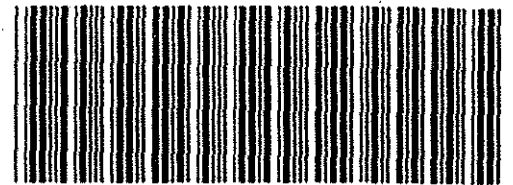


When Recorded, Return to:

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63 East Main Street
Suite 501
Mesa, Arizona 85201-7423



OFFICIAL RECORDS OF
MARICOPA COUNTY RECORDER
HELEN PURCELL

97-0879414 12/16/97 11:2

LILIAN 10 OF 24

LAWYERS TITLE OF ARIZONA, INC.

GAL 1/2

**AMENDMENT OF DECLARATION
OF
COVENANTS, CONDITIONS AND RESTRICTIONS
FOR
CIRCLE G AT HIGHLANDS WEST**

THIS AMENDMENT OF DECLARATION OF, COVENANTS, CONDITIONS AND RESTRICTIONS FOR CIRCLE G AT HIGHLANDS WEST (this "Amendment") is made by Circle G at Higley, L.L.C., an Arizona limited liability company, (herein referred to as "Declarant.

RECITALS

A. Declarant was the "Declarant" under that certain Declaration of Covenants, Conditions and Restrictions For Circle G at Highlands West recorded December 5, 1997, as Document No. 97-0854527, in the official records of Maricopa County, Arizona (the "Declaration").

B. Section 9.5 of the Declaration provides for the amendment of the Declaration by an instrument signed by the Declarant and the Owners owning not less than eighty percent of the Lots.

C. Declarant owns more than eighty percent of the Lots.

D. Declarant now desires to amend the Declaration.

NOW, THEREFORE, Declarant hereby declares, covenants and agrees as follows:

1. Fence Materials. Section 3.16 of the Declaration is amended to read in its entirety as follows:

3.16 Fence Materials: All fences and corrals constructed within the subdivision shall be of block and/or pre-cast concrete construction, except that the fences on the west sides of the Lots numbered 20, 21, 26 and 27 shall be six feet in height, the bottom three feet of which shall be of block and/or pre-cast concrete construction and the top three feet of which shall be of wrought iron. Under no circumstances shall a chain-link fence be permitted. Notwithstanding the provisions hereof, the design and specifications for all fences and corrals constructed within the subdivision shall be subject to the prior approval of the Committee.

2. Full Force and Effect. Except as set forth in this Amendment, the Declaration shall remain unchanged and in full force and effect.

IN WITNESS WHEREOF, the parties hereto have caused their names (or that of their duly-authorized officials) to be signed as of the day and year first above written..

CIRCLE G AT HIGLEY, L.L.C.,
an Arizona limited liability company

By: Circle G Property Development, L.L.C.,
an Arizona limited liability company,
Member

By: Gerald Rieke
Member

STATE OF ARIZONA)
) ss:
County of Maricopa)

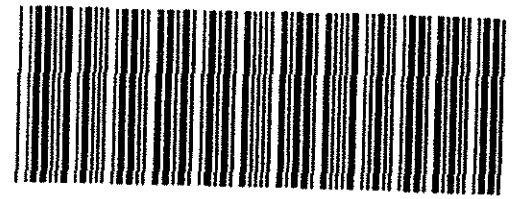
This instrument was acknowledged before me this 15th day of December, 1997, by Gerald Rieke, an authorized Member of Circle G Property Development, L.L.C., an Arizona limited liability company, on behalf of Circle G at Higley, L.L.C., an Arizona limited liability company.

My Commission Expires
10/16/2000
(Seal)

Daniel K. Johnson
Notary Public
OFFICIAL SEAL
DANIEL K. JOHNSON
NOTARY PUBLIC-ARIZONA
MARICOPA COUNTY
My Comm. Expires Oct. 16, 2000

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HELEN PURCELL

97-0854527 12/05/97 11:53

LILIAN 1 OF 1

Lawyers Title

**DECLARATION OF COVENANTS,
CONDITIONS AND RESTRICTIONS OF
CIRCLE G AT HIGHLANDS WEST**

THIS DECLARATION of Covenants, Conditions and Restrictions is made as of November 11, 1997 by Circle G at Higley, L.L.C., an Arizona limited liability company, herein referred to as "Declarant".

WITNESSETH:

WHEREAS, Declarant is the owner of both legal and equitable title of the following described real property, situated within the County of Maricopa, State of Arizona, to wit:

Lots 1 through 81, inclusive, and Tracts A through K, inclusive, CIRCLE G AT HIGHLANDS WEST, according to the plat of record in the office of the County Recorder of Maricopa County, Arizona, in Book 455 of Maps, Page 27 thereof;

WHEREAS, Declarant desires to develop the above-described real property into a uniquely planned residential subdivision; and

WHEREAS, at full development it is intended, without obligation, that such subdivision shall have common areas; and

WHEREAS, Declarant desires to form a non-profit corporation for the purpose of benefiting the Property and the Owners thereof, which non-profit corporation (herein defined as the "Association") shall be intended, without obligation, to (i) acquire,

construct, operate, manage and maintain the Common Area and related facilities; (ii) establish, levy, collect and disburse the assessments and other charges as may be imposed hereunder, and (iii) as the agent and representative of the Owners of the Property, administer and enforce all provisions hereof and enforce use and other restrictions imposed on various parts of the Property; and

WHEREAS, until such time as the Association is incorporated, Declarant desires to and hereby does reserve to itself, its successors and assigns the right to exercise the powers and duties granted in this Declaration to the Association; and

WHEREAS, in order to enable Declarant and the Association to accomplish the purposes outlined above, all of the Property is hereby subjected to and shall be held, sold and conveyed subject to the following easements, restrictions, covenants, and conditions which are for the purpose of protecting the value and desirability of, and which shall run with the Property and be binding on all parties having any right, title or interest in the described properties or any part thereof, their heirs, successors and assigns, and shall enure to the benefit of each Owner thereof.

NOW, THEREFORE, Circle G at Higley, L.L.C., hereby declares, covenants and agrees as follows:

ARTICLE 1

Definitions

The following words, phrases or terms used in this Declaration shall have the following meanings:

1.1 Articles shall mean the Articles of Incorporation prepared and filed for the formation of the Association in accordance with the requirements of applicable laws and regulations of the State of Arizona.

1.2 Association shall mean Circle G at Highlands West Homeowners Association, an Arizona non-profit corporation, to be organized by Declarant to administer and enforce the covenants and to exercise the rights, powers and duties set forth in this Declaration.

1.3 Board shall mean the governing board of directors of the Association.

1.4 Building shall mean a building and related structures built on any portion of the Project for permanent use, including, but not limited to, buildings, canopies, enclosed atriums, or porches.

1.5 Bylaws shall mean the written procedures, if any, adopted for the regulation or management of the affairs of the Association which may from time to time be adopted by the Board.

1.6 Committee shall be synonymous with "Architectural Control Committee" and shall mean Circle G at Highlands West Architectural Control Committee as described herein.

1.7 Committee Rules shall mean those rules and regulations that the Architectural Control Committee may, from time to time in its sole and absolute discretion, adopt, amend and repeal, by unanimous vote or written consent, which set forth the standards and procedures for Committee review and guidelines for architectural design, placement of Buildings, Landscaping, color scheme, exterior finishes and materials and similar features which are recommended for use within Circle G at Highlands West in accordance with Section 4.9.

1.8 Common Area shall mean all real property owned by the Association for the common use and enjoyment of all or a part of the Owners, and any other real property which the Association has the obligation to maintain (including, without limitation, landscape tracts, subdivision signage, etc.), or which the Association may otherwise agree to maintain for the common use and enjoyment of all or a part of the Owners.

1.9 Declarant shall mean Circle G at Higley, L.L.C, an Arizona limited liability company, its successors and assigns if such successors or assigns should acquire more than one (1) undeveloped Lot from Declarant for the purpose of development.

1.10 Declaration shall mean this Declaration of Covenants, Conditions and Restrictions of Circle G at Highlands West, as it may from time to time be amended or supplemented.

1.11 Defined Terms. Unless the context clearly indicates otherwise, certain terms used in this Declaration shall have the meanings set forth in this Article 1. In this

Declaration, unless the context requires otherwise, the masculine, feminine and neuter genders and the singular and the plural shall be deemed to include one another, as appropriate.

1.12 Developer shall mean and refer to Circle G at Higley, L.L.C.

1.13 Landscaping shall mean lawn, ground cover, flowers, shrubbery, trees and the like which may be complemented with earth berms, masonry or similar materials and the real property located thereunder, together with all sprinkling or other irrigation system related thereto.

1.14 Landscape Plan shall mean the plan for the installation and maintenance of Landscaping of a Lot which has been submitted to and approved by the Architectural Control Committee.

1.15 Lot shall mean any plot of land shown upon any recorded subdivision map of the Property with the exception of the Common Area.

1.16 Owner shall mean the record owner, whether one (1) or more persons or entities, of equitable or beneficial title (or legal title if same has merged) of any Lot. Owner shall include the purchaser of a Lot under an executory contract for the sale of real property. The foregoing does not include persons or entities who hold an interest in any Lot merely as a security for the performance of an obligation, nor shall the term "Owner" include a developer or contractor other than Declarant.

1.17 Parking Areas shall mean the portions of the Lots and other areas within the Project designated on the Plat or otherwise used for parking of motor vehicles, including without limitation, incidental and interior driveways, Roadways, walkways, curbs, and Landscaping within the areas used for such parking, together with all improvements thereon.

1.18 Plat shall mean *The Final Plat of Circle G at Highlands West*, prepared by Agra Infrastructure, Inc., Job No. 960708, and recorded in the office of the County Recorder of Maricopa County, Arizona, as the same may be amended or modified from time to time.

1.19 Project shall mean the Property, together with the improvements, the Common Area, the Roadways and the Landscaping which are now located upon or may in the future be located upon the Property and which shall collectively be commonly known as Circle G at Highlands West.

1.20 Property shall mean that certain real property hereinbefore described.

1.21 Roadways shall mean that portion of the Property which shall be used for the construction, maintenance and existence of roads, streets, selected sidewalks and related improvements.

1.22 Rules and Regulations shall mean standards for the occupancy and use of the Common Area and other portions of the Project and other matters related to the administration and management of the Project which may be adopted and amended by the Board from time to time in accordance with the provisions of this Declaration.

1.23 Taxes shall mean all taxes, assessments, charges and fees imposed, assessed or levied by any governmental or public authority against or upon the Property and/or improvements.

1.24 Town shall mean the Town of Gilbert, Arizona.

ARTICLE 2

Property Rights

2.1 Owner Easements of Enjoyment: Every Owner of a Lot within Circle G at Highlands West shall have a right and easement of enjoyment in and to the Common Area which shall be appurtenant to and shall pass with the title of said Lot, subject to the following provisions:

- A. the restricted nature of any easement of enjoyment existing on any part of the Common Area;
- B. the right of the Association to charge reasonable admission and other fees for the use of any recreational facility situated upon the Common Area;

- C. the right of the Association to suspend the voting rights and right to use the recreational facilities by an Owner for any period during which any assessment against his Lot remains unpaid; and for a period not to exceed sixty (60) days for any infraction of its published Rules and Regulations;
- D. the right of the Association to dedicate or transfer all or any part of the Common Area to any public agency, authority, or utility for such purposes and subject to such conditions as may be agreed to by the Members. No such dedication or transfer shall be effective unless an instrument agreeing to such dedication or transfer signed by two-thirds (2/3) of the Members of each class of membership has been recorded.

2.2 Delegation of Use: Any Owner may delegate, in accordance with the Bylaws, his right of enjoyment to the Common Area and facilities to the members of his family, his tenants, or contract purchasers who reside on the Property.

ARTICLE 3

Permitted Uses and Restrictions

3.1 Residential Use: Lots 1 through 81, inclusive, of Circle G at Highlands West shall be single-family residential Lots, and there may be erected on any one (1) Lot not more than one (1) single-family residence plus such accessory and auxiliary garages, barns and tack rooms as are incidental to single-family residential use. No other Building shall be erected on any of said Lots, nor shall any of said Lots or any part thereof be used for any business purposes whatsoever.

3.2 Subdividing: No Lot shall be re-subdivided into smaller Lots nor conveyed or encumbered in less than the full original dimensions of such Lot as shown by the recorded Plat. Nothing herein contained shall prevent the dedication or conveyance of portions of Lots for public utilities purposes, in which event the remaining portion of such Lots shall, for the purpose of this provision, be treated as a whole Lot.

3.3 Parking: Automobiles of the private passenger class and pickup trucks not exceeding three-quarter (3/4) ton may be parked on the side of any Lot; provided that any such Parking Area shall comply with the same setback requirements as the residential dwellings and be subject to required approval by the Committee. Campers, horse trailers, motor homes and boats may be parked on the back of any Lot; provided that any such parking shall be attractively screened or concealed from neighboring Lots, roads and streets, and then only with the prior approval of the Committee. All other trucks, vehicles and equipment shall not be kept on any Lot or street except in a private garage or barn. No motor vehicle which is under repair or not in operating condition shall be placed or permitted to remain on any street or streets, or any portion of any Lot in Circle G at Highlands West, unless it is within an enclosed garage or structure.

3.4 General Upkeep: All clothes lines, yard or tack equipment, garbage cans and service yards shall be kept screened by adequate planting or fencing so as to conceal them from the view of neighboring parcels and streets. All rubbish, trash and garbage shall be removed from the premises of all Lots and shall not be allowed to accumulate thereon. No antenna or broadcasting tower shall be erected on any of the said Lots in Circle G at Highlands West, except that a television antenna may be constructed and maintained within the attic of any approved Building and a satellite dish may be installed if (i) it is screened so as not to be visible from the street, and (ii) such installation has been specifically approved by the Committee.

3.5 Additional Upkeep Obligations. The Owners of Lots numbered 46, 64, 69, 70, 75, 76, and 81 acknowledge that Tract D, E, F or G lies adjacent to each of such Lots. In order to maintain consistency with the Landscape Plan for the front yard of each of such Lots, the Owners thereof each respectively covenant and warrant that he shall incorporate that part of the Common Area Tract that lies contiguous to the front yard of his Lot into the Landscape Plan for his Lot. In addition, each such Owner further covenants and warrants that he shall thereafter install the Landscaping on that part of the Common Area Tract lying contiguous to the front yard of his Lot at his expense and maintain the same at his expense in a manner that shall be harmonious and consistent with the Landscape Plan approved for such Lot.

3.6 Tanks: No elevated tanks of any kind shall be erected, placed or permitted on any Lot. Any tanks, including tanks for the storage of fuel, must be buried or attractively screened to conceal them from neighboring Lots, roads and streets, and then only with the prior approval of the Committee.

3.7 Horse Privileges: Subject to the laws, ordinances, health codes and rules and regulations of the State of Arizona, Maricopa County and municipalities thereof having jurisdiction over the Property, Circle G at Highlands West is and shall remain a multi-purpose subdivision intended for the use and enjoyment of horsemen including the non-commercial raising of horses; provided, however that only Lots 18 through 29 shall have such horse privileges.

All animals, including dogs, must be kept within a fenced area, encaged or otherwise controlled, and not allowed to wander off or fly about. There shall be no commercial breeding, raising and/or boarding of any animals.

The care of all animals shall be performed by the Owner in a clean, neat, orderly fashion in accordance with the prevailing customs and methods; the physical facilities for the same shall also be maintained by the Owner in a clean, neat and orderly fashion in accordance with the prevailing custom and usage so that such facilities shall not become a nuisance to the remaining Owners and shall comply with all requirements of the Maricopa County Health Department and the Committee.

At no time will swine, peacocks or geese be allowed.

3.8 Construction Permitted: All structures erected within Circle G at Highlands West must be of new construction, and no Buildings or structures may be moved from any other location, other than a point of distribution or manufacture, onto any of said Lots or tracts. All roofs must be of tile, wood shake or other construction material approved by the Committee.

3.9 Minimum Livable Area: All single-family residences constructed within Circle G at Highlands West, shall contain a minimum livable area of 2,400 square feet on the grade level if one (1) story, with or without basement, and 2,400 square feet on the grade level if two (2) story. A split level home containing a grade level, sub-grade level

and above-grade level shall contain a minimum livable area of 2,400 square feet on the grade level and sub-grade level combined. All square footage requirements shall be exclusive of open porches, pergolas or attached garages.

3.10 Garages: All single-family residences shall be constructed with a minimum of two-car garages enclosed with garage doors. No single or double carport shall be allowed. Side-entry garages shall be required within Circle G at Highlands West for all Lots, except for Lots (i) located on a cul-de-sac, and (ii) for which a side-entry garage is not practical, as determined by the Committee.

3.11 Plan Approval: Except as provided herein, no single-family residence, garage, barn, stable or shed, fence or other structure shall be constructed within Circle G at Highlands West without having first obtained the prior approval of design, location and materials by the Circle G at Highlands West Architectural Control Committee as described herein. All such approvals shall be obtained pursuant to the provisions and requirements of Article 4 herein.

3.12 Landscaping. Each Lot shall be landscaped in accordance with a Landscape Plan submitted to and approved by the Committee for such Lot. If the proposed plan includes the use of natural vegetation or materials, such natural vegetation or materials shall none-the-less be maintained at all times in accordance with standards acceptable to the Committee; as an example (and without any limitation) the Committee may require an Owner to trim or prune trees or other vegetation naturally growing on his Lot so as to eliminate fire hazards or prevent the unsightly collection of debris. The Owner shall landscape the Lot in accordance with the approved Landscape Plan within three (3) months after completion of construction of the residence (weather permitting, and if not, as soon thereafter as reasonably possible). If the Owner fails to comply with the provisions of this Section 3.12 within the permitted time period, then the Association or Committee may require compliance and shall have the rights and remedies provided in this Declaration to enforce such compliance.

3.13 Commencement of Construction: No garage, barn, stable or similar structure shall be erected on any Lot until construction of the primary single-family residence (complying with these restrictions) shall have been commenced on said Lot,

and no garage or barn shall be maintained or occupied until construction on said single-family residence is finished and ready for occupancy. Any garage, barn, stable or similar structure erected on any Lot shall be of the same design and constructed of the same materials as the permanent residence on said Lot.

3.14 Permanent Structure: No garage, barn, stable, tack room, trailer, mobile home, motor home, motor vehicle, or any temporary structure of any nature may be used temporarily or permanently as a residence on any Lot or tract. Except as may be otherwise permitted by the Committee under the authority granted in Section 4.5 hereof, all permanent structures on all Lots shall comply with (i) all minimum yard setback requirements established by the zoning ordinances of Maricopa County, as they may be amended from time to time, or (ii) the following minimum setback requirements, whichever are greater:

- Front Yard 40 feet or 30 feet, as applicable (as set forth below in this Section 3.14)
- Side Yard 30 feet or 20 feet, as applicable (as set forth below in this Section 3.14)
- Rear Yard 40 feet or 35 feet, as applicable (as set forth below in this Section 3.14)

Lots numbered 18 through 29 shall each comply with front and rear yard setback requirements of 40 feet; Lots numbered 1 through 17, and 30 through 81 shall each comply with a front yard setback requirement of 30 feet, and a rear yard setback requirement of 35 feet; Lots numbered 1 through 19, 22 through 25, and 28 through 81 shall each comply with a side yard setback requirement of 20 feet; and Lots 20, 21, 26 and 27 each shall comply with a setback requirement for the west side yard of 30 feet, and a setback requirement for the east side yard of 20 feet.

In addition to the foregoing, the site plan and construction on each Lot shall provide adequate space to accommodate a covered patio of at least 80 square feet (minimum dimension of 6 feet) within the required setbacks.

Further, the lot coverage on Lots numbered 18 through 29 shall not exceed 24%.

3.15 Fenced Areas: Each Owner shall enclose his back and side yards with six-foot fencing. A fence designed or used for the containment of horses may be built and maintained up to and conterminous with the back wall of a residential dwelling, provided that the location, design and type of materials for such fence have been approved by the Committee as provided herein. When an Owner has one (1) or more Lots to be used for grazing, then said fence shall be extended to the front Lot line of said grazing Lot(s) and shall enclose the entire grazing Lot(s).

All fencing required hereunder shall be constructed prior to the time that any person occupies the residence on the Lot and shall be constructed on the Lot boundary line. Each Owner will share the costs of such fencing with the Owner of an adjoining Lot in regard to the cost incurred to construct the required fencing between their two (2) Lots. If any Owner refuses or fails to pay his proportionate share of fencing required to be constructed hereunder, then such obligation shall be deemed to create a lien on his Lot for the amount owed and may be enforced by the Association or other Owners in a similar manner to any other lien created by this Declaration.

3.16 Fence Materials: All fences and corrals constructed within the subdivision shall be of block construction, except that the fences on the west sides of the Lots numbered 20, 21, 26 and 27 shall be six feet in height, the bottom three feet of which shall be of block construction and the top three feet of which shall be of wrought iron. Under no circumstances shall a chain-link fence be permitted. Notwithstanding the provisions hereof, the design and specifications for all fences and corrals constructed within the subdivision shall be subject to the prior approval of the Committee.

3.17 Light Post: Each and every Owner must have a least one (1) light post located within the front yard of his Lot and shall obtain the approval of the Committee of the location, design and construction of the light post. If approved by the Committee, the required light post may be designed and constructed as a part of a mailbox structure.

3.18 Commercial Activities: No hotel, store, multi-family dwelling, boarding house, guest ranch, or any other place of business of any kind, and no hospital, sanitarium or other place for the care or treatment of the physically or mentally sick or for the treatment of disabled animals shall be erected or permitted upon the premises of any Lot,

or any part thereof, and no business of any kind or character whatsoever shall be conducted in or from any residence or Building on any Lot.

3.19 Signs: No advertising signs, billboards or unsightly objects shall be erected, placed or permitted to remain on any Lot or tract, provided, however, that a sign or signs as may be required by legal proceedings and a single "For Sale" or "For Rent" sign, not containing more than four (4) square feet of surface area, may be placed on any Lot, and such sign or signs shall not be deemed in violation of these restrictions.

3.20 Upkeep Assessment: Owners of all Lots shall keep the same reasonably clean and clear of weeds and trash, so as not to cause an unsightly or dangerous condition, and if such Owner should fail after ten (10) days' written notice from the Committee to do so, the Committee shall have the right to enter upon such Lot and may cause the same to be cleaned, up to four (4) times yearly as necessary, and charge the actual cost thereof to the Owner of such Lot, and said charges shall be a lien against the Lot.

3.21 Drainage: The Developer has established appropriate grades, as required by the proper governmental authorities, within Circle G at Highlands West, and said final grades shall not be disturbed in any manner which may adversely affect any other residential unit or real property whether within the subdivision or elsewhere; nor shall any Owner divert or cause diversion of the surface water from the street adjacent to his Lot onto any other property. Each Owner hereby acknowledges and covenants that all surface runoff from the street adjacent to his Lot (excluding Guadalupe Road) and from the Lot itself shall be retained on the Lot. All other surface water shall be left free to its natural flow unless lawfully diverted to a drainage ditch. The Owner of each Lot that is 35,000 square feet or larger in size shall finish grade such Lot in conformance with a grading plan for such Lot that has been approved by the Town. The provisions of this paragraph shall be subordinate to the Maricopa County and Town subdivision regulations governing such drainage.

3.22 Utility Easements: All Lots and tracts in the subdivision are subject to a public utilities easement for the purpose of permitting installation and maintenance of public utilities, and no excavation, planting, fence, Building, structure or other barrier or

impediment may be placed or permitted to remain at any point on any public utility easement within Circle G at Highlands West which would restrict the free use and enjoyment of said easements by the Owner of any Lot in the subdivision.

3.23 Use of Trail Bikes: No trail bikes, ATV's, motorcycles or motor-driven vehicles of any kind shall make use of any easement within Circle G at Highlands West without the prior consent and approval of the Committee.

3.24 Trash Containers and Collection: No garbage or trash shall be placed or kept on any property within Circle G at Highlands West except in covered containers. 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.

3.25 Diseases and Insects: No Owner shall permit any thing or condition to exist upon any property within Circle G at Highlands West, which shall induce, breed or harbor infectious plant diseases or noxious insects; provided, however, this provision shall not restrict the horse and animal privileges contained herein.

3.26 Air Conditioning Equipment: No heating, air conditioning or refrigeration equipment shall be placed, allowed or maintained anywhere other than on the ground unless screened or concealed (subject to required approvals by the Committee) in such manner that the screening or concealment thereof appears to be part of the integrated architectural design of the Building and does not have the appearance of a separate piece or pieces of machinery fixtures or equipment.

3.27 Utility and Service Lines: No gas, electric, power, telephone, water, sewer, cable television or other utility or service lines of any nature or kind shall be placed, allowed or maintained upon or above the ground on any Lot, except to the extent, if any, underground placement thereof may be prohibited by law or would prevent the subject line from being functional. The foregoing shall not prohibit service pedestals and above-ground switch cabinets and transformers where required.

3.28 Burning and Incinerators: No open fires or burning shall be permitted on any Lot at any time, and no incinerators or like equipment shall be placed, allowed or

maintained upon any Lot. The foregoing shall not be deemed to preclude the use, in customary fashion, of outdoor residential barbecues or grills.

3.29 Mailboxes. Each residence will have an individual mailbox. The proposed design, color and construction of the mailbox shall be submitted to and approved by the Committee prior to construction. All mailboxes shall comply with the applicable specifications for mailboxes established by the United States Postal Service and the Town. All mailboxes shall be constructed of "break away" materials; no masonry construction of mailboxes shall be allowed.

ARTICLE 4

Architectural Control Committee

4.1 Organization: There shall be an Architectural Control Committee organized, which shall consist of three (3) members. None of such members shall be required to be an architect or to meet any other particular qualifications for membership. A member need not be, but may be, a member of the Board or an officer of the Association.

4.2 Initial Members: The following persons are hereby designated as the initial members of the Committee:

T. Dennis Barney

William R. Olsen

Gerald J. Ricke

4.3 Terms of Office: Unless the initial members of the Committee have resigned or been removed, their terms of office shall expire at the time all Lots are developed, sold and recorded, but shall continue thereafter until the appointment of their respective successors. Thereafter the term of each member of the Committee shall be for a period of three (3) years and until the appointment of his successor.

4.4 Appointment and Removal: The right to appoint and remove all members of the Committee at any time shall be and is hereby vested fully in the Board; provided, however, that no member may be removed from the Committee by the Board except by

the vote or written consent of two-thirds (2/3) of all the members of the Board. Any member of the Committee may resign at any time by giving written notice thereof to the Board.

4.5 Duties: The Committee shall have the authority and responsibility to review the plans and specifications of all single-family residences, garages, barns, stables, sheds, fences and other structures to be constructed in the subdivision pursuant to the terms hereof, and perform such other duties as may be delegated to it by the Board.

The Committee shall have the right to disapprove any plans or specifications or grading plans which are not suitable or desirable, in its opinion, for aesthetic or other reasons, and in so passing upon such plans, specifications and grading plans, and without any limitations of the foregoing, it shall have the right to take into consideration the suitability of the proposed Building or other structure, the materials of which it is to be built, the site upon which it is proposed to erect the same, the harmony thereof with the surrounding and the effect of the proposed Building or other structure on the outlook from the adjacent or neighboring property.

In addition, the Committee shall have the right and power to waive the specific requirements hereof when reasonableness and prudence, in its opinion, require in order to avoid unnecessary or excessive expense or inconvenience to one (1) or more Owners or the Association; provided, however, that the Committee shall have no power to waive the requirements of applicable city, county or state laws.

All subsequent additions to or changes or alterations in any Building, fence, wall or other structure, including exterior color scheme, shall be subject to the prior approval of the Committee. No changes or deviations in or from such plans and specifications, once approved, shall be made without the prior written approval of the Committee. All decisions of the Committee shall be final, and no Owner or other party shall have recourse against the Committee for its approval or disapproval of any such plans and specifications or plot plans, including lawn area and Landscaping.

4.6 Application and Approval: Two (2) copies of the complete plans and specifications of any proposed structure must be submitted to the Committee, together with such fees as the Committee determines in its sole discretion to be reasonable or

necessary to defray the cost of its review and the professional evaluation of such plans and specifications. At least one (1) copy of said plans and specifications shall be retained by the Committee.

In the event that a written request for such approval is not acted upon within thirty (30) days of the receipt by the Committee of said request, then such approval will not be required; provided, however, that no structure may be constructed pursuant to this paragraph which conflicts with any specifically delineated restriction contained herein or with any applicable zoning or use law.

4.7 Waiver: The approval by the Committee of any plans, drawings, or specifications for any work done or proposed, or for any other matter requiring the approval of the Committee, shall not be deemed to constitute a waiver of any right to withhold approval of any similar plan, drawing, specification, or matter subsequently submitted for approval.

4.8 Meeting and Compensations: The Committee shall meet from time to time as necessary to perform its duties hereunder. The vote or written consent of any two (2) members at a meeting, or otherwise, shall constitute the act of the Committee. Members of the Committee shall not be entitled to compensation for their services.

4.9 Committee Rules: The Committee may, from time to time in its sole and absolute discretion, adopt, amend and repeal, by unanimous vote or written consent, rules and regulations, defined herein as Committee Rules. Committee Rules may set forth the standards and procedures for Committee review and guidelines for architectural design, placement of Buildings, Landscaping, color scheme, exterior finishes and materials and similar features which are recommended for use within Circle G at Highlands West.

4.10 Liability: Neither the Committee nor any member thereof shall be liable to the Association, any Owner, or to any other party for any damage, loss or prejudice suffered or claimed on account of:

- A. Approval or disapproval of any plans, drawings, or specifications, whether or not defective;

- B. The construction or performance of any work, whether or not pursuant to approved plans, drawings and specifications;
- C. The development of any property within Circle G at Highlands West; or
- D. The execution and filing of any estoppel certificate, whether or not the facts therein are correct; provided, however, that with respect to the liability of a member, such member has acted in good faith on the basis of such information as may be possessed by him.

Without any way limiting the generality of any of the foregoing provisions of this section, the Committee, or any member thereof, may, but is not required to, consult with, or hear the views of the Association or any Owner with respect to any plans, drawings, specifications, or any other proposal submitted to the Committee for review.

ARTICLE 5

Circle G at Highlands West Homeowners Association

5.1 **The Association:** Circle G at Highlands West Homeowners Association shall be a non-profit Arizona corporation charged with the duties and vested with the powers prescribed by law and set forth in its Articles, Bylaws and this Declaration. Neither the Articles nor Bylaws shall, for any reason, be amended or otherwise changed or interpreted so as to be inconsistent with this Declaration.

5.2 **Board of Directors and Officers:** The affairs of the Association shall be conducted by the Board of three (3) or more directors (as determined by the Bylaws) who need not be Members of the Association. The initial Board shall consist of three (3) directors, one (1) of which shall serve until the election of his successor at the first annual meeting, one (1) of which shall serve until the election of his successor at the second annual meeting, and one (1) of which shall serve until the election of his successor at the third annual meeting. Beginning with the first annual meeting, the Members, at each annual meeting, shall elect one-third (1/3) of the directors, each for a term of three (3) years.

5.3 Powers and Duties: The Association shall have such rights, duties and powers as set forth in the Articles and Bylaws, as they may be amended from time to time. Such rights, duties and powers shall include, but not be limited to, the following:

- A. Appoint and remove members of the Committee as permitted herein;
- B. Hold title to the Common Area and such other areas as may be acquired by it and set aside and maintained for the use, enjoyment or convenience of Owners of Lots within Circle G at Highlands West; and
- C. Maintain and manage all Common Areas and the equestrian and irrigation easements.

5.4 Rules and Regulations: By a majority vote of the Board, the Association may, from time to time and subject to the provisions of this Declaration, adopt, amend and repeal rules and regulations, defined herein as Rules and Regulations. The Rules and Regulations may restrict and govern the use of any area by any Owner, or by an invitee, licensee or lessee of such Owner, provided that the Rules and Regulations may not discriminate among Owners and shall not be inconsistent with this Declaration, the Bylaws or Articles. A copy of the Rules and Regulations as they may from time to time be adopted, amended or repealed shall be mailed or otherwise delivered to each Owner and may be recorded. Upon such recordation, said Rules and Regulations shall have the same force and effect as if they were set forth in and were a part of the Declaration.

5.5 Personal Liability: No member of the Board or any committee of the Association nor any officer of the Association shall be personally liable to any Owner or to any other party, including the Association, for any damage, loss or prejudice suffered or claimed on account of any acts, omissions, errors or negligence of the Association, the Board or any other representative or employee of the Association or the Architectural Control Committee or any other committee or any officer of the Association, provided that such person has, upon the basis of such information as may be possessed by him, acted in good faith, without willful or intentional misconduct.

ARTICLE 6

Membership and Voting Rights

6.1 Every Owner of a Lot which is subject to assessment shall be a Member of the Association. Membership shall be appurtenant to and may not be separated from ownership of any Lot which is subject to assessment.

6.2 The Association shall have two (2) classes of voting membership.

Class A: Class A Members shall be all Owners of Lots within Circle G at Highlands West with the exception of Declarant. Class A Members shall be entitled to one (1) vote for each Lot owned. When more than one (1) person holds an interest in any Lot, all such persons shall be Members. The vote for such Lot shall be exercised as they among themselves determine, but in no event shall more than one (1) vote be cast with respect to any Lot.

Class B: The Class B Member shall be the Declarant (including its successors and assigns) and shall be entitled to three (3) votes for each Lot owned. The Class B membership shall cease and be converted into Class A memberships on the happening of any of the following events, whichever first occurs: (i) When all of the Lots have been conveyed to purchasers, (ii) when the Declarant notifies the Association in writing that it relinquishes its Class B memberships, or (iii) on January 1, 2003.

6.3 The vote for each Lot must be cast as a unit, and fractional votes shall not be allowed. In the event that joint Owners are unable to agree among themselves as to how their vote shall be cast, they shall lose their right to vote on the matter in question. If any Owner casts a vote representing a certain Lot, it will thereafter be conclusively presumed for all purposes that he is acting with the authority and consent of all other Owners of the same Lot. In the event more than one (1) vote is cast for a particular Lot, none of said votes shall be counted, and said votes shall be deemed void.

6.4 In any election of the members of the Board, cumulative voting shall be permitted.

6.5 Each Member shall have such other rights, duties and obligations as set forth in the Articles and Bylaws, as they may be amended from time to time.

6.6 The Association membership of each Owner of a Lot within Circle G at Highlands West shall be appurtenant to said Lot and shall run with the title to said Lot. The rights and obligations of an Owner and membership in the Association shall not be assigned, transferred, pledged, conveyed or alienated in any way except upon transfer of ownership to the Lot, and then only to the transferee of ownership to such Lot, or by intestate succession, testamentary disposition, or 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 in the State of Arizona. Any attempt to make a prohibited transfer shall be void. Any transfer of ownership of said Lot shall operate to transfer said membership to the new Owner thereof.

ARTICLE 7

Permitted Uses and Restrictions

Common Area

7.1 Maintenance by Association: The Association may, at any time, as to any Common Area conveyed, leased or transferred to it, or otherwise placed under its jurisdiction, in the discretion of the Board, without any prior approval of the Owners being required:

- A. Reconstruct, repair, replace or refinish any improvement or portion thereof upon any such area in accordance with original design, finish or standard of construction of such improvement or in accordance with the last plans thereof approved by the Committee.
- B. Replace injured and diseased trees or other vegetation in any such area, and plant trees, shrubs, and ground cover to the extent deemed necessary by the Board for the conservation of water and soil and for aesthetic purposes.
- C. Place and maintain upon any such area such signs as the Board may deem appropriate for the proper identification, use and regulation thereof.

- D. Do all such other and further acts which the Board deems necessary to preserve and protect the Property and the beauty thereof, in accordance with the general purposes specified herein.
- E. The Board shall be the sole judge as to the appropriate maintenance of all grounds and improvements within the Common Area.

7.2 Damage or Destruction of Common Area by Owners: In the event any Common Area is damaged or destroyed by an Owner or any member of his family, such Owner does hereby authorize the Association to repair said damaged area, and the Association shall so repair said damaged area in a good workmanlike manner in conformance with the original plans and specifications of the area involved, or as the area may have been modified or altered subsequently by the Association, in the discretion of the Association. The amount necessary for such repairs shall be paid by said Owner, upon demand, to the Association and the Association may enforce collection in the same manner as provided elsewhere in this Declaration for collection and enforcement of assessments.

7.3 Use of Common Area: The Common Area shall be operated for the use and enjoyment of the Owners, and the Association shall have the right to make, promulgate, supplement, amend, change or revoke rules pertaining to the use and operation of the Common Area as deemed necessary by the Board.

7.4 Restricted Easements: Notwithstanding any other provision of this Declaration to the contrary, the vehicular access easements created by the Plat across Tract H and Tract I are exclusive and restricted in nature and are for use only by the Owners of Lots 22 and 25, as to the easement located on Tract H, and Lots 26 and 27, as to the easement located on Tract I, their guests, licensees and invitees. The Owners of Lots 22 and 25 shall not be obligated to construct fencing on the west side yard of their respective Lots; however, the Owners of Lots 22 and 25 shall be obligated to participate (with the Owners of Lots 21 and 26, respectively) in the cost of the side yard fencing built on the west boundary of Tract H in accordance with the provisions of Section 3.15 above. The Owners of Lots 22 and 25 shall not place trees or any permanent improvements within Tract H, but shall have the right to place driveways and "crash" or

other legally permissible gates at either or both ends of Tract H. Any such driveways or gates established on Tract H shall be paid for by the Owner of Lot 22 or 25, as appropriate.

ARTICLE 8

Covenant for Maintenance Assessments

8.1 Creation of Lien and Personal Obligation of Assessments: The Declarant for each Lot owned within Circle G at Highlands West hereby covenants, and each Owner of any Lot by acceptance of a deed therefor, whether or not it shall be so expressed in such deed, is deemed to covenant and agree to pay the Association:

- A. Annual assessments or charges consisting of a pro rata share of the actual cost to Circle G at Highlands West Homeowners Association relating to or incurred as a result of the upkeep, repair, maintenance or improvement of the Common Area, and a pro rata share of any and all Taxes and assessments paid by the Association relating to or incurred as a result of the Common Area.
- B. A pro rata share of such sums as the Board shall determine to be fair and prudent for the establishment of necessary reserves for expenses, maintenance and the payment of Taxes, all as herein required.
- C. A pro rata share of any special assessment for capital improvements, such assessments to be established and collected as herein provided.

The annual and special assessments, together with interest, costs and reasonable attorneys' fees, shall be a charge on the land and shall be a continuing lien upon the Lot against which each such assessment is made. Each assessment, together with interest, costs and reasonable attorneys' fees, shall also be the personal obligation of the person who was the Owner of such Lot at the time when the assessment fell due. The personal obligation for delinquent assessment shall not pass to his successor in title unless expressly assumed by said successor in title.

8.2 Purpose of Assessment: Assessments levied by the Association shall be used exclusively to promote the recreation, health, safety and welfare of the residents within Circle G at Highlands West and for the improvement and maintenance of the Common Area.

8.3 Maximum Annual Assessment: Until January 1, 1999, the maximum annual assessment for all Lots within Circle G at Highlands West shall be the sum of Three Hundred Dollars (\$300.00) payable in accordance with the provisions of Section 8.6. From and after January 1, 1999, the maximum annual assessment may be increased each year not more than five percent (5%) above the maximum assessment for the previous year, or the amount of increase in the "Cost of Living Index", whichever is greater, without a vote of the membership. For purposes hereof, "Cost of Living Index" shall mean the "Metropolitan Phoenix Consumer Price Index" published quarterly by the Center for Business Research at the College of Business Administration, Arizona State University, which index shall have as its base the number 100.00 for the period from 1982 to 1984. Any successor index or modification of the above-described index shall be adjusted to relate to the 1982-1984 index of 100.00. From and after January 1, 1999, the maximum annual assessment may be increased more than the normal increase allowed (five percent [5%] or Cost of Living increase, whichever is greater) above the maximum assessment for the previous year by a vote of two-thirds (2/3) of the Members of each class of membership who are voting in person or by proxy, at a meeting duly called for this purpose. The Board may fix the annual assessment at an amount not in excess of the applicable maximum.

Notwithstanding anything to the contrary contained herein, until January 1, 1999, Declarant shall have no obligation to pay any assessments for any Lot or Lots owned by Declarant. However, Declarant shall subsidize the Association by paying those expenses that are reasonably necessary for the Association to perform its duties hereunder and meet its current obligations in a timely manner to the extent that the Association does not have funds for such expenses. After January 1, 1999, Declarant shall have no obligation to subsidize the Association but shall be liable for the assessments attributable to any Lot or Lots then owned by Declarant.

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

8.5 Notice and Quorum for Any Action Authorized Under Sections 8.3 and 8.4: Written notice for any meeting called for the purpose of taking any action authorized under Section 8.3 or Section 8.4 shall be sent to all Members not less than thirty (30) days nor more than sixty (60) days in advance of the meeting. At the first meeting called, the presence of Members or of proxies entitled to cast sixty percent (60%) of all the votes of each class membership constitute a quorum. If the required quorum is not present, another meeting may be called subject to the same notice requirement, and the required quorum at the subsequent meeting shall be one-half (1/2) of the required quorum at the preceding meeting. No such subsequent meeting shall be held more than sixty (60) days following the preceding meeting.

8.6 Uniform Rate of Assessment: Both annual and special assessments must be fixed at a uniform rate for all Lots and may be collected on a monthly, quarterly, or annual basis. However, the amount of the assessment of any one (1) year and from year to year may vary between undeveloped and improved Lots.

8.7 Commencement of Assessments: The annual assessments provided for herein shall commence as to all Lots at such time as the Board determines in its sole and absolute discretion. The first annual assessment shall be adjusted according to the number of months remaining in that calendar year. The Board shall fix the amount of the annual assessment against each Lot at least thirty (30) days in advance of each annual assessment. Written notice of the annual assessment shall be sent to every Owner subject thereto. The due date shall be established by the Board.

8.8 Effective Non-Payment of Assessment; Remedies of the Association:

Each Owner of any Lot shall be deemed to covenant and agree to pay to the Association the assessment provided for herein, and agrees to the enforcement of the assessments in the manner herein specified. In the event the Association employs an attorney or attorneys for the collection of any assessment, whether by suit or otherwise, or to enforce compliance with or specific performance of the terms and conditions of this Declaration, or for any other purpose in connection with the breach of this Declaration, each Owner and Member agrees to pay reasonable fees and costs thereby incurred in addition to any other amounts due or any other relief or remedy obtained against said Owner or Member. In the event of a default in payment of any such assessment when due and such default continues for a period of thirty (30) days, the assessment shall be deemed delinquent, and the Association shall have the right to assess a late payment fee (the amount of which shall be determined in the light of the facts and in accordance with the limitations dictated by the Arizona Revised Statutes, but at the sole and absolute discretion of the Board) and, in addition to any other remedies herein or by law provided, the Association may enforce each such obligation in any manner provided by law or in equity or without any limitation of the foregoing, by either or both of the following procedures:

- A. Enforcement by Suit: The Board may cause a suit at law to be commenced and maintained in the name of the Association against an Owner to enforce each such assessment obligation. Any judgment rendered in any such action shall include the amount of the delinquency (and late payment fees, if any), together with interest thereon at the rate of twelve percent (12%) per annum from the date of delinquency, court costs, and reasonable attorneys' fees in such amount as the Court may adjudge against the delinquent Owner.
- B. Enforcement by Lien: There is hereby created a claim of lien, with power of sale, on each and every Lot within Circle G at Highlands West to secure payment to the Association of any and all assessments (and late payment fees, if any) levied against any and all Owners of such Lots under these restrictions, together with interest thereon at the rate of twelve percent (12%) per annum from the date of delinquency, and all

costs of collection which may be paid or incurred by the Association in connection therewith, including reasonable attorneys' fees. Each default shall constitute a separate basis for a demand or claim of lien or a lien, but any number of defaults may be included within a single demand or claim of lien.

Except as otherwise provided by law, the lien or liens created hereby shall have priority over all liens or claims created subsequent to the recordation of the claim of lien thereof, except only tax liens for real property Taxes on any Lot, assessments on any Lot in favor of any municipal or other governmental assessing unit, and the liens which are specifically described in Section 8.9 hereinafter. Any such lien may be foreclosed by appropriate action in court or in the manner provided by law for the foreclosure of a realty mortgage or trust deed as set forth by the laws of the State of Arizona, as the same may be changed or amended. The lien created hereby shall be in favor of the Association and shall be for the benefit of all other Owners. The Association shall have the power to bid in at any foreclosure sale and to purchase, acquire, hold, lease, mortgage, and convey any Lot. In the event such foreclosure is by action in court, reasonable attorneys' fees, court costs, title search fees, interest and all other costs and expenses shall be allowed to the extent permitted by law. Each Owner, by becoming an Owner of a Lot in Circle G at Highlands West, hereby expressly waives any objection to the enforcement and foreclosure of this lien in this matter.

8.9 Subordination of the Lien to Mortgages: The lien of the assessments provided for herein shall be subordinate to the lien of any first mortgage. Sale or transfer of any Lot shall not affect the assessment lien. However, the sale or transfer of any Lot pursuant to mortgage foreclosure or any proceeding in lieu thereof, shall extinguish the lien of such assessment as to payments which became due prior to such sale or transfer. No sale or transfer shall relieve such Lot from liability for any assessments thereafter becoming due or from the lien thereof.

ARTICLE 9

General Provisions

9.1 Enforcement The Association, or any Owner, shall have the right to enforce by any proceeding at law or in equity all restrictions, conditions, covenants reservations, liens and charges now or hereinafter imposed by the provisions of this Declaration. Failure by the Association or by any Owner to enforce any covenant or restriction herein contained shall in no way be deemed a waiver of the right to do so thereafter.

9.2 Interpretation of the Declaration: Except for judicial construction, the Association, by its Board, shall have the exclusive right to construe and interpret the provisions of this Declaration. In the absence of any adjudication to the contrary by a court of competent jurisdiction, the Association's construction or interpretation of the provisions hereof shall be final, conclusive and binding as to all persons and property benefited or bound by the covenants and provisions hereof.

9.3 Severability: Invalidation of any of these covenants or restrictions by judgment or court order shall in no wise affect any other provisions which shall be in full force and effect.

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

9.5 Amendment: The covenants and restrictions of this Declaration shall run with and bind the land until December 31, 2024, after which they shall be automatically extended for successive periods of ten (10) years. This Declaration may be amended at any time prior to December 31, 2024, by an instrument signed by not less than eighty

percent (80%) of the Owners, and thereafter by an instrument signed by not less than seventy percent (70%) of the Owners. Any amendment must be recorded.

9.6 Violations and Nuisances: Every act or omission whereby any provision in this Declaration is violated in whole or in part is hereby declared to be a nuisance and may be enjoined or abated, whether or not the release sought is for negative or affirmative action, by Declarant, the Association, or any Owner of a Lot within Circle G at Highlands West. However, any other provision to the contrary notwithstanding, only Declarant, the Association, the Board, or the duly authorized agent of any of them, may enforce by self help any of the provisions of this Declaration.

9.7 Violation of Law: Any violation of any state, municipal, or local law, ordinance or regulation, pertaining to the ownership, occupation, or use of any Property within Circle G at Highlands West is hereby declared to be a violation of this Declaration and subject to any and all of the enforcement procedures set forth herein.

9.8 Remedies Cumulative: Each remedy provided by this Declaration is cumulative and not exclusive.

9.9 Delivery of Notices and Documents: Any written notice or other documents relating to or required by this Declaration may be delivered either personally or by mail. If by mail, it shall be deemed to have been delivered forty-eight (48) hours after a copy of the same has been deposited in the United States mail, postage prepaid, addressed to the last known address of the addressee.

9.10 References to Covenants in Deeds: Deeds to and instruments affecting any Lot or any part of the Property may contain the covenants 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 covenants shall be binding upon the grantee-Owner or other person claiming through any instrument and his heirs, executors, administrators, successors and assigns.

9.11 Declaration: By acceptance of a deed, or by acquiring any ownership interest in any of the Property within this Declaration, each person or entity, for himself or itself, his or its heirs, personal representatives, successors, transferees and assigns,

binds himself or itself, his or its heirs, personal representatives, successors, transferees and assigns, to all of the provisions, restrictions, covenants, conditions, rules, and regulations now or hereinafter imposed by this Declaration and any amendments thereof. In addition, each person or entity, by so doing, thereby acknowledges that this Declaration sets forth a general scheme for the improvement and care of the Property covered thereby, and hereby evidences that his or its interest in all of the restrictions, conditions, rules, and regulations contained herein shall run with the land and be binding on all subsequent and future Owners, grantees, purchasers, assignees, and transferees thereof. Furthermore, each such person or entity fully understands and acknowledges that this Declaration shall be mutually beneficial, prohibitive and enforceable by the various subsequent and future Owners.

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

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

IN WITNESS WHEREOF the undersigned Circle G at Higley, L.L.C. has caused its company name to be signed by the signature of a duly authorized member, on this 14th day of November, 1997.

CIRCLE G AT HIGLEY, L.L.C.
an Arizona limited liability company

By: Circle G Property Development, L.L.C.,
an Arizona limited liability company,
Member

By: William R. Olson
Member

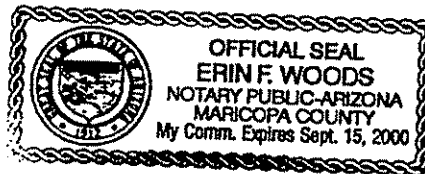
STATE OF ARIZONA)
) ss.
County of Maricopa)

The foregoing instrument was acknowledged before me this 11 day of November, 1997, by William R. Olsen, an authorized Member of Circle G Property Development, L.L.C., an Arizona limited liability company, on behalf of *Circle G at Higley, L.L.C.*, an Arizona limited liability company.

Erin F. Woods
Notary Public

My Commission Expires:

Sept. 15, 2000



Unofficial Document

When Recorded, Return to:

(Return to Hawkins & Campbell via 24-Hr. Turnaround)

ROBERTS, ROWLEY & SMITH, LTD.
63 East Main Street
Suite 501
Mesa, Arizona 85201-7423

LAWYERS TITLE OF ARIZONA, INC.

GAL 1/2

**AMENDMENT OF DECLARATION
OF
COVENANTS, CONDITIONS AND RESTRICTIONS
FOR
CIRCLE G AT HIGHLANDS WEST**

THIS AMENDMENT OF DECLARATION OF, COVENANTS, CONDITIONS AND RESTRICTIONS FOR CIRCLE G AT HIGHLANDS WEST (this "Amendment") is made by Circle G at Higley, L.L.C., an Arizona limited liability company, (herein referred to as "Declarant.

RECITALS

A. Declarant was the "Declarant" under that certain Declaration of Covenants, Conditions and Restrictions For Circle G at Highlands West recorded December 5, 1997, as Document No. 97-0854527, in the official records of Maricopa County, Arizona (the "Declaration").

B. Section 9.5 of the Declaration provides for the amendment of the Declaration by an instrument signed by the Declarant and the Owners owning not less than eighty percent of the Lots.

C. Declarant owns more than eighty percent of the Lots.

D. Declarant now desires to amend the Declaration.

NOW, THEREFORE, Declarant hereby declares, covenants and agrees as follows:

1. Fence Materials. Section 3.16 of the Declaration is amended to read in its entirety as follows:

3.16 Fence Materials: All fences and corrals constructed within the subdivision shall be of block and/or pre-cast concrete construction, except that the fences on the west sides of the Lots numbered 20, 21, 26 and 27 shall be six feet in height, the bottom three feet of which shall be of block and/or pre-cast concrete construction and the top three feet of which shall be of wrought iron. Under no circumstances shall a chain-link fence be permitted. Notwithstanding the provisions hereof, the design and specifications for all fences and corrals constructed within the subdivision shall be subject to the prior approval of the Committee.

2. Full Force and Effect. Except as set forth in this Amendment, the Declaration shall remain unchanged and in full force and effect.

IN WITNESS WHEREOF, the parties hereto have caused their names (or that of their duly-authorized officials) to be signed as of the day and year first above written..

CIRCLE G AT HIGLEY, L.L.C.,
an Arizona limited liability company

By: Circle G Property Development, L.L.C.,
Unofficial Document Arizona limited liability company,
Member

By: *Gerald Rike*
Member

STATE OF ARIZONA)
) ss:
County of Maricopa)

This instrument was acknowledged before me this 15th day of December, 1997, by *Gerald Rike*, an authorized Member of Circle G Property Development, L.L.C., an Arizona limited liability company, on behalf of *Circle G at Higley, L.L.C.*, an Arizona limited liability company.

My Commission Expires
10/16/2000
(Seal)

Daniel K. Johnson
Notary Public
OFFICIAL SEAL
DANIEL K. JOHNSON
NOTARY PUBLIC-ARIZONA
MARICOPA COUNTY
My Comm. Expires Oct. 16, 2000