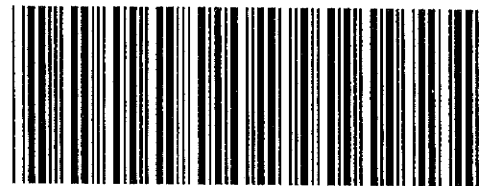


FIELD FOR 21  
ADDITIONAL  
2007 04/20

WHEN RECORDED, RETURN TO:

Dan G. Curtis  
Dan G. Curtis, P.C.  
63 East Main Street  
Suite 501  
Mesa, Arizona 85201



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MARICOPA COUNTY RECORDER  
HELEN PURCELL  
2004-0421447 04/20/04 16:46  
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SOTOR

**AMENDED AND RESTATED DECLARATION OF  
COVENANTS, CONDITIONS AND RESTRICTIONS  
FOR  
4935 THOMAS EAST**

**AMENDED AND RESTATED DECLARATION OF  
COVENANTS, CONDITIONS AND RESTRICTIONS  
FOR  
4935 THOMAS EAST**

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**AMENDED AND RESTATED  
DECLARATION OF COVENANTS, CONDITIONS AND RESTRICTIONS**

**FOR**

**4935 THOMAS EAST HOMEOWNER'S ASSOCIATION**

This Amended and Restated Declaration of Covenants, Conditions, and Restrictions for **4935 THOMAS EAST HOMEOWNER'S ASSOCIATION** (the "Declaration") is as of February 29, 2004.

**INTRODUCTION**

A. By that certain Declaration of Covenants, Conditions and Restrictions recorded in Docket 9348, pages 831 through 851, as amended by the instruments recorded in Docket 9493, commencing at page 332, Docket 9643, commencing at page 104, and Docket 14737, commencing at page 222, and as restated by that certain Restatement of Declaration of Covenants, Conditions and Restrictions recorded on May 2, 1989, at Instrument No. 89-200481, and by that Amendment to the Restatement recorded January 30, 1998, at Instrument No. 98-0072383, all in the records of Maricopa County, Arizona (collectively, the "Original Declaration"), certain conditions, covenants, restrictions were imposed and other property and contract rights were created, burdening and benefitting the real property described in the Declaration (the "Property").

B. Article XII, Section 4 of the Original Declaration provides for the amendment of the Original Declaration by the affirmative written assent or vote of not less than seventy-five percent (75%) of the voting power of the Members.

C. By a duly held vote of the 4935 THOMAS EAST HOMEOWNER'S ASSOCIATION, in excess of seventy-five percent (75%) of the voting power of the Members have approved this Amended and Restated Declaration of Restrictions.

D. The Owners desire that all of the Property subject hereto be held, conveyed, hypothecated, encumbered, leased, occupied, built upon and otherwise used, improved or transferred in whole or in part, subject to this Declaration, as amended or modified from time to time.

NOW THEREFORE, the Prior Declaration is hereby amended and revoked in its entirety and the provisions of this restated Declaration are hereby imposed upon the Property.

**ARTICLE 1.  
DEFINITIONS**

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

1.1 "Annual Assessment" means the assessments levied against each Lot, and the Owner thereof, pursuant to Section 8 of this Declaration.

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

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

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

1.5 "Assessable Lot" means each Lot.

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

1.7 "Assessment Lien" means the lien created and imposed by Article 8 of this Declaration.

1.8 "Assessment Period" means the period set forth in Section 8.4 of this Declaration.

1.9 "Association" means **4935 THOMAS EAST HOMEOWNER'S ASSOCIATION**, an Arizona nonprofit corporation, and its successors and assigns.

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

1.11 "Association Rules" means the rules adopted by the Board pursuant to Section 7.3 of this Declaration, as amended from time to time.

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

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

1.14 "Common Area" means Tract I as shown on the Plat of the Property; and all land, together with all Improvements situated thereon, which the Association at any time owns in fee or in which the Association has a leasehold interest for as long as the Association is the owner of the fee or leasehold interest.

1.15 "Common Expenses" means the actual and estimated expenses incurred or anticipated to be incurred by or on behalf of the Association including any allocations to reserves determined by the Board to be necessary and appropriate, and all other financial liabilities of the Association.

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

1.17 "Design Guidelines" means the procedures, standards and guidelines adopted by the Architectural Committee pursuant to Section 3.10 of this Declaration, as amended or supplemented from time to time.

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

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

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

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

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

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

1.24 "Maintenance Standard" means the standard of Maintenance of Improvements situated on Lots established from time to time by the Board or, in the absence of any standard established by the Board, the standard of Maintenance of Improvements situated on Lots generally prevailing throughout the Project.

1.25 "Member" means any Person who is a member of the Association as provided in Section 7.6 of this Declaration.

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

vested in a trustee pursuant to a subdivision trust agreement or similar agreement, the beneficiary of any such trust who is entitled to possession of the trust property shall be deemed to be the Owner.

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

1.28 "Plat" means the plat of 4935 Thomas Road East, recorded in Book 147, page 38, records of Maricopa County, Arizona, and all amendments, supplements and corrections thereto.

1.29 "Property" or "Project" means the real property described in the Original Declaration together with all Improvements located thereon.

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

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

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

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

1.34 "Special Assessment" means any assessment levied and assessed pursuant to Section 8.3 of this Declaration.

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

## **ARTICLE 2.**

### **PROPERTY AND PERSONS BOUND BY DECLARATION**

2.1 General Declaration. The Owners intend by this Amended and Restated Declaration to impose upon the Property mutually beneficial restrictions in furtherance of the general plan for the development, sale and use of the Property and for the administration, maintenance, preservation, use and enjoyment of the Property. All of the Property shall be held, sold, used and conveyed subject to the easements, restrictions, conditions and covenants set forth in this Amended and Restated Declaration which are for the purpose of protecting the value, desirability and appearance of the Property. All of easements, restrictions, conditions and covenants in this Declaration shall run with the Property and shall be binding upon and inure to the benefit of all Owners, Lessees and Residents and all other Persons having or acquiring any right, title or interest in the Property or any part thereof, their heirs, successors, successors in title and assigns. By acceptance of a deed or by acquiring any interest in any of the Property, each Person, for himself or itself, his heirs, personal



representatives, successors, transferees and assigns, binds himself, his heirs, personal representatives, successors, transferees and assigns, to all of the provisions, restrictions, covenants, conditions, rules and regulations now or hereafter imposed by this Declaration and any amendments thereof. In addition, each such Person by so doing thereby acknowledges that this Declaration sets forth a general scheme for the development, sale, lease and use of the Property and hereby evidences his interest that all the restrictions, conditions, covenants, rules and regulations contained in this Declaration shall run with the land and be binding on all subsequent and future Owners, grantees, purchasers, assignees, lessees and transferees thereof. This Declaration shall also be binding upon and shall be for the benefit of and enforceable by the Association.

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

### **ARTICLE 3.** **ARCHITECTURAL CONTROL**

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

3.2 Review of Plans. The Architectural Committee may disapprove plans and specifications for any construction, installation, addition, alteration, repair, change or other work

which must be approved by the Architectural Committee pursuant to this Article 3 if the Architectural Committee determines, in its sole and absolute discretion, that the proposed work violates any provision of this Declaration or the Design Guidelines. In addition, the Architectural Committee may disapprove plans and specifications for any construction, installation, addition, alteration, repair, change or other work which must be approved by the Architectural Committee pursuant to this Article 3 even though the plans and specifications may be in substantial compliance with this Declaration and the Design Guidelines if the Architectural Committee, in its sole and absolute discretion, determines that the proposed construction, installation, addition, alteration, repair, change or other work, or some aspect or portion thereof, is unsatisfactory or aesthetically unacceptable. In reviewing the proposed plans and specifications, the Architectural Committee may consider any and all factors which the Architectural Committee, in its sole and absolute discretion, determines to be relevant including, but not limited to: (i) the harmony of the proposed Improvements with existing Improvements in the Project or with Improvements previously approved by the Architectural Committee but not yet constructed; (ii) the proposed location of the proposed Improvements in relation to existing topography, finished grade elevations, roads, Common Area and other structures; and (iii) the exterior design, finish materials and the color of the proposed Improvements. The Architectural Committee may approve plans and specifications which fail in some material way to comply with the requirements of this Declaration or the Design Guidelines if the Architectural Committee, in its sole and absolute discretion, determines that some particular feature of the Lot or the proposed Improvements allows the objectives of the violated requirements of this Declaration or the Design Guidelines to be substantially achieved. Also, the Architectural Committee may approve plans and specifications which fail to comply with the requirements of this Declaration or the Design Guidelines if the Architectural Committee, in its sole and absolute discretion, determines that the failure is not material. The approval required of the Architectural Committee pursuant to this Article 3 shall be in addition to, and not in lieu of, any approvals or permits which may be required under any federal, state or local law, statute, ordinance, rule or regulation.

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

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

3.5 Review Fee. The Architectural Committee shall have the right to charge a fee for reviewing requests for approval of any construction, installation, alteration, addition, repair, change or other work pursuant to this Article 3, which fee shall be payable at the time the application for approval is submitted to the Architectural Committee. The fee charged by the Architectural Committee may include the actual or estimated fees or costs incurred or anticipated to be incurred

by the Architectural Committee in consulting with an architect or engineer with respect to the plans submitted.

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

3.7 No Warranty. The approval by the Architectural Committee of any construction, installation, addition, alteration, repair, change or other work pursuant to this Article 3 shall not be deemed a warranty or representation by the Architectural Committee as to the quality of such construction, installation, addition, alteration, repair, change or other work or that such construction, installation, addition, alteration, repair, change or other work conforms to any applicable building codes or other federal, state or local law, statute, ordinance, rule or regulation.

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

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

3.10 Architectural Committee. The Board shall determine the number of members on the Architectural Committee, and the members of the Architectural Committee shall be appointed by the Board, or if no committee members are appointed by the Board, the Board shall serve as the Architectural Committee. The Architectural Committee may adopt, amend and repeal architectural guidelines, standards and procedures to be used in rendering its decisions. Such guidelines, standards and procedures may include, without limitation, provisions regarding: (i) the size and height of Residential Units; (ii) architectural design, with particular regard to the harmony of the design with the surrounding structures and typography; (iii) placement of Residential Units and other buildings; (iv) landscaping design, content and conformance with the character of the Property and permitted and prohibited plants; (v) requirements concerning exterior color schemes, exterior finishes and materials; (vi) signage; and (vii) perimeter and screen wall design and appearance. The

decision of the Architectural Committee shall be final on all matters submitted to it pursuant to this Declaration. The Architectural Committee may establish one or more subcommittees consisting of one or more members of the Architectural Committee and may delegate to such subcommittee or subcommittees the authority and power of the Architectural Committee to approve or disapprove the construction, installation or alteration of Improvements within a specified portion of the Project.

#### **ARTICLE 4.** **EXTERIOR MAINTENANCE**

In addition to maintaining the Common Area and all Improvements situated thereon, the Association shall maintain, repair and replace the paint on the outside surface of the exterior walls of the Townhouses, with reasonable notice to the Owners of the time such work shall be performed. The Owner of each Lot shall maintain, repair and replace the Townhouse and all other Improvements situated on the Owner's Lot except for the paint on the outside surface of the exterior walls of his Townhouse. The Association shall have the right to enter upon each Lot to the extent necessary for the Association to maintain, repair or replace the paint on the outside surface of the exterior walls of the Townhouses. In the event that the need for maintenance, repair or replacement of the paint on the outside surface of the exterior walls of the Townhouses is caused by the willful or negligent act of an Owner or such Owner's family, tenants, guests or invitees, the cost of such maintenance shall be paid to the Association by the Owner within ten (10) days after demand for such payment is made by the Association.

#### **ARTICLE 5.** **USE RESTRICTION**

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

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

5.3 Nuisances; Construction Activities. No rubbish or debris of any kind shall be placed or permitted to accumulate upon or adjacent to any Lot, and no odors or loud noises shall be permitted to arise or emit therefrom, so as to render any such property or any portion thereof, or activity thereon, unsanitary, unsightly, offensive or detrimental to any other Lot or the Common Area or to any Owner or Resident. No condition shall be permitted to exist or operate upon any Lot so as to be offensive or detrimental to any other Lot or the Common Area or to any Owner or Resident.

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

5.5 Antennas. The installation, use or maintenance of any antenna, satellite or microwave dish or other device for transmission or reception of television or radio signals shall be constructed on any Lot in accordance with the Rules and Regulations. Except to the extent that the Federal Communications Act and the Regulations adopted pursuant to such Act (collectively, the "FCC Rules") prohibit prior approval for certain devices, no antenna, satellite or microwave dish or other device for transmission or reception of television or radio signals shall be constructed, installed, used or maintained on any Lot without the prior written approval of the Architectural Committee. If any FCC Rules modify or override a portion of the Design Guidelines, the remaining Design Guidelines shall remain in full force and effect.

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

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

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

5.9 Utility Service. No lines, wires, or other devices for the communication or transmission of electric current or power, including telephone, television, and radio signals, shall be erected, placed or maintained anywhere in or upon any Lot unless the same shall be contained in conduits or cables installed and maintained underground or concealed in, under or on buildings or other structures approved by the Board of Directors.

5.10 Overhead Encroachments. No tree, shrub, or planting of any kind on any Lot shall be allowed to overhang or otherwise to encroach upon any sidewalk, street, pedestrian way or other area from ground level to a height of eight (8) feet.

5.11 Animals. No animal, bird, fowl, poultry, reptile or livestock may be kept on any Lot, except for dogs, cats, parakeets or similar household birds may be kept on a Lot if they are kept, bred or raised thereon solely as domestic pets and not for commercial purposes. All dogs, cats or other pets permitted under this Section shall be confined to an Owner's Lot, except that a dog may be permitted to leave an Owner's Lot if such dog is at all times kept on a leash not to exceed twenty feet (20') in length and is not permitted to enter upon any other Lot. No animal or bird shall be allowed to make an unreasonable amount of noise or to become a nuisance or annoyance to any Owner or Resident. No structure for the care, housing or confinement of any animal or bird shall be maintained so as to be Visible From Neighboring Property. Upon the written request of any Owner or Resident, the Board of Directors shall conclusively determine, in its sole and absolute discretion, whether, for the purposes of this Section, a particular animal or bird making an unreasonable amount of noise or is a nuisance or annoyance to any Owner or Resident. Any decision rendered by the Board of Directors shall be enforceable in the same manner as other restrictions set forth in this Declaration.

5.12 Machinery and Equipment. No machinery or equipment of any kind shall be placed, operated or maintained upon any Lot, except such machinery or equipment as is usual and customary in connection with residential use.

5.13 Signs. Except for signs constructed by the Association on the Common Area, no signs whatsoever may be erected, posted or displayed on any Lot in a location that is Visible From Neighboring Property or on the Common Area without the prior written approval of the Board of Directors.

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

5.15 Vehicles and Parking.

(a) As used in this Section 5.15, the term "Motor Vehicle" means a car, van, truck, recreational vehicle, motor home, motorcycle, all terrain vehicle, utility vehicle, pickup truck or other motor vehicle.

(b) No mobile home, travel trailer, tent trailer, trailer, camper shell, boat trailer or other similar equipment or vehicle may be parked, kept or stored on any Lot or the Common Area without the prior written approval of the Board of Directors.

(c) Except as permitted by Subsection (d) or (e), no Motor Vehicle may be parked, kept or stored on any Lot or the Common Area without the prior written approval of the Board of Directors.

(d) Motor Vehicles owned or leased by an Owner or Resident must be parked in the carport of the Townhouse, provided such Motor Vehicles do not exceed 7 feet in height and do not exceed 18 feet in length, are not used for commercial purposes and do not display any commercial name, phone number or message of any kind. No more than two (2) vehicles may be parked on a Lot and no Motor Vehicle of any kind may be stored on a Lot except in a carport, and no Motor Vehicle of any kind may be stored on the Common Area. Recreational vehicles, motor homes and similar vehicles owned or leased by an Owner or Resident which exceed 7 feet in height and/or exceed 18 feet in length may be parked in the guest parking area, but in no event shall such recreational vehicle, motor home or similar vehicle be parked in the guest parking area for more than twenty-four (24) consecutive hours or for more than seventy-two (72) hours within any seven (7) day period.

(e) The Board of Directors shall have the right and power to adopt rules and regulations governing the parking of Motor Vehicles on Lots and the Common Area and implementing the provisions of this Section 15. In the event of any conflict or inconsistency between the provisions of this Section 15 and the rules and regulations adopted by the Board of Directors, the provisions of this Section 15 shall control.

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

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

5.16 Variances. The Board of Directors may, at its option and in extenuating circumstances, grant variances from the restrictions set forth in this Article 5 if the Board of Directors determines in its discretion that (i) a restriction would create an unreasonable hardship or burden on an Owner or Resident or a change of circumstances since the recording of this Declaration has rendered such restriction obsolete and (ii) that the activity permitted under the variance will not

have any substantial adverse effect on the Owners and Residents and is consistent with the high quality of life intended for Owners and Residents.

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

5.18 Carports and Driveways. No carport shall be converted to living spaces or altered or used for purposes which would prevent the use of the carport for the parking of the number of vehicles for which the carport was designed.

5.19 Rooftop Air Conditioners Prohibited. Except for units originally installed by the developer (or replacements thereof), no air conditioning units or appurtenant equipment may be mounted, installed or maintained on the roof of any Townhouse or other building so as to be Visible From Neighboring Property.

5.20 Basketball Goals and Backboards. No basketball goal or backboard shall be attached to a Townhouse or other building. Basketball goals and backboards attached to a free-standing pole may be installed on a Lot provided the location of the basketball goal and backboard is approved in writing by the Board of Directors.

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

## **ARTICLE 6.** **EASEMENTS**

6.1 Easements for Use of Common Area. Every Owner and Resident and their guests shall have a right and easement of enjoyment in and to the Common Area, which right shall be appurtenant to and shall pass with the title to every Lot, subject to:

(a) The right of the Association to dedicate, convey, transfer, lease or encumber the Common Area as provided in Section 7.9 of this Declaration; provided, however, that if access to a Lot is over any part of the Common Area, any conveyance, lease or encumbrance of such Common Area shall be subject to an easement for ingress and egress in favor of the Owner and Residents of the Lot and their guests and invitees.

(b) The right of the Board to adopt rules, regulations or policies regulating the use of the Common Area including rules, regulations and policies limiting the number of guests who may use the Common Area and restricting or prohibiting access to such portions of the Common Area (such as landscaped areas) not intended for use by the Owners, Lessees or Residents.



(c) The right of the Association to suspend the right of an Owner and such Owner's family, tenants and guests to use the Common Area (other than the right of an Owner and such Owner's family, tenants and guests to use any streets which are part of the Common Area for ingress or egress to the Owner's Lot) if such Owner is more than fifteen (15) days delinquent in the payment of Assessments or other amounts due to the Association or if the Owner has violated any other provisions of the Association Documents and has failed to cure such violation within fifteen (15) days after the Association notifies the Owner of the violation.

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

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

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

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

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

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

of the land and the surrounding vegetation and improvements to their original condition (to the extent practical) as soon as possible.

The Association shall have the right to grant and reserve easements, rights-of-way and licenses over and through the Common Area for the purposes set forth in Section 6.2 or for any other purpose necessary or desirable for the orderly use of the Property. If the Person installing the utility or providing a service requests a specific easement by separate recordable documents, then the Association shall have the power to record a document locating such easements.

6.3 Dedications and Easements Required by Governmental Authority. The Association shall have the right to make any dedications and to grant any easements, rights-of-way and licenses required by any government or governmental agency over and through all or any portion of the Common Area.

6.4 Further Assurances. Any and all conveyances made to the Association or any Owner shall be conclusively deemed to incorporate these reservations of rights and easements, whether or not set forth in such grants.

6.5 Association Powers and Rights. The Association's exercise of the rights, powers and easements granted in Sections 6.2 and 6.3 are not subject to the time limitations on duration applicable to the Declarant. If any Owner requests the Association to exercise its powers under this Section, the Association's cooperation shall not be unreasonably withheld, conditioned or delayed.

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

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

**ARTICLE 7.**  
**THE ASSOCIATION; ORGANIZATION; MEMBERSHIP**  
**AND VOTING RIGHTS**

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

7.2 Board of Directors and Officers. The affairs of the Association shall be conducted by the Board and such officers as the Board may elect or appoint in accordance with the Articles and the Bylaws. The members of the Board shall be elected or appointed as provided in the Bylaws. Unless the Association Documents specifically require the vote or written consent of the Members, approvals or actions to be given or taken by the Association shall be valid if given or taken by the Board.

7.3 The Association Rules. The Board may, from time to time, and subject to the provisions of this Declaration, adopt, amend and repeal rules and regulations pertaining to: (i) the management, operation and use of the Areas of Association Responsibility including, but not limited to, any recreational facilities situated upon the Areas of Association Responsibility; (ii) minimum standards for the Maintenance of Lots; or (iii) restrictions on the use of Lots. In the event of any conflict or inconsistency between the provisions of this Declaration and the Association Rules, the provisions of this Declaration shall prevail. The Association Rules shall be enforceable in the same manner and to the same extent as the covenants, conditions and restrictions set forth in this Declaration.

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

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

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

7.7 Voting Procedures. No change in the ownership of a Lot shall be effective for voting purposes unless and until the Board is given actual written notice of such change and is provided satisfactory proof thereof. The vote for each such Lot must be cast as a unit, and fractional votes

shall not be allowed. In the event that a Lot is owned by more than one person and such Owners are unable to agree among themselves as to how their vote or votes shall be cast, they shall lose their right to vote on the matter in question. If any Member casts a vote representing a certain Lot, it will thereafter be conclusively presumed for all purposes that he was acting with the authority and consent of all other Owners of the same Lot unless objection thereto is made at the time the vote is cast. In the event more than one vote is cast by a Class A Member for a particular Lot, none of the votes shall be counted and all of the votes shall be deemed void.

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

7.9 Conveyance, Lease or Encumbrance of Common Area.

(a) Except as provided in Section 6.1(a) or Subsection 7.9(b) of this Declaration, the Common Area shall not be mortgaged, conveyed, transferred, dedicated or encumbered without the affirmative vote or written consent of the Owners representing at least two-thirds (2/3) of the votes entitled to be cast by Members of the Association.

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

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

**ARTICLE 8.**  
**COVENANT FOR ASSESSMENTS AND CREATION OF LIEN**

8.1 Creation of Lien and Personal Obligation of Assessments. Each Owner, by becoming the Owner of a Lot, is deemed to covenant and agree, to pay Assessments to the Association in accordance with this Declaration. All Assessments shall be established and collected as provided in this Declaration. The Assessments, together with interest, late charges and all costs, including but not limited to reasonable attorneys' fees, incurred by the Association in collecting or attempting to collect delinquent Assessments, whether or not suit is filed, shall be a charge on the Lot and shall be a continuing lien upon the Lot against which each such Assessment is made. Each Assessment, together with interest and all costs, including but not limited to reasonable attorneys' fees, incurred by the Association in collecting or attempting to collect delinquent Assessments, whether or not suit is filed, shall also be the personal obligation of the Person who was the Owner of the Lot at the time when the Assessment became due. The personal obligation for delinquent Assessments shall not pass to the successors in title of the Owner unless expressly assumed by them. No Owner shall be exempt from liability for Assessments because of such Owner's non-use of the Common Area, abandonment of such Owner's Lot or other circumstance. The obligation to pay Assessments is a separate and independent obligation on the part of each Owner. No diminution or abatement of Assessments or set-off shall be claimed or allowed for any alleged failure of the Association, the Board or the Architectural Committee to take some action or perform some function required of it.

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

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

8.3 Special Assessments. The Association may levy against each Assessable Lot a Special Assessment for the purpose of defraying, in whole or in part, the cost of any construction,

reconstruction, repair or replacement of an Improvement upon the Common Area, including fixtures and personal property related thereto, provided that any Special Assessment shall have the assent of two-thirds (2/3) of the votes entitled to be cast by Members who are voting in person or by proxy at a meeting duly called for such purpose. Any Special Assessment shall be levied in an equal amount for each Assessable Lot.

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

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

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

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

(a) Any Assessment, or any installment of an Assessment, not paid within fifteen (15) days after the Assessment, or the installment of the Assessment, first became due shall bear interest from the due date at the rate of interest set from time to time by the Board. In addition, the Board may establish a late fee to be charged to any Owner who has not paid any Assessment, or any installment of an Assessment, within five days after such payment was due.

(b) The Association shall have a lien on each Lot for: (i) all Assessments levied against the Lot; (ii) all interest, lien fees, late charges and other fees and charges assessed against the Lot or payable by the Owner of the Lot; (iii) all fines levied against the Owner of the Lot; (iv) all attorney fees, court costs, title report fees, costs and fees charged by any collection agency either to the Association or to an Owner and any other fees or costs incurred by the Association in attempting to collect Assessments or other amounts due to the Association by the Owner of a Lot whether or not suit is filed by the Association; (v) any amounts payable to the Association pursuant to Section 9.3 or 9.4 of this Declaration; and (vi) any other amounts payable to the Association pursuant to the Association Documents. The Recording of this Declaration constitutes record notice and perfection

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

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

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

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

8.8 Purposes for which Association's Funds May Be Used. The Association shall use all funds and property collected and received by it (including the Assessments, fees, loan proceeds, surplus funds and all funds and property received by it from any other source) solely for the purpose of (i) discharging and performing the Association's duties and obligations under the Association Documents; (ii) exercising the rights and powers granted to the Association by the Association Documents; and (iii) the common good and benefit of the Project and the Owners, Lessees and Residents. In furtherance of such purposes, the Association may use funds and property of the Association for, among other things, the acquisition, construction, alteration, maintenance, provision and operation, by any manner or method whatsoever, of any and all land, properties, improvements,

facilities, services, projects, programs, studies and systems, within or without the Project, which may be necessary, desirable or beneficial to the general common interests of the Project, the Owners, Lessees and Residents.

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

8.10 Working Capital Fund. To provide the Association with additional working capital, each Purchaser of a Lot shall pay to the Association immediately upon becoming the Owner of the Lot a sum equal to one-sixth (1/6th) of the then current Annual Assessment for an Assessable Lot. Funds paid to the Association pursuant to this Section may be used by the Association for payment of operating expenses or any other purpose permitted under the Association Documents. Payments made pursuant to this Section shall be nonrefundable and shall not be considered as an advance payment of any Assessments levied by the Association pursuant to this Declaration.

8.11 Transfer Fee. Each Person who purchases a Lot shall pay to the Association immediately upon becoming the Owner of the Lot a transfer fee in such amount as is established from time to time by the Board to compensate the Association for the administrative cost resulting from the transfer of a Lot. The transfer fee is not intended to compensate the Association for the costs incurred in the preparation of the statement which the Association is required to mail to deliver to a purchaser under A.R.S. § 33-1806A and, therefore, the transfer fee shall be in addition to the fee which the Association is entitled to charge pursuant to A.R.S. § 33-1806C.

## **ARTICLE 9.**

### **MAINTENANCE**

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

9.2 Lots. Each Owner of a Lot shall be responsible for the Maintenance of his Lot, and all buildings, Residential Units, landscaping or other Improvements situated thereon including, without limitation, the maintenance, repair and replacement of the roof of the Residential Unit,



except for any portion of the Lot, or any Improvement situated thereon, which is an Area of Association Responsibility. All buildings, Residential Units, landscaping and other Improvements shall at all times be kept in good condition and repair. All grass, hedges, shrubs, vines and plants of any type on a Lot shall be irrigated, mowed, trimmed and cut at regular intervals so as to be maintained in a neat and attractive manner. Trees, shrubs, vines, plants and grass which die shall be promptly removed and replaced with living foliage of like kind, unless different foliage is approved in writing by the Architectural Committee. No yard equipment, wood piles or storage areas may be maintained so as to be Visible From Neighboring Property or streets. All Lots upon which no Residential Units, buildings or other structures, landscaping or Improvements have been constructed shall be maintained in a weed free and attractive manner.

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

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

9.5 Boundary Walls.

(a) Each wall or fence which is located between two Lots shall constitute a boundary wall and, to the extent not inconsistent with this Section 9.5, the general rules of law regarding boundary walls shall apply.

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

(c) Except as provided in Subsection 9.5.(d) below, the Owners of contiguous Lots who share a boundary wall shall each pay one-half ( $\frac{1}{2}$ ) of the cost of any maintenance, repair or replacement of the boundary wall. Either of such Owners may perform any necessary repair, maintenance or replacement of the boundary wall and in such event, such Owner shall be entitled to reimbursement from the other Owner for one-half ( $\frac{1}{2}$ ) of such cost.

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

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

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

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

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

#### 9.6 Maintenance of Walls other than Boundary Walls.

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

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

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

### **ARTICLE 10.** **INSURANCE**

#### 10.1 Hazard Insurance.

(a) The Board of Directors, acting on behalf of the Association, must obtain and maintain at all times insurance for all insurable Improvements on the Common Area, and for all Townhouses and privacy walls or fences on Lots, against loss or damage by fire or other hazards, casualties and risks embraced within the coverage of the standard "extended coverage" policy available from time to time in the State of Arizona, against all other perils customarily covered for

similar types of projects (including those covered by the standard "all risk" endorsement available from time to time in the State of Arizona); and against loss or damage due to vandalism and malicious mischief. Said insurance must be in an amount equal to 100% of the current replacement cost, from time to time, without deduction for depreciation, of all Improvements insured (excluding land, foundations, excavations and other items usually excluded from such insurance coverage) with that amount to be redetermined annually by the Board with the assistance of the insurer or insurers providing the coverage. The Association will not be obligated to obtain or maintain insurance coverage with respect to the contents of any Townhouse, other than fixtures. Non-affixed appliances will not be covered.

(b) Each policy providing insurance required by this Subsection (10.1[a]) must provide that: (i) any insurance trust agreement will be recognized; (ii) the insurer waives any right of subrogation against the Owners, the Board of Directors or the Association, and their respective agents, employees, guests and household members; (iii) the insurance coverage (or amount) cannot be cancelled, invalidated or suspended due to the acts or omissions of any Owner (or of any Owner's invitees, agents, tenants, servants, employees, guests or household members), or of any member, officer or employee of the Board of Directors without a prior written demand to the Board of Directors that any such act or omission be cured and without providing a sixty (60) day period within which the Board of Directors may cure the act or omission (or cause the act or omission to be cured); (iv) the insurance coverage will be primary and will in no event be brought into contribution with any insurance maintained by individual Owners or their mortgagees; and (v) the coverage will not be prejudiced by any act or omission of any Owner or Resident (or their agents) when that act or omission is not within the control of the Association.

(c) Each policy providing insurance required by this Subsection (10.1[a]) must include the following endorsements (or their equivalents); (i) "agreed amount" and "inflation protection" endorsements; (ii) "increased cost of construction" endorsement; (iii) "contingent liability from operation of building laws or codes" endorsement"; and (iv) "demolition cost" endorsement.

(d) Unless a higher maximum deductible amount is required by applicable law, no policy providing insurance required by this Subsection (10.1[a]) may provide for a larger deductible than \$10,000 or one percent (1%) of the face amount of that policy, whichever is less.

**10.2 Liability Insurance.** The Board of Directors, acting on behalf of the Association, must obtain and maintain at all times a comprehensive general liability policy insuring the Association, each member of the Board of Directors and each Owner against any liability to the public or to any Owner or Resident (and such Owner's or Resident's invitees, agents, employees, tenants, guests, servants and household members) for death, bodily injury and property damage arising out of or incident to the ownership or use of the Common Area or arising out of or incident to the performance by the Association of its maintenance and other obligations under this Declaration, whether on the Common Area, any Lot or any public right-of-way. The Board of Directors, with the assistance of the insurer(s) providing that coverage, must review annually the amounts of coverage afforded by the comprehensive general liability policy or policies and adjust the amounts of coverage as the Board of Directors deems appropriate, but in no event may such policy or policies provide coverage less than One Million Dollars (\$1,000,000.00) for death, bodily injury and property damage for any single occurrence.

10.3 General Provisions Governing Insurance. The insurance required by Subsections (10.1[a] and [b]) of this Section must be written in the name of the Association as trustee for the Owners and the mortgagees (as their respective interests may appear) and must comply with the following:

(a) Each policy must be issued by a company authorized to provide such insurance in the State of Arizona;

(b) Exclusive authority to adjust losses with respect to property owned or insured by the Association must be vested in the Board of Directors;

(c) In no event may the insurance coverage maintained by the Association be brought into contribution with insurance purchased by individual Owners, residents or their mortgagees; insurance carried by the Association must be primary;

(d) All policies must provide for a waiver of subrogation by the insurer as to any claims against the Board of Directors or the Owners and their respective tenants, servants, agents, employees, guests and household members;

(e) Each policy must require the insurer to endeavor to give not less than ten (10) days written notice to the Association, and to each mortgagee which has given that insurer written notice of that mortgagee's interest in a Lot (and that mortgagee's name and address), of any cancellation, refusal to renew or material modification of such policy, and must also require the insurer to issue to any mortgagee, on request, such certificates of insurance as the mortgagee (or any Owner) may request to provide evidence of the coverage provided by the policy and to show the mortgagee as an additional insured under the policy; and

10.4 Workers' Compensation Insurance. The Board of Directors, acting on behalf of the Association, must obtain and maintain workers' compensation insurance if and to the extent necessary to meet the requirements of applicable law.

10.5 Cost of Insurance. At the option of the Board of Directors, the premiums for the hazard insurance with respect to the Townhouses required to be obtained by the Association by Section 10.1 will be billed directly to each Owner by the Association in addition to the costs of the Association which are assessed to the Owners by the annual assessment. If the Board of Directors decides to have the insurer bill each Owner separately, then each Owner shall pay the premium billed to such Owner before such premium becomes delinquent. If any Owner fails to pay the premium billed to such Owner by the insurer before such premium becomes delinquent, then the Association shall have the right to pay the premium for such Owner and, in that event, the Owner shall pay the Association the amount of such premium within ten (10) days after demand therefor is made by the Association. Any amounts that may become payable by an Owner to the Association pursuant to this Subsection shall be secured by the assessment lien granted to the Association by this Declaration, and the Association may enforce collection of such amounts in the same manner provided for in this Declaration for the collection of assessments. Other than the premiums billed directly to the Owners as provided in this Subsection, the premiums for all insurance obtained by the Association shall be paid by the Association and included in the costs of the Association which are assessed to the

Owners by the annual assessment. Neither the Association nor the Board will be liable for failure to obtain or maintain any of the insurance coverage required by this Article 10, or for any loss or damage resulting from such failure, if that failure is due to the unavailability of the required insurance coverage from reputable companies authorized to provide such insurance in the State of Arizona.

10.6 Payment of Deductible. Regardless of whether the Owner or the Association has provided insurance for a paid insurance claim, the person responsible for the maintenance and repair of the cause of damage or loss shall be responsible for any deductible required to be paid.

10.7 Owner's Public Liability Insurance. It will be the individual responsibility of each Owner to provide, as that Owner sees fit and at that Owner's sole expense, such public liability insurance as that Owner may desire against loss or liability for damages and any expense of defending against any claim for damages which might result from the ownership, use or occupancy of that Owner's Lot.

10.8 Owner's Contents Insurance. It will be the individual responsibility of each Owner to provide, as that Owner sees fit and at that Owner's sole expense, such fire, liability, theft and any other insurance as that Owner may desire covering any and all contents or other personal property upon that Owner's Lot or in the Townhouse or other structure(s) on that Owner's Lot.

10.9 Owner's Alternative Accommodations. The expenses of any alternative accommodations for an Owner and any Residents of that Owner's Lot following any damage to or destruction of the Townhouse on that Lot, and during any period of repair, reconstruction, restoration or replacement of that Townhouse, will be the responsibility of that Owner or those Residents (or both), and not of the Association or any other Owner, nor will those expenses be covered by insurance obtained by the Association. Any Owner or Resident may, at his, her or its sole expense, obtain separate insurance, if available, covering such alternative accommodation expenses.

10.10 Damage and Destruction.

(a) Immediately after any damage or destruction by fire or other casualty to all or any part of the property required to be insured by the Association under Section 10.1(a), the Board of Directors or its duly authorized agent must: (i) proceed with the filing and adjustment of all claims arising under that insurance; (ii) obtain reliable and detailed estimates of the cost of repair or reconstruction of the damaged or destroyed property; and (iii) upon receipt of the proceeds of that insurance and except as otherwise provided in this Section, use those proceeds to repair or reconstruct the damaged or destroyed property. Throughout Article 10, the terms "repair" and "reconstruction", and any variations of those terms, whether used separately or together, mean repairing or restoring the property in question to substantially its condition before the fire or other casualty (or, where applicable, replacing the damaged or destroyed property with property substantially similar to the damaged or destroyed property as it existed prior to the damage or destruction).

(b) Any major damage or destruction to property required to be insured by the Association under Section 10.1, must be repaired or reconstructed promptly by the Association

(under the supervision of the Board of Directors) unless (i) repair or replacement would be illegal under any applicable law, ordinances or governmental regulation; or (ii) at a special meeting of Members within sixty (60) days after the occurrence of the damage or destruction, Members owning not less than seventy-five percent (75%) of all Lots (including the Owner of any damaged or destroyed Townhouse which will not be repaired or reconstructed), vote not to so repair or reconstruct. If for any reason either the amount of the insurance proceeds to be received as a result of such damage or destruction, or reliable and detailed estimates of the cost of repair or reconstruction, or both, are not known within that 60 day period, then the period will be extended for up to sixty (60) additional days to permit the Association to obtain that information. The Board of Directors is authorized to determine whether any minor damage or destruction to the Common Area should be repaired or reconstructed.

(c) If it is determined in the manner described above that damage to or destruction of any part of the Common Area will not be repaired or reconstructed and no alternative improvements are authorized, then such property will be maintained by the Association in a neat and attractive condition as an undeveloped portion of the Common Area.

10.11 Excess or Deficiency of Proceeds. If the damage or destruction for which insurance proceeds are paid is to be repaired or reconstructed and those proceeds are not sufficient to pay the cost of that repair or reconstruction, the Board of Directors may, without the necessity of a vote of the Members, levy an equal assessment against the Owner of each Lot. Additional assessments may be made in like manner at any time during or following the completion of any repair or reconstruction. Any assessments levied pursuant to this Section will be deemed to be a part of the assessments and will be secured by the assessment lien granted to the Association by this Declaration. If the funds available from insurance exceed the cost of repair, the excess will be used to pay other expenses of the Association or, in the discretion of the Board of Directors, placed in a reserve account for contingencies, repairs, replacement or capital improvements.

## **ARTICLE 11.**

### **GENERAL PROVISIONS**

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

Residential Lot, by an Resident of the Owner's Lot, provided the Owner is given notice and an opportunity to be heard.

11.2 Duration; Termination. The covenants, conditions, restrictions and easements contained in this Declaration shall run with the land and bind the Property and be in full force and effect in perpetuity unless terminated pursuant to this Section or amended as provided in Section 11.3 of this Declaration. This Declaration may be terminated at any time if such termination is approved by the affirmative vote or written consent, or any combination thereof, of the Owners representing ninety percent (90%) or more of the votes in each class of membership. If the necessary votes and consents are obtained, the Board shall cause to be Recorded a Certificate of Termination, duly signed by the President or Vice President and attested by the Secretary or Assistant Secretary of the Association, with their signatures acknowledged. Thereupon this Declaration shall have no further force and effect, and the Association shall be dissolved pursuant to the terms set forth in its Articles.

11.3 Amendments. This Declaration may be amended at any time by the written approval or the affirmative vote, or any combination thereof, of Owners of not less than sixty seven percent (67%) of the Lots. Any amendment of this Declaration or by the Board pursuant to shall be signed by the President or Vice President of the Association and shall be Recorded, and any such amendment shall certify that the amendment has been approved as required by this Section. Unless a later effective date is provided for in the amendment, any amendment to this Declaration shall be effective upon the Recording of the amendment. Any challenge to an amendment to this Declaration for the reason that the amendment was not adopted by the required number of Owners or was not adopted in accordance with the procedures set forth in this Section must be made within one (1) year after the Recording of the amendment.

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

11.5 Interpretation. Except for judicial construction, the Association shall have the exclusive right to construe and interpret the provisions of this Declaration. In the absence of any

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

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

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

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

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

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

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



Owner or other person claiming through any instrument and his heirs, executors, administrators, successors and assignees.

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

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

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

4935 THOMAS EAST HOMEOWNER'S  
ASSOCIATION, an Arizona corporation

By: 

Its: President ROBERT BARROWS

STATE OF ARIZONA     )  
                                      ) ss.  
County of Maricopa     )

Acknowledged before me this 25th day of March, 2004, by  
Robert B Barrows the President of 4935 East Thomas Homeowner's Association, an  
Arizona nonprofit corporation, on behalf of the corporation.

\_\_\_\_\_  
Notary Public

Notary Stamp

