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COCONINO COUNTY RECORDER
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COCONINO COUNTY
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AT THE REQUEST OF:
CITY OF FLAGSTAFF
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DECLARATION OF COVENANTS, CONDITIONS AND RESTRICTIONS FOR "BOULDER RIDGE VILLAS"

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DECLARATION
OF COVENANTS, CONDITIONS AND RESTRICTIONS
FOR THE "BOULDER RIDGE VILLAS"

THIS DECLARATION is made on the 6th day of October, 1998, by Marc Archer, (hereinafter referred to as the "Declarant").

WITNESSETH

WHEREAS, the Declarant is the Owner of the real property located in Coconino County, Arizona, which is described on Exhibit A attached hereto & incorporated herein by this reference;

WHEREAS, Declarant desires to impose certain covenants, conditions and restrictions upon the real property described on Exhibit A attached hereto in order to establish a general scheme for the development, sale, use and enjoyment of the real property described on Exhibit A attached hereto for the purpose of enhancing and protecting the value, desirability and quality of life within the real property described on Exhibit A attached hereto.

WHEREAS, Declarant desires to provide for the annexation, at declarant's option, of all or any part of the real property described on exhibit B attached hereto together with all buildings, improvements and other permanent fixtures of whatsoever kind thereon, and all rights and privileges belonging or pertaining thereto into the property subject to the covenants, conditions and restrictions set forth in this Declaration;

NOW, THEREFORE, the Declarant hereby declares that all of the real property described on Exhibit A attached hereto and any or all of the real property annexed by the Declarant pursuant to Article 9 of this Declaration shall be held, sold and conveyed subject to the easements, restrictions, covenants, and conditions contained in this Declaration which are for the purpose of protecting the value and desirability of, and which shall run with said real property and be binding on all parties having any right, title or interest in said real property or any part thereof, their heirs, successors and assigns, and shall inure to the benefit of each Owner thereof.

ARTICLE 1

DEFINITIONS

1.1. "Annexable Property" means the real property located in Coconino County, Arizona, which is described on Exhibit B attached to this Declaration, together with all buildings and

other Improvements located thereon and all easements, rights, and appurtenances belonging thereto.

1.2. "Architectural Committee" means the committee established by the Board pursuant to section 2.4 of this Declaration.

1.3. "Architectural Committee Rules" means the rules adopted by the Architectural Committee.

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

1.5. Assessments" means the annual, special and/or supplemental assessments levied and assessed against each Lot pursuant to Article 3 of this Declaration.

1.6. "Association" means the Arizona nonprofit corporation to be organized by the declarant to administer and enforce the Project documents and to exercise the rights, powers and duties set forth therein, and its successors and assigns. Declarant intends to organize the Association under the name of "THE VILLAGE AT ELK RUN OWNERS ASSOCIATION", but if such name is not available, Declarant may organize the Association under such other name as the Declarant deems appropriate.

1.7. "Association Rules" means the rules and regulations adopted by the Association, as the same may be amended from time to time.

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

1.9. "Bylaws" means the bylaws of the Association, as such bylaws may be amended from time to time.

1.10. "Common Area" means all real property, and all Improvements located thereon, owned by the Association for the common use and enjoyment of the Owner. The Common Area to be owned by the Association at the time of the conveyance of the first Lot to a Purchaser is described as follows: -

Tract "A" and Tract "B", Boulder Ridge Villas, Unit One, according to Case 7, Map S 79 & 79B Records of Coconino County, Arizona.

1.11. "Declarant" means Marc Archer, his successors and any person or entity to whom he may expressly assign any of all of its rights under this Declaration.

1.12. "Declaration" means the covenants, conditions and restrictions herein set forth in this entire document, as the same may from time to time be amended.

1.13. "Dwelling Unit" means any building or portion of a building situated upon a Lot designed and intended for use and occupancy as a residence by a Single Family.

1.14. "Eligible Insurer Or Guarantor" means an insurer or governmental guarantor of a First Mortgage who has requested notice of certain matters from the Association in accordance with Section 10.1 of this Declaration.

1.15. "Eligible Mortgage Holder" means a First Mortgagee who has requested notice of certain matters from the Association in accordance with Section 10.1 of this Declaration.

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

1.17. "First Mortgagee" means the holder of any First Mortgage.

1.18. "Improvement" means buildings, roads, driveways, parking areas, fences, walls, rocks, hedges, plantings, planted trees and shrubs, and all other structures or landscaping improvements of every type and kind.

1.19. "Lot" means any parcel of real property designated as a Lot on the Plat.

1.20. "Member" means an person, corporation, partnership, joint venture or other legal entity who is a member of the Association.

1.21. "Owner" means the record owner, whether one or more persons or entities, of beneficial or equitable title (and legal title if the same has merged with the beneficial or equitable title) to the fee simple interest of a Lot. Owner shall not include (i) persons or entities having an interest in a Lot merely as security of the performance of an obligation, or (ii) a lessee or tenant of a Lot. Owner shall include a purchaser under a contract for the conveyance of real property, a contract for deed, a contract to convey, an agreement for sale or any similar contract through which a seller has conveyed to a purchaser equitable title in a Lot under which the seller is obligated to convey to the purchaser the remainder of seller's title in the Lot, whether legal or equitable, on payment in full of all monies due under the contract. Owner shall not include a purchaser under a purchase contract and receipt, escrow instructions or similar executory contracts which are intended to control the

rights and obligations of the parties to the executory contracts pending the closing of a sale or purchase transaction. In the case of Lots the fee simple title to which is vested in a trustee pursuant to Arizona Revised Statutes, Section 33-801, et seq., the trustor under the deed of trust shall be deemed to be the Owner. In the case of Lots the fee simple title to which is vested in a trustee pursuant to a subdivision trust agreement or similar agreement, the beneficiary of such trust who is entitled to possession of the trust property shall be deemed to be the Owner.

1.22. "Plat" means the plat of survey of "Boulder Ridge Villas", Unit One which plat has been recorded with the County Recorder according to Case 7, Maps 79 & 79A, Records of Coconino County, Arizona and all amendments thereto, and any plat of survey of all or any portion of the Annexable Property which is annexed by the Declarant pursuant to Article 9 of this Declaration.

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

1.24. "Property" or "Project" means the real property described on Exhibit A attached to this Declaration and all real property subsequently annexed by the Declarant on Exhibit B attached to this Declaration, property not yet subject to these restrictions, pursuant to Article 9 of this Declaration, together with all buildings and other Improvements located thereon, and all easements rights and appurtenances belonging thereto.

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

1.26. "Single Family" means a group of one or more persons each related to the other by blood, marriage or legal adoption, or a group of persons not all so related, together with their domestic servants, who maintain a common household in a dwelling.

1.27. "Single Family Residential Use" means the occupation or use of a residence by a Single Family in conformity with this Declaration and the requirements imposed by applicable zoning laws or other state, county or municipal rules and regulations.

1.28. "Visible From Neighboring Property" means, with

respect to any given object, that such object is or would be visible to a person six feet tall, standing on any part of such neighboring property at an elevation no greater than the elevation of the base of the object being viewed.

ARTICLE 2

THE ASSOCIATION: ORGANIZATION; MEMBERSHIP AND VOTING RIGHTS

2.1. Rights, Powers and Duties. The Association shall be a nonprofit Arizona corporation charged with the duties and invested with the powers prescribed by law and set forth in the Project Documents together with such rights, powers and duties as may be reasonably necessary to effectuate the objectives and purposes of the Association as set forth in the Project Documents. Unless the Project Documents specifically require a vote of the Members, approvals or actions to be given or taken by the Association shall be valid if given or taken by the Board.

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

2.3. Association Rules. The Board may adopt, amend and repeal rules and regulations to restrict and govern the use of any area by any Owner, by the family of such Owner, or by any invitee, licensee or lessee of such Owner except that the Association Rules may not unreasonably discriminate among Owners and shall not be inconsistent with this Declaration, the Articles or Bylaws. A copy of the Association Rules as they may from time to time be adopted, amended or repealed, shall be available for inspection by the Members at reasonable times. Upon adoption, the Association Rules shall have the same force and effect as if they were set forth in and were a part of this Declaration.

2.4. Architectural Committee. The Board shall establish and Architectural Committee consisting of not less than three (3) members appointed by the Board to regulate the external design, appearance and use of the Property and to perform such other functions and duties as may be imposed upon it by this Declaration, the Bylaws or the Board.

2.5. 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.

2.6. Transfer of Membership. Membership in the

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

2.7. Classes of Members. The Association shall have two classes of voting membership:

Class A. Class A members shall be all Owners, with the exception of the Declarant until the termination of the Class B membership, of Lots. Each Class A member shall be entitled to one (1) vote for each Lot owned.

Class B. The Class B member shall be the Declarant. The Class B member shall be entitled to three (3) votes for each Lot owned. The Class B membership shall cease and be converted to Class A membership on the happening of either of the following events, whichever occurs earlier:

(a) When ninety percent (90%) of the Lots have been conveyed to Purchasers; or

(b) Five (5) years after the conveyance of the first Lot to a Purchaser; or

(c) When the declarant notifies the Association in writing that it relinquishes its Class B membership.

2.8. Joint Ownership. When more than one person is the Owner of any Lot, all such persons shall be Members. The vote for such Lot shall be exercised as they among themselves determine, but in no event shall more than one ballot be cast with respect to any Lot. The vote or votes for each such Lot must be cast as a unit, and fractional votes shall not be allowed. In the event that joint Owners are unable to agree among themselves as to how their vote or votes shall be cast, they shall lose their right to vote on the matter in question. If any Owner casts a ballot representing a certain Lot, it will thereafter be conclusively presumed for all purposes that he was acting with the authority and consent of all other Owners of the same Lot. In the event more than one ballot is cast for a particular Lot, none of said votes shall be counted and said votes shall be deemed void.

2.9. Corporate Ownership. In the event any Lot is owned by a corporation, partnership or other association the corporation, partnership or association shall designate in writing at the time of acquisition of the Lot an individual who shall have the power to vote and otherwise exercise the membership rights of the

corporation, partnership or association, and in the absence of such designation and until such designation is made, the president, general partner or chief executive officer of the corporation, partnership or association shall have the power to vote and otherwise exercise the membership rights of the corporation, partnership or association.

2.10. Suspension of Voting Rights. In the event any Owner is in arrears in the payment of any Assessments or other amounts due under any of the provisions of the Project Documents for a period of five (5) days, such Owner's right to vote as a Member of the Association shall be suspended and shall remain suspended until all payments, including accrued interest and attorneys' fees, are brought current, and for a period not to exceed 60 days for any infractions of the Project Documents.

ARTICLE 3

ASSESSMENTS

3.1. Creation of the Lien and Personal Obligation of Assessments. The Declarant, for each Lot owned by it, hereby covenants, and each Owner of a Lot, by becoming the Owner thereof, whether or not it is expressed in the deed or other instrument by which the Owner acquired ownership of the Lot, is deemed to covenant and agree to pay to the Association: (i) annual assessments, (ii) supplemental assessments and (iii) special assessments. The annual, supplemental and special assessments, together with interest, costs and reasonable attorney's fees, shall be a charge on the land and shall be a continuing lien upon the Lot against which each such Assessment is made. Each such Assessment, together with interest, costs, and reasonable attorneys' fees, shall also be the personal obligation of the Owner of such Lot at the time when the Assessment became due. The personal obligation for delinquent Assessments shall not pass to the Owner's successors in title unless expressly assumed by them.

3.2. Purpose of the Assessments. The Assessments levied by the Association shall be used exclusively for the upkeep, maintenance and improvement of the Common Area and those portions of the Lots, and the Improvements located thereon, which the association is obligated to maintain pursuant to Section 7.2 of this Declaration; for payment of real estate taxes on the Common Area; for promoting the recreation, health, safety and welfare of the Owners and residents of Lots within the Property; and for the performance and exercise by the Association of its rights, duties and obligations under the Project Documents.

3.3. Annual Assessment.

(a) Until January 1 of the year immediately following the

conveyance of the first Lot to a Purchaser, the maximum annual assessment for each Lot shall be Five Hundred Forty Dollars ($540.00).

(b) From and after January 1 of the year immediately following the conveyance of the first Lot to a Purchaser, the Board may, without a vote of the membership, increase the maximum annual assessment during each fiscal year of the Association by an amount proportional to the amount of increase during the prior fiscal year in the Consumer Price Index for All Urban Consumers (All Items), U.S. City Average, published by the United States Department of Labor, Bureau of Labor Statistics (1967 = 100), or in the event said index ceases to be published, by any successor index recommended as a substitute therefor by the United States government.

(c) From and after January 1 of the year immediately following the conveyance of the first Lot to a Purchaser, the annual assessment may be increased by an amount greater than the increase allowed pursuant to Subsection (b) above, only by a vote of Members entitled to cast at least 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 purposes.

3.4. Supplemental Assessments. In the event the Board shall determine that its funds budgeted or available in any fiscal year are, or will, become inadequate to meet all expenses of the Association, for any reason, including, without limitation, nonpayment of Assessments by the Members, it shall immediately determine the approximate amount of such inadequacies for such fiscal year and prepare a supplemental budget and levy a supplemental assessment against each Lot in such amount as the Board deems necessary in order to obtain the amount of such inadequacies. Notice of any such supplemental assessment shall be paid on such dates and in such installments shall be levied by the Board until such assessment has been approved by Members entitled to cast at least 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 purposes.

3.5. Special Assessments. The Association may levy, in any fiscal year, a special assessment applicable to that fiscal year only for the purpose of defraying, in whole or in part, the cost of any construction, reconstruction, repair or replacement of a capital improvement of the Common Area, including fixtures and personal property related thereto, or for any other lawful Association purpose, provided that any such special assessment shall have the assent of Members having at least 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.

3.6. Notice and Quorum for Any Action Authorized Under

Sections 3.3, 3.4, and 3.5. Written notice of any meeting called for the purpose of taking any action authorized under Section 3.3, 3.4, or 3.5 shall be sent to all Members not less than thirty (30) days nor more than sixty (60) days in advance of the meeting. At the first such meeting called, the presence of Members or of proxies entitled to cast sixty percent (60%) of all the votes of each class of Members shall constitute a quorum. If the required quorum is not present, another meeting may be called subject to the same notice requirement, and the required quorum at the subsequent meeting shall be held more than sixty (60) days following the preceding meeting.

3.7. Rate of Assessment. Annual assessments shall be fixed at a uniform rate for each Lot except that the annual assessment for each Lot owned by the Declarant shall be an amount equal to ten percent (10%) of the annual assessment which would otherwise be levied against the Lot until the residence on the Lot has been occupied for Single Family Residential Use. If a Lot ceases to qualify for a reduced rate of assessment during the period to which an annual assessment is attributable, such assessment shall be prorated between the applicable rates on the basis of the number of days in the period that the Lot qualified for each rate. So long as any Lot owned by the Declarant qualifies for a reduced assessment, the Declarant shall pay to the Association the amounts, which when added to the annual assessments collected by the Association and the amounts collected pursuant to Section 3.15 of this Declaration, are necessary in order for the Association to manage the Project and to fulfill all of its duties and obligations under the Project Documents.

3.8. Date of Commencement of Annual Assessments; Due Dates. Except as provided in Section 3.9 with respect to Lots annexed into the Project pursuant to Article 9 of this Declaration, the annual assessments shall commence as to each Lot on the first day of the month following the conveyance of the first Lot to a Purchaser. The first annual assessment shall be adjusted according to the number of months remaining in the fiscal year of the Association. The Board shall fix the amount of the annual assessment against each Lot at least thirty (30) days in advance of each annual assessment period. Written notice of the annual assessment shall require that the annual assessment be paid in installments and in such event the Board shall establish the due dates for each installment. The Association shall, upon demand, and for a reasonable charge, furnish a certificate signed by an officer of the Association setting forth whether the Assessments on a specified Lot have been paid.

3.9. Assessments on Lots Subsequently Annexed. The annual assessment for Lots annexed by the Declarant pursuant to Article 9 of this declaration shall commence on the first day of the first month following the month in which the annexed portion of

the Annexable Property becomes irrevocably committed to the Project in accordance with Section 9.1 of this Declaration, and no Assessments may be levied against any such Lot until such time. If any Declaration of Annexation recorded pursuant to Article 9 of this Declaration divides the Annexable Property being annexed into separate phases, then the annual assessments for Lots annexed by the Declarant shall not commence until the first day of the first month following the month in which the phase of the Annexable Property within which such Lot is located is irrevocably annexed in accordance with Section 9.1 of this Declaration, and no Assessments may be levied against any such Lot until such time.

3.10. Effect of Nonpayment of Assessments; Remedies of the Association. Any Assessment, or any installment of an Assessment, not paid within five (5) days after the Assessment, or the installment of the Assessment, first became due shall bear interest from the due date at the rate of twelve percent (12%) per annum of the prevailing FHA/VA interest rate for new home loans, whichever is higher. Any Assessment, or any installment of an Assessment, which is delinquent shall become a continuing lien on the Lot against which such Assessment was made. The lien shall be perfected by the recordation of a "Notice of Claim of Lien" which shall set forth (a) the name of the delinquent Owner as shown on the records of the Association, (b) the legal description or street address of the Lot against which the claim of lien is made, (c) the amount claimed as of the date of the recording of the notice including interest, lien recording fees and reasonable attorneys' fees, (d) the name and address of the Association. the Associations lien shall have priority over all liens or claims created subsequent to the recordation of the Notice of Claim of Lien except for tax liens for real property taxes on the Lot, assessments on any Lot in favor of any municipal or other governmental body and the liens which are specifically described in Section 3.11 of this Declaration.

Before recording a lien against any Lot the Association shall make a written demand to the defaulting Owner for payment of the delinquent Assessments together with interest and reasonable attorneys' fees, if any. The demand shall state the date and amount of the delinquency. Each default shall constitute a separate basis for a demand or claim of lien, but any number of defaults may be included within a single demand or claim of lien. If such delinquency is not paid within ten (10) days after delivery of such demand, the Association may proceed with recording a Notice of Claim of Lien against the Lot of the defaulting Owner. The Association shall not be obligated to release any lien recorded pursuant to this Section until all delinquent Assessments, interest, lien fees and reasonable attorneys' fees have been paid in full whether or not all of such amounts are set forth in the Notice of Claim of Lien.

The Association shall have the right, at its option, to enforce collection of any delinquent Assessments together with 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, (a) bringing an action at law against the Owner personally obligated to pay the delinquent Assessments and such action may be brought without waiving any lien securing any such delinquent Assessments or (b) bringing an action to foreclose its lien against the Lot in the manner provided by law for the foreclosure of a realty mortgage or Deed of Trust. 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 purchases at such sale.

3.11. Subordination of the Lien to Mortgages. The lien of the Association for delinquent Assessments provided for in this Declaration shall be subordinate to the lien of any First Mortgage. Sale or transfer of any Lot shall not affect the assessment lien. However, the sale or transfer of any Lot pursuant to judicial or nonjudicial foreclosure or any proceeding in lieu thereof, shall extinguish the lien of such Assessment as to payments which became due prior to such sale or transfer. No sale or transfer shall relieve such Lot from liability for any Assessments thereafter becoming due or from the lien thereof.

3.12. Exemption of Owner. No Owner of a Lot may exempt himself from liability for Assessments levied against his Lot or for other amounts which he may owe to the Association under the Project Documents by waiver and non-use of any of the Common Area and facilities or by the abandonment of his Lot.

3.13. Maintenance of Reserve Fund. Out of the annual assessments, the Association shall establish and maintain an adequate reserve fund for the periodic maintenance, repair and replacement of improvements to he Common Area.

3.14. No Offsets. All Assessments shall be payable in accordance with the provisions of this Declaration, and no offsets against such Assessments shall be permitted for any reason, including, without limitation, a claim that the Association is not properly exercising its duties and powers as provided in the Project Documents.

3.15. Working Capital Fund. To insure that the Association shall have adequate funds to meet its expenses or to purchase necessary equipment or services, each Purchaser of a Lot from the Declarant shall pay to the Association, at the time he becomes the Owner of his Lot, a sum equal to one-sixth (1/6) of the annual assessment on his Lot. Such amount shall be nonrefundable and shall not be considered as an advance payment of any Assessments levied by the Association pursuant to this Declaration.

ARTICLE 4

PERMITTED USES AND RESTRICTIONS

4.1. Residential Use. All Lots shall be used, improved and devoted exclusively to Single family Residential Use. No gainful occupation, profession, trade or other nonresidential use shall be conducted on any Lot. This Section shall not preclude the Residential Leasing or Renting of a Lot for Month to Month or Longer Terms.

4.2. Animals. No animals, birds, fowl, poultry, or livestock, other than a reasonable number of generally recognized house or yard pets, shall be maintained on any Lot and then only if they are kept, bred or raised thereon solely as domestic pets and not for commercial purposes. No animal shall be allowed to make an unreasonable amount of noise, or to become a nuisance. No structure for the care, housing or confinement of any animal shall be maintained so as to be Visible from Neighboring Property. No Owner or any lessee or guest of an Owner shall permit any dog or other pet being kept on a Lot to relieve itself on another Owner's Lot or the Common Area. It shall be the responsibility of such Owner, lessee or guest to remove immediately any droppings from pets. No dog, cat or other pet shall be permitted to Run At Large and each dog, cat or other pet shall be confined entirely to an Owner's Lot except that a dog, cat or other pet shall be permitted to leave an owner's Lot if such dog, cat or other pet is at all times kept on a leash not to exceed six (6) feet in length and is under the direct control of the Owner.

4.3. Antennas. No antenna, satellite television dish antenna or other device for the transmission or reception of television or radio signals or any other form of electromagnetic radiation, including, but without limitation, Citizen's Band or Ham Radio signals shall be erected, used or maintained outdoors on any Lot without the prior written approval of the Architectural Committee.

4.4. Utility Lines and Drainage Easements. 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 structure. No structure, landscaping or other improvement shall be placed, erected or maintained upon any area designated on the Plat as a public utility easement which may damage or interfere with the installation and maintenance of utilities. No structure, landscaping or other improvement shall be placed, erected or maintained upon any area designated on the Plat as a drainage

easement which may change the direction or flow of drainage channels in such easement areas or which may obstruct or retard the flow of water through drainage channels in such easement areas. Such public utility easement areas, and all improvements thereon, shall be maintained by the utility company or a county, municipality or other public authority. The drainage facilities or easement areas, and all improvements located thereon, which are a part of a Lot shall be maintained, repaired and replaced by the Owner of the Lot on which the drainage facility or easement is located with the exception of the Drainage Detention Basin of Tract C, as shown on the recorded Plat map, a drainage easement for drainage detention purposes only, which shall be the sole responsibility of the Association as provided in Section 7.7.

4.5. Temporary Occupancy. No trailer, basement of any incomplete building, tent, shack, garage or barn, and no temporary buildings or structure of any kind shall be used at any time for a residence on any Lot, either temporary or permanent. Temporary buildings or structures used during the construction of a residence or other structure on a Lot shall be removed immediately after the completion of construction.

4.6. Trucks, Trailers, Campers, and Boats. No mobile home, motor home, trailer, truck, camper, truck with camper shell, boat, boat trailer or similar vehicle or equipment shall be parked, kept, placed, maintained, constructed, reconstructed, serviced or repaired on any street (public or private), Lot, Common Area or other property without the prior written approval of the Architectural Committee except for (a) emergency vehicle repairs or temporary construction shelters or facilities maintained during, and used exclusively in connection with, the construction of any Improvement approved by the Architectural Committee, (b) trucks, trucks with camper shells, mini-vans, motor homes and other recreational vehicles not exceeding 205 inches in length, 75 inches in height and 80 inches in width, and (c) trucks, trucks with camper shells, motor homes and recreational vehicles owned by any guest or invitee on an Owner or the tenant of an Owner which are parked on a Lot during such time as the guest or invitee is visiting the Owner or tenant but in no event for more than seven (7) days during any six (6) month period of time.

4.7. Parking. All vehicles of Owners and of their lessees, employees, guests and invitees shall be kept in garages, carports or residential driveways of the Owners wherever and whenever such facilities are sufficient to accommodate the number of vehicles on a Lot; provided, however, this Section shall not be construed to permit the parking in the above-described areas of any vehicle whose parking is otherwise prohibited by this Declaration or the parking of any inoperable vehicle.

4.8. Nuisances. No nuisance shall be permitted to exist or

operate upon any Lot so as to be offensive or detrimental to any other property in the vicinity thereof or to its occupant. Without limiting the generality of the foregoing provisions, no exterior speakers, horns, excessive car noise from faulty mufflers or tuneups, whistles, bells or other sound devices, except fire detection and security devices used exclusively for such purposes, shall be located, used or placed on any property.

4.9. Repair of Buildings. No building, landscaping or other Improvement upon any Lot shall be permitted to fall into disrepair, and each such building, landscaping or other Improvement shall at all times be kept in good condition and repair by the Owner thereof.

4.10. Trash Containers and Collection. No garbage, rubbish or trash shall be placed or kept on any Lot except in covered containers. In no event shall such containers be maintained so as to be Visible from Neighboring Property except to make the same available for collection and then only for the shortest time reasonably necessary to effect such collection. No rubbish or debris of any kind shall be placed or permitted to accumulate upon or adjacent to any Lot, and no odors shall be permitted to arise therefrom so as to render any such property or any portion thereof unsanitary, unsightly, offensive or detrimental to any other property in the vicinity thereof or to its occupants. No incinerators shall be kept or maintained on any Lot.

4.11. Clothes Drying Facilities. Outside clotheslines or other outside facilities for drying or airing clothes shall not be erected, placed or maintained on any Lot unless they are erected, placed or maintained in such a manner as to not be Visible from Neighboring Property.

4.12. 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 twelve (12) feet.

4.13. Machinery and Equipment. No machinery or equipment of any kind shall be placed, operated or maintained upon or adjacent to any Lot except such machinery or equipment as is usual and customary in connection with the use, maintenance or repair of a residence, appurtenant structures, or other Improvements constructed by the Declarant or approved by the Architectural Committee.

4.14. Restriction on Further Subdivision. No Lot shall be further subdivided or separated into smaller lots or parcels by any Owner other than the Declarant, and no portion less than all of any such Lot shall be conveyed or transferred by any Owner other the Declarant.

4.15. Signs. No signs whatsoever (including, but without limitation, commercial, political, "For Sale," "For Rent," and similar signs) shall be erected or maintained on any Lot except:

(a) One residential identification sign with a total face area of eighty square inches or less.

(b) Such signs as may be required by legal proceedings; and

(c) One "For Sale" or "For Rent" sign with a total face area of five square feet or less.

4.16. Declarant's Exemption. Nothing contained in this Declaration shall be construed to prevent the erection or maintenance by Declarant or its duly authorized agents, of structures, improvements or signs necessary or convenient to the construction, development, identification, or sale of Lots or other property within the Project.

4.17. Mineral Exploration. No Lot shall be used in any manner to explore for or to remove any water, oil, or other hydrocarbons, minerals or any kind, gravel, earth, or any earth substance of any kind and no derrick or other equipment designed or intended for any such activity shall be erected, placed, constructed or maintained on any Lot.

4.18. Diseases and Insects. No Owner shall permit any thing or condition to exist upon any property which could induce, breed or harbor infectious plant diseases or noxious insects.

4.19. Improvements and Alterations. All Improvements constructed on Lots within the Project shall be of new construction, and no buildings or other structures shall be removed from other locations on to any Lot. No addition, alteration, repair, change or other work which in any way alters the exterior appearance, including but without limitation, the exterior color scheme, of any Lot, or the Improvements located thereon, from their appearance on the date the Lot was conveyed by the Declarant to a Purchaser shall be made or done without the prior written approval of the Architectural Committee. Any Owner desiring approval of the Architectural Committee for any additional, alteration, repair, change or other work which alters the exterior appearance of his Lot, or the Improvements located thereon, shall submit to the Architectural Committee a written request for approval specifying in detail the nature and extent of the additions, alteration, repair, change or other work which the Owner desires to perform. Any Owner requesting the approval of the Architectural Committee shall also submit to the Architectural Committee any additional information, plans, and specifications which the Architectural Committee may request. In the event that the Architectural Committee fails to approve or

disapprove an application for approval within sixty (60) days after the application, together with all supporting information, plans and specifications requested by the Architectural Committee have been submitted to it, approval will not be required and this Section will be deemed to have been complied with by the Owner who had requested approval of such plans. The approval by the Architectural Committee of any addition, alteration, repair, change or other work pursuant to this section shall not be deemed a waiver of the Architectural Committee's Rights to withhold approval of any similar addition, alteration, repair, change or other work subsequently submitted for approval. Upon Receipt of Approval from the Architectural Committee for any 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.

4.20. Common Walls.

(a) The rights and duties of Owners of Lots with respect to common walls (other than walls which separate two Dwelling Units) shall be as follows:

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

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

(iii) In the event any such common wall is damaged or destroyed by some cause other than the act of one of the adjoining Owners, his agents, tenants, licensees, guests or family (including ordinary wear and tear and deterioration from lapse of time) then, in such event, both such adjoining Owners shall proceed forthwith to rebuild or repair the same to as good condition as formerly at their joint and equal expense;

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

(v) 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;

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

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

(b) Each wall built as a part of the original construction of the Dwelling Units which serve and separate any two (2) adjoining Dwelling Units shall constitute a common wall and the rights and duties of the adjoining Owners shall be as follows:

(i) To the extent not consistent the provisions of this Section, the general rules of law regarding common walls and liability for property damage due to negligence or willful acts or omissions shall apply thereto.

(ii) The cost of reasonable repair and maintenance of a common wall shall be shared by the Owners who make use of the wall in equal proportions.

(iii) If a common wall is destroyed or damaged by fire or other casualty, then to the extent that such damage is not covered by insurance and repaired out of the proceeds of insurance, any Owner who has used the wall may restore it, and if the other Owner or Owners thereafter make use of the wall, they shall contribute to the cost of restoration thereof in equal proportions without prejudice, however, to the right of any such Owners to demand a larger contribution from the others under any rule of law regarding liability for negligent or willful acts or omissions.

(iv) Notwithstanding and other provision of this Subsection, to the extent that such damage is not covered and paid by the insurance provided for herein, an Owner who by negligent or willful acts causes any common wall to be exposed to the elements shall bear the whole cost of furnishing the necessary protection against such element.

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

4.21. Outdoor Burning. There shall be no outdoor burning of trash or other debris; provided, however, that the foregoing shall not be deemed to prohibit the use of normal residential

barbecues or other similar outside cooking grills.

4.22. Fuel Tanks. Without the prior written approval of the Architectural Committee, no fuel tanks of any kind shall be erected, placed or maintained on the Property except for a propane or similar fuel tank with a capacity of fifteen (15) gallons or less used in connection with a normal residential gas barbecue or grill.

4.23. Window Coverings. No reflective materials, including, but without limitation, aluminum foil, reflective screens or glass, mirrors or similar type items, shall be installed or placed upon the outside or inside of any windows of any residence or other structure without the prior written approval of the Architectural Committee. No enclosures, drapes, blinds, shades, screens or other items affecting the exterior appearance of a residence or other structure shall be constructed or installed in any residence or other structure without the prior written consent of the Architectural Committee.

4.24. HVAC and Solar Panels. Except as initially installed by the Declarant, no heating, air conditions, evaporative cooling or solar energy collecting unit or panels shall be placed, constructed or maintained upon any Lot without the prior written approval of the Architectural Committee.

4.25. Garages and Driveways. The interior of all garages or carports situated on any Lot shall be maintained in a neat, clean and sightly condition. Garages and carports shall be used only for the parking of vehicles and the storage of normal household supplies and materials and shall not be used or converted for living quarters or recreational activities without the prior written approval of the Architectural Committee. All driveways shall be of concrete construction. Garage doors shall be left open only as needed for ingress and egress.

4.26. Resource Protection. All Trees located on individual lots outside of designated drives or building envelopes, as shown on the recorded final Plat, are designated perpetual resource protection easements and shall be the responsibility of the individual Lot owners to maintain and preserve. Resource protection areas as shown on the recorded final Plat, outside of individual lots, shall be perpetually protected as resource protection easements and shall be the responsibility of the Association to maintain and preserve.

All Existing Trees and Existing Landscaping not designated within the Perpetual Resource Protection areas shall require the approval from the Architectural Committee prior to the cutting, removing, relocating or trimming of such Trees or Landscaping.

ARTICLE 5

EASEMENTS

5.1. Utility Easement. There is hereby created a blanket easement upon, across, over and under the Common Area for ingress, egress, installation, replacing, repairing and maintaining all utilities, including, but not limited to, water, sewer, gas, telephone, electricity and a cable television system. By virtue of this easement, it shall be expressly permissible for the providing utility to erect and maintain the necessary poles and other necessary facilities and equipment on the Common Area. This easement shall in no way affect any other recorded easements on the Common Area.

5.2. Easements for Ingress and Egress. Easements for ingress and egress are hereby reserved to the Declarant, the Owners, and their family, guests, tenants and invitees for pedestrian traffic over, through an across sidewalks, paths, walks and lanes as the same from time to time may exist upon the Common Area; and for vehicular traffic over, through and across such portions of the common Area as from time to time may be paved and intended for such purposes; and for such other purposes reasonably necessary to the use and enjoyment of a Lot or the Common Area.

5.3. Association's Right of Entry. During reasonable hours, the Association, any member of the architectural Committee, any member of the Board or any authorized representative of them, shall have the right to enter upon and inspect any Lot, excluding the interior of any residence located thereon, for the purpose of making inspections to determine whether the provisions of this declaration, the Association Rules and the Architectural Committee Rules are being complied with by the Owner of said Lot.

5.4. Association Easement For Performing Maintenance Responsibilities. The Association shall have an easement upon, across, over an under the Common Area and the Lots for the purpose of repairing, maintaining and replacing the Common Area and for performing all of the Association's other rights, duties and obligations under the Project Documents.

ARTICLE 6

PROPERTY RIGHTS

6.1. Owners' Easement of Enjoyment. Every Owner, and each person residing with such Owner, shall have a right and easement of enjoyment in and to the Common Area including, but not limited to, all parking spaces located on the Common Area, which easement shall be appurtenant to and shall pass with the title to every

Lot subject to the following provisions:

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

(b) the right of the Association to charge reasonable admission and other fees for the use of any clubhouse or recreational facility, if any, situated upon the Common Area;

(c) the right of the Association to suspend the voting rights and the rights of an Owner to use the recreational facilities located on the Common Area for any period during which any Assessment against his Lot remains unpaid; and for a period not to exceed sixty (60) days for any infraction of the Project documents;

(d) the right of the Association to dedicate or transfer all or any part of the Common Area to any public agency, authority, or utility for such purposes and subject to such conditions as may be agreed to by the Members; provided, however, that no such dedication or transfer shall be effective unless evidenced by an instrument signed by at least two-thirds (2/3) of each class of Members;

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

6.2. Lessees. If a Lot is leased or rented by the Owner thereof, the lessee and the members of his family residing with such lessee shall have the right to use the Common 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.

6.3. Guests and Invitees. The guests and invitees of any Member or other person entitled to use the Common Area pursuant to Section 6.1 above or of any lessee who is entitled to use the Common Area pursuant to Section 6.2 above may use the Common Area provided they are accompanied by a Member, lessee or other person entitled to use the Common Area pursuant to Section 6.1 or 6.2 above. The Board shall have the right to limit the number of guests and invitees who may use the Common Area at any one time and may restrict the use of the Common Area by guests and invitees to certain specified times.

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

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

ARTICLE 7

MAINTENANCE

7.1. Maintenance of Common Area by the Association. The Association shall be responsible for the maintenance, repair and replacement of the Common Area and may, without any approval of the Owners being required, do any of the following:

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

(b) Construct, reconstruct, repair, replace or refinish any portion of the Common Area used as a road, street, walk, driveway and parking area;

(c) Replace injured and diseased trees or other vegetation in any such area, and plant trees, shrubs and ground cover to the extent that the Board deems necessary for the conservation of water and soil and for aesthetic purposes;

(d) Place and maintain upon any such area such signs as the Board may deem appropriate for the proper identification, use and regulation thereof;

(e) Do all such other and further acts which the Board deems necessary to preserve and protect the Common Area and the appearance thereof, in accordance with the general purposes specified in this Declaration.

7.2. Maintenance of Lots by the Association. The Association shall maintain, repair and replace (i) the exterior paint of the Dwelling Units situated on the Lots, and (ii) the grass, plants, trees and other landscaping improvements situated on the portion of each Lot which is between the street and the exterior wall of the Dwelling Unit (the wall which separates the interior of the Dwelling Unit from the outside yard, patios and entry ways) and any wall separating the side or backyard of the Lot from the front yard of the Lot. In the event the need for maintenance, repair of replacement of any portion of the Lots which are being maintained by the Association pursuant to this Section is caused by the willful or negligent act of an Owner, his family, guests, invitees or animals for whom he is legally

responsible under Arizona law, the Association shall cause the maintenance or repair to be performed and the cost of such maintenance or repair shall be levied against such Owner, and his Lot, by the Association and may be collected in the manner provided for elsewhere in this Declaration for the collection of Assessments.

7.3 Maintenance of Lots by Owners. Each Owner shall be solely responsible for the maintenance, repair and replacement of his Lot, and the Dwelling Unit, and all Improvements located thereon except for exterior paint and roofs on his Dwelling Unit and the landscape improvements which the Association is obligated to maintain pursuant to Section 7.2 of this Declaration.

7.4. Damage or Destruction of Common Area by Owners. No Owner shall in any way damage or destroy any Common Area or interfere with the activities of the Association in connection therewith. Any expenses incurred by the Association by reason of any such act of an Owner shall be paid by said Owner, upon demand to the Association to the extent that the Owner is liable therefor under Arizona law, and such amounts shall be a lien on any Lots owned by said Owner and the Association may enforce collection of any such amounts in the same manner as provided elsewhere in this Declaration for the collection and enforcement of Assessments.

7.5. Nonperformance by Owners. If any Owner fails to maintain any portion of his Lot, and the Improvements located thereon, the Association shall have the right, but not the obligation, to enter upon such Owner's Lot to perform the maintenance and repairs not performed by the Owner, and the cost of any such work performed by or at the request of the Association shall be paid for by the Owner of the Lot, upon demand from the Association, and such amounts shall be a lien upon the Owner's Lot and the Association may enforce collection of such amounts in this Declaration for the collection and enforcement of Assessments.

7.6. Payment of Utility Charges. Each Lot shall be separately metered for water, sewer, electrical service, gas, and all other utilities and all charges for such services shall be the sole obligation and responsibility of the Owner of each Lot. The cost of water, sewer and electrical service to the Common Area shall be a common expense of the Association and shall be included in the budget of the Association.

7.7. Maintenance of Drainage Detention Basins by the Association. The Association shall be responsible for the maintaining, repairing and replacement of all Drainage Facilities and all Drainage Detention Basins within common areas including

Tract C, as shown on the recorded Plat map. The Owner of each individual lot shall be responsible for the maintaining, repairing and replacement of any portion of Drainage Facilities or Easements and Detention Basins which are part of a lot, as provided in Section 4.4.

ARTICLE 8

INSURANCE

8.1. Scope of Coverage. Commencing not later than the time of the first conveyance of a Lot to a person other than the Declarant, the Association shall maintain, to the extent reasonably available, the following insurance coverage:

(a) Property insurance on the Common Area insuring against all risk of direct physical loss, insured against in an amount equal to the maximum insurable replacement value of the Common Area, as determined by the Board; provided, however, that the total amount of insurance after application of any deductibles replacement cost of the insured property, exclusive of land, excavations, foundations and other items normally excluded from a property policy.

(b) Comprehensive general liability insurance, including medical payments insurance, in an amount determined by the Board, but not less than $1,000,000.00. Such insurance shall cover all occurrences commonly insured against for death, bodily injury and property damage arising out of or in connection with the use, ownership or maintenance of the Common Area, and shall also include hired automobile and non-owned automobile coverages with cost liability endorsements to cover liabilities of the Owners as a group to an Owner and provide coverage for any legal liability that results from lawsuits related to employment contracts in which the Association is a party;

(c) Workers' Compensation insurance to the extent necessary to meet the requirements of the laws of Arizona;

(d) Such other insurance as the Association shall determine from time to time to be appropriate to protect the Association or the Owners;

(e) The insurance policies purchased by the Association shall, to the extent reasonably available, contain the following provisions:

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

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

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

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

(v) The Association shall be named as the Insured;

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

8.2 Certificates of Insurance. An insurer that has issued an insurance policy under this Article shall issue certificates or a memorandum of insurance to the Association and, upon request, to any Owner, mortgagee or beneficiary under a deed of trust. Any insurance obtained pursuant to this Article may not be

cancelled until thirty (30) days after notice of the proposed cancellation has been mailed to the Association, each Owner and each mortgagee or beneficiary under deed of trust to whom certificates of insurance have been issued.

8.3. Fidelity Bonds. The Association shall maintain blanket fidelity bonds for all officers, directors, trustees and employees of the Association and all other persons handling or responsible for funds of or administered by the Association, whether or not they receive compensation for their services. The Association shall require any management agent that handles funds for the Association to maintain its own fidelity bonds. The total amount of fidelity bond coverage shall be based upon the best business judgment of the Board, and shall not be less than the greater of (i) the amount equal to one hundred fifty percent (150%) of the estimated annual operating expenses of the Association, (ii) the estimated maximum amount of funds, including reserve funds, in the custody of the Association or the management agent, as the case may be, at any given time during the term of each bond, (iii) the sum equal to three months assessments on all Lots plus adequate reserve funds. Fidelity bonds obtained by the Association must also meet the following requirements;:

(a) The fidelity bonds shall name the Association as an obligee;

(b) The bonds shall contain waivers by the issuers of the bonds of all defenses based upon the exclusion of persons serving without compensation from the definition of "employees" or similar terms or expressions;

(c) The bonds shall provide that they may not be cancelled or substantially modified (including cancellation from non-payment of premium) without at least ten (10) days prior written notice to the Association and each First Mortgagee.

8.4. Payment of Premiums. The premiums for any insurance obtained by the Association pursuant to this Article shall be included in the budget of the Association and shall be paid by the Association.

8.5 Insurance Obtained by Owners. Each Owner shall be responsible for obtaining property insurance for his own benefit and at his own expense covering his Lot, and all Improvements and personal property located thereon. Each Owner shall also be responsible for obtaining at his expense personal liability coverage for death, bodily injury or property damage arising out of the use, ownership or maintenance of his Lot.

8.6. Payment of Insurance Proceeds. With respect to any loss to the Common Area, the Lots or any other property covered by property insurance obtained by the Association in accordance with this Article, the loss shall be payable to the Association and the insurance proceeds shall be payable to the Association and not to any mortgage or beneficiary under a deed of trust. Subject to the provisions of Section 8.7 of this Article, the proceeds shall be disbursed for the repair or restoration of the damaged property.

8.7. Repair and Replacement of Damaged or Destroyed Property.

(a) Immediately after the damage or destruction by fire or other casualty to all or any part of the property covered by insurance written in the name of the Association, the Board, or its duly authorized agent, shall proceed with the filing an adjustment of all claims arising under such insurance and obtain reliable and detailed estimates of the cost of repair or reconstruction of the damaged or destroyed property. Repair or Reconstruction, as used in this Section, means repairing or restoring the property to substantially the same condition in which they existed prior to the fire or other casualty.

(b) Any portion of the Common Area damaged or destroyed shall be repaired or replaced promptly by the Association unless (a) repair or restoration would be illegal under any state or local health or safety statute or ordinance, or (b) Owners owning at least eighty percent (80%) of the Lots vote not to rebuild. If the entire Common Area is not repaired or replaced, insurance proceeds attributable to the damaged Common Area shall be used to restore the damaged area to a condition which is not in violation of any state or local health or safety statute or ordinance and the remainder of the proceeds shall be distributed to the Owners on the basis of an equal share for each Lot.

(d) If damaged or destroyed property is to be repaired or restored pursuant to this Section and if the insurance proceeds collected on account of such damage or destruction is insufficient to pay the cost of the repair or restoration, the amount necessary to complete such repair or restoration may be obtained by the Association by a special assessment levied against all Lots as a uniform rate.

ARTICLE 9

ANNEXATION OF ADDITIONAL LAND

9.1. Right of Annexation.

(a) Declarant hereby expressly reserves the right, until Seven (7) years from the date of recording of this Declaration, to annex, without the consent of any Owner, all or any portion of the Annexable Property into the Property subject to this Declaration. The annexation of all or any portion of the Annexable Property shall be accomplished by the Declarant recording with the County Recorder of Coconino County, Arizona, a Declaration of Annexation stating the legal description of the Annexable Property being annexed and a description of any portion of the Annexable Property being added which will be Common Area.

(b) Any portion of the Annexable Property annexed pursuant to this Section shall not become irrevocably committed to the Project until the date on which the first Lot within the annexed portion of the Annexable Property is conveyed to a Purchaser. If any Declaration of Annexation recorded pursuant to this Section divides the portion of the Annexable Property being annexed into separate phases, then each phase of the property being annexed shall not become irrevocably committed to the Project until the date on which the first Lot within such phase is conveyed to a Purchaser.

(c) The Declarant shall have the right to amend any Declaration of Annexation recorded pursuant to this Section to change the description of the phases within the property being annexed; provided, however, that the Declarant may not change any portion of the Annexable Property which has already become irrevocably committed to the Project.

(d) At any time prior to the date which is Seven (7) years after the recording of this Declaration, the Declarant may withdraw from the Project any part of the Annexable Property which has not been irrevocably committed to the Project pursuant to the provisions of this Section. Any such withdrawal of property from the Project shall be accomplished by the recording with the County Recorder of Coconino County, Arizona, of a

Declaration of Withdrawal describing the portion of the property being withdrawn. Upon the recording of any such Declaration of Withdrawal, that portion of the Annexable Property described in the Declaration of Withdrawal shall no longer be part of the Project or subject to the Declaration.

(e) The voting rights of the Owners of Lots annexed pursuant to this Section shall be effective as of the date the Declaration of Annexation is recorded. The Lot Owners' obligation to pay Assessments shall commence as provided for in Section 3.9 of this Declaration.

9.2. No Assurances. Declarant makes no assurances as to the exact location of buildings and other improvements to be constructed on the Annexable Property. Declarant makes no assurances as to the exact number of Lots which may be added by annexation of all or any portion of the Annexable Property, but the number of Lots added by any such annexation shall not exceed sixty nine (69). Declarant makes no assurances as to what improvements may be constructed on the Annexable Property but such improvements shall be consistent in quality, material and style with the improvements constructed on the real property described in Exhibit A attached to this Declaration. All improvements to be constructed on any portion of the Annexable Property annexed by the Declarant will be substantially Annexable Property is irrevocably committed to the Project in accordance with Section 9.1 of this Declaration. All taxes and other assessments relating to all or any portion of the Annexable Property annexed by the Declarant covering any period prior to the time at which such portion of the annexable property is irrevocably committed to the Project in accordance with Section 9.1 of this declaration shall be the responsibility of and shall be paid for by the Declarant.

Article 10

Rights Of First Mortgage

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

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

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

(c) Any lapse, cancellation or material modification of any insurance policy or fidelity bond maintained by the Association;

(d) Any proposed action which will require the consent of a specified percentage of Eligible Mortgage Holders as set forth in Sections 10.2 or 10.3 of this Declaration.

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

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

1. Voting rights;

2. Assessments, assessment liens or subordination of assessment liens;

3. Reserves for maintenance, repair and replacement of Common Areas;

4. Insurance or fidelity bonds;

5. Responsibility for maintenance and repairs;

6. Expansion or contraction of the Project, or the addition, annexation or withdrawal of property to or from the Project;

7. Boundaries of any Lot;

8. Reallocation of interests in the Common Areas or the rights to their use;

9. Convertibility of Lots into Common Areas or of Common Areas into Lots;

10. Leasing of Lots;

11. Imposition of any restrictions on an Owner's right to sell or transfer his Lot;

12. A decision by the Association to establish self management when professional management had been required previously by an Eligible Mortgage Holder;

13. Restoration or repair of the Project (after a hazard damage or partial condemnation) in a manner other than that specified in the Project Documents;

14. Any action to terminate the legal status of the Project after substantial destruction or condemnation occurs;

15. Any provisions which expressly benefit First Mortgagees, Eligible mortgage Holders or Eligible Insurers or Guarantors.

Any addition or amendment to the Declaration, Articles or Bylaws shall not be considered material if it is for the purpose of correcting technical errors or for clarification only. Any First Mortgagee who receives a written request to approve additions or amendments to the Declaration, Articles or Bylaws which are not material who does not deliver or mail to the requesting party a negative response within thirty (30) days shall be deemed to have approved such request.

10.4. First Mortgagee Not Liable for Prior Assessments. Any First Mortgagee or any other party acquiring title or coming into possession of a Lot through foreclosure of the First Mortgage, purchase at a foreclosure 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 by the First Mortgagee or other party. 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.

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

attend all such meetings.

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

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

(a) By act or omission seek to abandon, partition, subdivide, sell or transfer the Common Area owned, directly or indirectly, by the Association for the benefit of the Lots (the granting of easements for the public utilities or for other public purposes consistent with the intended use of such Common Area shall not be deemed a transfer within the meaning of this subsection);

(b) Change the method of determining the obligations, assessments, dues or other charges which may be levied against a Lot Owner;

(c) By act or omission change, waive or abandon any scheme or regulations, or enforcement thereof, pertaining to the architectural design or the exterior appearance of Lots, the exterior maintenance of Lots, and the improvements located thereon, the maintenance of the Common Area, party walks or fences and driveways, or the upkeep of lawns and plantings in the Project;

(d) Use hazard insurance proceeds for losses to any Common Area, other than the repair, replacement or reconstruction of such Common area.

10.8. Conflicting Provisions. In the event of any conflict or inconsistency between the provisions of this Article and any other provisions of the Project Documents, the provisions of this Article shall prevail; provided, however, that in the event of any conflict or inconsistency between the different Sections of this article or between the provisions of this Article and any other provisions of the Project Documents with respect to the number or percentage of Owners, First Mortgagees, Eligible Mortgage Holders or Eligible Insurers or Guarantors that must consent to (i) an amendment of the Declaration, Articles or Bylaws, (ii) a termination of the Project, or (iii) certain actions of the Association as specified in Sections 10.2, 10.3 and 10.7 of this Declaration, the provision requiring the consent of the greatest number or percentage of Owners, First Mortgagees, Eligible Mortgage Holders or Eligible Insurers or Guarantors

shall prevail; provided, however, that the Board, without the consent of any Owner or First Mortgagee being required, shall have the right to amend this Declaration, the Articles or the Bylaws in order to conform this Declaration, the Articles or the Bylaws to the requirements or guidelines of the Federal National Mortgage Association, the Federal Home Loan Mortgage Corporation, the Federal Housing Administration, the Veterans Administration or any federal, state or local governmental agency whose approval of the Project, the Plat or the Project Documents is required by law or is requested by the Declarant.

Article 11

General Provisions

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

11.2. Severability. Invalidation of any one of these covenants or restrictions by judgment or court order shall in no way affect any other provisions which shall remain in full force and effect.

11.3. Duration. The covenants and restrictions of this Declaration shall run with and bind the Property for a term of twenty (20) years from the date this Declaration is recorded, after which time they shall be automatically extended for successive periods of ten (10) years. This Declaration may be terminated at any time by the written approval or the affirmative vote of Owners representing not less than ninety percent (90%) of the Lots. Any termination of this Declaration shall be evidenced by a Declaration or Termination signed by the President or Vice President of the Association and recorded with the County Recorder of Coconino County, Arizona.

11.4. Amendment.

(a) Except for amendments which may be executed by the Board or the Declaration pursuant to Subsection (b) of this Section, the Declaration or the Plat may only be amended by the written approval or the affirmative vote of Owners of not less than seventy percent (70%) of the Lots.

(b) Either the Board or the Declarant may amend this Declaration or the Plat, without obtaining the approval or consent of any Owner or First Mortgagee, in order to conform this Declaration or the Plat to the requirements or guidelines of the

Federal National Mortgage Association, the Administration, the Veterans Administration or any federal, state or local governmental agency whose approval of the Project, the Plat or the Project Documents is required by law or is required by the Declarant.

(c) So long as the Declarant owns any Lot any amendment which would delete or modify any right granted to the Declarant by the Declaration must be approved in writing by the Declarant.

(d) So long as there is a Class B membership in the Association, any amendment to this Declaration or the Plat must have the prior approval of the Veterans Administration or the Federal Housing Administration.

(e) Any amendment approved pursuant to Subsection (a) above or by the Board pursuant to Subsection (b) above shall be signed by the President or Vice President of the Association and shall be recorded with the County Recorder of Coconino County, Arizona. Any such amendment shall certify that the amendment has been approved as required by this Section. Any amendment made by the Declarant Pursuant to subsection (b) above shall be executed by the Declarant and shall be recorded with County Recorder of Coconino County, Arizona.

11.5. Violations and Nuisance. Every act or omissions whereby any provision of this Declaration is violated in whole or in part is hereby declared to be a nuisance and may be enjoined or abated, whether or not the relief sought is for negative or affirmative action, by the Declarant, the Association or any Owner.

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

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

11.8. Delivery of Notices and Documents. Any written notice or other document relating to or required by this Declaration may be delivered either personally or by mail. If by mail, it shall be deemed to have been delivered twenty-four hours after a copy of same has been deposited in the United states mail, postage prepaid, addressed as follows: If to the Declarant, the Association or the Architectural Committee at ATTENTION: ROB BRAMLEY, BROKER, SOUTHWEST INTERSTATE REALTY, 2310 Route 66, Flagstaff, Arizona, 86004; if to an Owner, to the address of his Lot or to any other address last furnished by the Owner, to the

address may be written notice of time by the party concerned by recording a written notice of change of address and delivery a copy thereof to the Association. Each Owner of a Lot shall file the correct mailing address of such Owner with association, and shall promptly notify the Association in writing of any subsequent change of address.

11.9. FHA/VA Approval. As long as there is a Class B membership in the Association, the following actions will require the prior approval of the Federal Housing Administration or the Veterans Administration: annexation of additional properties, dedication of Common Areas, and amendment of this Declaration.

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

11.11. Management agreements. Any agreement for professional management of the Association or the Project or any other contract providing for services of the Declarant, or other developer, sponsor or builder of the Project shall not exceed one year. Any such agreement must provide for termination by either party without cause and without payment of a termination fee on thirty (30) days or less written notice.

11.12. Gender. The singular, wherever used in this Declaration, shall be construed to mean the plural when applicable, and the necessary grammatical changes required to make the provisions of this Declaration apply either to corporations or individuals, men or women, shall in all cases be

assumed as though in each case fully expressed.

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

11.14. Survival of Liability. The termination of membership in the Association shall not relieve or release any such former Member from any liability or obligation incurred under or in any way connected with the Association during the period of such membership, or impair any rights or remedies which the Association may have against such former Member arising out of, or in any obligations incident thereto.

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

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

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

11.18. Declarant's Right To Use Similar Name. The Association hereby irrevocably consents to the use by any other nonprofit corporation which may be formed or incorporated by Declarant of a corporate name which is the same or deceptively similar to the name of the Association provided one or more words are added to the name of such other corporation to make the name of the Association distinguishable from the name of such other corporation. Within five (5) days after being requested to do so by the Declarant, the Association shall sign such letters, documents or other writings as may be required the Arizona Corporation Commission in order for any other corporation formed or incorporated by the Declarant to use a corporate name which is the same or deceptively similar to the name of the Association.

IN WITNESS WHEREOF, the understood has executed this Declaration on the day and year first above written.

Marc Archer

By: _____
Owner

STATE OF ARIZONA)
) ss.
County of Coconino)

The foregoing instrument was acknowledged before me this 12th day of October, 19 96 by Marc Archer.

_____
Notary Public

OFFICIAL SEAL
MARY JO STERLING
NOTARY PUBLIC—STATE OF ARIZONA
COCONINO COUNTY
My commission expires May 11, 1998

2158-506

EXHIBIT "B"

"BOULDER RIDGE VILLAS"

PROPERTY NOT YET SUBJECT TO THESE RESTRICTIONS

THE REAL PROPERTY DESCRIBED AS FOLLOWS:

Tract "C" and Tract "D", "Boulder Ridge Villas," according to Case 7
Map 5 79 & 79 A, Records of Coconino County, Arizona.

EXHIBIT "A"

"BOULDER RIDGE VILLAS"

THE REAL PROPERTY DESCRIBED AS FOLLOWS:

Lots 1 to 42, inclusive and Tracts "A" and "B" of "Boulder Ridge Villas", according to the plat recorded with the County Recorder of Coconino County, Arizona, in Case 7, Map 5 79 & 79A.

2158-508