



CANDACE OWENS
COCONINO COUNTY RECORDER
OFFICIAL RECORDS OF
COCONINO COUNTY

INST: 98-19350 FEE:\$ 40.00
AT THE REQUEST OF:
RONALD KOHNER
DATE: 06/17/1998 TIME: 08:52
DKT: 2114 PG: 431 PAGES: 035

When Recorded Mail to:

Blue Ridge Development, Inc.
P.O. Box 760
Peoria, Arizona 85380-0760

DECLARATION OF COVENANTS, CONDITIONS AND RESTRICTIONS FOR BLUE RIDGE ESTATES

This Declaration of Covenants, Conditions and Restrictions for Blue Ridge Estates ("Declaration") made as of this 12 day of June, 1998, by **First American Title Insurance Company**, a California corporation, as Trustee under Trust No. 8381 (the "Trust"), as legal owner, and **Blue Ridge Development, Inc.**, an Arizona corporation ("Blue Ridge"), as Second Beneficiary under said Trust, to run with the real property herein described for the purposes as herein set forth:

W I T N E S S E T H:

A. WHEREAS, Blue Ridge is the Second Beneficiary under the Trust and is in possession of approximately 200 acres of land in Coconino County, Arizona, more specifically described in **Exhibit A** attached hereto and made a part hereof (the "Property");

B. WHEREAS, Blue Ridge intends to develop, in stages, the Property into a new and uniquely planned recreation property to be known as "Blue Ridge Estates" and impose upon the Property mutually beneficial restrictions and obligations with respect to the proper use, conduct upon and maintenance thereof for the benefit of all persons who now or hereafter use, own, occupy or have an interest in any portion of the property;

C. WHEREAS, Blue Ridge has the authority under the Trust to prepare and file a Declaration of Covenants, Conditions and Restrictions covering the Property;

NOW, THEREFORE, Blue Ridge, as Declarant ("Declarant") hereby declares that all of the Property shall be held, sold and conveyed subject to the following easements, restrictions, covenants, and conditions, which are for the purpose of protecting the value and desirability of, and which shall run with the Property and be binding on all parties having any right, title or interest in the Property or any part thereof, their heirs, successors and assigns, and shall inure to the benefit of each owner of all or any part thereof.

ARTICLE I

DEFINITIONS

Except as otherwise expressly provided in this Declaration, the following terms shall, for purposes of this Declaration, have the meanings set forth below:

Section 1.1 "Annexable Property" shall mean the real property described on Exhibit B attached hereto and made a part hereof.

Section 1.2 "Annual Assessments" shall mean the charge levied and assessed each year against each Lot within the Assessable Property, as defined hereinbelow, in accordance with Article IX hereof.

Section 1.3 "Architectural Committee" shall mean the committee created pursuant to Article X hereof.

Section 1.4 "Architectural Committee Rules" shall mean the rules adopted by the Architectural Committee.

Section 1.5 "Articles" shall mean the Articles of Incorporation of the Association which shall be filed in the office of the Corporation Commission of the State of Arizona as said Articles may be amended from time to time.

Section 1.6 "Assessable Property" shall mean the entire Property, as defined hereinbelow, except such part or parts thereof as may from time to time constitute Exempt Property, as defined hereinbelow.

Section 1.7 "Assessments" shall mean the Annual Assessments together with all Special Assessments, as defined hereinbelow.

Section 1.8 "Association" shall mean and refer to Blue Ridge Estates Homeowners' Association of Coconino County, an Arizona non-profit corporation, its successors and assigns.

Section 1.9 "Association Expenses" shall mean the actual and estimated expenses of performing all obligations and exercising all rights and powers of the Association hereunder and otherwise of operating the Association, including any reasonable reserves, all as may be found to be necessary and appropriate by the Board pursuant to this Declaration, the Articles or By-Laws.

Section 1.10 "Association Property" shall mean such part or parts of the Property as may be owned by the Association, together with any adjacent real property upon which the Association is granted an easement, license or right to use, and any Improvements (as defined hereinbelow) thereon, and any personal property as may be owned by the Association.

Section 1.11 "Board" shall mean the Board of Directors of the Association.

Section 1.12 "By-Laws" shall mean the By-Laws of the Association, as such By-Laws may be amended from time to time.

Section 1.13 "Declarant" shall mean Blue Ridge Development, Inc., and any successor and assignee of the rights and duties granted or reserved to the Declarant herein. The term "Declarant" shall in no event refer to a "Public Purchaser".

Section 1.14 "Declaration" shall mean the covenants, conditions and restrictions herein set forth in this document, as same may from time to time be amended.

Section 1.15 "Deed" shall mean a deed or other instrument conveying the fee simple title in a "Lot", as defined hereinbelow.

Section 1.16 "Exempt Property" shall mean the following parts of the Property:

(i) All land and permanent Improvements owned by the United States, the State of Arizona, Coconino County, or any political subdivision thereof, for as long as any such entity or political subdivision is the Owner thereof.

(ii) All Association land for as long as the Association is the Owner thereof.

Section 1.17 "Improvements" shall mean the buildings, garages, carports, roads, driveways, parking areas, fences, walls, utilities and service lines, decks, hedges, plantings, planted trees and shrubs, and all other structures or landscaping improvements of every type and kind.

Section 1.18 "Lot" shall mean any parcel of real property designated as a Lot on any recorded Subdivision Map that is located within the Property. A Lot shall be deemed "Developed" when adjacent streets and off-site utilities have been completely installed. A Lot shall be deemed "Improved" when a Single-Family Residence has been completely constructed thereon. All other Lots shall be deemed "Unimproved Lots".

Section 1.19 "Maximum Annual Assessment" shall mean the maximum Annual Assessment determined in accordance with Section 9.7 hereof.

Section 1.20 "Member" shall mean any person, corporation, partnership, joint venture or other legal entity which is a member of the Association.

Section 1.21 "Owner(s)" shall mean and refer to the record holder, whether one or more persons or entities, of legal, equitable or beneficial title to the fee simple interest of any Lot. "Owner" shall include the purchaser of a Lot under an executory contract for the sale of real property. The foregoing does not include persons or entities who hold an interest in any Lot

merely as security for the performance of an obligation or a lessee, tenant or any other person other than an Owner who occupies or is in possession of a Lot.

Section 1.22 "Property" shall mean as follows:

(i) The real property, more specifically described on **Exhibit A** attached hereto and made a part hereof and any adjacent real property upon which easements, licenses or rights are granted to the Association;

(ii) any and all streets, roadways, and highways constructed, built, installed or erected upon the real property described in subparagraph (i) hereof;

(iii) Any permanent Improvements built, installed or erected upon the real property described in subparagraph (i) hereof.

Section 1.23 "Public Purchaser" shall mean any person or legal entity other than the Declarant who becomes an Owner of any Lot within the Property.

Section 1.24 "Record", "Recording", "Recorded" and "Recordation" shall mean placing or having placed an instrument of public record in the official records of Coconino County, Arizona, or of such other governmental authority, office or official with which or whom the applicable laws of the State of Arizona prescribe that documents affecting title to real property in the area including the Property are to be placed of public record.

Section 1.25 "Residence" shall mean any building situated upon a lot and intended for use and occupancy as a residence by a Single Family.

Section 1.26 "Resident" shall mean any person who is an Owner, lessee, tenant or any other person other than an Owner who occupies or is in possession of a Lot.

Section 1.27 "Rules and Regulations" shall mean the rules and regulations regarding the Property and its use, occupancy, operation and maintenance adopted by the Board, as they may be amended from time to time.

Section 1.28 "Single Family" shall mean a group of one or more persons each related to the other by blood, marriage or legal adoption, or a group of not more than three (3) persons not all so related, together with their domestic servants, who maintain a common household in a dwelling.

Section 1.29 "Single Family Residential Use" shall mean the occupation or use of a Single Family Residence in conformity with this Declaration and the requirements imposed by applicable zoning laws and other state, county or municipal rules and regulations.

Section 1.30 "Special Assessments" shall mean the charge levied or assessed against each Lot within the Assessable Property in accordance with Article IX hereof.

Section 1.31 "Subdivision Map" or "Subdivision Plat" shall mean a recorded map or plat covering any or all of the property described in **Exhibit A**.

Section 1.32 "Visible From Neighboring Property" shall mean, 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 II

COVENANTS BINDING ON PROPERTY AND OWNERS

Section 2.1 **Property Bound**. From and after the date of recordation of this Declaration, the Property shall be subject to the covenants, conditions and restrictions, assessments, charges, servitudes, liens, reservations and easements hereinafter set forth (collectively referred to as "Covenants"), and said Covenants shall run with, bind and burden the Property.

Section 2.2 **Owners Bound**. From and after the date of recordation of this Declaration, the Covenants shall be binding upon each Owner and his heirs, executors, administrators, successors and assigns. The Owners, for themselves, their heirs, executors, administrators, successors and assigns, expressly agree to pay, and be personally liable for, the assessments provided for in this Declaration ("Assessments"), and to be bound by all of the Covenants herein set forth. Each Owner shall be and remain personally liable, regardless of whether he has transferred title to his Lot, for the Assessments (together with interest thereon, costs of collection and attorneys' fees, if any) which fell due while the Owner held record title to his Lot. No Owner shall escape personal liability for the Assessments by non-use of the Property or transfer or abandonment of his Lot. The Owner's personal obligation shall not pass to a successor Owner unless expressly assumed by the successor Owner, but any such assumption of personal liability by a successor Owner shall not relieve the prior Owner of his personal liability for the Assessments which fell due while the prior Owner held record title to his Lot.

ARTICLE III

LAND USE CLASSIFICATIONS, PERMITTED USES AND RESTRICTIONS

Section 3.1 **Permitted Uses and Restrictions — Single Family**. The permitted uses, easements and restrictions for the Property shall be as follows:

(a) **Single Family Residential Use**. The Property shall be used, improved and devoted exclusively to Single Family Residential Use. No business, commercial, manufacturing, industrial, mercantile, vending or similar activity of any kind whatsoever shall be conducted on any of the Property, with the exception of the construction and sales activities of the Declarant or any affiliate or agent of Declarant with respect to the

Property. (Nothing herein shall be deemed to prevent the leasing of any Property to a Single Family from time to time by the Owner thereof, subject to all of the provisions of the Declaration.) All buildings and structures erected on the Property shall be of new construction and no buildings or structures shall be moved from any other location onto said Property except for buildings or structures used by the Declarant or any affiliate or agent of Declarant in construction or sales activities. No building or structure shall be erected or maintained separate from the Single Family Residence located on any Lot, other than a garage in accordance with Coconino County zoning ordinances in existence at the time. No dwelling or residence shall be erected, permitted or maintained having a floor area of less than twelve hundred square feet, and a ground floor area of less than eight hundred fifty square feet, exclusive of an open porch, carport or attached garage. No garage or shed shall be built prior to the issuance of a Coconino County building permit for the construction of a Single Family Residence.

Section 3.2 **Tanks**. Only tanks that contain fuel for heating purposes shall be allowed on the Lots and must be walled in or kept screened by adequate planting to conceal them from the neighboring properties, roads and streets. The location and method of concealment of the tanks must be approved by the Declarant or Architectural Committee. All tanks must be painted earth-tone colors.

Section 3.3 **Fencing**. Declarant may erect fencing with gates on the perimeter of the Property, along any easements or wherever it deems it necessary or desirable. The perimeter of any individual Lot may be fenced. All fencing must be of materials complimentary to the area and must be approved by the Declarant or Architectural Committee.

Section 3.4 **Building Materials**. No building material of any kind or character shall be placed upon any Lot except in connection with construction on said Lot of an Improvement as approved by the Declarant or Architectural Committee. As soon as building materials are placed on any Lot in such connection, construction shall be promptly commenced and diligently prosecuted in order that such construction shall be completed within a reasonable time after commencement but not later than nine (9) months from the date the material has been placed on the Lot.

Section 3.5 **Driveways**. All driveways which are established upon a Lot by an Owner shall be surfaced or paved with concrete, gravel, cinders or asphalt. The location of the driveway and the materials used shall be approved by the Declarant or Architectural Committee prior to the commencement of construction or use. All driveways must be ten (10) feet in width.

Section 3.6 **Temporary Structures**. No temporary building or structure shall be placed, erected or maintained on any portion of the Property.

Section 3.7 **Trailers and Motor Vehicles**. No mobile homes or manufactured homes of any kind shall be allowed on any portion of the Property. No vehicles shall be driven on any streets or roads within the Property unless properly licensed. No unlicensed vehicles shall be

kept or placed upon any portion of the Property unless parked within an enclosed garage. Except with the prior approval of the Declarant or Architectural Committee, no bus, motor home, truck larger than three-quarter (3/4) ton, trailer of any kind, boat, recreational vehicle, mini-bike, camper (except during the course of making deliveries or for the purposes of loading or unloading) or permanent tent or similar vehicles or equipment shall be kept, placed, maintained, constructed, reconstructed or repaired upon any portion of the Property, including streets and roads (public or private) within the Property in such a manner as will be Visible From Neighboring Property, provided, however, that the provisions of this paragraph shall not apply to emergency vehicle repairs and/or vehicles used exclusively in connection with the construction of any Improvements approved by the Declarant or Architectural Committee.

Section 3.8 **Maintenance of Lawns and Plantings by Owner.** Each Owner of a Lot shall keep his Lot free of trash and other unsightly material. No Owner shall cut down any tree larger than four (4) inches in diameter without the consent of the Declarant or Architectural Committee. All Lots shall be maintained by thinning and trimming of trees to keep fire danger to a minimum.

Section 3.9 **Nuisances.** No rubbish or debris of any kind shall be placed or permitted to accumulate upon any portion of the Property, and no odors shall be permitted to arise therefrom so as to render any portion of the Property unsanitary, unsightly, offensive or detrimental to any other portion of the Property or to its occupants. No noxious, destructive or offensive activity or any activity constituting an unreasonable source of annoyance shall be permitted to be conducted, exist or operate upon any portion of the Property. Without limiting the generality of any of the foregoing provisions, no exterior speakers, horns, whistles, bells or other devices, except security devices used exclusively for security purposes, shall be located, used or placed on any portion of the Property. The Declarant or the Board, in its sole discretion, shall have the right to determine the existence of any of the activities described herein.

Section 3.10 **Repair of Buildings.** No building or structure upon any portion of the Property shall be permitted to fall into disrepair, and each such building and structure shall at all times be kept in good condition and repair and adequately painted or otherwise finished.

Section 3.11 **Trash Containers and Collection.** No garbage or trash shall be placed or kept on any portion of the Property except in covered containers of a type, size and style which are approved by the Declarant or Architectural Committee. In no event shall such containers be maintained so as to be Visible From Neighboring Properties. All rubbish, trash or garbage shall be removed from any portion of the Property and shall not be allowed to accumulate thereon. No incinerators for burning trash or garbage shall be kept or maintained on any portion of the Property nor shall garbage or trash be permitted to be buried on any portion of the Property at any time.

Section 3.12 **Fires.** No outdoor fire of any kind is permitted at any time for any reason with the sole exception of cooking food, and then such fire must be confined to a barbecue-type

container, either free-standing or built-in, and under no circumstances shall such barbecue fire be directly on the ground.

Section 3.13 **Clothes Drying**. No outside clotheslines or other outside facilities for drying or airing clothes may be erected, placed or maintained on any Lot.

Section 3.14 **Mineral Exploration**. No portion of the Property shall be used in any manner to explore for or to remove oil or other hydrocarbons, minerals of any kind, gravel, earth or earth substance of any kind.

Section 3.15 **Machinery and Equipment**. No machinery or equipment of any kind shall be placed, operated or maintained upon any portion of the Property except such machinery or equipment as is usual and customary in connection with the construction of a residence or other Improvements and except that which Declarant or the Association may require for the development, operation and maintenance of the Property.

Section 3.16 **Disease and Insects**. No Owner shall permit any thing or condition to exist upon any portion of the Property which shall induce, breed or harbor infectious plant diseases or noxious insects.

Section 3.17 **Restriction on Further Subdivision**. 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, nor any easement or other interest therein, shall be conveyed or transferred by any Owner without the prior written approval of the Declarant or the Board.

Section 3.18 **Signs**. No signs or billboards whatsoever including, but not limited to, "For Sale" signs, commercial, political or other similar signs shall be erected or maintained on any Lot or portion of the Property, except:

- (a) Such signs as may be required by legal proceedings;
- (b) Not more than two (2) residential identification signs each of a combined total face area of seventy-two (72) square inches or less, provided such signs must contain the address numbers that are not less than four (4) inches in height and are visible from the street, within ten (10) feet of the driveway entry, and which signs shall be approved in advance by the Declarant or Architectural Committee;
- (c) During the time of construction of any building or other improvement, one job identification sign not larger than eighteen (18) by twenty-four (24) inches in height and width and having a face area not larger than three (3) square feet;
- (d) Such signs, the nature, number and location of which have been approved in advance by the Declarant or Architectural Committee; and

(e) Such signs, the number, type and size of which as may be approved from time to time by the Board.

Section 3.19 **Declarant's Exemption**. Nothing contained in this Declaration shall be construed to prevent the erection or maintenance by Declarant or any developers approved by Declarant, or their duly-authorized representatives and agents, of any structures, improvements or signs necessary or convenient to the development, sale, operation or other disposition of Property, or any portion thereof.

Section 3.20 **Utility Easements**. There is hereby reserved to the Declarant or Association the power to grant blanket easements upon, across, over and under all of the Association Property for ingress, egress, installation, replacement, repair and maintenance of all utility and service lines and systems, including, but not limited to, water, sewer, gas, telephone, electricity, television, cable or communication lines and systems, provided no such easement shall interfere with the use of any dwelling or the Declarant's construction and sales activities. This easement shall in no way affect any other recorded easements on the Property. Should any entity furnishing a service covered by the general easement herein provided request a specific easement by separate recordable document, the Association shall have the right to grant such easement in accordance with the terms hereof.

Section 3.21 **Cleaning and Damage Deposit**. A cleaning and damage deposit of Five Hundred Dollars (\$500.00) shall be required from each lot Owner at the time of plan approval by the Declarant or Architectural Committee to insure that construction of the Improvement is completed in a workmanlike manner. The deposit shall be deposited into a trust account for the benefit of the Association and is subject to being returned in full or in part upon the Declarant's or Architectural Committee's approval of the completion of Improvements.

Section 3.22 **Animals**. No animals, other than a reasonable number of generally-recognized house or yard pets, shall be maintained on any portion of the Property and then only if they are kept, bred or raised thereon solely as domestic pets and not for commercial purposes. Notwithstanding the foregoing, no horses, ponies, mules, ostriches, swine, chickens, turkeys, cows, goats, sheep, geese, ducks or other barnyard animals shall be kept, bred or raised on any portion of the Property and no pet of any kind may be kept upon the Property which in the opinion of the Board, results in an annoyance or are obnoxious to the Owners or occupants of other Lots in the vicinity.

Section 3.23 **Antennas**. No antennas or other devices for the transmission or reception of television or radio signals shall be placed, constructed or maintained outdoors on any Lot unless previously approved by the Declarant or Architectural Committee.

Section 3.24 **Improvement and Alterations**. The Property is located in a forested area which could be conducive to fire; therefore, the Owners are encouraged to use fire sprinkler systems and are discouraged from utilizing wood shake shingles. No improvements, alterations, repairs, excavation or other work which in any way alters the appearance of any Lot existing on the date such Lot was first conveyed by Declarant to a Public Purchaser shall be made or

done without the prior approval of the Declarant or the Architectural Committee, except as otherwise expressly provided in this Declaration. No building, fence, wall, screen, residence or other structure shall be commenced, erected, maintained, improved or altered in respect of any Lot without the prior written approval of the Declarant or Architectural Committee. Pursuant to its rule-making power, Declarant or the Architectural Committee shall establish a procedure for the preparation of the Lots for Improvements. The Declarant or Architectural Committee shall have the right to refuse or approve any plans or specifications including, but not limited to, any plot plan and any grading plans. In reviewing such plans and specifications and without any limitation of the foregoing, the Declarant or Architectural Committee shall have the right to take into consideration the suitability of the proposed building or other Improvement and the materials of which it is to be constructed, the site upon which it is proposed to be erected, the harmony thereof with the surroundings, and the effect of the building or other Improvement as planned on the outlook from the adjacent or neighboring property. All subsequent additions to, changes or alterations in any building or Improvement shall be subject to the prior approval of the Declarant or Architectural Committee.

ARTICLE IV

BLUE RIDGE ESTATES HOMEOWNERS' ASSOCIATION OF COCONINO COUNTY

Section 4.1 Organization.

(a) The Association. The Association, to be called Blue Ridge Estates Homeowners' Association, shall be or is a non-profit Arizona corporation charged with the duties and vested with the powers prescribed by law and set forth in the Articles and By-Laws of the Association, and this Declaration. Neither the Articles nor By-Laws shall, for any reason, be amended or otherwise changed or interpreted so as to be inconsistent with this Declaration.

(b) Board of Directors and Officers. The affairs of the Association shall be conducted by a Board of Directors and such officers as the Board may elect or appoint, in accordance with the Articles and the By-Laws, as same may be amended from time to time.

Section 4.2 The Rules. By a majority vote of the Board, the Association may, from time to time and subject to the provisions of this Declaration, adopt, amend and repeal rules and regulations to be known as the "Rules and Regulations". The Rules and Regulations may restrict and govern the use of any area by any Owner, by the family of such Owner, or by any invitee, guest or lessee of such Owner, provided, however, that the Rules and Regulations may not discriminate among Owners and shall not be inconsistent with this Declaration, the Articles or By-Laws of the Association. A copy of the Rules and Regulations, as they may from time to time be adopted, amended or repealed, shall be mailed or otherwise delivered to each Owner and may be recorded. Upon recordation, said Rules and Regulations shall have the same force and effect as if they were set forth in and were a part of this Declaration.

Section 4.3 **Personal Liability.** No member of the Board or any committee of the Association, or any officer of the Association, shall be personally liable to any Owner, or to any other party, for any damage, loss or prejudice suffered or claimed by such Owner or any other person on account of any act, omission, error or negligence of the member of the Board or any Committee of the Association or any officer of the Association, provided that such member or officer has, upon the basis of such information as may be possessed by him, acted in good faith, without willful or intentional misconduct.

Section 4.4 **Personal Property and Real Property for Common Use.** The Association, through action of the Board, may acquire, hold and dispose of tangible and intangible personal property and real property. Except as provided elsewhere herein, no dedication, sale or transfer of all or any part of the Association Property shall be made or effective unless approved by not less than two-thirds (2/3) of the votes of each class of Members represented in person or by valid proxy at a meeting of Members duly called for such purpose. The Board, acting on behalf of the Association, shall accept any real or personal property, leasehold or other property interests within, adjacent to or related to all or any part of the Property as may be conveyed or assigned to the Association by Declarant (or by a trustee holding title for the benefit of Declarant).

Section 4.5 **Availability of Books, Records and Other Documents.** The Association shall maintain complete and current copies of this Declaration, the Articles, the By-Laws and the Rules and Regulations (as well as any amendments to the foregoing) and of the books, records and financial statements of the Association and, upon the prior written request to the Association by any Owner, shall make the same available for inspection, at reasonable times and under reasonable circumstances, by such Owner. Copies of the Articles and By-Laws may be purchased for such reasonable fees as may be prescribed by the Association.

Section 4.6 **Other Express or Implied Rights.** The Association may exercise any other right or privilege given to it expressly by this Declaration, the Articles or the By-Laws and every other right or privilege reasonably to be implied from the existence of any right or privilege given to the Association herein or reasonably necessary to effectuate any such right or privilege.

Section 4.7 **Association's Rights and Powers as Set Forth in Articles of Incorporation and By-Laws.** In addition to the rights and powers of the Association set forth in this Declaration, the Association shall have such rights and powers as are set forth in the Articles and By-Laws and every other right or power reasonably to be implied from the existence of any right or power given herein. Such rights and powers, subject to the approval thereof by any agencies or institutions deemed necessary by the Declarant, may encompass any and all things which a natural person could do or which now or hereafter may be authorized by law, provided such rights and powers are not inconsistent with the provisions of this Declaration and are necessary, desirable or convenient for effectuating the purposes set forth in this Declaration.

Section 4.8 Association's Rights of Enforcement of Provision in Other Instruments Affecting the Property. The Association, as the agent and representative of the Owners, shall have the right to enforce the covenants, conditions and restrictions set forth in this Declaration and/or any and all covenants, restrictions, reservations, servitudes, assessments, conditions, liens or easements provided for in any contract, deed, declaration of restrictions or other instrument affecting all or any portion of the Property. Any such instrument shall have been executed pursuant to, or subject to, the provisions of this Declaration, or otherwise shall indicate that the provisions of such instrument were intended to be enforced by the Association, its successors or assigns.

Section 4.9 Contracts with Others for Performance of Association's Duties. Subject to the restrictions and limitations contained in this Declaration, the Association may enter into contracts and transactions with the Declarant, its subsidiaries and affiliated companies, and such contracts or transactions shall not be invalidated or in any way affected by the fact that one or more directors of the Association is employed by or otherwise connected with the Declarant, its subsidiaries and affiliates, provided that the fact of such interest shall be disclosed or known to the other directors acting upon such contract or transaction and provided further that the transaction or contract is fair and reasonable. Any such director may be counted in determining the existence of a quorum at that meeting of the Board of Directors of the Association which shall authorize any such contract or transaction and may vote thereat to authorize any such contract or transaction with like force and effect as if he were not so interested.

Section 4.10 Mergers and Consolidations. The Association shall have the right and power to participate in mergers or consolidations with any other non-profit corporation or association regardless of whether the objects, purposes, rights and powers of such non-profit corporation or association are lesser than, the same as, or greater than those of the Association. Any proposed merger or consolidation shall not be effective or voted upon by the Owners without prior approval of the Board of Directors of the Association. Any such merger or consolidation shall be consummated only upon an affirmative vote of the Owners of two-thirds (2/3) of the Lots as defined for voting purposes at an election held for such purpose in the manner provided in Article VI. Upon any such merger or consolidation, all of the properties, rights and obligations of the other non-profit corporation or association shall be transferred to and assumed by the Association as the survivor, or alternatively, all the properties, rights and obligations of the Association shall be transferred to and assumed by the surviving or newly-created non-profit corporation or association.

ARTICLE V

PROPERTY RIGHTS

Section 5.1 Every Owner shall have a non-exclusive right and easement of enjoyment in, to and over the Association Property, subject to any restrictions or limitations contained herein or in any instrument conveying such property to the Association or subjecting such property to this Declaration, and subject further to the Rules and Regulations. Any Owner may assign his right of enjoyment to (and share the same with) the members of his household and

assign the same to and share the same with his tenants and invitees subject to the provisions of this Declaration and to the reasonable regulation by the Board. An Owner who leases his Lot shall be deemed to have delegated such Owner's rights under this Article V to the lessee of such Lot for the term of such lease.

ARTICLE VI

MEMBERSHIP AND VOTING RIGHTS

Section 6.1 Votes of Owners of Lots. Every Owner of a Lot automatically shall be a Member of the Association and shall remain a Member for so long as such ownership continues. Each Owner's membership in the Association shall be appurtenant to and may not be separated from ownership of the Lot to which the membership is attributable. In the event any Lot is owned by two or more persons, whether by joint tenancy, tenancy in common, community property or otherwise, each such person shall be considered a Member, but the membership as to such Lot shall be joint, and such persons shall jointly designate to the Association in writing one of their number who shall have the power to vote said membership, and, in the absence of such designation and until such designation is made, the Board shall make such designation and such designation shall be binding for all purposes. Notwithstanding the foregoing, so long as the Class B membership is in existence, no Class B Member shall at the same time be a Class A Member and the membership and number of votes of the Class B Member(s) shall be determined in accordance with subsection 6.3(b). Subject to subsection 6.3(a), each Owner (other than Declarant, so long as the Class B membership is in existence) shall have one (1) vote for each Lot owned by such Owner.

Section 6.2 Declarant. Declarant shall be a Member of the Association for so long as it holds a Class A or Class B membership.

Section 6.3 Voting Classes. The Association shall have two classes of voting Members:

(a) Class A. Class A Members shall be all Owners except Declarant (until the conversion of Declarant's Class B membership to Class A membership as provided below); and

(b) Class B. The Class B Member shall be Declarant, who shall be entitled to five (5) votes for each Lot owned by Declarant. Declarant shall have the right, at any time and from time to time, to assign all or any part of its voting rights appurtenant to its Class B membership (as well as all or any other rights appurtenant thereto) to one or more Persons acquiring for purposes of development and sale, any part of the Property. Further, Declarant shall have the right, at any time and from time to time, to designate an individual or individuals to exercise Declarant's voting rights (whether appurtenant to Class A or Class B membership), provided, however, that such designation shall not act as any assignment by Declarant of its membership or voting rights hereunder.

The Class B membership automatically shall cease and be converted to Class A membership upon the happening of the first of the following events:

- (i) the date which is ninety (90) days after the date upon which the Declarant ceases to own any portion of the Property;
- (ii) the date which is ten (10) years after the date this Declaration is recorded; or
- (iii) the date on which Declarant records a written notice electing to convert the Class B membership to Class A membership.

Section 6.4 **Right to Vote.** Subject to the authority of the Board to suspend voting rights, each Member shall be entitled to cast votes as established in this Declaration, the Articles, the By-Laws and the Rules and Regulations. No change in the ownership of a Lot shall be effective for voting purposes until the Board receives written notice of such change together with satisfactory evidence thereof. The vote(s) for each Member must be cast as a single unit. Split or fractional votes shall not be allowed. If any Owner casts a vote or votes representing a certain Lot, that Owner will thereafter be conclusively presumed to be acting with the authority and consent of all other Owners of such Lot unless and until objection thereto is made to the Board in writing. Any outstanding and recorded executory agreement of sale may, in the lease, agreement of sale or other written instrument, assign the voting right appurtenant to the Lot to the lessee thereof under such lease or to the purchaser thereof under such agreement of sale, as applicable, provided that a copy of the written assignment of such voting rights is furnished to the secretary of the Association prior to any meeting at which such lessee or purchaser seeks to exercise such voting right.

Section 6.5 **Member's Rights.** Each Member shall have the rights, duties and obligations set forth in this Declaration, the Articles, the By-Laws and the Rules and Regulations.

Section 6.6 **Transfer of Membership.** Except as otherwise provided in this Declaration, the rights duties and obligations of a Class A Member cannot and shall not be assigned, transferred, pledged, conveyed or alienated in any way except upon transfer of ownership of such Class A Member's Lot, and then only to the transferee thereof. Such transfer may be effected by deed, intestate succession, testamentary disposition, foreclosure or other legal process authorized under Arizona law, shall operate to transfer the membership appurtenant thereto to the new Owner and any attempt to make any other form of transfer shall be void.

Section 6.7 **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 this Declaration, the Articles, the By-Laws, or the Rules and Regulations for a period of fifteen (15) days, said Owner's right to vote as a Member of the Association shall be suspended and shall remain suspended until all payments, including payments for accrued interest, attorneys' fees and related collection costs and fees, are brought current and paid. In the event any Owner is in

default, breach, or in violation of any of the provisions of this Declaration, the Articles, the By-Laws or the Rules and Regulations, other than for non-payment of any Assessment, said Owner's right to vote as a Member of the Association shall be suspended and shall remain suspended for a period not to exceed sixty (60) days and for successive sixty (60) day periods thereafter if the infraction has not been corrected during the prior sixty (60) day suspension period.

ARTICLE VII

MAINTENANCE

Section 7.1 **Association's General Responsibilities.** The Association shall maintain and keep in good repair the Association Property (and certain other areas, as more expressly provided in this Section 7.1), the costs of such maintenance to be Association Expenses (subject to any insurance then in effect). This maintenance shall include, but not be limited to:

(a) maintenance, repair and replacement of any and all landscaping and other flora, structures and improvements situated upon the Association Property, and any perimeter or boundary walls or fences surrounding the Property, and any and all fencing and gates along any easements within the Property;

(b) maintenance, repair and replacement of any street or road located upon Association Property, including, but not limited to, any adjacent real property upon which the Association has been granted an easement, license or right-of-way; and

(c) maintenance and repair of any drainage easements upon or across the Association Property or designated retention basins as shown on the final plat of the Property.

Section 7.2 **Maintenance of Owner's Structures.** Each Owner shall be responsible for the maintenance, cleaning, painting, repair and general care of all structures existing or constructed upon such Owner's Lot, and, in particular, each Owner shall cause the exterior of said structures to be maintained in good condition and repair and in an attractive state consistent with general community standards within the Property. In the event that the Board shall determine that any Owner is in breach of such Owner's obligations under the preceding sentence, the Board shall promptly give such Owner written notice of such determination, including a reasonably detailed list or description of the repairs, maintenance or other work required to cure such Owner's breach, and in the event the Owner shall not have cured such breach within thirty (30) days after the date of said written notice (or such longer period as may be specified in writing by the Board), the Board, acting on behalf of the Association, may cause the repairs, maintenance or other work to be performed so as to cure such Owner's breach, and the Association's costs in doing so, together with interest from the date of expenditure at the rate to be determined by the Board, shall be the personal obligation of such Owner and shall constitute a lien on such Owner's Lot, which lien shall have the priority and may be enforced in the manner described in Section 9.3 of this Declaration. In addition, the Board, acting on

behalf of the Association, shall also have standing and authority to request that a court of competent jurisdiction compel such Owner to cure such breach, and may pursue either or both of the courses of action described herein. The Association and its officers, directors, agents, employees and contractors shall have an easement on, over, across and through each Lot to permit it to carry out its duties and obligations, and to exercise its rights and privileges, under this Article VII.

Section 7.3 **Publicly-Dedicated Areas**. Except as expressly provided in this Article VII, and except as may otherwise be required by applicable law, the Association shall have no responsibility to maintain any areas within the Property (including, but not limited to, public streets) which are dedicated to or the responsibility of a municipality or other governmental entity.

Section 7.4 **No Discrimination**. The provision of services by the Association in accordance with Section 7.1 shall not be deemed to be discrimination in favor of or against any Owner.

ARTICLE VIII

INSURANCE AND FIDELITY BONDS; CASUALTY LOSSES

Section 8.1 **Insurance to be Obtained by the Association**.

(a) **Hazard Insurance**. The Board, acting on behalf of the Association, shall obtain and maintain at all times insurance for all insurable improvements on the Association Property against loss or damage caused by fire or other hazards customarily covered for similar types of projects.

(b) **Liability Insurance**. The Board, acting on behalf of the Association, shall obtain and maintain at all times a comprehensive general liability policy in amounts, with deductibles, and under such terms and conditions as are acceptable to the Board in its sole discretion, insuring the Association, each member of the Board and each Owner (and, so long as Declarant, or a person with whom Declarant contracts directly for the performance of all or a substantial portion of Declarant's rights and obligations hereunder, or for the construction of substantial improvements on the Property, retains an interest in the Property or any Lot), insuring Declarant and such person.

(c) **Fidelity Bonds**. The Board, acting on behalf of the Association, shall obtain and maintain at all times fidelity bond coverage in amounts, with deductibles, and under such terms and conditions as are acceptable to the Board, in its sole discretion, to protect against dishonest acts on the part of officers, directors and employees of the Association, and all others who handle or are responsible for handling, funds held or administered by the Association, whether or not such officers, directors, employees or others receive compensation for services they render to or on behalf of the Association.

