

08374

State of Arizona
County of Yuma

I hereby certify that the within instrument
was filed and recorded at the request of
YUMA TITLE & TRUST COMPANY

Dkt 1686
Book 1719
Page 607 - 648

Witness my hand and official seal the day
and year aforesaid.

GLENYS E. SCHMITT

Christine J. Doherty
County Recorder
Deputy Recorder

112
42.00
4.50



INDEXED

SAN MARCOS CASITAS

MICROFILMED

* BOARD MEMBERS

DECLARATION

OF

COVENANTS, CONDITIONS AND RESTRICTIONS

FOR

SAN MARCOS CASITAS

DECEMBER, 1989

15 yrs ago

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FIRST AMENDED DECLARATION OF COVENANTS,
CONDITIONS AND RESTRICTIONS
FOR
SAN MARCOS CASITAS

THIS DECLARATION OF COVENANTS, CONDITIONS AND RESTRICTIONS (the DECLARATION) is made as of the 28th day of November, 1989, by YUMA TITLE AND TRUST COMPANY, a corporation, as trustee (the DECLARANT).

WHEREAS, DECLARANT is the owner of the following described real property situated in Yuma County, Arizona (the PARCEL):

Lots 1 through 60, inclusive, and Tracts A, B, C, D and E, SAN MARCOS CASITAS, according to Book 12 of Plats, pages 36 and 37, records of Yuma County, Arizona;
EXCEPT all uranium, thorium, or any other material which is or may be determined to be peculiarly essential to the production of fissionable materials, whether or not of commercial value, as reserved in Patent from United States of America.

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

WHEREAS, DECLARANT desires that the PROPERTY be developed in accordance with a master plan and general scheme of development into a residential community, together with related facilities, to be collectively known as "SAN MARCOS CASITAS" (the PROJECT).

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

WHEREAS, it is desirable for the efficient management of the PROJECT to create an owners association to which should be delegated and assigned the powers of owning, managing, maintaining and administering the COMMON AREAS within the PROJECT and administering and enforcing these covenants, conditions and restrictions and collecting and disbursing funds pursuant to the assessments and charges hereinafter created and to perform such other acts as are herein provided or which generally benefit its members, the PROJECT, and the owners of

WHEREAS, the SAN MARCOS CASITAS OWNERS ASSOCIATION, a private non-profit corporation, has been, or will be, incorporated under the laws of the State of Arizona for the purpose of exercising such powers and functions.

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

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

1. DEFINITIONS.

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

1.1 "ARTICLES" means the Articles of Incorporation of the ASSOCIATION, as such may be amended from time to time, or of any successor thereto.

1.2 "ASSESSMENTS" shall include the following:

1.2.1 "REGULAR ASSESSMENT" means the amount which is to be paid each MEMBER of the ASSOCIATION as such MEMBER's PROPORTIONATE SHARE of the COMMON EXPENSES of the ASSOCIATION, as provided in Section 6.3.

1.2.2 "SPECIAL ASSESSMENT" means a charge against a particular MEMBER, an OWNER or a UNIT, directly attributable to such MEMBER, OWNER or UNIT, to reimburse the ASSOCIATION for costs incurred in bringing the MEMBER, the OWNER or the UNIT into compliance with the provisions of this DECLARATION, the ARTICLES, BYLAWS or ASSOCIATION RULES, or any other charge designated as a SPECIAL ASSESSMENT in this DECLARATION, the ARTICLES, BYLAWS or ASSOCIATION RULES, together with attorneys' fees and other charges payable by such MEMBER or OWNER pursuant to the provisions of this DECLARATION, as provided in Section

1.2.3 "RECONSTRUCTION ASSESSMENT" means the amount which is to be paid by each MEMBER representing such MEMBER's PROPORTIONATE SHARE of the cost to the ASSOCIATION for reconstruction of any portion of the COMMON AREAS, as provided in Section 8.

1.2.4 "CAPITAL IMPROVEMENT ASSESSMENT" means the amount which is to be paid by each MEMBER representing such MEMBER's PROPORTIONATE SHARE of the cost to the ASSOCIATION for the installation or construction of any capital improvements on any of the COMMON AREAS which the ASSOCIATION may from time to time authorize pursuant to the provisions of Section 6.5.

1.3 "ASSOCIATION" means the/SAN MARCOS CASITAS OWNERS ASSOCIATION, an Arizona private non-profit corporation, its successors and assigns.

1.4 "ASSOCIATION RULES" means the rules and regulations adopted by the ASSOCIATION from time to time.

1.5 "BOARD" means the Board of Directors of the ASSOCIATION.

1.6 "BYLAWS" means the BYLAWS of the ASSOCIATION adopted in accordance with the ARTICLES, as such BYLAWS may be amended from time to time, or of any successor thereto.

1.7 "CITY" means the City of Yuma, Arizona, a municipal corporation of the State of Arizona.

1.8 "COMMON AREAS" means all portions of the PROJECT except the LOTS.

1.9 "COMMON EXPENSES" means the actual and estimated costs incurred by the ASSOCIATION in administering, maintaining and operating the PROJECT, including, but not strictly limited to, the following:

1.9.1 maintenance, management, operation, repair and replacement of the COMMON AREAS and all other areas on the PROJECT which are maintained by the ASSOCIATION;

1.9.2 unpaid assessments;

1.9.3 maintenance by the ASSOCIATION of areas within the right-of-way of public streets in the vicinity of the PROJECT as provided in this DECLARATION or pursuant to agreements with the CITY or COUNTY;

1.9.4 costs of management, administration of the ASSOCIATION, including, but not limited to, compensation paid by the ASSOCIATION to managers, accountants, attorneys and employees;

1.9.5 the costs of utilities, including, but not limited to, water, electricity, gas, sewer, trash pick-up and disposal which are provided to the ASSOCIATION or the PROJECT and not individually metered or assessed by LOT; landscaping, maintenance and other services which generally benefit and enhance the value and desirability of the PROJECT and which are provided by the ASSOCIATION;

1.9.6 the costs of fire, casualty, liability, workmen's compensation and other insurance covering the COMMON AREAS;

1.9.7 the costs of any other insurance obtained by the ASSOCIATION;

1.9.8 reasonable reserves for contingencies, replacements and other proper purposes as deemed appropriate by the ASSOCIATION, which reserve fund shall be adequate to meet the costs and expenses of maintenance, repairs and replacement of those COMMON AREAS or other areas which must be maintained, repaired, or replaced on a periodic basis;

1.9.9 the costs of bonding the members of the BOARD, the PRESIDENT, any professional managing agent or any other person handling the funds of the ASSOCIATION;

1.9.10 taxes paid by the ASSOCIATION;

1.9.11 amounts paid by the ASSOCIATION for discharge of any lien or encumbrance levied against the COMMON AREAS or portions thereof;

1.9.12 costs incurred by any committees established by the BOARD or the PRESIDENT;

1.9.13 costs of security guards and any other security systems or services installed, operated or contracted for by the ASSOCIATION, if any;

1.9.14 costs incurred in the maintenance of all party walls between COMMON AREAS and LOTS and between LOTS and the perimeter wall around the PROJECT;

1.9.15 other expenses incurred by the ASSOCIATION for any reason whatsoever in connection with the COMMON AREAS (excepting reconstruction costs and capital improvements as otherwise provided herein), or the costs of any other item or items designated by, or to be provided or performed by, the ASSOCIATION pursuant to this DECLARATION, the ARTICLES, BYLAWS or ASSOCIATION RULES, or in furtherance of the purposes of the ASSOCIATION or in the discharge of any duties or powers of the ASSOCIATION.

1.10 "COUNTY" means the County of Yuma, Arizona.

1.11 "DECLARANT" means the above recited DECLARANT, its successors and assigns.

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

1.13 "DEFAULT RATE OF INTEREST" means an annual rate of interest equal to the prime rate as announced by Valley National Bank, Phoenix, Arizona (as the rate charged to its largest and most creditworthy customers) from time to time while interest is accruing (with interest hereunder adjusted as and when said prime rate is adjusted) plus 2% per annum, but never less than 18% (so that if during any periods while interest is accruing said prime rate plus 2% per annum is less than 18%, interest shall accrue during said periods at 18% per annum). Notwithstanding anything herein to the contrary, if, during any periods, the highest lawful rate of interest which may be paid by the PERSON required to pay the DEFAULT RATE OF INTEREST hereunder, despite the provisions hereof, is less than the rate provided above, the interest payable by such PERSON during said periods shall be the highest lawful rate. If Valley National Bank should cease doing business or no longer announce its prime rate as described above, the ASSOCIATION may compute interest hereunder upon the announced prime rate of any other bank doing business in Arizona. If banks should cease announcing prime rates, the ASSOCIATION may elect to use 18% as the DEFAULT RATE OF INTEREST, or may specify the rate, in lieu of said prime rate, for purposes of the computation hereunder, which the ASSOCIATION would reasonably have to pay to borrow money at the time.

1.14 "LIMITED COMMON AREAS" means a portion of the COMMON AREA designated for the exclusive use of one or more, but less than all the LOTS. The boundaries of LIMITED COMMON AREAS are shown on the PLAT.

1.15 "LOT" and "UNIT" shall be synonymous and shall mean a subdivided lot as shown on the PLAT. A "LOT" shall not include any COMMON AREAS. A "LOT" includes the residential dwelling unit, garages/carports, structures and other improvements constructed thereon. A description of the boundaries of each LOT, and each LOT's identifying number is shown on the PLAT.

1.16 "MAJORITY OF MEMBERS" means the MEMBERS holding more than fifty percent (50%) of the total votes entitled to be cast with respect to a given matter; and any specified fraction or percentage of the MEMBERS means the MEMBERS holding that fraction or percentage of the total votes entitled to be cast with respect to a given matter. A specified fraction or percentage "of all of the MEMBERS" means that fraction or percentage of the total votes of all MEMBERS other than DECLARANT. Unless otherwise specified, any provision herein requiring the approval of the MEMBERS means the approval of a MAJORITY of MEMBERS.

1.17 "MEMBER" means every person who holds a REGULAR MEMBERSHIP in the ASSOCIATION pursuant to Section 3, entitled "Membership".

1.18 "MORTGAGE" means any recorded, filed or otherwise perfected instrument given in good faith and for valuable consideration which is not a fraudulent conveyance under Arizona law as security for the performance of an obligation, including without limitation a deed of trust, but shall not include any instrument creating or evidencing solely a security interest arising under the Uniform Commercial Code. "MORTGAGEE" means the holder of a note secured by a MORTGAGE, including the trustee and beneficiary under any deed of trust. "MORTGAGOR" means the party executing a MORTGAGE. "FIRST MORTGAGE" means a MORTGAGE which is the first and most senior of all MORTGAGES upon the same property. "FIRST MORTGAGEE" means the holder of a FIRST MORTGAGE.

1.19 "OCCUPANT" means any PERSON, other than an OWNER, in rightful possession of a LOT, whether as a guest, tenant or otherwise.

1.20 "OWNER" means the record owner, whether one or more PERSONS, of fee simple title, whether or not subject to any MORTGAGE, to any LOT which is a part of the PROPERTY, including contract sellers, but excluding those having such interest merely as security for the performance of an obligation. In the case of LOTS, the fee simple title to which is vested of record in a trustee pursuant to Arizona Revised Statutes, Section 33-801 et seq., legal title shall be deemed to be in the trustor.

1.21 "PARCEL" means the parcel of real property referred to and described in the recitals hereof.

1.22 "PERSON" means an individual, corporation, partnership, trust or other entity capable of holding title to real property, and their respective heirs, successors and assigns.

1.23 "PLAT" means the plat of subdivision of the PARCEL as first recorded in the official records of Yuma County, Arizona, and as thereafter from time to time amended or supplemented. The PLAT is incorporated herein and made a part hereof by reference.

1.24 "PRESIDENT" means the duly elected or appointed president of the ASSOCIATION.

1.25 "PROJECT" means the master planned development of the PROPERTY, as described in the recitals hereof, to be called "SAN MARCOS CASITAS".

1.26 "PROPERTY" means the PARCEL, together with all buildings, improvements and other permanent fixtures of whatever kind now or hereafter located thereon, and all easements, rights,

appurtenances and privileges belonging to or in any way pertaining thereto.

1.27 "PROPORTIONATE SHARE" means that fraction wherein the numerator is one and the denominator is the total number of REGULAR MEMBERS then required to pay ASSESSMENTS.

1.28 "RECORD" or "RECORDING" means an instrument of record in, or the act of recording an instrument with, the office of the County Recorder for Yuma County, Arizona.

1.29 "REGULAR MEMBER" means an individual designated as such in accordance with Section 3, entitled "Membership".

2. RIGHTS OF OWNERSHIP ENJOYMENT COMMON AREAS.

2.1 OWNER'S Right of Enjoyment. The ASSOCIATION shall own the COMMON AREA. Every OWNER shall have a non-exclusive right to the use and enjoyment of the COMMON AREAS, which right shall be appurtenant to and shall pass with such OWNER's membership as herein provided, and shall be subject to all of the easements, covenants, conditions and other provisions contained in this DECLARATION, including, without limitation, the following provisions:

2.1.1 The right of the ASSOCIATION to limit the number of guests of MEMBERS and to limit the use of COMMON AREAS by PERSONS who are not MEMBERS.

2.1.2 The right of the ASSOCIATION to establish reasonable rules and regulations pertaining to or restricting the use of the COMMON AREAS by MEMBERS or other PERSONS.

2.1.3 The right of the ASSOCIATION to borrow money for the purpose of improving, replacing, restoring or expanding the COMMON AREAS or adding new COMMON AREAS and, in aid thereof, to mortgage said property, provided that the rights of the lender thereunder shall be subordinated to the rights of the MEMBERS.

2.1.4 The right of the ASSOCIATION to dedicate or transfer all or any part of the COMMON AREA to any public agency, authority, or utility for such purposes and subject to such conditions as may be agreed to by the MEMBERS.

2.2 Delegation of Use. No MEMBER may delegate his right of use and enjoyment of the COMMON AREAS to any PERSON, except to the members of his immediate family as provided in Section 3 or to his guests as permitted by the ASSOCIATION rules or to an occupant.

2.3 Waiver of Use. No MEMBER or OWNER may exempt himself, and no MEMBER or OWNER shall be exempt, from personal liability for ASSESSMENTS or release any LOT owned by him from the liens, charges and other provisions of this DECLARATION, the BYLAWS

BYLAWS or ASSOCIATION RULES, by voluntary waiver of, or suspension or restriction of such OWNER or MEMBER's right to, the use and enjoyment of the COMMON AREAS, or the abandonment of such OWNER or MEMBER's LOT or membership.

3. MEMBERSHIP.

3.1 Classification of Memberships. There shall be one class of membership in the ASSOCIATION to be known as REGULAR MEMBERSHIPS.

3.2 Regular Memberships.

3.2.1 Each OWNER of a LOT shall be entitled to one REGULAR MEMBERSHIP in the ASSOCIATION so long as he is the OWNER of his LOT, and shall specify in writing to the ASSOCIATION the REGULAR MEMBER entitled to use the REGULAR MEMBERSHIP. In the absence of such written specification, ASSESSMENTS shall nevertheless be charged against the LOT and OWNER thereof, but there shall be no right to vote the MEMBERSHIP. The REGULAR MEMBER must be an individual who, except as provided in Section 11.15, is either an OWNER, or if the OWNER is or includes a PERSON other than an individual, the REGULAR MEMBER may be an individual who is a partner, if the OWNER is or includes a partnership, or an officer of the corporation, if the OWNER is or includes a corporation, or a beneficiary of the trust, if the OWNER is or includes a trust, or an owner of the entity, if the OWNER is or includes a PERSON other than an individual, partnership, a corporation or trust.

3.2.2 Once a REGULAR MEMBER has been specified by an OWNER of a LOT, a new REGULAR MEMBER may only be specified for that LOT by the OWNER in writing to the ASSOCIATION.

3.2.3 The REGULAR MEMBER, as so specified, shall be the only PERSON entitled to vote for the OWNER of the LOT at ASSOCIATION meetings and elections, except that proxies may be appointed as provided in the BYLAWS and this DECLARATION. The REGULAR MEMBER specified by the OWNER, and the REGULAR MEMBER's spouse and children, natural and adopted, under the age of 22 (and such other children and other relatives of the REGULAR MEMBER as the BOARD or the PRESIDENT may from time to time specify) shall, with respect to an OWNER's LOT, be the only persons entitled to use the COMMON AREAS other than as guests, and no other individual or PERSON, even though an OWNER of the LOT, shall be entitled to use COMMON AREAS other than as guests.

3.3 Transfer of Memberships. A membership in the ASSOCIATION is appurtenant to the ownership of that LOT and shall not be transferred, pledged or alienated in any way, except as herein expressly provided. A REGULAR MEMBERSHIP shall automatically be transferred to the new OWNER (subject to Section 3.2.1) upon the transfer of the LOT to which it appertains (and then only to such transferee), whether by sale, intestate succession, testamentary disposition, foreclosure of a MORTGAGE

or other legal process transferring fee simple title to such LOT. Any attempt to make a prohibited transfer of MEMBERSHIP is void and shall not be reflected upon the books and records of the ASSOCIATION. The ASSOCIATION shall record the proper transfer of ownership upon the books of the ASSOCIATION, it is the responsibility of the new OWNER to notify the ASSOCIATION in writing of the purchase of a LOT and, prior to such notification, the ASSOCIATION is entitled to rely on its books and records as showing the true OWNER of the LOT and any notice given and action taken by the ASSOCIATION with respect to the LOT and the OWNER shown on the ASSOCIATION's official books and records shall be valid. In the event any MEMBER fails or refuses to transfer or surrender the membership registered in his name as herein required, the ASSOCIATION shall have the right to record a transfer upon the books of the ASSOCIATION and issue a new membership as appropriate, and thereupon the old membership outstanding in the name of said MEMBER shall be null and void as though the same had been surrendered.

4. ASSOCIATION.

4.1 Purpose of ASSOCIATION. The ASSOCIATION has been, or will be, incorporated as a private non-profit corporation to serve as owner of the COMMON AREA and as the governing body for all of the OWNERS and MEMBERS for the protection, improvement, alteration, maintenance, repair, replacement, administration and operation of the PROJECT, the assessment of expenses, payment of losses, disposition of casualty insurance proceeds, and other matters as provided in this DECLARATION, the ARTICLES, BYLAWS or ASSOCIATION RULES. The ASSOCIATION shall not be deemed to be conducting a business of any kind, and all funds received by the ASSOCIATION shall be held and applied by it for the OWNERS and MEMBERS in accordance with the provisions of this DECLARATION, the ARTICLES and the BYLAWS.

4.2 Pledge of Voting Rights. Notwithstanding the foregoing, in the event that an OWNER has granted as irrevocable proxy or otherwise pledged the voting right appurtenant to the REGULAR MEMBERSHIP with respect to his LOT to a MORTGAGEE as additional security, only the vote of such MORTGAGEE will be recognized in regard to such special matters if a copy of such proxy or other instrument pledging such vote has been filed with the ASSOCIATION. In the event that more than one such instrument has been filed, the ASSOCIATION shall recognize the rights of the first MORTGAGEE to so file, regardless of the priority of the MORTGAGES themselves.

4.3 Assignment of DECLARANT's Voting Rights. If any lender to whom the DECLARANT has assigned, or hereafter assigns, as security all or substantially all of its rights under this DECLARATION succeeds to the interests of the DECLARANT by virtue of said assignment, the absolute voting rights of the DECLARANT as provided in Section 4.17 shall not be terminated thereby, and such lender shall hold the DECLARANT's memberships and voting rights on the same terms as they were held by the DECLARANT

pursuant hereto.

4.4 Board of Directors.

4.4.1 The affairs of the ASSOCIATION shall be conducted by the BOARD as herein provided and in accordance with the ARTICLES and BYLAWS. Except for directors elected by the DECLARANT, each director shall be a MEMBER or the spouse of a MEMBER. If a director shall cease to meet such qualifications during his term, he will thereupon cease to be a director and his place on the BOARD shall be deemed vacant.

4.4.2 The DECLARANT shall have the absolute power and right to appoint and remove the members of the BOARD until four (4) years after the DECLARANT has ceased to offer LOTS for sale in the ordinary course of business or ninety (90) days after conveyance of seventy-five (75%) percent of the LOTS to owners other than the DECLARANT, whichever occurs first. The DECLARANT may voluntarily relinquish its power of appointment and removal at any time. After such time the MEMBERS of the ASSOCIATION shall have the power and right to appoint and remove the members of the BOARD as provided in the ARTICLES and BYLAWS.

4.5 Duties and Powers of the PRESIDENT.

4.5.1 To the extent not prohibited by law, or as otherwise herein expressly limited, including without limitation Section 4.6.2, the affairs of the ASSOCIATION and to act on behalf of, and bind, the ASSOCIATION in every instance wherein the ASSOCIATION is required or permitted to take any action. The action of the PRESIDENT shall at all times be subject to the review of the BOARD.

4.5.2 Notwithstanding anything in Section 4.6.1 to the contrary, the PRESIDENT shall not have the power to borrow any funds on behalf of the ASSOCIATION, make any expenditures on behalf of the ASSOCIATION which are, in the aggregate, more than five percent (5%) in excess of the total amount of the ASSOCIATION's budget, or increase the amount of or levy any ASSESSMENT (except a SPECIAL ASSESSMENT), without the prior approval of the BOARD.

4.5.3 The PRESIDENT may appoint such assistants as he deems necessary or appropriate. No compensation shall be paid to the PRESIDENT or to any assistant except as provided in the ASSOCIATION's budget or as otherwise approved by the BOARD.

4.5.4 Any right or power herein given or delegated to the PRESIDENT which cannot be exercised by the PRESIDENT, whether by reason of law or otherwise, shall be deemed to be a right or power to be exercised by the BOARD.

4.6 PRESIDENT's Determination Binding. In the event of any dispute or disagreement between any OWNERS, MEMBERS, or any other PERSONS subject to this DECLARATION, relating to the

PROJECT, or any question of interpretation or application of the provisions of this DECLARATION, the ARTICLES, BYLAWS or ASSOCIATION RULES, the determination thereof by the PRESIDENT shall be final and binding on each and all of such OWNERS, MEMBERS or PERSONS. The PRESIDENT may, at his election, delegate the resolution of such dispute or disagreement to the BOARD or a committee appointed by the PRESIDENT.

4.7 Approval of MEMBERS. Unless elsewhere otherwise specifically provided in this DECLARATION, the ARTICLES or BYLAWS, any provision of this DECLARATION, the ARTICLES or BYLAWS which requires the vote or written assent of the MEMBERS of the ASSOCIATION shall be deemed satisfied by the following:

4.7.1 The vote in person or by proxy of the specified percentage of MEMBERS at a meeting duly called and noticed pursuant to the provisions of the ARTICLES or BYLAWS dealing with annual or special meetings of the MEMBERS.

4.7.2 Written consents signed by the specified percentage of MEMBERS as provided in the BYLAWS.

4.7.3 If no percentage of MEMBERS is otherwise specified, then the vote or written assent of a MAJORITY OF MEMBERS shall be required.

4.7.4 In all cases, each MEMBER shall have one vote for each LOT for which the MEMBER has been designated as the REGULAR MEMBER.

4.8 Additional Provisions in ARTICLES and BYLAWS. The ARTICLES and BYLAWS may contain any provision relating to the conduct of the affairs of the ASSOCIATION and the rights and powers of its directors, officers, employees, agents and members not inconsistent with law or this DECLARATION.

4.9 ASSOCIATION RULES. The BOARD shall be empowered, but not required, to adopt, amend or repeal such rules and regulations as it deems reasonable and appropriate (the ASSOCIATION RULES), binding upon all PERSONS subject to this DECLARATION and governing the use and/or occupancy of the COMMON AREAS or any other part of the PROJECT. The ASSOCIATION RULES may include the establishment of a system of fines and penalties enforceable as SPECIAL ASSESSMENTS. The ASSOCIATION RULES shall govern such matters in furtherance of the purposes of the ASSOCIATION, including, without limitation, the use of the COMMON AREAS; provided, however, that the ASSOCIATION RULES may not discriminate among OWNERS and MEMBERS except as expressly provided or permitted herein, and shall not be inconsistent with this DECLARATION, the ARTICLES or BYLAWS. A copy of the ASSOCIATION RULES as they may from time to time be adopted, amended or repealed or a notice setting forth the adoption, amendment or repeal of specific portions of the ASSOCIATION RULES shall be delivered to each OWNER and MEMBER in the same manner established in this DECLARATION for the delivery of notices. Upon

completion of the notice requirements, said ASSOCIATION RULES shall have the same force and effect as if they were set forth in and were part of this DECLARATION and shall be binding on the OWNERS and MEMBERS, and all other PERSONS having any interest in, or making any use of, the PROPERTY, whether or not actually received thereby. The ASSOCIATION RULES, as adopted, amended or repealed, shall be available from the PRESIDENT to each OWNER, MEMBER or other PERSON reasonably entitled thereto, upon request. In the event of any conflict between any provision of the ASSOCIATION RULES and any provisions of this DECLARATION, or the ARTICLES or the BYLAWS, the provisions of this DECLARATION, the ARTICLES or the BYLAWS shall control to the extent of any such conflict.

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

4.11 Non-Liability of Officials. To the fullest extent permitted by law, neither DECLARANT, the PRESIDENT, the BOARD, or any committees of the ASSOCIATION nor any member thereof, nor any directors or officers of the ASSOCIATION shall be liable to any MEMBER, OWNER, OCCUPANT, the ASSOCIATION or any other PERSON for any damage, loss or prejudice suffered or claimed on account of any decision, approval or disapproval of plans or specifications (whether or not defective), course of action, act, inaction, omission, error, negligence or the like made in good faith and which DECLARANT, the PRESIDENT, the BOARD, or such committees or persons reasonably believed to be within the scope of their respective duties.

4.12 Easements. In addition to the blanket easements granted in Section 5.1, the ASSOCIATION is authorized and

empowered to grant upon, across or under real property owned or controlled by the ASSOCIATION and such permits, licenses, easements and rights-of-way for sewer lines, water lines, underground conduits, storm drains, television cable and other similar public or private utility purposes, roadways or other purposes as may be reasonably necessary and appropriate for the orderly maintenance, preservation and enjoyment of the COMMON AREAS or for the preservation of the health, safety, convenience and welfare of the OWNERS and MEMBERS, provided that any damage to a LOT resulting from such grant shall be repaired by the ASSOCIATION at its expense.

4.13 Accounting. The ASSOCIATION, at all times, shall keep, or cause to be kept, true and correct records of account in accordance with generally accepted accounting principles, and shall have available for the inspection of all OWNERS and MEMBERS at reasonable times, such books which shall specify in reasonable detail all expenses incurred and funds accumulated from assessments or otherwise.

4.14 Records. The ASSOCIATION shall, upon reasonable written request and at reasonable times, make available for inspection by each OWNER and MEMBER the books and financial statements of the ASSOCIATION together with current copies, as amended from time to time, of this DECLARATION and the ARTICLES, BYLAWS and ASSOCIATION RULES. The DECLARANT shall be under no obligation to make its own books and records available for inspection by any OWNER, MEMBER or other person.

4.15 Managing Agent. All powers, duties and rights of the ASSOCIATION, the PRESIDENT or the BOARD, as provided by law and herein, may be delegated to a managing agent under a management agreement; provided, however, that no such delegation shall relieve the ASSOCIATION of its obligation to perform any such delegated duty. Any agreement for professional management, or any other contract providing for services of the DECLARANT or any other party, shall not exceed a term of three (3) years, which term may be renewed by agreement of the parties for successive one-years periods, and shall further provide for termination by either party with or without cause and without payment of a termination fee upon ninety (90) days' written notice.

5. EASEMENTS.

5.1 Blanket Easements. There is hereby created a blanket easement upon, across, over and under the PROPERTY for ingress and egress (over existing roadways), installing, constructing, replacing, repairing, maintaining and operating all utilities, including but not limited to water, sewer, gas, telephone, electricity, television cable, security systems, and communication lines and systems, and in addition thereto for the use of emergency vehicles of all types. By virtue of the easement, it shall be expressly permissible for the providing utility company to erect (including without limitation underground installation)

and maintain the necessary facilities, wires, circuits, conduits, cables and related appurtenances, facilities and equipment on the PROPERTY. Notwithstanding anything to the contrary contained in this Section, no easements shall be created nor shall any sewers, electrical lines, water lines or other facilities for utilities be installed or relocated except as initially created and approved by the DECLARANT or thereafter created or approved by the ASSOCIATION. This provision shall in no way affect any other recorded easements on the PROPERTY.

5.2 Use of COMMON AREAS. Except for the use limitations provided in Section 5.3 each OWNER and MEMBER shall have the exclusive right to use the COMMON AREAS in common with all other OWNERS and MEMBERS as required for the purposes of access and ingress and egress to (and use, occupancy and enjoyment of) and LOT owned by such OWNER or MEMBER or other COMMON AREAS available for the use of said OWNER or MEMBER. Such right to use the COMMON AREAS for purposes of access and ingress and egress shall, subject to the ASSOCIATION RULES, extend to each OWNER, MEMBER, OCCUPANT and the agents, servants, tenants, family members and invitees of each OWNER or MEMBER. Such right to use the COMMON AREAS shall be perpetual and appurtenant to each respective LOT, subject to and governed by the provisions of this DECLARATION, the ARTICLES, BYLAWS and ASSOCIATION RULES and such reasonable limitations as may from time to time be contained therein.

5.3 Exclusive Use Rights. Certain areas of the COMMON AREAS may be reserved by the BOARD for the exclusive control, possession and use of the OWNER of a LOT. If such an area serves as access to and from two LOTS, the OWNERS of the two LOTS shall have joint control, possession and use of such portion of said area as reasonably serves both LOTS. The exclusive use rights created herein are subject to the blanket utility easement, maintenance, and architectural and landscape control provisions contained in this DECLARATION and to such reasonable rules and regulations with respect to possession, control, use and maintenance as the ASSOCIATION may from time to time promulgate. Easements are hereby created in favor of and running with each LOT having such an area for the exclusive control and use of each such area. Each OWNER, by accepting title to a LOT, and each MEMBER shall be deemed to have further ratified the easements and rights to exclusive use created by this Section 5.3.

5.4 Estate Wall Easement. There is hereby created an affirmative easement in favor of the ASSOCIATION, its employees and agents, upon, over and across each LOT adjacent to the perimeter boundaries of the PROJECT for reasonable ingress, egress, installation, replacement, maintenance and repair of the street side of the estate walls as shown on the PLAT.

6. ASSESSMENTS.

6.1 Creation of Lien and Personal Obligation. Each OWNER

and MEMBER, by acceptance of a deed or other conveyance of an interest in a LOT or by acceptance of his membership, is deemed to covenant and agree to pay to the ASSOCIATION: REGULAR ASSESSMENTS, SPECIAL ASSESSMENTS, CAPITAL IMPROVEMENT ASSESSMENTS and RECONSTRUCTION ASSESSMENTS, if applicable, such ASSESSMENTS to be established and collected from time to time as provided in this DECLARATION. The ASSESSMENTS, together with interest thereon, late charges, attorneys' fees and court costs, and other costs of collection thereof, as hereinafter provided, shall be a continuing lien upon such OWNER or MEMBER's LOT against which the ASSESSMENTS are made. Each ASSESSMENT, together with such interest and other costs, shall also be the personal obligation of the MEMBER and/or OWNER to whom such ASSESSMENT relates. The personal obligation for delinquent payments shall not pass to an OWNER or MEMBER's successor unless expressly assumed by him. The obligation of a REGULAR MEMBER and the OWNER of a LOT to which such membership appertains for the payment of ASSESSMENTS shall be joint and several.

6.2 Purpose of ASSESSMENTS. The ASSESSMENTS levied by the ASSOCIATION shall be used to promote the recreation, health, safety and welfare of the OWNERS and MEMBERS, to enhance the quality of life within the PROJECT, to preserve the value of the PROPERTY, to pay the costs of administration of the ASSOCIATION and all other COMMON EXPENSES, or to otherwise further the interests of the ASSOCIATION. Where a LOT has separate gas, telephone, cable, electrical or other similar utilities service, the cost of the same shall be the personal obligation of each OWNER.

6.3 REGULAR ASSESSMENTS.

6.3.1 Except as otherwise specifically provided herein (including without limitation in Section 6.3.4), each MEMBER shall pay as his REGULAR ASSESSMENT such MEMBER's PROPORTIONATE SHARE of the COMMON EXPENSES. Except as otherwise specifically provided herein, payment of REGULAR ASSESSMENTS shall be in such amounts and at such times as may be provided in the ARTICLES and BYLAWS or as determined by the ASSOCIATION.

6.3.2 Not later than thirty (30) days prior to the beginning of each fiscal year of the ASSOCIATION, the ASSOCIATION shall make available for review by each OWNER and MEMBER a pro forma operating statement or budget for the upcoming fiscal year which shall, among other things, estimate the total COMMON EXPENSES to be incurred for such fiscal year. Subject to the provisions of Section 6.3.4, the ASSOCIATION shall at that time determine the amount of the REGULAR ASSESSMENT to be paid by each MEMBER and notify the MEMBER thereof. Each MEMBER shall thereafter pay to the ASSOCIATION his REGULAR ASSESSMENT in monthly installments. Each such installment shall be due and payable on the date set forth in the written notice sent to MEMBERS.

6.3.3 If the ASSOCIATION determines that the total

REGULAR ASSESSMENTS for the current year are, or will become, inadequate to meet all COMMON EXPENSES for whatever reason, including COMMON EXPENSES in excess of the estimated COMMON EXPENSES used in preparation of the ASSOCIATION's budget for that year, the PRESIDENT shall then immediately determine the approximate amount of such inadequacy and, with the consent of the BOARD, issue a supplemental estimate of the COMMON EXPENSES and determine the revised amount of REGULAR ASSESSMENTS to be paid by each MEMBER for the balance of the year, and the date or dates when due. If the estimated total REGULAR ASSESSMENTS for the current year proves to be excessive in light of the actual COMMON EXPENSES, the ASSOCIATION may, at the discretion of the BOARD, retain such excess as additional working capital or reserves, reduce the amount of the REGULAR ASSESSMENTS for the succeeding year, or abate collection of REGULAR ASSESSMENTS for such period as it deems appropriate. No reduction or abatement of REGULAR ASSESSMENTS because of any such anticipated surplus may diminish the quantity or quality of services upon which the COMMON EXPENSES for the year in question are based.

6.4 SPECIAL ASSESSMENTS. SPECIAL ASSESSMENTS shall be levied by the ASSOCIATION against a MEMBER and/or an OWNER and his LOT to reimburse the ASSOCIATION for:

6.4.1 Costs incurred in bringing a MEMBER or an OWNER and his LOT into compliance with the provisions of this DECLARATION, or the ARTICLES, BYLAWS or ASSOCIATION RULES;

6.4.2 Any other charge designated as a SPECIAL ASSESSMENT in this DECLARATION, the ARTICLES, BYLAWS or ASSOCIATION RULES;

6.4.3 Fines levied or fixed by the BOARD under Section 11.8 or as otherwise provided herein; and

6.4.4 Attorneys' fees, interest and other costs or charges provided to be paid as, or which are incurred in connection with, a SPECIAL ASSESSMENT in accordance with this DECLARATION, the ARTICLES, BYLAWS or ASSOCIATION RULES.

In the event the ASSOCIATION undertakes to provide materials or services which benefit individual MEMBERS or LOTS and which can be accepted or not by individual MEMBERS, such MEMBERS, in accepting such materials or services agree that the costs thereof shall be a SPECIAL ASSESSMENT.

6.5 CAPITAL IMPROVEMENT ASSESSMENTS. In addition to the REGULAR ASSESSMENTS, the ASSOCIATION may levy in any calendar year following substantial completion of the COMMON AREAS a CAPITAL IMPROVEMENT ASSESSMENT applicable to that year only, for the purpose of defraying, in whole or in part, any action or undertaking on behalf of the ASSOCIATION in connection with, or the cost of, any construction or replacement of a described capital improvement upon the COMMON AREAS, including the necessary fixtures and personal property related thereto, to the

extent the same is not covered by the provisions affecting RECONSTRUCTION ASSESSMENTS in Section 8, entitled "Damage and Destruction of COMMON AREA". Without the vote of a MAJORITY OF MEMBERS, the ASSOCIATION shall not impose a CAPITAL IMPROVEMENT ASSESSMENT in an amount which in any one year exceeds five percent (5%) of the estimated annual COMMON EXPENSES. Any reserves collected by the ASSOCIATION for the future maintenance and repair of the COMMON AREAS, or any portion thereof, shall not be included in determining the foregoing limitation on any annual CAPITAL IMPROVEMENT ASSESSMENT. All amounts collected as CAPITAL IMPROVEMENT ASSESSMENTS may only be used for capital improvements and shall be deposited by the ASSOCIATION in a separate bank account to be held in trust for such purposes. Said funds shall not be commingled with any other funds of the ASSOCIATION and shall be deemed a contribution to the capital account of the ASSOCIATION by the MEMBERS.

6.6 Uniform ASSESSMENT. The REGULAR ASSESSMENT and CAPITAL IMPROVEMENT ASSESSMENT for each REGULAR MEMBER shall be uniform. The DECLARANT shall not be liable for any of the ASSESSMENTS or charges imposed upon REGULAR MEMBERS for LOTS held by the DECLARANT for sale. If the DECLARANT becomes the OWNER of any LOT following the forfeiture of a prior OWNER's interest therein, the DECLARANT shall be liable for ASSESSMENTS and charges on that LOT only.

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

6.8 Date of Commencement of REGULAR ASSESSMENTS. The REGULAR ASSESSMENTS shall commence as to each particular REGULAR MEMBER on the first day of the month following the date of conveyance to the OWNER of the LOT to which the REGULAR MEMBERSHIP appertains.

6.9 Time and Manner of Payment; Late Charges and Interest. ASSESSMENTS shall be due and payable by the MEMBERS in such manner and at such times as the ASSOCIATION shall designate. If not paid within ten (10) days after its due date, each such ASSESSMENT shall have added to it a late charge equal to ten percent (10%) of the amount of ASSESSMENT and thereafter bear interest at the DEFAULT RATE OF INTEREST until paid. The ASSOCIATION may, in its discretion and without waiving the imposition of a late charge or interest in any other instance waive the late charge or interest in a particular instance. A delinquent MEMBER shall also be liable for attorneys' fees and other related costs incurred by the ASSOCIATION as a result of such delinquency, and if any suit, action or arbitration proceeding is brought to collect any such ASSESSMENT or charge, then there shall be added to the amount thereof costs of suit and reasonable attorneys' fees to be fixed by the court and included in any judgment or award rendered thereon. The delinquency of a REGULAR MEMBER shall be deemed to also constitute

the delinquency of the OWNER of the LOT to which such MEMBERSHIP appertains.

6.10 No Offsets. All ASSESSMENTS shall be payable in the amount specified in the ASSESSMENT or notice of ASSESSMENT and no offsets against such amount shall be permitted for any reason, including, without limitation, a claim that (a) the ASSOCIATION, the BOARD, the PRESIDENT or the DECLARANT is not properly exercising its duties and powers as provided in this DECLARATION; or (b) ASSESSMENTS for any period exceed COMMON EXPENSES.

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

6.12 Reserves. The reserves included in the COMMON EXPENSES which are collected as part of the REGULAR ASSESSMENTS shall be deposited by the ASSOCIATION in a separate bank account to be held in trust for the purposes for which they are collected and are to be segregated from and not commingled with any other funds of the ASSOCIATION, except to the extent that the ASSOCIATION's regularly employed accountant deems it desirable to do otherwise on the basis of standard accounting principles in similar contexts or the laws, tax or otherwise, of the State of Arizona or the United States relating to non-profit corporations or homeowners associations. Such reserves shall be deemed a contribution to the capital account of the ASSOCIATION by the MEMBERS. The responsibility of the BOARD (whether while controlled by the DECLARANT or the MEMBERS) shall be only to provide for such reserves as the BOARD in good faith deems reasonable, and neither the DECLARANT, the BOARD or any member thereof shall have any liability to any OWNER or MEMBER or to the ASSOCIATION if such reserves prove to be inadequate.

6.13 Subordination of Lien. Any lien which arises against a LOT by reason of the failure or refusal of an OWNER or MEMBER to make timely payment of any ASSESSMENT shall be subordinate to the lien of a prior recorded FIRST MORTGAGE on the LOT, acquired in good faith and for value, except for that amount of the unpaid ASSESSMENT which accrues from and after the date on which a FIRST MORTGAGEE comes into possession of or acquires title to the LOT, whichever occurs first (together with any interest, costs, reasonable attorneys' fees and any late charges related thereto), and if any lien for unpaid ASSESSMENTS prior to the date the FIRST MORTGAGEE comes into possession of or acquires title to the LOT has not been extinguished by the process by which such FIRST MORTGAGEE came into possession of or acquired title to the LOT, such FIRST MORTGAGEE shall not be liable for unpaid ASSESSMENTS arising prior to the aforesaid date and, upon written request to the ASSOCIATION by such FIRST MORTGAGEE, such lien shall be released in writing by the ASSOCIATION. Any

unpaid ASSESSMENTS which are extinguished pursuant to the foregoing sentence shall continue to be the personal obligation of the delinquent OWNER and MEMBER and may also be reallocated by the ASSOCIATION among all MEMBERS as part of the COMMON EXPENSES.

6.14 Certificate of Payment. Any person acquiring an interest in any LOT shall be entitled to a certificate from the ASSOCIATION setting forth the amount of due but unpaid ASSESSMENTS relating to such LOT, if any, and such person shall not be liable for, nor shall any lien attach to the LOT in excess of, the amount set forth in the certificate, except for ASSESSMENTS which occur or become due after the date thereof and any interest, costs, attorneys' fees and any late charges related to such ASSESSMENTS. Nothing herein shall be construed as requiring that the ASSOCIATION take any action required hereunder in any particular instance, but the failure of the ASSOCIATION to take such action at any time shall not constitute a waiver of the right to take such action at a later time or in a different instance.

6.15 Enforcement of Lien. The lien provided for in this Section 6 may be foreclosed by the ASSOCIATION in any manner provided or permitted for the foreclosure of realty mortgages or deeds of trust in the State of Arizona. All of the provisions of this Section 6 relating to the enforcement of the lien provided for herein (including without limitation the subordination provisions in Section 6.13 or the provisions of this Section 6.15) shall apply with equal force in each other instance provided for in this DECLARATION or the ASSOCIATION RULES wherein, it is stated that payment of a particular ASSESSMENT, charge or other sum shall be secured by the lien provided for in this Section 6. Nothing herein shall be construed as requiring that the ASSOCIATION take any action required hereunder in any particular instance, and the failure of the ASSOCIATION to take such action at any time shall not constitute a waiver of the right to take such action at a later time or in a different instance. The BOARD is permitted to record a "Notice and Claim of Lien" against any LOT thirty (30) days after any ASSESSMENT is due.

6.16 Pledge of ASSESSMENT Rights as Security. The ASSOCIATION may pledge the right to exercise its assessment powers and rights provided for in this DECLARATION as security for any obligation of the ASSOCIATION; provided, however, that any such pledge shall require the prior affirmative vote or written assent of a majority of all of the MEMBERS. The ASSOCIATION's power to pledge its assessment powers shall include, but not be limited to, the ability to make an assignment of ASSESSMENTS which are then payable to, or which will become payable to, the ASSOCIATION; which assignment may then be presently effective but shall allow said ASSESSMENTS to continue to be paid to the ASSOCIATION and used by the ASSOCIATION as set forth in this DECLARATION, unless and until the ASSOCIATION shall default on its obligations secured by said assignment.

7. INSURANCE.

7.1 Authority to Purchase. No later than the time of the first conveyance of a LOT to a person other than the DECLARANT, the ASSOCIATION shall purchase and maintain certain insurance upon the COMMON AREAS including but not limited to the insurance described in Section 7.3. Such policies, and endorsements thereon, or copies thereof shall be deposited with the ASSOCIATION. The ASSOCIATION shall advise the OWNERS and MEMBERS of the coverage of said policies in order to permit the OWNERS and MEMBERS to determine which particular items are included in the coverage so that the OWNERS and MEMBERS may insure themselves as they see fit if certain items are not insured by the ASSOCIATION.

7.2 MEMBER's Responsibility. It shall be each OWNER's or MEMBER's responsibility to provide for himself insurance on his own LOT, to the extent not insured, through the ASSOCIATION's policy (if any), his additions and improvements thereto, furnishings and personal property therein, his personal property stored elsewhere within the PROJECT, his personal liability to the extent not covered by the public liability insurance obtained by the ASSOCIATION and such other insurance which is not carried by the ASSOCIATION as the OWNER or MEMBER desires. No OWNER or MEMBER may maintain any insurance, whether on his LOT or otherwise, which would limit or reduce the insurance proceeds payable under the casualty insurance maintained by the ASSOCIATION in the event of damage to the improvements or fixtures on the COMMON AREAS.

7.3 Coverage. The ASSOCIATION shall maintain and pay for policies of insurance as follows:

7.3.1 A multi-peril type policy covering all of the COMMON AREAS providing, as a minimum, fire and extended coverage, and all other coverage in kinds and amounts customarily acquired or required for projects similar in construction, location and use, provided, however, that in no event shall the amount of insurance be less than one hundred (100%) percent of the insurable value of the COMMON AREA based upon current replacement cost. Such insurance shall include, without limitation, all perils normally covered by an "all-risk" policy.

7.3.2 A policy of comprehensive public liability insurance covering all of the COMMON AREAS in an amount determined by the ASSOCIATION but not less than \$1,000,000.00 per occurrence, for personal injury or death and/or property damage. The scope of such coverage shall include all other coverage in the kinds and amounts customarily acquired or required for projects similar in construction, location and use, including, without limitation, liability for non-owned and hired automobiles, liability for property of others, liability arising in connection with the operation, maintenance or use of the

COMMON AREAS, liability assumed by contract or contractual liability, and liability arising out of any employment contracts of the ASSOCIATION.

7.3.3 At its election, fidelity bond coverage against dishonest acts on the part of directors, officers, managers, trustees, agents, employees or volunteers responsible for handling funds belonging to or administered by the ASSOCIATION. If funds of the ASSOCIATION are handled by a management agent, then fidelity bond coverage shall also be obtained for the officers, employees or agents thereof handling or responsible for ASSOCIATION funds. The fidelity bond or insurance must name the ASSOCIATION as the named insured and shall be written to provide protection in an amount not less than the lesser of (a) one-half (½) times the ASSOCIATION's estimated annual operating expenses and reserves, (b) a sum equal to three (3) months' aggregate REGULAR ASSESSMENTS plus reserves, or (c) the estimated maximum amount of funds, including reserves, in the custody of the ASSOCIATION (and its management agent) at any one time. In connection with such coverage, an appropriate endorsement to the policy to cover any person who serves without compensation shall be added if the policy would not otherwise cover volunteers. Such coverage must name the ASSOCIATION as an obligee.

7.3.4 A workmen's compensation policy, if necessary to meet the requirements of law.

7.3.5 At its election, a policy of "directors and officers" liability insurance.

7.3.6 Such other insurance, and in such amounts, as the ASSOCIATION shall determine from time to time to be desirable.

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

7.4.1 The coverage afforded by such policies shall not be brought into contribution or proration with any insurance which may be purchased by any OWNER, MEMBER or FIRST MORTGAGEE.

7.4.2 The conduct of any one or more OWNERS or MEMBERS shall not constitute grounds for avoiding liability on any such policies.

7.4.3 There shall be no subrogation with respect to the ASSOCIATION, its agents or employees, OWNERS, MEMBERS, or members of their households or families and employees, and each MORTGAGEE of all or any part of the PROPERTY or of any LOT, or the policy(ies) should name said persons as additional insureds; and, each policy must contain a waiver of any defenses based on co-insurance or an invalidity arising from the acts of the insured.

7.4.4 A "severability of interest" endorsement shall be obtained which shall preclude the insurer from denying the claim of an OWNER or MEMBER because of the conduct or negligent acts of the ASSOCIATION and its agents or other OWNERS or MEMBERS.

7.4.5 Any "no other insurance" clause shall exclude insurance purchased by OWNERS, MEMBERS or FIRST MORTGAGEES.

7.4.6 Coverage must not be prejudiced by (a) any act or neglect of OWNERS or MEMBERS when such act or neglect is not within the control of the ASSOCIATION or (b) any failure of the ASSOCIATION to comply with any warranty or condition regarding any portion of the PROJECT over which the ASSOCIATION has no control.

7.4.7 Coverage may not be cancelled or substantially modified without at least thirty (30) days' (or such lesser period as the ASSOCIATION may reasonably deem appropriate) prior written notice to the ASSOCIATION.

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

7.4.9 A recognition of any insurance trust agreements entered into by the ASSOCIATION.

7.4.10 Each hazard insurance policy shall be written by a hazard insurance carrier licensed or authorized by law to transact business within the State of Arizona.

7.4.11 Policies shall not be used where, under the terms of the carrier's charter, bylaws or policy, contributions or assessments may be made against the OWNERS, MEMBERS or the ASSOCIATION or loss payments are contingent upon action by the carrier's board of directors, policyholders, or MEMBERS.

7.5 Non-Liability of ASSOCIATION/BOARD/PRESIDENT. Notwithstanding the duty of the ASSOCIATION to obtain insurance coverage as stated herein, neither the ASSOCIATION nor any BOARD member nor the PRESIDENT of the ASSOCIATION nor the DECLARANT shall be liable to any OWNER, MEMBER, MORTGAGEE or other PERSON if any risks or hazards are not covered by insurance or if the amount of insurance is not adequate, and it shall be the responsibility of each OWNER and MEMBER to ascertain the coverage and protection afforded by the ASSOCIATION's insurance and to procure and pay for such additional insurance coverage and protection as the OWNER or MEMBER may desire.

7.6 Premiums. Premiums upon insurance policies purchased by the ASSOCIATION shall be paid by the ASSOCIATION as a COMMON

EXPENSE, except that the amount of increase over any annual or other premium occasioned by the use, misuse, occupancy or abandonment of a LOT or its appurtenances, or of the COMMON AREAS, by an OWNER or MEMBER, shall be assessed against that particular OWNER or MEMBER.

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

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

8. DAMAGE AND DESTRUCTION OF COMMON AREAS.

8.1 Duty of ASSOCIATION. In the event of partial or total destruction of any portion of the PROPERTY for which insurance is required under this DECLARATION, it shall be the duty of the ASSOCIATION to restore and repair the same as promptly as practical pursuant to this Section 8. The proceeds of any casualty insurance maintained pursuant to this DECLARATION shall be used for such purpose, subject to the prior rights of MORTGAGEES whose interest may be protected by said policies.

8.2 Automatic Reconstruction. In the event the amount available from the proceeds of any insurance policies for such restoration and repair, together with any uncommitted or unreserved capital of the ASSOCIATION, are at least seventy-five percent (75%) of the estimated cost of restoration and repair, a RECONSTRUCTION ASSESSMENT against each MEMBER in its PROPORTIONATE SHARE, and/or the OWNER of the LOT to which a REGULAR MEMBERSHIP is appurtenant, may be levied by the ASSOCIATION to provide the necessary funds for such reconstruction in excess of the amount of the funds available for such purpose. The ASSOCIATION shall thereupon cause the damaged or destroyed COMMON AREAS to be restored to substantially the condition the COMMON AREAS were in prior to the destruction or damage.

8.3 Vote of MEMBERS. In the event that the amount available from the proceeds of any insurance policies for such restoration and repair, together with any uncommitted or unreserved capital of the ASSOCIATION, are less than seventy-five percent (75%) of the estimated cost of restoration and repair, the COMMON AREAS shall be replaced or restored unless

eighty percent (80%) of the MEMBERS, at a special meeting held for such purpose, disapprove of such replacement or restoration. If the MEMBERS do not disapprove the proposed replacement or restoration, the ASSOCIATION shall levy a RECONSTRUCTION ASSESSMENT against each MEMBER in its PROPORTIONATE SHARE, and/or the OWNER of the LOT to which a REGULAR MEMBERSHIP is appurtenant, and cause the damaged or destroyed COMMON AREAS to be restored as closely as practical to its former condition prior to the destruction or damage. If the MEMBERS disapprove of the repair or restoration of the damaged or destroyed improvements on the COMMON AREAS as provided above, the COMMON AREAS so damaged or destroyed shall be cleared and landscaped for community park use or other community use determined by the ASSOCIATION and the costs thereof shall be paid with the insurance proceeds.

8.4 Excess Insurance Proceeds. In the event any excess insurance proceeds remain after any reconstruction by the ASSOCIATION pursuant to this Section, the ASSOCIATION, in its sole discretion, may retain such sums in the general funds of the ASSOCIATION or may distribute all or a portion of such excess to the MEMBERS in their PROPORTIONATE SHARES, subject to the prior rights of MORTGAGEES whose interest may be protected by the insurance policies carried by the ASSOCIATION. The rights of a MEMBER, an OWNER, or the MORTGAGEE of a LOT as to such distribution shall be governed by the provisions of the MORTGAGE encumbering such LOT.

8.5 Use of RECONSTRUCTION ASSESSMENTS. All amounts collected as RECONSTRUCTION ASSESSMENTS shall only be used for the purposes set forth in Section 8 and shall be deposited by the ASSOCIATION in a separate bank account to be held in trust for such purposes. Such funds shall not be commingled with any other funds of the ASSOCIATION and shall be deemed a contribution to the capital account of the ASSOCIATION by the MEMBERS. Any RECONSTRUCTION ASSESSMENT shall be secured by the lien provided for in Section 6.

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

8.7 Insurance Proceeds Trust. Upon receipt by the ASSOCIATION of any insurance proceeds, the ASSOCIATION may cause the insurance proceeds to be paid directly to a bank, savings and loan association, or trust company located in Yuma County, Arizona, as designated by the ASSOCIATION as trustee (the INSURANCE TRUSTEE). Such funds shall be received, held and

administered by the INSURANCE TRUSTEE subject to a trust agreement consistent with the provisions of this DECLARATION and which shall be entered into between the INSURANCE TRUSTEE and the ASSOCIATION. Disbursements to contractors performing any repair or reconstruction upon the PROPERTY shall be made periodically as the work progresses in a manner consistent with procedures then followed by prudent lending institutions in Yuma County, Arizona.

9. EMINENT DOMAIN.

9.1 Definition of Taking. The term "taking" as used in this Section 9 shall mean condemnation by eminent domain or sale under threat of condemnation of all or any portion of the COMMON AREAS.

9.2 Representation in Condemnation Proceedings. In the event of a threatened taking of all or any portion of the COMMON AREAS, the OWNERS and MEMBERS hereby appoint the ASSOCIATION through such persons as the BOARD may delegate to represent all of the OWNERS and MEMBERS in connection therewith. The ASSOCIATION shall act in its sole discretion with respect to any awards being made in connection with the taking and shall be entitled to make a voluntary sale to the condemnor in lieu of engaging in a condemnation action.

9.3 Award for COMMON AREAS. Any awards received by the ASSOCIATION on account of the taking of COMMON AREAS shall be paid to the ASSOCIATION. The ASSOCIATION may, in its sole discretion, retain any award in the general funds of the ASSOCIATION or distribute all or any portion thereof to the OWNERS or MEMBERS as their interests may appear. The rights of an OWNER and the MORTGAGEE of his LOT as to any distribution shall be governed by the provisions of the MORTGAGE encumbering such LOT.

10. MAINTENANCE, REPAIRS AND REPLACEMENTS.

10.1 OWNER's Responsibility. Each OWNER shall furnish and be responsible for, at his own expense, all of the maintenance, repairs and replacements upon his own LOT.

10.2 Maintenance of COMMON AREAS. Except as otherwise provided herein to the contrary, maintenance, repairs and replacements of the COMMON AREAS shall be furnished by the ASSOCIATION as part of the COMMON EXPENSES, subject to the BYLAWS and ASSOCIATION RULES. If, due to the act or neglect of an OWNER or MEMBER, or the invitee, guest or other authorized visitor of either, or an OCCUPANT of such OWNER or MEMBER's LOT, damage shall be caused to the COMMON AREAS or to a LOT or LOTS owned by others, or maintenance, repairs or replacement shall be required which would otherwise be a COMMON EXPENSE, then such OWNER or MEMBER shall pay for the damage and for such maintenance, repairs and replacements as may be determined necessary or appropriate by the ASSOCIATION, to the extent not.

covered by the ASSOCIATION's insurance. Such obligation shall be a SPECIAL ASSESSMENT secured by the lien provided for in Section 6.

10.3 Right of Access. An authorized representative of the ASSOCIATION, and all contractors, repairmen or other agents employed or engaged by the ASSOCIATION, shall be entitled to reasonable access to each of the LOTS as may be required in connection with maintenance, repairs or replacements of or to the COMMON AREAS or any equipment, facilities or fixtures affecting or serving other LOTS and the COMMON AREAS, or to perform any of the ASSOCIATION's duties or responsibilities hereunder.

10.4 Architectural Control. No building, fence, wall or other structure shall be commenced, erected or maintained upon the PROJECT, nor shall any exterior addition to, change or alteration therein be made on any LOT until the plans and specifications showing the nature, kind, shape, height, materials and location of the same shall have been submitted to and approved, in writing, by the BOARD. In all events, any such construction shall be commenced and completed by a contractor duly licensed under the laws of the State of Arizona and pursuant to valid building permits issued by appropriate governmental entities. The BOARD may elect to delegate architectural control under this section to a committee consisting of no fewer than three (3) members of the BOARD.

11. USE AND OCCUPANCY RESTRICTIONS.

11.1 Residential Use. Each LOT may be used only for single-family residential purposes and none other. No business or commercial enterprise or other non-residential use of any kind may be conducted on any part of any LOT.

11.2 Violation of Law or Insurance. No OWNER or MEMBER shall permit anything to be done or kept on his LOT or in or upon any COMMON AREAS which will result in the cancellation of insurance thereon or which would be in violation of any law.

11.3 Signs. No sign of any kind shall be displayed to the public view or on any LOT or any COMMON AREAS without the approval of the ASSOCIATION, except: (a) such signs as may be used by DECLARANT in connection with the development and sale of LOTS in the PROJECT; (b) such signs as may be required by legal proceedings, or the prohibition of which is precluded by law; or, (c) such signs as may be required for traffic control and regulation of COMMON AREAS. No "For Sale" or "For Rent" sign may be posted on any LOT; provided, however, an OWNER may, in accordance with applicable provisions of the ASSOCIATION RULES, be permitted to post one "For Sale" or "For Rent" notice in a form approved by the BOARD in a location specified for that purpose by the BOARD.

11.4 Animals. No domestic farm animals, fowl or poisonous

reptiles of any kind may be kept, bred or maintained on any LOT or in or upon any COMMON AREA, except a reasonable number (in the aggregate) of dogs, cats, birds and other commonly accepted household pets may be kept. No animals shall be kept, bred or raised within the PROJECT for commercial purposes, without BOARD approval. In no event shall any domestic pet be allowed to run free away from its owner's LOT without a leash, or so as to create a nuisance. All such domestic pets must be registered with the ASSOCIATION and shall have a proof of proper immunization presented with said registration. The ASSOCIATION may assess the membership of any pet owner, or if a guest, the membership of any host, a fee for the removal of pet waste deposited by the pet of a MEMBER or MEMBER's guest.

11.5 Nuisances. No OWNER or MEMBER shall permit or suffer anything to be done or kept about his LOT, or on or about the PROPERTY, which will obstruct or interfere with the rights of other OWNERS, MEMBERS, OCCUPANTS or PERSONS authorized to the use and enjoyment of the COMMON AREAS, or annoy them by unreasonable noises or otherwise, nor will he commit or permit any nuisance or or commit or suffer any illegal act to be committed therein. Each OWNER or MEMBER shall comply with any ASSOCIATION RULES and the requirements of all health authorities and other governmental authorities having jurisdiction over the PROPERTY.

11.6 Boats and Motor Vehicles. No boats, boat trailers, travel trailers, buses, motor homes, campers, motorcycles, commercial vehicles or other vehicles shall be parked or stored within the PROJECT, for more than forty-eight (48) hours. No OWNER shall permit any unlicensed vehicle or vehicle under repair to remain within the PROJECT for more than forty-eight (48) hours. Nothing shall be parked on the public streets except in such parking areas as may be designated by the ASSOCIATION. The ASSOCIATION may remove, or cause to be removed, any unauthorized vehicle at the expense of the owner thereof in any manner consistent with law.

11.7 Lights. No spotlights, flood lights or other high intensity lighting shall be placed or used on any LOT, which in any manner will allow light to be directed or reflected on the COMMON AREAS, or in any part thereof, or any other LOT, except as may be expressly permitted by the BOARD.

11.8 Antennas. No radio, television or other antennas of any kind or nature, or device for the reception or transmission of radio, microwave or other similar signals, shall be placed or maintained upon any LOT, without approval of the BOARD.

11.9 Garbage and Unsightly Objects. No garbage or trash (or City or County provided receptacle therefore) or other unsightly object shall be kept, maintained or contained on any LOT so as to be visible from another LOT or the COMMON AREAS. No incinerators shall be kept or maintained on any LOT. No refuse pile, garbage or unsightly objects shall be allowed to be placed, accumulated or suffered to remain anywhere on a LOT.

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

11.11 Safe Condition. Without limiting any other provision in this Section, each OWNER shall maintain and keep his LOT at all times in a safe, sound and sanitary condition and repair and shall correct any condition or refrain from any activity which might interfere with the reasonable enjoyment by other OWNERS or MEMBERS of their respective LOTS or the COMMON AREAS.

11.12 Fires. Other than barbecues, in properly constructed pits or grills, no open fires shall be permitted on the PROJECT nor shall any other similar activity or condition be permitted which would tend to increase the insurance rates for the COMMON AREA, or for other OWNERS.

11.13 Clothes Drying Area. No portion of any LOT shall be used as a drying or hanging area for laundry of any kind, unless, to the extent feasible, such area is kept screened by adequate planting or fencing so as to conceal the area from the view of neighboring Units and streets.

11.14 No Obstruction to Drainage. No OWNER shall erect, construct, maintain, permit or allow any fence or planting or other improvement or other obstruction which would interrupt the normal drainage of the land or within any area designated on a PLAT, or other binding document, as a "drainage easement", except that, with the prior consent of the CITY and the BOARD, non-permanent structures, including fences, may be erected in those areas which contain only underground closed conduit storm drainage facilities.

11.15 Rental of LOTS. An OWNER who leases his LOT to any PERSON shall be responsible for assuring compliance by his lessee with all of the provisions of this DECLARATION, the ARTICLES, BYLAWS, and ASSOCIATION RULES, all as amended and supplemented from time to time, and shall be jointly and severally responsible for any violations by his lessee thereof.

11.16 Enforcement. The ASSOCIATION or its authorized agents may enter any LOT in which a violation of these restrictions exists and may correct such violation at the expense of the OWNER of such LOT. Such expenses, and such fines as may be imposed pursuant to the BYLAWS or ASSOCIATION RULES, shall be a SPECIAL ASSESSMENT secured by a lien upon such LOT enforceable in accordance with the provisions of Section 6 hereof. All remedies described in Section 15 hereof and all other rights and remedies available at law or equity shall be available in the event of any breach by any OWNER, MEMBER, OCCUPANT or other PERSON of any provision of this Section 12.

11.17 Modification. The BOARD may modify or waive the foregoing restrictions or otherwise restrict and regulate the

use and occupancy of the PROPERTY and the LOTS by reasonable rules and regulations of general application adopted by the BOARD from time to time which shall be incorporated into the ASSOCIATION RULES.

12. RIGHTS OF FIRST MORTGAGEES.

12.1 General Provisions. Notwithstanding and prevailing over any other provisions of this DECLARATION, the ARTICLES, BYLAWS or ASSOCIATION RULES, the following provisions shall apply to and benefit each holder of a FIRST MORTGAGE upon a LOT.

12.2 Liability for ASSESSMENTS. A FIRST MORTGAGEE who comes into possession or becomes record OWNER of a mortgaged LOT by virtue of foreclosure of the MORTGAGE, or through any equivalent proceedings, such as but not but not limited to the taking of a deed or assignment in lieu of foreclosure or acquiring title at a trustee's sale under a first deed of trust, or any third-party purchaser at a foreclosure sale or trustee's sale, will not be liable for such LOT's unpaid dues, charges or ASSESSMENTS which may accrue prior to the time such FIRST MORTGAGEE or third-party purchaser comes into possession of such LOT or becomes record OWNER of the LOT, whichever occurs first, and shall acquire title free and clear of any lien authorized by or arising out of the provisions of this DECLARATION which secures the payment of any dues, charges or ASSESSMENTS accrued prior to the time such FIRST MORTGAGEE or third-party purchaser either comes into possession of such LOT or becomes the record OWNER of the LOT. Any such unpaid dues, charges or ASSESSMENTS against the LOT foreclosed shall be deemed to be a COMMON EXPENSE charged proratably against all of the MEMBERS. Nevertheless, in the event the OWNER or MEMBER against whom the original ASSESSMENT was made is the purchaser or redemptioner, the lien shall continue in effect and may be enforced by the ASSOCIATION, or by the BOARD, for the respective LOT's ASSESSMENT that was due prior to the final conclusion of any such foreclosure or equivalent proceedings. Further, any such unpaid ASSESSMENT shall continue to exist as the personal obligation of the defaulting MEMBER and the defaulting OWNER of the respective LOT to the ASSOCIATION, and the BOARD may use reasonable efforts to collect the same from said MEMBER and/or OWNER even after he is no longer a MEMBER of the ASSOCIATION or the OWNER of the LOT.

12.3 No Personal Liability. A FIRST MORTGAGEE shall not in any case or manner be personally liable for the payment of any ASSESSMENT or charge, nor the observance or performance of any covenant, restriction, or rule and regulation of the ASSOCIATION, or any provision of the ARTICLES or BYLAWS, or any management agreement, except for those matters which are enforceable by injunctive or other equitable actions, not requiring the payment of money, except as specifically provided in this Section 12.

12.4 Enforcement After Foreclosure Sale. An action to

abate the breach of any of these covenants, conditions, restrictions, and reservations may be brought against the purchasers who have acquired title through foreclosure of a MORTGAGE and the subsequent foreclosure or trustee's sale (or through any equivalent proceedings), and the successors in interest to said purchasers, even though the breach existed prior to the time said purchaser acquired an interest in such LOT.

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

12.6 Subject to DECLARATION. At such time as the FIRST MORTGAGEE shall come into possession of or become record OWNER of a LOT, the FIRST MORTGAGEE shall be subject to all of the terms and conditions of this DECLARATION including, but not limited to, the obligation to pay all ASSESSMENTS and charges accruing thereafter, in the same manner as any other OWNER.

12.7 Rights Not Affected. No provision of this DECLARATION, or the ARTICLES and BYLAWS shall give any OWNER, or any other party, priority over any rights of a FIRST MORTGAGEE of any LOT in the PROJECT, pursuant to its mortgage in the case of a distribution to such OWNER of insurance proceeds or condemnation awards for losses to or the taking of the COMMON AREA.

13. EXEMPTION OF DECLARANT FROM RESTRICTIONS.

Notwithstanding anything contained in this DECLARATION to the contrary, none of the restrictions contained in this DECLARATION shall be construed or deemed to limit or prohibit any act of DECLARANT, its employees, agents, contractors and subcontractors, or parties designated by it in connection with construction, completion, sale or leasing of the LOTS, COMMON AREAS or the PROPERTY. By way of example only, DECLARANT may maintain a temporary sales office on the PROPERTY and may construct model residences which will be available for viewing by the general public.

14. REMEDIES.

14.1 General Remedies. In the event of any default by any OWNER, MEMBER, OCCUPANT or other PERSON under the provisions of this DECLARATION, the ARTICLES, BYLAWS or ASSOCIATION RULES, the ASSOCIATION, or its successors or assigns, or its agents, or the DECLARANT, shall have each and all of the rights and remedies which may be provided for in this DECLARATION, the ARTICLES,

BYLAWS or ASSOCIATION RULES, or which may be available at law or equity, and may prosecute any action or other proceedings against such defaulting OWNER, MEMBER, OCCUPANT or other PERSONS for an injunction, whether affirmative or negative, or for enforcement or foreclosure of the lien herein provided and the appointment of a receiver for the LOT, or for damages, or specific performance, or for judgment for payment of money and collection thereof, or the right to take possession of the LOT and to rent the LOT and apply the rents received to payment of unpaid ASSESSMENTS and interest accrued thereon, and to sell the same as hereinafter in this Section provided, or for any combination of remedies or for any other relief, all without notice and without regard to the value of the LOT or the solvency of such OWNER or MEMBER. The proceeds of any such rental or sale shall first be paid to discharge court costs, other litigation costs, including without limitation reasonable attorneys' fees, and all other expenses of the proceeding and sale, and all such items shall be taxed against the defaulting OWNER or MEMBER in a final judgment. Any balance of proceeds after satisfaction of such charges and any unpaid ASSESSMENTS hereunder or any liens shall be paid to the OWNER or MEMBER. Upon the confirmation of the sale, the purchasers thereupon shall be entitled to a deed to the LOT and to immediate possession of the LOT and may apply to the court for a writ of restitution for the purpose of acquiring such possession, and it shall be a condition of any such sale, and the judgment shall so provide, that the purchaser shall take the interest in the property sold subject to this DECLARATION.

14.2 Expenses of Enforcement. All expenses of the ASSOCIATION or the DECLARANT, or other PERSON granted rights of enforcement hereunder, in connection with any action or proceeding described or permitted by this Section, including court costs and reasonable attorneys' fees and other fees and expenses, and all damages, liquidated or otherwise, together with interest thereon at the DEFAULT RATE OF INTEREST, shall be charged to and assessed against such defaulting OWNER or MEMBER or other PERSON and shall be a SPECIAL ASSESSMENT against such OWNER, MEMBER or other PERSON and the ASSOCIATION shall have a lien as provided in Section 6 therefor. In the event of any such default by any OWNER, MEMBER or other PERSON the ASSOCIATION and the DECLARANT, and the manager or managing agent of the ASSOCIATION, if so authorized by the PRESIDENT, shall have the authority to correct such default and to do whatever may be necessary for such purpose, and all expenses in connection therewith shall be charged to and assessed against such defaulting OWNER, MEMBER or other PERSON as a SPECIAL ASSESSMENT, which shall constitute a lien against the defaulting OWNER or MEMBER's LOT as provided in Section 6. Any and all such rights and remedies may be exercised at any time and from time to time, cumulatively or otherwise, by the ASSOCIATION or the DECLARANT.

14.3 Legal Action. In addition to any other remedies available under this Section, if any OWNER or MEMBER (either by his conduct or by the conduct of any OCCUPANT of his LOT or

family member, guest, invitee or agent) shall violate any of the provisions of this DECLARATION, or the ARTICLES, BYLAWS or ASSOCIATION RULES, as then in effect, then the ASSOCIATION, the DECLARANT, or any affected or aggrieved OWNER or MEMBER, shall have the power to file an action against the defaulting OWNER or MEMBER for a judgment or injunction against the OWNER or MEMBER or such other PERSON requiring the defaulting OWNER, MEMBER or other PERSON to comply with the provisions of this DECLARATION, or the ARTICLES, BYLAWS or ASSOCIATION RULES, and granting other appropriate relief, including money damages.

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

14.5 Limitation on the DECLARANT's Liability. Notwithstanding anything to the contrary herein, it is expressly agreed that the DECLARANT (including without limitation any assignee of the interest of the DECLARANT hereunder) shall have no personal liability to the ASSOCIATION, or any OWNER, MEMBER or 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, and, in the event of a judgment against the DECLARANT (or any partner or assignee thereof), no execution or other action shall be sought or brought thereon against any other assets, nor be a lien upon such other assets, of the judgment debtor.

14.6 Default. In the event any MEMBER or OWNER is (a) in arrears in the payment of any amount due to the ASSOCIATION pursuant to any provision of this DECLARATION for a period of sixty (60) days or more, or (b) shall be in default in the performance of any provision of this DECLARATION or the ARTICLES, BYLAWS or ASSOCIATION RULES for a period of sixty (60) days or more after written notice of such default, the right to vote of the MEMBERSHIP to which the default or violation relates may be suspended at any time without notice of any action of the BOARD, and may remain suspended until all payments are brought current and all defaults and violations remedied.

15. AMENDMENT.

15.1 Amendment to DECLARATION. Amendments to this DECLARATION shall be made by an instrument in writing entitled "Amendment to Declaration" which sets forth the entire amendment. Except as otherwise specifically provided for in this DECLARATION, any proposed amendment must be approved by the MEMBERS.

Amendments may be adopted at a meeting of the MEMBERS upon the approval thereof of sixty-seven (67%) percent of all the MEMBERS or without any meeting if all MEMBERS have been duly notified and if sixty-seven (67%) percent of all the MEMBERS consent in writing to such amendment. In all events, the amendment when adopted shall bear the signature of the PRESIDENT of the ASSOCIATION and shall be attested by the secretary, who shall state whether the amendment was properly adopted, and shall be acknowledged by them as officers of the ASSOCIATION. Amendments once properly adopted shall be effective upon recording of the "Amendment to Declaration" in the appropriate governmental offices.

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

15.3 Amendment of PLAT. Except as otherwise provided herein, the PLAT may be amended by revised versions or revised portions thereof referred to and described as to effect in an amendment to this DECLARATION adopted as provided for herein. Copies of any such proposed amendment to the PLAT shall be made available for the examination of every MEMBER at the offices of the ASSOCIATION during reasonable times. Such amendment to the PLAT shall be effective, once properly adopted, upon recordation in the appropriate governmental office in conjunction with the DECLARATION amendment.

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

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

15.4.2 Until all LOTS are sold, this DECLARATION may not be amended by the MEMBERS without the written consent of the DECLARANT, which may be withheld for any reason.

15.5 DECLARANT's Right to Amend. Notwithstanding any other provision of this Section, before any LOTS are sold, the DECLARANT reserves the right to amend this DECLARATION without the approval of the BOARD or any other PERSON or entity.

16. GENERAL PROVISIONS.

16.1 Notices. Notice provided for in this DECLARATION, or the BYLAWS or ASSOCIATION RULES, shall be in writing and shall be addressed to the ASSOCIATION at the address specified in the BYLAWS. The ASSOCIATION may designate a different address for notice by giving written notice of such change of address to all OWNERS and MEMBERS at such time. All notices to OWNERS shall be to their respective LOTS or to the last address shown on the records of the ASSOCIATION and to other MEMBERS at the last address shown on the records of the ASSOCIATION. Any MEMBER may designate a different address or addresses for notices to him by giving written notice of his change of address to the ASSOCIATION. Notices addressed as above shall be deemed delivered when mailed by United States registered or certified mail, or when delivered in person with written acknowledgement of the receipt thereof.

16.2 Captions and Exhibits; Construction. Captions given to various Sections herein, and the Table of Contents for this DECLARATION, are for convenience only and are not intended to modify or affect the meaning of any of the substantive provisions hereof. The provisions of this DECLARATION shall be liberally construed to effectuate its purpose of creating a uniform plan for the development and operation of the PROPERTY as hereinabove set forth.

16.3 Severability. If any provision of this DECLARATION, the ARTICLES, BYLAWS or ASSOCIATION RULES, or any section, clause, sentence, phrase or word, or the application thereof in any circumstance, is held invalid, the validity of the remainder of this DECLARATION, the ARTICLES, BYLAWS or ASSOCIATION RULES, and of the application of any such provision, section, clause, sentence, phrase or word in any other circumstances, shall not be affected thereby, and the remainder of this DECLARATION, the ARTICLES, BYLAWS or ASSOCIATION RULES shall be construed as if such invalid part were never included therein.

16.4 Rule Against Perpetuities. If any of the options, privileges, covenants or rights created by this DECLARATION shall be unlawful, void or voidable for violation of the rule against perpetuities, then such provision shall continue until twenty-one (21) years after the death of the survivor of the now living descendants of United States Senator John McCain and United States Senator Dennis DiConcini.

16.5 Mortgage of LOT. Each OWNER shall have the right, subject to the provisions hereof, to make separate MORTGAGES for his respective LOT. No MEMBER shall have the right or authority to make or create or cause to be made or created any MORTGAGE, or other lien or security interest, on or affecting the PROPERTY or any part thereof, except only to the extent of his LOT.

16.6 Power of Attorney. Whenever the ASSOCIATION is

granted rights, privileges or duties in this DECLARATION, the PRESIDENT shall have the authority to act for the ASSOCIATION, unless such right and power is herein expressly reserved to the BOARD. Further, unless otherwise specifically restricted by the provisions of this DECLARATION, wherever the ASSOCIATION is empowered to take any action or do any act, including but not limited to action or acts in connection with the COMMON AREAS or sale thereof, which may at any time be deemed to require the act of an OWNER or MEMBER, the OWNERS and MEMBERS and each of them hereby constitute and appoint the ASSOCIATION as their attorney-in-fact, as may be appropriate, for the purposes of taking such action or doing such acts including but not limited to executing, acknowledging and delivering any instruments or documents necessary, appropriate or helpful for such purposes. It is acknowledged that this power of attorney is irrevocable and coupled with an interest and by becoming a MEMBER of the ASSOCIATION or by the acceptance of a deed for a LOT or by signing a contract for purchase of a LOT or by succeeding in any other manner to the ownership of a LOT, or any interest therein, or a membership in the ASSOCIATION, each OWNER and MEMBER shall be deemed and construed to have ratified and expressly granted the above power of attorney.

16.7 No Warranties. The DECLARANT in setting forth these restrictive covenants makes no warranty as to their present or future validity or enforceability and any OWNER acquiring a LOT in reliance on any one or more such restrictive covenants shall assume all risks of the validity and enforceability and by acquiring a LOT agrees to hold DECLARANT harmless therefrom.

16.8 Limitation in Actions of Association. Unless at least two-thirds (2/3) of the FIRST MORTGAGEES (based on one (1) vote for each first mortgage owned) or two-thirds (2/3) of the OWNERS of the LOTS (other than the DECLARANT) have given their prior written approval, the ASSOCIATION is not entitled to take any of the following actions:

16.8.1 By act or omission, seek to abandon, partition, subdivide, encumber, sell, or transfer the COMMON AREA or any part thereof, directly or indirectly, by the ASSOCIATION. The granting of easements for public utilities or other public purposes consistent with the intended use of the COMMON AREA is not a transfer within the meaning of this provision.

16.8.2 Change the method of determining the obligations, assessments, dues or other charges that may be levied against an OWNER;

16.8.3 By act or omission change, waive or abandon any scheme of regulation or the ASSOCIATION's enforcement pertaining to the architectural design or the exterior appearance of UNITS, the exterior maintenance of the LOTS, the maintenance of the COMMON AREA, party walks, common fences and driveways and the upkeep of lawns and plantings in the PROJECT;

16.8.4 Fail to maintain fire and extended coverage on the insurable COMMON AREA on a current replacement cost basis in an amount at least one hundred (100%) percent of the insurable value (based on current replacement cost);

16.8.5 Use hazard insurance proceeds for losses to any COMMON AREA for other than repair, replacement, or reconstruction of the COMMON AREA.

16.9 FIRST MORTGAGEE's Additional Rights. Any FIRST MORTGAGEE of a LOT may, jointly or singly, pay taxes or other charges which are in default and which may or have become a charge against any of the COMMON AREA and may pay overdue premiums on hazard insurance policies, or secure new hazard insurance coverage on the lapse of a policy, for any of the COMMON AREA. Any FIRST MORTGAGEE making any payment contemplated in this section shall be entitled to immediate reimbursement therefor from the ASSOCIATION. Upon request, the ASSOCIATION agrees to execute a written agreement separately obligating the ASSOCIATION to perform its obligations hereunder and to provide a certified copy of such written agreement to any FIRST MORTGAGEE.

17. RIGHTS AND OBLIGATIONS.

Each grantee of DECLARANT, by the acceptance of a deed of conveyance, or each purchaser under any contract for such deed of conveyance, or each purchaser under any agreement of sale, or each PERSON acquiring a membership in the ASSOCIATION, and the heirs, successors and assigns of the foregoing PERSONS, accepts the same subject to all restrictions, conditions, covenants, reservations, liens and charges, and the jurisdiction, rights and powers created or reserved by this DECLARATION, and all rights, benefits and privileges of every character hereby granted, created, reserved or declared, and all impositions and obligations hereby imposed shall be deemed and taken to be covenants running with the land and equitable servitudes, and shall bind any PERSON having at any time any interest or estate in said land, and shall inure to the benefit of any such PERSON in like manner as though the provisions of this DECLARATION were recited and stipulated at length in each and every deed of conveyance, purchase contract or instrument evidencing or creating such interest.

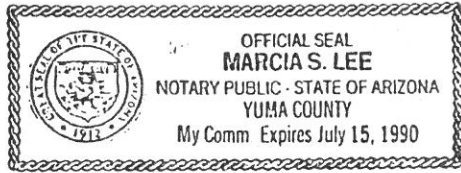
IN WITNESS WHEREOF, DECLARANT has caused this DECLARATION to be duly executed.

YUMA TITLE AND TRUST COMPANY,
an Arizona corporation, as Trustee
under Trust No. 84-113, and not
personally

BY: Mary McClyoud
Mary McClyoud, Trust Officer

STATE OF ARIZONA)
) ss.
County of Yuma)

Before me this 28th day of November, 1989, personally appeared Mary McCloud, Trust Officer of Yuma Title & Trust Company, an Arizona corporation as Trustee and not personally.



Marcia S. Lee

Notary Public