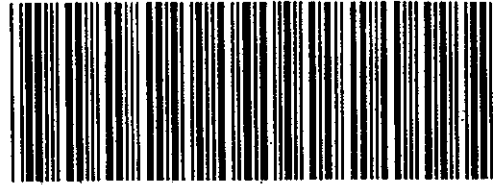


When Recorded, Return To:

DYEKMAN, CURTIS & COHEN, P.L.C.
6750 East Camelback Road
Suite 104
Scottsdale, Arizona 85251
Attention: Donald E. Dyekman, Esq.



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COMPANY

**FIRST AMENDMENT TO
DECLARATION OF COVENANTS, CONDITIONS AND RESTRICTIONS
FOR
TONE RANCH ESTATES**

This First Amendment to Declaration of Covenants, Conditions and Restrictions for Tone Ranch Estates (this "First Amendment") is made as of this 26th day of October, 2000, by The Ryland Group, Inc., a Maryland corporation (the "Declarant").

RECITALS

A. The Declarant caused a Declaration of Covenants, Conditions and Restrictions for Tone Ranch Estates (the "Declaration") to be recorded on July 31, 2000, at Recording No. 2000-0584450, in the official records of the County Recorder of Maricopa County, Arizona, in order to create a general plan for the development, sale and use of the planned community known as Tone Ranch Estates.

B. Unless otherwise defined in this First Amendment, each capitalized term used in this First Amendment shall have the meaning given to such term in the Declaration.

C. Subsection 11.3.2 of the Declaration provides that so long as the Declarant owns any Lot, the Declarant may amend the Declaration, without obtaining the approval or consent of any Owner or First Mortgagee, in order to conform the Declaration to the requirements or guidelines of the Federal National Mortgage Association, the Federal Home Loan Mortgage Corporation, the Federal Housing Administration, the Veterans Administration or any federal, state or local governmental agency whose approval of the Project, the Plat or the Association Documents is required by law or requested by the Declarant or the Board. The Declarant desires to amend the Declaration to add certain provisions required in order for the Declaration to conform to the requirements of the Federal Housing Administration and the Veterans Administration.

AMENDMENT

NOW, THEREFORE, the Declarant amends the Declaration as follows:

1. The following Subsections 11.13, 11.14 and 11.15 are hereby added to Article 11 of the Declaration:

11.13 FHA/VA Approval.

So long as there is a Class B membership in the Association, the following actions shall require the prior written approval of the Federal Housing Administration or the Department of Veterans Administration: annexation of additional properties, mergers or consolidations, mortgaging of Common Areas, dedication of Common Areas, dissolution of the Association or amendment of this Declaration.

11.14 No Absolute Liability.

No provision of the Association Documents shall be interpreted or construed as imposing on Owners absolute liability for damage to the Common Area or the Lots. Owners shall only be responsible for damage to the Common Area or Lots caused by the Owners' negligence or intentional acts.

11.15 References to VA and FHA.

In various places throughout the Association Documents, references are made to the Veterans Administration ("VA") and the Federal Housing Administration ("FHA") and, in particular, to various consents or approvals required of either or both of such agencies. Such references are included so as to cause the Association Documents to meet certain requirements of such agencies should Declarant request approval of the Project by either or both of those agencies. However, Declarant shall have no obligation to request approval of the Project by either or both of such agencies. Unless and until the VA or the FHA have approved the Project as acceptable for insured or guaranteed loans and at any time during which such approval, once given, has been revoked, withdrawn, cancelled or suspended and there are no outstanding mortgages or deeds of trust recorded against a Lot to secure payment of any insured or guaranteed loan by either of such agencies, all references in the Association Documents to required approvals or consents of such agencies shall be deemed null and void and of no further force and effect. In the event of any conflict between this Section and any other provision of the Association Documents, this Section shall control.

2. Except as expressly amended by this First Amendment, the Declaration shall remain unchanged and in full force and effect. In the event of any conflict or inconsistency between the provisions of this First Amendment and the Declaration, this First Amendment shall control.

THE RYLAND GROUP, INC., a Maryland corporation

By: *James P. Joyce*

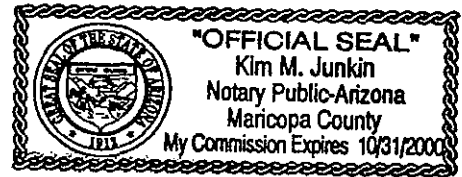
Its: *Vice President*

State of Arizona)
) ss.
County of Maricopa)

The foregoing instrument was acknowledged before me this 26th day of October, 2000, by James P. Joyce, the Vice President of The Ryland Group, Inc., a Maryland corporation, on behalf of the corporation.

Kim M. Junkin
Notary Public

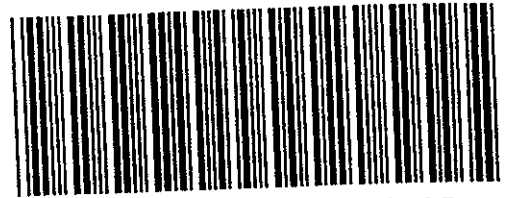
My Commission Expires: October 31, 2000



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When Recorded Mail To:

DYEKMAN, CURTIS & COHEN, P.L.C.
6750 East Camelback Road
Suite 104
Scottsdale, Arizona 85251
Attention: Dónald E. Dyekman, Esq.



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**DECLARATION OF
COVENANTS, CONDITIONS AND RESTRICTIONS
FOR
TONE RANCH ESTATES**

**DECLARATION OF
COVENANTS, CONDITIONS AND RESTRICTIONS
FOR
TONE RANCH ESTATES**

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DECLARATION OF COVENANTS, CONDITIONS AND RESTRICTIONS

FOR

TONE RANCH ESTATES

This Declaration of Covenants, Conditions, and Restrictions for Tone Ranch Estates (the "Declaration") is made this 12th day of July, 2000, by The Ryland Group, Inc., a Maryland corporation (the "Declarant").

INTRODUCTION

A. Declarant is the Owner of fee title to the real property located in Maricopa County, Arizona, legally described on Exhibit A attached hereto (the "Property").

B. By executing and recording this Declaration with the County Recorder of Maricopa County, Arizona, the Declarant intends to impose upon the Property mutually beneficial restrictions under a general plan of improvement for the benefit of the Owners of each portion of the Property and establish a flexible and reasonable procedure for the overall development, administration, maintenance and preservation of the Property. Declarant intends for this Declaration to create equitable servitudes and covenants appurtenant to and running with the Property and which will be binding upon all future Owners of all or any portion of the Property and any other Person acquiring any right, title or interest in or to all of any portion of the Property.

C. Declarant deems it desirable to provide for the creation of a nonprofit corporation under the laws of the State of Arizona to administer and maintain, repair and replace the Areas of Association Responsibility (as defined in Section 1.3 below) and to provide for the levying and collecting of Assessments and other charges by the Association for the purpose, among other things, of paying all costs and expenses incurred or to be incurred by the Association in connection with the maintenance, repair and replacement and administration of the Areas of Association Responsibility and the enforcement of the covenants, conditions and restrictions contained in this Declaration.

ARTICLE 1

DEFINITIONS

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

1.1 "**Annual Assessment**" means the assessments levied against each Assessable Lot, and the Owner thereof, pursuant to Section 7.2 below.

1.2 "**Architectural Committee**" means the committee created pursuant to Section 3.10 of this Declaration.

1.3 "**Areas of Association Responsibility**" means (i) all Common Area; and (ii) all land, and the Improvements situated thereon, located within the boundaries of a Lot which the Association is obligated to maintain, repair and replace pursuant to the terms of this Declaration or the terms of another Recorded document executed by the Association.

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

1.5 "**Assessable Lot**" means each Lot, except for Lots owned by the Declarant so long as there is a Class B membership in the Association. Until the termination of the Class B membership as provided in Section 6.7 below, Lots owned by the Declarant shall not be Assessable Lots. After the termination of the Class B membership, all Lots (including Lots owned by the Declarant) shall be Assessable Lots.

1.6 "**Assessment**" means an Annual Assessment or Special Assessment.

1.7 "**Assessment Lien**" means the lien created and imposed by Article 7 below.

1.8 "**Assessment Period**" means the period set forth in Section 7.4 below.

1.9 "**Association**" means Tone Ranch Estates Homeowners Association, an Arizona nonprofit corporation, and its successors and assigns.

1.10 "**Association Documents**" means, collectively, this Declaration, the Articles, the Bylaws, the Association Rules and Design Guidelines, all as amended from time to time.

1.11 "**Association Rules**" means the rules adopted by the Board pursuant to Section 6.3 below.

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

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

1.14 "**Common Area**" means (i) Tracts A through S inclusive, Tone Ranch Estates, according to the plat recorded in Book 537, page 14, records of Maricopa County, Arizona; and (ii) 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 the actual and estimated expenses incurred or anticipated to be incurred by or on behalf of the Association including any allocations to reserves determined by the Board to be necessary and appropriate, and all other financial liabilities of the Association.

1.16 "**Declarant**" means The Ryland Group, Inc., a Maryland corporation, and any person to whom it may expressly assign any or all of its rights under this Declaration by a Recorded instrument.

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

1.18 "**Design Guidelines**" means the procedures, standards and guidelines adopted by the Architectural Committee pursuant to Section 3.10 below, as amended or supplemented from time to time.

1.19 "**First Mortgage**" means any mortgage or deed of trust on a Lot which has priority over all other mortgages and deeds of trust on the same Lot.

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

1.21 "**Improvement**" means: (i) any Residential Unit, building, fence or wall; (ii) any swimming pool, tennis court, basketball goal, backboard or apparatus or playground equipment; (iii) any road, driveway or parking area; (iv) any trees, plants, shrubs, grass or other landscaping improvements of any type and kind; (v) any statuary, fountain, artistic work, craft work, figurine or ornamentation of any type or kind, and (vi) any other structure of any type, kind or nature.

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

1.23 "**Lot**" means a parcel of land within the Project, whether improved or unimproved, intended for independent ownership and use and designated as a "lot" on the Plat and any Residential Unit, building, structure or other Improvements situated thereon.

1.24 "**Maintenance**" means care, inspection, maintenance, operation, repair, repainting, remodeling, restoration, improvement, renovation, alteration, replacement and reconstruction.

1.25 "**Maintenance Standard**" means the standard of Maintenance of Improvements situated on Lots 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 situated on Lots generally prevailing throughout the Project.

1.26 "**Member**" means any Person who is a member of the Association as provided in Section 6.6 below.

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

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

1.29 "**Plat**" means the plat of Tone Ranch Estates recorded in Book 537, page 14, records of Maricopa County, Arizona, and all amendments, supplements and corrections thereto.

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

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

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

1.33 "**Resident**" means each person occupying or residing in any Residential Unit.

1.34 "**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.

1.35 "**Special Assessment**" means any assessment levied and assessed pursuant to Section 7.3 below.

1.36 "**Visible From Neighboring Property**" means, with respect to any given Improvement, that such Improvement is or would be visible to a natural person six feet tall, standing at ground level on any part of any Lot, the Common Area or any public street within or adjacent to the Project.

ARTICLE 2

PROPERTY AND PERSONS BOUND BY DECLARATION

2.1 **General Declaration.** Declarant is the record owner of fee title to the Property. Declarant intends by this Declaration to impose upon the Property mutually beneficial restrictions in furtherance of the general plan for the development, sale and use of the Property and for the administration, maintenance, preservation, use and enjoyment of the Property. The Declarant declares that all of the Property shall be held, sold, used and conveyed subject to the easements, restrictions, conditions and covenants set forth in this Declaration which are for the purpose of protecting the value, desirability and appearance of the Property. Declarant further declares all of easements, restrictions, conditions and covenants in this Declaration shall run with the Property and shall be binding upon and inure to the benefit of the Declarant and all Owners, Lessees and Residents and all other Persons having or acquiring any right, title or interest in the Property or any part thereof, their heirs, successors, successors in title and assigns. By acceptance of a deed or by acquiring any interest in any of the Property, each Person, for himself or itself, his heirs, personal representatives, successors, transferees and assigns, binds himself, his heirs, personal representatives, successors, transferees and assigns, to all of the provisions, restrictions, covenants, conditions, rules and regulations now or hereafter imposed by this Declaration and any amendments thereof. In addition, each such Person by so doing thereby acknowledges that this Declaration sets forth a general scheme for the development, sale, lease and use of the Property and hereby evidences his interest that all the restrictions, conditions, covenants, rules and regulations contained in this Declaration shall run with the land and be binding on all subsequent and future Owners, grantees, purchasers, assignees, lessees and transferees thereof. This Declaration shall also be binding upon and shall be for the benefit of and enforceable by the Association.

2.2 **Disclaimer of Implied Covenants.** Nothing contained in this Declaration and nothing which may be represented to a purchaser of a Lot by real estate brokers or salesmen shall be deemed to create any implied covenants, servitudes or restrictions with respect to the use of any property subject to this Declaration.

2.3 Effect of Declaration. Declarant makes no warranties or representations, express or implied, as to the binding effect or enforceability of all or any portion of this Declaration, or as to the compliance of any of the provisions with public laws, ordinances and regulations applicable thereto.

ARTICLE 3

ARCHITECTURAL CONTROL

3.1 Approval Required. As used in this Article 3, "Construction" means any devegetation, excavation or grading work or the construction, erection or installation of an Improvement on a Lot, and "Modification" means an addition, alteration, repair, change or other work which in any way alters the appearance of any part of a Lot, or the exterior appearance of any Improvement located thereon. No Construction or Modification shall be made or done without the prior written approval of the Architectural Committee. Any Owner desiring approval of the Architectural Committee for any Construction or Modification shall submit to the Architectural Committee a written request for approval specifying in detail the nature and extent of the Construction or Modification which the Owner desires to perform. The request for approval must be accompanied by plans or specifications showing the nature, kind, color, shape, height, materials and location of the Improvements and such other information as may be required by the Design Guidelines. Any Owner requesting the approval of the Architectural Committee shall also submit to the Architectural Committee any additional information, plans and specifications which the Architectural Committee may request. In the event that the Architectural Committee fails to approve or disapprove an application for approval within forty-five (45) days after the application, together with any fee payable pursuant to Section 3.5 of this Declaration and all supporting information, plans and specifications requested by the Architectural Committee, have been submitted to the Architectural Committee, approval will not be required and this Section will be deemed to have been complied with by the Owner who requested approval of such plans. The approval by the Architectural Committee of any Construction or Modification shall not be deemed a waiver of the Architectural Committee's right to withhold approval of any similar Construction or Modification subsequently submitted for approval.

3.2 Review of Plans. The Architectural Committee may disapprove plans and specifications for any Construction or Modification if the Architectural Committee determines, in its sole and absolute discretion, that the proposed Construction or Modification violates any provision of this Declaration or the Design Guidelines. In addition, the Architectural Committee may disapprove plans and specifications for any Construction or Modification even though the plans and specifications may be in substantial compliance with this Declaration and the Design Guidelines if the Architectural Committee, in its sole and absolute discretion, determines that the proposed Construction or Modification, or some aspect or portion thereof, is unsatisfactory or aesthetically unacceptable. In reviewing the proposed plans and specifications, the Architectural Committee may

consider any and all factors which the Architectural Committee, in its sole and absolute discretion, determines to be relevant including, but not limited to: (i) the harmony of the proposed Improvements with existing Improvements in the Project or with Improvements previously approved by the Architectural Committee but not yet constructed; (ii) the proposed location of the proposed Improvements in relation to existing topography, finished grade elevations, roads, Common Area and other structures; and (iii) the exterior design, finish materials and the color of the proposed Improvements. The Architectural Committee may approve plans and specifications which fail in some material way to comply with the requirements of this Declaration or the Design Guidelines if the Architectural Committee, in its sole and absolute discretion, determines that some particular feature of the Lot or the proposed Improvements allows the objectives of the violated requirements of this Declaration or the Design Guidelines to be substantially achieved. Also, the Architectural Committee may approve plans and specifications which fail to comply with the requirements of this Declaration or the Design Guidelines if the Architectural Committee, in its sole and absolute discretion, determines that the failure is not material. The provisions of this Article to do not apply to, and approval of the Architectural Committee shall not be required for, the Construction or Modification of any Improvements or any other work made by, or on behalf of, the Declarant. The approval required of the Architectural Committee pursuant to this Article 3 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.

3.3 Construction of Improvements. Upon receipt of approval from the Architectural Committee for any Construction or Modification, the Owner who had requested such approval shall proceed with the Construction or Modification approved by the Architectural Committee as soon as practicable and shall diligently pursue such Construction or Modification so that it is completed as soon as reasonably practicable and within such time as may be prescribed by the Architectural Committee.

3.4 No Changes Without Approval. Any Construction or Modification approved by the Architectural Committee must be done or performed in accordance with the plans and specifications approved by the Architectural Committee. No change, deletion or addition to the plans and specifications approved by the Architectural Committee may be made without the prior written approval of the Architectural Committee.

3.5 Review Fee. The Architectural Committee shall have the right to charge a fee for reviewing requests for approval of any Construction or Modification, which fee shall be payable at the time the application for approval is submitted to the Architectural Committee. The fee charged by the Architectural Committee may include the actual or estimated fees or costs incurred or anticipated to be incurred by the Architectural Committee in consulting with an architect or engineer with respect to the plans submitted.

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

3.7 No Warranty. The approval by the Architectural Committee of any Construction or Modification shall not be deemed a warranty or representation by the Architectural Committee as to the quality of such Construction or Modification or that such Construction or Modification conforms to any applicable building codes or other federal, state or local law, statute, ordinance, rule or regulation.

3.8 Conditional Approval. The Architectural Committee may condition its approval of plans and specifications upon the agreement by the Owner submitting such plans and specifications to furnish to the Association a bond or other security acceptable to the Architectural Committee in an amount determined by the Architectural Committee to be reasonably sufficient to: (i) assure the completion of the proposed Improvements or the availability of funds adequate to remedy any nuisance or unsightly conditions occurring as a result of the partial completion of such Improvement, and (ii) repair any damage which might be caused to any Area of Association Responsibility as a result of such work. Provided there is no damage caused to any Area of Association Responsibility by the Owner or its agents or contractors, any such bond shall be released or security shall be fully refundable to the Owner upon: (i) the completion of the Improvements in accordance with the plans and specifications approved by the Architectural Committee; and (ii) the Owner's written request to the Architectural Committee.

3.9 Improvements to Areas of Association Responsibility. If the plans and specifications pertain to an Improvement which is within an Area of Association Responsibility so that the Association is responsible for the maintenance, repair and replacement of such Improvement, the Architectural Committee may condition its approval of the plans and specifications for the proposed Construction or Modification with respect to the Improvement on the agreement of the Owner to reimburse the Association for the future cost of the repair, maintenance or replacement of such Improvement.

3.10 Architectural Committee. So long as the Declarant owns any Lot, the Declarant shall have the sole right to determine the number of members on the Architectural Committee and to appoint and remove the members of the Architectural Committee. At such time as the Declarant no longer owns any Lot, the Board shall determine the number of members on the Architectural Committee, and the members of the Architectural Committee shall be appointed by the Board. The Declarant may at any time voluntarily surrender its right to appoint and remove the members of the Architectural Committee, and in that event the Declarant may require, for so long as the Declarant owns any Lot, that specified actions of the Architectural Committee, as described in a Recorded instrument executed by the Declarant, be approved by the Declarant before they become effective. The Architectural Committee may adopt, amend and repeal architectural guidelines, standards and procedures to be used in rendering its decisions. Such guidelines, standards and procedures may

include, without limitation, provisions regarding: (i) the size and height of Residential Units; (ii) architectural design, with particular regard to the harmony of the design with the surrounding structures and typography; (iii) placement of Residential Units and other buildings; (iv) landscaping design, content and conformance with the character of the Property and permitted and prohibited plants; (v) requirements concerning exterior color schemes, exterior finishes and materials; (vi) signage; (vii) perimeter and screen wall design and appearance; (viii) time periods for commencement and completion of any approved construction or modification; and (ix) rules and regulations governing construction activities. The decision of the Architectural Committee shall be final on all matters submitted to it pursuant to this Declaration. The Architectural Committee may establish one or more subcommittees consisting of one or more members of the Architectural Committee and may delegate to such subcommittee or subcommittees the authority and power of the Architectural Committee to approve or disapprove the construction, installation or alteration of Improvements within a specified portion of the Project.

ARTICLE 4

USE RESTRICTION

4.1 Residential Use. All Residential Units shall be used, improved and devoted exclusively to residential use. 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 to the Lot or the door-to-door solicitation of Owners or other Residents in the Project; (iv) the use of the Residential Unit for trade or business in no way destroys or is incompatible with the residential character of the Residential Unit or the surrounding neighborhood; (v) the trade or business is conducted only inside the Residential Unit or inside an accessory building or garage, and does not involve the viewing, purchasing or taking delivery of good or merchandise at, to, from or in any Residential Unit; (vi) the trade or business is conducted by a Resident or Residents of the Residential Unit with no employee working in or from such Residential Unit who is not a Resident thereof; (vii) the volume of vehicular or pedestrian traffic or parking generated by such trade or business does not result in congestion or be in excess of what is customary in a residential neighborhood; (viii) the trade or business does not utilize flammable liquids or hazardous materials in quantities not customary to a residential use; and (ix) the use of the Residential Unit for a trade or business does not violate any other provision of the Association Documents. 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.

4.2 . Temporary Occupancy and Temporary Buildings. No trailer, basement of any incomplete building, tent, shack, garage or barn, and no temporary buildings or structures of any kind, shall be used at any time for a residence, either temporary or permanent. Temporary buildings, 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 buildings, 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.

4.3 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 condition shall be permitted to exist or operate upon any Lot so as to be offensive or detrimental to any other property in the vicinity thereof or to its occupants. Normal construction activities and parking in connection with the building of Improvements on a Lot shall not be considered a nuisance or otherwise prohibited by this Declaration, but Lots shall be kept in a neat and tidy condition during construction periods, trash and debris shall not be permitted to accumulate, and supplies of brick, block, lumber and other building materials will be piled only in such areas as may be approved in writing by the Architectural Committee. In addition, any construction equipment and building materials stored or kept on any Lot during the construction of Improvements may be kept only in areas approved in writing by the Architectural Committee, which may also require screening of the storage areas. The provisions of this Section shall not apply to construction activities of the Declarant.

4.4 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.

4.5 Antennas. To the extent permitted by applicable law, the installation of antennas, satellite dishes or other devices for the transmission or reception of television or radio signals or any other form of electromagnetic radiation shall be subject to the prior written approval of the Architectural Committee. Therefore, no antenna, satellite or microwave dish or other device for transmission or reception of television or radio signals shall be constructed, installed, erected, used or maintained on any Lot without the prior written approval of the Architectural Committee unless applicable law prohibits the Architectural Committee from requiring such approval. Even if applicable law prohibits the Architectural Committee from requiring prior approval for the installation of certain antennas, any such antennas must still be installed in accordance with the Design Guidelines.

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

4.7 **Trash Containers and Collection.** No garbage or trash shall be placed or kept on any Lot except in covered containers of a type, size and style which are 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.

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

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

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

4.11 **Animals.** No animal, bird, fowl, poultry, reptile or livestock may be kept on any Lot, except that dogs, cats, parakeets or similar household birds not to exceed a total of two (2) 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 may be permitted to leave an Owner's Lot if such dog is at all times kept on a leash not to exceed six feet (6') in length and is not permitted to enter upon any other Lot. Any person bringing a dog onto the Common Area shall immediately remove any feces deposited on the Common Area by the dog. The Board may restrict the portions of the Common Area on which dogs are permitted. No animal, bird, fowl, poultry or livestock shall be allowed to make an unreasonable amount of noise or to become a nuisance. No structure for the care, housing or confinement of any 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.

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

4.13 Signs. No signs whatsoever may be erected, posted or displayed on any Lot or the Common Area in a location that is Visible From Neighboring Property without the prior written approval of the Architectural Committee, except for (i) signs constructed or erected by the Declarant for promotional and marketing purposes or by the Association, and (ii) one "For Sale" sign not exceeding five (5) square feet placed on a Lot which is available for sale.

4.14 Further Subdivision, Property Restrictions, Rezoning and Timeshares. No Lot shall be further subdivided or separated into smaller lots or parcels by any Owner other than the Declarant, and no portion less than all of any such Lot shall be conveyed or transferred by any Owner other than the Declarant, without the prior written approval of the Architectural Committee. No further covenants, conditions, restrictions or easements shall be recorded by any Owner, Lessee, or other Person other than the Declarant against any Lot without the provisions thereof having been first approved in writing by the Architectural Committee. No application for rezoning, variances or use permits pertaining to any Lot shall be filed with any governmental authority by any Person other than the Declarant unless the application has been approved by the Architectural Committee and the proposed use otherwise complies with this Declaration. No Lot shall be subjected to or used for any timesharing, cooperative, weekly, monthly or any other type or revolving or periodic occupancy by multiple owners, cooperators, licensees or timesharing participants.

4.15 Vehicles and Parking.

* 4.15.1 As used in this Section 4.15, the term "Motor Vehicle" means a car, van, bus, truck, recreational vehicle, motor home, motorcycle, all terrain vehicle, utility vehicle, pickup truck or other motor vehicle.

* 4.15.2 No mobile home, travel trailer, tent trailer, trailer, camper shell, boat trailer or other similar equipment or vehicle may be parked, kept or stored on any Lot or the Common Area without the prior written approval of the Architectural Committee.

* 4.15.3 Except as permitted by Subsection 4.15.4 or 4.15.5, no Motor Vehicle may be parked, kept or stored on any Lot or the Common Area without the prior written approval of the Architectural Committee.

* 4.15.4 Motor Vehicles owned or leased by an Owner, Lessee or Resident of a Lot must be parked in the garage of the Residential Unit unless there is insufficient space within the garage for the parking of all such Motor Vehicles, in which case such Motor Vehicles may be parked in the driveway situated on the Lot provided such Motor Vehicles do not exceed 7 feet in height and do not exceed 222 inches in length. No Motor Vehicle of any kind which exceeds seven feet in height may be stored on a Lot in such a manner as to be Visible From Neighboring Property. No Motor Vehicle of any kind may be stored on the Common Area. For purposes of this Subsection 4.15.4, a Motor Vehicle should be deemed stored if it is covered by a car cover, tarp or other material. Recreational vehicles, motor homes and similar vehicles owned or leased by an Owner, Lessee or Resident which exceed 7 feet in height and/or exceed 18 feet in length may be parked in the driveway on a Lot for the purpose of loading or unloading, but in no event shall such recreational vehicle, motor home or similar vehicle be parked in the driveway for more than twenty-four (24) consecutive hours or for more than seventy-two (72) hours within any seven (7) day period.

* 4.15.5 Motor Vehicles owned by guests of an Owner, Lessee or other Resident may be parked in the driveway on a Lot or on a public or private street for a period not to exceed 72 hours within any seven (7) day period.

* 4.15.6 The Board of Directors shall have the right and power to adopt rules and regulations governing the parking of Motor Vehicles on Lots and the common Area and implementing the provisions of this Section 4.15. In the event of any conflict or inconsistency between the provisions of this Section 4.15 and the rules and regulations adopted by the Board of Directors, the provisions of this Section 4.15 shall control.

4.15.7 No Motor Vehicle shall be constructed, reconstructed or repaired on any Lot or Common Area in such a manner as to be Visible From Neighboring Property, and no inoperable vehicle may be stored or parked on any Lot or Common Area in such a manner as to be Visible From Neighboring Property.

4.15.8 The Board shall have the right to have any Motor Vehicle which is parked, kept, maintained, constructed, reconstructed or repaired in violation of the Association Documents towed away at the sole cost and expense of the owner of the Motor Vehicle. Any expense incurred by the Association in connection with the towing of any Motor Vehicle shall be paid to the Association upon demand by the owner of the Motor Vehicle. If the Motor Vehicle is owned by an Owner, any amounts payable to the Association shall be secured by the Assessment Lien, and the Association may enforce collection of suit amounts in the same manner provided for in this Declaration for the collection of Assessment.

4.16 Variances. The Architectural Committee may, with the approval of the Board, grant variances from the restrictions 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) the activity permitted under the variance will not have any substantial adverse effect on the Owners, Lessees and Residents of the Project and is consistent with the high quality of life intended for residents of the Project.

4.17 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.

4.18 Garages and Driveways. No garage shall be converted to living spaces or altered or used for purposes which would prevent the use of the garage for the parking of the number of vehicles for which it was designed, except that the Declarant may use a garage in one or more model homes for a sales office and/or a construction office. The interior of all garages shall be maintained and kept in a neat, clean and sightly condition, free of debris or unsightly objects. Garage doors shall be kept closed except when the opening of the door is necessary to permit ingress or egress.

4.19 Rooftop HVAC Equipment Prohibited. No heating, ventilating, air conditioning or evaporative cooling units or equipment related thereto may be mounted, installed or maintained on the roof of any Residential Unit or other building so as to be Visible From Neighboring Property.

4.20 Basketball Goals and Backboards. No basketball goal or backboard shall be attached to the roof or other part of a Residential Unit, garage or other building. Basketball goals and backboards attached to a free-standing pole may be installed on a Lot provided the location, design and appearance of the basketball goal and backboard is approved in writing by the Architectural Committee. Only pole-mounted backboards and goals are acceptable. Basketball poles must be painted to match house or trim color. Poles must be set in the ground permanently, and must be centered between garage wall and back of sidewalk. Backboards must be of a predominantly neutral color (black, grey, white), or match the house or trim color. Clear Plexiglas or glass backboards are acceptable. Portable or temporary goals are acceptable; however, they must be removed from visibility after play has ceased (a goal may not remain out overnight). All equipment must be constantly maintained. Broken backboards, disfigured or bent rims, ripped or torn nets, chipped and/or peeling paint must be promptly repaired or replaced. Only nylon or similar cord nets are acceptable. Metal or chain nets are not acceptable. The Owner of the Lot with the basketball pole backboard is fully responsible for ball containment on his Lot. Any damage to neighboring Lots or Common Area from basketballs shall be the Lot Owner's (with the goal or standards) responsibility to repair or replace.

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

4.22 **Rental of Lots.** No Owner may lease less than his entire Lot and the Residential Unit situated thereon. All leases must be in writing and must provide that the terms of the lease are subject in all respect to the provisions of this Declaration and the Association Rules and that any violation of this Declaration or the Association Rules by the lessee or the other occupants shall be a default under the lease. There shall be no subleasing of Residential Units or assignments of leases. At least ten (10) days before commencement of the lease term, the Owner shall provide the Association with the following information: (i) the commencement date and expiration date of the lease term; (ii) the names of each of the Lessees and each other person who will reside in the Residential Unit during the lease term; (iii) the address and telephone number at which the Owner can be contacted by the Association during the lease term; and (iv) the name, address and telephone number of a person other than the Owner whom the Association can contact in the event of an emergency involving the Lot. Any Owner who leases his Lot and the Residential Unit situated thereon must provide the Lessee with copies of this Declaration and the Association Rules. Any lease of a Lot or Residential Unit situated thereon must be for an initial term of at least one (1) month. The Owner shall be liable for any violation of this Declaration or the Association Rules by the Lessees or other persons residing in the Residential Unit and their guests or invitees and, in the event of any such violation, the Owner, upon demand of the Association, shall immediately take all necessary actions to correct any such violations.

4.23 **Tile Roofs Required.** The roofs of all Residential Units must be tile roofs of a design, style, material and color approved by the Architectural Committee.

4.24 **Screening Materials.** All screening materials, whether fences, hedges or walls, shall be maintained and replaced from time to time on the Lots by the Owners thereof in accordance with the original construction of such Improvements by a Declarant or as approved by the Architectural Committee pursuant to Article 3 of this Declaration.

4.25 **Lights.** Except as initially installed by a Declarant, no spotlights, floodlights or other high intensity lighting shall be placed or utilized upon any Lot or any structure erected thereon which in any manner will allow light to be directed or reflected on any other Lot or adjacent street, or any part thereof, except as approved by the Architectural Committee.

4.26 **Window Cover Materials.** Within ninety (90) days after becoming the Owner of a Lot, the Owner shall install permanent draperies or suitable window coverings on all windows facing the street. All such window coverings facing the street must show white, beige, earth tone or pastel colors unless otherwise approved in writing by the Architectural Committee.

4.27 Landscaping. Unless installed by the Declarant, front yard landscaping must be installed and substantially completed on each Lot by the Owner of the Lot within ninety (90) days from the date the Owner acquires title to the Lot. All landscaping must comply with the Design Guidelines and must be approved by the Architectural Committee. Landscaping at all times must be maintained by each Owner in a neat and attractive manner and alterations or modifications made to the original landscaping of a Lot as originally installed must be approved in advance by the Architectural Committee.

ARTICLE 5

EASEMENTS

5.1 Easements for Use of Common Area.

5.1.1 Every Owner and Resident and their guests 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:

(i) The right of the Association to dedicate, convey, transfer, lease or encumber the Common Area as provided in Section 6.10 of this Declaration; provided, however, that if access to a Lot is over any part of the Common Area, any conveyance, lease or encumbrance of such Common Area shall be subject to an easement for ingress and egress in favor of the Owner and Residents of the Lot and their guests and invitees.

(ii) The right of the Board to adopt rules, regulations or policies regulating the use of the Common Area including rules, regulations and policies limiting the number of guests who may use the Common Area and restricting or prohibiting access to such portions of the Common Area (such as landscaped areas) not intended for use by the Owners, 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 Area (other than the right of an Owner and such Owner's family, tenants and guests to use any streets which are part of the Common Area for ingress or egress to the Owner's Lot) if such Owner is more than fifteen (15) days delinquent in the payment of Assessments or other amounts due to the Association or if the Owner has violated any other provisions of the Association Documents and has failed to cure such violation within fifteen (15) days after the Association notifies the Owner of the violation.

(iv) The rights and easements reserved by or granted to the Declarant by this Declaration.

(v) The right of the Association to rent or lease any portion of the Common Area on a short-term basis to an Owner or Resident for the exclusive use of such Owner or Residents and their guests and invitees.

(vi) The right of the Board to charge reasonable admission or other fees for the use of any recreational facility or amenity situated on the Common Area.

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

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

(ix) The rights of the public to use Tracts A, B, K and N pursuant to the easements for public access created by the Plat.

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

5.1.3 The right of easement and enjoyment of the Common Area may not be transferred or assigned except upon the conveyance or transfer of the Lot to which such right is appurtenant.

5.2 Utility and Development Easements.

5.2.1 A non-exclusive, perpetual blanket easement is hereby granted over and through the Common Area and any public utility easements shown on the Plat for the purpose of: (i) installing, constructing, operating, maintaining, repairing or replacing equipment used to provide to any portion of the Property or adjacent land any utilities, including, without limitation, water, sewer, drainage, gas, electricity, telephone and television service, whether public or private; and (ii) ingress and egress to install, construct, operate, maintain, repair and replace such equipment and (iii) storm water management and storm water drainage, as necessary or desirable for the orderly development of the Property. Such easement is hereby granted to any Person providing the aforesaid utilities or installing, constructing, maintaining, repairing or replacing equipment related thereto. Any pipes, conduits, lines, wires, transformers and any other apparatus necessary for the provision or metering of any utility may be installed or relocated only where permitted by the Declarant, where contemplated on any site plan approved by the Declarant or where approved by resolution of the Board. Equipment used to provide or meter such utilities or services may be installed above ground during periods of construction if approved by the Declarant. The Person providing a service or

installing a utility pursuant to this easement shall install, construct, maintain, repair or replace the equipment used to provide or meter the utility as promptly and expeditiously as possible, and shall restore the surface of the land and the surrounding vegetation and improvements to their original condition as soon as possible.

5.2.2 The Declarant hereby reserves the right to grant and reserve easements, rights-of-way and licenses over and through the Common Area for the purposes set forth in Section 5.2.1 or for any other purpose necessary or desirable for the orderly development of the Property. If the Person installing the utility or providing a service requests a specific easement by separate recordable documents, then the Declarant or the Association shall have the power to record a document locating such easements.

In the event of any conflict or inconsistency between the provisions of this Section and any other provision of the Association Documents, this Section shall control.

5.3 Easements to Facilitate Development.

5.3.1 The Declarant hereby reserves to itself and its successors and assigns a non-exclusive blanket easement over and through the Property for all purposes reasonably related to the development and completion of Improvements on the Property, including without limitation: (i) temporary construction easements; (ii) easements for the temporary storage of supplies of building materials and equipment necessary to complete Improvements; and (iii) easements for the construction, installation and Maintenance of Improvements on the Property or Improvements reasonably necessary to serve the Property.

5.3.2 The Declarant hereby reserves to itself, its successors and assigns the right to: (i) use any Lots owned or leased by the Declarant, any other Lot with written consent of the Owner thereof or any portion of the Common Area as models, management offices, sales offices, a visitors' center, construction offices, customer service offices or sales office parking areas; and (ii) install and maintain on the Common Area, any Lot owned or leased by the Declarant or any other Lot with the consent of the Owner thereof, such marketing, promotional or other signs which the Declarant deems necessary for the development, sale or lease of the Property.

In the event of any conflict or inconsistency between the provisions of this Section and any other provision of the Association Documents, this Section shall control.

5.4 Dedications and Easements Required by Governmental Authority. The Declarant hereby reserves to itself and its successors and assigns, the right to make any dedications and to grant any easements, rights-of-way and licenses required by any government or governmental agency over and through all or any portion of the Common Area.

5.5 Further Assurances. Any and all conveyances made to the Association or any Owner shall be conclusively deemed to incorporate these reservations of rights and easements, whether or not set forth in such grants. The easements granted and reservations made to the Declarant in this Declaration shall not terminate or merge and shall continue to run with the land, notwithstanding the common law doctrine of merger and the common ownership of all the Property by the Declarant. Upon written request of the Declarant, the Association and each Owner shall from time to time sign, acknowledge and deliver to the Declarant such further assurances of these reservations of rights and easements as may be requested.

5.6 Duration of Development Rights; Assignment. The rights and easements reserved by or granted to the Declarant pursuant to this Section shall continue so long as the Declarant owns any Lot. The Declarant may make limited temporary assignments of its easement rights under this Declaration to any Person performing construction, installation or Maintenance on any portion of the Property.

5.7 Association Powers and Rights. The Association's exercise of the rights, powers and easements granted in this Article 5 are not subject to the time limitations on duration applicable to the Declarant. If the Declarant or any Owner requests the Association to exercise its powers under this Section, the Association's cooperation shall not be unreasonably withheld, conditioned or delayed.

5.8 Easement for Maintenance and Enforcement. The Association and its directors, officers, agents, contractors and employees, the Architectural Committee and any other Persons authorized by the Board are hereby granted the right of access over and through any Lots (excluding the interior of any Residential Unit), for: (i) the exercise and discharge of their respective powers and responsibilities under the Association Documents; (ii) making inspections in order to verify that all Improvements on the Lot have been constructed in accordance with the plans and specifications for such Improvements approved by the Architectural Committee and that all Improvements are being properly maintained as required by the Association Documents; (iii) correcting any condition originating in a Lot or in the Common Area threatening another Lot or the Common Area; (iv) correcting drainage; (v) performing installations or Maintenance of utilities, landscaping or other Improvements located on the Lots for which the Association is responsible for Maintenance; or (vi) correcting any condition which violates the Association Documents.

5.9 Easements for Encroachments. If any Improvements on any Lot or portion of the Common Area now or hereafter encroach on any other portion of the Property by reason of: (i) the original construction thereof; (ii) deviations within normal construction tolerances in the Maintenance of any Improvement; or (iii) the settling or shifting of any land or Improvement, an easement is hereby granted to the extent of any such encroachment not in violation of the County ordinances for the period of time the encroachment exists. The Owner of the encroaching Improvement shall also have an easement for the limited purpose of Maintenance of the encroaching

Improvement. This easement does not relieve any Owner or any other Person from liability for such Owner's or other Person's negligence or willful misconduct.

ARTICLE 6

THE ASSOCIATION; ORGANIZATION; MEMBERSHIP AND VOTING RIGHTS

6.1 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 Design Guidelines, this Declaration shall control.

6.2 Board of Directors and Officers. The affairs of the Association shall be conducted by the Board and such officers as the Board may elect or appoint in accordance with the Articles and the Bylaws. So long as the Declarant owns any Lot, the Declarant shall have the right to appoint and remove the members of the Board. After the Declarant no longer owns any Lot, the Board shall be elected or appointed as provided in the Bylaws. Unless the Association Documents specifically require the vote of the Members, approvals or actions to be given or taken by the Association shall be valid if given or taken by the Board.

6.3 The Association Rules. The Board may, from time to time, and subject to the provisions 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 the Maintenance of Lots; or (iii) restrictions on the use of Lots. In the event of any conflict or inconsistency between the provisions of this Declaration and the Association Rules, the provisions of this Declaration shall prevail. The Association Rules shall be enforceable in the same manner and to the same extent as the covenants, conditions and restrictions set forth in this Declaration.

6.4 Personal Liability. No director or officer of the Association, no member of the Architectural Committee or of any committee of the Association, and no other person acting on behalf of the Board shall be personally liable to any Member, or to any other Person for any damage, loss or prejudice suffered or claimed on account of any act, omission, error, or negligence in the discharge of such person's duties and responsibilities under the Association Documents provided such person acted in good faith.

6.5 Implied Rights. The Association may exercise any right or privilege given to the Association expressly by the Association Documents and every other right or privilege reasonably

to be implied from the existence of any right or privilege given to the Association by the Association Documents or reasonably necessary to effectuate any such right or privilege.

6.6 Identity of Members. Membership in the Association shall be limited to Owners of Lots including the Declarant so long as the Declarant owns any Lot. All Owners of Lots shall be mandatory members of the Association. 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.

6.7 Classes of Members and Voting Rights. The Association shall have the following two classes of voting membership:

(i) **Class A.** Class A members are all Owners, with the exception of the Declarant until the termination of the Class B membership, of Lots. Each Class A member shall be entitled to one (1) vote for each Lot owned. Upon the termination of the Class B membership, the Declarant shall be a Class A member so long as the Declarant owns any Lot.

(ii) **Class B.** The Class B member shall be the Declarant. The Class B member shall be entitled to three (3) votes for each Lot owned. The Class B membership shall cease and be converted to Class A membership when the votes held by Class A members exceed the votes held by the Declarant or when the Declarant notifies the Association in writing that it relinquishes its Class B membership, whichever occurs first.

6.8 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 a Lot is owned by more than one person 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 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. In the event more than one vote is cast by a Class A Member for a particular Lot, none of the votes shall be counted and all of the votes shall be deemed void.

6.9 Transfer of Membership. The rights and obligations of any Member other than the Declarant 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.

6.10 Conveyance, Lease or Encumbrance of Common Area.

6.10.1 Except as provided in Section 5.2 or Subsection 6.10.2 of this Declaration, the Common Area shall not be mortgaged, transferred, dedicated or encumbered without the prior written consent or affirmative vote of the Class B member of the Association and the affirmative vote or written consent of the Owners representing at least two-thirds (2/3) of the total number of votes entitled to be cast by Members of the Association.

6.10.2 The Association may dedicate parts of the Common Area to any public agency, authority or utility for such purposes and subject to such conditions as the Board may determine to be in the best interests of the Association. The Association may grant permits, licenses and easements on, over, under and through the Common Area for utilities, roads and other purposes reasonably necessary or useful for the proper maintenance and operation of the Property. The Association may lease all or any part of the Common Area for such purposes and on such terms and conditions as are approved by Members entitled to cast more than fifty percent (50%) of the votes represented in person or by proxy at an annual or special meeting of the Members at which the lease is submitted to the Members for approval.

6.11 Suspension of Voting Rights. If any Owner fails to pay any Assessments or other amounts due to the Association under the Association Documents within fifteen (15) days after such payment is due or if any Owner violates any other provision of the Association Documents and such violation is not cured within fifteen (15) days after the Association notifies the Owner of the violation, the Board, in accordance with the procedures set forth in the Bylaws, 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 Association Documents are corrected.

ARTICLE 7

COVENANT FOR ASSESSMENTS AND CREATION OF LIEN

7.1 Creation of Lien and Personal Obligation of Assessments. The Declarant, for each Lot owned by it, hereby covenants and agrees, and each Owner, other than the Declarant, by becoming the Owner of a Lot, is deemed to covenant and agree, to pay Assessments to the Association in accordance with this Declaration. All Assessments shall be established and collected as provided in this Declaration. The Assessments, together with interest, late charges and all costs, including but not limited to reasonable attorneys' fees, incurred by the Association in collecting or attempting to collect delinquent Assessments, whether or not suit is filed, shall be a charge on the Lot and shall be a continuing lien upon the Lot against which each such Assessment is made. Each Assessment, together with interest and all costs, including but not limited to reasonable attorneys' fees, incurred by the Association in collecting or attempting to collect delinquent Assessments,

whether or not suit is filed, shall also be the personal obligation of the Person who was the Owner of the Lot at the time when the Assessment became due. The personal obligation for delinquent Assessments shall not pass to the successors in title of the Owner unless expressly assumed by them. No Owner shall be exempt from liability for Assessments because of such Owner's non-use of the Common Area, abandonment of such Owner's Lot or other circumstance. The obligation to pay Assessments is a separate and independent obligation on the part of each Owner. No diminution or abatement of Assessments or set-off shall be claimed or allowed for any alleged failure of the Association, the Board or the Architectural Committee to take some action or perform some function required of it.

7.2 Annual Assessments.

7.2.1 For each Assessment Period, the Board shall prepare and adopt a budget for the Association containing an estimate of the total amount of funds which the Board believes will be required during the applicable Assessment Period which shall serve as the basis for determining the Annual Assessments for that Assessment Period. The budget shall contain the estimated Common Expenses for the applicable Assessment Period and the estimated income to the Association other than from Assessments and reflect the amount reasonably estimated by the Board to be required in order for the Association to be able to pay all Common Expenses during the Assessment Period. ~~Based upon the applicable budget adopted by the Board, the Board, for each Assessment Period, shall assess against each Assessable Lot an Annual Assessment which shall be set at an equal amount for each Assessable Lot.~~

7.2.2 The Board shall give notice of the Annual Assessment to each Owner at least ~~thirty (30) days prior to the beginning of each Assessment Period~~, but the failure to give such notice shall not affect the validity of the Annual Assessment established by the Board nor relieve any Owner from its obligation to pay the Annual Assessment. If the Board fails to adopt a budget for any Assessment Period, then until and unless such budget is adopted and an Annual Assessment is levied by the Board for such Assessment Period, the amount of the Annual Assessment for the immediately preceding Assessment Period shall remain in effect. Unless approval or ratification of the budget or the Annual Assessment for any Assessment Period is required by law, neither the budget nor the Annual Assessment shall be required to be ratified or approved by the members. If the Board determines during any Assessment Period that the funds budgeted for that Assessment Period are, or will, become inadequate to meet all Common Expenses for any reason, including, without limitation, nonpayment of Assessment by Members, the Board may amend the budget and increase the Annual Assessment for that Assessment Period and the revised Annual Assessment shall commence on the date designated by the Board.

7.3 **Special Assessments.** The Association may levy against each Assessable Lot a Special Assessment for the purpose of defraying, in whole or in part, the cost of any construction, reconstruction, repair or replacement of an Improvement upon the Common Area, 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. So long as the Declarant owns any Lot, any Special Assessment must be approved in writing by the Declarant. Any Special Assessment shall be levied in an equal amount for each Assessable Lot.

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

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

7.6 **Obligation of Declarant for Deficiencies.** So long as there is a Class B membership in the Association, Declarant shall pay and contribute to the Association, within thirty (30) days after the end of each fiscal year of the Association, or at such other times as may be requested by the Board, such funds as may be necessary, when added to the Annual Assessment levied by the Association, to pay all Common Expenses of the Association as they become due. The Declarant's obligations under this Section may be satisfied by the payment of money or by contribution of services or materials, or a combination thereof. In no event shall the Declarant be obligated to pay or contribute money or services or materials to the Association in excess of the amount of Assessments that would have been payable by the Declarant if the Lots owned by the Declarant had been Assessable Lots.

7.7 **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 provisions of this Declaration. The failure of the Association to send a bill to a Member shall not relieve any Member of such Member's liability for any Assessment or charge under this Declaration, but the Assessment Lien therefor shall not be foreclosed until the Member has been given not less than thirty (30) days written notice prior to such foreclosure that the Assessment or any installment thereof is or will be due and of the amount owing. Such notice may be given at any time prior to or after delinquency of such payment. The Association shall be under no duty to refund any payments received by it even though the ownership of a Lot changes during an Assessment Period but successor Owners of Lots shall be given credit for prepayments, on a prorated basis, made by prior Owners.

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

7.8.1 Any Assessment, or any installment of an Assessment, not paid within fifteen (15) days after the Assessment, or the installment of the Assessment, first became due shall bear interest from the due date at the rate of interest set from time to time by the Board. In addition, the Board 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 was due.

7.8.2 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; (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 whether or not suit is filed by the Association; (v) any amounts payable to the Association pursuant to Section 8.3 or 8.4 of this Declaration; and (vi) any other amounts payable to the Association pursuant to the Association Documents. The Recording of this Declaration constitutes record notice and perfection of the Assessment Lien. The Association may, at its option, record a Notice of Lien setting forth the name of the delinquent Owner as shown in the records of the Association, the legal description or street address of the Lot against which the Notice of Lien is recorded and the amount claimed to be past due as of the date of the Recording of the Notice, including interest, lien recording fees and reasonable attorneys' fees. Before recording any Notice of Lien against a Lot, the Association shall make a written demand to the defaulting Owner for payment of the delinquent Assessments, together with interest, late charges and reasonable attorneys' fees, if any, and all other amounts secured by the Assessment Lien. Each default shall constitute a separate basis for a demand, but any number of defaults may be included within the single demand. If the amounts specified in the demand are not paid within ten (10) days after delivery of the demand, the Association may proceed with recording a Notice of Lien against the Lot. If the Association records a Notice of Lien, the Association may charge the Owner of the Lot against which the Notice of Lien is Recorded a lien fee in an amount established from time to time by the Board.

7.8.3 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. 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 which accrue prior to such sale or transfer shall remain the obligation of the defaulting Owner of the Lot.

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

7.8.5 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 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.

7.9 Purposes for which Association's Funds May Be Used. The Association shall use all funds and property collected and received by it (including the Assessments, fees, loan proceeds, surplus funds and all funds and property received by it from any other source) solely for the purpose of (i) discharging and performing the Association's duties and obligations under the Association Documents; (ii) exercising the rights and powers granted to the Association by the Association Documents; and (iii) the common good and benefit of the Project and the Owners, Lessees and Residents. In furtherance of such purposes, the Association may use funds and property of the Association for, among other things, the acquisition, construction, alteration, maintenance, provision and operation, by any manner or method whatsoever, of any and all land, properties, improvements, facilities, services, projects, programs, studies and systems, within or without the Project, which may be necessary, desirable or beneficial to the general common interests of the Project, the Owners, Lessees and Residents.

7.10 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.

7.11 Initial Capital Contribution. Each Purchaser of a Lot from the Declarant shall pay to the Association immediately upon becoming the Owner of the Lot a sum equal to one-sixth (1/6th) of the then current Annual Assessment for an Assessable Lot. Funds paid to the Association pursuant to this Section may be used by the Association for payment of operating expenses or any other purpose permitted under the Association Documents. Payments made pursuant to this Section shall be nonrefundable and shall not be considered as an advance payment of any Assessments levied by the Association pursuant to this Declaration. Payments made pursuant to this Section shall be deemed a contribution to the capital of the Association.

7.12 Contribution to Reserves.

7.12.1 Except as otherwise provided in Subsection 7.12.2, each Person who purchases or otherwise becomes the Owner of a Lot shall pay to the Association immediately upon becoming the Owner of the Lot a sum equal to one-sixth (1/6th) of the then current Annual Assessment for an Assessable Lot (the "Reserve Contribution") as a contribution to the Association's reserves for the construction of additional community recreation facilities or amenities, the expansion or addition to existing community recreation facilities and amenities or the future periodic maintenance, repair or replacement of the Areas of Association Responsibility. The Reserve Contribution shall be in addition to, and not in lieu of, any other Assessments or amounts payable to the Association by the Owner making the Reserve Contribution, and the Reserve Contribution shall be secured by the Assessment Lien. The Reserve Contribution shall be deemed a contribution to the capital of the Association.

7.12.2 No Reserve Contribution shall be payable with respect to: (i) the transfer or conveyance of a Lot by the Declarant; (ii) the transfer or conveyance of a Lot by devise or intestate succession; (iii) a transfer or conveyance of a Lot to a family trust, family limited partnership or other Person for bona fide estate planning purposes; (iv) a transfer or conveyance of a Lot to a corporation, partnership or other entity in which the grantor owns a majority interest unless the Board determines, in its sole discretion, that a material purpose of the transfer or conveyance was to avoid payment of the Reserve Contribution; or (v) the transfer or conveyance of a Lot as a result of a trustee's sale under a deed of trust, the foreclosure of a realty mortgage or the forfeiture or foreclosure of a purchaser's interest under a recorded contract for the conveyance of real property subject to A.R.S. 33-741, et seq.

7.12.3 All Reserve Contributions may only be used to pay costs and expenses related to the design or construction of recreational facilities and amenities on the Common Area, for the design and construction of additions to or expansions of existing community recreational facilities and amenities situated on the Common Area or the maintenance, repair or replacement of the Areas of Association Responsibility, unless the expenditure of any or all of the Reserve Contributions for other purposes is approved by the vote of Owners having two-thirds (2/3) of the votes entitled to be cast by Class A members of the Association and by the Declarant for so long as the Declarant is the Class B member of the Association.

7.13 Transfer Fee. Each Person who purchases a Lot from a Person other than the Declarant 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 to compensate the Association for the administrative cost resulting from the transfer of a Lot. The transfer fee is not intended to compensate the Association for the costs incurred in the preparation of the statement which the Association is required to mail to deliver to a purchaser under A.R.S. § 33-1806A and, therefore, the transfer fee shall be in addition to the fee which the Association is entitled to charge pursuant to A.R.S. § 33-1806C.

ARTICLE 8

MAINTENANCE

8.1 . Areas of Association Responsibility. The Association, or its duly delegated representative, shall be responsible for the management and Maintenance of the Common Area, and all Improvements located thereon, except for any part of the Common Area which any governmental entity is maintaining or is obligated to maintain. The Board shall be the sole judge as to the appropriate Maintenance of all Areas of Association Responsibility, but the Areas of Association Responsibility, and the Improvements located thereon, shall be maintained in good condition and repair at all times. No Owner, Resident or other Person shall construct or install any Improvements on the Areas of Association Responsibility or alter, modify or remove any Improvements situated on the Areas of Association Responsibility without the approval of the Board. No Owner, Resident or other Person shall obstruct or interfere with the Association in the performance of the Association's management or Maintenance of the Areas of Association Responsibility, and the Improvements located thereon.

8.2 Lots. Each Owner of a Lot shall be responsible for the Maintenance of his Lot, and all buildings, Residential Units, landscaping or other Improvements situated thereon, except for any portion of the Lot, or any Improvement situated thereon, 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, wood piles or storage areas may be maintained so as to be Visible From Neighboring Property or streets. All Lots upon which no Residential Units, buildings or other structures, landscaping or Improvements have been constructed shall be maintained in a weed free and attractive manner.

8.3 Assessment of Certain Costs of Maintenance and Repair. In the event that the need for Maintenance of an Area of Association Responsibility is caused through the willful or negligent act of any Owner, his family, tenants, guests or invitees, the cost of such Maintenance shall be paid by such Owner to the Association upon demand and payment of such amounts shall be secured by the Assessment Lien.

8.4 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 the Owner of any Lot is failing to perform any of its obligations under the Association 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 paid by such Owner to the Association upon demand and payment of such amounts shall be secured by the Assessment Lien.

8.5 Boundary Walls.

8.5.1 Each wall or fence which is located between two Lots shall constitute a boundary wall and, to the extent not inconsistent with this Section 8.5, the general rules of law regarding boundary walls shall apply.

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

8.5.3 Except as provided in Subsection 8.5.4 below, the Owners of contiguous Lots who share a boundary wall shall each pay one-half ($\frac{1}{2}$) of the cost of any maintenance, repair or replacement of the boundary wall. Either of such Owners may perform any necessary repair, maintenance or replacement of the boundary wall and in such event, such Owner shall be entitled to reimbursement from the other Owner for one-half ($\frac{1}{2}$) of such cost.

8.5.4 In the event that any boundary wall is damaged or destroyed through the negligence or willful act of an Owner, his agents, tenants, licensees, guests or family, it shall be the obligation of such Owner to rebuild and repair the boundary wall without cost to the other Owner or Owners who share the boundary wall.

8.5.5 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.

8.5.6 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 boundary wall shall first obtain the written consent of the adjoining Owners.

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

8.6 Maintenance of Walls other than Boundary Walls.

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

8.6.2 Any wall which is placed on the boundary line between a Lot and the Common Area shall be maintained, repaired and replaced by the Owner of the Lot, except that the Association shall be responsible for the repair and maintenance of the side of the wall which faces the Common Area. In the event any such wall encroaches upon the Common Area of a Lot, an easement for such encroachment shall exist in favor of the Association or the Owner of the Lot, as the case may be.

8.6.3 Any wall which is placed on the boundary line between a Lot and public right-of-way shall be maintained, repaired and replaced by the Association, except that the Owner of the Lot shall be responsible for the repair and replacement of the surface of the wall which faces the Lot.

ARTICLE 9

INSURANCE

9.1 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:

9.1.1 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 coverages with cost liability endorsements to cover liabilities of the Owners as a group to an Owner;

9.1.2 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.

9.1.3 Workmen's compensation insurance to the extent necessary to meet the requirements of the laws of Arizona;

9.1.4 Such other insurance as the Board shall determine from time to time to be appropriate to protect the Association or the Owners;

9.1.5 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 employees, with respect to Owners and members of their household; (ii) no act or omission by any Owner, unless acting within the scope of his authority on behalf of the Association, will void the policy or be a condition to recovery on the policy; (iii) that the coverage afforded by such policy shall not be brought into contribution or pro-rata with any insurance which may be purchased by Owners or their mortgagees or beneficiaries under deeds of trust; (iv) a "severability of interest" endorsement which shall preclude the insurer from denying the claim of an Owner because of the negligent acts of the Association or other Owners; (v) statement of the name of the insured as the Association; and (vi) for policies of hazard insurance, a standard mortgagee clause providing that the insurance carrier shall notify the first mortgagee named in the policy at least ten (10) days in advance of the effective date of any substantial modification, reduction or cancellation of the policy;

9.2 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 cancelled 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.

9.3 Payment of Premiums. The premiums for any insurance obtained by the Association pursuant to Section 9.1 of this Declaration shall be included in the budget of the Association and shall be paid by the Association.

9.4 Payment of Insurance Proceeds. With respect to any loss to any Area of Association Responsibility covered by property insurance obtained by the Association in accordance with this Article, 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 9.5 of this Declaration, the proceeds shall be disbursed for the repair or restoration of the damage to the Area of Association Responsibility.

9.5 Repair and Replacement of Damaged or Destroyed Property. Any portion of the Areas of Association Responsibility which is damaged or destroyed shall be repaired or replaced promptly by the Association unless (i) repair or replacement would be illegal under any state or local health or safety statute or ordinance, or (ii) Owners representing at least eighty percent (80%) of the total authorized votes in the Association vote not to repair or replace the damaged or destroyed Improvements. The cost of repair or replacement in excess of insurance proceeds and reserves shall be paid by the Association. If all of the Areas of Association Responsibility are not repaired or

replaced, insurance proceeds attributable to the damaged Areas of Association Responsibility shall be used to restore the damaged area to a condition which is not in violation of any state or local health or safety statute or ordinance and the remainder of the proceeds shall either (i) be retained by the Association as an additional capital reserve, or (ii) be used for payment of operating expenses of the Association if such action is approved by the affirmative vote or written consent, or any combination thereof, of Members representing more than fifty percent (50%) of the votes in the Association.

ARTICLE 10

DISPUTE RESOLUTION

10.1 Agreement to Resolve Certain Disputes Without Litigation. The Association, the Declarant, all Owners and other Persons bound by this Declaration, and any Person not otherwise bound by this Declaration who agrees to submit to this Article (collectively, the "Bound Parties") agree that the dispute resolution procedures set forth in this Article shall apply to the following claims (a "Claim"); (i) any claim arising out of or related to the planning, design, engineering, grading, construction or development of the Common Area, the Lots or any other part of the Project; or (ii) any claim against the Declarant or any employee, agent, director, member or officer of Declarant arising out of or in any way related to the development of the Project or the management or operation of the Association, including, without limitation, any claim for breach of fiduciary duty.

10.2 Notice of Claim. Any Bound Party having a Claim (a "Claimant") against any other Bound Party (a "Respondent") shall notify each Respondent in writing of the Claim (the "Notice"), stating plainly and concisely: (i) the nature of Claim, including, date, time, location, Persons involved, and Respondent's role in the Claim; (ii) the factual and legal basis of the Claim; and (iii) what Claimant wants Respondent to do or not do to resolve the Claim.

10.3 Mediation.

10.3.1. If the Parties do not resolve the Claim through negotiation within thirty (30) days after the date of the Notice or within such longer period as may be agreed upon by the Parties ("Termination of Negotiations"), Claimant shall have thirty (30) additional days within which to submit the Claim to mediation under the auspices of an independent mediation service designated by the Declarant.

10.3.2. If Claimant does not submit the Claim to mediation within thirty (30) days after Termination of Negotiations, Claimant shall be deemed to have waived the Claim, and Respondent shall be released and discharged from any and all liability to Claimant on account of such Claim; provided, nothing herein shall release or discharge Respondent from any liability to any Person not a Party to the foregoing proceedings.

10.3.3 If the Parties do not settle the Claim within thirty (30) days after submission of the matter to the mediation process, or within such time as determined reasonable or appropriate by the mediator, the mediator shall issue a notice of termination of the mediation proceedings ("Termination of Mediation"). The Termination of Mediation notice shall set forth when and where the Parties met, that the Parties are at an impasse, and the date that mediation was terminated.

10.4 Binding Arbitration. In the event a Claim is not resolved by Mediation, the Claimant shall have fifteen (15) days after the Termination of Mediation to submit the Claim to binding arbitration in accordance with this Section. If the Claimant fails to timely submit the Claim to arbitration, then the Claim shall be deemed waived and abandoned and the Respondent shall be relieved of any and all liability to Claimant arising out of the Claim. If the Claimant submits the Claim to binding arbitration in accordance with this Section, the arbitration shall be conducted in accordance with the following rules:

(i) **Initiation of Arbitration.** The arbitration shall be initiated by either party deliver to the other a Notice of Intention to Arbitrate as provided for in the American Arbitration Association ("AAA") Commercial Arbitration Rules, as amended from time to time (the "AAA Rules").

(ii) **Governing Procedures.** The arbitration shall be conducted in accordance with the AAA Rules and A.R.S. § 12-1501, et seq. In the event of a conflict between the AAA Rules and this Section 10.4, the provisions of this Section 10.4 shall govern.

(iii) **Appointment of Arbitrator.** The parties shall appoint a single Arbitrator by mutual agreement. If the parties have not agreed within ten (10) days of the date of the Notice of Intention to Arbitrate on the selection of an arbitrator willing to serve, the AAA shall appoint a qualified Arbitrator to serve. Any arbitrator chosen in accordance with this Subsection (iii) is referred to in this Section 10.8 as the "Arbitrator".

(iv) **Qualifications of Arbitrator.** The Arbitrator shall be neutral and impartial. The Arbitrator shall be fully active in such Arbitrator's occupation or profession, knowledgeable as to the subject matter involved in the dispute, and experienced in arbitration proceedings. The foregoing shall not preclude otherwise qualified retired lawyers or judges.

(v) **Disclosure.** Any candidate for the role of Arbitrator shall promptly disclose to the parties all actual or perceived conflicts of interest involving the dispute or the parties. No Arbitrator may serve if such person has a conflict of interest involving the subject matter of the dispute or the parties. If an Arbitrator resigns or becomes unwilling to continue to serve as an Arbitrator, a replacement shall be selected in accordance with the procedure set forth in Subsection (iii) above.

(vi) **Compensation.** The Arbitrator shall be fully compensated for all time spent in connection with the arbitration proceedings in accordance with the Arbitrator's hourly rate not to exceed Three Hundred Dollars (\$300.00) per hour, unless otherwise agreed to by the parties, for all time spent by the Arbitrator in connection with the arbitration proceeding. Pending the final award, the Arbitrator's compensation and expenses shall be advanced equally by the parties.

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

(viii) **Management of the Arbitration.** The Arbitrator shall actively manage the proceedings as the Arbitrator deems best so as to make the proceedings expeditious, economical and less burdensome than litigation.

(ix) **Confidentiality.** All papers, documents, briefs, written communication, testimony and transcripts as well as any and all arbitration decisions shall be confidential and not disclosed to anyone other than the Arbitrator, the parties or the parties' attorneys and expert witnesses (where applicable to their testimony), except that upon prior written consent of all parties, such information may be divulged to additional third parties. All third parties shall agree in writing to keep such information confidential.

(x) **Hearings.** Hearings may be held at any place within the State of Arizona designated by the Arbitrator and, in the case of particular witnesses not subject to subpoena at the usual hearing site, at a place where such witnesses can be compelled to attend.

(xi) **Final Award.** The Arbitrator shall promptly (within sixty (60) days of the conclusion of the proceedings or such longer period as the parties mutually agree) determine the claims of the parties and render a final award in writing. The Arbitrator may award the prevailing party in the proceeding all or a part of such party's reasonable attorneys' fees and expert witness fees, taking into account the final result of arbitration, the conduct of the parties and their counsel in the course of the arbitration, and other relevant factors. The Arbitrator shall not award any punitive damages. The Arbitrator shall not award indirect, consequential or special damages regardless of whether the possibility of such damage or loss was disclosed to, or reasonably foreseen

by the party against whom the claim is made; provided, however, that such damages may be deemed by the Arbitrator to be direct damages in an award reimbursing payments made by a party therefor to a third party. The Arbitrator shall assess the costs of the proceedings (including, without limitation, the fees of the Arbitrator) against the non-prevailing party.

10.5 Right to Enter, Inspect, Repair and/or Replace. Within a reasonable time after the receipt by Declarant of a Notice, Declarant shall have the right, upon reasonable notice to Claimant and during normal business hours, to enter onto or into, as applicable, the Common Area, any Lot, including any Residential Unit constructed thereon, and/or any Improvements for the purposes of inspecting and/or conducting testing to determine the validity of the Claim and, if deemed necessary by Declarant, to correct, repair and/or replace the alleged deficiency in the planning, design, engineering, grading, construction or development of the Common Area or any Lot, or any Improvement constructed on the Common Area or a Lot which is the basis for the Claim (the "Alleged Defect"). In conducting such inspection, testing, repairs and/or replacement, Declarant shall be entitled to take any actions as it shall deem reasonable and necessary under the circumstances. Nothing set forth in this Section shall be construed to impose any obligation on Declarant to inspect, test, repair, or replace any item or Alleged Defect for which Declarant is not otherwise obligated under applicable law or any limited warranty provided by Declarant in connection with the sale of the Lots and/or the Improvements constructed thereon. The right of Declarant to enter, inspect, test, repair and/or replace reserved hereby shall be irrevocable and may not be waived or otherwise terminated except by a writing, in recordable form, executed and Recorded by Declarant. In no event shall any statutes of limitations be tolled during the period in which Declarant conducts any inspection or testing of any Alleged Defects.

10.6 Use of Funds. In the event a Claimant initiates any legal action, cause of action, proceeding, reference or arbitration against Declarant alleging damages (i) for the costs of repairing or the replacement of any Alleged Defect (as defined in Section 10.5 above), (ii) for the diminution in value of any real or personal property resulting from such Alleged Defect, or (iii) for any consequential damages resulting from such Alleged Defect, any judgment or award in connection therewith shall first be used to correct and or repair such Alleged Defect or to reimburse the Claimant for any costs actually incurred by such Claimant in correcting and/or repairing the Alleged Defect. In the event the Claimant is the Association, the Association must provide written notice to all Members prior to initiation of any legal action, cause of action, proceeding, reference or arbitration against Declarant which notice shall (at a minimum) include (i) a description of the Claim, (ii) a description of the attempts of Declarant to correct such Alleged Defect and the opportunities provided to Declarant to correct such Alleged Defect, (iii) a certification from an engineer licensed in the State of Arizona that such Alleged Defect exists along with a description of the scope of work necessary to cure such Alleged Defect and a resume of such engineer, (iv) the estimated cost to repair such Alleged Defect, (v) the name and professional background of the attorney retained by the Association to pursue the claim against Declarant and a description of the relationship between such attorney and member(s) of the Board (if any), (vi) a description of the fee arrangement between such attorney and the Association, (vii) the estimated attorneys' fees and

expert fees and costs necessary to pursue the claim against Declarant and the source of the funds which will be used to pay such fees and expenses, (viii) the estimated time necessary to conclude the action against Declarant, and (ix) an affirmative statement from the Board that the action is in the best interests of the Association and its Members. In the event the Association recovers any funds from Declarant (or any other Person) to repair an Alleged Defect, any excess funds remaining after repair of such Alleged Defect shall be paid into the Association's reserve fund.

10.7 Approval of Litigation. The Association shall not incur legal expenses, including without limitation, attorneys' fees, in connection with any legal action or arbitration proceeding involving a Claim without the written approval of Owners entitled to cast more than fifty percent (50%) of the total votes in the Association, excluding the voting power of any Owner who would be a defendant in such proceedings. The Association must pay for any such legal action or arbitration proceeding with monies that are specifically collected for such purposes and may not borrow money or use reserve funds or other monies collected for specific Association obligations other than legal fees. In the event that the Association commences any legal action or arbitration proceeding involving a Claim, all Owners must notify prospective purchasers of such legal action or arbitration proceeding and must provide such prospective purchasers with a copy of the notice received from the Association in accordance with Section 10.6 of this Declaration.

ARTICLE 11

GENERAL PROVISIONS

11.1 Enforcement. The Association or any Owner shall have the right to enforce the Association Documents in any manner provided for in the Association Documents or by law or in equity, including, but not limited to, an action to obtain an injunction to compel removal of any Improvements constructed in violation of this Declaration or to otherwise compel compliance with the Association Documents. The failure of the Association or an Owner to take enforcement action with respect to a violation of the Association Documents shall not constitute or be deemed a waiver of the right of the Association or any Owner to enforce the Association Documents in the future. If any lawsuit is filed by the Association or any Owner to enforce the provisions of the Association Documents or in any other manner arising out of the Association Documents or the operations of the Association, the prevailing party in such action shall be entitled to recover from the other party all attorney fees incurred by the prevailing party in the action. In addition to any other rights or remedies available to the Association pursuant to the Association Documents or at law or in equity, the Board shall have the power to levy reasonable monetary penalties against an Owner for a violation of the Association Documents by the Owner, a Lessee of the Owner or, in the case of a Residential Lot, by an Resident of the Owner's Lot, provided the Owner is given notice and an opportunity to be heard.

11.2 Duration; Termination. The covenants, conditions, restrictions and easements contained in this Declaration shall run with the land and bind the Property and be in full force and effect in perpetuity unless terminated pursuant to this Section or amended as provided in Section 11.3 of this Declaration. 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 in each class of membership. If the necessary votes and consents are obtained, the Board shall cause to be Recorded a Certificate of Termination, duly signed by the President or Vice President and attested by the Secretary or Assistant Secretary of the Association, with their signatures acknowledged. Thereupon this Declaration shall have no further force and effect, and the Association shall be dissolved pursuant to the terms set forth in its Articles.

11.3 Amendments.

11.3.1 In addition to amendments made pursuant to Subsection 11.3.2 or 11.3.4 of this Declaration, the Declaration may be amended at any time by the affirmative vote of Owners holding not less than seventy-five percent (75%) of the total number of votes entitled to be cast by Members of the Association.

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

11.3.3 So long as the Declarant owns any Lot, any amendment to this Declaration must be approved in writing by the Declarant. After the Declarant no longer owns any Lot, this Declaration may be amended without the consent of the Declarant, except that any amendment to Article 10 of this Declaration still must be approved in writing by the Declarant.

11.3.4 The Declarant, so long as the Declarant owns any Lot, and thereafter, the Board, may amend this Declaration without the consent of any other Owner for the purposes of correcting technical or clerical errors.

11.3.5 Any amendment approved pursuant to Subsection 11.3.1 of this Declaration or by the Board pursuant to Subsection 11.3.2 or 11.3.4 of this Declaration shall be signed by the President or Vice President of the Association and shall be Recorded, and any such amendment shall certify that the amendment has been approved as required by this Section. Any amendment made by the Declarant pursuant to Subsection 11.3.2 or 11.3.4 of this Declaration shall be signed by the

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

11.3.6 Any challenge to an amendment to this Declaration for the reason that the amendment was not adopted by the required number of Owners or was not adopted in accordance with the procedures set forth in this Section must be made within one (1) year after the Recording of the amendment.

11.4 Condemnation of Common Area. If all or any part of the Common Area is taken or condemned, or conveyed by the Association in lieu of or under threat of such condemnation with the written consent or affirmative vote of Owners representing at least eighty percent (80%) of the votes in the Association, by or to any authority having the power of condemnation or eminent domain, the award or other compensation paid as a result of such taking or conveyance shall be paid to the Association. If the taking involves a portion of the Common Area upon which Improvements have been constructed, then the Association shall construct replacement Improvements on the remaining Common Area to the extent land is available for such construction, unless within sixty (60) days after such taking the owners having at least eighty percent (80%) of the votes in the Association, by written consent or affirmative vote, or any combination thereof, instruct the Board not to build replacement Improvements. If such replacement Improvements are to be constructed, then the Association shall be entitled to use the award or other compensation made for such taking solely for the purpose of such construction. If the taking does not involve any Improvements on the Common Area or if the Owners representing more than eighty percent (80%) of the votes in the Association decide not to construct any replacement Improvements or if there are any net funds remaining after such construction is completed, then such awarded net funds shall be retained by the Association and used for such purposes as may be determined by the Board.

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

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

11.7 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.

11.8 . Notice of Violation. The Association shall have the right to record a written notice of a violation by any Owner, Lessee or Resident of any restriction or other provision of the Association Documents. The notice shall be executed by an officer of the Association and shall contain substantially the following information: (i) the name of the Owner, Lessee or Resident violating, or responsible for the violation of, the Association Documents; (ii) the legal description of the Lot against which the notice is being Recorded; (iii) a brief description of the nature of the violation; (iv) a statement that the notice is being Recorded by the Association pursuant to this Declaration; and (v) a statement of the specific steps which must be taken by the Owner or occupant to cure the violation. Recordation of a notice of violation shall serve as notice to the Owner and Resident, and any subsequent purchaser of the Lot, that there is such a violation. Failure by the Association to Record a notice of violation shall not constitute a waiver of any such violation, constitute any evidence that no violation exists with respect to a particular Lot or constitute a waiver of any right of the Association to enforce the Association Documents.

11.9 Laws, Ordinances and Regulations.

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

11.9.2 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 this Declaration and subject to any or all of the enforcement procedures set forth herein.

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

11.11 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.

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

THE RYLAND GROUP, INC., a Maryland corporation

By: James P. Joyce
Its: v. Price

State of Arizona)
) ss.
County of Maricopa)

Acknowledged before me this 28th day of July, 2000, by James P. Joyce, the Vice President of The Ryland Group, Inc., a Maryland corporation, on behalf of the corporation.

Kim M. Junkin
Notary Public

My Commission Expires:

October 31, 2006

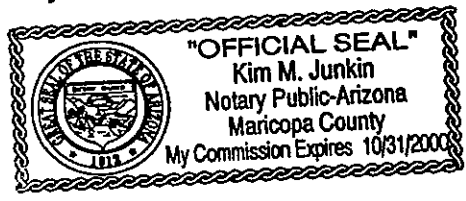


EXHIBIT A

DESCRIPTION OF PROPERTY SUBJECT TO DECLARATION

Lots 1 through 151, inclusive, and Tracts A through S, inclusive, Tone Ranch Estates, according to the plat recorded in Book 537, page 14, records of Maricopa County, Arizona.