.
Bryan Cave LLP
Two North Central Avenue, Suite 2200
Phoenix, Arizona 85004-4406

OFFICIAL RECORDS OF
MARICOPA COUNTY RECORDER
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FIRST AMENDMENT TO DECLARATION OF COVENANTS, CONDITIONS, RESTRICTIONS AND EASEMENTS FOR LYON'S GATE

THIS FIRST AMENDMENT TO DECLARATION OF COVENANTS, CONDITIONS, RESTRICTIONS AND EASEMENTS FOR LYON'S GATE ("**Amendment**") is made as of this 27th day of October, 2005 by WILLIAM LYON HOMES, INC., a California corporation ("**Declarant**").

RECITALS:

A. That certain Declaration of Covenants, Conditions, Restrictions and Easements for Lyon's Gate was recorded on September 20, 2005, as Document No. 2005-1385047, Official Records of Maricopa County, Arizona ("**Official Records**"), to establish a general plan of development for the planned community known as Lyon's Gate (the "**Declaration**").

B. Capitalized terms used in this Amendment without definition shall have the meanings given to such terms in the Declaration.

C. Section 9.3.1 of the Declaration provides that (except for amendments pursuant to Section 2.3, Section 9.3.2 or Section 9.3.5 thereunder) the Declaration may only be amended by the written approval or the affirmative vote, or any combination thereof, of Owners of not less than two-thirds (2/3) of the total votes in the Association.

D. Prior to the recording of this Amendment, there are 2,559 total votes in the Association. Declarant is entitled to 1,626 (or 63.54%) of the total votes in the Association, and Lyon's Gate Hacienda, LLC is entitled to 933 (or 36.46%) of the total votes in the Association.

E. Declarant and Lyon's Gate Hacienda, LLC desire to amend the Declaration as set forth herein.

AGREEMENT:

NOW, THEREFORE, the Declaration is amended as follows:

1. The foregoing Recitals are hereby incorporated as a part of this Amendment.

2. This Amendment shall become effective upon the Recording of this Amendment.

3. A new Section 6.18 is hereby added to the Declaration as follows:

6.18 Mandatory CC&R Compliance Fund. In order to ensure that the Association has sufficient funds to enforce the covenants, conditions and restrictions set forth in this Declaration, the Board shall include, as a separate line item in each Annual Assessment budget, an amount equal to three percent (3%) of the total anticipated expenses (excluding the amount for reserves) reflected on the budget (the "**CC&R Compliance Fund Contribution**"). The CC&R Compliance Fund Contribution shall be deposited by the Board in a separate bank account (the "**CC&R Compliance Fund Account**") to be held and used by the Association solely to enforce compliance with the covenants, conditions and restrictions set forth in this Declaration. Withdrawal of funds from the CC&R Compliance Fund Account must be authorized by a Board resolution.

4. Except as expressly amended by this Amendment, the Declaration shall remain in full force and effect.

DECLARANT:

WILLIAM LYON HOMES, INC., a California corporation

By: _____

Printed Name: Tom Hicken

Its: SR. V.P

By: _____

Printed Name: JULIE E. COLLINS

Its: V.P.

STATE OF ARIZONA)
) ss.
County of Maricopa)

The foregoing instrument was acknowledged before me this 14th day of November, 2005, by W. Thomas Hickcox, as the Sr. Vice President of **WILLIAM LYON HOMES, INC.**, a California corporation, on behalf of the corporation.

OFFICIAL SEAL
ADRIENNE KAUTZMAN
NOTARY PUBLIC - State of Arizona
MARICOPA COUNTY
My Comm. Expires Feb. 23, 2009

Notary Public

My Commission Expires:

2/23/09

STATE OF ~~CALIFORNIA~~ Arizona)
) ss.
County of ~~Orange~~ Maricopa

On November 14 2005, before me, Adrienne Kautzman, a Notary Public, personally appeared Julie E. Collins, personally known to me (or proved to me on the basis of satisfactory evidence) to be the person(s) whose name(s) is/are subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their authorized capacity(ies), and that by his/her/their signature(s) on the instrument the person(s), or the entity upon behalf of which the person(s) acted, executed the instrument.

WITNESS my hand and official seal.

OFFICIAL SEAL
ADRIENNE KAUTZMAN
NOTARY PUBLIC - State of Arizona
MARICOPA COUNTY
My Comm. Expires Feb. 23, 2009

Notary Public

My Commission Expires:

2/23/09

CONSENT

Lyon's Gate Hacienda, LLC, an Arizona limited liability company, as owner of certain Lots within Lyon's Gate Phase 3 and 4 which are subject to the terms of the Declaration and this Amendment, hereby ratifies, confirms and approves the foregoing Amendment.

DESIGNATED BUILDER: LYON'S GATE HACIENDA, LLC., an Arizona limited liability company

By: _____

Printed Name: Todd A. Stevens

Its: Secretary of the Manager

By: _____

Printed Name: _____

Its: _____

STATE OF ARIZONA)
) ss.
County of MARICOPA)

On this 15th day of DECEMBER, 2005, before me, CAROL CAPRIOTTI, a Notary Public, personally appeared, TODD A. STEVENS, the SECRETARY of the MANAGER of LYON'S GATE HACIENDA, LLC, an Arizona limited liability company, personally known to me (or proved to me on the basis of satisfactory evidence) to be the person(s) whose name is/are subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their authorized capacity, and that by his/her/their signature on the instrument the person(s) or the entity upon behalf of which the person(s) acted, executed the instrument.

WITNESS my hand and official seal.

Carol Capriotti
Notary Public

My commission expires:
Sept. 9, 2009

OFFICIAL SEAL
CAROL CAPRIOTTI
NOTARY PUBLIC - STATE OF ARIZONA
MARICOPA COUNTY
My Comm. Expires Sept. 9, 2009

STATE OF _____)
) ss.
County of _____)

On this _____ day of _____, 2005, before me, _____, a Notary Public, personally appeared, _____, the _____ of LYON'S GATE HACIENDA, LLC, an Arizona limited liability company, personally known to me (or proved to me on the basis of satisfactory evidence) to be the person(s) whose name is/are subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their authorized capacity, and that by his/her/their signature on the instrument the person(s) or the entity upon behalf of which the person(s) acted, executed the instrument.

WITNESS my hand and official seal.

_____
Notary Public

My commission expires: _____

JOINDER AND CONSENT OF LENDER

This Joinder and Consent of Lender, effective as of the 15th day of NOVEMBER, 2005, confirms that the undersigned joins with Declarant and Designated Builder and consents to the foregoing Amendment and the recording of same in the Office of the Maricopa County Recorder, Arizona.

IN WITNESS WHEREOF the undersigned has executed this Joinder and Consent of Lender effective as of the date set forth above.

RBC CENTURA ~~BANK~~, a North ~~Carolina~~ banking corporation

By: _____ V.P.
David J. Bourg

Its: Vice President

STATE OF Texas)
) ss.
County of Harris)

On Nov. 15th, 2005, before me, Charlene Ballantyne, a Notary Public, personally appeared David J. Bourg, personally known to me (or proved to me on the basis of satisfactory evidence) to be the person(s) whose name(s) is/are subscribed to the within instrument, and acknowledged to me that he/she/they executed the same in his/her/their authorized capacity, and that by his/her/their signature on the instrument the person(s), or entity upon behalf of which the person(s) acted, executed the instrument.

WITNESS my hand and official seal.

CHARLENE H. BALLANTYNE
Notary Public, State of Texas
My Commission Expires
July 20, 2008

_____
Notary Public

My Commission Expires: _____

SECURITY TITLE AGENCY

OFFICIAL RECORDS OF
MARICOPA COUNTY RECORDER
HELEN PURCELL
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ELECTRONIC RECORDING

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gonzalesj

When recorded, return to:

Lars O. Lagerman, Esq.
Bryan Cave LLP
Two North Central Avenue
22nd Floor
Phoenix, Arizona 85004-4406

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DECLARATION OF COVENANTS, CONDITIONS, RESTRICTIONS AND EASEMENTS

FOR

LYON'S GATE

DECLARATION OF COVENANTS, CONDITIONS, RESTRICTIONS AND EASEMENTS FOR LYON'S GATE

Table of Contents

DECLARATION OF COVENANTS, CONDITIONS, RESTRICTIONS AND EASEMENTS FOR LYON'S GATE

This Declaration of Covenants, Conditions, Restrictions and Easements for Lyon's Gate (the "**Declaration**") is made this 26 day of August, 2005, by William Lyon Homes, Inc., a California corporation (the "**Declarant**").

ARTICLE 1

DEFINITIONS

Unless otherwise defined, the following words and phrases when used in this Declaration the shall have the meanings set forth in this Article.

1.1 "Additional Property" means (i) the real property described on Exhibit B attached hereto, together with all Improvements situated thereon, and (ii) any other real property, together with the Improvements located thereon, situated in the vicinity of the Project.

1.2 "Alley" means a thoroughfare through the rear portion of certain Lots that provides vehicular access to the Residential Units constructed on the Lots and that is composed of a material approved by the Town, the Declarant or the Architectural Committee.

1.3 "Alley Easement" means the portion of an Alley used for non-exclusive vehicular ingress and egress purposes.

1.4 "Alley Landscaping" means the portion of an Alley used for landscaping purposes.

1.5 "Alley Lot" means any Lot that is subject to an Alley Easement.

1.6 "Annual Assessment" means the assessments levied against each Lot pursuant to Section 6.2 of this Declaration.

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

1.8 "Areas of Association Responsibility" means (i) all Common Areas and the Improvements situated thereon (including Pedestrian Walkways); (ii) all Front Yard Landscaping for Alley Lots and for Private Drive Lots, (iii) all Alley Landscaping, (iv) all Private Drive Landscaping, (v) all real property, and the Improvements situated thereon, within

or adjacent to the Project located within dedicated rights-of-way with respect to which the State of Arizona or any county or municipality has not accepted responsibility for the maintenance thereof (including, without limitation, all landscaping within public streets shown on the Phase 1 and 2 Plat, the Phase 3 and 4 Plat, or any other plat of the Project, together with any amendments, supplements and corrections thereto) but only until such time as the State of Arizona or any county or municipality has accepted all responsibility for the maintenance, repair and replacement of such areas; (vi) any other real property, and any Improvements situated thereon, located within the boundaries of a Lot which the Association is obligated to maintain, repair and replace pursuant to the terms of this Declaration or the terms of another Recorded document executed by Declarant or the Association; and (vii) any mailboxes located on a Lot.

1.9 "Articles" means the Articles of Incorporation of the Association, as amended from time to time.

1.10 "Assessment" means an Annual Assessment, a Special Assessment or a Neighborhood Assessment.

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

1.12 "Assessment Period" means the period set forth in Section 6.7 of this Declaration.

1.13 "Association" means the Lyon's Gate Community Association, an Arizona nonprofit corporation, or such other Arizona nonprofit corporation to be organized by Declarant to own the Common Area and to administer and enforce the Project Documents and to exercise the rights, powers and duties set forth therein, and its successors and assigns.

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

1.15 "Back Yard Landscaping" means the landscaping on those portions of a Lot that are completely enclosed by a fence or wall.

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

1.17 "Bylaws" means the Bylaws of the Association, as amended from time to time.

1.18 "Cluster Homes" means (i) Lots 1 through 46, inclusive, Lots 176 through 229, inclusive, Lots 256 through 301, inclusive, and Lots 345 through 386, inclusive, in Phase 1 and 2 and Lots 396 through 542, inclusive, in Phase 3 and 4; and (ii) any other specified Lots within a portion of the Project identified as Cluster Homes in a Supplemental Declaration. The Cluster Homes are a Neighborhood Assessment Area as defined in this Declaration.

1.19 **"Common Area" or "Common Areas"** means (a) Tracts A through N, inclusive, as identified on the Phase 1 and 2 Plat, and (b) Tracts A through N, inclusive and Tracts P through S, inclusive, as identified on the Phase 3 and 4 Plat (following the conveyance of such Tracts to the Association, which conveyance shall occur prior to the sale of the final Lot in Phase 1 and 2 and the final Lot in Phase 3 and 4, respectively, of the Project owned by Declarant), as well as all real property, together with all Improvements situated thereon, that the Association at any time owns in fee or in which the Association has a leasehold interest for as long as the Association is the owner of the fee or leasehold interest, except that Common Area shall not include any Lot that the Association may acquire through foreclosure of the Assessment Lien or any deed in lieu of foreclosure.

1.20 **"Common Expenses"** means the actual or estimated expenses incurred, or anticipated to be incurred, by the Association in connection with the Project, together with any allocations to reserves.

1.21 **"Declarant"** means William Lyon Homes, Inc., a California corporation, its successors, and any Person to whom it may expressly assign any or all of its rights under this Declaration by a Recorded instrument.

1.22 **"Declarant Party" or "Declarant Parties"** means collectively Declarant, the shareholders of Declarant, the parent, affiliates and subsidiaries of Declarant, the officers, directors and employees of all of the foregoing and, as to Section 11.1, to the extent such Persons agree to be bound by Section 11.1any contractors, subcontractors, suppliers, architects, engineers, brokers and any other Person providing materials or services in connection with the construction of any Improvements upon or benefiting the Project.

1.23 **"Declaration"** means this Declaration of Covenants, Conditions and Restrictions, as amended from time to time.

1.24 **"Design Guidelines"** means the rules and guidelines adopted by the Architectural Committee pursuant to Section 5.10 of this Declaration, as amended or supplemented from time to time.

1.25 **"Designated Builder"** means (i) Lyon's Gate Hacienda, LLC, an Arizona limited liability company as the owner and developer of the Lots in the Phase 3 and 4 Plat described on **Exhibit A-2** attached hereto and incorporated herein; and (ii) any Person approved by Declarant who purchases one (1) or more Lots or portions of the Property for further subdivision, development, construction of Residential Units and/or resale in the ordinary course of business. A Designated Builder shall not include a Person who purchases a single Lot whereon a single Residential Unit may be constructed.

1.26 **"Developer"** means William Lyon Homes, Inc., a California corporation, its successors and any Person to whom it has expressly assigned any or all of its rights under this Declaration by a Recorded instrument.

1.27 "Driveway" means the surface portion of a Lot used for vehicular access that extends from the garage of a Residential Unit to either (a) an Alley Easement or a Private Drive Easement or (b) a street and that is composed of a material approved by Declarant or the Architectural Committee.

1.28 "Entry Walkway" means the surface portion of a Lot used for pedestrian access and which extends from a Sidewalk, Pedestrian Walkway or street to the porch or entry of the Residential Unit on the Lot.

1.29 "First Mortgage" means any mortgage, deed of trust or contract for sale pursuant to the provisions of A.R.S. §§ 33-741 et seq. on a Lot which has priority over all other mortgages, deeds of trust and contracts for sale on the same Lot.

1.30 "First Mortgagee" means the holder or beneficiary of any First Mortgage.

1.31 "Front Yard Landscaping" means the landscaping on those portions of a Lot that are between the Lot lines and the exterior walls and face of the Residential Unit and any fence or wall (but excluding any Alley Landscaping).

1.32 "Improvement" or "Improvements" means any temporary or permanent building, fence, wall or other structure or improvement above or below ground (including, without limitation, any sheds, basketball poles/hoops, play structures, mailboxes, patio covers and balconies), and any septic system, swimming pool, road, Driveway, Pedestrian Walkway, Sidewalk, paved parking area, and any trees, plants, shrubs, grass and other landscaping improvements of every type and kind.

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

1.34 "Lot" means a portion of the Project intended for independent ownership and use and designated as a lot on the Phase 1 and 2 Plat, the Phase 3 and 4 Plat, or any other plat of the Project and, where the context indicates or requires, shall include any building, structure or other Improvements situated on the Lot.

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

1.36 "Member" means any Person who is a Member of the Association and holds a "Membership" created pursuant to Article 5.

1.37 "Neighborhood Assessment" means an assessment levied against less than all of the Lots in the Project pursuant to Section 6.6 of this Declaration.

1.38 "Neighborhood Assessment Area" means (i) the Cluster Homes and (ii) any other specified lots within a portion of the Project designated in a Supplemental Declaration as an area in which the Association will provide Neighborhood Services.

1.39 "Neighborhood Expenses" means that portion of the Common Expenses, including allocations to reserves, incurred or anticipated to be incurred by the Association to provide Neighborhood Services to the Owners, Lessees and Residents in a Neighborhood Assessment Area.

1.40 "Neighborhood Services" means services designated in a Supplemental Declaration as being for the sole or primary benefit of the Owners, Lessees and Residents of a particular part of the Project.

1.41 "Non-Alley Lot" means any Lot that is not either an Alley Lot or a Private Drive Lot.

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

1.43 "Pedestrian Walkway" means either (a) the surface portion of a Lot used for pedestrian access and which faces a Tract or (b) the surface portion of a Tract used for pedestrian access and which is generally parallel to a street.

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

1.45 "Phase" or "Phases" means a portion of the Project which is shown on a Recorded Plat.

1.46 "Phase 1 and 2" or "Phase 1 and 2 Property" means the real property described on Exhibit A-1 to this Declaration, together with all Improvements located thereon.

1.47 "Phase 1 and 2 Plat" means the final Plat of Lyon's Gate Phase 1 and 2 recorded in the official records of Maricopa County, Arizona in Book 752 of Maps, Page 16, and all amendments, supplements and corrections thereto.

1.48 "Phase 3 and 4" or "Phase 3 and 4 Property" means the real property described on Exhibit A-2 to this Declaration, together with all Improvements located thereon.

1.49 "Phase 3 and 4 Plat" means the final Plat of Lyon's Gate Phase 3 and 4 recorded in the Official Records of Maricopa County, Arizona in Book 754 of Maps, Page 16, and all amendments, supplements and corrections thereto.

1.50 "Plat" means (i) the Phase 1 and 2 Plat; (ii) the Phase 3 and 4 Plat; and (iii) any other Recorded plat for one or more of the residential property Phases in the Project.

1.51 "Private Drive" means a dead-end access way across a portion of certain Lots that provides vehicular access to the Residential Units constructed on the Lots.

1.52 "Private Drive Easement" means the portion of a Private Drive used for non-exclusive vehicular ingress and egress purposes.

1.53 "Private Drive Landscaping" means the portion of a Private Drive used for landscaping purposes.

1.54 "Private Drive Lot" means any Lot that shares a Private Drive with one or more adjacent Lots.

1.55 "Property" or "Project" means (i) the Phase 1 and 2 Property described on Exhibit A-1 attached to this Declaration, together with all Improvements located thereon which are initially subjected to this Declaration; (ii) the Phase 3 and 4 Property described on Exhibit A-2 attached to this Declaration, together with all Improvements located thereon which are initially subjected to this Declaration; and (ii) all other real property and Improvements situated on the Additional Property which may be annexed and subjected to this Declaration pursuant to Section 2.3 of this Declaration.

1.56 "Project Documents" means this Declaration, the Articles, the Bylaws, the Association Rules, the Design Guidelines and the Effluent System Covenant (defined in Section 6.2.3.4).

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

1.58 "Record" or "Recording" means placing an instrument of public record in the Official Records of the Maricopa County Recorder, Maricopa County, Arizona, and "Recorded" means having been so placed of public record.

1.59 "Resident" means each natural person occupying or residing in a Residential Unit.

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

1.61 "Sidewalk" means the surface portion of a Lot used for pedestrian access and which is generally parallel to a street.

1.62 "Special Assessment" means any assessment levied and assessed pursuant to Section 6.5 of this Declaration.

1.63 "Supplemental Declaration" means a Declaration recorded pursuant to Section 2.2 of this Declaration.

1.64 "Town" means the Town of Gilbert, State of Arizona.

1.65 "Use and Benefit Easement" means the easement affecting certain Lots within the Project as described in Section 10.7 of this Declaration.

1.66 "Visible From Neighboring Property" means, with respect to any given object, that such object is or would be visible to a person six (6) feet tall, standing at ground level on any part of an adjoining Lot, Common Area or street.

ARTICLE 2

PLAN OF DEVELOPMENT

2.1 Property Initially Subject to the Declaration. Declarant is the owner of fee title to the Property and intends by this Declaration to impose upon the Property mutually beneficial restrictions under a general plan of improvement and desires to provide a flexible and reasonable procedure for the overall development of the Property and to establish a method for the administration, maintenance, preservation, use and enjoyment of the Property. Declarant hereby declares that all the Property shall be held, sold, used and conveyed subject to the easements, restrictions, conditions and covenants set forth in this Declaration, which are for the purpose of protecting the value and desirability of the Property, and which shall run with the Property. Declarant further declares that this Declaration shall be binding upon all Persons having any right, title or interest in the Property or any part thereof, their successors, successors in title and assigns and shall inure to the benefit of each Owner thereof. By acceptance of a deed or by acquiring any interest in any of the property subject to this Declaration, each Person, for himself or itself, his heirs, personal representatives, successors, transferees and assigns, binds

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

2.2 Supplemental Declarations. Declarant reserves the right, but not the obligation, to record one or more Supplemental Declarations against portions of the Property. A Supplemental Declaration may (i) designate Neighborhood Services for Neighborhood Assessment Areas, (ii) impose such additional covenants, conditions and restrictions as the Declarant determines to be appropriate for the Neighborhood Assessment Area, (iii) establish a Neighborhood Assessment pursuant to Section 6.6 of this Declaration for a Neighborhood Assessment Area, and/or (iv) impose any additional covenants, conditions and restrictions as Declarant deems reasonably necessary and appropriate, whether or not a Neighborhood Assessment Area is established. A Supplemental Declaration may only be amended by (i) the written approval or the affirmative vote, or any combination thereof, of Owners representing not less than seventy-five percent (75%) of the votes with respect to the Lots subject to the Supplemental Declaration, (ii) the written approval of the Association, and (iii) the written approval of the Declarant so long as the Declarant owns any Lot or other real property in the Project. Such amendment shall certify that the amendment has been approved as required by this Section, shall be signed by the President or Vice President of the Association, and the Declarant, so long as the Declarant owns any Lot or other real property in the Project, and shall be Recorded.

2.3 Annexation of Additional Property.

2.3.1 At any time on or before the date which is ten (10) years after the date of the Recording of this Declaration, the Declarant shall have the right to annex and subject to this Declaration all or any portion of the Additional Property without the consent of any other Owner or Person. The annexation of all or any portion of the Additional Property shall be effected by the Declarant Recording an amendment to this Declaration setting forth the legal description of the Additional Property being annexed, stating that such portion of the Additional Property is annexed and subjected to the Declaration and describing any portion of the Additional Property being annexed which will be Common Area. Unless a later effective date is set forth in the amendment annexing Additional Property, the annexation shall become effective upon the Recording

of the amendment. An amendment Recorded pursuant to this Section may divide the portion of the Additional Property being annexed into separate phases and provide for a separate effective date with respect to each phase. The voting rights of the Owners of Lots annexed pursuant to this Section shall be effective as of the date the amendment annexing such Additional Property is Recorded or such later date set forth in the amendment. The Lot Owner's obligation to pay Assessments shall commence as provided in Section 6.8 of this Declaration. If an amendment annexing a portion of the Additional Property divides the annexed portion of the Additional Property into phases, the Declarant shall have the right to amend any such amendment to change the description of the phases within the annexed Additional Property, except that the Declarant may not change the description of any phase in which a Lot has been conveyed to a Purchaser.

2.3.2 Declarant makes no assurances as to the exact number of Lots which shall be added to the Project by annexation or if all or any portion of the Additional Property will be annexed.

2.3.3 All taxes and other assessments relating to all or any portion of the Additional Property annexed into the Project covering any period prior to the time when such portion of the Additional Property is annexed in accordance with this Section 2.3 shall be the responsibility of, and shall be paid by the owner of such Additional Property.

2.3.4 The Additional Property may be annexed as a whole, at one time or in one or more portions at different times, or it may never be annexed, and there are no limitations upon the order of annexation or the boundaries thereof. Any portion of the Additional Property annexed by the Declarant pursuant to this Section 2.3 need not be contiguous with other Property in the Project, and the exercise of the right of annexation as to any portion of the Additional Property shall not bar the further exercise of the right of annexation as to any other portion of the Additional Property.

2.4 Disclosures; Release of Claims. Declarant hereby informs all prospective purchasers and occupants of Lots that:

2.4.1 Williams Gateway Airport (the "**Airport**") is located approximately three (3) miles east of the Project. Flights over the Project by certain aircraft taking off from or landing at the Airport may have flight patterns over the Project which may generate noise that may be of concern to some individuals. The noise, to the extent applicable, may be affected by future changes in Airport size, usage and configuration (which may include, without limitation, expansion of the Airport).

2.4.2 The Town has required that the water used to irrigate all of the Common Area (or such portions designated by the Town) be reclaimed water ("effluent") purchased by the Association from the Town when such reclaimed water is available from the Town for such purposes. The effluent is not potable (drinkable) water and consumption of such effluent by humans or animals may cause severe illness. Owners,

Lessees and Residents may be exposed to or experience odors, flies, mosquitoes and other insects, birds or other effects generated by the use of such effluent.

2.4.3 As of the date of Recording of this Declaration, certain real property adjacent to or in close proximity to the Project is (i) not a part of the Project and (ii) could be rezoned and/or developed to uses other than its present use (including commercial and apartment uses). Those areas may contribute to increased noise and traffic in and around the Project.

2.4.4 There may be undeveloped parcels of land within close proximity to the Project that are being used for agricultural purposes. Activities that may be conducted on those parcels may include tilling, cultivation, irrigation, harvesting and other management of crop lands, aerial and ground application of agri-chemicals and fertilizers, raising, feeding, boarding and movement of livestock and such other activities as are a part of or are related to such agricultural uses. Owners, Lessees and Residents may experience dust, fumes, odors, pollen, flies, mosquitoes, noise or other effects as may be generated by such agricultural operations.

2.4.5 Multiple parcels of real property adjacent to the Project may be used as a school site. In such case, there will be increased slow moving traffic and noise in and around the Project. If not developed as a school site, these parcels may be developed for residential purposes, annexed to this Declaration and become a part of the Project.

2.4.6 A railroad line runs along the southwestern boundary of the Property, and the operation, repair and replacement of such railroad line may result in noises, odors, dust, vibrations, derailments or other potential nuisances or hazards affecting the Property.

2.4.7 The Project is located to the south and southeast of the projected alignment of the Loop 202 San Tan Freeway which is or will be under construction. During construction, the Project may be affected by heavy truck traffic and dust, fumes, odors, noise or other effects from such construction. After construction, the Project may be affected by noise from traffic on the freeway, increased local traffic volume or other effects from the proximity of the freeway.

2.4.8 The Project is approximately one (1) mile southeast of the San Tan Generating Station operated by Salt River Project. Owners, Lessees and Residents may experience dust, fumes, odors or other effects from the operation of the generating station.

2.4.9 The Roosevelt Water Conservation District Canal and the East Maricopa Floodway are approximately one (1) mile southeast of the Project. The proximity of the canal, floodway and irrigation laterals may pose an attractive nuisance with the potential risk of drowning for children, pets and adults, and the Project may be

exposed to or experience odors, flies, mosquitoes and other insects, birds or other effects as a result of the proximity of such irrigation facilities.

2.4.10 The route of an underground high-pressure natural gas pipeline is planned to run along the northern boundary of the railroad line referred to in Section 2.4.6. The construction, existence, operation, repair and maintenance of such gas line may result in noises, odors, dust, vibrations, or other potential nuisances or hazards affecting the Project.

2.4.11 An equestrian trail and multi-purpose trail is planned to be located along the southwestern boundary of the Project over the high-pressure natural gas pipeline referred to in Section 2.4.10. The existence of these trails may result in potential nuisances or hazards affecting the Project.

2.4.12 Each Owner, Lessee and Resident, for itself and its family, guests, invitees and licensees, assumes any and all risks, burdens and inconveniences as may now or hereafter be or become associated with the proximity of the Project to the conditions described in this Section 2.4. Neither the Declarant Parties, the Association nor any director, officer, agent or employee of the Association shall be liable to any Owner, Resident or Lessee, or its family, guests, invitees or licensees, for any claims or damages to persons or property resulting, directly or indirectly, from the proximity of the Project to the conditions described in this Section 2.4.

2.4.13 Each Owner, Lessee and Resident, for itself and its family, guests, invitees and licensees, hereby releases the Declarant Parties, the Association and any director, officer, agent or employee of the Association from any and all claims, actions, suits, demands, causes of action, losses, damages or liabilities (including, without limitation, strict liability) related to or arising in connection with any nuisance, inconvenience, disturbance, injury, death or damage to persons and property resulting from activities or occurrences described in this Section 2.4.

2.5 Avigation Easements. Declarant may be required by the Town to grant to the owners and operators of the Airport one (1) or more perpetual avigation easements over portions of the Project. Such easements shall allow usage of the airspace over the Project by persons and entities using such Airport in accordance with the requirements of applicable federal and state laws. No Owner shall have any claim for damages or injunctive relief of any nature as a result of use of airspace over the Project that is in accordance with applicable federal and state laws. Declarant and/or the Association shall have the right to execute any further documents or instruments requested from time to time by the Town to further evidence the avigation easements granted herein. As disclosed in Section 2.4.1 above, Declarant hereby informs all prospective purchasers and occupants of the Project that this Project, due to its proximity to the Airport, is likely to experience aircraft overflights which could generate noise levels which may be of concern to some individuals.

2.6 **Disclaimer of Implied Covenants.** Nothing contained in this Declaration and nothing which may be represented to a Purchaser by real estate brokers or salespersons representing the Declarant or a Designated Builder shall be deemed to create any implied covenants, servitudes or restrictions with respect to the use of any Property subject to this Declaration.

2.7 **Disclaimer of Representations.** Declarant makes no representations or warranties whatsoever that: (i) the Project will be completed in accordance with the plans for the Project as they exist on the date of this Declaration is Recorded; (ii) any Property subject to this Declaration will be committed to or developed for a particular use or for any use; (iii) the use of any Property subject to this Declaration will not be changed in the future; or (iv) the use of any property within the vicinity of the Property will not change so as to impact the use, enjoyment and value of any of the Property.

2.8 **Views Not Guaranteed.** Although certain Lots in the Project at any point in time may have particular views, no express or implied rights or easements exist for views or for the passage of light and air to any Lot. Neither Declarant Parties nor Association makes any representation or warranty whatsoever, express or implied, concerning the view that any Lot will have whether as of the date this Declaration is Recorded or thereafter. Any view that exists at any point in time for a Lot may be impaired or obstructed by further construction within or outside the Project, including, without limitation, by construction of Improvements (including, without limitation, landscaping) by Declarant, construction by third parties (including, without limitation, other Owners, Residents and Designated Builder) and by the natural growth of landscaping. No third party, including, without limitation, any broker or salesperson, has any right to bind Declarant, a Designated Builder or the Association with respect to the preservation of any view from any Lot or any view of a Lot from any other property.

ARTICLE 3

USE RESTRICTIONS

3.1 **Architectural Control.**

3.1.1 No excavation or grading work shall be performed on any Lot without the prior written approval of the Architectural Committee, unless such work is performed in the normal course of landscaping and does not alter or impair the direction or flow of water in accordance with the drainage plans for the Project or otherwise violate Section 3.19 herein.

3.1.2 No Improvement which would be Visible From Neighboring Property (including, without limitation, landscaping in rear yards which may grow to be Visible From Neighboring Property) and no swimming pool shall be constructed or installed on any Lot without the prior written approval of the Architectural Committee. No addition, alteration, repair, change or other work which in any way alters a swimming pool, the exterior appearance, including but without limitation, the exterior color scheme,

of any part of a Lot, or any Improvements located thereon which are or may become Visible From Neighboring Property, from their appearance on the date this Declaration is Recorded shall be made or done without the prior written approval of the Architectural Committee. Accordingly, approval of the Architectural Committee is not required for the construction, installation, addition, alteration or repair of any Improvement situated in the back yard of a Lot unless such Improvement is or would be Visible From Neighboring Property. Any Owner desiring approval of the Architectural Committee for the construction, installation addition, alteration, repair, change or replacement of a swimming pool or any Improvement which is, will become, or would be Visible From Neighboring Property shall submit to the Architectural Committee a written request for approval specifying in detail the nature and extent of the addition, alteration, repair, change or other work which the Owner desires to perform, including, without limitation, the distance of such work from neighboring properties, if applicable. Any Owner requesting the approval of the Architectural Committee shall also submit to the Architectural Committee any additional information, plans and specifications which the Architectural Committee may request. In the event that the Architectural Committee fails to approve or disapprove an application for approval within thirty (30) days after the application, together with any fee payable pursuant to Section 3.1.6 of this Declaration and all supporting information, plans and specifications requested by the Architectural Committee, have been submitted to the Architectural Committee, approval will not be required and this Section will be deemed to have been complied with by the Owner who had requested approval of such plans. The approval by the Architectural Committee of any construction, installation, addition, alteration, repair, change or other work pursuant to this Section shall not be deemed a waiver of the Architectural Committee's right to withhold approval of any similar construction, installation, addition, alteration, repair, change or other work subsequently submitted for approval.

3.1.3 In reviewing plans and specifications for any construction, installation, addition, alteration, repair, change or other work which must be approved by the Architectural Committee, the Architectural Committee, among other things, may consider the quality of workmanship and design, harmony of external design with existing structures and location in relation to surrounding structures, topography and finish grade elevation. The Architectural Committee may disapprove plans and specifications for any construction, installation, addition, alteration, repair, change or other work which must be approved by the Architectural Committee pursuant to this Section 3.1 if the Architectural Committee determines, in its sole and absolute discretion, that: (i) the proposed construction, installation, addition, alteration, repair, change or other work would violate any provision of this Declaration; (ii) the proposed construction, installation, addition, alteration, repair, change or other work does not comply with any Design Guideline; (iii) the proposed construction, installation, addition, alteration, repair, change or other work is not in harmony with existing Improvements in the Project or with Improvements previously approved by the Architectural Committee but not yet constructed; (iv) the proposed construction, installation, addition, alteration, repair, change or other work is not aesthetically acceptable; (v) the proposed construction, installation, addition, alteration, repair, change or other work would be

detrimental to or adversely affect another Owner or the appearance of the Project; or (vi) the proposed construction, installation, addition, alteration, repair, change or other work is otherwise not in accord with the general plan of development for the Project.

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

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

3.1.6 The Architectural Committee shall have the right to charge a reasonable fee for reviewing requests for approval of any construction, installation, alteration, addition, repair, change or other work pursuant to this Section 3.1, which fee shall be payable at the time the application for approval is submitted to the Architectural Committee.

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

3.1.8 The provisions of this Section do not apply to, and approval of the Architectural Committee shall not be required for, the construction, erection, installation, addition, alteration, repair, change or replacement of any Improvements made by, or on behalf of, the Declarant, the Developer or a Designated Builder.

3.1.9 The approval required of the Architectural Committee pursuant to this Section 3.1 shall be in addition to, and not in lieu of, any approvals or permits which may be required under any federal, state or local law, statute, ordinance, rule or regulation.

3.1.10 The approval by the Architectural Committee of any construction, installation, addition, alteration, repair, change or other work pursuant to this Section 3.1 shall not be deemed a warranty or representation by the Architectural Committee as to the quality of such construction, installation, addition, alteration, repair, change or other work or that such construction, installation, addition, alteration, repair, change or other work conforms to any applicable building codes or other federal, state or local law, statute, ordinance, rule or regulation.

3.1.11 The Architectural Committee may condition its approval of plans and specifications upon the agreement by the Owner submitting such plans and specifications (other than the Declarant or the Developer, who shall not be subject to the provisions of this Subsection) to furnish to the Association a bond or other security acceptable to the Architectural Committee in an amount determined by the Architectural Committee to be reasonably sufficient to: (i) assure the completion of the proposed Improvements or the availability of funds adequate to remedy any nuisance or unsightly conditions occurring as a result of the partial completion of such Improvement, and (ii) to repair any damage which might be caused to any Area of Association Responsibility as a result of such work. Any such bond shall be released or security shall be fully refundable to the Owner upon: (a) the completion of the Improvements in accordance with the plans and specifications approved by the Architectural Committee; and (b) the Owner's written request to the Architectural Committee, provided that there is no damage caused to any Area of Association Responsibility by the Owner or its agents or contractors.

3.1.12 If the plans and specifications pertain to an Improvement which is within an Area of Association Responsibility so that the Association is responsible for the maintenance, repair and replacement of such Improvement, the Architectural Committee may condition its approval of the plans and specifications for the proposed construction, installation, addition, alteration, repair, change or other work with respect to the Improvement on the agreement of the Owner to reimburse the Association for the future cost of the repair, maintenance or replacement of such Improvement.

3.1.13 Any approval of the Architectural Committee required under this Section 3.1 shall be in addition to, and not in lieu of, any approvals, consents or permits required under the ordinances or rules and regulations of the Town or any other agency or municipality having jurisdiction over the Project.

3.2 Temporary Occupancy and Temporary Buildings. No trailer, basement or other portion of any incomplete building, tent, shack, garage or barn, and no temporary buildings or structures of any kind, shall be used at any time for a residence, either temporary or permanent. No temporary construction buildings or trailers (including temporary construction buildings or trailers used by a Designated Builder in connection with construction of the Project and/or the sale of homes within the Project) may be installed or kept on any Lot without the prior written approval of the Architectural Committee. Any such temporary buildings or trailers approved by the Architectural Committee shall be removed immediately after the completion of construction, and in no event shall any such buildings, trailer or other structures be maintained or kept on any Lot for a period in excess of twelve months without the prior written approval of the Architectural Committee.

3.3 Nuisances; Construction Activities. No animal waste, rubbish or debris of any kind shall be placed or permitted to accumulate upon or adjacent to any Lot or Common Area, and no odors or loud noises shall be permitted to arise or emit therefrom, so as to render any such property or any portion thereof, or activity thereon, unsanitary, unsightly, offensive or detrimental to any other property in the vicinity thereof or to the occupants of such other

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

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

3.5 Antennas. Except as permitted by law or under the Design Guidelines, no antenna, aerial, satellite television dish or other device for the transmission or reception of television or radio signals or any other form of electromagnetic radiation proposed to be erected, used or maintained outdoors on any portion of the Project, whether attached to a Residential Unit or structure or otherwise, shall be erected or installed without the prior written consent of the Architectural Committee.

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

3.7 Trash Containers and Collection. No garbage or trash shall be placed or kept on any Lot, except in covered containers of a type, size and style which are required by the Town or approved by the Architectural Committee. In no event shall such containers be maintained so as to be Visible From Neighboring Property except to make the same available for collection and then only for the shortest time reasonably necessary to effect such collection. All rubbish, trash, or garbage shall be removed from Lots and other property and shall not be allowed to accumulate thereon. If trash collection services are not provided by the Town, the Board shall have the right to subscribe to a trash service for the use and benefit of the Association and all Owners and Residents, with any costs to be Common Expenses or billed separately to the Owners or Residents, and to adopt and promulgate rules and regulations regarding garbage, trash, trash containers and collection. No outdoor incinerators shall be kept or maintained on any Lot or other property. Additional restrictions applicable to Alley Lots and Private Drive Lots are described in Article 10.

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

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

3.10 Overhead Encroachments. No tree, shrub, or planting of any kind on any Lot shall be allowed to overhang or otherwise to encroach upon any sidewalk, street, pedestrian way or other area from ground level to a height of eight (8) feet.

3.11 Residential Use. All Residential Units shall be used, improved and devoted exclusively to single-family residential use. No time-sharing use of any Lot or Residential Unit shall be permitted. No trade or business may be conducted on any Lot or in or from any Residential Unit, except that an Owner or other Resident of a Residential Unit may conduct a business activity within a Residential Unit so long as: (i) the existence or operation of the business activity is not apparent or detectable by sight, sound or smell from outside the Residential Unit; (ii) the business activity conforms to all applicable zoning ordinances or requirements for the Project; (iii) the business activity does not involve persons coming on to the Lot or the door-to-door solicitation of Owners or other Residents in the Project; and (iv) the business activity is consistent with the residential character of the Project and does not constitute a nuisance or a hazardous or offensive use or threaten security or safety of other Residents in the Project, as may be determined from time to time in the sole discretion of the Board. The terms "business" and "trade" as used in this Section shall be construed to have ordinary, generally accepted meanings, and shall include, without limitation, any occupation, work or activity undertaken on an ongoing basis which involves the provision of goods or services to persons other than the Residents of a provider's Residential Unit and for which the provider receives a fee, compensation or other form of consideration, regardless of whether: (i) such activity is engaged in full or part time; (ii) such activity is intended or does generate a profit; or (iii) a license is required for such activity. The leasing of a Residential Unit by the Owner thereof shall not be considered a trade or business within the meaning of this Section.

3.12 Animals. No animals of any kind shall be raised, bred or kept on any Lot, except a reasonable number of generally recognized house or yard pets ("**Permitted Pets**") may be kept on a Lot if they are kept, bred or raised thereon solely as domestic pets and not for commercial purposes. No Permitted Pet shall be allowed to make an unreasonable amount of noise or to become a nuisance. No structure for the care, housing or confinement of any Permitted Pet shall be maintained so as to be Visible From Neighboring Property. Upon the written request of any Owner, Lessee or Resident, the Architectural Committee shall determine, in its sole and absolute discretion, whether, for the purposes of this Section (i) a particular

Permitted Pet is a nuisance or making an unreasonable amount of noise, (ii) a particular pet is a Permitted Pet, and (iii) the number of Permitted Pets kept on a Lot is reasonable. Any decision rendered by the Architectural Committee shall be enforceable in the same manner as other restrictions set forth in this Declaration. Any Owner, Resident or other person who brings or permits a pet to be on the Common Area or any Lot or street shall be responsible for keeping the pet on a leash and immediately removing any feces deposited by said pet.

3.13 Machinery and Equipment. No machinery or equipment of any kind shall be placed, operated or maintained upon or adjacent to any Lot, except such machinery or equipment as is usual and customary in connection with the use, maintenance or construction (during the period of construction) of a building, appurtenant structures, or other Improvements or such machinery or equipment which Developer, a Designated Builder or the Association may require for the operation and maintenance of the Project. Lawn and garden equipment may be kept on a Lot provided such equipment is housed and stored in a garage or in a building approved by the Architectural Committee or not Visible From Neighboring Property.

3.14 Signs. No signs whatsoever (including, but not limited to, commercial and similar signs) which are Visible From Neighboring Property shall be erected or maintained on any Lot without the prior written approval of the Architectural Committee except:

3.14.1 Signs required by legal proceedings.

3.14.2 Political signs; however, the Architectural Committee reserves the right to disallow and/or regulate the size and number of political signs to the extent permitted by law.

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

3.14.4 One (1) "For Sale" sign placed by a professional residential real estate brokerage company or placed by the Owner of the Lot, provided that such signs are consistent with provisions set forth in the Design Guidelines.

3.14.5 One (1) security system sign placed by a professional residential security alarm company that has installed a security alarm system in a Residential Unit, provided that such sign is consistent with provisions set forth in the Design Guidelines.

3.15 Restriction on Further Subdivision, Property Restrictions and Rezoning. No Lot shall be further subdivided or separated into smaller lots or parcels by any Owner other than the Declarant, the Developer or a Designated Builder, and no portion less than all of any such Lot shall be conveyed or transferred by any Owner other than the Declarant, the Developer or a Designated Builder, without the prior written approval of the Architectural Committee. No further covenants, conditions, restrictions or easements shall be Recorded by any Owner, Lessee, or other Person other than the Declarant, the Developer or a Designated Builder against any part of the Property without the provisions thereof having been first

approved in writing by the Architectural Committee. No application for rezoning, variances or use permits pertaining to any Lot shall be filed with any governmental authority by any Person other than the Declarant, the Developer or a Designated Builder unless the application has been approved by the Architectural Committee and the proposed use otherwise complies with this Declaration.

3.16 **Vehicles and Parking.** As used in this Declaration, the term "**Motor Vehicle**" means a car, van, truck, motorcycle, all terrain vehicle, utility vehicle, pickup truck or other motorized vehicle intended for non-commercial use, and the term "**Recreational Vehicle**" means a recreational vehicle, motor home, travel trailer, tent trailer, boat or similar vehicles intended for non-commercial use vehicle.

3.16.1 All Motor Vehicles not prohibited by the provisions of this Declaration shall be stored in a garage so as to be concealed from view from adjoining Lots, streets or Common Areas.

3.16.2 For those Lots which are not Alley Lots or Private Drive Lots, Motor Vehicles may be parked upon the Driveway surface of the Lot when there are more Motor Vehicles on a Lot than the number of garages constructed thereon.

3.16.3 If there are more Motor Vehicles than the number of garages constructed on an Alley Lot or a Private Drive Lot, those Motor Vehicles must be parked in areas designated in the Association Rules.

3.16.4 Parking and/or storing of Recreational Vehicles on a Lot or any portion of the Property is prohibited unless such vehicles are not Visible From Neighboring Property or are otherwise permitted pursuant to the Design Guidelines.

3.16.5 Notwithstanding the provisions of Section 3.16.4, Recreational Vehicles may be parked on a Driveway (or, for Alley Lots or Private Drive Lots, in an area designated in the Association Rules) for purposes of loading or unloading, but only for short periods of time.

3.16.6 Any Motor Vehicles or Recreational Vehicles stored or parked on a Lot may not be reconstructed, modified or rebuilt unless an emergency threatening persons or property exists or unless such work is not Visible From Neighboring Property or any Common Area or street. No Motor Vehicle or Recreational Vehicle may be constructed on a Lot, even if such construction were not Visible From Neighboring Property.

3.16.7 No inoperable Motor Vehicle may be stored or parked on any Lot or other property so as to be Visible From Neighboring Property or to be any Common Area or any street.

3.17 **Towing of Vehicles.** The Board shall have the right to have any Motor Vehicle or Recreational Vehicle which is parked, kept, maintained, constructed, reconstructed or

repaired in violation of the Project Documents towed away at the sole cost and expense of the owner of the Motor Vehicle or Recreational Vehicle. Any expense incurred by the Association in connection with the towing of any Motor Vehicle or Recreational Vehicle shall be paid to the Association upon demand by the owner of the Motor Vehicle or Recreational Vehicle. If the Motor Vehicle or Recreational Vehicle is owned by an Owner, any amounts payable to the Association shall be secured by the Assessment Lien, and the Association may enforce collection of said amounts in the same manner provided for in this Declaration for the collection of Assessments.

3.18 Garages and Driveways. Garages situated on Lots shall be used only for the parking of Motor Vehicles and shall not be used or converted for living or recreational activities without the prior written approval of the Architectural Committee. Garages may be used for the storage of non-hazardous material so long as the storage of material allows sufficient space for the parking of at least one (1) Motor Vehicle. No garage door shall remain open except when necessary for access to and from the garage.

3.19 Drainage. No structure, building, landscaping, fence, wall or other Improvement shall be constructed, installed, placed or maintained in any manner that would obstruct, interfere with or change the direction or flow of water in accordance with the drainage plans for the Project, or any part thereof, or for any Lot as shown on the drainage plans on file with the county or municipality in which the Project is located. No Person shall alter the grading of a Lot or alter the natural flow of water over and across a Lot without the prior written approval of the Architectural Committee.

3.20 Rooftop Air Conditioners and Solar Panels. No air conditioning units or appurtenant equipment may be mounted, installed or maintained on the roof of any Residential Unit or other building on a Lot. No solar panels mounted, installed or maintained on the roof of any Residential Unit or other building on a Lot may be Visible From Neighboring Property, except as may be permitted by the Design Guidelines.

3.21 Basketball Goals and Backboards. No basketball hoop, goal or backboard, whether permanent or portable, shall be constructed or installed on any Lot without the prior written approval of the Architectural Committee. If the means of vehicular access to a Lot is over an Alley or a Private Drive, the basketball hoop, goal or backboard may not be constructed or installed on any portion of the Alley or Driveway.

3.22 Violation of Law or Insurance. No Owner shall permit anything to be done or kept in or upon a Lot which will result in the cancellation or increase in premium, or reduction in coverage, of insurance maintained by any Owner or the Association or which would be in violation of any law.

3.23 Playground Equipment. No jungle gyms, swing sets or similar playground equipment which would be Visible From Neighboring Property shall be erected or installed on any Lot without the prior written approval of the Architectural Committee.

3.24 Restriction on Gates. No Owner shall install a gate on any portion of a Lot in order to obtain direct access from such Lot to a Common Area.

3.25 Lights. No spotlights, backyard lights or other high intensity lighting shall be placed or utilized upon any Lot, except that security lighting shall be permitted if such lighting is consistent with the provisions for security lighting in the Design Guidelines.

3.26 Window Coverings. No window which would be Visible From Neighboring Property shall at any time be covered with aluminum foil, bed sheets, newspapers or any other like materials. No reflective materials shall be installed or used on any Improvement without the prior written consent of the Architectural Committee.

3.27 Fire/Building Repair. In the event that any Improvement is destroyed or partially destroyed by fire, act of God or as the result of any other act or thing, the damage must be repaired and the Improvement reconstructed or razed within twelve months after such damage. Notwithstanding the foregoing, if a dangerous condition shall exist because of such damage, it shall immediately be corrected so as to not cause harm to another Person.

3.28 Leasing of Residential Units. An entire Residential Unit may be leased to a Lessee from time to time by an Owner. The lease between an Owner and a Lessee shall contain a provision that the Lessee has received and agrees to be bound by the provisions, restrictions, covenants, conditions, rules and regulations now or hereafter imposed by the Project Documents. Any lease agreement shall be for a period of not less than thirty (30) days, and a copy thereof shall be delivered to the Association.

3.29 Plant Material Restrictions. Unless approved by the Architectural Committee, no grass or plant materials shall be installed, maintained or replaced on that portion of a Lot which is between the street adjacent to the Lot and the exterior walls of the Residential Unit situated on the Lot, except for any side or back yard of the Lot which is completely enclosed by a wall or fence.

3.30 Variances. The Architectural Committee may, at its option and in extenuating circumstances, grant variances from the restrictions set forth in this and if the Architectural Committee determines in its discretion that (i) a restriction would create an unreasonable hardship or burden on an Owner, Lessee or Resident or a change of circumstances since the Recordation of this Declaration has rendered such restriction obsolete, and (ii) the activity permitted under the variance will not have any substantial adverse effect on the Owners, Lessees and Residents of the Project and is consistent with the high quality of life intended for Residents of the Project. If any restriction set forth in this Article 3 is adjudged or deemed to be invalid or unenforceable as written by reason of any federal, state or local law, ordinance, rule or regulation, then a court or the Board, as applicable, may interpret, construe, rewrite or revise such restriction to the fullest extent allowed by law, so as to make such restriction valid and enforceable. Such modification shall not serve to extinguish any restriction not adjudged or deemed to be unenforceable.

ARTICLE 4

EASEMENTS

4.1 Easement for Use of Common Area.

4.1.1 Every Owner, Lessee and Resident shall have a non-exclusive right and easement of use and enjoyment in and to the Common Area (including, but not limited to, the right to use any streets which may be part of the Common Area for ingress and egress to an Owner's Lot) which right shall be appurtenant to and shall pass with the title to every Lot, subject to the following:

4.1.1.1 The right of the Association to dedicate, convey, transfer or encumber the Common Area as provided in Section 5.11 of this Declaration; provided, however, that if access to a Lot is over any part of the Common Area, any conveyance, lease or encumbrance of such Common Area shall be subject to an easement for ingress and egress in favor of the Owner and Residents of the Lot and their guests and invitees.

4.1.1.2 The rights and easements granted to the Declarant, the Developer and the Designated Builder in this Declaration, including, without limitation, the rights and easements granted to the Declarant, the Developer and the Designated Builder in Section 4.4 and Section 4.5 of this Declaration.

4.1.1.3 The right of the Association to regulate the use of the Common Area through the Association Rules, to limit the number of guests who may use the Common Area and to prohibit access to such portions of the Common Area, such as landscaped areas, not intended for use by the Owners, Lessees or Residents.

4.1.1.4 The right of the Board to impose reasonable Membership requirements and charge reasonable special use fees for services to be rendered by the Association or for the use of any facility situated on the Common Area.

4.1.1.5 The right of the Board, subject to applicable law, to permit the use of any recreational facility or amenity situated on the Common Area by persons other than Owners or Residents and their guests upon payment of such fees as may be established by the Board.

4.1.1.6 The rights and easements, if any, reserved or granted to the Declarant or any other Person in the deed conveying the Common Area to the Association.

4.1.1.7 The right of the Association to operate any recreational facility on Common Area through management agreements with Persons designated by the Board.

4.1.1.8 The right of the Association to suspend the right of an Owner to use the Common Area (other than the right of an Owner and such Owner's family, tenants and guests to cross over a portion of the Common Area used as access to the Lot and to use any streets which are part of the Common Area for ingress or egress to the Owner's Lot) if such Owner is more than fifteen (15) days delinquent in the payment of Assessments or other amounts due to the Association or if the Owner has violated any other provisions of the Project Documents and has failed to cure such violation within fifteen (15) days after the Association notifies the Owner of the violation. Any suspension of an Owner's right to use the Common Area shall also extend to the Lessees and Residents of the Owner's Lot and their guests and invitees.

4.1.2 If a Lot is leased or rented by the Owner thereof, the Lessee and the members of the Lessee's family residing with such Lessee shall have the right to use the Common Area during the term of the lease, and the Owner of such Lot shall have no right to use the Common Area (except the right to cross over any portion of the Common Area used as access to the Lot and to use any streets which may be part of the Common Area for ingress and egress to the Owner's Lot) until the termination or expiration of such lease.

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

4.3 Mailbox Easement. There is hereby created an easement upon, across, over and under the Common Area and that portion of any Lot within the Project which has a mailbox located on it, as reasonably necessary for ingress, egress, installation, replacing, repairing or maintaining mailboxes within the Project.

4.4 Declarant's, Developer's and Designated Builder's Use for Sales and Leasing Purposes. Declarant, Developer or a Designated Builder shall have the right and an easement to maintain sales or leasing offices, management offices, construction offices, a design center, model homes and parking areas for the purpose of accommodating Persons visiting such model homes and sales offices, throughout the Project and to maintain one or more advertising, identification or directional signs on the Common Area or on the Lots owned or leased by Declarant, Developer or a Designated Builder while the Declarant, Developer or a Designated Builder is selling Lots. Declarant, Developer and Designated Builder reserve the right to place model homes, management offices, sales and leasing offices and parking areas on any Lots owned or leased by Declarant, Developer and Designated Builder and on any portion of the Common Area in such number, of such size and in such locations as Declarant, Developer or

Designated Builder deems appropriate. In the event of any conflict or inconsistency between this Section and any other provision of this Declaration, this Section shall control.

4.5 Declarant's, Developer's and Designated Builder's Easements. Declarant, Developer and Designated Builder shall have the right and an easement on and over the Areas of Association Responsibility, Alleys and Private Drives to construct all Improvements that the Declarant, Developer or Designated Builder may deem necessary and to use the Areas of Association Responsibility, Alleys and Private Drives and any Lots or other property within the Project owned by Declarant, Developer or Designated Builder for construction or renovation related purposes, including the storage of tools, machinery, equipment, building materials, appliances, supplies and fixtures, and the performance of work respecting the Project. The Declarant, Developer and Designated Builder shall have the right and an easement upon, over, and through the Areas of Association Responsibility, Alleys and Private Drives as may be reasonably necessary for the purpose of discharging its obligations or exercising the rights granted to or reserved by the Declarant, the Developer or the Designated Builder by this Declaration. In the event of any conflict or inconsistency between this Section and any other provision of this Declaration, this Section shall control.

4.6 Easement in Favor of Association. The Lots (except for the interior of a Residential Unit or other buildings and the back yard area of a Lot) are hereby made subject to the following easements in favor of the Association and its directors, officers, agents, employees and independent contractors:

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

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

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

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

4.6.5 For inspection of the Lots in order to verify that the provisions of the Project Documents are being complied with by the Owners, their guests, Lessees, invitees and the other Residents of a Lot; and

4.6.6 For repair and maintenance of Alley Landscaping, Private Drive Landscaping, Front Yard Landscaping and Sidewalks.

4.7 Easement for Unintended Encroachments. To the extent that any Improvement upon a Lot or Common Area encroaches on any other Lot or Common Area as a result of the original construction, or of any shifting or settling, or alteration or restoration

authorized by this Declaration or any other reason other than the intentional encroachment on a Lot or Common Area by an Owner, a valid easement for the encroachment, and for the maintenance thereof, exists.

ARTICLE 5

THE ASSOCIATION; ORGANIZATION; MEMBERSHIP AND VOTING RIGHTS; POWERS OF BOARD

5.1 Formation of Association. The Association shall be a nonprofit Arizona corporation charged with the duties and invested with the powers prescribed by law and set forth in the Articles, Bylaws, and this Declaration.

5.2 Board of Directors and Officers. The affairs of the Association shall be conducted by the Board and such officers as the Board may elect or appoint in accordance with the Articles and the Bylaws. Until the termination of the Class B Membership in the Association, Declarant shall have the right to appoint and remove members of the Board. After the termination of the Class B Membership, the directors shall be elected by the Members of the Association at the annual meeting of the Members as provided in the Bylaws. Unless the Project Documents specifically require the vote or written consent of the Members, approvals or actions to be given or taken by the Association shall be valid if given or taken by the Board. The Board shall have the power to levy reasonable fines against an Owner for a violation of the Project Documents by the Owner, a Lessee of the Owner or by any Resident of the Owner's Lot, and to impose late charges for payment of such fines if such fines remain unpaid fifteen (15) or more days after the due date, provided that the late charge shall not exceed the greater of fifteen dollars ($15.00) or ten percent (10%) of the amount of the unpaid fine, or such greater amount as permitted under applicable law. Notwithstanding the foregoing, to the extent applicable law from time to time (i) provides for any shorter period of time after which fines may or shall become delinquent, such shorter period of time may be established by the Board to apply in lieu of the time period set forth in this Section, and (ii) provides for an increased amount to be charged as a late charge for fines, such amount may be modified by the Board to apply in lieu of the late charge set forth in this Section. The Board shall obtain an annual financial audit, review or compilation of the Association not later than one hundred eighty (180) days after the end of the Association's fiscal year, and such audit, review or compilation shall be made available to Members upon request within thirty (30) days after its completion.

5.3 The Association Rules. The Board may, from time to time, adopt, amend and repeal rules and regulations pertaining to: (i) the management, operation and use of the Areas of Association Responsibility including, but not limited to, any recreational facilities situated upon the Areas of Association Responsibility; (ii) minimum standards for any maintenance of Lots; (iii) the health, safety or welfare of the Owners, Lessees and Residents, or (iv) restrictions on the use of Lots. In the event of any conflict or inconsistency between the provisions of this Declaration and the Association Rules, the provisions of this Declaration shall prevail. The Association Rules shall be enforceable in the same manner and to the same extent as the covenants, conditions and restrictions set forth in this Declaration.

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

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

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

5.7 Classes of Members and Voting Rights.

5.7.1.1 Class A. Class A Members are all Owners (including Designated Builders), with the exception of the Declarant until the termination of the Class B Membership, of Lots. Each Class A Member shall be entitled to one (1) vote for each Lot owned. Upon the termination of the Class B Membership, the Declarant shall be a Class A Member so long as the Declarant owns any Lot.

5.7.1.2 Class B. The Class B Member shall be the Declarant. The Class B Member shall be entitled to three (3) votes for each Lot owned. The Class B Membership shall cease and be converted to Class A Membership on the earliest of (i) the date on which the votes entitled to be cast by the Class A Members other than Designated Builders equals or exceeds the votes entitled to be cast by the votes of the Class B Member; (ii) the date which is seven (7) years after the Recording of this Declaration; or (iii) when the Declarant notifies the Association in writing that it relinquishes its Class B Membership.

5.8 Voting Procedures. No change in the ownership of a Lot shall be effective for voting purposes unless and until the Board is given actual written notice of such change and is provided satisfactory proof thereof. The vote or votes for each such Lot must be cast as a unit, and fractional votes shall not be allowed. In the event that a Lot is owned by more than one person or entity and such Owners are unable to agree among themselves as to how their vote or votes shall be cast, they shall lose their right to vote on the matter in question. If any Member casts a vote or votes representing a certain Lot, it will thereafter be conclusively

presumed for all purposes that he was acting with the authority and consent of all other Owners of the same Lot unless objection thereto is made at the time the vote is cast.

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

5.10 Architectural Committee. The Association shall have an Architectural Committee to perform the functions of the Architectural Committee set forth in this Declaration. The Architectural Committee shall consist of such number of regular members and alternate members as may be provided for in the Bylaws. So long as the Declarant is a Member of the Association, the Declarant shall have the sole right to appoint and remove the members of the Architectural Committee. At such time as the Declarant no longer is a Member of the Association, the members of the Architectural Committee shall be appointed by the Board. The Declarant may at any time voluntarily surrender its right to appoint and remove the members of the Architectural Committee, and in that event the Declarant may require, for so long as the Declarant is a Member of the Association, that specified actions of the Architectural Committee, as described in a Recorded instrument executed by the Declarant, be approved by the Declarant before they become effective. The Architectural Committee may adopt, amend and repeal architectural guidelines, standards and procedures to be used in rendering its decisions. Such guidelines, standards and procedures may include, without limitation, provisions regarding: (i) the size of Residential Units; (ii) architectural design, with particular regard to the harmony of the design with the surrounding structures and topography; (iii) placement of Residential Units and other buildings; (iv) Driveway alignments for Residential Units; (v) landscaping design, content and conformance with the character of the Property and permitted and prohibited plants; (vi) requirements concerning exterior color schemes, exterior finishes and materials; (vii) signage; and (viii) perimeter and screen wall design and appearance. The decision of the Architectural Committee shall be final on all matters submitted to it pursuant to this Declaration. The Design Guidelines may contain general provisions which are applicable to all of the Neighborhood Assessment Areas within the Project as well as provisions which vary from one Neighborhood Assessment Area to another depending upon the location, unique characteristics and intended use thereof. The Architectural Committee may establish one or more subcommittees consisting of one or more members of the Architectural Committee and may delegate to such subcommittee or subcommittees the authority and power of the Architectural Committee to approve or disapprove the construction, installation or alteration of Improvements within a specified Neighborhood Assessment Area, or the Architectural Committee may delegate such authority to the property manager approved and hired by the Board.

5.11 Conveyance or Encumbrance of Common Area. Except for any dedications required to be made to Maricopa County, the Town or any other governmental or quasi-governmental agency, the Common Area shall not be mortgaged, transferred or dedicated without the prior written consent or affirmative vote of (i) Owners representing at least two-thirds (2/3) of the votes entitled to be cast by Class A members of the Association, and (ii) the Class B Member.

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

ARTICLE 6

COVENANT FOR ASSESSMENTS AND CREATION OF LIEN

6.1 Creation of Lien and Personal Obligation for Assessments.

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

6.1.2 No Owner shall be exempt from liability for Assessments because of such Owner's non-use of the Common Area, abandonment of such Owner's Lot, or other circumstance. The obligation to pay Assessments is a separate and independent obligation on the part of each Owner. No diminution or abatement of Assessments or set-off shall be claimed or allowed for any alleged failure of the Association, the Board or the Architectural Committee to take some action or perform some function required of it.

6.2 Annual Assessments.

6.2.1 In order to provide for the operation and management of the Association and to provide funds for the Association to pay all Common Expenses and to perform its duties and obligations under the Project Documents, including the establishment of replacement and maintenance reserves, the Board, for each Assessment Period, shall assess an Annual Assessment against each Lot that is subject to this Declaration, to be allocated to each Lot in accordance with Section 6.3 below. The total amount to be assessed against the Lots as an Annual Assessment shall be the amount which is reasonably estimated by the Board to produce income to the Association equal to the total budgeted Common Expenses (other than Neighborhood Expenses) taking into account other sources of funds available to the Association.

6.2.2 The Board shall give notice of the Annual Assessment to each Owner at least thirty (30) days prior to the beginning of each Assessment Period, but the failure to give such notice shall not affect the validity of the Annual Assessment established by the Board nor relieve any Owner from its obligation to pay the Annual Assessment. If the Board fails to adopt a budget for any Assessment Period, then until and unless such budget is adopted and an Annual Assessment is levied by the Board for such Assessment Period, the amount of the Annual Assessment for the immediately preceding Assessment Period shall remain in effect. If the Board determines during any Assessment Period that the funds budgeted for that Assessment Period are, or will, become inadequate to meet all Common Expenses for any reason, including, without limitation, nonpayment of Assessments by Members, it may increase the Annual Assessment for that Assessment Period and the revised Annual Assessment shall commence on the date designated by the Board. Notwithstanding anything contained in this Section 6.2 to the contrary, the Board shall not impose an Annual Assessment in any Assessment Period in excess of that amount permitted by law; however, to the extent that the law shall permit any increase in the Annual Assessment that requires the approval of a majority of the Members, such increase shall be implemented only upon approval of a majority of the Members.

6.2.3 The maximum Annual Assessment for each fiscal year of the Association shall be as follows:

6.2.3.1 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 prepared and adopted by the Board, prior to the time of the conveyance of the first Lot to a Purchaser, based upon a budget of the estimated Common Expenses required for the initial Assessment Period, including any contribution required to be made for reserves as required under Section 6.16.

6.2.3.2 From and after January 1 of the year immediately following the conveyance of the first Lot to a Purchaser, the Board may, without a vote of the Members, increase the maximum Annual Assessment during each fiscal year of

the Association by the greater of (a) an amount established by the Board not to exceed the maximum amount permitted under applicable state law or (b) an amount based upon the percentage increase in the Consumer Price Index for All Urban Consumers (CPI-U) U.S. City Average (1982-84=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 year immediately preceding the calendar year for which the maximum Annual Assessment is to be determined.

$\frac{Y-X}{X}$ multiplied by the maximum Annual Assessment for the then current fiscal year equals 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 Subsection 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, either the Consumer Price Index used for the preceding calendar year or another index selected by the Board.

6.2.3.3 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 maximum increase allowed pursuant to Section 6.2.3.2 above, only by a vote of Members entitled to cast at least two-thirds (2/3) of the votes entitled to be cast by Members who are voting in person or by proxy at a meeting duly called for such purpose.

6.2.3.4 A portion of the Annual Assessments shall be allocated to the cost of (i) maintenance, repair and replacement of an effluent delivery system that provides reclaimed water to the Common Elements in the Project; (ii) the

Association's use of reclaimed water provided by the effluent delivery system; and (iii) collection from owners of real property adjacent to the Project for their share of the use, maintenance and repair of the effluent delivery system, all as described in that certain Declaration of Covenants Regarding Water Effluent Delivery System Recorded on July 14, 2005, as Instrument No. 2005-0973900 of Official Records of Maricopa County, Arizona (the "**Effluent System Covenant**").

6.3 Rate of Assessment. The amount of the Annual Assessment for each Lot other than Lots owned by the Declarant, the Developer and the Designated Builder shall be the amount obtained by dividing the total budget of the Association for the Assessment Period for which the Annual Assessment is being levied by the total number of Lots subject to the Assessment at the time the Annual Assessment is levied by the Board. The Annual Assessment for Lots owned by the Declarant, the Developer and each Designated Builder shall be an amount equal to twenty-five percent (25%) of the Annual Assessment levied against Lots owned by Persons other than the Declarant, the Developer and the Designated Builder. 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 Developer and Designated Builder for Deficiencies. So long as there is a Class B Membership in the Association, Developer and Designated Builder 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, which funds shall be divided between or among Developer and Designated Builder on a prorata basis according to the number of Lots owned by Developer and each Designated Builder as of the date the request for such deficiency payment is made by the Board. Notwithstanding the foregoing, Developer and Designated Builder shall not be obligated to pay to the Association pursuant to this Section any funds for the establishment of replacement and maintenance reserves.

6.5 Special Assessments. The Association may levy against each Lot a Special Assessment for the purpose of defraying, in whole or in part, the cost of any construction, reconstruction, repair or replacement of an Improvement upon an Area of Association Responsibility, including fixtures and personal property related thereto, provided that any Special Assessment is approved by Members having more than two-thirds (2/3) of the votes in each Class of Membership entitled to be cast by Members present in person or by proxy at a meeting duly called for such purpose.

6.6 Neighborhood Assessments.

6.6.1 All Neighborhood Expenses shall be shown separately in the budget adopted by the Board and shall be assessed solely against the Lots within the

Neighborhood Assessment Area benefited by the Neighborhood Services being provided. Neighborhood Assessment Areas shall be established in this Declaration or in a Supplemental Declaration designating a Neighborhood Assessment Area. Neighborhood Assessments are in addition to Annual Assessments and no Neighborhood Expenses shall be used in computing the Annual Assessments to be levied pursuant to Section 6.2 of this Declaration. Unless otherwise provided for in this Declaration or the applicable Supplemental Declaration, Neighborhood Assessments shall be levied against the Lots within the Neighborhood Assessment Area at a uniform rate per Membership. If the Board determines during any Assessment Period that any Neighborhood Assessment is, or will, become inadequate to pay all Neighborhood Expenses for any reason, including, without limitation, nonpayment of Neighborhood Assessments by Owners within the Neighborhood Assessment Area, the Board may increase the Neighborhood Assessment for that Assessment Period and the revised Neighborhood Assessment shall commence on the date designated by the Board.

6.6.2 In addition to a Neighborhood Assessment assessed pursuant to Section 6.6.1, the Association may assess against each Lot within a Neighborhood Assessment Area a special Neighborhood Assessment for the purpose of paying, in whole or in part, the cost of any construction, reconstruction, repair or replacement of an Improvement situated within a Neighborhood Assessment Area. Any such special Neighborhood Assessment shall be assessed against all Lots within the applicable Neighborhood Assessment Area at a uniform rate per Membership.

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

6.8 Commencement Date of Assessment Obligation. The Lots described in Exhibit A-1 and Exhibit A-2 to this Declaration shall be subject to assessment on a Phase by Phase basis, with the assessment obligation for Lots in a particular Phase commencing upon the date that the first Lot in such Phase is conveyed to a Purchaser. Lots annexed pursuant to Section 2.3 of this Declaration shall be subject to assessment on a Phase by Phase basis, with the assessment obligation for Lots in a particular Phase commencing upon the date that the first Lot in such Phase is conveyed to a Purchaser.

6.9 Rules Regarding Billing and Collection Procedures. Annual Assessments and Neighborhood Assessments shall be collected on a monthly or quarterly basis or such other basis as may be selected by the Board. Special Assessments may be collected as specified by the Board. The Board shall have the right to adopt rules and regulations setting forth procedures for the purpose of making Assessments and for the billing and collection of the Assessments provided that the procedures are not inconsistent with the provisions of this Declaration. The failure of the Association to send a bill to a Member shall not relieve any

Member of his liability for any Assessment or charge under this Declaration, but the Assessment Lien therefor shall not be foreclosed 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.

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

6.10.1 Any Assessment or any installment of an Assessment not paid within fifteen (15) days after the Assessment or the installment of the Assessment first became due (or such longer period of time as required by applicable law) shall be deemed delinquent and shall bear interest from the date on which such Assessment or installment of the Assessment became due at the rate of twelve percent (12%) per annum or the prevailing VA/FHA interest rate for new home loans, whichever is higher. In addition, the Board may establish a late fee, not to exceed the greater of fifteen dollars ($15.00) or ten percent (10%) of the amount of the unpaid Assessment or installment thereof (but in no event an amount greater than permitted under applicable law), to be charged to any Owner who has not paid any Assessment, or any installment of an Assessment, within fifteen (15) days after such payment was due. Notwithstanding the foregoing, to the extent applicable law from time to time provides for any shorter period of time after which Assessments or any other amounts payable hereunder may or shall become delinquent, such shorter period of time may be established by the Board to apply in lieu of the time period set forth in this Section, and to the extent applicable law from time to time provides for any greater amount of late fee or other amount to be charged to any Owner deemed delinquent in the payment of any Assessment, or any installment of an Assessment, such greater amount may be established by the Board to apply in lieu of the late fee set forth in this Section.

6.10.2 The Association shall have a lien on each Lot for: (i) all Assessments levied against the Lot; (ii) all interest, lien fees, late charges and other fees and charges assessed against the Lot or payable by the Owner of the Lot with respect to Assessments; (iii) all reasonable attorney fees, court costs, title report fees, costs and fees charged by any collection agency either to the Association or to an Owner and any other fees or costs incurred by the Association in attempting to collect Assessments or other amounts due to the Association by the Owner of a Lot with respect to the Assessments. Notwithstanding anything contained herein to the contrary, no lien shall apply to any interest, lien fee, late charge or other fees, charges and costs not permitted by law; (iv) any amounts payable to the Association pursuant to Section 7.3 or Section 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, lien Recording fees and reasonable attorneys' fees. Before Recording any Notice of Lien against a Lot, the Association shall make a written demand to the defaulting Owner for payment of the delinquent Assessments and all other amounts due to the Association by such Owner. The demand shall state the date and amount of the delinquency. Each default shall constitute a separate basis for a demand, but any number of defaults may be included within the single demand. If the delinquency is not paid within ten (10) days after delivery of the demand, the Association may proceed with Recording a Notice of Lien against the Lot. 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.

6.10.3 The Assessment Lien shall have priority over all liens or claims except for: (i) liens and encumbrances Recorded before the Recordation of this Declaration; (ii) tax liens for real property taxes; (iii) assessments in favor of any municipal or other governmental body; and (iv) the lien of any First Mortgage on the Lot, or as otherwise provided from time to time under applicable law. Any First Mortgagee or any other Person acquiring title or coming into possession of a Lot through foreclosure of the First Mortgage, purchase at a foreclosure sale or trustee's 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. Notwithstanding anything to the contrary herein contained, in no event shall any First Mortgagee be required to collect any Assessments.

6.10.4 The Association shall not be obligated to release the Assessment Lien as to any portion of Assessments past due until all such delinquent Assessments, interest, lien fees, reasonable attorneys' fees, court costs, collection costs and all other sums payable to the Association by the Owner of the Lot with respect to Assessments have been paid in full. In no event shall such release of past due Assessments release the lien of this Declaration as to all other Assessments to become due hereunder.

6.10.5 The Association shall have the right, at its option, to enforce collection of any delinquent Assessments together with interest, lien fees, reasonable attorneys' fees and any other sums due to the Association in any manner allowed by law including, but not limited to: (i) bringing an action at law against the Owner personally obligated to pay the delinquent Assessments and such action may be brought without waiving the Assessment Lien securing the delinquent Assessments and (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.

6.10.6 In addition to the Assessment Lien, the Association shall also have a lien on each Lot for all monetary penalties and the reasonable fees, attorneys' fees, court costs, charges, late charges and interest charged with respect to such monetary penalties (the "**Penalty Charges**"), after the entry of a judgment in a civil suit for such Penalty Charges from a court of competent jurisdiction and the Recording of such judgment as otherwise provided by law (the "**Penalty Lien**"). The Penalty Lien may not be foreclosed and is effective only on conveyance of any interest in the Lot except as otherwise may be permitted by law.

6.11 Evidence of Payment of Assessments. Upon receipt of a written request from a lienholder, Member or Person designated by a Member, to the extent required by law, the Association shall issue, or cause to be issued, within the time period required by applicable law, a statement setting forth the amount of any unpaid Assessment or other fee or charge against the Lot. The Association may impose a reasonable charge for the issuance of such statements, which charge shall be payable at the time the request for any such statement is made. Any such statement, when duly issued as herein provided, shall be conclusive and binding on the Association with respect to any matters therein stated as against any bona fide Purchaser of, or lender on, the Lot in question.

6.12 Purposes for Which Association's Funds May Be Used. The Association shall use all funds and property collected and received by it (including the Assessments, fees, loan proceeds, surplus funds and all funds and property received by it from any other source) solely for the purpose of (i) discharging and performing the Association's duties and obligations under the Project Documents; (ii) exercising the rights and powers granted to the Association by the Project Documents, and (iii) the common good and benefit of the Project and the Owners, Lessees 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, Lessees and Residents. Notwithstanding any other provision of this Declaration to the contrary, so long as there is a Class B Membership in the Association, funds of the Association may not be used for the initial construction of Improvements on the Common Area.

6.13 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.

6.14 Working Capital Fund. To ensure that the Association shall have adequate funds to meet its expenses or to purchase necessary equipment or services, each

Purchaser (other than a Developer or a Designated Builder) of a Lot from the Declarant, a Developer or a Designated Builder shall pay to the Association immediately upon becoming the Owner of the Lot a sum equal to one-sixth (1/6th) of the then current Annual Assessment attributable to the Lot. Funds paid to the Association pursuant to this Section may be used by the Association for payment of operating expenses or any other purpose permitted under the Project Documents. Payments made pursuant to this Section shall be nonrefundable and shall not be considered as an advance payment of any Assessments levied by the Association pursuant to this Declaration.

6.15 Reserve Fund. To ensure that the Association shall have funds reserved for repair and replacement of Improvements within the Areas of Association Responsibility, each Purchaser (other than a Developer or a Designated Builder) of a Lot from the Declarant, a Developer or a Designated Builder shall pay to the Association immediately upon becoming the Owner of the Lot a sum equal to one-sixth (1/6th) of the then current Annual Assessment attributable to the Lot. Funds paid to the Association pursuant to this Section shall be deposited in the Reserve Account established pursuant to Section 6.16. 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.

6.16 Reserves. Each budget adopted by the Board shall include reasonable amounts as determined by the Board to be collected as reserves for the future periodic maintenance, repair or replacement of all or a portion of the Areas of Association Responsibility. All amounts collected as reserves, whether pursuant to this Section or otherwise, shall be deposited by the Board in a separate bank account (the "Reserve Account") to be held for the purposes for which they are collected and are to be segregated from and not commingled with any other funds of the Association. Such reserves shall be deemed a contribution to the capital account of the Association by the Members. The Board shall not expend funds designated as reserve funds for any purpose other than those purposes for which they were collected. Withdrawal of funds from the Association's reserve account shall require the signatures of either (a) two (2) members of the Board, or (b) one (1) member of the Board and an officer of the Association who is not also a member of the Board. The Board shall obtain an initial reserve study and then provide updates thereto at least once every five years. The reserve study shall at a minimum include (a) identification of the major components of the Areas of Association Responsibility that the Association is obligated to repair, replace, restore or maintain which, as of the date of the study, have a remaining useful life of less than thirty (30) years, (b) identification of the probable remaining useful life of the identified major components as of the date of the study, (c) an estimate of the cost of repair, replacement, restoration or maintenance of the identified major components during and at the end of their useful life, and (d) an estimate of the total annual contribution necessary to defray the cost to repair, replace, restore or maintain the identified major components during and at the end of their useful life, after subtracting total reserve funds as of the date of the study. Provided that the Board acts in good faith in determining the amount to be collected as reserves, the Declarant Parties shall not be liable to the Association or any Member if the amount collected as reserves proves to be inadequate to pay

for all required periodic maintenance, repair and replacement which was intended to be funded from reserves.

6.17 Transfer Fee. Each Purchaser (other than a Developer or a Designated Builder) of a Lot shall pay to the Association, or to its managing agent, if directed to do so by the Board, immediately upon becoming the Owner of the Lot, a transfer fee in such amount as is established from time to time by the Board.

ARTICLE 7

MAINTENANCE

7.1 Areas of Association Responsibility. The Association, or its duly delegated representative, shall manage, maintain, repair and replace the Areas of Association Responsibility, and all Improvements located thereon, except for any part of the Areas of Association Responsibility which any governmental entity is maintaining or is obligated to maintain. The Board shall be the sole judge as to the appropriate maintenance, repair and replacement of all Areas of Association Responsibility, but all Areas of Association Responsibility, and the Improvements located thereon, shall be maintained in good condition and repair at all times. No Owner, Resident or other Person shall construct or install any Improvements on the Common Area or alter, modify or remove any Improvements situated on the Common Area without the approval of the Board. No Owner, Resident or other person shall remove, add to or modify any plants, trees, granite, landscaping or other Improvements in the part of their Lot which constitutes an Area of Association Responsibility without the prior written approval of the Board. No Owner, Resident or other Person shall obstruct or interfere with the Association in the performance of the Association's maintenance, repair and replacement of the Areas of Association Responsibility, and the Improvements located thereon. The Association shall be responsible for the control, maintenance and payment of ad valorem taxes and liability insurance on the Common Area.

7.2 Lots. Each Owner of a Lot shall be responsible for maintaining, repairing or replacing his Driveway, Entry Walkway, Back Yard Landscaping, Residential Unit and all other buildings or Improvements situated on his Lot. All Residential Units, buildings, and other Improvements shall at all times be kept in good condition and repair in accordance with the Maintenance Standard. If any portion of the Back Yard Landscaping is Visible From Neighboring Property, it shall be irrigated, mowed, trimmed and cut at regular intervals by the Owner so as to be maintained in a neat and attractive manner, and any trees, shrubs, vines, plants and grass which die shall be promptly removed and replaced with living foliage of like kind, unless different foliage is approved in writing by the Architectural Committee. No yard equipment, wood piles or storage areas may be maintained so as to be Visible From Neighboring Property. All Lots upon which no Residential Units, buildings or other structures, landscaping or Improvements have been constructed shall be maintained in a weed-free and attractive manner.

7.3 Assessment of Certain Costs of Maintenance and Repair. In the event that the need for maintenance or repair of an Area of Association Responsibility, or any

Improvement situated thereon, is caused through the willful or negligent act of any Owner, his family, Lessees, guests or invitees, the cost of such maintenance or repairs shall be paid by such Owner to the Association upon demand and payment of such amounts shall be secured by the Assessment Lien.

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

7.5 **Boundary Walls.**

7.5.1 Each wall or fence which is located between two Lots shall constitute a boundary wall and, to the extent not inconsistent with this Section 7.5, the general rules of law regarding boundary walls shall apply.

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

7.5.3 The adjoining Owners shall each have the right to perform any necessary maintenance, repair or replacement of the wall and the cost of such maintenance, repair or replacement shall be shared equally by the adjoining Owners except as otherwise provided in this Section; provided, however, that if an Owner elects to paint and/or stucco the side of the wall which faces his Lot, the Owner shall be solely responsible for the cost thereof.

7.5.4 If any boundary wall is damaged or destroyed through the act of an Owner, its agents, Lessees, licensees, guests or family, it shall be the obligation of such Owner to rebuild and repair the boundary fence without cost to the other Owner or Owners.

7.5.5 If any boundary wall is damaged or destroyed by some cause other than the act of one of the adjoining Owners, his agents, tenants, licensees, guests or family (including ordinary wear and tear and deterioration from lapse of time), it shall be

the obligation of all adjoining Owners to rebuild and repair the boundary wall to as good a condition as it formerly existed at such Owners' joint and equal expense.

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

7.5.7 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 Owner or Owners and the Architectural Committee.

7.5.8 In the event any boundary wall encroaches upon a Lot, 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 such boundary wall.

7.5.9 Notwithstanding anything in this Declaration to the contrary, no boundary wall shall exceed the maximum height allowed for a boundary wall as established by the Architectural Committee.

7.6 Maintenance of Walls Other Than Boundary Walls.

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

7.6.2 Any wall which is placed on the boundary line between a Lot and the Common Area shall be maintained, repaired and replaced by the Owner of the Lot, except that the Association shall be responsible for the repair and maintenance of the side of the wall which faces the Common Area. If any such wall or portion thereof is wrought iron, the Association shall be responsible for the repair and maintenance of all sides of such wrought iron surface. 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 of the Lot, as the case may be.

7.6.3 Any wall which is placed on the boundary line between Common Area and public right-of-way or any other property dedicated to the public shall be maintained, repaired and replaced by the Association.

7.7 Installation and Maintenance of Landscaping. Notwithstanding the provisions set forth below, each Owner shall be solely responsible for the installation and maintenance of any trees, plants and/or other landscaping Improvements on the remaining portions of such Owner's Lot.

7.7.1 For all Private Drive Lots, Developer or Designated Builder shall install all Front Yard Landscaping and Private Drive Landscaping, including such trees, plants or other landscaping Improvements (and any sprinkler system or drip irrigation

system sufficient to adequately water the trees, plants or other landscaping Improvements) as desired by Developer or Designated Builder, or required by the Town. The Association shall maintain, repair and replace such Front Yard Landscaping and Private Drive Landscaping.

7.7.2 Within ninety (90) days after acquiring a Non-Private Drive Lot from the Developer or a Designated Builder, each Owner of the Non-Private Drive Lot shall install all Front Yard Landscaping, including such trees, plants or other landscaping Improvements (and any sprinkler system or drip irrigation system sufficient to adequately water the trees, plants or other landscaping Improvements) as required by the Town or the Architectural Review Committee.

7.7.3 Owners of all Non-Private Drive Lots shall be responsible for maintaining, repairing and replacing all Front Yard Landscaping and Alley Landscaping (where applicable).

7.8 Maintenance of Alley Easement Areas, Private Drive Easement Areas, Sidewalks and Pedestrian Walkways. The Town shall be responsible for maintaining, repairing and replacing Alley Easement Areas and Sidewalks. The Association shall be responsible for maintaining, repairing and replacing Private Drive Easement Areas and Pedestrian Walkways.

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 Commercial general liability insurance, including medical payments insurance, in an amount determined by the Board, but not less than $1,000,000 per occurrence with a $2,000,000 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 the Areas of Association Responsibility and all other portions of the Project which the Association is obligated to maintain under this Declaration, and shall also include hired automobile and non-owned automobile coverages with cost liability endorsements to cover liabilities of the Owners as a group to an Owner;

8.1.2 Property insurance on all Areas of Association Responsibility insuring against all risk of direct physical loss, insured against in an amount equal to the maximum insurable replacement value of the Areas of Association Responsibility, as determined by the Board; provided, however, that the total amount of insurance after application of any deductibles shall not be less than one hundred percent (100%) of the

current replacement cost of the insured property, exclusive of land, excavations, foundations and other items normally excluded from a property policy;

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

8.1.4 Directors' and officers' liability insurance in an amount not less than $1,000,000 covering the directors and officers of the Association against claims arising out of or relating to the administration of the Association;

8.1.5 Such other insurance (including, without limitation, employee practices liability insurance and fidelity insurance) as the Association shall determine from time to time to be appropriate to protect the Association, the members of the Board, the officers and the members of any committees of the Board or the Owners; and

8.1.6 The insurance policies purchased by the Association shall, to the extent reasonably available, contain the following provisions: (i) that there shall be no subrogation with respect to the Association, its agents, servants, and employees, with respect to Owners and members of their household; (ii) no act or omission by any Owner, unless acting within the scope of his authority on behalf of the Association, will void the policy or be a condition to recovery on the policy; (iii) that the coverage afforded by such policy shall not be brought into contribution or proration with any insurance which may be purchased by Owners or their mortgagees or beneficiaries under deeds of trust; (iv) a "severability of interest" endorsement which shall preclude the insurer from denying the claim of an Owner because of the negligent acts of the Association or other Owners; (v) statement of the name of the insured as the Association; and (vi) for policies of hazard insurance, a standard mortgagee clause providing that the insurance carrier shall notify the first mortgagee named in the policy at least thirty (30) days in advance of the effective date of any substantial modification, reduction or cancellation of the policy.

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

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

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

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

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

ARTICLE 9

GENERAL PROVISIONS

9.1 Enforcement. The Association or any Owner shall have the right to enforce the Project Documents 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. 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 lawsuit 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 attorney 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 Board shall have the power to levy reasonable monetary penalties against an Owner for a violation of the Project Documents by the Owner, a Lessee of the Owner or by any Resident of the Owner's Lot, provided the Owner is given notice and an opportunity to be heard.

9.2 Termination. This Declaration may be terminated at any time if such termination is approved by the affirmative vote or written consent, or any combination thereof, of Owners representing ninety percent (90%) or more of the votes in each class of Membership and by the holders of First Mortgages, 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 a Certificate of Termination, duly signed by the President or Vice President and attested by the Secretary or Assistant Secretary of the Association, with their

signatures acknowledged. Thereupon this Declaration shall have no further force and effect, and the Association shall be dissolved pursuant to the terms set forth in its Articles.

9.3 Amendments.

9.3.1 Except for amendments made pursuant to Section 2.3, Section 9.3.2 or Section 9.3.5 of this Declaration, the Declaration may only be amended by the written approval or the affirmative vote, or any combination thereof, of Owners of not less than two-thirds (2/3) of the total votes in the Association.

9.3.2 The Declarant, so long as the Declarant owns any Lot, and thereafter, the Board, may amend this Declaration, without obtaining the approval or consent of any Owner or First Mortgagee, in order to conform this Declaration 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 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 Except for amendments made pursuant to Section 2.3, Section 9.3.2 or Section 9.3.5 of this Declaration, and except as provided in Section 9.16 of this Declaration, 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.

9.3.5 The Declarant, so long as the Declarant is a Member of the Association, and thereafter, the Board, may amend this Declaration without the consent of any other Owner to correct any error or inconsistency in the Declaration.

9.3.6 So long as the Declarant, Developer and Designated Builder hold more than two-thirds (2/3) of the votes in the Association, any amendment to this Declaration shall be signed by the Declarant, Developer and such Designated Builder and Recorded. At any time the Declarant, Developer and Designated Builder do not collectively hold at least two-thirds (2/3) of the votes in the Association, any amendment approved pursuant to Section 9.3.1 of this Declaration or by the Board pursuant to Section 9.3.2 or Section 9.3.5 of this Declaration shall be signed by the President or Vice President of the Association and shall be Recorded, and any such amendment shall certify that the amendment has been approved as required by this Section.

9.3.7 Any amendment made by the Declarant pursuant to Section 2.3, Section 9.3.2 or Section 9.3.5 of this Declaration shall be signed by the Declarant and

Recorded. Unless a later effective date is provided for in the amendment, any amendment to this Declaration shall be effective upon the Recording of the amendment.

9.4 Rights of First Mortgagees.

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

9.4.2 In addition to the other restrictions set forth in this Declaration, no Lot shall be partitioned or subdivided without the prior written approval of the holder of any First Mortgage on such Lot.

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

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

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

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

9.4.3.4 Fail to maintain fire and extended coverage insurance on Common Area on current replacement cost basis in an amount of at least one hundred percent (100%) of insurable value; or

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

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

9.4.4 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.

9.4.5 In the event of any conflict or inconsistency between the provisions of this Section and any other provision of the Project Documents, the provisions of this Section shall prevail; provided, however, that in the event of any conflict or inconsistency between the provisions of this Section and any other provisions of the Project Documents with respect to the number or percentage of Owners or First Mortgagees that must consent to (i) an amendment of the Declaration, Articles or Bylaws, (ii) a termination of the Project, or (iii) certain actions of the Association as specified in Section 9.4.3 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 Developer, so long as the Declarant, the Developer or Designated Builder owns any Lot, and thereafter, the Board, without the consent of any Owner or First Mortgagee being required, shall have the right to amend this Declaration, the Articles or the Bylaws in order to conform this Declaration, the Articles or the Bylaws to the requirements or guidelines of the Federal National Mortgage Association, the Federal Home Loan Mortgage Corporation, the Federal Housing Administration, the Veterans Administration or any federal, state or local governmental agency whose approval of the Project, the Plat or the Project Documents is required or requested by the Declarant, the Developer, a Designated Builder or the Board.

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

9.6 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.

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

issue of the Board who are living at the time the period of perpetuities starts to run on the challenged interest.

9.8 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.

9.9 Notice of Violation. The Association shall have the right (but not the obligation) to Record against a Lot a written notice of a violation with respect to any violation of the Project Documents by the Owner, Lessee or Resident of the Lot. The notice shall be executed by an officer of the Association and shall contain substantially the following information: (i) the name of the Owner, Lessee 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; and (v) a statement of the specific steps which must be taken by the Owner, Lessee or Resident to cure the violation. Recordation of a notice of violation shall serve as notice to the Owner, Lessee and Resident, and any subsequent purchaser of the Lot, that there is such a violation. If, after the Recording 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 did 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.

9.10 Laws, Ordinances and Regulations.

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

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

9.11 References to This Declaration in Deeds. Deeds to and instruments affecting any Lot or any other part of the Project may contain the covenants, conditions and

restrictions herein set forth by reference to this Declaration; but regardless of whether any such reference is made in any Deed or instrument, each and all of the provisions of this Declaration shall be binding upon the grantee-Owner or other person claiming through any instrument and his heirs, executors, administrators, successors and assignees.

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

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

9.14 FHA/VA Approval. Except as provided in Section 9.16 of this Declaration, so long as there is a 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 of Common Areas to an entity other than the Association, any amendment to this Declaration.

9.15 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. Owners shall only be responsible for damage to the Common Area caused by the Owners' negligence or intentional acts.

9.16 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 or Developer request approval of the Project by either or both of those agencies. However, Declarant or Developer shall have no obligation to request approval of the Project by either or both of such agencies. Unless and until the VA or the FHA has 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 or consents of such agencies shall be deemed null and void and of no force and effect.

9.17 Limitation on Declarant's Liability. Notwithstanding anything to the contrary in this Declaration, each Owner, by accepting any interest in any portion of the Property and becoming an Owner, acknowledges and agrees that neither Declarant (including any assignee of any interest of Declarant hereunder) nor any affiliate, partner, officer, director or

shareholder of Declarant (or any partner or shareholder in such assignee) shall have any personal liability to the Association, or any Owner, Member or any other Person, arising under, in connection with, or resulting from (including, without limitation, resulting from action or failure to act with respect to) this Declaration or the Association except, in the case of Declarant (or its assignee), to the extent of its interest in the Property and, in the event of a judgment, no execution or other action shall be sought or brought thereon against any other assets or be a lien upon such other assets of the judgment debtor.

ARTICLE 10

COVENANTS, CONDITIONS, RESTRICTIONS AND EASEMENT SPECIFIC TO CERTAIN LOTS

10.1 Private Drive Lots. The Private Drive Lots described in this Section 10.1 shall be designated as a Neighborhood Assessment Area, as defined in this Declaration. Private Drive Lots shall be subject to a Private Drive Easement, as defined in Section 10.2 below, over portions of the Private Drive Lots for the purpose of providing the Owners and occupants of the Private Drive Lots and their respective guests, invitees and agents with the right to use the Private Drive Easement for ingress and egress to Private Drive Lots. The Cluster Homes identified in this Declaration pursuant to Section 1.18 are Private Drive Lots subject to a Private Drive Easement. Except as otherwise may be provided in a Supplemental Declaration or other Recorded Instrument, the Owners of the Cluster Homes and any other Private Drive Lots shall each have the right to use the Private Drive; provided, however, that the use and enjoyment of the Private Drive by one Owner shall not interfere with the use and enjoyment of the Private Drive by any other Owner.

10.2 Private Drive Easements. There is hereby created a series of perpetual use and benefit easements (the "**Private Drive Easements**") for ingress and egress to each Private Drive Lot affected by a particular Private Drive Easement. The centerline of each Private Drive Easement is the common property line between the Private Drive Lots, with ten (10) feet of the Private Drive Easement being on each Private Drive Lot (for a total width of the Private Drive Easement of twenty (20) feet). Each Private Drive Lot benefited by the entire Private Drive Easement it shares with other Private Drive Lots is also burdened to provide its portion of the Private Drive Easement for the benefit of the other Private Drive Lots that share the Private Drive Easement. An illustration of a typical Private Drive Easement is attached as **Exhibit C** to this Declaration; provided, however, that such illustration is an example only and the actual boundaries of the Private Drive Easement will be determined by their as-built locations. Each Private Drive Lot Owner sharing a Private Drive Easement understands and agrees that drainage of water from the roofs of Residential Units constructed on the Private Drive Lots and drainage of water resulting from the normal use of the Private Drive Lots may flow on, over and across any Private Drive Lot sharing the Private Drive Easement. Each Private Drive Lot Owner has the right to install and maintain utility lines and facilities within the portion of the Private Drive Easement on his Lot. Subject to the provisions of this Declaration and any other interest affecting title to any Lot, each Private Drive Lot Owner, the Town, and applicable utility

providers and their respective contractors, agents and employees shall have the right to install and maintain utility lines and facilities for the benefit all Private Drive Lots within a Private Drive Easement. An easement is hereby granted to the Town and all applicable utility providers and their respective contractors, agents and employees for access upon, over, across and through the Private Drive Easement to install, maintain and repair utility lines and facilities within the Private Drive Easement.

10.3 Private Drive Trash Collection. In addition to the provisions contained in Section 3.7 of this Declaration, Owners of Private Drive Lots shall be required to place their trash containers in specified locations on trash collection days as designated from time to time by the Town (or by the Association, if the Town does not offer such service) and communicated to the Private Drive Lot Owners by the Association in the Association Rules (as amended from time to time) and through periodic mailings.

10.4 Alley Lots. Alley Lots shall be subject to an Alley Easement, as defined in Section 10.5 below, over portions of the Alley Lots for the purpose of providing the Owners and occupants of the Alley Lots and their respective guests, invitees and agents with the right to use the Alley Easement for ingress and egress to Alley Lots. The following Lots are Alley Lots subject to an Alley Easement: Lots 47 through 175, inclusive, Lots 230 through 255, inclusive, and Lots 302 through 344, inclusive, of the Phase 1 and 2 Plat, and Lots 387 through 395, inclusive and Lot 398 of the Phase 3 and 4 Plat. The Owners of Alley Lots shall each have the right to use the Alley; provided, however, that the use and enjoyment of the Alley by one Owner shall not interfere with the use and enjoyment of the Alley by any other Owner.

10.5 Alley Easements. There is hereby created a series of perpetual use and benefit easements (the "Alley Easements") for ingress and egress to each Alley Lot affected by a particular Alley Easement. The centerline of each Alley Easement is the common property line between the Alley Lots, with ten (10) feet of the Alley Easement being on each Alley Lot (for a total width of the Alley Easement of twenty (20) feet). Portions of an Alley Easement will be slightly wider within certain Alley Lots where the Alley makes a perpendicular turn. Each Alley Lot benefited by the entire Alley Easement it shares with other Alley Lots is also burdened to provide its portion of the Alley Easement to benefit the other Alley Lots that share the Alley Easement. An illustration of a typical Alley Easement is attached as **Exhibit D** to this Declaration; provided, however, that such illustration is an example only and the actual boundaries of the Alley Lot Easement will be determined by their as-built locations. Each Alley Lot Owner sharing an Alley Easement understands and agrees that drainage of water from the roofs of Residential Units constructed on the Alley Lots and drainage of water resulting from the normal use of the Alley Lots may flow on, over and across any Alley Lot sharing the Alley Easement. Each Alley Lot Owner has the right to install and maintain utility lines and facilities within the portion of the Alley Easement on his Lot. Subject to the provisions of this Declaration and any other interest affecting title to any Lot, each Alley Lot Owner, the Town, and applicable utility providers and their respective contractors, agents and employees shall have the right to install and maintain utility lines and facilities for the benefit all Alley Lots within an Alley Easement. An easement is hereby granted to the Town and all applicable utility providers and

their respective contractors, agents and employees for access upon, over, across and through the Alley Easement to install, maintain and repair utility lines and facilities within the Alley Easement.

10.6 Alley Trash Collection. An easement is hereby granted to the Town and the waste management company contracted with by the Town (or by the Association, if the Town does not arrange for or provide such service) for access upon, over, across and through each Alley Easement for the collection of trash from the Alley Lots affected by each Alley Easement. In addition to the provisions contained in Section 3.7 of this Declaration, Alley Lot Owners must place their trash containers in specified locations on trash collection days as designated from time to time by the Town (or by the Association, if the Town does not provide such service) and communicated to the Alley Lot Owners by the Association in the Association Rules (as amended from time to time) and through periodic mailings. Each Alley Lot Owner understands that the designated trash collection location may be within the portion of the Alley Easement on his lot and agrees that each other Alley Lot Owner required to deposit their trash container in the designated location shall have the right to enter upon his Lot for that purpose.

10.7 Use and Benefit Easements. A portion of some Alley Lots or Private Drive Lots (collectively referred to, ***only*** for purposes of this Section 10.7, as a "**Lot**" or the "**Lots**") may be subject to a perpetual use and benefit easement for the benefit of an adjacent Lot (the "**Use Easement**"). An illustration of a typical Use Easement Area (as defined below) taken from the Plat is attached as **Exhibit E** to this Declaration; provided, however, that such illustration is an example only and the actual boundaries of the Use Easement will be determined by as-built locations. The length and width of each Use Easement Area will be determined by the model, elevation and the location of the Residential Unit constructed on each Lot and the setbacks required on each Lot. The initial location and dimensions of a Use Easement Area will be shown on the building permit plans submitted to the Town; provided, however, the final location and dimensions of a Use Easement Area will be determined by the as-built location of the Residential Units on the Lots. Neither Declarant nor any Developer shall have any obligation to prepare, obtain or record any as-built surveys of the Lots. A Use Easement shall subject a portion of one Lot to an easement in favor of an adjacent Lot, but some affected Lots may also benefit from a similar easement over a portion of an adjacent Lot. The portion of a Lot which is subject to a Use Easement is referred to herein as the "**Use Easement Area.**" When a Lot is benefited by a particular Use Easement, the Lot is referred to herein as a "**Benefited Lot**" with respect to such Use Easement. A Lot that is subject to a particular Use Easement in favor of another Lot is referred to herein as a "**Burdened Lot**" with respect to such Private Use Easement. A Benefited Lot Owner shall have the non-exclusive right to enter onto the Use Easement Area of a Burdened Lot and use the Use Easement Area for back yard purposes. Except as provided below, a Benefited Lot Owner shall have the non-exclusive right to use the Use Easement Area on the adjacent Burdened Lot, and the Burdened Lot Owner shall not interfere with that use. Owners affected by a Use Easement Area shall be jointly responsible for the upkeep and repair of the Use Easement Area. A Use Easement Area shall not be used for any permanent Improvements of any kind, including (but not limited to) a patio or porch, pool or spa, barbeque pit or other use which may become an annoyance or nuisance to the Owner of the

adjacent Burdened Lot. Each Use Easement is subject to the right of the Burdened Lot Owner to utilize the Private Use Easement Area for (a) drainage from the roof of the Residential Unit constructed on the Burdened Lot onto the Use Easement Area; and (b) drainage over, across and upon the Use Easement Area for water resulting from the normal use of the Burdened Lot. The Burdened Lot Owner shall have no liability for damage to or removal of any decoration or landscaping within the Use Easement Area which is necessarily occasioned by any repair, maintenance or restoration to the Use Easement Area. A Benefited Lot Owner shall obtain and maintain a comprehensive general liability insurance policy insuring against liability incident to the use and occupancy of the Use Easement Area appurtenant to the Benefited Lot by the Owner and the Owner's occupants, family members, invitees, agents and contractors. Said policy shall designate as additional named insured(s) the adjoining Burdened Lot Owner. The limits of such insurance shall be not less than $100,000 covering all claims for death of or injury to any person and/or property damage in any single occurrence, but the Board may from time to time, in its discretion, by written notice to the Owners of the Lots, require that the amount of such insurance be increased. Except as provided above, a Burdened Lot Owner shall not be liable for any loss, cost, damage or expense arising out of any accident or other occurrence causing death of or injury to any person and/or damage to any property by reason of the use of any Use Easement Area located upon the Burdened Lot, and the adjoining Benefited Lot Owner agrees to indemnify and hold harmless the adjoining Burdened Lot Owner, its heirs, successors and assigns for, from and against each and every loss, cost, damage and expense, including attorneys' fees, arising from such accident and occurrence. Each Use Easement shall be appurtenant to the applicable Benefited Lot, shall run with the ownership of the applicable Benefited Lot and shall inure to the benefit of the Benefited Lot Owner, its heirs, successors and assigns. The rights and obligations of the Burdened Lot Owner shall run with the ownership of the applicable Burdened Lot.

ARTICLE 11

CLAIMS AGAINST DEVELOPER, DESIGNATED BUILDER OR THE DECLARANT PARTIES

11.1 Dispute Notification and Resolution Procedure. All actions or claims (i) by the Association against the Developer, Designated Builder and/or any one or more of the Declarant Parties, (ii) by any Owner(s) against the Developer, Designated Builder and/or any one or more of the Declarant Parties or (iii) by both the Association and any Owner(s) against the Developer, Designated Builder and/or any one or more of the Declarant Parties, arising out of or relating to the Project, including the Declaration or any other Project Documents, the use or condition of the Project or the design or construction of or any condition on or affecting the Project, including construction defects, surveys, soils conditions, grading, specifications, installation of Improvements (including Residential Units) or disputes that allege negligence or other tortious conduct, fraud, misrepresentation, breach of contract or breach of implied or express warranties as to the condition of the Project or any Improvements (collectively, "**Dispute(s)**") shall be subject to the provisions of this Article 11. Declarant, Developer, Designated Builder and each Owner acknowledge that the provisions set forth in this Article 11 shall be binding upon current and future Owners of the Project and upon the Association,

whether acting for itself or on behalf of any Owner(s). Nothing in this Declaration is intended to limit, expand or otherwise modify the terms of any limited warranty provided by Developer, Designated Builder or any Developer affiliate to an Owner pursuant to a purchase agreement.

11.1.1 Notice. Any Person (including the Association) with a Dispute claim shall notify the Developer, Designated Builder or the applicable Declarant Party (the "**Notified Declarant Party**") in writing of the claim, which writing shall describe the nature of the claim and any proposed remedy (the "**Claim Notice**").

11.1.2 Right to Inspect and Right to Corrective Action. Within a reasonable period after receipt of the Claim Notice, which period shall not exceed sixty (60) days, Developer, Designated Builder or the Notified Declarant Party (as applicable) and the claimant shall meet at a mutually acceptable place within the Project to discuss the claim. At such meeting or at such other mutually agreeable time, the Developer, Designated Builder or the Notified Declarant Party (as applicable) and the Developer's, Designated Builder's or the Notified Declarant Party's (as applicable) representatives shall have full access to the property that is the subject of the claim and shall have the right to conduct inspections, testing and/or destructive or invasive testing in a manner deemed appropriate by Developer, Designated Builder or the Notified Declarant Party (as applicable) (provided Developer, Designated Builder or the Notified Declarant Party (as applicable) shall repair or replace any property damaged or destroyed during such inspection or testing), which rights shall continue until such time as the Dispute is resolved as provided in this Section 11.1. The parties shall negotiate in good faith in an attempt to resolve the claim. If the Developer, Designated Builder or the Notified Declarant Party (as applicable) elects to take any corrective action, Developer or the Notified Declarant Party (as applicable) and Developer's, Designated Builder's or the Notified Declarant Party's (as applicable) representatives and agents shall be provided full access to the Project and the property that is the subject of the claim to take and complete corrective action.

11.1.3 No Additional Obligations; Irrevocability and Waiver of Right. Nothing set forth in Section 11.1 shall be construed to impose any obligation on Developer, Designated Builder or the Notified Declarant Party (as applicable) to inspect, test, repair or replace any item of the Project for which Developer, Designated Builder or the Notified Declarant Party (as applicable) is not otherwise obligated under applicable law or any limited warranty provided by Developer or any Developer affiliate to an Owner in a purchase agreement. The right of Developer, Designated Builder or the Notified Declarant Party (as applicable) to enter, inspect, test, repair and/or replace reserved hereby shall be irrevocable and may not be waived or otherwise terminated except by a writing, in Recordable form, executed and Recorded by Developer, Designated Builder or the Notified Declarant Party (as applicable).

11.1.4 Mediation. If the parties to the Dispute fail to resolve the Dispute pursuant to the procedures described in Section 11.1.2 above within ninety (90) days after delivery of the Claim Notice, the matter shall be submitted to mediation pursuant to the

Construction Industry Mediation Rules of the American Arbitration Association (except as such procedures are modified by the provisions of this Section 11.1.4) or such other mediation service selected by Developer, Designated Builder or the Notified Declarant Party (as applicable). The Person who delivered the Claim Notice shall have until one hundred twenty (120) days after the date of delivery of the Claim Notice to submit the Dispute to mediation. If the Person who delivered the Claim Notice fails to timely submit the Dispute to mediation, then the claim of the Person who delivered the Claim Notice shall be deemed waived and abandoned and Developer, Designated Builder and all applicable Declarant Parties shall be relieved and released from any and all liability relating to the Dispute. No person shall serve as a mediator in any dispute in which the person has any financial or personal interest in the result of the mediation, except by the written consent of all parties. Prior to accepting any appointment, the prospective mediator shall disclose any circumstances likely to create a presumption of bias or to prevent a prompt commencement of the mediation process. No litigation or other action shall be commenced against the Developer, Designated Builder or the Notified Declarant Party without complying with the procedures described in this Section 11.1.4.

(i) Position Memoranda; Pre-Mediation Conference. Within ten (10) days of the selection of the mediator, each party shall submit a brief memorandum setting forth its position with regard to the issues that need to be resolved. The mediator shall have the right to schedule a pre-mediation conference, and all parties shall attend unless otherwise agreed. The mediation shall be commenced within ten (10) days following the submittal of the memoranda and shall be concluded within fifteen (15) days from the commencement of the mediation unless the parties mutually agree to extend the mediation period. The mediation shall be held in the county in which the Project is located or such other place as is mutually acceptable by the parties.

(ii) Conduct of Mediation. The mediator has discretion to conduct the mediation in the manner in which the mediator believes is most appropriate for reaching a settlement of the Dispute, consistent with the Construction Industry Mediation Rules of the American Arbitration Association. The mediator is authorized to conduct joint and separate meetings with the parties and to make oral and written recommendations for settlement. Whenever necessary, the mediator may also obtain expert advice concerning technical aspects of the Dispute, provided the parties agree and assume the expenses of obtaining such advice. The mediator does not have the authority to impose a settlement on the parties.

(iii) Exclusion Agreement. Any admissions, offers of compromise or settlement negotiations or communications at the mediation shall be excluded in any subsequent dispute resolution forum.

(iv) Parties Permitted at Sessions. Persons other than the parties, the representatives and the mediator may attend mediation sessions only with the permission of both parties and the consent of the mediator. Notwithstanding the foregoing, applicable contractors, subcontractors, suppliers, architects, engineers, brokers and any other Person providing materials or services in connection with the construction of any Improvement

upon or benefiting the Project designated by Developer, Designated Builder or the Notified Declarant Party (as applicable) may attend mediation sessions and may be made parties to the mediation. Confidential information disclosed to a mediator by the parties or by witnesses in the course of the mediation shall be confidential. There shall be no stenographic record of the mediation process.

(v) Expenses. The expenses of witnesses for either side shall be paid by the party producing such witnesses. All other expenses of the mediation, including the fees and costs charged by the mediator and the expenses of any witnesses or the cost of any proof or expert advice produced at the direct request of the mediator, shall be borne equally by the parties unless they agree otherwise. Each party to the mediation shall bear its own attorneys' fees and costs in connection with such mediation.

11.1.5 Arbitration. Should mediation pursuant to Section 11.1.4 above not be successful in resolving any Dispute, then the Person who delivered the Claim Notice shall have ninety (90) days after the date of termination of the mediation to submit the Dispute to binding arbitration. If timely submitted, such claim or dispute shall be resolved by binding arbitration in accordance with the Construction Industry Arbitration Rules of the American Arbitration Association as modified or as otherwise provided in this Section 11.1.5. If the Person who delivered the Claim Notice fails to timely submit the claim to arbitration within the ninety (90) day period, then the claim of the Person who delivered the Claim Notice shall be deemed waived and abandoned and Developer, Designated Builder and all applicable Declarant Parties shall be relieved and released from any and all liability relating to the Dispute. A Person with any Dispute may only submit such Dispute in arbitration on such Person's own behalf. No Person may submit a Dispute in arbitration as a representative or member of a class, and no Dispute may be arbitrated as a class action. Developer, Designated Builder and all Declarant Parties and any Person(s) submitting a Claim Notice, together with any additional Persons who agree to be bound by this Section 11.1, such as contractors, subcontractors suppliers, architects, engineers, brokers and any other Person providing materials or services in connection with the construction of any Improvement upon or benefiting the Project (collectively, the "**Bound Parties**"), agree that all Disputes that are not resolved by negotiation or mediation shall be resolved exclusively by arbitration conducted in accordance with this Section 11.1.5, and waive the right to have the Dispute resolved by a court, including the right to file a legal action as the representative or member of a class or in any other representative capacity. The parties shall cooperate in good faith to attempt to cause all necessary and appropriate parties to be included in the arbitration proceeding. Subject to the limitations imposed in this Section 11.1.5, the arbitrator shall have the authority to try all issues, whether of fact or law.

(i) Place. The proceedings shall be heard in the county in which the Project is located.

(ii) Arbitrator. A single arbitrator shall be selected in accordance with the rules of the American Arbitration Association from panels maintained by

the American Arbitration Association with experience in relevant real estate matters or construction. The arbitrator shall not have any relationship to the parties or interest in the Project. The parties to the Dispute shall meet to select the arbitrator within ten (10) days after service of the demand for arbitration on all respondents named therein.

(iii) Commencement and Timing of Proceeding. The arbitrator shall promptly commence the proceeding at the earliest convenient date in light of all of the facts and circumstances and shall conduct the proceeding without undue delay.

(iv) Pre-Hearing Conferences. The arbitrator may require one or more pre-hearing conferences.

(v) Discovery. The parties shall be entitled only to limited discovery, consisting of the exchange between the parties of only the following matters: (i) witness lists; (ii) expert witness designations; (iii) expert witness reports; (iv) exhibits; (v) reports of testing or inspections of the property subject to the Dispute, including destructive or invasive testing; and (vi) hearing briefs. The parties shall also be entitled to conduct further tests and inspections as provided in Section 11.1.2 above. Any other discovery shall be permitted by the arbitrator upon a showing of good cause or based on the mutual agreement of the parties. The arbitrator shall oversee discovery and may enforce all discovery orders in the same manner as any trial court judge.

(vi) Motions. The arbitrator shall have the power to hear and dispose of motions, including motions to dismiss, motions for judgment on the pleadings and summary judgment motions, in the same manner as a trial court judge, except the arbitrator shall also have the power to adjudicate summarily issues of fact or law, including the availability of remedies, whether or not the issue adjudicated could dispose of an entire cause of action or defense.

(vi) Motions. The arbitrator shall have the power to hear and dispose of motions, including motions to dismiss, motions for judgment on the pleadings and summary judgment motions, in the same manner as a trial court judge, except the arbitrator shall also have the power to adjudicate summarily issues of fact or law, including the availability of remedies, whether or not the issue adjudicated could dispose of an entire cause of action or defense.

(vii) Arbitration Award. Unless otherwise agreed by the parties, the arbitrator shall render a written arbitration award within thirty (30) days after conclusion of the arbitration hearing. The arbitrator's award may be enforced as provided for in the Uniform Arbitration Act, A.R.S. §§ 12-1501, et seq., such similar laws governing enforcement of awards in a trial court as are applicable in the jurisdiction in which the arbitration is held, or, as applicable, pursuant to the Federal Arbitration Act (Title 9 of the United States Code).

11.1.6 Waivers.

NOTICE: BY ACCEPTANCE OF A DEED OR BY ACQUIRING ANY OWNERSHIP INTEREST IN ANY PORTION OF THE PROJECT, EACH PERSON, FOR HIMSELF, HIS HEIRS, PERSONAL REPRESENTATIVES, SUCCESSORS, TRANSFEREES AND ASSIGNS, AGREES TO HAVE ANY DISPUTE RESOLVED ACCORDING TO THE PROVISIONS OF THIS ARTICLE 11 AND WAIVES THE RIGHT TO PURSUE ANY DISPUTE IN ANY MANNER OTHER THAN AS PROVIDED IN THIS ARTICLE 11. THE ASSOCIATION, EACH OWNER, THE DEVELOPER, DESIGNATED BUILDER AND THE DECLARANT PARTIES ACKNOWLEDGE THAT BY AGREEING TO RESOLVE ALL DISPUTES AS PROVIDED IN THIS ARTICLE 11, THEY ARE GIVING UP THEIR RESPECTIVE RIGHTS TO HAVE SUCH DISPUTES TRIED BEFORE A JURY. SPECIFICALLY, AND WITHOUT LIMITATION, EACH SUCH PERSON WAIVES THE RIGHT TO SUBMIT A DISPUTE IN ARBITRATION AS A REPRESENTATIVE OR MEMBER OF A CLASS AND TO HAVE SUCH DISPUTE ARBITRATED AS A CLASS ACTION AND ALSO WAIVES THE RIGHT TO HAVE THE DISPUTE RESOLVED BY A COURT, INCLUDING THE RIGHT TO FILE A LEGAL ACTION AS THE REPRESENTATIVE OR MEMBER OF A CLASS OR IN ANY OTHER REPRESENTATIVE CAPACITY. THE ASSOCIATION, EACH OWNER, THE DEVELOPER, THE DESIGNATED BUILDER AND THE DECLARANT PARTIES FURTHER WAIVE THEIR RESPECTIVE RIGHTS TO AN AWARD OF PUNITIVE AND CONSEQUENTIAL DAMAGES RELATING TO A DISPUTE. BY ACCEPTANCE OF A DEED OR BY ACQUIRING ANY OWNERSHIP INTEREST IN ANY PORTION OF THE PROJECT, EACH OWNER HAS VOLUNTARILY ACKNOWLEDGED THAT HE IS GIVING UP ANY RIGHTS HE MAY POSSESS TO PUNITIVE AND CONSEQUENTIAL DAMAGES OR THE RIGHT TO A TRIAL BEFORE A JURY RELATING TO A DISPUTE.

11.1.7 Statutes of Limitation. Nothing in this Article 11 shall be considered to toll, stay, reduce or extend any applicable statute of limitations.

11.1.8 Required Consent of Declarant to Modify. This Article 11 may not be amended except in accordance with Section 9.3.1 of this Declaration and with the express written consent of the Developer, Designated Builder or the Notified Declarant Party (as applicable).

11.2 Required Consent of Owners for Legal Action. Any action or claim instituted by the Association (which action or claim shall be subject to the terms of this Article 11) against the Developer, Designated Builder or any one or more of the Declarant Parties, arising out of or relating to the Project, including the Declaration or any other Project Documents, the use or condition of the Project or the design or construction of or any condition on or affecting the Project, including construction defects, surveys, soils conditions, grading, specifications, installation of Improvements (including Residential Units) or disputes that allege negligence or other tortious conduct, fraud, misrepresentation, breach of contract or breach of implied or express warranties as to the condition of the Project or any Improvements, shall have

first been approved by Owners representing seventy-five percent (75%) of the votes in the Association who are voting in person or by proxy at a meeting duly called for such purpose.

11.2.1 Notice to Owners.

(i) Prior to obtaining the consent of the Owners in accordance with Section 11.2, the Association must provide written notice to all Owners which notice shall (at a minimum) include (1) a description of the nature of any action or claim (the "**Claim**"), (2) a description of the attempts of Developer, the Designated Builder or the Notified Declarant Party (as applicable) to correct such Claim and the opportunities provided to Developer, the Designated Builder or the Notified Declarant Party (as applicable) to correct such Claim, (3) a certification from an engineer licensed in the State of Arizona that such Claim is valid along with a description of the scope of work necessary to cure such Claim and a resume of such engineer, (4) the estimated cost to repair such Claim, (5) the name and professional background of the attorney proposed to be retained by the Association to pursue the Claim against Developer, the Designated Builder or the Notified Declarant Party (as applicable) and a description of the relationship between such attorney and member(s) of the Board of Directors (if any), (6) a description of the fee arrangement between such attorney and the Association, (7) the estimated attorneys' fees and expert fees and costs necessary to pursue the Claim against Developer, the Designated Builder or the Notified Declarant Party (as applicable) and the source of the funds that will be used to pay such fees and expenses, (8) the estimated time necessary to conclude the action against Developer, the Designated Builder or the Notified Declarant Party (as applicable), and (9) an affirmative statement from the Board that the action is in the best interest of the Association and its Members.

(ii) In the event the Association recovers any funds from Developer, the Designated Builder or Notified Declarant Party (or any other Person) to repair a Claim, any excess funds remaining after repair of such Claim shall be paid into the Association's reserve fund.

11.2.2 Notification to Prospective Purchasers. In the event that the Association commences any action or claim, all Owners must notify prospective purchasers of such action or claim and must provide such prospective purchasers with a copy of the notice received from the Association in accordance with Section 11.2.1.

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DECLARANT:

WILLIAM LYON HOMES, INC.,
a California corporation

By: _____
Its: SR. V.P.

By: _____
Its: V.P.

STATE OF ARIZONA)
)ss.
County of Maricopa)

On this 26 day of August, 2005 before me, Adrienne Kautzman, a Notary Public, personally appeared, W. Thomas Hickox, personally known to me (or proved to me on the basis of satisfactory evidence) to be the person(s) whose name(s) is/are subscribed to the within instrument, and acknowledged to me that he/she/they executed the same in his/her/their authorized capacity, and that by his/her/their signature on the instrument, the person(s), or the entity upon which the person(s) acted, executed the instrument.

WITNESS my hand and official seal.

OFFICIAL SEAL
ADRIENNE KAUTZMAN
NOTARY PUBLIC - State of Arizona
MARICOPA COUNTY
My Comm. Expires Feb. 23, 2009

_____, Notary Public

My Commission Expires:
Feb 23, 2009

STATE OF ~~CALIFORNIA~~ Arizona)
)ss.
County of ~~Orange~~ Maricopa)

On this 24 day of August, 2005 before me, Adrienne Kautzman a Notary Public, personally appeared, Julie E. Collins, personally known to me (or proved to me on the basis of satisfactory evidence) to be the person(s) whose name(s) is/are subscribed to the within instrument, and acknowledged to me that he/she/they executed the same in his/her/their authorized capacity, and that by his/her/their signature on the instrument, the person(s), or the entity upon which the person(s) acted, executed the instrument.

WITNESS my hand and official seal.

OFFICIAL SEAL
ADRIENNE KAUTZMAN
NOTARY PUBLIC - State of Arizona
MARICOPA COUNTY
My Comm. Expires Feb. 23, 2009

Adrienne Kautzman, Notary Public

My Commission Expires:

Feb 23, 2009

DEVELOPER:

WILLIAM LYON HOMES, INC.,
a California corporation

By: _____
Its: Sr. V.P.

By: _____
Its: V.P.

STATE OF ARIZONA)
)ss.
County of Maricopa)

On this 26 day of August, 2005 before me, Adrienne Kautzman, a Notary Public, personally appeared, W. Thomas Hickey, personally known to me (or proved to me on the basis of satisfactory evidence) to be the person(s) whose name(s) is/are subscribed to the within instrument, and acknowledged to me that he/she/they executed the same in his/her/their authorized capacity, and that by his/her/their signature on the instrument, the person(s), or the entity upon which the person(s) acted, executed the instrument.

WITNESS my hand and official seal.

OFFICIAL SEAL
ADRIENNE KAUTZMAN
NOTARY PUBLIC - State of Arizona
MARICOPA COUNTY
My Comm. Expires Feb. 23, 2009

_____, Notary Public

My Commission Expires:

Feb 23, 2009

STATE OF ~~CALIFORNIA~~ Arizona)
)ss.
County of ~~Orange~~ Maricopa)

On this 26 day of August, 2005 before me, Adrienne Kautzman, a Notary Public, personally appeared, Julie E. Collins, personally known to me (or proved to me on the basis of satisfactory evidence) to be the person(s) whose name(s) is/are subscribed to the within instrument, and acknowledged to me that he/she/they executed the same in his/her/their authorized capacity, and that by his/her/their signature on the instrument, the person(s), or the entity upon which the person(s) acted, executed the instrument.

WITNESS my hand and official seal.

OFFICIAL SEAL
ADRIENNE KAUTZMAN
NOTARY PUBLIC - State of Arizona
MARICOPA COUNTY
My Comm. Expires Feb. 23, 2009

_____, Notary Public

My Commission Expires:

Feb 23, 2009

CONSENT

Lyon's Gate Hacienda, LLC, an Arizona limited liability company, as owner of certain Lots within Lyon's Gate Phase 3 and 4 which are subject to the terms and conditions of this Declaration, hereby ratifies, confirms and approves the foregoing Declaration of Covenants, Conditions, Restrictions and Easements for Lyon's Gate.

Dated this 25th day of August, 2005

LYON'S GATE HACIENDA, LLC, an Arizona limited liability company

By: _____

Its: President of the Manager

By: _____

Its: _____

STATE OF Arizona)
) ss.
County of Maricopa)

On this 25th day of August, 2005, before me, Carol Capriotti a Notary Public, personally appeared David Cohen, personally known to me (or proved to me on the basis of satisfactory evidence) to be the person(s) whose name(s) is/are subscribed to the within instrument, and acknowledged to me that he/she/they executed the same in his/her/their authorized capacity, and that by his/her/their signature on the instrument, the person(s), or the entity upon which the person(s) acted, executed the instrument.

WITNESS my hand and official seal.

Carol Capriotti
Notary Public

My Commission Expires:
Sept. 9, 2005

OFFICIAL SEAL
CAROL CAPRIOTTI
NOTARY PUBLIC - STATE OF ARIZONA
MARICOPA COUNTY
My Commission Expires Sept. 9, 2005

STATE OF _____)
) ss.
County of _____)

On this _____ day of _____, 2005, before me, _____ a Notary Public, personally appeared _____, personally known to me (or proved to me on the basis of satisfactory evidence) to be the person(s) whose name(s) is/are subscribed to the within instrument, and acknowledged to me that he/she/they executed the same in his/her/their authorized capacity, and that by his/her/their signature on the instrument, the person(s), or the entity upon which the person(s) acted, executed the instrument.

WITNESS my hand and official seal.

_____
Notary Public

My Commission Expires:

_____

LENDER CONSENT

The undersigned ("**RBC**"), as the Beneficiary under that certain Deed of Trust recorded on December 22, 2004 as Document No. 2004-1503516, Official Records of the Maricopa County Recorder, Maricopa County, Arizona (the "**RBC Deed of Trust**"), hereby ratifies, confirms and approves the terms and conditions of the foregoing Declaration. RBC hereby agrees that the Declaration shall not be modified, disturbed or extinguished by any judicial or statutory foreclosure of the RBC Deed of Trust, or deed in lieu thereof, and that any purchaser or taker under the RBC Deed of Trust, by foreclosure or otherwise, shall take title to the real property encumbered by the RBC Deed of Trust subject to the Declaration.

Dated this 16th day of Sept., 2005.

RBC CENTURA BANK, a North Carolina banking corporation

By: _____ VP

Print Name: DAVID J BOURG

Title: Vice President

STATE OF Texas)
) ss.
County of Harris)

On this 16th day of September, 2005, before me, Charlene Ballantyne a Notary Public, personally appeared DAVID J BOURG, personally known to me (or proved to me on the basis of satisfactory evidence) to be the person(s) whose name(s) is/are subscribed to the within instrument, and acknowledged to me that he/she/they executed the same in his/her/their authorized capacity, and that by his/her/their signature on the instrument, the person(s), or the entity upon which the person(s) acted, executed the instrument.

WITNESS my hand and official seal.

Charlene Ballantyne
Notary Public

My Commission Expires:
7-20-05

CHARLENE H. BALLANTYNE
Notary Public, State of Texas
My Commission Expires
July 20, 2008

EXHIBIT A-1

PHASE 1 AND 2

Lots 1 through 386, inclusive, and Tracts A through N, inclusive, of Lyon's Gate Phase 1 and 2, according to the final plat recorded in Book 752 of Maps, Page 16, Official Records of the Maricopa County Recorder, Maricopa County, Arizona.

EXHIBIT A-2

PHASE 3 AND 4

Lots 387 through 853, inclusive, and Tracts A through N, inclusive and Tracts P through S, inclusive, of the Lyon's Gate Phase 3 and 4, according to the final plat recorded in Book 754 of Maps, Page 16, Official Records of the Maricopa County Recorder, Maricopa County, Arizona.

EXHIBIT B

ADDITIONAL PROPERTY

PARCEL NO. 1 (Lyon's Gate Phases 5-9):

A portion of the Northwest quarter and the Southwest quarter of Section 26, Township 1 South, Range 6 East of the Gila and Salt River Base and Meridian, Maricopa County, Arizona, described as follows:

COMMENCING at the Northwest corner of said Section 26;

thence North 89 degrees 38 minutes 18 seconds East along the North line of the Northwest quarter of said Section 26, a distance of 1068.32 feet to the **TRUE POINT OF BEGINNING;**

thence continuing North 89 degrees 38 minute 18 seconds East along said North line, a distance of 1548.92 feet to the North quarter corner of said Section 26;

thence South 00 degrees 23 minutes 22 seconds East along the East line of the Northwest quarter of said Section 26, a distance of 2629.86 feet;

thence South 00 degrees 22 minutes 42 seconds East, along the East line of the Southwest quarter, a distance of 1376.21 feet;

thence South 89 degrees 37 minutes 18 seconds West, a distance of 17.00 feet to a non-tangent curve with a radius of 30.00 feet being concave to the Southwest to which the center bears South 89 degrees 37 minutes 18 seconds West;

thence Northwesterly along the arc of said curve through a central angle of 90 degrees 00 minutes 10 seconds, an arc distance of 47.13 feet;

thence South 89 degrees 37 minutes 08 seconds West, a distance of 990.93 feet to a tangent curve with a radius of 305.50 feet being concave to the Northeast;

thence Northwesterly along the arc of said curve through a central angle of 52 degrees 43 minutes 50 seconds, an arc distance of 281.16 feet to a non-tangent line;

thence South 89 degrees 37 minutes 08 seconds West, a distance of 1037.69 feet;

thence North 44 degrees 49 minutes 49 seconds West, a distance of 194.97 feet;

thence South 89 degrees 48 minutes 18 seconds West, a distance of 109.20 feet to the East line of the West 65.0 feet of the Southwest quarter;

thence South 00 degrees 11 minutes 42 seconds East along said East line, a distance of 229.54 feet to the South line of Northwest quarter of the Southwest quarter of said Section 26;

thence South 89 degrees 37 minutes 08 seconds West along said South line, a distance of 65.00 feet to the West line of the Southwest quarter of said Section 26;

thence North 00 degrees 11 minutes 42 seconds West along said West line, a distance of 1318.84 feet to the West quarter corner of said Section 26;

thence North 00 degrees 11 minutes 55 seconds West along the West line of the Northwest quarter of said Section 26, a distance of 1835.55 feet;

thence North 89 degrees 48 minutes 05 seconds East along a line being perpendicular to said West line, a distance of 1070.58 feet to the intersection of a line being perpendicular to the North line of the Northwest quarter and being 1068.32 feet East (as measured along the North line of said Northwest quarter) of the Northwest corner of said Section 26;

thence North 00 degrees 21 minutes 42 seconds West along last mentioned perpendicular line, a distance of 795.12 feet to the **TRUE POINT OF BEGINNING.**

PARCEL NO. 2 (Lyon's Gate Phase 10 Less TCR/FOR):

A portion of the Southwest quarter of Section 26, Township 1 South, Range 6 East of the Gila and Salt River Base and Meridian, Maricopa County, Arizona, described as follows:

BEGINNING at the South quarter corner of said Section 26;

thence South 89 degrees 33 minutes 03 seconds West along the South line of the Southwest quarter of said Section 26, a distance of 874.21 feet;

thence North 00 degrees 17 minutes 11 seconds West, departing said South line, a distance of 637.50 feet;

thence South 89 degrees 42 minutes 49 seconds West, a distance of 93.00 feet;

thence North 00 degrees 17 minutes 11 seconds West, a distance of 648.59 feet;

thence North 89 degrees 37 minutes 08 seconds East, a distance of 918.15 feet to a point on a curve with a radius of 30.00 feet being concave to the Southwest to which the center bears South 89 degrees 37 minutes 18 seconds West;

thence Northeasterly along the arc of said curve through a central angle of 90 degrees 00 minutes 10 seconds, an arc distance of 47.13 feet;

thence North 89 degrees 37 minutes 18 seconds East, a distance of 17.00 feet to the mid-section line for Section 26;

thence South 00 degrees 22minutes 42 seconds East along said mid-section line, a distance of 1930.05 feet, to the **POINT OF BEGINNING;**

LESS AND EXCEPT that portion of the Southwest quarter of Section 26, Township 1 South, Range 6 East of the Gila and Salt River Base and Meridian, Maricopa County, Arizona, described as follows:

BEGINNING at the South quarter corner of said Section 26;

thence South 89 degrees 33 minutes 03 seconds West along the South line of the Southwest quarter of said Section 26, a distance of 874.21 feet;

thence North 00 degrees 17 minutes 11 seconds West, departing said South line, a distance of 637.50 feet;

thence South 89 degrees 42 minutes 49 seconds West, a distance of 93.00 feet;

thence North 00 degrees 17 minutes 11 seconds West, a distance of 209.38 feet;

thence North 89 degrees 37 minutes 46 seconds East, a distance of 145.79 feet;

thence South 00 degrees 24 minutes 15 seconds East, a distance of 145.07 feet;

thence North 89 degrees 35 minutes 10 seconds East, a distance of 820.00 feet, to the Mid Section line for said Section 26;

thence South 00 degrees 22 minutes 42 seconds East, along said Mid Section line, a distance of 701.36 feet, to the **POINT OF BEGINNING.**

PARCEL NO. 3 (Lyon's Gate TCR/FOR Portion of Phase 10):

A portion of the Southwest quarter of Section 26, Township 1 South, Range 6 East of the Gila and Salt River Base and Meridian, Maricopa County, Arizona, described as follows:

BEGINNING at the South quarter corner of said Section 26;

thence South 89 degrees 33 minutes 03 seconds West along the South line of the Southwest quarter of said Section 26, a distance of 874.21 feet;

thence North 00 degrees 17 minutes 11 seconds West, departing said South line, a distance of 637.50 feet;

thence South 89 degrees 42 minutes 49 seconds West, a distance of 93.00 feet;

thence North 00 degrees 17 minutes 11 seconds West, a distance of 209.38 feet;

thence North 89 degrees 37 minutes 46 seconds East, a distance of 145.79 feet;

thence South 00 degrees 24 minutes 15 seconds East, a distance of 145.07 feet;

thence North 89 degrees 35 minutes 10 seconds East, a distance of 820.00 feet, to the Mid Section line for said Section 26;

thence South 00 degrees 22 minutes 42 seconds East, along said Mid Section line, a distance of 701.36 feet, to the **POINT OF BEGINNING.**

PARCEL NO. 4 (Bus Facility Site):

A portion of the Southwest quarter of Section 26, Township 1 South, Range 6 East of the Gila and Salt River Base and Meridian, Maricopa County, Arizona, described as follows:

COMMENCING at the South quarter corner of said Section 26;

thence South 89 degrees 33 minutes 03 seconds West along the South line of the Southwest quarter of said Section 26, a distance of 874.21 feet to the **TRUE POINT OF BEGINNING;**

thence continuing South 89 degrees 33 minutes 03 seconds West along said South line, a distance of 162.12 feet to the centerline of a 200' right of way of the Southern Pacific Railroad;

thence North 53 degrees 22 minutes 20 seconds West along said centerline, a distance of 351.31 feet to the West line of the East half of the Southwest quarter of said Section 26;

thence North 00 degrees 17 minutes 11 seconds West along said West line , a distance of 426.96 feet;

thence North 89 degrees 42 minutes 49 seconds East along a line perpendicular to said West line, a distance of 443.00 feet;

thence South 00 degrees 17 minutes 11 seconds East along a line parallel with the West line of the East half of the Southwest quarter of said Section 26, a distance of 637.50 feet to the **TRUE POINT OF BEGINNING.**

PARCEL NO. 5 (Play Field Parcel):

A portion of the Southeast quarter of the Southwest quarter of Section 26, Township 1 South, Range 6 East of the Gila and Salt River Base and Meridian, Maricopa County, Arizona, described as follows:

COMMENCING at the Southwest corner of said Section 26;

thence North 00 degrees 11 minutes 42 seconds West (an assumed bearing), along the West line of the Southwest quarter of said Section 26, a distance of 1,318.84 feet to a point on the North line of the Southwest quarter of the Southwest quarter of said Section 26;

thence North 89 degrees 37 minutes 08 seconds East along said North line, a distance of 1315.10 feet to the West line of the Southeast quarter of the Southwest quarter of said Section 26;

thence South 00 degrees 17 minutes 11 seconds East along said West line , a distance of 9.50 feet to the **TRUE POINT OF BEGINNING;**

thence North 89 degrees 37 minutes 08 seconds East, a distance of 98.00 feet to a curve with a radius of 469.50 feet and being concave to the Southwest, to which the center bears South 00 degrees 22 minutes 52 seconds East;

thence Southeasterly along the arc of said curve, through a central angle of 13 degrees 19 minutes 32 seconds, an arc distance of 109.19 feet to a reverse curve with a radius of 305.50 feet and being concave to the Northeast, to which the center bears North 12 degrees 59 minutes 16 seconds East;

thence Southeasterly along the arc of said curve, through a central angle of 13 degrees 26 minutes 06 seconds, an arc distance of 71.63 feet;

thence North 89 degrees 37 minutes 08 seconds East along said right-of-way line, a distance of 165.78 feet;

thence departing said right of way line, South 00 degrees 17 minutes 11 seconds East, a distance of 648.75 feet;

thence South 89 degrees 42 minutes 49 seconds West, a distance of 443.00 feet;

thence North 00 degrees 17 minutes 11 seconds West, a distance of 669.01 feet to the **TRUE POINT OF BEGINNING.**

PARCEL NO. 6 (High School Parcel):

A portion of the East half of Section 27, Township 1 South, Range 6 East of the Gila and Salt River Base and Meridian, Maricopa County, Arizona, described as follows;

COMMENCING at the Northeast corner of said Section 27;

thence South 00 degrees 11 minutes 55 seconds East along the East line of the Northeast quarter of said Section 27, a distance of 1975.09 feet to the **TRUE POINT OF BEGINNING;**

thence continuing South 00 degrees 11 minutes 55 seconds East along said East line , a distance of 685.54 feet to the East quarter corner of said Section 27;

thence South 00 degrees 11 minutes 42 seconds East along the East line of the Southeast quarter of said Section 27, a distance of 786.06 feet;

thence South 89 degrees 48 minutes 18 seconds West along a line being perpendicular to last said East line, a distance of 865.53 feet to the centerline of a 200' right of way of the Southern Pacific Railroad;

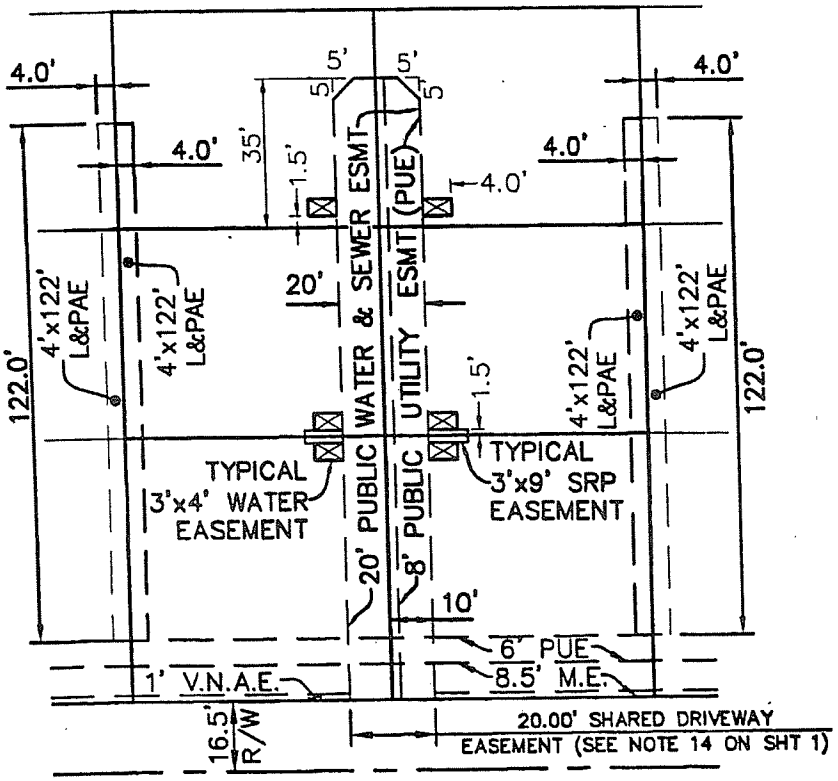
thence North 53 degrees 22 minutes 20 seconds West along said centerline, a distance of 1599.21 feet;

thence North 36 degrees 37 minutes 40 seconds East along a line being perpendicular to said centerline of the Southern Pacific Railroad, a distance of 640.87 feet to the intersection of a line being perpendicular to the East line of the Northeast quarter of said Section 27 and being 1975.09 feet South of the Northeast corner of said Section 27 and as measured along said East line;

thence North 89 degrees 48 minutes 05 seconds East along the last said perpendicular line, a distance of 1761.55 feet to the **TRUE POINT OF BEGINNING.**

EXHIBIT C

ILLUSTRATION SHOWING EXAMPLE PRIVATE DRIVE EASEMENT



EAST MEGAN ST.

TYPICAL DRIVEWAY AND EASEMENTS TYPE A

EXHIBIT D

ILLUSTRATION SHOWING EXAMPLE ALLEY EASEMENT

20051385047

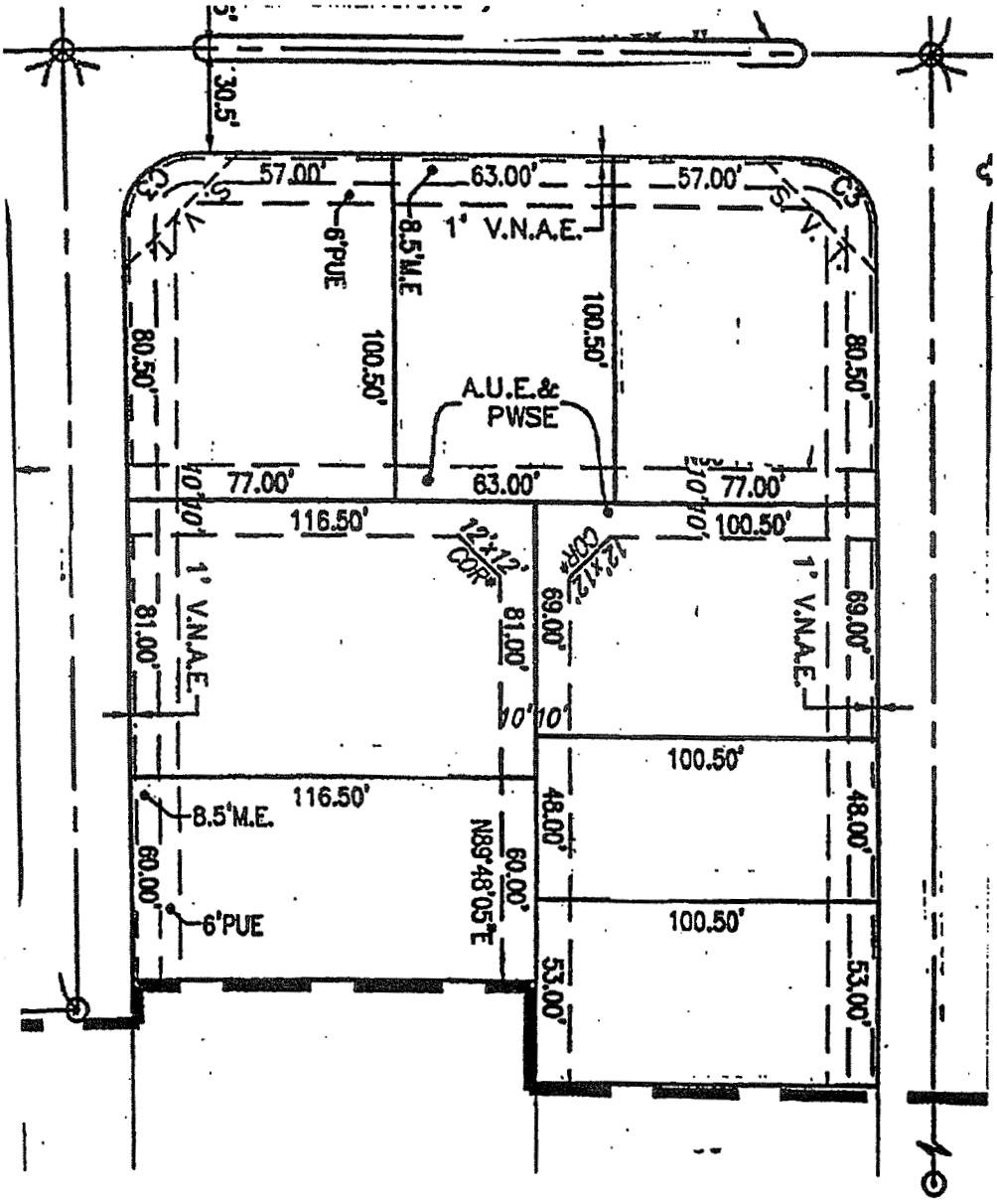
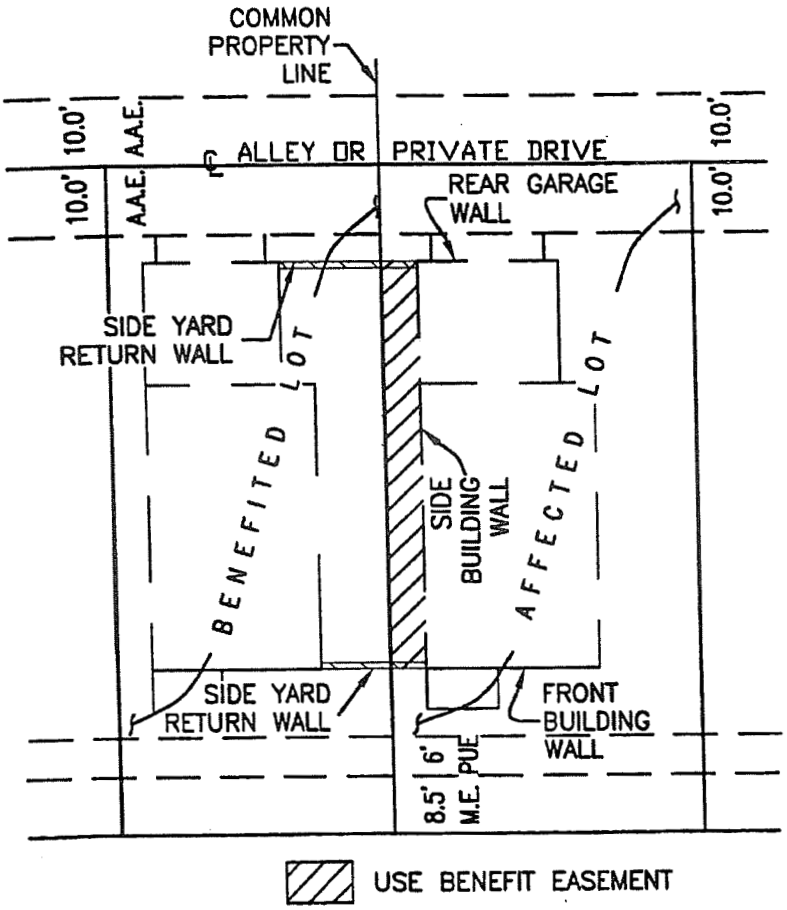


EXHIBIT E

ILLUSTRATION SHOWING EXAMPLE USE EASEMENT AREA


COMMON PROPERTY LINE
10.0'
A.A.E.
ALLEY OR PRIVATE DRIVE
10.0'
10.0'
A.A.E.
REAR GARAGE WALL
10.0'
SIDE YARD RETURN WALL
BENEFITED LOT
SIDE BUILDING WALL
AFFECTED LOT
SIDE YARD RETURN WALL
FRONT BUILDING WALL
8.5' M.E. 6' PUE
USE BENEFIT EASEMENT