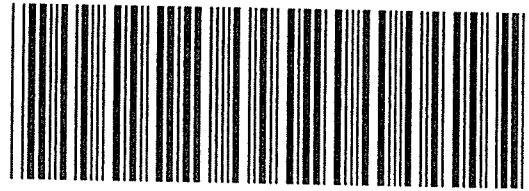


WHEN RECORDED RETURN TO:

W. Scott Schirmer Investment Co.  
1300 N. McClintock Drive  
Chandler, AZ 85224

14/17

TRANSAMERICA TITLE INS. CO.



OFFICIAL RECORDS OF  
MARICOPA COUNTY RECORDER  
HELEN PURCELL

94-0324562 04/22/94 01:09

LILIAN 14 OF 21

DECLARATION  
OF COVENANTS, CONDITIONS AND RESTRICTIONS  
FOR  
WILD TREE

THIS Declaration of Covenants, Conditions and Restrictions (hereinafter termed the "Declaration") is made on this 14th day of April, 1994, by Schirmer Management and Development, Inc., an Arizona corporation, (hereinafter sometimes termed "Declarant").

W I T N E S S E T H:

WHEREAS, the Declarant is the Owner of the real property located in Chandler, Arizona, which is described on Exhibit A attached hereto.

NOW, THEREFORE, Declarant hereby declares that all of said real property (hereinafter sometimes referred to as Wild Tree) shall be held, sold, conveyed, encumbered, used and improved subject to the easements, restrictions, covenants, and conditions contained in this Declaration, as amended or modified from time to time, which are for the purpose of protecting the value and desirability of, and which shall run with, said real property, and be binding on all parties having any right, title or interest in said real property or any part thereof, their heirs, successors, and assigns, and shall inure to the benefit of each Owner thereof, provided, however, property, if any, which is dedicated to the public or a governmental entity for public purposes shall not be subject to this Declaration while owned by the public or governmental entity, although restrictions imposed in this Declaration upon the Owners concerning the use and maintenance of such public areas shall at all times apply to the Owners. This Declaration is declared to be in furtherance of a general plan for the development, improvement and sale of the Property and is established for the purpose of enhancing and perfecting the value, desirability and attractiveness of the Property and every portion thereof.

**ARTICLE 1****DEFINITIONS**

Section 1.1. "Annexable Property" shall mean the real property located in Maricopa County, Arizona, which is described on Exhibit B attached to this Declaration, together with all buildings and other Improvements located thereon and all easements, rights and privileges appurtenant thereto.

Section 1.2. "Architectural Committee" shall mean the committee established by the Board pursuant to Section 2.4 of this Declaration.

Section 1.3. "Architectural Committee Rules" shall mean the rules adopted by the Architectural Committee, as said rules may be amended from time to time.

Section 1.4. "Articles" shall mean the Articles of Incorporation of the Association which have been, or will be, filed in the Office of the Corporation Commission of the State of Arizona, as said Articles may be amended from time to time.

Section 1.5. "Association" shall mean "Wild Tree Homeowners Association", an Arizona nonprofit corporation, its successors and assigns.

Section 1.6. "Association Rules" shall mean the rules and regulations adopted by the Association, as the same may be amended from time to time.

Section 1.7. "Assurances" shall mean the assurances, restrictions, covenants, conditions, reservations, easements, servitudes, assessments, liens, charges and development standards set forth herein.

Section 1.8. "Board" shall mean the Board of Directors of the Association.

Section 1.9. "Bylaws" shall mean the Bylaws of the Association, as such Bylaws may be amended from time to time.

Section 1.10. "Common Area" shall mean all real property, and all Improvements located thereon, owned by the Association for the common use and enjoyment of the Members.

Section 1.11. "Declarant" shall mean Schirmer Management and Development, Inc. and its successors, and any person or entity to whom it may expressly assign its rights under this Declaration.

Section 1.12. "Declaration" shall mean this instrument and the covenants, conditions and restrictions herein set forth, as the same may from time to time be amended.

Section 1.13. "First Mortgage" shall mean and refer to any mortgage, deed of trust or agreement for sale made in good faith for value and duly executed and recorded so as to create a lien that is prior to the lien of any other mortgage, deed of trust or agreement for sale.

Section 1.14. "First Mortgagee" shall mean and refer to the holder of any First Mortgage.

Section 1.15. "Improvement" shall mean buildings, roads, driveways, parking areas, fences, walls, rocks, hedges, plantings, planted trees and shrubs, and all other structures or landscaping of every type and kind.

Section 1.16. "Lot" shall mean any parcel of real property designated as a Lot on the Plat.

Section 1.17. "Member" shall mean any natural person, corporation, partnership, joint venture, limited liability company, trust, association or other legal entity who is an Owner of a Lot or Parcel within the Property.

Section 1.18. "Owner" shall mean the record Owner, whether one or more persons or entities, 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 or Parcel. Owner shall not include: (i) the Purchaser of a Lot or Parcel under an executory contract for the sale of real property, (ii) First Mortgagees or other persons or entities having an interest in a Lot or Parcel merely as security for the performance of an obligation, or (iii) a lessee or tenant of a Lot or Parcel. In the case of Lots and Parcels, the fee simple title to which is vested in a trustee pursuant to Arizona Revised Statutes, Section 33-801, et seq., the Trustor shall be deemed to be the Owner. In the case of Lots and Parcels, 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 shall be deemed to be the Owner.

Section 1.19. "Parcel" shall mean an area of real property limited by a Tract Declaration to a specific Land Use Classification, except that with respect to an area with a Single Family Residential Use Classification, such area shall cease to be a Parcel upon Recordation of a subdivision plat or other instrument creating Lots and related amenities. Lots, Tracts designated as such on a Recorded subdivision plat, and Common Area are not Parcels. In the case of staged developments, the term "Parcel" shall include areas not yet included in a subdivision plat.

Section 1.20. "Plat" shall mean the Plat of survey of Wild Tree, which Plat is recorded with the County Recorder of Maricopa County, Arizona, as the same may be amended in accordance with applicable law.

Section 1.21. "Project Documents" shall mean this Declaration and the Articles, Bylaws, Association Rules, and Architectural Committee Rules.

Section 1.22. "Property" or "Project" shall mean the real property described on Exhibit A attached to this Declaration.

Section 1.23. "Purchaser" shall mean any person other than the Declarant who by means of a voluntary or involuntary transfer acquires a legal or equitable interest in a Lot or Parcel other than: (a) a leasehold interest (including renewable options) of less than five (5) years; or (b) as security for an obligation.

Section 1.24. "Single Family" shall mean a group of natural persons each related to the other by blood, marriage or legal adoption; or a group of not more than three (3) natural persons not all so related, together with their domestic servants, who maintain a common household in a dwelling.

Section 1.25. "Single Family Residential Use" shall mean the occupation or use of a residence by a Single Family in conformity with this Declaration and the requirements imposed by applicable zoning laws or other state, county, or municipal rules and regulation.

Section 1.26. "Sub-Developer" shall mean a home builder or developer acquiring a Sub-Developer Parcel from Declarant.

Section 1.27. "Sub-Developer Parcel" shall mean two (2) or more Lots or Parcels acquired by a Sub-Developer.

Section 1.28. "Visible From Neighboring Property" shall mean, with respect to any given object, that such object is, or would be, visible to a person six (6) feet tall, standing on any part of such neighboring property at an elevation no greater than the elevation of the base of the object being viewed.

## ARTICLE 2

### THE ASSOCIATION

Section 2.1. Rights, Powers, and Duties. 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 together with such rights, powers and duties as may be reasonably necessary to effectuate the

objectives and purposes of the Association as set forth in this Declaration.

Section 2.2. Board of Directors and Officers. The affairs of the Association shall be conducted by a Board of Directors and such officers and committees as the Board may elect or appoint, in accordance with the Articles and the Bylaws.

Section 2.3. Association Rules. By action 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. The Association Rules may restrict and govern the use of any area by any Owner, by the family of such Owner, or by any invitee, licensee, or lessee of such Owner; provided, however, that the Association Rules may not discriminate among Owners and shall not be inconsistent with this Declaration, the Articles or Bylaws. A copy of the Association Rules as they may from time to time be adopted, amended or repealed, shall be available for inspection by the Members at reasonable times and may be recorded. Upon adoption, the Association Rules shall have the same force and effect as if they were set forth in and were a part of this Declaration. The Board shall have the right to impose fines and penalties for violations of this Declaration and the rules after written notice thereof to the Owner and, upon written request, a reasonable opportunity to be heard by the Board. If such fines or penalties are not paid within fifteen (15) days after written notice to the Owner in violation, the fines or penalties shall become a lien on the Residence of the Owner and be enforceable as any other lien created by Article 5. The fines and penalties shall be in the amount of \$100.00 for each offense, or such other amount as the Board may determine and prescribe in a schedule adopted by the Board. Each occasion of violation and each day during which such violation continues shall be deemed a separate offense subject to a separate and additional fine and penalty.

Section 2.4. Architectural Committee.

2.4.1. Establishment. The Board shall establish an Architectural Committee consisting of not less than three (3) members appointed by the Board to regulate the external design, appearance and use of the Property and to perform such other functions and duties as may be imposed upon it by this Declaration, the Bylaws or the Board. None of such members shall be required to be an Owner, an architect or to meet any other particular qualifications for membership. No Improvement of any kind may be made on any Lot or Parcel without prior approval from the Architectural Committee and no change to an Improvement previously approved by the Architectural Committee may be made without prior written approval of the Architectural Committee.

2.4.2. Rules. Architectural Committee Rules may be adopted and amended, from time to time. The Architectural

Committee Rules shall interpret and implement this Declaration by setting forth the standards and procedures for Architectural Committee review and the guidelines for architectural design, placement of buildings, walls, landscaping, color schemes, exterior finishes and materials and other features which are recommended for use in the Property.

2.4.3. **Waiver.** The approval or disapproval by the Architectural Committee of any plans, drawings or specifications for any work done or proposed, or for any other matter requiring the approval of the Architectural Committee shall be in writing and shall not be deemed to constitute a waiver of any right to approve or withhold approval of any similar plan, drawing, specification or matter subsequently submitted for approval.

2.4.4. **Liability.** Neither the Architectural Committee nor any member thereof shall be liable to the Association, any Owner, or to any other Person, for any damage, loss or prejudice suffered or claimed on account of the approval or disapproval of any plans, drawings, or specifications, whether or not effective; the construction or performance of any work, whether or not pursuant to approved plans, drawings and specifications; the development of any property within Wild Tree; or 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 of the Committee, such member has acted in good faith on the basis of such information as may be possessed by him. Without in any way limiting the generality of any of the foregoing provisions, the Architectural 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 Architectural Committee. The Architectural Committee shall not be deemed to have approved or disapproved any proposal unless in writing. Approval of plans and specifications by the Architectural Committee is not, and shall not be deemed to be, a representation or warranty that said plans and specifications comply with applicable governmental ordinances or regulations including, without limitation, zoning ordinances or building codes, and neither the Architectural Committee or any member thereof, the Association, the Board, nor Declarant, assumes any liability or responsibility therefor, or for any defect in any structure constructed from such plans and specifications.

Section 2.5. **Sub-Associations.** In the event it is determined that a sub-association should be formed, formation of said sub-association must be approved by the Board of Directors of the Wild Tree Homeowners Association. Sub-association documents are subject to this Declaration and in the case of a conflict, this Declaration shall prevail. Members of the sub-association are subject to approval procedures and requirements of the Wild Tree Homeowners Association in addition to those of the sub-association.

Section 2.6. No Personal Liability. No Director, member of any Committee of the Association, officer of the Association,, compensated or voluntary manager, or employee or agent of the Association shall be personally liable to any Owner, or to any other Person, including the Association, for any damage, loss or prejudice suffered or claimed on account of any act, omission, error or negligence of the Association, the Board, the manager or any other representative or employee of the Association, the Architectural Committee, 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. Officers and Directors of the Association shall be indemnified against personal liability for acts or omissions in the manner set forth in the Articles.

### ARTICLE 3

#### MEMBERSHIP

Section 3.1. Identity of Members. Membership in the Association shall be limited to Owners of Lots and Parcels. An Owner of a Lot or Parcel 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.

Section 3.2. Transfer of Membership. Membership in the Association shall be appurtenant to each Lot and Parcel and a membership in the Association shall not be transferred, pledged or alienated in any way, except upon the conveyance of a Lot or Parcel and then only to the Purchaser thereof, or by intestate succession, testamentary disposition, foreclosure of mortgage of record or other legal process. Any attempt to make a prohibited transfer shall be void and shall not be reflected upon the books and records of the Association.

### ARTICLE 4

#### VOTING RIGHTS

Section 4.1. Classes of Members. Members shall be entitled to vote to elect all members of the Board of Directors as provided in the Bylaws and, additionally, shall be entitled to vote on any other matter described in the Declaration, the Articles, or the Bylaws as requiring the vote of Members. For purposes of voting, the Members of the Association shall be divided into two (2) classes of voting membership:

Class A. Class A Members shall be all Owners of Lots and Parcels, with the exception of the Declarant. Each Class A Member shall be entitled to one (1) vote for each Lot owned. Voting rights and memberships for Parcels shall be determined by the appropriate Tract Declaration.

Class B. The Class B Member shall be the Declarant. The Class B Member shall be entitled to three (3) votes for each Class A vote outstanding for as long as there is a Class B membership. The Class B membership shall cease and be converted to Class A membership on the happening of any of the following events, whichever occurs earlier:

(a) The date upon which the Declarant no longer owns any Property within Wild Tree; or

(b) When the Declarant notifies the Association in writing that it relinquishes its Class B membership; or

(c) January 1, 2002.

Section 4.2. Joint Ownership. When more than one (1) person is the Owner of any Lot or Parcel, all such persons shall be Members. The vote or votes for such Lot or Parcel shall be exercised as they among themselves determine, but in no event shall more than one (1) ballot be cast with respect to any Lot. The vote or votes for each such Lot or Parcel 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 or votes shall be cast, they shall lose their right to vote on the matter in question. If any Owner casts a ballot 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. In the event more than one (1) ballot is cast for a particular Lot, none of said votes shall be counted and said votes shall be deemed void

Section 4.3. Corporate Ownership. In the event any Lot or Parcel is owned by a corporation, partnership or other association, the corporation, partnership or association shall be a Member and shall designate in writing at the time of acquisition of the Lot or Parcel an individual who shall have the power to vote said membership, and in the absence of such designation and until such designation is made, the chief executive officer, if any, of such corporation or association or any general partner of such partnership, shall have the power to vote the membership, and if there is no chief executive officer or general partner, then the Board of Directors may designate who shall have the power to vote the membership.

Section 4.4. Suspension of Voting Rights. In the event any Owner is in arrears in the payment of any assessments or other



amounts due under any of the provisions of the Project Documents, or shall otherwise be in default or breach of any of the other terms or provisions of the Project Documents, for a period of fifteen (15) days, said Owner's right to vote as a Member of the Association shall be suspended and shall remain suspended until all payments, including attorneys' fees, are brought current, and all other defaults cured.

## ARTICLE 5

### COVENANT FOR MAINTENANCE ASSESSMENTS

Section 5.1. Creation of the Lien and Personal Obligation of Assessments. The Declarant, for each Lot and Parcel, within the Property hereby covenants, and each Owner of a Lot or Parcel by becoming the Owner thereof, whether or not it is expressed in the deed or other instrument by which the Owner acquired ownership of the Lot or Parcel, is deemed to covenant and agree to pay to the Association: (1) annual assessments, (2) supplemental assessments, and (3) special assessments for capital improvements. Assessments shall be established and collected as hereafter provided. The annual, supplemental, and special assessments, together with costs and reasonable attorneys' fees, shall be a charge on the land and shall be a continuing lien upon the Lot and Parcel against which each such assessment is made. Each such assessment, together with costs, and reasonable attorneys' fees, shall also be the personal obligation of the Owner of such Lot or Parcel at the time when the assessment became due. The personal obligation for delinquent assessments shall not pass to the Owner's successors in title unless expressly assumed by them, although the lien shall continue irrespective of a change in ownership.

Section 5.2. Purpose of the Assessments. The assessments levied by the Association shall be used exclusively for the upkeep, maintenance, and improvement of the Common Area and such portions of the Lots and Parcels and such portions of the Improvements located thereon, as the Association is obligated to maintain under Article 9 of this Declaration, and for promoting the recreation, health, safety and welfare of the Owners and residents of Lots and Parcels within the Property.

### Section 5.3. Maximum Annual Assessment

(a) Until January 1 of the year immediately following the conveyance of the first Lot to a Purchaser, the maximum annual assessment for each Lot shall be Two Hundred Sixty-Four Dollars (\$264.00).

(b) From and after January 1 of the year immediately following the conveyance of the first Lot to a Purchaser, the Board may, without a vote of the membership, increase the maximum annual

assessment during each fiscal year of the Association by (i) an amount proportional to the amount of increase during the prior fiscal year in the Consumer Price Index for All Urban Consumers (All Items), U.S. City Average, published by the United States Department of Labor, Bureau of Labor Statistics (1982-1984 = 100), or in the event said index ceases to be published, by any successor index recommended as a substitute therefor by the United States government; or (ii) five percent (5%), whichever is greater.

(c) From and after January 1 of the year immediately following the conveyance of the first Lot to a Purchaser, the maximum annual assessment may be increased by an amount greater than the maximum increase allowed pursuant to (b) above, only by a vote of Declarant (while Class B membership exists) and by Class A Members entitled to cast at least two-thirds (2/3) of the votes entitled to be cast by Class A Members who are voting in person or by proxy at a meeting duly called for such purpose, or by a two-thirds (2/3) majority of each class of vote as long as there is a Class B vote.

(d) The Board may fix the annual assessment in any amount not in excess of the maximum annual assessment.

Section 5.4. Supplemental Assessments. In the event the Board shall determine that its funds budgeted or available in any fiscal year are, or will become, inadequate to meet all expenses of the Association, for any reason, including, without limitation, nonpayment of assessments by the Members, the Board shall immediately determine the approximate amount of such deficit for such fiscal year, prepare a supplemental budget, determine the amount of such deficit for such fiscal year, and levy a supplemental assessment against each Lot and Parcel in such amount as the Board deems necessary in order to obtain the amount of such deficit. Notice of any such supplemental assessment shall be given to each Owner. The supplemental assessment shall be paid on such dates, and in such installments, as may be determined by the Board. No supplemental assessment shall be levied by the Board until such assessment has been approved by Declarant (while Class B membership exists) and by Class A Members entitled to cast at least two-thirds (2/3) of the votes entitled to be cast by Class A Members who are voting in person or by proxy at a meeting duly called for such purpose.

Section 5.5. Special Assessments. In addition to the annual assessments authorized above, the Association may levy, in any assessment year, a special assessment applicable to that fiscal 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 located in or constituting a part of the Common Area, including fixtures and personal property related thereto, or for any other lawful Association purpose provided that any such assessment shall have the assent of Declarant (while Class

B membership exists) and by Class A Members having at least two-thirds (2/3) of the votes entitled to be cast by Class A Members who are voting in person or by proxy at a meeting duly called for such purpose.

Section 5.6. Notice and Quorum for Any Action Authorized Under Sections 5.3, 5.4 and 5.5. Written notice of any meeting called for the purpose of taking any action authorized under Section 5.3, 5.4 or 5.5 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 such meeting called, the presence of Members or proxies entitled to cast sixty percent (60%) of all the votes of each class of Members shall constitute a quorum. If the required quorum is not present, another meeting may be called subject to the same notice requirement, and the required quorum at the subsequent meeting shall be one-half (1/2) of the required quorum for each class of Members at the preceding meeting. No such subsequent meeting shall be held more than sixty (60) days following the preceding meeting. While Class B membership exists, the quorum requirements described above shall apply to each class, and a quorum shall not exist for a meeting unless a quorum of each class is present.

Section 5.7. Uniform Rate of Assessment . Annual, supplemental, and special assessments must be fixed at a uniform rate for all Lots and Parcels. However, so long as there is a Class B membership, Declarant shall not be subject to assessments for Lots not sold to individual Purchasers, but instead shall be required to pay the difference between actual operating costs for the Association and all income from assessments and other sources. When the Class B membership ceases as prescribed in Article 4, Section 4.1, Declarant shall become a Class A Member and will be subject to assessment for each Lot or Parcel owned by Declarant; provided, however, notwithstanding anything to the contrary contained herein, Declarant shall pay only twenty-five percent (25%) of the full assessment amount until such time as the Lot or Parcel is conveyed by Declarant to an individual Owner or is occupied, whichever occurs sooner. The one hundred percent (100%) assessment permanently attaches upon initial occupancy regardless of its state of occupancy thereafter.

Section 5.8. Builder Assessment Rate. In the case of a builder, who for purposes of this Section shall mean a person or entity who purchases more than one Lot from the Declarant for the express intent of building homes to be sold as a business enterprise, by such builder shall pay twenty-five percent (25%) of the full assessment amount until the earlier of the following: a) when the home is completed, or b) six (6) months after purchase of Lot(s) from Declarant. After the earlier of these aforementioned events, the assessment shall be permanently set at one hundred percent (100%) regardless of the state of occupancy of such Lot(s) thereafter.

Section 5.9. Date of Commencement of Annual Assessments; Due Dates. The annual assessments provided for herein shall commence as to all Lots and Parcels on the first day of the month following the conveyance of the first Lot to a Purchaser. The first annual assessment shall be adjusted according to the number of months remaining in the fiscal year of the Association. The Board shall fix the amount of the annual assessment at least thirty (30) days in advance of each annual assessment period. Written notice of the annual assessment shall be sent to every Owner subject thereto. The Board may require that the annual assessment be paid in installments and in such event the Board shall establish the due dates for each installment. The Association shall, upon demand, and for a reasonable charge, furnish a certificate signed by an officer of the Association setting forth whether the assessments on a specified Lot or Parcel have been paid.

Section 5.10. Effect of Nonpayment of Assessments; Remedies of the Association. 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 a monthly late charge to be set by the Board. Any assessment, or any installment of an assessment, which is delinquent shall become a continuing lien on the Lot or Parcel against which such assessment was made. The lien shall be perfected by the recording of a "Notice of Claim of Lien" which shall set forth (1) the name of the delinquent Owner as shown on the records of the Association, (2) legal description, street address and number of the Lot against which the lien is made, (3) the amount claimed as of the date of the recording of the notice including lien recording fees, interest and reasonable attorneys' fees, and (4) the name and address of the Association. The Association's lien shall have priority over all liens or claims created subsequent to the recording of the Notice of Claim of Lien except for tax liens for real property taxes on the Lot or Parcel, assessments on any Lot or Parcel in favor of any municipal or other governmental body and the liens which are specifically described in Section 5.11 of this Declaration.

Before recording a lien against any Lot or Parcel, the Association shall make a written demand to the defaulting Owner for payment of the delinquent assessments, together with interest and reasonable attorneys' fees, if any. Said demand shall state the date and amount of the delinquency. Each default shall constitute a separate basis for a demand or claim of lien, but any number of defaults may be included within a single demand or claim of lien. If such delinquency is not paid within ten (10) days after delivery of such demand, or at any time following such demand that such delinquency is at least thirty (30) days past due, the Association may proceed with recording a Notice of Claim of Lien against the Lot or Parcel of the defaulting Owner. The Association shall not be obligated to release any lien recorded pursuant to this Section until all delinquent assessments, lien fees, interest and

reasonable attorneys' fees have been paid in full whether or not all of such amounts are set forth in the Notice of Claim of Lien.

The Association shall have the right, at its option, to enforce collection of any delinquent assessments together with lien fees, late fees, reasonable attorneys' fees and any other sums due to the Association in any manner allowed by law including, but not limited to (a) bringing an action at law against the Owner personally obligated to pay the delinquent assessments and such action may be brought without waiving any lien securing any such delinquent assessments, or (b) bringing an action to foreclose its lien against the Lot or Parcel in the manner provided by law for the foreclosure of a realty mortgage (including the right, if applicable, to recover a deficiency). The Association shall have the power to bid at any foreclosure sale and to purchase, acquire, hold, lease, mortgage and convey any and all Lot(s) or Parcel(s) purchased at such sale. In the event such foreclosure is by action in court, reasonable attorneys' fees, court costs, title search fees, interest at the Default Rate, and all other costs and expenses shall be allowed to the extent permitted by law. Each Owner, by becoming an Owner of a Residence, hereby expressly waives any objection to the enforcement and foreclosure of this lien in this manner.

Section 5.11. Subordination of the Lien to Mortgages. The lien for the assessments provided for in this Declaration shall be subordinate to the lien of any First Mortgage. Sale or transfer of any Lot or Parcel shall not affect the assessment lien. However, the sale or transfer of any Lot or Parcel pursuant to judicial or nonjudicial foreclosure or any proceeding in lieu thereof, shall extinguish the lien of such assessment as to payments which become due prior to such sale or transfer. No such sale or transfer shall, however, relieve such Lot or Parcel from liability for any assessments thereafter becoming due or from the lien thereof. No sale or transfer whatsoever shall relieve the previous Owner from personal liability for assessments or charges that become due while such Owner held title.

Section 5.12. No Exemption of Owner. No Owner of a Lot or Parcel may exempt himself from liability for annual, supplemental, or special assessments levied against his Lot or Parcel or for other amounts which he may owe to the Association under the Project Documents by waiver or non-use of any of the Common Area and facilities, or by the abandonment of his Lot or Parcel.

## ARTICLE 6

PERMITTED USES AND RESTRICTIONS

Section 6.1. Land Use Classifications. As a portion of Wild Tree is readied or development, any number of Land Use Classifications, including any number of subclassifications thereof for any special uses, shall be fixed by Declarant in a Tract Declaration for such portion of Wild Tree, which Tract Declaration may be Recorded at such time as such property is conveyed by deed or, if retained by Declarant, at such time as Declarant begins development thereof. Each Recorded Tract Declaration shall be construed as a supplement to this Declaration and fully a part hereof as if all of the provisions thereof were set forth herein. The Land Use Classifications established by a Tract Declaration shall not be changed except as specifically permitted by this Declaration. The contemplated Land Use Classifications are as follows:

- a) Single Family Residential Use.
- b) Multi-Family Residential Use.
- c) Apartment Development Use.
- d) Condominium Development Use.
- e) Commercial Office Use.
- f) Shopping Center Use.
- g) General Commercial Use.

Unless otherwise specifically provided in this Declaration and subject to applicable zoning laws, the definitions and characteristics of such Land Use Classifications, and specific permitted and prohibited uses of real property in such Land use Classifications, shall be determined in the respective Recorded Tract Declaration. Assessment responsibility shall be set forth in the applicable Recorded Tract Declarations for those Parcels which have not been subdivided into Lots.

Section 6.2. Residential Use. All Lots shall be used, improved, and devoted exclusively to Single Family Residential use. No gainful occupation, profession, trade, business or other nonresidential use shall be conducted on any Lot. No Residence shall be leased or rented for a term of less than six (6) months. Nothing herein shall be deemed to prevent the leasing of a Lot to a Single Family from time to time by the Owner thereof, subject to all of the provisions of the Project Documents. Any Owner who leases his Lot shall promptly notify the Association and shall advise the Association of the term of the lease and the name of each lessee. All buildings or structures erected upon the Property shall be of new construction and no buildings or structures shall be moved from other locations onto the Property without the prior written approval of the Architectural Committee.

Section 6.2. Animals. No animals, reptiles, birds, fowl, poultry, or livestock, other than a reasonable number of generally recognized house or yard pets, shall be maintained on any Lot or Parcel and then only if they are kept, bred, or raised thereon solely as domestic pets and not for commercial purposes. No animal shall be allowed to make an unreasonable amount of noise, or to become a nuisance. Household pets shall be restrained by fence, cage or leash at all times and shall not be allowed to commit a trespass or to eliminate excrement upon the Common Area or other Residences. Owners shall be liable for any and all damage to property and injury to persons, animals, fish and fowl (domestic and wildlife), caused by their household pets. No structure for the care, housing or confinement of any animal shall be maintained so as to be Visible From Neighboring Property. Upon the written request of any Owner, the Board shall determine whether, for the purposes of this Section, a particular animal is a generally recognized house or yard pet, or nuisance, or whether the number of animals on any such property is reasonable. Any decision rendered by the Board shall be enforceable to the same extent as other restrictions contained in this Declaration.

Section 6.3. Antennas. No antenna, satellite dish or other device for the transmission or reception of television or radio signals or any other form of electromagnetic radiation shall be erected, used or maintained outdoors on any property, whether attached to a building or structure or otherwise, without prior written approval by the Architectural Committee.

Section 6.4. Roof Mounted Equipment. No roof mounted equipment of any kind including, but not limited to, solar collectors, evaporative coolers, air conditioners, and ventilating systems shall be permitted without the written approval of the Architectural Committee.

Section 6.5. Utility Service. Except as approved in writing by the Architectural Committee, 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 or Parcel 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 hereof shall be deemed to forbid the erection of temporary power or telephone structures incidental to the construction of buildings or structures approved by the Architectural Committee.

Section 6.6. Improvements and Alterations. No improvements, alterations, repairs, excavations, landscaping (except for such planting and landscaping as is installed in accordance with the initial construction of buildings on a Lot or Parcel or such planting or landscaping as is enclosed by a fence or wall) or other

work which in any way alters the exterior appearance of any property or the Improvements located thereon, from its natural or improved state existing on the date such property was first conveyed in fee by Declarant to a Purchaser, shall be made or done without the prior written approval of the Architectural Committee, except as otherwise expressly provided in this Declaration. No building, fence, wall, landscaping, residence, or other structure shall be commenced, erected, maintained, improved, altered, made or done without the prior written approval of all plans and specifications therefor by the Architectural Committee. No change or deviations in or from such plans and specifications once approved shall be made without the prior written approval of the Architectural Committee. All decisions of the Architectural Committee shall be final and no Owner or other parties shall have recourse against the Architectural Committee for its refusal to approve any such plans and specifications or plot plan, including lawn area and landscaping.

Section 6.7. Temporary Occupancy. No trailer, motorhome, mobile home, prefabricated structure, basement of any incomplete building, tent, shack, garage or barn, and no temporary buildings or structure of any kind shall be used at any time, on any portion of the Property, for a residence, either temporary or permanent. Temporary buildings or structures used during the construction of a dwelling on any such property shall be removed immediately after the completion of construction.

Section 6.8. Trailers and Motor Vehicles. No motor vehicle classed by manufacturer rating as exceeding 3/4-ton, mobile home, travel trailer, tent trailer, trailer, camper shell, detached camper, boat, boat trailer, or other similar equipment or vehicle may be parked, maintained, constructed, reconstructed or repaired on any Lot or on any street so as to be Visible From Neighboring Property; provided, however, that the provisions of this Section shall not apply to pickup trucks of 3/4-ton or less capacity with camper shells not exceeding seven (7) feet in height measured from ground level and mini-motor homes not exceeding seven (7) feet in height and eighteen (18) feet in length which are used on a regular and recurring basis for basic transportation.

Section 6.9. Nuisances. No rubbish or debris of any kind shall be placed or permitted to accumulate upon or adjacent to any Lot or Parcel, and no odors shall be permitted to arise therefrom, so as to render any such property or any portion thereof unsanitary, unsightly, offensive or detrimental to any other property in the vicinity thereof or to its occupants. No nuisance shall be permitted to exist or operate upon any such property so as to be offensive or detrimental to any other property in the vicinity thereof or to its occupants. Without limiting the generality of any of the foregoing provisions, no exterior speakers, horns, whistles, bells, or other sound devices, except



security devices used exclusively for security purposes, shall be located, used, or placed on any such property.

Section 6.10. Trash Containers and Collection. No garbage or trash shall be placed or kept on any property 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. The Board shall have the right to require all Owners to place their garbage or trash containers at a specific location for collection, or to require all Owners to subscribe to a trash collection service. All rubbish, trash, and garbage shall be removed from the Lots and shall not be allowed to accumulate thereon. No incinerators shall be kept or maintained on any Lot. No garbage or trash containers shall be kept or placed on any grass or other landscaped area.

Section 6.11. Clothes Drying Facilities. Outside clotheslines or other outside facilities for drying or airing clothes shall not be erected, placed, or maintained on any Lot or Parcel so as to be Visible From Neighboring Property.

Section 6.12. Machinery and Equipment. No machinery or equipment of any kind shall be placed, operated, or maintained upon or adjacent to any Lot or Parcel except such machinery or equipment as is usual and customary in connection with the use, maintenance, or construction of a residence, appurtenant structures, or other Improvements, and except that which Declarant or the Association may require for the operation and maintenance of the Property.

Section 6.13. Restriction on Further Subdivision. No Lot shall be further subdivided or separated into smaller Lots by any Owner, and no portion less than all of any such Lot shall be conveyed or transferred by any Owner without the prior written approval of the Board.

Section 6.14. Signs. No advertising signs will be permitted except one "For Rent" or "For Sale" sign per Lot, the size and specifications of which shall be determined by the Architectural Committee. No "For Rent" or "For Sale" signs or signs of any other nature may be attached to any perimeter or side Lot walls.

Section 6.15. Declarant's Exemption. Notwithstanding any other provision of the Project Documents, it shall be expressly permissible for the Declarant or its duly authorized agents, employees, and representatives to maintain during the period of the sale of Lots, such facilities, structures, and signs as are necessary or convenient, in the sole opinion of the Declarant, to the sale of the Lots, including, but without limitation, a business office, storage area, construction yards, homes, and sales offices;

provided, however, that such use of the Common Area by the Declarant must be reasonable and must not interfere with any Owner's use and enjoyment of the Common Area.

Section 6.16. Planting and Landscaping. No planting or landscaping shall be done, and no fences, hedges, or walls shall be erected or maintained on any Lot or Parcel, without the prior written approval of the Architectural Committee.

Section 6.17. Mineral Exploration. No Lot or Parcel shall be used in any manner to explore for, or to remove any water, oil, or other hydrocarbons, minerals of any kind, gravel, earth, or any earth substance of any kind.

Section 6.18. Diseases and Pests. No Owner shall permit any thing or condition to exist upon any Lot or Parcel which shall induce, breed or harbor infectious plant diseases or noxious insects.

Section 6.19. Trash and Debris. Each Owner of a Lot or Parcel, when installing or constructing Improvements on the Lot or Parcel, shall provide a place for the daily collection and storage of trash and debris and will remove such trash and debris on a reasonable schedule. No Owner of a Lot or Parcel will allow any nuisance to occur on his Lot or Parcel or adjacent to his Lot or Parcel other than the reasonable result of construction activity. The Board shall be the sole judge as to whether or not undue nuisance is occurring, and upon notice from the Board to the Lot or Parcel Owner, any such nuisances identified by the Board shall be corrected.

Section 6.20. Landscape Installation. Landscaping on Lot(s) or Parcel(s) must be installed within one hundred eighty (180) days of close of escrow from builder to individual Owner, failing which, the Association shall have the option of installing the landscaping at the expense of the Owner (not to exceed \$5,000) or of treating each day of delay beyond 180 days as a separate violation subject to the fine and lien provided in Section 2.3. All landscape plans must be approved in advance by the Architectural Committee.

## ARTICLE 7

### EASEMENTS

Section 7.1. Utility Easement. There is hereby created a blanket easement upon, across, over, and under the Common Area and the Lots for ingress, egress, installation, replacing, repairing, and maintaining all utilities, including, but not limited to water, sewers, gas, telephones, electricity, and a cable television system, and maintenance of drainage areas. By virtue of this easement, it shall be expressly permissible for the providing

utility to erect and maintain the necessary facilities and equipment on the Common Area. This easement shall in no way affect any other recorded easements on the Property.

Section 7.2. Easement for Encroachments. In the event a wall, landscaping, or other approved Improvement on a Lot, Parcel or the Common Area encroaches upon another Lot, Parcel or the Common Area, and such encroachment is inadvertent and has no significant adverse impact on the adjacent property, an easement for such encroachment is hereby given and the right to determine whether such encroachment causes a significant adverse impact shall be determined by the Architectural Committee upon request by either of the parties. When such determination is made by the Architectural Committee, that determination is binding on all parties.

Section 7.3. Easements for Ingress and Egress. Easements for ingress and egress are hereby reserved to the Declarant, the Owners, and to their families, guests, tenants, and invitees for pedestrian traffic over, through and across sidewalks, paths, walks, and lanes as the same from time to time may exist upon the Common Area; and for vehicular traffic over, through and across such portions of the Common Area as from time to time may be paved and intended for such purposes; and for such other purposes reasonably necessary to the use and enjoyment of a Lot or Parcel or the Common Area. Further, each Owner whose Lot or Parcel is accessible across private drives shall have an irrevocable and nonexclusive right and easement of ingress, egress, and access over and across the private drives which shall run with the title to the Lot or Parcel, and neither the Association, the Board, Declarant, any other Owner, any lienholder, or any other person shall have any rights, ability, or power to deny or deprive the Lot or Parcel and the Owner of the Lot or Parcel of the continuous right of ingress, egress and access.

Section 7.4. Association's Right of Entry. During reasonable hours, the Association, any member of the Architectural Committee, any member of the Board or any authorized representative of any of them, shall have an easement, and the right is hereby reserved to enter upon and inspect any Lot or Parcel, excluding the interior of any residence or business located thereon, for the purpose of making inspections to determine whether the provisions of this Declaration, the Association Rules and the Architectural Committee Rules are being complied with by the Owner of said Lot or Parcel.

Section 7.5. Association's Easement For Performing Maintenance Responsibilities. The Association shall have an easement upon, across, over and under the Common Area and the Lots and Parcels for the purpose of repairing, maintaining and replacing the Common Area and those portions of the Lots and Parcels which

the Association is obligated to maintain under Article 9 of this Declaration.

Section 7.6. Use and Drainage Easements Among Owners. Wherever drainage, as estimated by the Declarant, flows from one (1) Lot or Parcel under or through one (1) or more other Lots or Parcels, said drainage flow shall not be impeded, diverted, or otherwise changed. These easements shall include, but are not limited to, receiving the runoff from roofs and drainage under and through garden walls.

## ARTICLE 8

### PROPERTY RIGHTS

Section 8.1. Owners' Easement of Enjoyment. Every Owner shall have a right and easement of enjoyment in and to the Common Area. Said easement shall be appurtenant to and shall pass with the title to every Lot and Parcel subject to the following provisions:

(a) the right of the Association to adopt reasonable rules and regulations governing the use of the Common Area and all facilities located thereon;

(b) 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; provided, however, that no such dedication or transfer shall be effective unless evidenced by an instrument signed by at least two-thirds (2/3) of each class of Members, except that the Board may make a dedication for transfer without consent of the Members, provided such transfer is of minimal value and causes no adverse impact to the Members; and

(c) the right of Declarant and its agents and representatives, in addition to the rights set forth elsewhere in this Declaration, to the non-exclusive use, without charge, of the Common Area for maintenance of sales facilities, and display and exhibit purposes.

Section 8.2. Declaration of Use. Any Owner may delegate, subject to this Declaration and the Association Rules, his right of enjoyment to the Common Area and facilities to the members of his family, his tenants, his guests and/or invitees, provided such delegation is for a reasonable number of persons and at reasonable times, and in accordance with reasonable Association Rules.

Section 8.3. Limitations. An Owner's right and easement of enjoyment in and to the Common Area shall not be conveyed, transferred, alienated or encumbered separate and apart from an

Owner's Lot or Parcel. Such right and easement of enjoyment in and to the Common Area shall be deemed to be conveyed, transferred, alienated or encumbered upon the conveyance of any Owner's Lot or Parcel, notwithstanding that the description in the instrument of conveyance, transfer, or alienation may not refer to the Common Area.

Section 8.4. Title to Common Area. All Common Area within the Property shall be conveyed to the Association free and clear of all liens and encumbrances prior to or concurrently with the conveyance of all or any portion of the Property to a third party purchaser; provided, however the Declarant or a Sub-Developer may postpone conveyance to the Association of a parcel of Common Area until all improvements thereon are completed in compliance with all governmental requirements and the plans and specifications therefore, and all FHA or VA requirements, if applicable. The Sub-Developer, if any, or the Declarant shall be responsible to maintain and repair such parcels until such improvements are fully completed and the parcel conveyed as Common Area to the Association.

## ARTICLE 9

### MAINTENANCE

Section 9.1. Maintenance of Common Area by the Association. The Association shall be responsible for the maintenance, repair and replacement of the Common Area and all Improvements now or hereafter located therein or constituting a part thereof and may, without any approval of the Owners being required, do any of the following:

(a) Reconstruct, repair, replace or refinish any Improvement or portion thereof upon any such area (to the extent that such work is not done by a governmental entity, if any, responsible for the maintenance and upkeep of such area);

(b) Replace injured and diseased trees or other vegetation in any such area, and plant trees, shrubs and ground cover to the extent that the Board deems necessary 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 Common Area and the appearance thereof, in accordance with the general purposes specified in this Declaration.

Section 9.2. Exterior Maintenance By Association. In addition to the maintenance, repair and replacement of the Common Area and the Improvements located thereon, the Association shall maintain, repair and replace the landscaping and other Improvements on any area within, or immediately adjacent to Wild Tree, provided that the Board agrees that such maintenance shall be in the best interest of all the Members and agrees to such maintenance in writing.

Section 9.3. Maintenance By Owners. Each Owner shall be responsible for and bear the expense of the initial construction and landscaping and all subsequent repair and maintenance of the exterior and interior of Improvements construction on such Owner's Lot or Parcel, including all areas and features not expressly herein provided to be maintained by the Association. In such repair and maintenance, an Owner shall not interfere with, hinder or damage any Common Area or the area or Improvement of any other Lot or Parcel. The removal, replacement, installation and repair of any fence, wall or other component of a Lot, placed or constructed by the Declarant or any Owner, on, within, or about any utility easement or service line or system shall be the responsibility of the Owner, either directly or through increased assessment, at the option of the Board. In addition, if the need for repair or maintenance of areas to be repaired and maintained by the Association is caused through the negligent or willful acts or omissions of an Owner, his family, licensees, guests, tenants or invitees, the cost of such repair or maintenance shall be the responsibility of such Owner, either directly or through increased assessment, at the option of the Board. Further, repair and maintenance of the interior and exterior of any Improvement on a Lot which is undertaken by the Association, because of the failure or neglect of an Owner, as provided in Section 9.5 below, shall be the responsibility of such Owner, either directly or through assessment by the Association, at the option of the Board.

Section 9.4. Damage or Destruction of Common Area by Owners. No Owner shall in any way damage or destroy any Common Area or interfere with the activities of the Association, in connection therewith. No Owner shall in any way interfere with the maintenance responsibilities of the Association, including, but not limited to, landscaping, street maintenance, and wall maintenance. Any expenses incurred by the Association by reason of any such act of an Owner, his grantees or assignees, shall be paid by said Owner, upon demand, to the Association to the extent that the Owner is liable therefor under Arizona law, and such amounts shall be a lien on any Lots or Parcels owned by said Owner, and the Association may enforce collection of any such amounts in the same manner as provided elsewhere in this Declaration for the collection and enforcement of assessments.

Section 9.5. Nonperformance by Owners. If any Owner fails to maintain any portion of his Lot or Parcel, and the Improvements

located thereon, which he is obligated to maintain under the provisions of the Project Documents, the Association shall have the right, but not the obligation, after fourteen (14) days' notice, to enter upon such Owner's Lot or Parcel to perform the maintenance and repairs not performed by the Owner, and the cost of any such work performed by or at the request of the Association shall be paid for by the Owner of the Lot or Parcel upon demand from the Association, and such amounts shall be a lien upon the Owner's Lot or Parcel and the Association may enforce collection of such amounts in the same manner and to the same extent as provided elsewhere in this Declaration for the collection and enforcement of assessments.

Section 9.6. Preservation and Maintenance of Public Art. Declarant may elect to dedicate for the public benefit and enjoyment certain sculpture or art to be located upon and become a part of the Common Area. Owners and the Association agree that the Association shall insure and maintain such public art in good condition and repair and will not remove, alter or modify such art without the written consent of Declarant.

## ARTICLE 10

### PARTY WALLS

Section 10.1. Rights and Duties of Adjoining Owners. The rights and duties of Owners of Lots and Parcels with respect to party walls shall be governed by the following provisions:

(a) Each wall or fence which is placed on the dividing line between separate Lots and/or Parcels shall constitute a party wall. With respect to any such wall, each of the adjoining Owners shall assume the burden and be entitled to the benefit of the restrictive covenants contained in this Declaration, and to the extent not inconsistent with this Declaration, the general rules of law regarding party walls shall apply;

(b) The cost of reasonable repair and maintenance of a party wall shall be shared by the adjoining Owners of such wall in proportion to the use thereof, without prejudice, however, to the right of any Owner to call for a larger contribution from the adjoining Owner under any rule of law regarding liability for negligent or willful acts or omissions;

(c) In the event any such party wall is damaged or destroyed by some abuse other than the act of one (1) of the adjoining Owners, his agents, tenants, licensees, guests or family (including ordinary wear and tear and deterioration from lapse of time) then, in such event, both such adjoining Owners shall proceed

forthwith to rebuild or repair the same to as good condition as formerly at their joint and equal expense;

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

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

(f) In addition to meeting the other requirements of this Declaration and of any other city code or similar regulations or ordinances, any Owner proposing to modify, make additions to or build or rebuild a party wall in any manner which requires construction, extension or other alteration, shall first obtain the written consent of the adjoining Owner and the Architectural Committee;

(g) In the event of a dispute between Owners with respect to the repair or the rebuilding of a party wall or with respect to sharing of the cost thereof, then, upon written request of one of such Owners addressed to the Association, the matter shall be submitted to the Architectural Committee whose decision shall be final; and

(h) The provisions of this Article shall be binding upon the heirs and assigns of any Owners, but no person shall be liable for any act or omission respecting the party wall except such as took place while such Owner held title.

## ARTICLE 11

### INSURANCE

Section 11.1. Scope of Coverage. Commencing not later than the time of the first conveyance of a Lot or Parcel to an individual Owner other than the Declarant, the Association shall maintain adequate insurance for Common Area liability to extend to those areas the Association may agree to maintain pursuant to Article 9 herein, officers and directors liability, committees appointed by the Board, property, fidelity and any other coverage deemed necessary by the Board.

Section 11.2. Certificates of Insurance. An insurer that has issued an insurance policy under this Article shall issue certificates or a memorandum of insurance to the Association and, upon request, and subject to approval by the Board, to any Owner, mortgagee or beneficiary under a deed of trust. Any insurance



obtained pursuant to this Article may not be canceled until thirty (30) days after notice of the proposed cancellation has been mailed to the Association, each Owner and each mortgagee or beneficiary under deed of trust to whom certificates of insurance have been issued.

Section 11.3. Repair and Replacement of Damaged or Destroyed Property. Any portion of the Common Area damaged or destroyed shall be repaired or replaced promptly by the Association unless (a) repair or replacement would be illegal under any state or local health or safety statute or ordinance, or (b) Owners owning at least eighty percent (80%) of the Lots vote not to rebuild. The cost of repair or replacement in excess of insurance proceeds and reserves shall be paid by the Association, which shall have the right to levy a special assessment as provided herein. If the entire Common Area is not repaired or replaced, insurance proceeds attributable to the damaged Common Area 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 be retained by the Association, or in the sole discretion of the Board, distributed to the Owners on the basis of an equal share for each Lot.

Section 11.4. Owner's Responsibility. It is the responsibility of each Owner of a Lot or Parcel to maintain insurance on his Lot or Parcel and Improvements thereon, and nothing contained herein shall be deemed to obligate the Association to do so.

## ARTICLE 12

### FIRST MORTGAGE

Notwithstanding and prevailing over any other provisions of this Declaration, the Articles, the Bylaws, or any rules or regulations, the following provisions shall apply to and benefit each holder of a First Mortgage upon a Lot or Parcel.

12.1. Exoneration. Except as hereinafter provided, the First Mortgagee shall not in any case or manner be personally liable for the payment of any assessment or charge, nor for the observance or performance of any Assurances, except for those matters which are enforceable by injunctive or other equitable actions, not requiring the payment of money.

12.2. Substitution. During the pendency of any proceeding to foreclose the First Mortgage, including any period of redemption, the First Mortgagee (or any receiver appointed in such action) may, but need not, exercise any or all of the rights and privileges of the Owner including, but not limited to, the right to vote as a Member to the exclusion of the Owner's exercise of such rights and privileges.

12.3. Acquisition. At such time as the First Mortgagee shall become record owner of a Lot or Parcel, the First Mortgagee shall be subject to all of the terms and conditions of this Declaration, including, but not limited to, the obligation to pay for all assessments and charges accruing thereafter, in the same manner as any other Owner.

12.4. Foreclosure. The First Mortgagee, or any other Person acquiring title to a mortgaged Residence through foreclosure suit or through any equivalent proceedings such as, but not limited to, the taking of a deed in lieu of foreclosure, or the exercise of the power of sale under a deed of trust, shall acquire title to the Lot or Parcel free and clear of any lien authorized by or arising out of any of the provisions of this Declaration which secures the payment of any assessment or charges accrued prior to the final conclusion of any such foreclosure suit or equivalent proceeding, including the expiration date of any period of redemption, except as follows: Any such unpaid assessment against the Lot or Parcel foreclosed against may be treated as an expense common to all of the Lots and Parcels subject to assessment. Any such unpaid assessment or charge shall nevertheless continue to exist as the personal obligation of the defaulting Owner of the Lot or Parcel to the Association. There shall be a lien upon the interest of the First Mortgagee or other Person which acquires title to a mortgaged Lot or Parcel by foreclosure or equivalent proceedings for all assessments and charges authorized by this Declaration which accrue or are assessed after the date the acquire has acquired title to the Lot or Parcel free and clear of any right of redemption.

## ARTICLE 13

### GENERAL PROVISIONS

Section 13.1. 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 hereafter 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 event be deemed a waiver of the right to do so thereafter.

Section 13.2. Severability. Invalidation of any one (1) of these covenants or restrictions by judgment or court order shall in no way affect any other provisions, which shall remain in full force and effect.

Section 13.3. Duration. The covenants and restrictions of this Declaration shall run with and bind the Property for a term of twenty (20) years from the date this Declaration is recorded, after which time they shall be automatically extended for successive

periods of ten (10) years, unless revoked or amended by and amendment in writing in accordance with Section 13.4 below.

Section 13.4. Amendment by Owners. This Declaration may be amended during the first twenty (20) year period by an instrument signed by Owners representing not less than ninety percent (90%) of the Lots, and thereafter by an instrument signed by Owners representing not less than seventy-five percent (75%) of the Lots. Any amendment must be recorded. A Tract Declaration may be amended by a recorded instrument executed by the Declarant and seventy-five percent (75%) of the Owners of all Lots and Parcels subject to the recorded Tract Declaration. However, during the period of Class B Membership, a recorded Tract Declaration may be amended by the Declarant alone without the approval of any other Owners. For so long as Declarant has Class B Membership rights under Paragraph 4.1 of this Declaration, the following actions will require the prior approval of FHA or VA: (i) the annexation of additional properties; (ii) the dedication, conveyance, or mortgage of any Common Area; (iii) any amendment to this Declaration; and (iv) any merger, consolidation, or dissolution of the Association. Notwithstanding any other provision of this Declaration or any other document to the contrary, the Common Area cannot be mortgaged, conveyed, or dedicated, nor can there be a merger, consolidation, or dissolution of the Association, without the consent of at least two-thirds (2/3) of Owners of Lots (excluding the Declarant).

Section 13.5. Amendment by Board. Notwithstanding anything to the contrary in this Declaration, the Board shall have the right, but not the obligation, to amend this Declaration, without obtaining the approval or consent of any other Owner, First Mortgagee or other lienholder, 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 other government or government approved agencies when such modification is required to qualify for the use of the services, insurance, or other guarantees provided by such agencies.

Section 13.6. Violations and Nuisance. Every act or omission whereby any provision of 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 relief sought is for negative or affirmative action, by Declarant, the Association or any Owner.

Section 13.7. 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 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.

Section 13.8. Remedies Cumulative. Each remedy provided herein is cumulative and not exclusive.

Section 13.9. 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 twenty-four (24) hours after a copy of same has been deposited in the United States mail, postage prepaid. Each Owner of a Lot and Parcel shall file the correct mailing address of such Owner with the Association, and shall promptly notify the Association in writing of any subsequent change of address.

Section 13.10. Binding Effect. By acceptance of a deed or by acquiring any interest in any of the Property subject to this Declaration, each person or entity, for himself or itself, his heirs, personal representatives, successors, transferees and assigns, binds himself, his heirs, personal representatives, successors, transferees and assigns, to all of the provisions, restrictions, covenants, conditions, rules, and regulations now or hereafter imposed by this Declaration and any amendments thereof. In addition, each such person by so doing thereby acknowledges that this Declaration sets forth a general scheme for the improvement and development of the Property and hereby evidences his interest and consent 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. Furthermore, each such person fully understands and acknowledges that this Declaration shall be mutually beneficial, prohibitive and enforceable by the various subsequent and future Owners. Declarant, its successors, assigns and grantees, covenants and agrees that the Lots, Parcels and the membership in the Association and the other rights created by this Declaration shall not be separated or separately conveyed, and each shall be deemed to be conveyed or encumbered with its respective Lot or Parcel even though the description in the instrument of conveyance or encumbrance may refer only to the Lot or Parcel.

Section 13.11. Gender. The singular, wherever used in this Declaration, shall be construed to mean the plural when applicable, and the necessary grammatical changes required to make the provisions of this Declaration apply either to corporations or individuals, men or women, shall in all cases be assumed as though in each case fully expressed.

Section 13.12. Topic Headings. The marginal or topical headings of the Sections contained in this Declaration are for convenience only and do not define, limit or construe the contents of the Sections or this Declaration.

Section 13.13. Survival of Liability. The termination of membership in the Association shall not relieve or release any such former Member from any liability or obligation incurred under or in any way connected with the Association during the period of such

membership, or impair any rights or remedies which the Association may have against such former Member arising out of, or in any way connected with such membership and the covenants and obligations incidental thereto.

Section 13.14. Construction. In the event of any discrepancies, inconsistencies or conflicts between the provisions of this Declaration and the Articles, Bylaws, Association Rules or Architectural Committee Rules, the provisions of this Declaration shall prevail.

Section 13.15. Joint and Several Liability. In the case of joint ownership of a Lot or Parcel, the liabilities and obligations of each of the joint Owners set forth in, or imposed by, this Declaration, shall be joint and several.

Section 13.16. Attorneys' Fees. In the event the Association employs an attorney to enforce any lien granted to it under the terms of this Declaration, or to collect any assessments or other amounts due from an Owner or to enforce compliance with or recover damages for any violation or noncompliance with the Project Documents, the prevailing party in any such action shall be entitled to recover from the other party its reasonable attorneys' fees incurred in any such action.

Section 13.17. Declarant's Right To Use Similar Name. The Association hereby irrevocably consents to the use by any other nonprofit corporation which may be formed or incorporated by Declarant of a corporate name which is the same or deceptively similar to the name of the Association provided one (1) or more words are added to the name of such other corporation to make the name of the Association distinguishable from the name of such other corporation. Within five (5) days after being requested to do so by the Declarant, the Association shall sign such letters, documents or other writings as may be required by the Arizona Corporation Commission in order for any other corporation formed or incorporated by the Declarant to use a corporate name which is the same or deceptively similar to the name of the Association. Declarant hereby reserves all right, title and interest in and to the name "Wild Tree" for such uses as Declarant may choose in connection with the development and sale of the Property, to the fullest extent permitted by law.

Section 13.18 Annexation of Annexable Property. All or any part of the Annexable Property may be annexed to the Property and become subject to this Declaration and subject to the jurisdiction of the Association without the approval, assent or vote of the Association or its Members, provided that a Supplementary Declaration of Covenants, Conditions and Restrictions, or similar instrument, covering the property sought to be annexed shall be executed and recorded by Declarant or its successors and assigns; provided, however, no such Supplementary Declaration shall be so

executed and recorded pursuant to this Section more than fifteen (15) years subsequent to the recording of this Declaration. The recording of said supplementary Declaration shall constitute and effectuate the annexation of said portion of the Annexable Property described therein, making said real property subject to this Declaration and subject to the functions, powers and jurisdiction of the Association, and thereafter said property shall be part of the Property and all of the Owners of Lots or Parcels in said property shall automatically be Members of the Association. Although Declarant or its successors and assigns shall have the ability to so annex all or any portion of the Annexable Property, neither Declarant nor its successors and assigns shall be obligated to annex all or any portion of such Annexable Property and such Annexable Property shall not become subject to this Declaration unless and until a Supplementary Declaration shall have been so executed and recorded. Any such Supplementary Declaration may contain such complementary additions and modifications of the covenants, conditions and restrictions contained in this Declaration as may be necessary to reflect the difference character, if any, of the annexed property so annexed and as are not inconsistent with the plan of this Declaration. In no event, however, shall any such Supplementary Declaration, revoke, modify or add to the covenants, established by this Declaration within the existing Property. Without limiting the generality of the foregoing, it is acknowledged and agreed that all or a portion of the Annexable Property may be rezoned and/or used for commercial purposes, including, without limitation, multi-family, retail, office of hotel uses. Any such Supplementary Declaration subjecting all or any portion of the Annexable Property to this Declaration shall establish the number of Class A memberships and the assessment responsibility under the Declaration to be attributed thereto.

13.19 Declarant's Rights Regarding Retention Basin. Declarant reserves the right, in its discretion, to grant to and for the benefit of the Annexable Property the right of access and shared use of Tract D within the Property (as described on the Plat Map) as a flood retention area for runoff water from the Annexable Property to the extent there exists any capacity for water retention (as determined by the City of Chandler) on Tract D in excess of that required by the Property. The owners of the Annexable Property shall bear all costs and expenses associated with the accomplishment of such operation and shared use thereof together and in the event of such shared use, will pay twenty percent (20%) of any real property taxes attributable to Tract D.

IN WITNESS WHEREOF, the Declarant has executed this Declaration as of the day and year first set forth above.

SCHIRMER MANAGEMENT AND DEVELOPMENT, INC. an Arizona corporation

By: W. Scott Schirmer  
W. Scott Schirmer  
Its: President

STATE OF ARIZONA        )  
                                  ) ss.  
County of Maricopa     )

The foregoing instrument was acknowledged before me this 8th day of April, 1994, by W. Scott Schirmer, President of SCHIRMER MANAGEMENT AND DEVELOPMENT, INC., an Arizona corporation.

[Signature]  
Notary Public

My Commission Expires:  
7-7-96

---

"EXHIBIT A"  
LEGAL DESCRIPTION

Lots 1 to 260, inclusive, and Tracts A to G, inclusive, WILD TREE, according to Book 373 of Mpas, page 40, and Affidavit of Correction recorded in Document No. 94-245263, records of Maricopa County, Arizona.



EXHIBIT "B"  
PAGE 1 of 2

DESCRIPTION

PARCEL NO. 1

A portion of the Southwest quarter of Section 26, Township 1 South, Range 4 East of the Gila and Salt River Base and Meridian, Maricopa County, Arizona, more particularly described as follows:

The South half of the West half of the Southwest quarter of the Southwest quarter AND the South half of the West half of the East half of the Southwest quarter of the Southwest quarter of Section 26;  
EXCEPT the South 55.00 feet; and  
EXCEPT the West 55.00 feet; and  
EXCEPT COMMENCING at the Southwest corner of said Section 26;  
thence Northerly along the Westerly line of said Southwest quarter of Section 26 to a point 70.00 feet Northerly of the Southerly line of said Southwest quarter of Section 26;  
thence Easterly to a point 70.00 feet Northerly of said Southerly line of the Southwest quarter of Section 26 and 55.00 feet Easterly of said West line of the Southwest quarter of Section 26 said point being the POINT OF BEGINNING;  
thence Southerly to a point 55.00 feet North of said Southerly line of said Southwest quarter of Section 26 and 55.00 feet East of the Easterly line of said Southwest quarter of Section 26;  
thence Easterly to a point 55.00 feet North of said Southerly line of the Southwest quarter of Section 26 and 70.00 feet East of said Westerly line of the Southwest quarter of Section 26;  
thence Northwesterly to the POINT OF BEGINNING.

PARCEL NO. 2

A portion of the South half of the Southwest quarter of Section 26, Township 1 South, Range 4 East of the Gila and Salt River Base and Meridian, Maricopa County, Arizona, more particularly described as follows:

COMMENCING at the Southwest corner of Section 26;  
thence North  $01^{\circ} 27' 32''$  East along the Westerly line of said Southwest quarter of Section 26, a distance of 912.85 feet;  
thence South  $88^{\circ} 32' 28''$  East a distance of 55.00 feet to a point on the Easterly 55.00 feet right-of-way line of Rural Road, said point being the TRUE POINT OF BEGINNING;

EXHIBIT "B"  
PAGE 2 of 2

## DESCRIPTION (Continued)

## Parcel No. 2 (Continued)

thence continuing South 88° 32' 28" East a distance of 316.85 feet;  
thence South 77° 29' 28" East a distance of 24.27 feet;  
thence South 75° 41' 07" East a distance of 150.00 feet;  
thence South 78° 13' 48" East a distance of 58.16 feet;  
thence South 83° 50' 42" East a distance of 70.17 feet;  
thence South 88° 24' 26" East a distance of 34.10 feet;  
thence South 89° 53' 56" East a distance of 410.91 feet;  
thence South 00° 06' 04" West a distance of 365.00 feet;  
thence South 45° 06' 04" West a distance of 21.21 feet;  
thence South 00° 06' 04" West a distance of 50.00 feet;  
thence South 89° 53' 56" East a distance of 2.76 feet;  
thence South 00° 12' 04" West a distance of 115.00 feet;  
thence South 89° 53' 56" East a distance of 333.00 feet;  
thence South 00° 12' 04" West a distance of 214.22 feet;  
thence South 45° 12' 04" West a distance of 28.28 feet;  
thence South 00° 12' 04" West, a distance of 10.00 feet to a point  
55.00 feet North of the Southerly line of said Southwest quarter  
of Section 26, said point being on the Northerly 55.00 feet right-  
of-way line of Chandler Boulevard;  
thence North 89° 47' 56" West along the said Northerly right-of-way  
line of Chandler Boulevard a distance of 431.80 feet to a point on  
the East line of the West half of the East half of the Southwest  
quarter of the Southwest quarter of said Section 26;  
thence North 01° 09' 37" East along said East line a distance of  
607.23 feet to the Northeast corner of the South half of the West  
half of the East half of the Southwest quarter of the Southwest  
quarter of said Section 26;  
thence North 89° 50' 55" West along the North line of said South half  
of the Southwest quarter of the Southwest quarter of Section 26 a  
distance of 943.29 feet to a point on said Easterly 55.00 feet  
right of way line of Rural Road;  
thence North 01° 27' 32" East along said Easterly 55.00 feet right-  
of-way line of Rural Road a distance of 250.16 feet to the TRUE  
POINT OF BEGINNING.