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**DECLARATION OF COVENANTS,
CONDITIONS, RESTRICTIONS AND EASEMENTS
FOR
DESERT WILLOW ESTATES**

Original

DATED: May 31, 2002
Tucson, Arizona

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**DECLARATION OF
COVENANTS, CONDITIONS, RESTRICTIONS AND EASEMENTS
FOR
DESERT WILLOW ESTATES**

THIS DECLARATION is made this 31st day of May, 2002, by Title Security Agency of Arizona, an Arizona corporation, as Trustee under Trust No. 759 and not otherwise, hereinafter referred to as "Declarant."

WITNESSETH:

WHEREAS, Declarant is the Owner of certain real property in the County of Pima, State of Arizona, which is more particularly described as:

Lots 1 through 110, and Common Areas "A-9" - "A-12", "A-14" - "A-16", "A-20" - "A-22", "A-24", "A-25", "B-7", "B-9", "B-12" of Desert Willow Estates, a subdivision in Pima County, Arizona, as recorded in Book 56 of Maps and Plats at Page 81 thereof, in the Office of the Pima County Recorder, Pima County, Arizona (the "Plat").

which real property, together with any additional property annexed hereunder, shall hereinafter be referred to as the "Properties";

WHEREAS, Declarant and/or the Developer (as hereinafter defined) propose to construct improvements upon the Properties (as hereinafter defined), and to sell and convey the same, subject to the covenants, restrictions, uses, limitations, obligations, easements, equitable servitudes, charges and liens hereafter set forth, each of which is for the benefit of the Properties and the subsequent owners thereof.

NOW, THEREFORE, Declarant hereby declares that the Properties are and shall be held, conveyed, encumbered, leased and used subject to the following covenants, conditions, restrictions, uses, limitations, obligations, easements, equitable servitudes, charges and liens (hereinafter collectively referred to as the "Restrictions"), all of which are for the purpose of enhancing and protecting the value, desirability and attractiveness of the Properties. The Restrictions set forth herein shall run with the Properties, shall be binding upon all persons having or acquiring any interest therein, and shall inure to the benefit of, be binding upon and enforceable by all Owners, Declarant, the Association and their successors in interest.

No provision contained herein shall be construed to prevent or limit Declarant's or Developer's right to complete development of the Properties and construction of improvements thereon, nor Declarant's or Developer's right to maintain model homes, construction, sales or leasing offices, nearby parking areas or similar facilities on the Properties, nor Declarant's or Developer's right to post signs incidental to construction, sales or leasing, nor Declarant's or Developer's right to do anything that is reasonably necessary and proper for the full development of the Properties.

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ARTICLE 1

DEFINITIONS

Unless the context otherwise specifies or requires, the following words and phrases when used herein shall have the meanings hereinafter assigned.

Section 1.1 "Articles" shall mean the Articles of Incorporation of the Association and amendments thereto which are or shall be filed in the Office of the Arizona Corporation Commission.

Section 1.2 "Association" shall mean and refer to Desert Willow Estates Homeowners Association, an Arizona nonprofit corporation, its successors and assigns.

Section 1.3 "Board" or "Board of Directors" shall mean the Board of Directors of the Association.

Section 1.4 "Bylaws" shall mean the Bylaws of the Association, together with any amendments thereto.

Section 1.5 "Common Area" or "Common Areas" shall mean all real property and any improvements thereon from time to time owned or controlled by the Association for the common use and enjoyment of the Owners.

Section 1.6 "Declarant" shall mean Title Security Agency of Arizona, an Arizona corporation, as Trustee under Trust No. 759 and not otherwise, and its successors or assigns who have been designated in writing by Declarant as the successor to all or a portion of Declarant's rights hereunder and who own one or more Lots in the Properties.

Section 1.7 "Declaration" shall mean and refer to this instrument and any amendment thereto or restatement thereof.

Section 1.8 "Developer" shall mean U.S. Home Corporation, a Delaware corporation, its successors or assigns, who have been designated in writing by Developer as a successor to all or a portion of the Developer's rights hereunder. The rights of the Developer hereunder may be assigned by written instrument duly recorded.

Section 1.9 "Dwelling Unit" or "Unit" shall mean any improvements placed within the confines of any Lot.

Section 1.10 "First Mortgagee" shall mean the holder of any Mortgage under which the interest of any Owner of a Lot is encumbered and which mortgage has first and paramount priority (referred to herein as a First Mortgage), subject only to the lien of general or ad valorem taxes and assessments and such other matters as are recognized in such First Mortgage as permitted exceptions.

Section 1.11 "Lot", unless otherwise indicated by the context, shall first mean and refer to any numbered parcel of real property within the Properties shown on the Plat, as may

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be amended, together with the Wellbeing Unit if any, thereon, and in the event of annexation shall include all additional lots annexed and shown on a plat for the annexed land. The term Lot shall also include any Lots combined to become a single lot, in which case the Lots so combined shall be considered one Lot for all purposes, including voting and assessments.

Section 1.12 "Member" shall mean and refer to every person and/or entity who holds membership in the Association pursuant to Section 2.1 hereof.

Section 1.13 "Mortgage" shall mean any mortgage, deed of trust or other security instrument by which a Lot or any part thereof is encumbered.

Section 1.14 "Mortgagee" shall mean the holder of the beneficial interest under a Mortgage.

Section 1.15 "Owner" or "Homeowner" shall mean and refer to (1) the record Owner, whether one or more persons or entities, of equitable or beneficial title in fee simple (or legal title if same has merged) of any Lot, or (2) the purchaser of a Lot under a recorded contract for the sale of real property as set forth in Arizona Revised Statutes; Section 33-741 et seq. The foregoing does not include persons or entities who hold an interest in any Lot merely as security for the performance of an obligation, or a lessee or tenant of an Owner as defined above, or a purchaser or vendee under any executory contract of sale which has not been fully consummated with a deed to the purchaser recorded in the office of the County Recorder of Pima County, Arizona.

Section 1.16 "Perimeter Wall" shall mean a wall that lies along the exterior boundary of the Properties, or along the interior boundary of any portion of the Common Area that borders the exterior boundary of the Properties.

Section 1.17 "Person" shall mean a natural individual, corporation or other entity with the legal right to hold title to real property.

Section 1.18 "Plat" shall mean the plat or plats of the real estate that is subject to this Declaration recorded in the office of the County Recorder of Pima County, Arizona, and any amendment thereto or resubdivision thereof.

Section 1.19 "Properties" shall mean Lots 1 through 110, and Common Areas "A-9" - "A-12", "A-14" - "A-16", "A-20" - "A-22", "A-24", "A-25", "B-7", "B-9", "B-12" of Desert Willow Estates as shown on the Plat thereof, as well as any additional property annexed hereunder.

Section 1.20 "Restrictions" shall mean the covenants, conditions, restrictions, uses, limitations, obligations, easements, equitable servitudes, charges and liens set forth in this Declaration.

Section 1.21 "Rules" shall mean any and all rules adopted by the Board pursuant to the Bylaws and Section 2.8 herein.

ARTICLE 2

ASSOCIATION

Section 2.1 Membership in the Association. Each Owner (including Declarant) of a Lot, by virtue of being an Owner, shall automatically be a Member of the Association. Membership in the Association shall be appurtenant to each Lot owned and shall not be transferred, pledged, or alienated in any way, except upon the transfer of ownership to a Lot, and then only to the transferee thereof. Any transfer of ownership of a Lot shall operate automatically to transfer the membership associated therewith to the new Owner thereof. Any attempted transfer of membership separate from the appurtenant Lot or Lots shall be void.

Section 2.2 Voting Rights and Classes of Membership. The Association shall have two classes of voting membership.

2.2.1 Class A: Class A Members shall be all Owners other than Declarant and Developer and each such Owner shall be entitled to one vote for each Lot owned. When more than one person holds an interest in any Lot, all such persons shall be Members. The vote for such Lot shall be exercised as the Owners may determine, but in no event shall more than one (1) vote be cast with respect to any Lot owned by a Class A Member.

2.2.2 Class B: The Class B Members shall be Declarant and Developer, who shall be entitled to three (3) memberships and three (3) votes for each Lot owned. The Class B membership shall cease and be converted to Class A membership on the happening of the earliest of the following events:

2.2.2.1 Ninety (90) days after such time as the total votes outstanding in the Class A membership equal the total votes outstanding in the Class B membership, or

2.2.2.2 Five (5) years following the conveyance of the first Lot to an Owner, other than the Declarant or Developer.

Any Mortgagee who acquires title to a Lot pursuant to a judgment of foreclosure or a trustee's sale shall automatically become entitled to exercise all voting rights which the Owner of said Lot would otherwise have had.

If any lender to whom Declarant has assigned, or hereafter assigns, as security all or substantially all of its rights under this Declaration should succeed to the interest of the Declarant by virtue of said assignment, the absolute voting rights of the Declarant as provided herein shall not be terminated thereby, and such lender, or successor to such lender by assignment or foreclosure or acceptance of a deed in lieu thereof, shall hold Declarant's memberships and voting rights on the same terms as they were held by Declarant.

Section 2.3 Purpose of Association. The Association is a non-profit corporation which will serve as the governing body for all Owners and Members for the protection, improvement, alteration, maintenance, repair, replacement, administration and operation of the Common Area and any other areas for which the Association is responsible

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under the terms of this Declaration or otherwise; the assessment of expenses; payment of losses; disposition of casualty insurance proceeds; and other matters as provided in this Declaration, the Articles, the Bylaws, and the Rules. The Association shall not be deemed to be conducting a business of any kind. 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.

Section 2.4 Rights and Responsibilities of Association. The Association, through the Board of Directors, unless specifically provided otherwise, shall have the right of enforcement of all of the provisions hereof. The Association shall have the right, but not the obligation, to enter upon any drainage easements shown on the Plat to landscape or maintain same and shall be responsible for the proper and efficient management and operation of the Common Area and any other areas for which it is responsible under the terms of this Declaration or for which it has assumed responsibility. The Association's responsibilities shall include:

2.4.1 maintaining, operating, and rebuilding improvements on the Common Area;

2.4.2 maintaining and landscaping property owned or controlled by the Association, including private roads, paths, and other easement rights, if any;

2.4.3 maintaining the exterior portion of any Perimeter Wall;

2.4.4 operating, maintaining, rebuilding and insuring improvements originally constructed by Declarant or Developer or later constructed by the Association on the Common Area;

2.4.5 paying real estate taxes, assessments and other charges on the Common Area, including all ad valorem taxes thereon;

2.4.6 insuring all improvements which the Association is obligated to maintain against damage by casualty with such companies and in such limits as provided herein and as the Association deems appropriate;

2.4.7 hiring, firing, supervising and paying employees and independent contractors including, but not limited to, workers, landscapers, attorneys, accountants, architects and contractors to carry out the obligations set forth herein;

2.4.8 maintaining such liability insurance as the Association deems necessary to protect the members and the Board of Directors of the Association from any liability caused by occurrences or happenings on or about the Common Area;

2.4.9 maintaining workers' compensation insurance for the employees of the Association;

2.4.10 purchasing all goods, supplies, labor and services reasonably necessary for the performance of the obligations set forth herein;

2.4.11 establishing and maintaining such adequate cash reserves as the Association may, in its sole and absolute discretion, deem reasonably necessary for the periodic maintenance, repair and replacement of the improvements which it is responsible to maintain;

2.4.12 providing for and payment of all utility services for the Common Area if deemed appropriate by the Board;

2.4.13 entering into such agreements and taking such actions as are reasonably necessary and convenient for the accomplishment of the obligations set forth above and the operation and maintenance of the Properties as a first-class, residential development;

2.4.14 granting licenses, easements and other agreements for the use of Common Area;

2.4.15 maintaining any personal property owned by the Association; and

2.4.16 giving the notice required to be sent to any prospective purchaser pursuant to Section 12.10 and

2.4.17 such other matters as are provided for in this Declaration, the Articles of Incorporation, and the Bylaws.

Section 2.5 Articles and Bylaws. The manner in which the Association holds meetings and attends to other corporate formalities shall be controlled by the provisions of the Bylaws, the Articles and this Declaration, which Declaration shall control in the event of conflict

Section 2.6 Board of Directors. The Board of Directors of the Association shall be elected by majority vote of the total votes cast by both classes of the membership at a meeting attended by a quorum as called for by the Bylaws, except that so long as Declarant retains the Class B membership, Declarant reserves the exclusive right to appoint the a majority of the directors of the Board.

Section 2.7 Transition to Board. Prior to the time that the operations of the Association are turned over to the members by the Declarant, the Members shall be required by February 15 of each year to report and submit to the Association, in writing, any claims or disputes which regard to the operations of the Association by the Developer or Declarant, during the immediately preceding calendar year, including the maintenance of any streets, roads, sidewalks, street signs, walls, fences, landscape or other improvements originally constructed by Developer or Declarant or the collection of assessments, maintenance and reserve accounts and other matters falling within the realm of responsibility of the Association.

When the operations of the Association are turned over to the Members by the Declarant, the Declarant shall deliver all corporate books and accounting records to the Members at the Association's offices. Upon receipt of the corporate books, accounting records and written notice of Declarant's intent to turn over the operations of the Association, the Members shall notify Declarant in writing within forty-five (45) days of any claims or disputes with regard to the operations of the Association by the Declarant or Developer which have arisen subsequent to

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December 31 of the preceding year, including the maintenance of any streets, roads, sidewalks, street signs, walls, fences, landscape or any other improvements, to the extent applicable, originally constructed by Developer or Declarant or the collection of assessments, maintenance of reserve accounts and other matters falling within the realm of responsibility of the Association.

In the event that such claims or disputes are not presented in writing to the Declarant within the time periods set forth above, such claims and disputes, whether against Declarant or Developer, shall be deemed forever waived, relinquished and abandoned.

Section 2.8 Rules and Regulation of the Association. The Board shall be empowered to adopt, amend or repeal such rules and regulations as it deems reasonable and appropriate (collectively the "Rules"), which shall be binding upon all persons subject to this Declaration and shall govern the use and/or occupancy of the Properties. The Rules may include the establishment of a system of fines and penalties for violation of the Rules, which shall be levied only after the offending Owner has been given notice and an opportunity to be heard in accordance with the terms of the Bylaws of the Association. The Rules shall govern such matters as the Board deems to be in furtherance of the purposes of the Association, including, without limitation, the use of the Common Area. The Rules *may* be amended at any special or regular meeting of the Board.

The Rules are deemed incorporated herein by this reference and shall have the same force and effect as if they were set forth in and were part of this Declaration and shall be binding upon all persons having any interest in, or making any use of, any part of the Properties, whether or not copies of the Rules are actually received by such persons. References to the covenants and restrictions contained herein shall be deemed to refer also to the Rules (except to the extent the rules are in conflict herewith). The Rules, as adopted, amended or repealed, shall be available for review at the principal office of the Association to each person reasonably entitled thereto. It shall be the responsibility of each person subject to the Rules to review and keep abreast of any changes in the provisions thereof. In the event of any conflict between any provision of the Rules and any provision of this Declaration, or the Articles or Bylaws, the provisions of the Rules shall be deemed to be superseded by the provisions of this Declaration, the Articles or Bylaws to the extent of any such conflict.

Section 2.9 Liability of Officials and Indemnification. To the fullest extent permitted by law, neither Declarant, Developer, the Board, nor any committees of the Association nor any member thereof; nor any officers, directors or employees of the Declarant, Developer or of the Association, shall be liable to any Owner or to the Association or any other person for any damage, loss or prejudice suffered or claimed on account of any decision, course of action, act, inaction, omission, error, negligence or the like made in good faith and which Declarant, Developer, the Board or such committees or officers reasonably believed to be within the scope of their respective duties or rights.

To the fullest extent permitted by law, Declarant, Developer and every director, officer or committee member of the Association, Developer and or the Declarant (to the extent a claim may be brought by reason of Declarant's appointment, removal or control over members of the Board or its control over the Association or any committee thereof) shall be indemnified by

the Association. Every other person serving as an employee or direct agent of the Association, or otherwise acting on behalf of, and at the request of, the Association, may, in the discretion of the Board, be indemnified by the Association.

Any *such* indemnification shall be limited to *all* expenses and liabilities, including attorneys' fees, reasonably incurred by or imposed upon such person in connection with any proceeding to which such person 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 Declarant by reason of having appointed, removed, controlled or failed to control members of the Board, or controlled or failed to control the Association), or incurred in any settlement thereof, whether or not he is a director, officer or member of a committee or serving in such other specified capacity at the time such expenses are incurred,

Section 2.10 Managing Agent. All powers, duties and rights of the Association 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 shall not exceed a term of one year, which term may be renewed by agreement of the parties for successive one-year periods. Any such agreement shall provide for termination by either party with or without cause and without payment of a termination fee upon ninety (90) days' written notice; provided, however, that the Association may terminate the agreement for cause upon thirty (30) days' written notice. The Association is expressly authorized to contract with Declarant or Developer or an affiliate of Declarant or Developer, to provide management services or to perform other duties of the Association or the Board.

Section 2.11 Records and Accounting. The Association shall keep, or cause to be kept, true and correct books and records of account at the sole cost and expense of the Association in accordance with generally accepted accounting principles. Such books and records, together with current copies of this Declaration, the Articles, Bylaws and Rules shall be available for inspection by all Owners and First Mortgagees of record at reasonable times during regular business hours.

ARTICLE 3

EXTERIOR MAINTENANCE

Section 3.1 Maintenance, Repair and Up-Keep.

3.1.1 Dwelling units. Except as provided in Section 2.4 hereof, maintenance, repair, upkeep and repainting of Dwelling Units, including all other improvements on a Lot, shall be the sole responsibility of each Owner.

3.1.2 Walls. Each Owner shall maintain, repair and repaint (if applicable), the interior and exterior sides of the yard walls or fences appurtenant to his Lot, except that if such a wall or fence is a common wall or fence, an Owner shall be required to repair and repaint only that portion of the wall or fence exclusively used by that Owner, and except that the Association shall maintain and repair the exterior surface of any Perimeter Wall.

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3.1.3 Plumbing. Each Owner shall be responsible for sewer blockage, repair, etc., of all Dwelling Unit plumbing as well as the house connection line from the Dwelling Unit to its connection point in the main collection sewer line in the street.

3.1.4 Exterior Lighting. Each Owner shall be responsible for the maintenance and repair, including replacement of light bulbs, of all exterior lighting fixtures located within the Owner's Lot (or located outside the Owner's Lot if the lighting is substantially or exclusively of benefit to, and is metered on, such Owner's Lot).

3.1.5 Failure to Maintain. Such maintenance, repair and repainting of a Dwelling Unit and other improvements on a Lot shall be undertaken in a manner and with such frequency as shall keep each Owner's Lot in an attractive, well-kept and maintained condition in conformity with all other Lots. In the event any Owner fails to fulfill his or her obligation under this Section, the Association, after approval of two-thirds (2/3) vote of the Board of Directors, shall have the right through its agents and employees, to enter upon the subject property, and to repair, maintain and restore the Lot, including the perimeter yard walls, or fences and any other improvements. The cost of such exterior maintenance shall be added to and become part of the assessment to which such Lot is subject. The Board shall have the right to determine whether or not a Lot is in need of maintenance, repair and upkeep in order to conform to the standards of the general neighborhood of the Properties and the Board shall use a reasonably high standard to determine whether such maintenance, repair and upkeep is required so that the Lots as a whole will reflect a high pride of ownership.

3.1.6 Easement for Maintenance. Each Owner or the Owner's authorized agent, in order to conduct such maintenance, repair or repainting, shall have the right of entry at reasonable times upon Lots adjacent to such Owner's Lot, provided reasonable notice of such entry is first given by such Owner to the Owner of the involved adjacent Lot. The Association shall have a right of entry and an easement upon each Lot for the purpose of fulfilling its responsibilities hereunder.

Section 3.2 Maintenance of Common Areas. The Association shall be responsible for maintenance, repair and upkeep of any Common Area improvements including, but not limited to, curb line sidewalks, Common Area sidewalks or paths, landscaping, common trash/garbage collection areas, park benches, barbecue areas, and parking areas, if any. The Association shall also be responsible for maintaining and repairing the exterior surface (meaning the surface that lies outside any enclosed yard) of all Perimeter Walls.

Section 3.3 Drainage and Retention/Detention Facilities.

3.3.1 Maintenance. The Association shall operate, maintain, repair and replace any drainage and retention/detention facilities installed by Declarant, Developer, or the Association within the Common Areas or drainage easements shown on the Plat

3.3.2 Inspection Report. The Association shall, each year, have prepared, by an Arizona Registered Professional Civil Engineer, a certified inspection report for all such drainage and retention/detention facilities stating:

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3.3.2. J Either that no maintenance work is needed at that time, or setting forth the work needed to correct any deficiencies (including deficiencies in aesthetics) or potential problems discovered; and

3.32.2 Either that watershed conditions have not changed since the previous inspection report, or that specific changes have occurred that alter or eliminate some of the Section 8.2 design features or affect the level of service of the system.

3.3.2.3 Whether or not the system satisfies the requirements of the Floodplain Regulations found in the Tucson Zoning Code.

The Association shall keep such reports on file, available for review by the City upon written request, and shall notify the City Engineer if a report indicates that watershed conditions have changed to the extent that the drainage and retention/detention system no longer satisfies the requirements of the Floodplain Regulations in the Tucson Zoning Code.

3.3.3 City Inspection and maintenance. The City shall have an easement to periodically inspect any such drainage and retention/detention facilities within the Properties and to operate, maintain, repair or replace same if the City determines that the Association's maintenance is inadequate. The Association shall reimburse the City for any costs or expenses incurred by the City in conducting such maintenance or repair.

ARTICLE 4

INSURANCE

Section 4.1 Association's Insurance Requirements: The Association shall purchase and maintain at all times the following types of insurance, but only to the extent reasonably available and reasonably priced:

4.1.1 Commercial General Liability and Property Insurance. Commercial general liability insurance covering bodily injury and property damage liability insurance covering all Common Area maintained by the Association, if any, and all other areas under the jurisdiction or control of the Association, excluding the Lots. Such insurance policy or policies shall contain, if available, a "severability of interest" clause or endorsement which shall preclude the insurer from denying the claim of an Owner because of negligent acts of the Association or of any other Owners.

The scope of coverage of such policy or policies must include all other coverage in the kinds and amounts commonly required by private institutional mortgage investors for projects similar in construction, location and use to the Properties. Coverage shall be for at least one million dollars (\$1,000,000.00) combined single limit.

Such coverage shall include, without limitation, legal liability of the insureds for property damage, bodily injuries, and deaths of persons in connection with the operation, maintenance, or use of the Common Area maintained by the Association; legal liability arising out of lawsuits related to employment contracts of the Association; and protection against liability for non-owned and hired automobiles; such coverage may also include, if applicable,

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garagekeeper's liability, liability for property of others, host liquor liability, water damage liability, contractual liability, workmen's compensation insurance for employees of the Association, and such other risks as shall customarily be covered with respect to projects similar in construction, location and use.

4.1.2 Insurance of Common Area. Fire and other hazard insurance covering improvements constructed on the Common Area. Such policy or policies shall consist, at a minimum, of a multi-peril type policy covering the subject improvements, providing, as a minimum, fire and extended coverage and all other coverage in the kinds and amounts commonly required by private institutional mortgage lenders in Tucson, Arizona.

Such policies of property insurance shall contain a "Replacement Cost Endorsement" providing that any claim shall be settled on a full replacement cost basis without deduction for depreciation, an "Inflation Guard Endorsement" and an "Agreed Amount Endorsement," if possible. The Association shall also purchase a "Demolition Endorsement", an "Increased Cost of Construction Endorsement", a "Contingent Liability from Operation of Building Laws Endorsement" or the equivalent, and coverage on personal property owned by the Association.

If the Common Area or any portion thereof is located within an area identified by the Federal Emergency Management Agency as having special flood hazards, and flood insurance coverage or improvements on the Common Area has been made available under the National Flood Insurance Program, then such a policy of flood insurance shall, if deemed necessary by the Board, be obtained on the Common Area in an amount at least equal to the lesser of:

4.1.2.1 the maximum coverage available under the National Flood Insurance Program for all buildings and other insurable property located within a designated flood hazard area; or

4.1.2.2 one hundred percent (100%) of current replacement cost of all buildings and other insurable property located within a designated flood hazard area.

4.1.3 Worker's Compensation Insurance. Worker's Compensation insurance to the extent necessary to comply with any applicable laws.

4.1.4 Fidelity Insurance. Fidelity coverage against dishonest acts on the part of directors, officers, managers, trustees, employees, or volunteers responsible for handling funds belonging to or administered by the Association. Such fidelity bonds or insurance shall name the Association as the named insured and shall be written in an amount sufficient to provide protection, that is, in no event, less than one and one-half times the insured's estimated annual operating expenses and reserves, and provide for at least thirty (30) days notice to the Association before cancellation or substantial modification thereof. In connection with such coverage, an appropriate endorsement to the policy to cover any persons who serve without compensation shall be added, if the policy would not otherwise cover volunteers.

4.1.5 Exceptions. The foregoing insurance and endorsements shall be maintained only to the extent available and reasonably priced and, without limitation, the Board

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of Directors may elect to dispense with certain endorsements if, in the discretion of the Board of Directors, it is determined that the cost of such endorsements is excessive or the coverage not reasonably available.

Section 4.2 Waiver of Subrogation; Claims Against Declarant, Etc. Every policy of insurance obtained by the Association shall contain an express waiver, if available, of any and all rights of subrogation against Declarant, Developer, the Board and such other persons or entities affiliated with the Association such as a manager and its representatives, members and employees and a provision, if available, preventing any cancellation or modification thereof, except upon at least thirty (30) days' written notice to the insureds.

Liability by insurance hereinafore specified shall name as separately protected insureds Declarant, Developer, the Association, the Board and such other persons or entities affiliated with the Association such as a manager and its representatives, members and employees as their interest may appear with respect to any liability arising out of the maintenance or use of any insured property.

To the extent that each such policy will not be voided or impaired thereby, the Association hereby waives and releases all claims against the Declarant, the Board, the Developer and such other persons or entities named in said insurance policies, and against the agents and employees of each of the foregoing, with respect to any loss covered by such insurance, whether or not caused by negligence or breach of any agreement by said persons, but only to the extent that insurance proceeds are received in compensation for such loss.

Section 4.3 Association's Insurance Premiums a Common Expense. Premiums for insurance purchased or obtained by the Association shall be a common expense payable through assessments of Lots and all such insurance coverage obtained by the Board shall be written in the name of the Association.

Section 4.4 Insurance by Owner.

4.4.1 Insurance on Common Area. In addition to the aforesaid insurance required to be carried by the Association, each Owner shall, at his own expense, carry any other insurance on the Common Area deemed advisable; however, if available, said policy or policies shall provide that there shall be no contribution or offset between policies of the Association and policies an individual Owner may have in effect.

4.4.2 Insurance for Residences and Lots. All Owners shall at their own expense obtain insurance for their Dwelling Units and Lots, insuring against fire, accident and casualty, which insurance shall be in an amount sufficient to cover the full replacement cost of any repair or reconstruction work in the event of any such loss or losses.

4.4.3 Use of Insurance Proceeds. In the event of damage or destruction by fire or other casualty to any Dwelling Unit, Lot or other property covered by insurance written in the name of an individual Owner, said Owner shall use any insurance proceeds for the repair of the damaged property.

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Section 4.5 Condemnation or Destruction of the Common Area.

4.5.1 Condemnation.

4.5.1.1 The term "taking", as used in this Section, shall mean either (a) condemnation by eminent domain or (b) sale under threat of condemnation.

4.5.1.2 Authority of Board. In the event of a threatened taking of all or any portion of the Common Area, the Members hereby appoint the Board of the Association and such persons as the Board or the Association may designate to represent any of the Owners in connection with the taking. The Board shall act in its sole discretion with respect to any awards being made in connection with the taking and shall be entitled to make a voluntary sale to the condemnor in lieu of engaging in a condemnation action.

4.5.1.3 Partial Taking. In the event of a taking of less than all of the Common Area, the rules as to restoration and replacement of the Common Area and the improvements thereon shall apply as in the case of destruction of improvements upon the Common Area as provided in Section 4.5.2.

4.5.1A Distribution of Proceeds. Any awards received on account of the taking shall be paid to the Association and to Mortgagees of record, as their interests may appear. In the event of a total taking, the Board may retain any award in the general funds of the Association, and any distribution of the award shall be on a reasonable and equitable basis. Notwithstanding anything to the contrary in this Section, the distribution of any award or awards for a taking of all or any portion of the Common Area shall be subject to the prior rights of Mortgagees.

4.5.2 Destruction.

4.5.2.1 Duty of Association. In the event of a partial or total destruction of the Common Area or improvements thereon, except as otherwise provided herein, it shall be the duty of the Association to restore and repair the same to its former condition as promptly as is practicable and in a workmanlike manner. The proceeds of any insurance maintained pursuant hereto shall be used for such purpose, subject to the prior rights of Mortgagees whose interests may be protected by said policies.

4.5.2.2 Destruction: Proceeds Exceed 80% of Reconstruction Costs. If the amount available from the proceeds of such insurance policies for such restoration and repair is at least eighty percent (80%) of the estimated costs of restoration and repair, a special assessment for reconstruction with each Owner contributing a like sum for each lot owned, may be levied by the Association to provide the necessary funds for such reconstruction and repair, over and above the amount of any insurance proceeds available for such purpose, and such assessment shall not require the consent of any specified proportion of the Members.

4.5.2.3 Destruction: Proceeds Less Than 80% of Reconstruction Costs. If the amount available from the proceeds of such insurance policies for such restoration and repair is less than eighty percent (80%) of the estimated cost of restoration and repair, the improvements shall not be replaced or restored through application of a special assessment

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unless such assessment is approved by the vote or written consent of two-thirds (2/3) of each Class of Members. In the event of a determination not to replace or restore the improvements on the Common Area, the Common Area shall be cleared and landscaped as open space to be used by the Owners pursuant to the provisions hereof, and the costs thereof shall be paid for with the insurance proceeds, and any deficiency may be raised by the levy of uniform special assessment for reconstruction in an amount determined by the Board.

4.5.2.4 Use of Hazard Proceeds. Notwithstanding the foregoing, unless the Owners of at least two-thirds (2/3) of the Lots other than Declarant, and the holders of two-thirds (2/3) of the First Mortgages, have given their prior written approval, the Association shall not be entitled to use hazard proceeds for losses to any Common Area for other than the repair, replacement or reconstruction of such improvements.

Section 4.6 Mortgagee Priority. In the event of substantial damage or destruction of any part of the Common Area or a Lot, no Owner of a Lot or other party shall have priority over a First Mortgagee with respect to the distribution of any insurance proceeds.

ARTICLE 5

OWNERSHIP AND USE OF THE COMMON AREA

Section 5.1 Owner's Easements of Enjoyment. Every Owner shall have a right and easement of enjoyment in and to the Common Area which shall be appurtenant to and shall pass with title to every Lot, subject to the provisions hereof.

Section 5.2 Conditional Use of Common Area. Each Owner, his family, licensees, invitees and tenants or lessees, or contract purchasers of a Lot shall be entitled to use the Common Area subject to:

5.2.1 The provisions of the Articles, Bylaws, this Declaration and the Rules. Each Owner, invitee, licensee, and tenant agrees in using the Common Area to comply with the provisions of such Articles, Bylaws, this Declaration, and the Rules.

5.2.2 The right of the Association to charge a reasonable security deposit and clean-up fee for the use of any facility situated upon the Common Area.

5.2.3 The right of the Association to suspend the right of an Owner to use facilities, if any, of the Common Area for a period not to exceed sixty (60) days for any infraction of this Declaration or the Association's published Rules. Each day an infraction continues to exist is to be deemed a separate infraction.

5.2.4 The right of the Association to take such steps as are reasonably necessary to protect the Common Area against foreclosure.

5.2.5 The right of the Association, in connection with any adopted Rules, to enforce reasonable rules and regulations with respect to the use of the Common Area, including specific provisions with respect to the parking of vehicles thereon.

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ARTICLE 6

COVENANTS FOR MAINTENANCE ASSESSMENTS

Section 6.1 Creation of the Lien and Personal Obligation to Pay Assessments. Each Owner, by acceptance of a deed to any Lot, whether or not it shall be so expressed in such deed, agrees and is deemed to covenant and agree to pay to the Association: (1) annual assessments or charges, (2) special assessments for capital improvements, and (3) individual repair and maintenance assessments, such assessments to be established and collected as hereinafter provided. Any and all assessments levied against a Lot, together with interest thereon from the date of delinquency until paid, and all costs of collection which may be paid or incurred by the Association in connection therewith, including reasonable attorneys fees, shall be a continuing lien upon the Lot.

Delinquent assessments, together with interest, costs, and reasonable attorney's fees, shall also be the personal obligation of the person who was the Owner of such Lot at the time when the assessment was levied. The personal obligation for delinquent assessments shall not pass to successors in title unless expressly assumed by them. The sale or transfer of a Lot shall not relieve the prior Owner thereof from personal liability to pay delinquent assessments, plus interest, costs and attorney's fees. Such obligation shall remain the personal obligation of the defaulting Owner. The new Owner, except a First Mortgagee as set forth herein, shall take title to such Lot subject to the lien of the full amount of the delinquent assessment.

Section 6.2 Purpose of Assessments. The assessments levied by the Association shall be used exclusively to promote the recreation, health, safety, and welfare of the Members and their guests, for the improvement and maintenance of the Common Area and for all purposes set forth in the Articles, Bylaws and this Declaration. The Board of the Association may provide that assessments include a reserve fund for maintenance, repairs and replacement of those elements of the Common Area owned by the Association.

Section 6.3 Annual Assessment Amount. The Board shall each year estimate the total expenses anticipated for the coming year and shall determine the necessary level of reserve balances for ordinary and unexpected expenses, and shall determine the annual assessment necessary to generate the required revenues. The annual assessment determined to be necessary in any given year may be set at any amount necessary to cover expenses, reserves and other expenditure or budgetary matters, but may not be increased in any single year by more than the amount permitted by law.

Section 6.4 Special Assessment for Capital Improvements. In addition to the annual assessments authorized above, the Association may levy, in any assessment year, a special assessment applicable to that year only for the purpose of defraying, in whole or in part, the cost of any construction, reconstruction, repair or replacement of a capital improvement of the Common Area, including fixtures and personal property related thereto, provided that any such assessment shall have the assent of the holders of two-thirds (2/3) of the votes of each Class of Members who vote in person or by proxy at a meeting called for this purpose.

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Section 6.5 Individual Assessments. The Association may also levy and collect from each Owner individual assessments against specific Lots, and shall have a lien therefor, should the special circumstances of any Lot or Lots require special maintenance, expense or costs to be incurred by the Association for the protection of any of the Properties, Lots or Common Area or should the Association be required to perform maintenance or repair upon a Lot or take enforcement action hereunder. Such individual assessments may be levied by action of the Board.

Section 6.6 Notice and Quorum for an Action Authorized Under Section 6.4. Written notice of any meeting called for the purpose of taking action authorized under Section 6.4 shall be sent to all Members not less than thirty (30) days nor more than fifty (50) days in advance of the meeting. At the first such meeting called, the presence of Members or of proxies entitled to cast sixty percent (60%) of the votes of each Class of Membership shall constitute a quorum. If the required quorum is not present, another meeting may be called subject to the same notice requirement, and the required quorum at the subsequent meeting shall be one-half (1/2) of the required quorum at the preceding meeting. No such subsequent meeting shall be held more than fifty (50) days following the preceding meeting.

Section 6.7 Uniform Rate of Assessment; Declarant and Developer Exempt. Both annual and special assessments must be fixed at a uniform rate for all Lots and may be collected on a monthly basis. However said uniform rate may be revised periodically to reflect revisions in the annual assessments based on actual operating costs of the Association.

Notwithstanding anything to the contrary herein, neither Declarant nor Developer shall be responsible for payment of any assessments established pursuant to this Declaration or the Articles or Bylaws, except that Declarant and Developer shall pay assessments on Completed Lots owned by Declarant or Developer. For purposes of this Section "Completed Lots" shall mean any Lot with a Dwelling Unit ready for occupancy as a home that is in the condition of any other Dwelling Unit sold to persons living in the Properties (e.g., carpet, kitchen countertops and cabinets, plumbing and lighting fixtures, etc., installed), but shall not include any Lots with improvements thereon used by Declarant or Developer as models or sales offices.

Although Declarant and Developer may contribute to the expenses of the Association and the maintenance of the Common Area, it is understood that Declarant and Developer are not and shall not be held liable for the payment of any assessments provided for in this Declaration or Bylaws by virtue of the ownership of Lots within the Properties unless such ownership is of Completed Lots as herein defined, and that their failure to pay said assessments shall not give rise to any right of imposing any lien or encumbrance upon Lots owned by either of them as security for the payment of said assessment unless Declarant or Developer has failed to pay said assessments on Completed Lots as herein defined.

Section 6.8 Date of Commencement of Annual Assessments; Due Dates. The annual assessments provided for herein shall commence as to all Lots on the first day of the month following the conveyance of the first Lot to an Owner. The first annual assessment shall be in an amount equal to or less than the maximum annual assessment as determined by the Board, and shall be adjusted according to the number of months remaining in the calendar year. The Board thereafter shall fix the amount of the annual assessment against each Lot at least thirty

shall have the power to bid in at any foreclosure sale and to purchase, acquire, hold, lease, mortgage, and convey any Lot. In the event such foreclosure is by action in court, reasonable attorney's fees, court costs, title search fees, interest and all other costs and expenses shall be allowed to the extent permitted by law. Each Owner hereby expressly waives any objection to the enforcement and foreclosure of this lien. Notwithstanding the foregoing, the failure by an Owner to pay assessments provided for herein shall not constitute a default under any federally insured mortgage.

Section 6.10 No Exemption of Owner. No Owner is exempt from liability for payment of assessments by waiver of the use of enjoyment of the Common Area or by abandonment of a Lot.

ARTICLE 7

MORTGAGEE PROTECTIONS

Section 7.1 Mortgage Protection. Notwithstanding and prevailing over any other provisions of this Declaration, or the Association's Articles or Bylaws, or the Rules, the provisions in this Article shall apply to and benefit each First Mortgagee of a Lot.

Section 7.2 Subordination of Assessment Lien to First Mortgages; Sale or Transfer of Lots. The lien of the assessments provided for herein, including without limitation any fees, costs, late charges, or interest which may be levied by the Association in connection with unpaid assessments, shall be subordinate to the lien of any First Mortgage. Sale or transfer of any Lot pursuant to foreclosure of any such First Mortgage or any proceeding in lieu thereof, including deed in lieu of foreclosure, or cancellation or forfeiture of such executory land sales contract, shall extinguish the lien of assessments or charges which became due prior to any such sale or transfer, or foreclosure, or any proceeding in lieu thereof, including deed in lieu of foreclosure, or cancellation or forfeiture of any such executory land sales contract; provided, however, that any such delinquent assessments or charges, including interest, late charges, costs, and reasonable attorneys' fees, which are extinguished as provided herein, may be reallocated and assessed to all Lots as a common expense. No such sale, transfer, foreclosure, or any proceeding in lieu thereof, including deed in lieu of foreclosure, nor cancellation or forfeiture of such executory land sales contract, shall relieve any Owner of a Lot from liability for any assessments or charges thereafter becoming due, nor from the lien thereof. In the event of foreclosure of a First Mortgage or the taking of a deed in lieu thereof, such First Mortgagee shall not be liable for unpaid assessments or other charges which accrued prior to the acquisition of title to the Lot in question by such First Mortgagee.

Section 7.3 Liability for Assessments and Other Charges.

7.3.1 First Mortgagees shall not in any case or manner prior to acquiring title to a Lot be personally liable for the payment of any assessment or charge, nor for the observance or performance of any covenant, restriction, regulation, Rule, Article or Bylaw, except for those matters which are enforceable by injunctive or other equitable actions, not requiring the payment of money, nor shall a First Mortgagee be liable for any violation of the Restrictions that occurred prior to such First Mortgagee acquiring title.

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ARTICLE 8

EASEMENTS AND COMMON WALLS

Section 8.1 Utility Easements. In addition to those specific easements shown on the Plat, there is hereby created a blanket easement upon, across, over and under all portions of the Properties (including Lots and Common Area) for ingress, egress, installation, replacing, repairing and maintaining all utility and service lines and systems, including, but not limited to, water, sewer, gas, telephone, electricity, television cable or communications lines and systems, etc. By virtue of this easement, it shall be expressly permissible for the providing utility or service company to install and maintain facilities and equipment on the Properties and to affix and maintain wire, circuits and conduits on, in, and under the roofs and walls of Dwelling Units and any other structures or improvements on the Properties. Notwithstanding anything to the contrary contained in this Section, no sewers, electrical lines, water lines, or other utilities or service lines may be installed or relocated on the Properties, except as initially designed and installed by Developer or thereafter approved by the Architectural Control Committee. This easement shall in no way affect any other recorded easements on the Properties. In no event shall any portion of the above mentioned easements for utilities be constructed to authorize the placing or installing of sewers, electrical lines, water lines or other utilities under any permanent building structure constructed on the Properties. There shall be an access easement for the delivery and collection of the U.S. Mail over all portions of the Properties.

Section 8.2 Easement for Walls and Other Improvements. Developer may construct improvements, including but not limited to, driveways, walkways, yard walls, exterior lighting (metered to a particular Dwelling Unit), drainage structures, etc., as a part of, or for the use of, a particular Dwelling Unit, which may encroach upon or encompass portions of the Common Area or adjacent Lots. Wherever such an encroachment should occur, the Owner of the Dwelling Unit benefited by the encroachment shall have, subject to the conditions hereinafter set forth, a perpetual permanent easement for such encroachment.

In consideration thereof, each Owner agrees to maintain and keep in repair any improvements encroaching upon the Common Area or adjacent Lots which were constructed for the use of that Owner's Lot.

In the event any Owner should make demand upon the Association or upon the Owners of adjacent Lots to repair or maintain any portion of the Common Area or adjacent Lot that, because of incidental encroachment, lies within such Owner's wall or over which an encroachment has been built benefiting such Owner's Lot, then the Association or the Owner of the adjacent Lot upon which the encroachment lies, as applicable, shall have the right to require the Owner making such demand to remove said encroachment at his own expense and rebuild in accordance with the Board's plans and design specifications within such Owner's Lot.

Section 8.3 Electrical Service and Telephone Lines. All electrical service and telephone lines shall be placed underground and no outside electrical lines shall be placed overhead, except existing overhead lines; provided that no provisions hereof shall prohibit the erection of temporary power or telephone structures incident to construction.

Section 8.4 Pedestrian/Utility Easement. If any Lot is encumbered by a pedestrian or utility easement as shown on the Plat for the benefit of pedestrians or for the installation and placement of utilities, then by accepting a deed to such Lot, the Owner acknowledges and consents to such easement.

Section 8.5 Drainage Easements. The Association is hereby granted an easement upon, across, over and under any drainage easements shown on the Plat in order to maintain all such easements, construct, repair or maintain any structure thereon, install, place, replace and maintain landscaping thereon, and control the use thereof, all as the Association may deem appropriate, but without obligation by the Association unless otherwise agreed by it or otherwise provided herein.

Section 8.6 Common Walls. The rights and duties of Owners with respect to common walls or fences shall be as follows:

8.6.1 Each wall, including patio walls and fences, which is constructed as a part of the original construction of the Dwelling Unit, any part of which is placed on, adjacent to, or over the dividing line between separate Dwelling Units, shall constitute a common wall. Each Owner consents to the use and construction of such common walls and acknowledges that portions of the Properties may contain common walls. With respect to any such wall, each of the adjoining Dwelling Unit Owners shall assume the burden of and be entitled to the benefits recited in this Section and to the extent not inconsistent herewith, the general rules of law regarding common walls shall be applied thereto.

8.6.2 The Owners of contiguous Dwelling Units who have a common wall shall have reciprocal easements for support and an equal right to use such wall provided that such use by one Owner does not interfere with the use and enjoyment of same by the other Owner.

8.6.3 Unless other provisions of this Section are applicable, the costs of reasonable repair and maintenance of a common wall shall be shared equally by the Owners who make use of the common wall in proportion to such use.

8.6.4 In the event any common wall is damaged or destroyed through the act of one adjoining Owner, or any of his guests or agents or members of his family so as to deprive the other Owner of the full use and enjoyment of such wall, then the first of such Owners, if required under local law, shall forthwith proceed to rebuild and repair the same to as good condition as formerly without cost to the other Owner.

8.6.5 In the event any common wall is damaged or destroyed by some cause other than the act of one of the adjoining Owners, his agents, guests or family (including ordinary wear and tear and deterioration from lapse of time), then in such event, both such adjoining Owners shall, if required under local law, proceed forthwith to rebuild or repair the same to as good condition as formerly at their joint and equal expense.

8.6.6 Notwithstanding anything to the contrary herein contained, there shall be no impairment of the structural integrity of any common wall (other than by Developer or Declarant) without prior consent of the adjoining Owner.

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8.6.7 In the event of a dispute between Owners with respect to the repair or rebuilding of a common wall or with respect to the sharing of cost thereof, then upon written request of one of such Owners delivered to the Association, the matter shall be heard and determined by the Board, except that neither the Declarant nor the Developer shall be subject to this provision. The Declarant and Developer may modify a common wall without any consent or approval whatsoever.

ARTICLE 9

ARCHITECTURAL CONTROL COMMITTEE

Section 9.1 Composition of Committee. The Architectural Control Committee shall consist of three (3) or more persons appointed by the Board of Directors of the Association; provided, however, that until all Lots have been conveyed to the first Owner thereof other than the Declarant or Developer, Declarant shall appoint the Architectural Control Committee without a meeting and without a vote of the Members, and during said period, no election of the Members of said committee shall be had unless Developer has in writing relinquished its rights of exclusive appointment. A majority of the Committee may designate a representative to act for it.

Section 9.2 Review by Committee. No Dwelling Unit, structure, improvement, (including but not limited to any building, fence, wall, driveway or other surfaced area), or any attachment to an existing structure, shall be made, placed or constructed upon any Lot or the Properties (except by the Association upon the Common Area); no change of the exterior of a Dwelling Unit, structure, or improvement shall be made; no change in the final grade of any Lot shall be made; no change in exterior lighting shall be made; and no landscaping shall be installed or changed (except that plant materials may be installed in enclosed rear yards without cause for concern, provided that they do not overhang the yard walls and are not visible from the street), unless complete plans and specifications (including a construction schedule) showing the nature, design, kind, quality, shape, height, materials, color scheme and location of any such Dwelling Unit, improvement, structure, attachment, or landscaping, shall have first been submitted to and approved in writing by the Architectural Control Committee. The Architectural Control Committee shall exercise its best judgment to the end that all Dwelling Units, attachments, improvements, construction, landscaping and alterations to structures on lands located within the Properties (collectively referred to herein as "Architectural Improvements") conform to and harmonize with the existing surroundings and structures. Subject to all municipal ordinances, building codes and other applicable governmental rules and regulations, including without limitation those governing positive drainage, all decisions of the Architectural Control Committee shall be binding and conclusive.

Notwithstanding the foregoing, neither the Declarant nor the Developer shall be required to submit any plans or specifications whatsoever to the Architectural Control Committee, nor shall any consent or approval of the Architectural Control Committee be required for the construction of any improvements by the Declarant or the Developer.

Section 9.3 Procedures. The Architectural Control Committee shall approve or disapprove all plans within thirty (30) days after submission and issuance by the Association

of a receipt therefor. In the event the Architectural Control Committee fails to approve or disapprove such design and location within thirty (30) days after said plans and specifications have been submitted to it, approval shall be deemed denied, except that the party submitting the plans may resubmit the plans and if no response is given for a period of thirty (30) days after a written request by certified mail for a decision, approval shall be deemed given. The Architectural Control Committee, with approval of the Board, may establish its own rules amplifying or supplementing the foregoing procedures, and establishing design guidelines and standards. The Architectural Control Committee may from time to time, without notice, establish, add to, delete or amend separate standards, rules and procedures, which shall not be contrary to or inconsistent with these Restrictions, providing for or otherwise relating to the submission, processing, review and approval of plans and specifications for Architectural Improvements or various portions or stages thereof. The Architectural Control Committee shall not be bound by previous standards or interpretations of its standards; and any consent or approval of a prior set of plans and specifications shall not preclude disapproval of a subsequent identical or similar set of plans and specifications.

Section 9.4 Vote. A majority vote of the Architectural Control Committee is required to approve a proposed change or improvement, unless the Committee has designated a representative to act for it, in which case the decision of the representative shall control.

Section 9.5 Liability. The Architectural Control Committee and the members thereof shall not be liable in damages to any person submitting requests for approval or to any Owner by reason of any action, failure to act, approval, disapproval or failure to approve or disapprove in regard to any matter within its jurisdiction hereunder.

Section 9.6 Variance. The Architectural Control Committee may grant reasonable variances or adjustments from any conditions and restrictions imposed by this Article or ARTICLE 10 hereof in order to overcome practical difficulties and prevent unnecessary hardships arising by reason of the application of the Restrictions contained in this Article or ARTICLE 10 hereof. Such variances or adjustments shall be granted only in case the granting thereof shall not be materially detrimental or injurious to the Properties and shall not militate against the general intent and purpose hereof.

Section 9.7 Nonconforming Architectural Improvements. In the event that the Architectural Improvements do not, upon the proposed date set forth in the construction schedule, conform to the plans submitted to and approved by the Architectural Control Committee, the Architectural Control Committee shall give written notice to the Owner of the property upon which such Architectural Improvements have been made. Such notice shall specify the nature of the nonconformity of the Architectural Improvements and shall grant the Owner a hearing before the Architectural Control Committee in accordance with the Bylaws.

If an Owner has not, within sixty (60) days of the mailing or delivery of the written notice, corrected the nonconformity of the Architectural Improvement, then the Architectural Control Committee shall have the right and an easement to direct its agents, employees or contractors to enter upon the said Owner's property for the purpose of making any or all of such improvements, alterations or repairs as are necessary to bring the Owner's

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Architectural Improvements into conformity with the plans submitted to and approved by the Architectural Control Committee.

All costs incurred by the Association in the course of the Architectural Control Committee's efforts to bring the nonconforming Architectural Improvements into conformity with the approved plans as provided above, including costs of labor, materials and all associated administrative costs reasonably incurred by the Association in connection therewith, shall be added to and become part of the assessment to which such Owner's Lot is subject and shall become a lien on such Owner's Lot and the improvements thereon, and shall be enforceable and collected as provided for herein.

Section 9.8 Color and Building Materials. Without limiting the foregoing, no color changes nor any changes in the original building structure, composition or products shall be permitted without approval of the Architectural Control Committee.

Section 9.9 Broad Discretion of Architectural Control Committee. In reviewing plans for alterations, modifications, additions or other changes to a Dwelling Unit, improvement or structure upon a Lot, the Architectural Control Committee shall exercise its discretion in deciding whether or not an alteration or modification is in harmony with the overall scheme of subdivision development. The Architectural Control Committee shall have the right to deny alterations or modifications for purely aesthetic reasons if the Architectural Control Committee considers the alteration or modification to be unattractive in relation to the overall scheme of development, or if the Architectural Control Committee considers the alteration or modification to be a nuisance or upset of design, or if the Architectural Control Committee considers the alterations or modifications to be in contrast to or out of harmony with the style of existing structures, or if the physical views of the Properties will be disrupted by the alteration or modification. The Architectural Control Committee may elicit the opinion of other Owners, including the neighbors of the Owner submitting the plan for alteration or modification, as to the conformity and harmony of the proposed plan with the overall scheme of development, and the effect that the proposed plan might have on the physical views of other Owners. After eliciting these opinions, the Architectural Control Committee may, but need not, take them into account in making its final decision of approval or disapproval of an alteration or modification to an existing structure. While the opinion of no single Lot Owner will control a decision of the Architectural Control Committee, the Architectural Control Committee may, within its own discretion, but need not, attach whatever significance it deems sufficient to the statements of residents and/or neighbors of the Owner submitting the proposed alteration or modifications to an existing structure.

Section 9.10 Fee. The Association may establish, and from time to time adjust, a reasonable processing fee to defer the costs of the Architectural Control Committee in considering any requests for approvals submitted to the Architectural Control Committee. The Association also may establish a fee schedule and amend such schedule from time to time, with respect to all or any portion or stage of the processing of plans and specifications as provided for in Section 9.3.

Section 9.11 Exemption. Notwithstanding the above, neither Declarant nor Developer shall be required to submit any plans to or obtain any consent whatsoever from the

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Architectural Control Committee for any improvements, structures or landscaping built, constructed, erected, modified or altered by Declarant or by Developer on the Properties.

ARTICLE 10

USES AND RESTRICTIONS

All the Properties shall be held, used and enjoyed, subject to the following limitations and restrictions (in addition to all other provisions hereof):

Section 10.1 Plat Notes. In addition to the Restrictions contained herein, the Properties are subject to any restrictions and limitations set forth on the Plat, including, without limitation, any height and set-back restrictions.

Section 10.2 Private Residential Purposes. Dwelling Units and Lots shall be occupied and used by the respective Owners solely for private single family residential use of the Owner, his family, tenants and social guests and for no other purpose. No manufactured, pre-fabricated or mobile homes shall be permitted. No gainful occupation, profession, trade or other non-residential use shall be conducted on the Properties, except that (a) Declarant or Developer may maintain sales offices, construction offices and sales models on the Properties, and (b) an Owner may carry on a "Home Occupation", as provided below.

"Home Occupation" as permitted by this Section means private consultation and advice in trades and professions, and the sales or creation of art work, small wares and miscellaneous goods at a retail level, and includes consultation by professionals such as accountants, lawyers, and doctors, but no portion of the Properties nor any Dwelling Unit shall be used for the full-time general practice of any profession, nor as a lodge, regular club meeting place, religious institution, revivalist, cult or sect meeting place, nor may the interior of any Dwelling Unit be used for medical or surgical treatment or procedures.

An Owner or occupant residing in a Dwelling Unit may conduct a Home Occupation solely within the private confines of a Dwelling Unit so long as: a) the existence or operation of the business activity is not apparent from the outside of the Dwelling Unit, and no sound or smell from the outside of the Dwelling Unit indicating the conduct of business is detectable; b) the business activity conforms to all zoning requirements for the Properties; c) the business activity does not involve frequent or annoying traffic by persons coming on the Properties who do not reside in the Properties or door-to-door solicitation of residents of the Properties; and d) the business activity is consistent with the residential character of the Properties and does not constitute a nuisance or hazardous or offensive use, nor threaten the security or safety of other residents of the Properties.

No Home Occupation may involve heavy equipment or machinery, manufacturing, drilling, burning or conversion of any garage or carport into a business office or room.

No business conducted upon the Properties or in any Dwelling Unit by persons other than the Declarant or its successors and assigns or the Developer, may result in any change to the exterior appearance of any Dwelling Unit or Lot, and no business conducted, except by the

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Declarant or Developer, shall involve signs, buildings, or structures in addition to the Dwelling Unit.

The Board of Directors shall have the discretion to determine whether, in a particular case, the conduct of a Home Occupation violates the provisions hereof. If such determination is made, the Board of Directors shall have the authority to require that the Home Occupation in question cease immediately.

Sales offices, sales models and construction offices utilized by the Declarant or Developer on the Properties need not be owned by either Declarant or Developer. Further, sales models and sales offices may be utilized on the Properties as sales models and sales offices for the benefit of other subdivisions of either Declarant or Developer.

Section 10.3 Animals. No animals of any kind shall be raised, bred, or kept, except that a reasonable number of generally recognized house or yard pets may be kept, provided that they are not kept, bred or maintained for any commercial purpose. No animal shall be allowed to become a nuisance. A "reasonable number" as used in this Section shall ordinarily mean no more than two pets per household; provided, however, that the Architectural Control Committee may determine, in its sole and absolute discretion, whether a particular animal is a generally recognized house or yard pet or a nuisance, or whether the number of animals is reasonable.

Section 10.4 Trash Containers. No garbage or trash shall be placed or kept on any Lot within the Properties, except in covered containers of a type, size, and style which have been approved by the Architectural Control Committee, and containers shall at all times be hidden from view except on days of trash pick-up. All rubbish, trash or garbage shall be removed from the Lots and shall not be allowed to accumulate thereon. No incinerators shall be allowed.

Section 10.5 Backboards. No basketball backboards of any kind shall be erected or attached, by either a permanent or temporary method, to any Dwelling Unit unless approved by the Architectural Control Committee.

Section 10.6 Aerials. No television, radio, or other electronic towers, aerials, antennae, satellite dishes or device of any type for the reception or transmission of radio or television broadcasts or other means of communication shall hereafter be erected, constructed, placed or permitted to remain on any Lot or upon any improvements thereon, except that this prohibition shall not apply to those antennae specifically covered by 47 CFR Part 1, Subpart S, Section 1.4000 (or any successor provision) promulgated under the Telecommunications Act of 1996, as amended from time to time.

The Association shall be empowered to adopt rules governing the types of antennae that are permissible hereunder, and to establish reasonable, non-discriminatory restrictions relating to location and safety of antennae structures.

To the extent that reception of an acceptable signal would not be impaired, an antenna permissible pursuant to rules of the Association may only be installed in a side or rear yard location, not visible from the street or (when reasonably feasible) from neighboring

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property or integrated with the Dwelling Unit and surrounding landscaping to prevent or limit such visibility. Antennae shall be installed in compliance with all applicable laws and regulations.

Section 10.7 Nuisances. After completion of construction of any Dwelling Units and landscaping of Lots, no rubbish or debris of any kind shall be placed or permitted thereon so as to render any such property or any portion thereof unsanitary, unsightly, offensive or detrimental to any other property in the vicinity thereof or to its occupants. No loud or offensive noise, excessively glaring or bright lights, foul odors or other nuisance shall be permitted to exist or operate upon the Properties so as to be offensive or detrimental to its occupants. Without limiting the generality of any of the foregoing provisions, no exterior speakers, horns, whistles, bells or other sound devices, except security devices used exclusively for security purposes, shall be located, used or placed on any such property without the prior written approval of the Architectural Control Committee. The Architectural Control Committee, in its sole discretion, shall have the right to determine the existence of any such nuisance.

Section 10.8 Parking and Storage of Vehicles.

10.8.1 General Rule. Any and all motor vehicles not prohibited by the provisions hereof shall be stored in a carport or garage so as to conceal the same from view from adjoining property or from the street or public way, except that vehicles (other than recreational vehicles, commercial vehicles, motorhomes, campers, trailers, boats and similar vehicles, as provided below) may be parked upon the paved driveway surfaces of each Lot when there is insufficient room within an enclosed garage. Parking on public or private streets within or adjacent to the Properties is prohibited.

10.8.2 Recreational and Commercial Vehicles. Parking and/or storing of recreational vehicles, commercial vehicles, motorhomes, campers, trailers, boats and similar vehicles is prohibited on all portions of the Properties, and on any public streets adjacent thereto, except within the confines of an enclosed structure which has been first approved by the Architectural Control Committee, in its sole and absolute discretion. Such vehicles may be parked on the parking area of an owner's Lot, but only for short periods of time solely for purposes of loading or unloading.

The foregoing prohibition shall not apply to (1) pick-up trucks with no more than a 3/4 ton capacity with camper shells attached that are no more than seven feet in height as measured from ground level; (2) mini-motorhomes that are no more than seven feet in height and no more than eighteen feet in length or (3) non-commercial pick-up trucks larger than 3/4 ton capacity that the Architectural Control Committee finds to be substantially similar in size and appearance to smaller vehicles; so long as any such vehicles are used on a regular and recurring basis for regular transportation and are parked in accordance with the provisions of 10.8.1.

10.8.3 Use of Recreational Vehicle as Living Quarters; Storage of Vehicles Under Repair. The use or occupancy of a recreational vehicle, motorhome, van, camper, trailer, or boat as living quarters on either a temporary or permanent basis is strictly prohibited on any portion of the Properties. At no time shall there be any outside storage of

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motor vehicles in stages of construction, reconstruction, modification or rebuilding of parts of motor vehicles such as frames, bodies, engines or other parts or accessories.

Section 10.9 Diseases and Insects. No Owner shall permit any thing or condition to exist upon any property which shall induce, breed or harbor infectious plant diseases or noxious insects.

Section 10.10 Drainage. There shall be no interference with the established drainage pattern over any property unless adequate provision is made for proper drainage conforming to applicable city and county rules, regulations, ordinances, and drainage criteria. For purposes hereof, "established drainage" is defined as the positive drainage away from the home and off the Lot which exists at the time the overall grading of the Properties is completed, or which is shown on any plans conforming to applicable rules, regulations, ordinances, and applicable drainage criteria, including without limitation, private drainage easements shown on the Plat.

Section 10.11 Modification of Exterior Wall. Unless approved by the Architectural Control Committee, no Dwelling Unit owner shall alter or modify the exterior wall of a Dwelling Unit by cutting any opening in or placing any window of any kind in said exterior wall.

Section 10.12 Electrical Service and Telephone Lines. All electrical service and telephone lines shall be placed underground and no outside electrical lines shall be placed overhead; provided, however, that the Declarant shall not be prohibited from erecting temporary power or telephone structures incident to construction.

Section 10.13 Mailboxes. If the Architectural Control Committee has provided uniform mailbox designs in the course of original construction, then such designs, colors, lettering, and other features shall be maintained by each at all times.

Section 10.14 Temporary Structures, Mobile Homes, Etc. No manufactured, prefabricated home or mobile home shall be permitted or placed upon any Lot or anywhere else in the Properties. Except as hereinafter provided, no structure of a temporary character, including but not limited to a house trailer, tent, shack, temporary garage, or outbuilding shall be placed or erected upon any Lot, and no residence placed or erected upon any Lot shall be occupied in any manner at any time prior to its being fully completed, nor shall any residence when completed be in any manner occupied until made to comply with all requirements, conditions, and restrictions herein set forth; provided, however, that during the actual construction or alteration of a structure on any Lot, necessary temporary structures for storage of materials may be erected and maintained by the person doing such work. The work of constructing, altering, or remodeling any structure on any part of any Lot shall be prosecuted diligently from the commencement thereof until the completion thereof. The provisions of this section shall not apply to the Declarant or Developer.

Section 10.15 Lots to be Maintained. Each Lot shall at all times be kept by the Owner in a clean, sightly, and wholesome condition. No trash, litter, junk, boxes, containers, bottles, cans, implements, machinery, lumber, or other building materials shall be permitted to

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remain exposed upon any Lot so that the same are visible from any neighboring Lot or street, except as necessary during the period of construction.

Section 10.16 Lots Not to be Subdivided. No Lot shall be subdivided or resubdivided, except by Declarant, or except for the purpose of combining portions of a Lot with an adjoining Lot or Common Area, provided that no additional building site is created thereby. Resubdivision by Declarant may result in additional Lots at its discretion.

Section 10.17 No Hazardous Activities. No activities shall be conducted on the Properties and on improvements constructed on the Properties which are or might be unsafe or hazardous to any person or property. Without limiting the generality of the foregoing, no firearms shall be discharged upon the Properties and no open fires shall be lighted or permitted on the Properties, except in a contained barbecue unit while attended and in use for cooking purposes or within a safe and well-designed interior fireplace or firepit, or except such campfires or picnic fires on property designated for such use by Declarant or Developer.

Section 10.18 Tanks. No tanks of any kind, either elevated or buried, shall be erected, placed, or permitted upon any Lot.

Section 10.19 Signs. No billboards or advertising signs of any character shall be erected, placed, permitted or maintained on any Lot or improvement thereon of this subdivision, except that in the course of selling a Dwelling Unit, one sign not to exceed five square feet in size shall be permitted in the front yard area of a Lot. The Declarant and Developer are exempt from the provisions of this Section.

Section 10.20 Derricks, Boring, Etc.. No derrick or other structure designed for use in boring for oil or natural gas shall be erected, placed or permitted upon any part of the Properties, nor shall any oil, natural gas, petroleum, asphaltum or hydrocarbon products or minerals of any kind be produced or extracted therefrom.

Section 10.21 Landscaping. All front and side yard landscaping shall conform to and be compatible with original landscaping installed by Declarant or Developer, and the restrictions in Section 10.27 below, and landscaping shall not be permitted to cause a nuisance. All front or side yard landscaping shall require the prior approval of the Architectural Control Committee, except for replacement of original landscaping installed by Declarant or Developer. Without limitation, no hedges, trees or other landscaping shall be permitted in front or side yards within fifteen feet of any front Lot line or corner Lot line unless installed by Developer or Declarant or approved by the Architectural Control Committee, or unless in replacement of similar landscaping installed by Developer or Declarant.

Section 10.22 Minimum Driveway Requirements. Driveways on all Lots shall be approved by the Architectural Control Committee.

Section 10.23 Renting. Each Owner shall have the right to lease or rent his Dwelling Unit; provided, however, that any lease agreement, including any agreement to lease the Dwelling Unit on a month to month basis, must be in writing and must provide that the failure of any lessee or tenant to comply with the Rules, Bylaws, Articles and provisions of this

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Declaration shall be a default under the lease. Any lease agreement shall be for a period of not less than thirty (30) days, and a copy thereof shall be delivered to the Association.

Section 10.24 Solar Devices. No solar devices, of any type, shall be placed, erected or installed on any Lot without the approval of the Board or the Architectural Control Committee.

Section 10.25 Insurance Rates. Nothing shall be done or kept on any Lot or Common Area which will increase the rate of insurance on such property nor shall anything be done or kept on or in any Dwelling Unit or Common Area which will result in the cancellation of insurance on any such property or which would be in violation of any law, unless expressly approved by the Architectural Control Committee.

Section 10.26 Soil Reports. The soils which underlie the foundation of homes within the Properties may have the potential for consolidation or swelling. No owner of all or any portion of any Lot shall maintain any kind of landscaping, irrigation or vegetation within four feet of any exterior wall or foundation of the residence built upon said Lot. Only indigenous desert plantings with a drip-type minimal water use system, shall be used in the area that is between 4 and 8 feet of any exterior wall or foundation.

No Owner of all or any portion of any Lot shall maintain or cause to be maintained upon said lot a pattern of grading and drainage other than the original drainage and grading for said Lot, as established by the builder.

No Owner of all or any portion of any Lot shall construct a swimming pool, Jacuzzi, whirlpool, or other like improvement ("Subgrade Improvements") without first making, or causing to be made, an independent determination that the soil conditions of the Lot are suitable for such improvements. Neither Declarant nor Developer have made any representation or warranties, express or implied, regarding the suitability of the soil upon any particular Lot for Subgrade Improvements, and therefore as between Declarant and Developer and the Owner, or any successor-in-interest thereto, the Owner assumes all liability and risk and shall hold harmless and indemnify Declarant and Developer for all liability and risk arising from, directly or indirectly, the construction of Subgrade Improvements upon the Lot.

Section 10.27 Right of Inspection. During reasonable hours, any member of the Board, or any authorized representative of the Board shall have the right upon reasonable notice to the Owner of a Dwelling Unit to enter upon and inspect the Lot (except the interior of Dwelling Unit), for the purpose of ascertaining whether or not the provisions of this Declaration have been or are being complied with, and such persons shall not be deemed guilty of trespass by reason of such entry.

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ARTICLE 11

DISPUTE RESOLUTION

Section 11.1 Consensus for Association Action.

11.1.1 Except as provided in this Article, the Association may not commence a legal proceeding or an action without the approval of at least two-thirds of the votes of the Members eligible to vote. This Article shall not apply, however, to (i) actions brought by the Association for affirmative or injunctive relief to enforce governing documents as defined below (including, without limitation, the foreclosure of liens); (ii) the imposition and collection of fines, assessments or charges; (iii) proceedings involving challenges to ad valorem taxation; or (iv) counterclaims brought by the Association in proceedings instituted against it.

11.1.2 Prior to the Association or any Member commencing any proceeding to which Declarant or Developer is a party, including but not limited to an alleged defect of any improvement, Declarant or Developer shall have the right to be heard by the Members, or the particular Member, and to access, inspect, correct the condition of, or redesign any portion of any improvement as to which a defect is alleged or otherwise correct the alleged dispute.

Section 11.2 Alternative Method for Resolving Disputes. Declarant and Developer and their officers, directors, employees and agents; the Association, its officers, directors and committee members; all Persons subject to this Declaration, including all Members of the Association; any Developer and its officers, directors employees and agents; and any Person not otherwise subject to this Declaration but who agrees to submit to this Article (each such entity being referred to as a "Bound Party") agree to encourage the amicable resolution of disputes, without the emotional and financial costs of litigation. Accordingly, each Bound Party covenants and agrees to submit those claims, grievances or disputes described in Section 11.3.1 (singularly, "Claim," and collectively, "Claims") to the procedures set forth herein.

Section 11.3 Claims.

11.3.1 Unless specifically exempted herein, all claims between any of the Bound Parties regardless of how the same might have arisen or on what it might be based including but not limited to, claims (a) arising out of or relating to the interpretation, application or enforcement of the Governing Documents (meaning this Declaration, the Articles or Bylaws of the Association, or any rules or regulations adopted thereunder, including design guidelines) or the rights, obligations and duties of any Bound Party under the Governing Documents, (b) relating to the design or construction of improvements; or (c) based upon any statements, representations, promises, warranties, or other communications made by or on behalf of any Bound Party, shall be subject to the provisions of Section 11.4

Notwithstanding the above, unless all parties thereto otherwise agree, the following shall not be Claims and shall not be subject to the provisions of Section 11.4:

11.3.1.1 any suit by the Association against any Bound Party to enforce the provisions hereof pertaining to assessments;

Section 11.5 Amendment of Article. Without the express prior written consent of Declarant, this Article may not be amended for a period of twenty years from the effective date of this Declaration.

Section 11.6 Reference to Declarant. Reference in this Article 11 to Declarant shall include Declarant's beneficiary and affiliates and agents.

ARTICLE 12

GENERAL PROVISIONS

Section 12.1 Term. This Declaration, as from time to time amended as provided below, shall remain in full force and effect, subject to repeal at any time by the written consent of the Owners of at least seventy-five (75%) percent of the Lots.

Section 12.2 Amendments; Termination.

12.2.1 Procedure. This Declaration may be amended by an instrument in writing, signed and acknowledged by the President and Secretary of the Association, certifying that such Amendment has been approved by the vote or written consent of the then Owners, including Declarant and Developer, of not less than seventy-five percent (75%) of the Lots within the Properties. Such amendment shall be effective upon its recordation with the Pima County Recorder, Pima County, Arizona.

12.2.2 Amendments Necessary for FHA Compliance, Etc. Notwithstanding anything to the contrary contained in this Declaration, if Declarant shall determine that any amendments to this Declaration or any amendments to the Articles of Incorporation or Bylaws of the Association shall be necessary in order for existing or future mortgages, deeds of trust, or other security instruments to be acceptable to the Veterans Administration, the Federal Housing Administration of the U.S. Department of Housing and Urban Development, the Federal National Mortgage Association or the Federal Home Loan Mortgage Corporation, then Declarant shall have and hereby specifically reserves the right and power to unilaterally make and execute any such amendments without obtaining the approval of any other Owners, Members, or First Mortgagees.

12.2.3 Declarant Approval. So long as Declarant owns a single Lot, any amendment or termination proposed shall first be submitted to Declarant for approval and, should Declarant refuse to approve such amendment, such amendment or termination shall be null and void, provided that this right of veto shall not endure beyond four (4) years after recording of this Declaration.

12.2.4 Non-Uniform Amendments. No amendment shall be invalid solely because it affects property within the Properties in a non-uniform manner.

Section 12.3 Annexation. Additional property may be annexed hereunder by the Owner thereof with the approval of (a) the Owners of two-thirds (2/3) of the Lots within the Properties, or (b) Declarant so long as it owns any Lot within the Properties; and (c) VA or FHA if required by Section 12.9. In addition, Declarant expressly reserves and shall have the right at

any time, and without the consent or approval of any person or entity, to annex into the Properties, and under the purview hereof, any land adjacent to the Properties.

Any such annexation shall be accomplished by recordation of a Declaration of Annexation in the Office of the County Recorder of Pima County, Arizona, which document shall provide for annexation to this Declaration of the property described in such document and shall be executed by all appropriate parties as set forth above.

Upon recording of any Declaration of Annexation, the annexed property shall be part of the Properties hereunder and the lots described therein shall be deemed Lots hereunder. The Declarant expressly reserves, for itself and the Developer, the right in the course of development of the annexed property to designate common areas, which the Association shall accept and hold as Common Area hereunder.

All provisions of this Declaration, including but not limited to those provisions regarding special Declarant and Developer rights, shall apply to annexed property immediately upon recording the annexation document, unless provided to the contrary in the Declaration of Annexation.

Section 12.4 Enforcement and Non-Waiver.

12.4.1 Enforcement. Except as otherwise provided herein, the Association or any Owner shall have the right to enforce by any proceeding at law or in equity, all restrictions, conditions, covenants, reservations, liens or charges or Rules now or hereafter imposed by provision of this Declaration.

12.4.2 Violation of Rules. If any Owner, his family or any licensee, tenant or lessee or invitee violates the restrictions of this Declaration or the Association's Rules, the Board may, in addition to any other enforcement provisions contained herein, suspend the right of such person to use the Common Area, under such conditions as the Board may specify, for a period not to exceed sixty (60) days for each violation. Each day an infraction continues is a separate violation. Before invoking any such suspension, the Board shall give such person notice of hearing before the Board.

Further, the Association shall have the authority to bring an action at law or in equity to enforce any of the provisions and Restrictions of this Declaration. Expenses of enforcement, in the event the Association is a substantially prevailing party, shall be paid to the Association by the Owner against whom enforcement action was commenced. The Association shall have the right to enter upon the Lot of any Owner for the purpose of repairing, modifying, or demolishing improvements which are not in conformance with the provisions of this Declaration and all expenses incurred in connection therewith shall be paid to the Association by the Owner in violation.

12.4.3 Violation of Law. Each and every provision of this Declaration and any amendment hereto shall be subject to all applicable governmental ordinances and subdivision regulations and any future amendments thereto. Any violation of any state, municipal or local law, ordinance or regulation pertaining to the ownership, occupation or use of

any of the Properties is hereby declared to be a violation of this Declaration and subject to any or all of the enforcement procedures set forth herein or in the Bylaws.

12.4.4 Remedies Cumulative. Each remedy provided herein is cumulative and not exclusive.

12.4.5 Non-Waiver. Failure by the Declarant, the Developer, the Board, the Association, the Architectural Control Committee, or by any Owner to enforce any of the provisions hereof at any time shall not constitute a waiver of the right thereafter to enforce any of such provisions.

12.4.6 Severability. Invalidation of any one of these covenants or restrictions by judgment, court order, or waiver, shall not affect the enforceability of any other provisions which shall remain in full force and effect.

Section 12.5 Construction.

12.5.1 Interpretation. The provisions of this Declaration shall be liberally construed to effectuate the purpose of creating a uniform plan for the development and operation of the Properties. Except for judicial construction, Declarant shall have the exclusive right to construe and interpret this Declaration and the provisions and Restrictions herein. In the absence of any adjudication to the contrary by a court of competent jurisdiction, Declarant's construction or interpretation of the provisions and Restrictions in this Declaration shall be final, conclusive and binding upon all persons and the Properties.

12.5.2 Restrictions Severable. Notwithstanding any other provision hereof, each of the provisions of this Declaration shall be deemed independent and severable, and the invalidity or partial invalidity of any provision or portion thereof shall not affect the validity or enforceability of any other provision.

12.5.3 References to Restrictions. Any and all instruments of conveyance or lease of any interest in any Lot or the Properties may contain reference to this Declaration and shall be subject to the Restrictions in this Declaration the same as if they were therein set forth in full; provided that the Restrictions herein shall be binding upon all persons affected by the same, whether express reference is made to this Declaration or not.

12.5.4 Singular Includes Plural; Gender. Unless the context requires a contrary construction, the singular shall include the plural and the plural the singular; and the masculine, feminine or neuter shall each include the masculine, feminine and neuter.

12.5.5 Captions. All captions and titles used in this Declaration are intended solely for convenience or reference purposes only and in no way define, limit or describe the true intent and meaning of the provisions hereof.

Section 12.6 Exemption of Declarant and Developer. Nothing in this Declaration shall limit the right of Developer or Declarant to complete excavation, grading and construction of improvements to any portion of the Properties, including Common Area, or to construct such additional improvements as Developer deems advisable in the course of

development of the Properties so long as any Lot therein remains unsold. Further, nothing in this Declaration shall limit the right of a Developer or Declarant to use any structure as a sales model, sales office or construction office or parking area and to place any sign, banner, flag or similar method of advertisement to promote sales within the Properties or subdivisions of Declarant or Developer. Without limitation, the Declarant and Developer may maintain sales, administrative and construction offices on any Lot within the Properties and may maintain parking areas and parking lots on any Lot or Common Area within the Properties. The rights of Declarant or Developer hereunder or elsewhere in this Declaration may be assigned by Declarant or Developer.

Section 12.7 Delivery of Notices and Documents. Any written notice or other documents relating to or required by this Declaration may be delivered either personally or by mail. If by mail, it shall be deemed to have been delivered seventy-two (72) hours after a copy of same has been deposited in the United States mail, postage prepaid, addressed as follows (or to such other address as the Association or Declarant shall designate in writing):

If to the Association: c/o U.S. Home Corporation
5151 East Broadway, Suite 1100
Tucson, Arizona 85711-3606

If to the Declarant: U.S. Home Corporation
5151 East Broadway, Suite 1100
Tucson, Arizona 85711-3706

If to an Owner, to the address of the Owner within the subdivision. The address of any of the above parties may be changed at any time by the party concerned by delivering written notice of change of address to the Association. Each Owner of a Lot shall file the correct mailing address of such Owner with the Association, and shall promptly notify the Association in writing of any subsequent change of address.

Section 12.8 Binding Effect. By acceptance of a deed or acquiring any ownership interest in any of the Properties included within this Declaration, each person or entity, for himself, or his heirs, personal representatives, successors, transferees and assigns, binds himself, his heirs, personal representatives, successors, transferees and assigns to all of the provisions, Restrictions, covenants, conditions, rules and regulations now or hereafter imposed by this Declaration and any amendments thereof. In addition, each such person by so doing thereby acknowledges that this Declaration sets forth a general scheme for the Properties and hereby evidences his intent that all the Restrictions, conditions, covenants, rules, and regulations contained herein shall run with the land and be binding on all subsequent and future owners, grantees, purchasers, assignees, and transferees thereof. Furthermore, each such person fully understands and acknowledges that this Declaration shall be mutually beneficial, prohibitive and enforceable by the various subsequent and future owners.

Section 12.9 FHA/VA Approval. If this Declaration has been initially approved by FHA or VA in connection with any loan programs made available by FHA or VA and any loans have been which are insured or guaranteed by FHA or VA, then as long as there is a Class B membership, the following actions will require the prior approval of the Federal

Housing Administration or the Veterans Administration (unless the need for such approval has been waived by FHA or VA): annexation of additional properties (unless specifically provided hereunder), mergers and consolidations, mortgaging of Common Area, public dedication of Common Area, and amendment of this Declaration. If this Declaration has not been so initially approved and no loans have been made which are insured or guaranteed by FHA or VA, a statement by Declarant to that effect shall be sufficient to eliminate the need for FHA/VA approval.

Section 12.10 Resale of Lot by Owner. Each Owner shall notify the Association, not less than 10 business days prior to the closing of any sale of such Owner's Lot, of the name and address of the purchaser thereof, as well as the scheduled closing date for the sale. The Association shall, upon receipt of such information, mail or otherwise deliver to such purchaser such information as is required by the Bylaws or by applicable law.

IN WITNESS WHEREOF, Declarant has executed this Declaration the day, month and year first above written.

TITLE SECURITY AGENCY OF ARIZONA, an Arizona corporation, as Trustee under Trust No. 759 and not otherwise

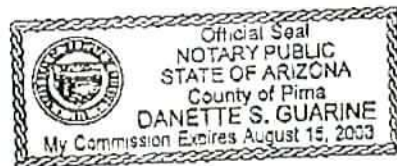
By: Leslie D. Hogg
Leslie Hogg, Trust Officer

STATE OF ARIZONA)
) ss.
COUNTY OF PIMA)

Acknowledged before me this 31st day of May, 2002, by Leslie Hogg, Trust Officer of Title Security Agency of Arizona, an Arizona corporation, as Trustee under Trust No. 759 and not otherwise.

Danette S. Guarine
Notary Public

My Commission Expires:
Aug. 15, 2003



SUBDIVISION
Petition for
Conditional Sales Exemption

06/18/03

Date

DESERT WILLOW ESTATES, LOTS 111-232, 338, 339

Development Name

Dear Commissioner:

This letter constitutes a Petition for Exemption pursuant to A.R.S. § 32-2181.01 from certain provisions of Article 4, Chapter 20, Title 32, Arizona Revised Statute.

We are currently processing or in the process of preparing our application for Public Report, as required by A.R.S. § 32-2181, et seq. Petitioner hereby requests exemption from A.R.S. § 32-2181 (A), § 32-2183 (A) and (F) until such time as the Public Report issues, under the following conditions:

1. All conditional sales buyers will be provided a copy of the completed subdivision questionnaire prior to signing the conditional sales contract.
2. Sales will be made on Purchase Contracts that comply with the Subdivision law and rules of the Department of Real Estate.
3. The conditional sales addendum to purchase contract authorized by the Department will be used in all conditional sales.
4. All money paid by the buyer will be impounded and held in a neutral escrow depository. We plan to use Fidelity National Title for the escrow depository.
5. Sales will not close until the Public Report has been issued and delivered to the buyer(s).
6. Upon receiving the Public Report, buyer will have the right to either cancel or affirm the decision to purchase within (no less than 5) 5 days after which time the contract becomes null and void and all money paid by the buyer shall be returned to buyer within 5 business days.
7. Buyers cancellation or affirmation of purchase shall be in writing on the authorized conditional sales addendum.
8. At any time prior to the issuance of the Public Report, the buyer shall have the right to cancel the contract.
9. Should buyer elect to cancel the contract, all money paid by the buyer shall be returned to buyer within 5 business days.
10. Until such time as the Public Report is issued and the buyer's right to cancel has lapsed, seller shall have no cancellation rights.
11. All advertising and promotional material utilized during the conditional sales period will disclose that sales are conditioned upon buyers receipt and acceptance of the Arizona Department of Real Estate Public Report.

If the requested Special Order of Exemption is granted, Petitioner understands and agrees that (1) failure to comply with any of the terms, conditions or representations made in connection with this petition or failure to comply with any term or condition of the order shall render the order void and a Summary Order of Suspension may be issued; (2) that the conditional sales exemption expires upon issuance of the public report; (3) that there is no guarantee when or if a public report will be issued; and (4) that representations made to conditional sale purchasers related to escrow closing or occupancy dates are made at Petitioner's sole liability and risk.

Accordingly, Petitioner respectfully submits that compliance with A.R.S. § 32-2181 (A) and 32-2183 (A) and (F) is not essential to the public interest or for the protection of Buyers for the reason(s) stated above. **Enclosed with this petition are:**

1. Our check in the amount of \$100.00 for the filing fee.
2. Completed **and** executed subdivision questionnaire.
3. Specimen purchase contract which meets Department requirements for issuance of public reports and **with** Conditional Sales Addendum.
4. Current title report showing acceptable condition of title.
5. A copy of the final or recorded Plat.

It is understood that this petition may need to be supplemented with additional information or documentation including assured or adequate water supply documentation from the Arizona Department of Water Resources.

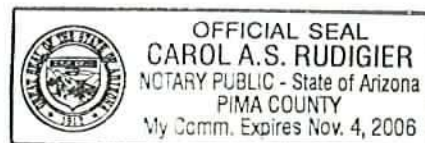
STATE OF ARIZONA)
COUNTY OF PIMA)

JAMES AND VERNA BLOODWORTH, being duly sworn deposes and says:
That the statements made herein and documents submitted hereto are full, true and completed as required by the Arizona Department of Real Estate and that the undersigned as Petitioner(s) is (are) the owner(s) of the property described herein, or that the undersigned is authorized to execute this Petition on behalf of the owner.

U. S. HOME CORPORATION
also doing business as LENNAR

Owner(s)/Petitioner(s)
By [Signature] _____
Signature
Steven L. Craddock - President
Printed Name and Title

Subscribed and sworn to before me this
17 day of June, 2003.
[Signature]
Notary Public
My Commission Expires: 11/4/2006



ADDENDUM TO PURCHASE CONTRACT

The following shall constitute an Addendum to, and become a part of, that Purchase Contract dated _____, 20____, by and between _____ as Seller and _____ as Buyer pertaining to Lot _____, _____ (Development Name)

Notwithstanding anything contained in the Purchase Contract, said contract shall be subject to the following conditions:

1. Buyers will be given a copy of the completed subdivision questionnaire filed by Seller with the Arizona Department of Real Estate (ADRE) prior to signing this conditional sales contract.
2. All money paid by the Buyer will be deposited and held in a neutral escrow.
3. Sales will not close until the ADRE Public Report has been issued and delivered to the Buyer(s).
4. Upon receiving the Public Report, Buyer will have the right to either cancel or affirm the decision to purchase within (no less than 5) 5 days after which time the contract becomes null and void and all money paid by the Buyer shall be returned to the Buyer within 5 business days.
5. No escrow closing or occupancy date will be agreed to until after Buyers receipt of the Public Report and their affirmation of the purchase contract.
6. At any time prior to the issuance of the Public Report, the Buyer shall have the right to cancel the contract.
7. Should Buyer elect to cancel the contract, all money paid by the Buyer shall be returned to Buyer within 5 business days.
8. Until such time as the Arizona Department of Real Estate Public Report is issued and the Buyer's right to cancel has lapsed, Seller shall have no cancellation rights.
9. Buyers cancellation or affirmation of purchase shall be on page 2 of this addendum.

Dated this _____ day of _____, 20 _____.

SELLER

BUYER(S)

By _____

Its _____

ADDENDUM TO PURCHASE CONTRACT (CONT')

Buyers Cancellation or Affirmation of Purchase

Buyer(s), having received a copy of the Public Report issued by the State of Arizona Department of Real Estate pertaining to _____, do(es), by signing below, hereby elect to cancel or affirm the Purchase Contract.

I (we) hereby elect to **CANCEL**

I (we) hereby elect to **AFFIRM** and understand that our earnest and down payment money will be held in or transferred from the neutral escrow depository as agreed to in the purchase contract.

Dated this _____ day of _____, 20____.

CONTRACT DISCLOSURES

- A. Any agreement or contract for the sale or lease of a property interest in a development that requires a public report shall contain the following language in large or bold print above the signature portion of the document:

THE PURCHASER SHALL BE GIVEN A COPY OF THE PUBLIC REPORT BEFORE SIGNING THIS DOCUMENT.

- B. Any agreement or contract for the sale or lease of a property interest in a development shall conspicuously disclose the nature of the document at or near the top of the document.
- C. The contract shall indicate where the earnest money or down payment, if any, will be deposited and shall include the name of the title company, the name of the broker's trust account, or other depository.
- D. Any agreement or contract for the sale or lease of a property interest in a development where a down payment, earnest money deposit, or other advanced money, if any, is paid directly to the seller and not placed in a neutral escrow depository, shall conspicuously disclose this fact within the document, and the purchaser shall sign or initial this provision indicating approval in the space adjacent to or directly below the disclosure in the purchase contract or agreement of sale. The following disclosure shall be written in large or bold print and shall be included in the public report, purchase contract, and agreement of sale.

PROSPECTIVE PURCHASERS ARE ADVISED THAT EARNEST MONEY DEPOSITS, DOWN PAYMENTS, AND OTHER ADVANCED MONEY WILL NOT BE PLACED IN A NEUTRAL ESCROW. THIS MONEY WILL BE PAID DIRECTLY TO THE SELLER AND MAY BE USED BY THE SELLER. THIS MEANS THE PURCHASER ASSUMES A RISK OF LOSING THE MONEY IF THE SELLER IS UNABLE OR UNWILLING TO PERFORM UNDER THE TERMS OF THE PURCHASE CONTRACT.

- E. Any agreement or contract for the purchase or lease of an unimproved subdivided lot, or any unsubdivided land, shall contain the following language in large or bold print above the signature portion of the document:

THE PURCHASER OR LESSEE HAS THE LEGAL RIGHT TO RESCIND (CANCEL) THIS AGREEMENT WITHOUT CAUSE OR REASON OF ANY KIND, AND TO THE RETURN OF ANY MONEY OR OTHER CONSIDERATION BY SENDING OR DELIVERING A WRITTEN NOTICE OF RESCISSION TO THE SELLER OR LESSOR BY MIDNIGHT OF THE 7TH CALENDAR DAY FOLLOWING THE DAY THE PURCHASER OR LESSEE EXECUTED THE AGREEMENT. IF

THE PURCHASER OR LESSEE DOES NOT INSPECT THE LOT OR PARCEL BEFORE THE EXECUTION OF THE AGREEMENT, THE PURCHASER OR LESSEE SHALL HAVE SIX MONTHS TO INSPECT THE LOT OR PARCEL, AND AT THE TIME OF INSPECTION SHALL HAVE THE RIGHT TO UNILATERALLY RESCIND THE AGREEMENT.

- F. In areas outside of groundwater active management areas established pursuant to Title 45, Chapter 2, Article 2, if the Director of Water Resources, pursuant to § 45-108, reports an inadequate on-site supply of water to meet the needs projected by the developer or if no water is available, the State Real Estate Commissioner shall require that all promotional material and contracts for the sale of lots in subdivisions approved by the Commissioner adequately display the Director of Water Resources' report or the developer's brief summary of the report as approved by the Commissioner on the proposed water supply for the subdivision.
- G. If the assurance for the subdivision improvements is a certificate of occupancy program, the contract or an addendum to the contract shall contain the following language:

ESCROW SHALL NOT CLOSE UNTIL THE CITY OR COUNTY OF _____ ISSUES ITS OCCUPANCY CLEARANCE AND ALL SUBDIVISION IMPROVEMENTS ARE COMPLETE.

- H. For applications seeking HUD Certification, see the HUD Supplement to this application for HUD's rescission language and additional contract disclosures required by HUD.