

**AMENDED AND RESTATED
DECLARATION OF COVENANTS, CONDITIONS, AND RESTRICTIONS
FOR
CATALINA POINT**

**F. ANN RODRIGUEZ, RECORDER
RECEIPT OF RECORDING**

F. ANN RODRIGUEZ, RECORDER
RECORDED BY: RJL
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This Amended and Restated Declaration of Covenants, Conditions, and Restrictions for Catalina Point (the "Declaration") is made this 21st day of October, 2005, by Catalina Point Homeowners' Association, an Arizona nonprofit corporation.

Grantor's predecessor in interest has recorded previously the Declaration of Covenants, Conditions and Restrictions for Catalina Point in the office of the Pima County Recorder, Arizona, in Docket 8156 beginning at Page 1948 (the "Declaration").

The Grantor wishes to entirely amend and restate the Declaration as more fully set forth herein.

NOW, THEREFORE, the Declaration is hereby amended and restated as follows:

ARTICLE 1

DEFINITIONS

1. 1 "**Annual Assessments**" means the assessments levied against each Lot, and the Owner thereof, pursuant to Section 6. 2 of this Declaration.

1. 2 "**Architectural Committee**" means the committee of the Association to be created pursuant to Section 5.10 of this Declaration.

1. 3 "**Architectural Committee Rules**" means the rules and guidelines adopted by the Architectural Committee pursuant to Section 5.10 of this Declaration, as they may from time to time be amended or supplemented.

1. 4 "**Areas of Association of Responsibility**" means (i) all Common Areas; (ii) all land, and the Improvement situated thereon, situated within the boundaries of a Lot which the Association acknowledges in a recorded document is land which is to be improved, maintained, repaired and replaced by the Association, and (iii) all real property, and the Improvements situated thereon, within the Project located within dedicated rights-of-way with respect to which the State of Arizona or any county or municipality has not accepted responsibility for the maintenance thereof, but only until such time as the State of Arizona or any county or municipality has accepted all responsibility for the maintenance, repair and replacement of such areas.

1. 5 "**Articles**" means the Articles of Incorporation of the Association, as they may from time to time be amended.

1. 6 "**Assessment**" means an Annual Assessment or Special Assessment.

1. 7 "**Assessment Lien**" means the lien created and imposed by Article 6 of this Declaration.

1. 8 "**Assessment Period**" means the period set forth in Section 6. 5 of this Declaration.

1.9 "**Association**" means Catalina Point Homeowners' Association, an Arizona nonprofit corporation, and its successors and assigns.

1.10 "**Association Rules**" means the rules adopted by the Board pursuant to Section 5.3 of this Declaration, as they may from time to time be amended.

1.11 "**Block**" means the Block A and Block B as depicted on the Plat.

1.12 "**Board**" means the Board of Directors of the Association.

1.13 "**Bylaws**" means the Bylaws of the Association, as they may from time to time be amended.

1.14 "**Common Area**" means the real property designated as Common Area A, on the Plat and all land, together with all Improvements situated thereon, which the Association at any time owns in fee or in which the Association has a leasehold interest for as long as the Association is the owner of the fee or leasehold interest.

1.15 "**Common Expenses**" means expenditures made by or financial liabilities of the Association, together with any allocations to reserves.

1.16 Deleted from Original

1.17 "**Declaration**" means this Declaration of Covenants, Conditions, and Restrictions, as it may be amended from time to time.

1.18 "**Eligible Insurer or Guarantor**" means an insurer or governmental guarantor of a First Mortgage who has requested notice of certain matters from the Association in accordance with Section 9. 1 of this Declaration.

1.19 "**Eligible Mortgage Holder**" means a First Mortgagee who has requested notice of certain matters from the Association in accordance with Section 9. 1 of this Declaration.

1.20 "**Improvement**" means any building, fence, wall, or other structure or any swimming pool, road, driveway, parking area, or any trees, plants, shrubs grass, or other landscaping improvements of every type and kind.

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

1.22 "**Lot**" means those portions of the Project (other than a Block) intended for independent ownership and use and designated as lots 1-32 on the Plat and, where the context indicates or requires, shall include any Residential Unit, Building, structure or other Improvements situated on the Lot.

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

1.24 **"Member"** means any person who is a Member of the Association.

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

1.26 **"Person"** means a natural person, corporation, business trust, estate, trust, partnership, association, joint venture, governmental subdivision or agency, or other legal or commercial entity.

1.27 **"Plat"** means the plat of Catalina Point recorded in Book 41 of Maps, page 78, records of Pima County, Arizona, and all amendments, supplements and corrections thereto.

1.28 **"Property" or "Project"** means the real property described on Exhibit A attached to this Declaration together with all Improvements located thereon.

1.29 **"Project Documents"** means this Declaration, the Articles, the Bylaws, the Association Rules and the Architectural Committee Rules.

1.30 **"Purchaser"** means any Person, who by means of a voluntary transfer becomes the Owner of a Lot.

1.31 **"Recording"** means placing an instrument of public record in the office of the County Recorder of Pima County, Arizona, and **"Recorded"** means having been so placed of public record.

1.32 **"Resident"** means each individual occupying or residing in any Residential Unit.

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

1.34 **"Single Family"** means a group of one or more persons each related to the other by blood marriage or legal adoption, or a group of not more than three (3) persons not all so related, who maintain a common household in a Residential Unit.

1.35 **"Special Assessment"** means any assessment levied and assessed pursuant to Section 6.4 of this Declaration.

1.36 **"Visible From Neighboring Property"** means, with respect to any given object, that such object is or would be visible to a person five feet tall, standing at ground level on any part of such neighboring property; provided, however that an object shall not be considered as being Visible From Neighboring Property if the object is visible to a person five feet (5') tall, standing at ground level on any part of neighboring property only by such person being able to see the object through a wrought iron fence and such object would not be visible to such person if the wrought iron were a solid fence.

ARTICLE 2

PLAN OF DEVELOPMENT

2.1 **Property Initially Subject to the Declaration.** This Declaration is being recorded to establish a general plan for the development and use of the Project in order to protect and enhance the value and desirability of the Project. The Home Owners' Association (HOA) declares that all of the lots within the Project shall be held, sold and conveyed subject to this Declaration. By acceptance of a deed or by acquiring any interest in any of the property subject to this Declaration, each person or entity, for himself or itself, his heirs, personal representatives, successors, transferees and assigns, binds himself, his heirs, personal representatives, successors, transferees and assigns, to all of the provisions, restrictions, covenants, conditions, rules, and regulations, now or hereafter imposed by this Declaration and any amendments thereof. In addition, each such person by so doing thereby acknowledges that this Declaration sets forth a general scheme for the development and use of lots within the Property and hereby evidences his interest that all the restrictions, conditions, covenants, rules and regulations contained in subsequent and future Owners, grantees, purchasers, assignees, lessees and transferees thereof. Furthermore, each such person fully understands and acknowledges that this Declaration shall be mutually beneficial, prohibitive, and enforceable by the Association and all Owners. The HOA, its successors, assigns and grantees, covenants and agrees that the Lots and the membership in the Association and the other rights created by this Declaration shall not be separated or separately conveyed, and each shall be deemed to be conveyed or encumbered with its respective Lot even though the description in the instrument of conveyance or encumbrance may refer only to the Lot.

ARTICLE 3

LAND USE CLASSIFICATIONS, PERMITTED USES AND RESTRICTIONS

3.1 **Architectural Control.**

3. 1. 1 All Improvements constructed on Lots shall be of new construction, and no building or other structures shall be removed from other locations on to any Lot.

3. 1. 2 No excavation or grading work shall be performed on any Lot without the prior written approval of the Architectural Committee.

3. 1. 3 No Improvement shall be constructed or installed on any Lot without the prior written approval of the Architectural Committee.

3. 1. 4 No addition, alteration, repair, change, or other work which in any way alters the exterior appearance, including but without limitation, the exterior color scheme, of any Lot, or the Improvements located thereon, from their appearance on the date this Declaration is Recorded shall be made or done without the prior written approval of the Architectural Committee.

3. 1. 5 Any owner desiring approval of the Architectural committee for the construction, installation addition, alteration, repair, change, or replacement of any Improvement which would alter the exterior appearance of his, her, or its Lot, or the Improvements located thereon, shall submit to the Architectural Committee a written request for approval specifying in detail the nature and extent of the addition, alteration, repair, change, or other work which the Owner desires to perform. Any Owner requesting the approval of the Architectural Committee shall also submit to the Architectural committee any additional information, plans and specifications that the Architectural Committee may request. In the event that the Architectural Committee fail to approve or disapprove an application for approval within thirty (30) days after the application, together with all supporting information, plans and specifications requested by the Architectural committee have been submitted to it, approval will not be required and this Section will be deemed to have been complied with by the owner who had requested approval of such plans.

3. 1. 6 The approval by the Architectural Committee of any construction, installation, addition, alteration, repair, change or other work pursuant to this Section shall not be deemed a waiver of the Architectural Committee's right to withhold approval of any similar construction, installation, addition, alteration, repair, change or other work subsequently submitted for approval.

3. 1. 7 Upon receipt of approval from the Architectural Committee for any construction, installation, addition, alteration, repair, change, or other work, the Owner who had requested such approval shall proceed to perform, construct, or make the addition, alteration, repair, change, or other work approved by the Architectural Committee as soon as practicable and shall diligently pursue such work so that it is completed as soon as reasonably practicable and within such time as may be prescribed by the Architectural Committee.

3. 1. 8 Any change, deletion, or addition to the plans and specifications approved by the Architectural Committee must be approved in writing by the Architectural Committee.

3. 1. 9 The Architectural Committee shall have the right to charge a fee for reviewing requests for approval of any construction, installation, alteration, addition, repair, change, or other work pursuant to this Section, which fee shall be payable at the time the application for approval is submitted to the Architectural Committee.

3. 1.10 Deleted from Original

3. 1. 11 The approval required of the Architectural committee pursuant to this Section shall be in addition to, and not in lieu of, any approvals or permits which may be required under any federal, state, or local law, statute, ordinance, rule, or regulation.

3. 2 Temporary Occupancy and Temporary Buildings. No trailer, basement of any incomplete building, tent, shack, garage, or barn, and no temporary building or structures of any kind, shall be used at any time for a residence, either temporary or permanent. Temporary building, trailers or other structures used during the construction of Improvements approved by the Architectural Committee shall be removed immediately after the completion of construction, and in no event shall any such building, trailer, or other structures be maintained or kept on any property for a period in excess of twelve months without the prior written approval of the Architectural Committee.

3. 3 Maintenance of Lawns and Plantings. Each Owner of a Lot shall keep all shrubs, trees, hedges, grass and plantings of every kind located on (i) his Lot, (ii) any public right-of-way or easement area which abuts or adjoins the Owner's Lot and which is located between the boundary line of his Lot and the paved area of any street, sidewalk, bike-path or similar area, and (iii) any no-street public right-of-way or easement area adjacent to his Lot, neatly trimmed, and shall keep all such areas properly cultivated and free of trash, weeds and unsightly material; provided, however, that such Owner shall not be responsible for maintenance of any area over which (i) the Association assumes the responsibility in writing; (ii) the Association has been given such responsibility by this Declaration; or (iii) Pima County or any municipality having jurisdiction over such property assumes responsibility, for so long as the Association, Pima County or such municipality assumes or has responsibility.

3. 4 Nuisances; Construction Activities. No rubbish or debris of any kind shall be placed or permitted to accumulate upon or adjacent to any Lot and no odors or loud noises shall be permitted to arise or emit therefrom, so as to render any such property or any portion thereof, or activity thereon, unsanitary, unsightly, offensive or detrimental to any other property in the vicinity thereof, or to the occupants of such other property. No other nuisance shall be permitted to exist or operate upon any Lot so as to be offensive or detrimental to any other property in the vicinity thereof or to its occupants. Normal construction activities and parking in connection with the building of Improvements on a Lot shall not be considered a nuisance or otherwise prohibited by this Declaration, but Lots shall be kept in a neat and tidy condition during construction periods, trash and debris shall not be permitted to accumulate, and supplies of brick, block, lumber, and other building material will be piled only in such areas as maybe approved in writing by the Architectural Committee. In addition, any construction of Improvement may be kept only in areas approved in writing by the Architectural Committee, which may also require screening of the storage areas. The Architectural Committee in its sole discretion shall have the right to determine the existence of any such nuisance.

3.5 **Diseases and Insects.** No person shall permit any thing or condition to exist upon any Lot, which shall induce, breed, or harbor infectious plant diseases or noxious insects.

3.6 **Repair of Building.** No residential Unit, building or structure on any Lot shall be permitted to fall into disrepair and each such Residential Unit, building and structure shall at all times be kept in good condition and repair and adequately painted or otherwise finished. In the event any Residential Unit, building or structure is damaged or destroyed, then, subject to the approvals required by Section 3. 1 of the Declaration, such Residential Unit, building or structure shall be immediately repaired or rebuilt or shall be demolished.

3.7 **Antennas.** No antenna or other device for the transmission or reception of radio signals or any other form of electromagnetic radiation shall be erected, used, or maintained on any Lot without the prior written approval of the Architectural Committee.

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

3.9 **Trash Containers and Collection.** No garbage or trash shall be placed or kept on any Lot, except in covered containers of a type, size, and style, which are approved by the Architectural Committee. In no event shall such containers be maintained so as to be Visible From Neighboring Property except to make the same available for collection and then only for the shortest time reasonably necessary to effect such collection. All rubbish, trash, or garbage shall be removed from Lots and shall not be allowed to accumulate thereon. No outdoor incinerators shall be kept or maintained on any Lot.

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

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

3.12 **Overhead Encroachments.** No tree, shrub, or planting of any kind on any Lot shall be allowed to overhang or other wise to encroach upon any sidewalk, street, pedestrian way or other area from ground level to a height of eight (8) feet without the prior approval of the Architectural Committee.

3.13 **Health, Safety, and Welfare.** In the event additional uses, activities, and facilities are deemed by the Board to be a nuisance or to adversely affect the health, safety or

welfare of Owner, Lessees and Residents, the Board may make rules restricting or regulating their presence in the Project as part of the Association Rules or may direct the Architectural Committee to make rules governing their presence on Lots as part of the Architectural committee Rules.

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

3.15 Animals. No animal, bird, fowl, poultry, reptile, or livestock may be kept on any Lot, except for no more than two dogs or cats, parakeets, or similar household birds may be kept on a Lot if they are kept, bred, or raised thereon solely as domestic pets and not for commercial purposes. All dogs, cats, or other pets permitted under this Section shall be confined to an Owner's Lot except that a dog or cat may be permitted to leave an Owner's Lot if such dog or cat is at all time kept on a leash not to exceed six feet (6') in length and is not permitted to enter upon any other Lot. No animal, bird, fowl, poultry, or livestock shall be maintained so as to be Visible From Neighboring Property. Upon the written request of any Owner, Lessee, or Resident, the Architectural Committee shall conclusively determine, in its sole and absolute discretion, whether, for the purposes of this Section, a particular animal, bird, fowl, poultry, or livestock is a nuisance or making an unreasonable amount of noise. Any decision rendered by the Architectural Committee shall be enforceable in the same manner as other restrictions set forth in this Declaration.

3.16 Machinery and Equipment. No machinery or equipment of any kind shall be placed, operated or maintained upon or adjacent to any Lot, except (i) such machinery or equipment as is usual and customary in connection with the use, maintenance or construction (during the period of construction) of a building, appurtenant structures, or other Improvements; (ii) that which the Association may require for the operation and maintenance of the Project.

3.17 Signs. No signs whatsoever (including, but not limited to, commercial,

political, "for sale," "for rent," and similar signs) which are Visible From Neighboring Property shall be erected or maintained on any Lot except:

3.17. 1 Signs required by legal proceedings.

3.17. 2 Residence identification signs provided the size, color, contents, and location of such signs have been approved in writing by the Architectural Committee.

3.17. 3 One (1) "For Sale" sign provided the size, color, design, message content, location and type has been approved in writing by the Architectural Committee.

3.18 Restriction on Further Subdivision, Property Restrictions, and Rezoning. No Lot shall be further subdivided or separated into smaller lots or parcels by any Owner and no portion less than all of any such Lot shall be conveyed or transferred by any Owner without the prior written approval of the Architectural Committee. Any Owner, Lessee, or other Person against any Lot shall record no further covenants, conditions, restrictions, or easements without the provisions thereof having been first approved in writing by the Architectural Committee. No application for rezoning, variances or use unless the Architectural Committee and the proposed use have approved the application otherwise complies with this Declaration.

3.19 Trucks, Trailers, Campers, and Boats. No truck, mobile home, travel trailer, tent trailer, trailer, camper shell, detached camper, recreational vehicle, boat, boat trailer, or other similar equipment or vehicle may be parked, maintained, constructed, reconstructed or repaired on any Lot or Common Area or on any street so as to be Visible From neighboring Property without approval of the Architectural committee; except for (i) the temporary parking of any such vehicle or equipment on a Lot or on a street for a period of not more than forty-eight (48) hours within any seven (7) day period, (ii) temporary construction trailers or facilities maintained during and used exclusively in connection with, the construction of any Improvement approved by the Architectural Committee; (iii) boats and vehicles parked in garages on Lots so long as such vehicles are in good operating condition and appearance and are not under repair; or (iv) motor vehicles not exceeding seven(7) feet in height and eighteen (18) feet in length which are not used for commercial purposes and which do not display any commercial name, phone number or message of any kind.

3.20 Motor Vehicles.

3.20. 1 Except for emergency vehicle repairs, no automobile or other motor vehicle shall be constructed, reconstructed or repaired upon a Lot or other property in the Project, and no inoperable vehicle may be stored or parked on any such Lot so as to be Visible From Neighboring Property or to be visible from any Common Area or any street.

3.20. 2 No motorcycle, motorbike, all-terrain vehicle, off-road vehicle, or any similar vehicle shall be parked, maintained, or operated on any portion of the Project except in garages on Lots.

3.20. 3 No automobile or other motor vehicle shall be parked on any road or street in the Project, except for automobiles or motor vehicles of guests of Owners which

may be parked on a road or street in the Project for a period of not more than forty eight (48) hours within any seven day period.

3.20.4 No automobile or other vehicle may be parked in such a manner as to block any sidewalk.

3.21 Towing of Vehicles. The Board shall have the right to have any truck, mobile home, travel trailer, tent trailer, trailer, camper shell, detached camper, recreational vehicle, boat trailer or similar equipment or vehicle or any automobile, motorcycle, motorbike, or other motor vehicle which is parked, kept, maintained, constructed, reconstructed, or repaired in violation of the Project Documents towed away at the sole cost and expense of the owner of the vehicle or equipment. Any expense incurred by the Association in connection with the towing of any vehicle or equipment shall be paid to the Association upon demand by the owner of the vehicle or equipment. If the vehicle or equipment is owned by any Owner, any amounts payable to the Association shall be secured by the Assessment Lien, and the Association may enforce collection of suit amounts in the same manner provided for in their Declaration for the collection of Assessment.

3.22 Variances. The Architectural Committee may, at its option and in extenuating circumstances, grant variances from the restriction set forth in this Article 3 if the Architectural Committee determines in its discretion that (i) a restriction would create an unreasonable hardship or burden on an Owner, Lessee, or Resident or a change of circumstances since the recordation of this Declaration has rendered such restriction obsolete and (ii) that the activity permitted under the variance will not have any substantial adverse effect on the Owners, Lessees, Residents of the Project and is consistent with the high quality of life intended for residents of the Project.

3.23 Change of Use. Upon (i) adoption of a resolution by the Board stating that in the Board's opinion the then present use of a designated part of the Area of Association Responsibility is no longer in the best interests of the Owners and (ii) the approval of such resolution by Members casting more than fifty percent (50%) of the votes entitles to be cast by Members who are present in person or by proxy at a meeting duly called for such purpose and who are entitled to use such Area of Association Responsibility under the terms of this Declaration, the Board shall have the power and right to change the use thereof (and in connection therewith, construct, reconstruct, alter, or change the building, structure and improvements thereon in any manner deemed necessary by the Board to accommodate the new use), provided such new use shall be for the benefit of the Owners and shall be consistent with any zoning regulation restricting or limiting the use of the Area of Association Responsibility.

3.24 Drainage. No Residential Unit, structure, building, landscaping, fence, wall, or other Improvement shall be constructed, installed, placed, or maintained in any manner that would obstruct, interfere with or change the direction or flow of water in accordance with the drainage plans for the Project, or any part thereof, or for any Lot as shown on the drainage plans on file with the county or municipality in which the Project is located.

3.25 Garages and Driveways. Garages shall be used only for the parking of

vehicles and/or storage and shall not be used or converted for living or recreational activities without the prior written approval of that Architectural Committee.

3.26 Rooftop Air Conditioners Prohibited. No air conditioning units or appurtenant equipment may be mounted, installed or maintained on the roof of any Residential Unit or other building so as to be Visible From Neighboring Property.

ARTICLE 4

EASEMENTS

4.1 Owners' Easements of Enjoyment.

4.1.1 Subject to the rights and easements granted to the Members in Section 4.5 of this Declaration, every Member, and any person residing with such Member, shall have a right and easement of enjoyment in and to the Common Area which right shall be appurtenant to and shall pass with the title to every Lot, subject to the following provisions:

(i) The right of the Association to dedicate, convey, transfer or encumber the Common Areas as provided in Section 5.11 of this Declaration.

(ii) The right of the Association to regulate the use of the Common Areas through the Association Rules and to prohibit access to such portions of the Common Areas, such as landscaped areas, not intended for use by the Owner, Lessees, or Residents.

(iii) The right of the Association to suspend the right of an Owner and such Owner's family, tenants and guests to use the Common Areas if such Owner is more than fifteen (15) days delinquent in the payment of Assessments or other amounts due to the Association or if the Owner has violated any other provisions of the Project Documents and has failed to cure such violation within fifteen (15) days after the Association notifies the Owner of the violation.

4.1.2 If a Lot is leased or rented by the Owner thereof, the Lessee and the members of his family residing with such Lessee shall have the right to use the Common Areas during the term of the lease, and the Owner of such Lot shall have no right to use the Common Areas until the termination or expiration of such lease.

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

4.3 & 4.4 Deleted from Original

4. 5 **Easement in Favor of Association.** The Lots are hereby made subject to the following easements in favor of the Association and its directors, officers, agents, employees and independent contractors:

4. 5. 1 For inspection of the Lots in order to verify the performance by Owners of all items of maintenance and repair for which they are responsible;

4. 5. 2 For inspection, maintenance, repair and replacement of the Areas of Association Responsibility accessible only from such Lots;

4. 5. 3 For correction of emergency conditions in one or more Lots;

4. 5. 4 For the purpose of enabling the Association, the Board, the Architectural committee, or any other committee appointed by the Board to exercise and discharge their respective rights, powers, and duties under the Project documents;

4. 5. 5 For inspection of the Lots in order to verify that the provisions of the Project Documents are being complied with by the Owners, their guests, tenants, invitees and the other occupants of the Lot.

ARTICLE 5

THE ASSOCIATION; ORGANIZATION; MEMBERSHIP AND VOTING RIGHTS

5. 1 **Formation of Association.** The Association shall be a nonprofit Arizona corporation charged with the duties and invested with the powers prescribed by law and set forth in the Articles, Bylaws, and this Declaration. In the event of any conflict or inconsistency between this Declaration and the Articles, Bylaws, Association Rules or Architectural rules, this Declaration shall control.

5. 2 **Board of Directors and Officers.** The Board and such officers shall conduct the affairs of the Association as the Board may elect or appoint in accordance with the Articles and the Bylaws. Unless the Project Documents specifically require the vote or written consent of the Members, approvals or actions to be given or taken by the Association shall be valid if given or taken by the Association. In accordance with such procedures as may be set forth in the Bylaws, the Board shall have the right to impose reasonable fines against an Owner for a violation of any provision of the Project Documents by the Owner, his family, tenants, or guests.

5. 3 **The Association Rules.** The Board may, from time to time, and subject to the provision of this Declaration, adopt, amend, and repeal rules and regulations pertaining to (i) the management, operation, and use of the Areas of Association Responsibility including, but not limited to, any recreational facilities situated upon the Areas of Association Responsibility, (ii) minimum standards for any maintenance of Lots, or (iii) any other subject within the jurisdiction of the Association. In the event of any conflict or inconsistency between the provisions of this Declaration and the Association rules, the provisions of this Declaration shall prevail.

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

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

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

5.7 Deleted from Original

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

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

5.10 **Architectural Committee.** The Association shall have an Architectural Committee to perform the functions of the Architectural Committee set forth in this Declaration. The Architectural committee shall consist of such number of regular members and alternate members as may be provided for in the Bylaws. The Board shall appoint the members of the

Architectural Committee. The Architectural Committee shall promulgate architectural guidelines and standards to be used in rendering its decision. The decision of the Architectural Committee shall be final on all matters submitted to it pursuant to this Declaration. The Architectural committee may establish a reasonable processing fee to defer the costs of the Association in considering any requests for approvals submitted to the Architectural Committee, which fee shall be paid at the time the request for approval is submitted.

5.11 Conveyance of Encumbrance of Common Areas. The common Areas maybe mortgaged, transferred, dedicated, or encumbered only by the affirmative vote or written consent of the Owners representing at least two-third (2/3) of the votes entitled to be cast by members of the Association.

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

ARTICLE 6

COVENANT FOR ASSESSMENTS AND CREATION OF LIEN

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

6.2 Annual Assessments.

6.2.1 In order to provide for the operation and management of the Association and to provide funds for the Association to pay all Common Expenses and to perform its duties and obligations under the Project Documents, including the establishment of replacement and maintenance reserves, the Board, for each Assessment Period shall assess against each Lot an Annual Assessment.

6. 2. 2 The board shall give notice of the Annual Assessment to each Owner at least thirty (30) days prior to the beginning of each Assessment Period, but the failure to give such notice shall not affect the validity of the Annual Assessment established by the Board nor relieve any Owner from its obligation to pay the Annual Assessment. If the Board determined during any Assessment Period that the funds budgeted for that Assessment Period are, or will, become inadequate to meet all common Expenses for any reason, including, without limitation, nonpayment of Assessment by Members, it may increase the Annual Assessment for that Assessment Period and the revised Annual Assessment shall commence on the date designated by the board.

6. 2. 3 The maximum Annual Assessment for each fiscal year of the Association shall be as follows:

(i) Until January 1 of the year immediately following the conveyance of the first Lot to a Purchaser, the maximum Annual Assessment for each Lot shall be \$240.00

(ii) From and after January 1 of the year immediately following the conveyance of the first Lot to a Purchaser, the Board may, without a vote of the members, increase the maximum Annual Assessment during each fiscal year of the Association by the greater of (a) 5% of the maximum Annual Assessment for the immediately preceding fiscal year or (b) an amount based upon the percentage increase in the Consumer Price Index for All Urban Consumers (CPI-U) U.S. City Average (1982-84=100), issued by the United States Department of Labor, Bureau of Labor Statistics (the "Consumer Price Index"), which amount shall be computed in the last month of each fiscal year in accordance with the following formula:

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

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

Y-X

X multiplied by the maximum Annual Assessment for the then current fiscal year equals the amount by which the maximum Annual Assessment may be increased.

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

(iii) From and after January 1 of the year immediately following the conveyance of the first Lot to a Purchaser, the maximum Annual Assessment may be increased by an amount greater than the maximum increase allowed pursuant to (ii) above,

only by a vote of Members entitled to cast at least two-third (2/3) of the votes entitled to be cast by Members who are voting in person or by proxy at a meeting duly called for such purpose.

6.3 **Rate of Assessment.** The amount of the Annual Assessment for each Lot shall be the amount obtained by dividing the total budget of the Association for the Assessment Period for which the Annual Assessment is being levied by the total number of Lots subject to the Assessment at the time the Annual Assessment is levied by the board.

6.4 **Special Assessments.** The Association may levy against each Lot which is then subject to assessment, in any Assessment Period, a Special Assessment for the purpose of defraying, in whole or in part, the cost of any construction, reconstruction, repair, or replacement of an Improvement upon the common Areas, including fixtures and personal property related thereto, provided that any Special Assessment shall have the assent of two-thirds (2/3) of the votes entitled to be cast by Members who are voting in person or by proxy at a meeting duly called for such purpose.

6.5 **Assessment Period.** The period for which the Annual Assessment is to be levied (the "Assessment Period") shall be the calendar year. The board in its sole discretion from time to time may change the Assessment Period.

6.6 Deleted from Original

6.7 **Rules Regarding Billing and Collection Procedures.** Annual Assessments shall be collected on a quarterly basis or such other basis as may be selected by the Board. Special Assessments may be collected as specified by the Board. The board shall have the right to adopt rules and regulations setting forth procedures for the purpose of making Assessments and for the billing and collection of the Assessments provided that the procedures are not inconsistent with the provision of this Declaration. The Failure of the Association to send a bill to a Member shall not relieve any Member of his liability for any Assessment or charge under this Declaration, but the Assessment Lien therefore shall not be foreclosed or otherwise enforced until the Member has been given not less than thirty (30) days written notice prior to such foreclosure or enforcement that the Assessment or any installation thereof is or will be due and of the amount owing. Such notice may be given at any time prior to or after delinquency of such payment. The Association shall be under no duty to refund any payments received by it even though the ownership of a Lot changes during an Assessment Period; successor Owners of Lots shall be given credit for prepayments, on a prorated basis, made by prior owners.

6.8 **Effect of Nonpayment of Assessments; Remedies of the Association.**

6.8.1 Any Assessment, or any installment of an Assessment, not paid within five (5) days after the Assessment, or the installment of the Assessment, first became due shall bear interest from the due date at the rate of twelve percent (12) per annum or the prevailing VA/FHA interest rate for new home loans, whichever is higher. In addition, the Board of Directors may establish a late fee to be charged to any Owner who has not paid any Assessment, or any installment of an Assessment, within five days after such payment is due.

6. 8. 2 The Association shall have a lien on each Lot for (i) all Assessments levied against the Lot, (ii) all interest, lien fees, late charges and other fees and charges assessed against the Lot or payable by the Owner of the Lot, (iii) all fines levied against the Owner of the Lot, and (iv) all attorney fees, court costs, title report fees, costs and fees charged by any collection agency either to the Association or to an Owner and any other fees or costs incurred by the Association in attempting to collect Assessments or other amounts due to the Association by the Owner of a Lot. Recording of this Declaration constitutes record notice and perfection of the Assessment Lien. The Association may, at its option record a Notice of Lien setting forth the name of the delinquent owner as shown in the records of the Association, the legal description or street address of the Lot against which the Notice of Lien is recorded and the amount claimed to be past due as of the date of the recording of the Notice, including interest, lien recording fees and reasonable attorneys' fees. Before recording any Notice of lien against a Lot, the Association shall make a written demand to the defaulting Owner for payment of the delinquent Assessments, together with interest, late charges and reasonable attorneys' fees, if any. The demand shall state the date and amount of demand, but any number of defaults may be included within the single demand. If the delinquency is not paid within ten (10) days after delivery of the demand, the Association may proceed with recording a Notice of Lien against the Lot.

6. 8. 3 The Assessment Lien shall have priority over all liens or claims except for (i) tax liens for real property taxes, (ii) assessments in favor of any municipal or other governmental body and (iii) the lien of any first mortgage or first deed of trust. Any First Mortgagee or any other Person acquiring title or coming into possession of a Lot through foreclosure of the First Mortgage, purchase at a foreclosure sale or trustee sale, or through any equivalent proceedings, such as, but not limited to, the taking of a deed in lieu of foreclosure shall acquire title free and clear of any claims for unpaid assessments and charges against the Lot which became payable prior to the acquisition of such Lot by the First Mortgagee or other Person. Any Assessments and charges against the Lot that accrue prior to such sale or transfer shall remain the obligation of the defaulting Owner of the Lot.

6. 8. 4 The Association shall not be obligated to release the Assessment Lien until all delinquent Assessments, interest, lien fees, fines, reasonable attorneys' fees, court costs, collections costs and all other sums payable to the Association by the Owner of the Lot have been paid in full.

6. 8. 5 The Association shall have the right, at its option, to enforce collection of any delinquent Assessments together with interest, lien fees, reasonable attorneys' fees and any other sums due to the Association in any manner allowed by law including, but not limited to, (i) bringing an action at law against the Owner personally obligated to pay the delinquent Assessments and such action may be brought without waiving the Assessment Lien securing the delinquent Assessments or (ii) bringing an action to foreclose the Assessment Lien against the Lot in the manner provided by law for the foreclosure of a realty mortgage. The Association shall have the power to bid in at any foreclosure sale and to purchase, acquire, hold, lease, mortgage, and convey any and all Lots purchased at such sale.

6. 9 Evidence of Payment of Assessments. Upon receipt of a written request by a Member or any other Person, the Association, within a reasonable period of time

thereafter, shall issue to such Member or other Person a written certificate stating (i) that all Assessments, interest, and other fees and charges have been paid with respect to any specified Lot as of the date of such certificate, or (ii) if all Assessments have not been paid, the amount of such Assessments, interest, fees and charges due and payable as of such date. The Association may make a reasonable charge for the issuance of such certificates, which charges must be paid at the time the request for any such certificate is made. Any such certificate, when duly issued as herein provided, shall be conclusive and binding with respect to any matters therein stated as against any bona fide Purchaser of, or lender on, the Lot in question.

6.10 **Purposes for which Association's Funds may be Used.** The Association shall apply all funds and property collected and received by it (including the Assessments, fees, loan proceeds, surplus funds and all funds and property received by it from any other source) for the common good and benefit of the Project and the Owners and Residents by devoting said funds and property, among other things, to the acquisition, construction, alteration, maintenance, provision and operation, by any manner or method whatsoever, of any and all land, properties, improvements facilities, services, projects, programs, studies and systems, within or without the Project, which may be necessary, desirable or beneficial to the general common interests of the Project, the Owners and the Residents. The following are some, but not all, of the areas in which the Association may seek to aid, promote and provide for such common benefit: social interaction among members and Residents, maintenance of landscaping on Common Areas and public right-of-way and drainage areas the Project, recreation, liability insurance, communications, ownership and operation of vehicle services, safety and indemnification of officers and directors of the Association. The Association may also expend its funds under the laws of the State of Arizona or such municipality's charter.

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

6.12 **Transfer Fee.** Each Purchaser of a Lot shall pay to the Association immediately upon becoming the Owner of the Lot a transfer fee in such amount as is established from time to time by the board.

ARTICLE 7

MAINTENANCE

7.1 **Areas of Association Responsibility and Public Right-of-Way**

7. 1. 1 The Association, or its duly delegated representative, shall manage, maintain, repair, and replace the Areas of Association Responsibility, and all Improvements located thereon, except the Association shall not maintain areas which any governmental entity is maintaining and is obligated to maintain.

7. 1. 2 The Board, subject to the request of any governmental authority, shall be the sole judge as to the appropriate maintenance of all Areas of Association Responsibility and other properties maintained by the Association. Any cooperative action necessary or appropriate to the proper maintenance and upkeep of said properties shall be taken by the board or by its duly delegated representative. The Association shall be responsible for control, maintenance and payment of ad valorem taxes and liability of the Common Areas.

7. 2 **Lots.** Each Owner of a Lot shall be responsible for maintaining, repairing, or replacing his Lot, and all buildings, Residential Units, landscaping or other Improvements situated thereon, except for any portion of the Lot which is an Area of Association Responsibility. All buildings, Residential Units, landscaping and other Improvements shall at all times be kept in good condition and repair. All grass, hedges, shrubs, vines, and plants of any type on a Lot shall be irrigated, mowed, trimmed, and cut at regular intervals so as to be maintained in a neat and attractive manner. Trees, shrubs, vines, plants, and grass which die shall be promptly removed and replaced with living foliage of like kind, unless different foliage is approved in writing by the Architectural Committee. No yard equipment, woodpiles or storage areas may be maintained so as to be Visible From Neighboring Property or streets.

7. 3 **Assessment of Certain costs of Maintenance and Repair.** In the event that the need for maintenance or repair of an Area of Association Responsibility is caused through the willful or negligent act of any Member, his family, tenants, guests or invitees, the cost of such maintenance or repairs shall be added to and become a part of the Assessment to which such Member and the Member's Lot is subject and shall be secured by the Assessment Lien. Any charges or fees to be paid by the Owner of a Lot pursuant to this Section in connection with a contract entered into by the Association with an owner for the performance of an Owner's maintenance responsibilities shall also become a part of such Assessment and shall be secured by the Assessment Lien.

7. 4 **Improper Maintenance and Use of Lots.** In the event any portion of any Lot is so maintained as to present a public or private nuisance, or as to substantially detract from the appearance or quality of the surrounding Lots or other areas of the Project, which are substantially affected thereby or related thereto, or in the event any portion of a lot is being used in a manner which violates this Declaration; or in the event any portion of a Lot is failing to perform any of its obligations under the Project Documents, the board may make a finding to such effect, specifying the particular condition or conditions which exist, and pursuant thereto give notice thereof to the offending Owner that unless corrective action is taken within fourteen (14) days, the Board may cause such action to be taken at said Owner's cost. If at the expiration of said fourteen day period of time the requisite corrective action has not been taken, the Board shall be authorized and empowered to cause such action to be taken and the cost thereof shall be added to and become a part of the Assessment to which the offending Owner and the Owner's Lot is subject and shall be secured by the Assessment Lien.

7.5 **Common Walls.** The rights and duties of Owners of Lots with respect to common walls shall be as follows:

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

7.5.2 In the event that any common wall is damaged or destroyed through the act of an Owner, it shall be the obligation of such Owner to rebuild and repair the common wall without cost to the other Owner or Owners;

7.5.3 In the event any such common wall is damaged or destroyed by some cause other than the act of an Owner, it shall be the obligation of such Owner to rebuild and repair the common wall without cost to the other Owner or Owners;

7.5.4 Notwithstanding any other provision of this Section, an Owner who, by his negligent or willful act, causes any common wall to be exposed to the elements shall bear the whole cost of furnishing the necessary protection against such elements;

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

7.5.6 In addition to meeting the other requirements of this Declaration and of any other building code or similar regulations or ordinances, any Owner proposing to modify, make additions to or rebuild a common wall shall first obtain the written consent of the adjoining Owners;

7.5.7 In the event any common wall encroaches upon a Lot or a Common Area, a valid easement for such encroachment and for the maintenance of the common wall shall and does exist in favor of the Owners of the Lots which share such common wall.

7.6 **Maintenance of Walls other than Common Walls.**

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

7.6.2 Any wall, which is placed on the boundary line between a Lot and a Common Area, shall be maintained, repaired and replaced by the Owner of the Lot, except that the Association shall be responsible for the repair and maintenance of the side of the wall, which faces the Common Area.

ARTICLE 8

INSURANCE

8.1 **Scope of Coverage.** Commencing not later than the time of the first conveyance

of a Lot to a Purchaser, the Association shall maintain to the extent reasonably available, the following insurance coverage:

8. 1. 1 Comprehensive general liability insurance, including medical payments insurance in an amount determined by the Board, but not less than \$1,000,000. Such insurance shall cover all occurrences commonly insured against for death, bodily injury and property damage arising out of or in connection with the use, ownership or maintenance of the Areas of Association Responsibility and all other portions of the Project which the Association is obligated to maintain under this Declaration, and shall also include hired automobile and non-owned automobile coverage with cost liability endorsements to cover liabilities of the Owners as a group to an Owner;

8. 1. 2 Property insurance on all Areas of Association Responsibility insuring against all risk of direct physical loss, insured against in an amount equal to the maximum insurable replacement value of the Areas of Association Responsibility, as determined by the Board; provided, however, that the total amount of insurance after application of any deductibles shall not be less than one hundred percent (100%) of the current replacement cost of the insured property, exclusive of land, excavations, foundations and other items normally excluded from a property policy.

8. 1. 3 Workmen's compensation insurance to the extent necessary to meet the requirements of the laws of Arizona;

8. 1. 4 Such other insurance as the Association shall determine from time to time to be appropriate to protect the Association or the Owners;

8. 1. 5 The insurance policies purchased by the Association shall, to the extent reasonably available, contain the following provisions:

(i) That there shall be no subrogation with respect to the Association, its agents servants, and employee, with respect to Owners and members of their household;

(ii) No act or omission by an Owner, unless acting within the scope of his authority on behalf of the Association, will void the policy or be a condition to recovery on the policy;

(iii) That the coverage afforded by such policy shall not be brought into contribution or proration with any insurance, which may be purchased by Owners or their mortgagees or beneficiaries under deeds of trust;

(iv) A "severability of interest" endorsement, which shall preclude the insurer from denying the claim of an Owner because of the negligent acts of the Association or other Owners;

(v) Statement of the name of the insured as the Association;

(vi) For policies of hazard insurance, a standard mortgagee clause providing that the insurance carrier shall notify the first mortgagee named in the policy at least ten (10) days in advance of the effective date of any substantial modification, reduction or cancellation of the policy.

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

8.3 Payment of Premiums. The premiums for any insurance obtained by the Association pursuant of Section 8. 1 of this Declaration shall be included in the budget of the Association and shall be paid by the Association.

8.4 Payment of Insurance Proceeds. With respect to any loss to any Area of Common Responsibility covered by property insurance obtained by the Association in accordance with this Article, the loss shall be adjusted with the Association, and the insurance proceeds shall be payable to the Association and not to any mortgagee or beneficiary under a deed of trust. Subject to the provisions of Section 8.5 of this Declaration, the proceeds shall be disbursed for the repair or restoration of the damage to the Area of Association Responsibility.

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

ARTICLE 9

RIGHTS OF FIRST MORTGAGEES

9.1 Notification to First Mortgagees. Upon receipt by the Association of a written request from a First Mortgagee or insurer or governmental guarantor of a First Mortgagee informing the Association of its correct name and mailing address and the Lot number or address to which the request relates, the Association shall provide such Eligible Mortgage Holder or Eligible Insurer or Guarantor with timely written notice of the following:

9. 1. 1 Any condemnation loss or any casualty loss which affects a material portion of the Project or any Lot on which there is a First Mortgage held, insured or guaranteed by such Eligible Mortgage Holder of Eligible Insurer or Guarantor;

9. 1. 2 Any delinquency in the payment of Assessments or charges owed by an Owner of a Lot subject to a First Mortgage held, insured or guaranteed by such Eligible Mortgage Holder or Eligible Insurer of Guarantor or any other default in the performance by the Owner of any obligation under the Project Documents, which delinquency remains uncured for the period of sixty (60) days;

9. 1. 3 Any lapse, cancellation, or material modification of any insurance policy or fidelity bond maintained by the Association;

9. 1. 4 Any proposed action, which will require the consent of a specified percentage of Eligible Mortgage Holders as set forth in Section 9. 2 or 9. 3 of this Declaration.

9. 2 Approval Required to Terminate Project. Any termination of the legal status of the Project for reasons other than the substantial destruction or a substantial taking in condemnation of the Project shall not be effective unless approved by Eligible Mortgage Holders holding First Mortgages on Lots the Owners of which have at least sixty-seven (67%) of the votes in the Association allocated to Owners of all Lots subject to First Mortgages held by Eligible Mortgage Holders.

9. 3 Approval Required for Amendment to Declaration, Articles, or Bylaws.

9. 3. 1 The approval of eligible Mortgage Holders holding First Mortgages on Lots the Owners of which have at least fifty-one percent (51%) of the votes in the Association allocated to Owners of all Lots subject to First Mortgages held by Eligible Mortgage Holders shall be required to add or amend any material provisions of the Declaration, Articles or Bylaws which establish, provide for, govern, or regulate any of the following:

- (i) Voting rights;
- (ii) Assessments, assessment liens or subordination of assessment liens;
- (iii) Reserves for maintenance, repair and replacement of Common Areas;
- (iv) Insurance or fidelity bonds;
- (v) Responsibility for maintenance and repairs;
- (vi) Expansion or contraction of the Project, or the addition, annexation or withdrawal of property to or from the Project;
- (vii) Boundaries of any Lot;
- (viii) Reallocation of interests in the Common Areas or the rights to their use;
- (ix) Convertibility of Lots into common Area or of Common Areas into Lots;
- (x) Leasing of Lots;
- (xi) Imposition of any restrictions on an Owner's right to sell or transfer his Lot;
- (xii) A decision by the Association to establish self-management when professional management had been required previously by an Eligible Mortgage Holder;

- (xiii) Restoration or repair of the Project (after a hazard damage or partial condemnation) in a manner other than that specified in the Project Documents;
- (xiv) Any action to terminate the legal status of the Project after substantial destruction or condemnation occurs;
- (xv) Any provisions which expressly benefit First Mortgagees, Eligible Mortgage Holders, or Eligible Insurers of Guarantors.

9. 3. 2 Any addition or amendment to the Declaration, Articles, or Bylaws shall not be considered material if it is for the purpose of correcting technical errors or for clarification only.

9. 4 First Mortgagee's Right of Inspection of Records. Any First Mortgagee will upon written request, be entitled to (i) inspect the books and records of the Association during normal business hours, (ii) receive within ninety; (90) days following the end of any fiscal year of the Association, a financial statement of the Association for the immediately preceding fiscal year of the Association, free of charge to the requesting party, and (iii) receive written notice of all meetings of the Members of the Association and be permitted to designate a representative to attend all such meetings.

9. 5 Limitation on Partition and Subdivision. No Lot shall be partitioned or subdivided without the prior written approval of the holder of any First Mortgage on such Lot.

9. 6 Prior Written Approval of First Mortgagees. Unless at least two-thirds (2/3) of the First Mortgagees (based upon one vote for each First Mortgage owned) or Owners (other than the sponsor, developer, or builder) of at least two-thirds (2/3) of the Lots have given their prior written approval, the Association shall not be entitled to:

9. 6. 1 Seek to abandon, partition, subdivide, sell or transfer the Common Area Owned, directly or indirectly, by the Association for the benefit of the Lots. The granting of easements for public utilities or for other public purposes consistent with the intended use of such Common Area shall not be deemed a transfer within the meaning of his Subsection;

9. 6. 2 Change the method of determining the obligations, assessments, dues or other charges, which may be levied against a Lot Owner;

9. 6. 3 Change, waive, or abandon any scheme or regulations, or enforcement thereof, pertaining to the architectural design or the exterior appearance of Lots or the maintenance of the Common Areas;

9. 6. 4 Fail to maintain fire and extended coverage on insurance common area on current replacement cost basis in an amount of at least 100 percent of insurable value;

9. 6. 5 Use hazard insurance proceeds for losses to any Common Area, other than the repair, replacement or reconstruction of such Common Area.

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

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

9.9 **Conflicting Provisions.** In the event of any conflict or inconsistency between the provisions of this Article and any other provision of the Project Documents, the provisions of this Article shall prevail; provided, however, that in the event of any conflict or inconsistency between the different Sections of this Article or between the provisions of this Article and any other provisions of the Project Documents with respect to the number or percentage of Owners, First Mortgagee, Eligible Mortgage Holders or Eligible Insurers or Guarantors that must consent to (i) an amendment of the Declaration, Articles, or Bylaws, (ii) a termination of the Project, or (iii) certain actions of the Association as specified in Section 9. 2, 9. 3, and 9. 6 of this Declaration, the provision requiring the consent of the greatest number or percentage of Owners, First Mortgagees, Eligible Mortgage Holders or Eligible Insurers or Guarantors shall prevail.

ARTICLE 10

GENERAL PROVISIONS

10.1 **Enforcement.** The Association or any Owner shall have the right to enforce the Project Documents and/or any and all covenants, restrictions, reservations, charges, servitudes, assessments, conditions, liens, or easements provided for in any contract, deed, declaration or other instrument which (i) shall have been executed pursuant to, or subject to the provisions of this Declaration, or (ii) otherwise shall indicate that the provisions of such instrument were intended to be enforced by the Association.

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

10.3 **Amendments.**

10.3.1 Except for amendments made pursuant to Subsection 10.3.2 of this Declaration, the Declaration may only be amended by the written approval or the affirmative vote, or any combination thereof, of Owners of not less than seventy-five (75%) of the Lots.

10.3.2 The board may amend this Declaration or the Plat without obtaining the approval or consent of any Owner or First Mortgagee, in order to conform this Declaration or the Plat to the requirements or guidelines of the Federal National Mortgage Association, the Federal Home Loan Mortgage Corporation, the federal Housing Administration, the Veterans Administration or any federal, state or local government agency whose approval of the Project, the Plat or the Project Documents is required by law or requested by the Board.

10.3.3 & 10.3.4 Deleted from Original

10.3.5 Any amendment approved pursuant to Subsection 10.3.1 of this Declaration or by the Board pursuant to Subsection 10.3.2 of this Declaration shall be signed by the President or vice President of the Association and shall be recorded with the County recorder of Pima County, Arizona. Any such amendment shall certify that the amendment has been approved as required by this Section.

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

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

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

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

10.8 **Rules and Regulations.** In addition to the right to adopt rules and regulations on the matters expressly mentioned elsewhere in this Declaration, the Association shall have the right to adopt rules and regulations with respect to all other aspects of the Association's rights, activities and duties, provided said rules and regulations are not inconsistent with the provisions of this Declaration.

10.9 **Laws, Ordinances, and Regulations.**

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

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

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

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

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

10.13 **Notices.** If notice of any action or proposed action by the Board or any committee or of any meeting is required by applicable law, this Declaration or resolution of the board to be given to any Owner, Lessee or Resident then unless otherwise specified herein or in the resolution of the Board, such notice requirement shall be deemed satisfied if notice of such action or meeting is published once in any; newspaper in general circulation within Pima County. This Section shall not be construed to require that any notice be given if not otherwise required and shall not prohibit satisfaction of any notice requirement in any other manner.

10.14 Deleted from Original

10.15

No Absolute Liability. No provision of the Project Documents shall be interpreted or construed as imposing on Owners absolute liability for damage to the common Areas or the Lots. Owners shall only be responsible for damage to the common Areas or Lots caused by the Owners' negligence or intentional acts.

EXHIBIT A

Lots 1 through 32, inclusive, and Common Area A, Catalina Point, according to the plat recorded in Book 41 of Maps, page 78, records of Pima County, Arizona