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**DECLARATION OF
COVENANTS, CONDITIONS AND RESTRICTIONS
FOR
AGUA FRIA RANCH**

TABLE OF CONTENTS

	<u>Page</u>
ARTICLE 1 DEFINITIONS.....	1
ARTICLE 2 PROPERTY AND PERSONS BOUND BY DECLARATION	5
2.1 PURPOSE AND BINDING EFFECT	5
2.3 DISCLAIMER OF IMPLIED COVENANTS	5
ARTICLE 3 ARCHITECTURAL CONTROL	6
3.1 APPROVAL REQUIRED	6
3.2 REVIEW OF PLANS	6
3.3 VARIANCES	7
3.4 CONSTRUCTION OF IMPROVEMENTS	7
3.5 NO CHANGES WITHOUT APPROVAL	8
3.6 REVIEW FEE	8
3.7 NEW CONSTRUCTION	8
3.8 NO WARRANTY	8
3.9 CONDITIONAL APPROVAL	8
3.10 IMPROVEMENTS TO AREAS OF ASSOCIATION RESPONSIBILITY	9
3.11 DESIGN REVIEW COMMITTEE	9
ARTICLE 4 USE RESTRICTION	10
4.1 RESIDENTIAL USE	10
4.2 TEMPORARY OCCUPANCY AND TEMPORARY BUILDINGS	10
4.3 NUISANCES; CONSTRUCTION ACTIVITIES	11
4.5 ANTENNAS	11
4.7 TRASH CONTAINERS AND COLLECTION	12
4.9 UTILITY SERVICE	12
4.10 OVERHEAD ENCROACHMENTS	12
4.11 ANIMALS	12
4.12 MACHINERY AND EQUIPMENT	13
4.13 SIGNS	13
4.14 FURTHER SUBDIVISION, PROPERTY RESTRICTIONS, REZONING AND TIMESHARES ..	13
4.15 VEHICLES AND PARKING	13
4.16 DRAINAGE	15
4.17 GARAGES AND CARPORTS	15
4.18 ROOFTOP HVAC EQUIPMENT PROHIBITED	16
4.19 BASKETBALL GOALS AND BACKBOARDS	16
4.20 PLAYGROUND EQUIPMENT	16
4.21 RENTAL OF LOTS	16
4.22 SCREENING MATERIALS	17
4.23 LIGHTS	17
4.24 WINDOW COVER MATERIALS	17

ARTICLE 5 EASEMENTS.....	17
5.1 EASEMENTS FOR USE OF COMMON AREA	17
5.2 UTILITY AND DEVELOPMENT EASEMENTS.....	19
5.3 EASEMENTS TO FACILITATE DEVELOPMENT.....	19
5.4 DEDICATIONS AND EASEMENTS REQUIRED BY GOVERNMENTAL AUTHORITY	20
5.5 FURTHER ASSURANCES	20
5.6 DURATION OF DEVELOPMENT RIGHTS; ASSIGNMENT	20
5.8 EASEMENT FOR MAINTENANCE AND ENFORCEMENT	20
5.9 EASEMENTS FOR ENCROACHMENTS.....	20
THE ASSOCIATION; ORGANIZATION; MEMBERSHIP AND VOTING RIGHTS.....	21
6.1 FORMATION OF ASSOCIATION	21
6.2 BOARD OF DIRECTORS AND OFFICERS	21
6.3 THE ASSOCIATION RULES.....	21
6.4 PERSONAL LIABILITY.....	22
6.5 IMPLIED RIGHTS.....	22
6.6 IDENTITY OF MEMBERS	22
6.7 CLASSES OF MEMBERS AND VOTING RIGHTS	22
6.8 VOTING PROCEDURES	22
6.9 TRANSFER OF MEMBERSHIP	23
6.10 CONVEYANCE, LEASE OR ENCUMBRANCE OF COMMON AREA.....	23
6.11 SUSPENSION OF VOTING RIGHTS	23
ARTICLE 7 COVENANT FOR ASSESSMENTS AND CREATION OF LIEN.....	24
7.1 CREATION OF LIEN AND PERSONAL OBLIGATION OF ASSESSMENTS.....	24
7.2 REGULAR ASSESSMENTS	24
7.3 SPECIAL ASSESSMENTS	25
7.4 ASSESSMENT PERIOD	25
7.5 OBLIGATION OF DECLARANT FOR DEFICIENCIES.....	25
7.6 RULES REGARDING BILLING AND COLLECTION PROCEDURES.....	26
7.7 EFFECT OF NONPAYMENT OF ASSESSMENTS; REMEDIES OF THE ASSOCIATION.....	26
7.8 PURPOSES FOR WHICH ASSOCIATION'S FUNDS MAY BE USED.....	27
7.9 SURPLUS FUNDS.....	28
7.10 INITIAL CAPITAL CONTRIBUTION.....	28
7.11 TRANSFER FEE	28
ARTICLE 8 MAINTENANCE.....	28
8.1 AREAS OF ASSOCIATION RESPONSIBILITY	28
8.2 LOT OWNER'S RESPONSIBILITY	29
8.3 ASSESSMENT OF CERTAIN COSTS OF MAINTENANCE AND REPAIR.....	29
8.4 IMPROPER MAINTENANCE AND USE OF LOTS.....	29
8.5 BOUNDARY WALLS.....	30
8.6 MAINTENANCE OF WALLS OTHER THAN BOUNDARY WALLS	30
ARTICLE 9 INSURANCE.....	31
9.1 SCOPE OF COVERAGE.....	31
9.2 CERTIFICATES OF INSURANCE	32

9.3	PAYMENT OF INSURANCE PROCEEDS	32
9.4	REPAIR AND REPLACEMENT OF DAMAGED OR DESTROYED PROPERTY	32
9.5	Cancellation of Insurance.....	32
 ARTICLE 10 DISPUTE RESOLUTION		33
10.1	DEFINED TERMS	33
10.2	AGREEMENT TO RESOLVE CERTAIN DISPUTES WITHOUT LITIGATION	33
10.3	NOTICE OF CLAIM	34
10.4	MEDIATION	34
10.5	BINDING ARBITRATION	35
10.6	RIGHT TO ENTER, INSPECT, REPAIR AND/OR REPLACE	37
10.7	USE OF FUNDS	37
10.8	APPROVAL OF LITIGATION	38
 ARTICLE 11 GENERAL PROVISIONS.....		38
11.1	ENFORCEMENT	38
11.2	DURATION; TERMINATION	40
11.3	AMENDMENTS.....	40
11.4	CONDEMNATION OF COMMON AREA	41
11.5	INTERPRETATION	41
11.6	SEVERABILITY	42
11.7	CHANGE OF CIRCUMSTANCES	42
11.8	LAWS, ORDINANCES AND REGULATIONS	42
11.9	REFERENCES TO THIS DECLARATION IN DEEDS	42
11.10	GENDER AND NUMBER.....	42
11.11	CAPTIONS AND TITLES.....	42

DECLARATION OF COVENANTS, CONDITIONS AND RESTRICTIONS

FOR

AQUA FRIA RANCH

This Declaration of Covenants, Conditions, and Restrictions for Agua Fria Ranch (this "Declaration") is made this ____ day of _____, 2003 by Sivage-Thomas of Arizona, Inc., a New Mexico corporation (the "Declarant").

INTRODUCTION

A. The Declarant is the Owner of fee title to the real property located in the Town of Youngtown, Arizona, legally described on Exhibit A attached hereto (the "Property").

B. By executing and recording this Declaration with the County Recorder of Maricopa County, Arizona, the Declarant intends to impose upon the Property mutually beneficial covenants, conditions, restrictions and easements to establish a flexible and reasonable procedure for the overall development, administration, maintenance, use and preservation of the Property. Declarant intends for this Declaration to create equitable servitudes and covenants appurtenant to and running with the Property and which will be binding upon all future Owners of all or any portion of the Property and any other Person acquiring any right, title or interest in or to all of any portion of the Property.

C. Declarant deems it desirable to provide for the creation of a nonprofit corporation under the laws of the State of Arizona to administer and maintain, repair and replace the Areas of Association Responsibility and to provide for the levying and collecting of Assessments and other charges by the Association for the purpose, among other things, of paying all costs and expenses incurred or to be incurred by the Association in connection with the maintenance, repair and replacement and administration of the Areas of Association Responsibility and the enforcement of the covenants, conditions and restrictions contained in this Declaration.

ARTICLE 1

DEFINITIONS

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

1.1 "**Areas of Association Responsibility**" means (a) all Common Area; and (b) all land, and the Improvements situated thereon, located within the boundaries of a Lot or a public right-of-way, including but not limited to the center landscaped median in Agua Fria Ranch Parkway, which the Association is obligated to maintain, repair and replace pursuant to the terms of this Declaration or other Recorded document executed by the Declarant or the Association. The Area of Association Responsibility shall include the payment to the Town of Youngtown for

the maintenance of the park area on Tract A of the Plat dedicated to the Town of Youngtown, but only for the first three (3) calendar years following the transfer of the Common Areas to the Association hereunder.

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

1.3 **"Assessable Lot"** means, during the Declarant Control Period, a Lot owned by a Person other than the Declarant. After the termination of the Declarant Control Period, all Lots shall be Assessable Lots.

1.4 **"Assessment"** means a Regular Assessment or Special Assessment.

1.5 **"Assessment Lien"** means the lien created and imposed by Article 7.

1.6 **"Assessment Period"** means the period set forth in Section 7.4.

1.7 **"Association"** means Agua Fria Ranch Homeowners Association, Inc., an Arizona nonprofit corporation, and its successors and assigns.

1.8 **"Association Rules"** means the rules adopted by the Board pursuant to Section 6.3.

1.9 **"Board"** means the Board of Directors of the Association.

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

1.11 **"Common Area"** means (a) Tracts B, C, E, F, H, I, J, K, L, M, N, O, P, Q, R, UU and XX, inclusive, Agua Fria Ranch, according to the plat recorded in Book 632 of Maps, page 20, records of Maricopa County, Arizona, together with all improvements situated thereon and (b) all land, together with all Improvements situated thereon, which the Association at any time owns in fee or in which the Association has a leasehold interest for as long as the Association is the owner of the fee or leasehold interest, except that Common Area shall not include any Lot the Association acquires by the foreclosure of the Assessment Lien or any deed in lieu of foreclosure, and excepting that portion of Tract H which has been conveyed to the Arizona American Water Company as a site for a lift station. "Common Area" will also include those landscaped tracts that will be created through the subdivision of Tracts VV, WW and YY/ZZ that will make up the second, third and fourth phases of Agua Fria Ranch, respectively.

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

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

1.14 "Declarant" means Sivage-Thomas of Arizona, Inc., a New Mexico corporation, and any Person to whom it may expressly assign any or all of its rights under this Declaration by a Recorded instrument.

1.15 "Declarant Control Period" means the period commencing upon the Recording of this Declaration and ending on the date that the Class B membership in the Association terminates pursuant to Section 6.7.

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

1.17 "Design Guidelines" means the procedures, standards and guidelines adopted by the Design Review Committee pursuant to Section 3.11, as amended or supplemented from time to time.

1.18 "Design Review Committee" means the committee created pursuant to Section 3.11.

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

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

1.21 "Improvement" means: (a) any Residence, building, fence or wall; (b) any swimming pool, tennis court, basketball goal, backboard or apparatus or playground equipment; (c) any road, driveway or parking area; (d) any trees, plants, shrubs, grass or other landscaping improvements of any type and kind; (e) any statuary, fountain, artistic work, craft work, figurine or ornamentation of any type or kind, and (f) any other structure of any type, kind or nature.

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

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

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

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

1.26 "Member" means any Person who is a member of the Association as provided in Section 6.6.

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

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

1.29 "Plat" means the plat of Agua Fria Ranch, recorded in Book 632 of Maps, page 20, records of Maricopa County, Arizona, and all amendments, supplements and corrections thereto.

1.30 "Property" or "Project" means the real property described on Exhibit A attached to this Declaration together with all Improvements located thereon.

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

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

1.33 "Regular Assessment" means the Assessments levied pursuant to Section 7.2.

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

1.35 "Resident" means each person occupying or residing in any Residence.

1.36 "Special Assessment" means any assessment levied pursuant to Section 7.3.

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

ARTICLE 2

PROPERTY AND PERSONS BOUND BY DECLARATION

2.1 Purpose and Binding Effect.

Declarant is the record owner of fee title to the Property. Declarant intends by this Declaration to impose upon the Property covenants, conditions, restrictions and easements to create a general plan of development for the Property and to provide a flexible and reasonable procedure for the administration, maintenance, preservation, use and enjoyment of the Property. The Declarant declares that all of the Property shall be held, sold, used and conveyed subject to the easements, restrictions, conditions and covenants set forth in this Declaration which are for the purpose of protecting the value, desirability and appearance of the Property. Declarant further declares that all of easements, restrictions, conditions and covenants in this Declaration shall run with the Property and shall be binding upon and inure to the benefit of the Declarant and all Owners, Lessees and Residents and all other Persons having or acquiring any right, title or interest in the Property or any part thereof, their heirs, successors, successors in title and assigns. Each Person who acquires any right, title or interest in the Property, or any part thereof, agrees to abide by all of the provisions of the Community Documents. This Declaration shall be binding upon and shall be for the benefit of and enforceable by the Association. Declarant makes no warranties or representations, express or implied, as to the binding effect or enforceability of all or any portion of the Community Documents, or as to the compliance of any of the provisions of the Community Documents with public laws, ordinances and regulations applicable thereto.

2.2 Disclaimer of Implied Covenants.

The Declarant makes no representation or warranty that the Project will be developed in accordance with the zoning and development plan for the Project as it exists as of the Recording of this Declaration. Each Owner, Lessee, Resident and other Person acquiring any Lot or other real property in the Project acknowledges that the zoning and development plan may be amended from time to time by the Town of Youngtown. The Declarant makes no warranties or representations, express or implied, as to the binding effect or enforceability of all or any portion of the Community Documents or as to the compliance of any provision of the Community Documents with public laws, ordinances, or regulations applicable to the Project. Nothing contained in this Declaration and nothing which may be represented to a purchaser by real estate brokers or salesmen shall be deemed to create any implied covenants, servitudes or restrictions with respect to the use of any property subject to this Declaration.

ARTICLE 3

ARCHITECTURAL CONTROL

3.1 Approval Required.

As used in this Article 3, "Construction" means any devegetation, excavation or grading work or the construction, erection or installation of an Improvement on a Lot, and "Modification" means an addition, alteration, repair, change or other work which in any way alters the exterior appearance of any Improvement located on a Lot. No Construction or Modification shall be made or done without the prior written approval of the Design Review Committee. The provisions of this Article do not apply to, and approval of the Design Review Committee shall not be required for, any Construction or Modification or any other work made by, or on behalf of, the Declarant.

Any Owner desiring approval of the Design Review Committee for any Construction or Modification shall submit to the Design Review Committee a written request for approval specifying in detail the nature and extent of the Construction or Modification which the Owner desires to perform. The request for approval must be accompanied by plans or specifications showing the nature, kind, color, shape, height, materials and location of the Improvements and such other information as may be required by the Design Guidelines. Any Owner requesting the approval of the Design Review Committee shall also submit to the Design Review Committee any additional information, plans and specifications which the Design Review Committee may request.

In the event that the Design Review Committee fails to approve or disapprove a complete application for approval within forty-five (45) days after the application, together with any fee payable pursuant to Section 3.6 and all supporting information, plans and specifications requested by the Design Review Committee, have been submitted to the Design Review Committee, approval will not be required and this Section will be deemed to have been complied with by the Owner who requested approval of such plans. The approval by the Design Review Committee of any Construction or Modification shall not be deemed a waiver of the Design Review Committee's right to withhold approval of any similar Construction or Modification subsequently submitted for approval.

3.2 Review of Plans.

In reviewing plans and specifications for any Construction or Modification, the Design Review Committee may consider any and all factors which the Design Review Committee, in its sole and absolute discretion, determines to be relevant including, but not limited to: (a) the harmony of the proposed Improvements with existing Improvements in the Project or with Improvements previously approved by the Design Review Committee but not yet constructed; (b) the location of the proposed Improvements in relation to existing topography, finished grade elevations, roads, Common Area and other structures; (c) the exterior design, finish materials and color of the proposed Improvements; and (d) compliance of the proposed Improvements with this Declaration and the Design Guidelines. The Design Review Committee may disapprove

plans and specifications for any Construction or Modification even though the plans and specifications may be in substantial compliance with this Declaration and the Design Guidelines if the Design Review Committee, in its sole and absolute discretion, determines that the proposed Construction or Modification, or some aspect or portion thereof, is undesirable or unattractive.

Decisions of the Design Review Committee may be based on purely aesthetic considerations. Each Owner acknowledges that determinations as to such matters are purely subjective and opinions may vary as to the desirability and attractiveness of certain Improvements. Each Owner agrees that the decision of the Design Review Committee shall be final on all matters submitted to it pursuant to this Declaration.

The approval required of the Design Review Committee pursuant to this Article 3 shall be in addition to, and not in lieu of, any approvals or permits which may be required under any federal, state or local law, statute, ordinance, rule or regulation.

The Design Review Committee, by resolution, may exempt certain Construction or Modifications from the application and approval requirements of this Article, provided such Construction or Modifications are undertaken in strict compliance with the requirements of such resolution. No approval shall be required to repaint the exterior of a structure in accordance with the originally approved color scheme or to rebuild in accordance with originally approved plans and specifications. Any Owner may remodel, paint or redecorate the interior of a Residence without approval so long as such activity does not affect the exterior appearance of the Residence.

3.3 Variances.

The Design Review Committee may authorize variances from compliance with any provision of the Design Guidelines in circumstances where the design meets the intent of the provision sought to be varied and where granting of the variance would enhance design innovation and excellence, or when circumstances such as topography, natural obstructions, hardship, or aesthetic or environmental considerations so require, and the Design Review Committee determines, in its sole discretion, that the objective of the particular requirement can still be achieved. No variance shall be effective unless in writing and signed by an authorized representative of the Design Review Committee. No variance may be contrary to this Declaration or estop the Design Review Committee from denying a variance in other circumstances including, without limitation, circumstances similar or identical to circumstances under which the Design Review Committee previously granted a variance. For purpose of this Section, the inability to obtain approval of any governmental agency, issuance of any permit, or the terms of any financing shall not constitute hardships.

3.4 Construction of Improvements.

Upon receipt of approval from the Design Review Committee for any Construction or Modification, the Owner who had requested such approval shall proceed with the Construction or Modification approved by the Design Review Committee as soon as practicable and shall

diligently pursue such Construction or Modification so that it is completed as soon as reasonably practicable and within such time as may be prescribed by the Design Review Committee.

3.5 No Changes Without Approval.

Any Construction or Modification approved by the Design Review Committee must be done or performed in accordance with the plans and specifications approved by the Design Review Committee. No change, deletion or addition to the plans and specifications approved by the Design Review Committee may be made without the prior written approval of the Design Review Committee.

3.6 Review Fee.

The Design Review Committee shall have the right to charge a fee for reviewing requests for approval of any Construction or Modification, which fee shall be payable at the time the application for approval is submitted to the Design Review Committee. The fee charged by the Design Review Committee may include the actual or estimated fees or costs incurred or anticipated to be incurred by the Design Review Committee in consulting with, or having the application reviewed by, architects, engineers or other professionals. The Association may retain architects, engineers or other persons as deemed necessary to review applications or otherwise assist the Design Review Committee.

3.7 New Construction.

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

3.8 No Warranty.

The approval by the Design Review Committee of any Construction or Modification shall not be deemed a warranty or representation by the Design Review Committee as to the quality of such Construction or Modification or that such Construction or Modification conforms to any applicable building codes or other federal, state or local law, statute, ordinance, rule or regulation.

3.9 Conditional Approval.

The Design Review Committee may condition its approval of plans and specifications upon the agreement by the Owner submitting such plans and specifications to furnish to the Association a bond or other security acceptable to the Design Review Committee in an amount determined by the Design Review Committee to be reasonably sufficient to: (a) assure the completion of the proposed Improvements or the availability of funds adequate to remedy any nuisance or unsightly conditions occurring as a result of the partial completion of such Improvement, and (b) repair any damage which might be caused to any Area of Association Responsibility as a result of such work. Provided there is no damage caused to any Area of Association Responsibility by the Owner or its agents or contractors, any such bond shall be

released or security shall be fully refundable to the Owner upon the completion of the Improvements in accordance with the plans and specifications approved by the Design Review Committee and the Owner's written request to the Design Review Committee.

3.10 Improvements to Areas of Association Responsibility.

If plans and specifications submitted to the Design Review Committee pertain to an Improvement which is within an Area of Association Responsibility so that the Association is responsible for the maintenance, repair and replacement of such Improvement, the Design Review Committee may condition its approval of the plans and specifications for the proposed Construction or Modification with respect to the Improvement on the agreement of the Owner to reimburse the Association for the future cost of the repair, maintenance or replacement of such Improvement.

3.11 Design Review Committee.

So long as the Declarant owns one or more Lots, the Declarant shall have the sole right to determine the number of members on the Design Review Committee and to appoint and remove the members of the Design Review Committee. At such time as the Declarant no longer owns any Lot, the Board shall determine the number of members on the Design Review Committee, and the members of the Design Review Committee shall be appointed and may be removed by the Board. The Declarant may at any time voluntarily surrender its right to appoint and remove the members of the Design Review Committee, and in that event the Declarant may require, for so long as the Declarant own any Lot, that specified actions of the Design Review Committee, as described in a Recorded instrument executed by the Declarant, be approved by the Declarant before they become effective.

The Design Review Committee may adopt, amend and repeal architectural guidelines, standards and procedures to be used in rendering its decisions. Such guidelines, standards and procedures may include, without limitation, provisions regarding: (a) the size and height of Residences; (b) architectural design, with particular regard to the harmony of the design with the surrounding structures and typography; (c) placement of Residences and other buildings; (d) landscaping design, content and conformance with the character of the Property and permitted and prohibited plants; (e) requirements concerning exterior color schemes, exterior finishes and materials; (f) signage; (g) perimeter and screen wall design and appearance; (h) time periods for commencement and completion of any approved construction or modification; and (i) rules and regulations governing construction activities. Any adoption, amendment or repeal of the Design Guidelines after the Declarant no longer has the right to appoint the Design Review Committee must be approved by the Board.

The Design Review Committee may establish one or more subcommittees consisting of one or more members of the Design Review Committee and may delegate to such subcommittee or subcommittees the authority and power of the Design Review Committee to approve or disapprove any Construction or Modification within a specified portion of the Project.

ARTICLE 4

USE RESTRICTION

4.1 Residential Use.

All Residences shall be used, improved and devoted exclusively to residential use. No trade or business may be conducted on any Lot or in or from any Residence, except that the Owner, Lessee or other Resident of a Residence may conduct a business activity within the Residence so long as: (a) the existence or operation of the business activity is not apparent or detectable by sight, sound or smell from outside the Residence; (b) the business activity is a legal activity and conforms to all applicable zoning ordinances or requirements for the Project; (c) the business activity does not involve persons coming to the Lot to purchase goods or services or the door-to-door solicitation of Owners, Lessees or Residents in the Project; (d) the use of the Residence for trade or business in no way destroys or is incompatible with the residential character of the Residence or the surrounding neighborhood; (e) the trade or business is conducted only inside the Residence, and does not involve the viewing, purchasing or taking delivery of goods or merchandise at, to, from or in any Residence; (f) the trade or business is conducted by a Resident or Residents of the Residence with no employee working in or from such Residence who is not a Resident thereof; (g) the volume of vehicular or pedestrian traffic or parking generated by such trade or business does not result in congestion or be in excess of what is customary in a residential neighborhood; (h) the trade or business does not utilize flammable liquids or hazardous materials in quantities not customary to a residential use; and (i) the use of the Residence for a trade or business does not violate any other provision of the Community Documents.

The terms "business" and "trade" as used in this Section shall be construed to have ordinary, generally accepted meanings, and shall include, without limitation, any occupation, work or activity undertaken on an ongoing basis which involves the provision of goods or services to persons other than the provider's family and for which the provider receives a fee, compensation or other form of consideration, regardless of whether: (a) such activity is engaged in full or part time; (b) such activity is intended or does generate a profit; or (c) a license is required for such activity. The leasing of a Residence by the Owner thereof shall not be considered a trade or business within the meaning of this Section.

Without limiting the foregoing, each Owner shall maintain and keep his Lot and any Common Areas subject to his exclusive control at all times in a safe, sound and sanitary condition and repair and shall correct any condition or refrain from any activity which might interfere with the reasonable enjoyment by other Owners of their respective Lots or the Common Areas.

4.2 Temporary Occupancy and Temporary Buildings.

No trailer, basement of any incomplete building, tent, shack, shed, garage or barn, and no temporary buildings or structures of any kind, shall be used at any time for a residence, either temporary or permanent, or otherwise be kept on a Lot so as to be Visible From Neighboring

Property, except such structures as any builder designated by Declarant may find necessary or convenient to the development and sale of Lots and/or houses. Temporary buildings, trailers or other structures used during the construction of Improvements approved by the Design Review Committee shall be removed immediately after the completion of construction, and in no event shall any such buildings, trailers or other structures be maintained or kept on any property for a period in excess of twelve months without the prior written approval of the Design Review Committee.

4.3 Nuisances; Construction Activities.

No rubbish or debris of any kind shall be placed or permitted to accumulate on any Lot or other property, and no odors or loud noises shall be permitted to arise or emit therefrom, so as to render any such property or any portion thereof, or activity thereon, unsanitary, unsightly, offensive or detrimental to any other property in the vicinity thereof or to the Residents of such other property. No condition shall be permitted to exist or operate upon any Lot or other property so as to be offensive or detrimental to any other property in the vicinity thereof or to its Residents. No Lot shall be used in any manner to explore for or to remove any water, oil or other hydrocarbons, minerals of any kind, gravel, gas, earth or any earth substance of any kind. No outside clotheslines or other outside facilities for drying or airing clothes shall be erected, placed or maintained on any Lot so as to be Visible From Neighboring Property. No Person shall permit any thing or condition to exist upon any Lot which shall induce, breed or harbor infectious plant diseases or noxious insects. Normal construction activities and parking in connection with the building of Improvements on a Lot shall not be considered a nuisance or otherwise prohibited by this Declaration, but Lots shall be kept in a neat and tidy condition during construction periods, trash and debris shall not be permitted to accumulate, and supplies of brick, block, lumber and other building materials will be piled only in such areas as may be approved in writing by the Design Review Committee. In addition, any construction equipment and building materials stored or kept on any Lot during the construction of Improvements may be kept only in areas approved in writing by the Design Review Committee, which may also require screening of the storage areas. The provisions of this Section shall not apply to construction activities of the Declarant.

4.4 Antennas.

To the extent permitted by applicable law, the installation of antennas, satellite dishes or other devices for the transmission or reception of television or radio signals or any other form of electromagnetic radiation shall be subject to the prior written approval of the Design Review Committee. Therefore, no antenna, satellite or microwave dish or other device for transmission or reception of television or radio signals shall be constructed, installed, erected, used or maintained on any Lot without the prior written approval of the Design Review Committee unless applicable law prohibits the Design Review Committee from requiring such approval. Even if applicable law prohibits the Design Review Committee from requiring prior approval for the installation of certain antennas, any such antennas must still be installed in accordance with the Design Guidelines.

4.5 Trash Containers and Collection.

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

4.6 Utility Service.

No lines, wires, or other devices for the communication or transmission of electric current or power, including telephone, television, and radio signals, shall be erected, placed or maintained anywhere in or upon any Lot unless the same shall be contained in conduits or cables installed and maintained underground or concealed in, under or on buildings or other structures approved by the Design Review Committee. No provision of this Declaration shall be deemed to forbid the erection of temporary power or telephone structures incident to the construction of buildings or structures approved by the Design Review Committee.

4.7 Overhead Encroachments.

No tree, shrub, or planting of any kind on any Lot shall be allowed to overhang or otherwise to encroach upon any sidewalk, street, pedestrian way or other area from ground level to a height of eight (8) feet without the prior written approval of the Design Review Committee.

4.8 Animals.

No animal, bird, fowl, poultry, reptile or livestock may be kept on any Lot, except that a reasonable number of dogs, cats, parakeets or similar household birds may be kept on a Lot if they are kept, bred or raised thereon solely as domestic pets and not for commercial purposes. The Board shall have the authority to determine what is a reasonable number of dogs, cats, parakeets or similar household birds for any particular Lot, and the Board's determination shall be final. All dogs, cats or other pets permitted under this Section shall be confined to an Owner's Lot, except that a dog may be permitted to leave an Owner's Lot if such dog is at all times kept on a leash not to exceed six feet (6') in length and is not permitted to enter upon any other Lot. Any person bringing a dog onto the Common Area shall immediately remove any feces deposited on the Common Area by the dog. The Board may restrict the portions of the Common Area on which dogs are permitted.

No animal, bird, fowl, poultry or livestock 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, bird, fowl, poultry, or livestock shall be maintained so as to be Visible From Neighboring Property. Upon the written request of any Owner, Lessee or Resident, the Board shall conclusively determine, in its sole and absolute discretion, whether, for the purposes of this Section, a particular animal, bird, fowl, poultry, or livestock is a nuisance or making an

unreasonable amount of noise. Any decision rendered by the Board shall be enforceable in the same manner as other restrictions set forth in this Declaration.

The Board may adopt rules and regulations further restricting and governing animals within the Property, which rules may include, without limitation rules providing for the removal from the Property of a domestic pet which has bitten or attacked a person or other animal, has a propensity to attack persons or other animals or otherwise constitutes a threat to the safety of persons or other animals in the Property or which because of incessant barking or other behavior constitutes an unreasonable annoyance or nuisance to Owners and Occupants.

4.9 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 residential use of property or machinery or equipment necessary for the construction of a Residence, building, structure, or other Improvement on the Lot.

4.10 Signs.

Except for signs constructed or erected by the Declarant or by the Association, no signs whatsoever may be erected, posted or displayed on any Lot in a location that is Visible From Neighboring Property without the prior written approval of the Design Review Committee.

4.11 Further Subdivision, Property Restrictions, Rezoning and Timeshares.

Without the prior written approval of the Design Review Committee and the Board, no Owner other than the Declarant shall do any of the following: (a) further subdivide a Lot or separate the Lot into smaller lots or parcels; (b) convey or transfer less than all of a Lot; or (c) replat the Lot or combine the Lot with other Lots. No further covenants, conditions, restrictions or easements shall be recorded by any Owner, Lessee, or other Person other than the Declarant against any Lot without the provisions thereof having been first approved in writing by the Design Review Committee and the Board. No application for rezoning, variances or use permits pertaining to any Lot shall be filed with any governmental authority by any Person other than the Declarant unless the application has been approved by the Design Review Committee and the Board and the proposed use otherwise complies with this Declaration. No Lot shall be subjected to or used for any timesharing, cooperative, weekly, monthly or any other type or revolving or periodic occupancy by multiple owners, cooperators, licensees or timesharing participants.

4.12 Vehicles and Parking.

As used in this Section: (a) "Motor Vehicle" means a car, van, sport utility vehicle, bus, truck, recreational vehicle, motor home, motorcycle, all terrain vehicle, utility vehicle, pickup truck or other motor vehicle; and (b) "Street" means each public or private street shown on the Plat.

No mobile home, travel trailer, tent trailer, trailer, camper shell, boat trailer or other similar equipment or vehicle may be parked, kept or stored on the Common Area. No mobile home, travel trailer, tent trailer, trailer, camper shell, boat trailer or other similar equipment may be parked, kept or stored on any Lot so as to be Visible From Neighboring Property.

Except as permitted by this Section, no Motor Vehicle may be parked, kept or stored on any Lot, the Street or any other Common Area. No Motor Vehicle which exceeds eight feet (8') in height or exceeds twenty-four feet (24') in length shall be parked on a driveway or any other part of a Lot so as to be Visible From Neighboring Property, except for: (a) the temporary parking of the Motor Vehicles of contractors, subcontractors, suppliers or vendors of the Association or the Owners, Lessees or Residents, and (b) the temporary parking in the driveway on a Lot of recreational vehicles, motor homes and similar vehicles owned or leased by an Owner, Lessee or Resident for the purpose of loading or unloading, subject to such limitations as may be established by the Board. No Motor Vehicle of a contractor, subcontractor, supplier or vendor of an Owner, Lessee or Resident shall be parked overnight on a Lot, the Street or any other part of the Common Area.

It is the intent of this Section to limit parking on the Street. No Motor Vehicle owned or leased by an Owner, Lessee or Resident of a Lot may be parked on the Street if space for the parking of the Motor Vehicle is available in any of the following areas: (a) the garage or carport situated on the Lot of the Owner, Lessee or Resident; (b) the driveway on the Lot constructed as part of the initial construction of Improvements on the Lot by the Declarant; or (c) a driveway expansion constructed on the Lot with the approval of the Design Review Committee. In its review of any proposal to expand a driveway, the Design Review Committee may only approve of those proposals where all of the following criteria are met:

1. The driveway is expanded only toward the closest side property line to the driveway; and
2. Any existing drainage flows are adequately conveyed, and
3. The driveway extension observes at least a three (3) foot setback from any side property line; and
4. No driveway expansion shall be permitted to extend the driveway in the direction of the front door of the residence so as to allow parking into the main portion of the landscaped front yard.

It is also the intent of this Section to limit the parking of Motor Vehicles owned or leased by an Owner, Lessee or Resident of the Lot in the driveway and in any driveway expansion situated on the Lot. Accordingly, Motor Vehicles owned or leased by an Owner, Lessee or Resident of a Lot must be parked in the garage or carport situated on the Lot to the extent space is available in the garage or carport for the parking of such Motor Vehicles. If space is not available in the garage or carport, then Motor Vehicles owned or leased by an Owner, Lessee or Resident of a Lot may be parked on the driveway constructed as part of the initial construction of Improvements on the Lot by the Declarant. Parking of Motor Vehicles owned or leased by an Owner, Lessee or Resident of a Lot may only be parked on a driveway expansion constructed with the approval of the Design Review Committee if space for the parking of such Motor Vehicles is not available either in the garage or carport or in the driveway constructed as part of the initial construction or Improvements on the Lot by the Declarant. The parking of a Motor

Vehicle owned or leased by and Owner, Lessee or Resident of a Lot on a driveway expansion is also subject to such rules and regulations as may be adopted by the Board.

No Motor Vehicle of any kind may be stored on a Lot except in a garage, and no Motor Vehicle of any kind may be stored on the Common Area. For purposes of illustration but not of limitation, a Motor Vehicle shall be deemed stored if it is covered by a car cover, tarp or other material. Motor Vehicles owned by guests of an Owner, Lessee or other Resident may be parked in the driveway on a Lot or on the Streets or in designated parking spaces on the Common Area.

No Motor Vehicle shall be constructed, reconstructed or repaired on any Lot in such a manner as to be Visible From Neighboring Property, and no inoperable Motor Vehicle may be stored or parked on any Lot in such a manner as to be Visible From Neighboring Property. Except for emergency repairs, no Motor Vehicle shall be constructed, reconstructed or repaired on the Streets or any other part of the Common Area. No inoperable Motor Vehicle may be stored or parked on the Streets or any other part of the Common Area.

Notwithstanding any other provision of this Section to the contrary, no Motor Vehicle may be parked on a driveway if the length of the Motor Vehicle exceeds the length of the driveway or if the Motor Vehicle encroaches upon or obstructs access across the sidewalk or curb adjacent to the driveway.

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

4.16 Drainage.

No Residence, structure, building, landscaping, fence, wall or other Improvement shall be constructed, installed, placed or maintained in any manner that would obstruct, interfere with or change the direction or flow of water in accordance with the drainage plans for the Project, or any part thereof, or for any Lot as shown on the approved drainage plans on file with the municipality in which the Project is located. In addition, no Owner or other Person shall change the grade or elevation of a Lot in any manner that would obstruct, interfere with or change the direction or flow of water in accordance with the approved drainage plans.

4.13 Garages .

No garage shall be converted to living space or altered or used for storage of material or other purposes which would prevent the use of the garage for the parking of the number of vehicles for which it was designed, except that the Declarant may use a garage in one or more model homes for a sales office and/or a construction office. The interior of all garages shall be maintained and kept in a neat, clean and sightly condition, free of debris or unsightly objects. Garage doors shall be kept closed except when the opening of the door is necessary to permit ingress or egress.

4.14 Rooftop HVAC Equipment Prohibited.

No heating, ventilating, air conditioning or evaporative cooling units or equipment related thereto may be mounted, installed or maintained on the roof of any Residence or other building so as to be Visible From Neighboring Property.

4.15 Basketball Goals and Backboards.

No permanent basketball goal or backboard shall be constructed, installed or maintained on any Lot. Portable basketball goals or backboards may be kept on a Lot provided they are kept and used in accordance with the Association Rules which govern their size, design, color, material, location and hours of use.

4.16 Playground Equipment.

No jungle gyms, swing sets or similar playground equipment which would be Visible From Neighboring Property shall be erected or installed on any Lot without the prior written approval of the Design Review Committee.

4.21 Rental of Lots.

No Owner may lease less than his entire Lot and the Residence situated thereon. All leases must be in writing and must provide that the terms of the lease are subject in all respect to the provisions of the Community Documents and that any violation of this Declaration or the Association Rules by the lessee or the other occupants shall be a default under the lease. There shall be no subleasing of Residences or assignments of leases.

At least ten (10) days before commencement of the lease term, the Owner shall provide the Association with the following information: (a) the commencement date and expiration date of the lease term; (b) the names of each of the Lessees and each other person who will reside in the Residence during the lease term; (c) the address and telephone number at which the Owner can be contacted by the Association during the lease term; and (d) the name, address and telephone number of a person other than the Owner whom the Association can contact in the event of an emergency involving the Lot. Any Owner who leases his Lot and the Residence situated thereon must provide the Lessee with copies of this Declaration, the Design Guidelines and the Association Rules.

Any lease of a Lot or Residence situated thereon must be for an initial term of at least one (1) month. The Owner shall be liable for any violation of this Declaration, the Design Guidelines or the Association Rules by the Lessees or other persons residing in the Residence and their guests or invitees and, in the event of any such violation, the Owner, upon demand of the Association, shall immediately take all necessary actions to correct any such violations.

4.22 Screening Materials.

All screening materials, whether fences, hedges or walls, shall be maintained and replaced from time to time on the Lots by the Owners thereof in accordance with the original construction of such Improvements by the Declarant or as approved by the Design Review Committee pursuant to Article 3.

4.23 Lights.

Except as initially installed by the Declarant, no spotlights, floodlights or other high intensity lighting shall be placed or utilized upon any Lot or any structure erected thereon which in any manner will allow light to be directed or reflected on any other property except as approved by the Design Review Committee.

4.24 Window Cover Materials.

All window coverings facing a street must show white or beige colors unless otherwise approved in writing by the Design Review Committee. No reflective materials, including, but without limitation, aluminum foil, reflective screens or glass, mirrors or similar items, shall be installed or placed upon the outside or inside of any windows of a Residence without the prior written approval of the Board. No enclosures, drapes, blinds, shades, screens or other items affecting the exterior appearance of a Residence shall be constructed or installed without the prior written consent of the Board.

ARTICLE 5

EASEMENTS

5.1 Easements for Use of Common Area.

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

- (a) The right of the Association to dedicate, convey, transfer, lease or encumber the Common Area as provided in Section 6.10; provided, however, that if access to a Lot is over any part of the Common Area, any conveyance, lease or encumbrance of such Common Area shall be subject to an easement for ingress and egress in favor of the Owner and Residents of the Lot and their guests and invitees.
- (b) The right of the Board to adopt rules, regulations or policies regulating the use of the Common Area including rules, regulations and policies limiting the number of guests who may use the Common Area and restricting or prohibiting access to such

portions of the Common Area (such as landscaped areas) not intended for use by the Owners, Lessees or Residents.

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

(d) The rights and easements reserved by or granted to the Declarant by this Declaration.

(e) The rights and easements, if any, reserved or granted to the Declarant or any other Person in the deed conveying the Common Area to the Association.

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

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

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

(h) The rights and easements, if any, reserved or granted to the Declarant or any other Person in the deed conveying the Common Area to the Association.

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

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

5.2 Utility and Development Easements.

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

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

5.3 Easements to Facilitate Development.

The Declarant hereby reserves to itself and its successors and assigns a non-exclusive blanket easement over and through the Property for all purposes reasonably related to the development and completion of Improvements on the Property, including without limitation: (a) temporary construction easements; (b) easements for the temporary storage of supplies of building materials and equipment necessary to complete Improvements; and (c) easements for the construction, installation and Maintenance of Improvements on the Property or Improvements reasonably necessary to serve the Property.

The Declarant hereby reserves to itself, its successors and assigns the right to: (a) use any Lots owned or leased by the Declarant, any other Lot with written consent of the Owner thereof or any portion of the Common Area as models, management offices, sales offices, a visitors' center, construction offices, customer service offices or sales office parking areas; and (b) install and maintain on the Common Area, any Lot owned or leased by the Declarant or any other Lot with the consent of the Owner thereof, such marketing, promotional or other signs which the Declarant deems necessary for the development, sale or lease of the Property.

5.4 Dedications and Easements Required by Governmental Authorities or Utilities.

The Declarant hereby reserves to itself and its successors and assigns, the right to make any dedications and to grant any easements, rights-of-way and licenses required by any government, governmental agency or utility provider over and through all or any portion of the Common Area.

5.5 Further Assurances.

Any and all conveyances made to the Association or any Owner shall be conclusively deemed to incorporate these reservations of rights and easements, whether or not set forth in such grants. The easements granted and reservations made to the Declarant in this Declaration shall not terminate or merge and shall continue to run with the land, notwithstanding the common law doctrine of merger and the common ownership of all the Property by the Declarant. Upon written request of the Declarant, the Association and each Owner shall from time to time sign, acknowledge and deliver to the Declarant such further assurances of these reservations of rights and easements as may be requested.

5.6 Assignment of Development Rights .

The Declarant may make limited temporary assignments of its easement rights under this Declaration to any Person performing construction, installation or Maintenance on any portion of the Property.

5.7 Easement for Maintenance and Enforcement.

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

5.8 Easements for Encroachments.

If any Improvements on any Lot or portion of the Common Area now or hereafter encroach on any other portion of the Property by reason of: (a) the original construction thereof; (b) deviations within normal construction tolerances in the Maintenance of any Improvement; or

(c) the settling or shifting of any land or Improvement, an easement is hereby granted to the extent of any such encroachment for the period of time the encroachment exists. The Owner of the encroaching Improvement shall also have an easement for the limited purpose of Maintenance of the encroaching Improvement. This easement does not relieve any Owner or any other Person from liability for such Owner's or other Person's negligence or willful misconduct.

ARTICLE 6

THE ASSOCIATION; ORGANIZATION; MEMBERSHIP AND VOTING RIGHTS

6.1 Formation of Association.

The Association shall be a nonprofit Arizona corporation. The Association shall have all of the common law and statutory powers conferred upon nonprofit corporations under Arizona law and all powers necessary or desirable to perform the Association's duties and obligations and to exercise the rights and powers of the Association set forth in the Community Documents. The Association shall not be dissolved unless another entity has agreed to assume the obligations of the Association under this Declaration with respect to the operation and maintenance of the Areas of Association Responsibility.

6.2 Board of Directors and Officers.

The affairs of the Association shall be conducted by the Board and such officers as the Board may elect or appoint in accordance with the Articles and the Bylaws. The initial directors and officers of the Association shall be designated in the Articles, and such persons shall serve until their death, resignation or removal from office. Until the termination of the Declarant Control Period, the Declarant shall have the right to appoint and remove the members of the Board. After the termination of the Declarant Control Period, the Board shall be elected by the members as provided in the Bylaws. Unless the Community Documents specifically require the vote or consent of the Members, the Board may do or cause to be done any act on behalf of the Association.

6.3 The Association Rules.

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

6.4 Personal Liability.

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

6.5 Implied Rights.

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

6.6 Identity of Members.

The members of the Association shall be the Owners of the Lots. All Owners of Lots shall be mandatory members of the Association. 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.

6.7 Classes of Members and Voting Rights.

The Association shall have the following two classes of voting membership:

Class A. Class A members are 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. Upon the termination of the Class B membership, the Declarant shall be a Class A member so long as the Declarant owns any Lot.

Class B. The Class B member shall be the Declarant. The Declarant 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 earlier of (a) when the votes held by Class A members exceed the votes held by the Declarant or (b) five (5) years after the Recording of this Declaration. The Declarant may at any time relinquish its Class B membership by giving written notice thereof to the Association.

6.8 Voting Procedures.

No change in the ownership of a Lot shall be effective for voting purposes unless and until the Board is given actual written notice of such change and is provided satisfactory proof thereof. The vote for each such Lot must be cast as a unit, and fractional votes shall not be allowed. In the event that a Lot is owned by more than one person and such Owners are unable

to agree among themselves as to how their vote or votes shall be cast, they shall lose their right to vote on the matter in question. If any Member casts a vote representing a certain Lot, it will thereafter be conclusively presumed for all purposes that he was acting with the authority and consent of all other Owners of the same Lot unless objection thereto is made at the time the vote is cast. In the event more than one vote is cast by a Class A Member for a particular Lot, none of the votes shall be counted and all of the votes shall be deemed void.

6.9 Transfer of Membership.

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

6.10 Conveyance, Lease or Encumbrance of Common Area.

The Association may grant permits, licenses and easements on, over, under and through the Common Area for utilities, roads and other purposes reasonably necessary or useful for the proper maintenance and operation of the Property. In addition, the Association may convey portions of the Common Areas to make adjustments in the boundary lines between the Common Areas and adjoining Lots or public rights-of-way. Except as expressly permitted by this Section, the Common Area shall not be mortgaged or conveyed without the prior written consent or affirmative vote of the Declarant and the total affirmative vote or written consent of the Owners holding at least two-thirds (2/3) of the votes in the Association.

6.11 Suspension of Voting Rights.

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

ARTICLE 7

COVENANT FOR ASSESSMENTS AND CREATION OF LIEN

7.1 Creation of Lien and Personal Obligation of Assessments.

Each Owner, by becoming the Owner of a Lot, is deemed to covenant and agree, to pay Assessments to the Association in accordance with this Declaration. All Assessments shall be established and collected as provided in this Declaration. The Assessments, together with interest, late charges and all costs (including but not limited to reasonable attorneys' fees) incurred by the Association in collecting or attempting to collect delinquent Assessments, whether or not suit is filed, shall be a charge on the Lot and shall be a continuing lien upon the Lot against which each such Assessment is made. During the Declarant Control Period, no Regular Assessment or Special Assessment shall be levied against any Lot owned by the Declarant.

Each Assessment, together with interest and all costs, including but not limited to reasonable attorneys' fees, incurred by the Association in collecting or attempting to collect delinquent Assessments, whether or not suit is filed, shall also be the personal obligation of the Person who was the Owner of the Lot at the time when the Assessment became due. The personal obligation for delinquent Assessments shall not pass to the successors in title of the Owner unless expressly assumed by them.

No Owner shall be exempt from liability for Assessments because of such Owner's non-use of the Common Area, abandonment of such Owner's Lot or other circumstance. The obligation to pay Assessments is a separate and independent obligation on the part of each Owner. No diminution or abatement of Assessments or set-off shall be claimed or allowed for any alleged failure of the Association, the Board or the Design Review Committee to take some action or perform some function required of it.

7.2 Regular Assessments.

At least thirty (30) days prior to the commencement of each Assessment Period, the Board shall prepare and adopt a budget of the estimated Common Expenses for the next Assessment Period, including any contribution to be made to a reserve fund. The budget shall also reflect the sources and estimated amounts of funds to cover such Common Expenses, which may include any surplus to be applied from prior years, any income expected from sources other than Assessments are the amount to be generated through Assessments against the Lots. Based on the budget adopted by the Board, the Board shall assess against each Assessable Lot a Regular Assessment. The Regular Assessment shall be the same for each Assessable Lot. The amount of increase, if any, in the Regular Assessment from one Assessment Period to the next Assessment Period shall be subject to such limitations as may be imposed by Arizona law.

The Board shall give notice of the Regular Assessment to each Owner at least thirty (30) days prior to the beginning of each Assessment Period, but the failure to give such notice shall not affect the validity of the Regular Assessment established by the Board nor relieve any Owner

from its obligation to pay the Regular Assessment. If the Board fails to adopt a budget for any Assessment Period, then until and unless such budget is adopted and a Regular Assessment is levied by the Board for such Assessment Period, the amount of the Regular Assessment for the immediately preceding Assessment Period shall remain in effect. Unless approval or ratification of the budget or the Regular Assessment for any Assessment Period is required by law, neither the budget nor the Regular Assessment shall be required to be ratified or approved by the Members.

If the Board determines during any Assessment Period that the funds budgeted for that Assessment Period are, or will, become inadequate to meet all Common Expenses for any reason, including, without limitation, nonpayment of Assessment by Members, the Board may amend the budget and increase the Regular Assessment for that Assessment Period and the revised Regular Assessment shall commence on the date designated by the Board.

7.3 Special Assessments.

The Association may levy against each Assessable Lot a Special Assessment for the purpose of obtaining funds to pay the cost of any construction, reconstruction, repair or replacement of an Improvement upon the Common Area (including fixtures and personal property related thereto), or to pay unbudgeted expenses or expenses in excess of the amount budgeted. Any Special Assessment must be approved by 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. So long as the Declarant owns any Lot, any Special Assessment must be approved in writing by the Declarant. Any Special Assessment shall be levied in an equal amount for each Assessable Lot.

7.4 Assessment Period.

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

7.5 Obligation of Declarant for Deficiencies.

During the Declarant Control Period, the Declarant shall pay and contribute to the Association such funds as may be necessary, when added to the Regular Assessment levied by the Association, to pay all Common Expenses of the Association as they become due. The Board may require the payment of such funds by the Declarant from time to time as the Board deems necessary by giving written notice thereof to the Declarant. Each such notice shall state the total amount of funds required and the calculation of the pro rata share of such funds to be paid by the Declarant. In no event shall the Declarant be obligated to pay or contribute money to the Association in excess of the amount of Regular Assessments that would have been payable by the Declarant if the Lots owned by the Declarant had been assessed as Assessable Lots.

7.6 Rules Regarding Billing and Collection Procedures.

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

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

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

The Association shall have a lien on each Lot for: (a) all Assessments levied against the Lot; (b) all interest, lien fees, late charges and other fees and charges assessed against the Lot or payable by the Owner of the Lot; (c) all fines levied against the Owner of the Lot; (d) all attorney fees, court costs, title report fees, costs and fees charged by any collection agency either to the Association or to an Owner and any other fees or costs incurred by the Association in attempting to collect Assessments or other amounts due to the Association by the Owner of a Lot whether or not suit is filed by the Association; (e) any amounts payable to the Association pursuant to Section 8.3 or 8.4; and (f) any other amounts payable to the Association pursuant to the Community Documents.

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

records a Notice of Lien, the Association may charge the Owner of the Lot against which the Notice of Lien is Recorded a lien fee in an amount established from time to time by the Board.

The Assessment Lien shall have priority over all liens or claims except for: (a) liens and encumbrances recorded before the Recording of this Declaration; (b) liens for real estate taxes and other governmental assessments and charges against the Lot; and (c) any recorded first mortgage on the Lot, a seller's interest in a first contract for sale pursuant to Title 33, Chapter 6, Article 3 of the Arizona Revised Statutes Recorded prior to the Association's lien or a Recorded first deed of trust on the Lot. Any First Mortgagee or any other Person acquiring title or coming into possession of a Lot through foreclosure of the First Mortgage, purchase at a foreclosure sale or trustee sale, or through any equivalent proceedings, such as, but not limited to, the taking of a deed in lieu of foreclosure shall acquire title free and clear of any claims for unpaid assessments and charges against the Lot which became payable prior to the acquisition of such Lot by the First Mortgagee or other Person. Any Assessments and charges against the Lot which accrue prior to such sale or transfer shall remain the obligation of the defaulting Owner of the Lot.

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

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 the Assessment Lien or (b) bringing an action to foreclose the Assessment Lien against the Lot in the manner provided by law for the foreclosure of a realty mortgage. The Association shall have the power to bid in at any foreclosure sale and to purchase, acquire, hold, lease, mortgage and convey any and all Lots purchased at such sale.

7.8 Purposes for which Association's Funds May Be Used.

The Association may use the funds and property collected and received by it (including the Assessments, fees, loan proceeds, surplus funds and all funds and property received by it from any other source) for the purpose of: (a) discharging and performing the Association's duties and obligations under the Community Documents or applicable law; (b) exercising the rights and powers granted to the Association by the Community Documents or applicable law; (c) providing or promoting activities and services the Board deems appropriate, necessary or desirable to foster or promote the common good and general welfare of the Project and the Owners, Lessees and Residents; (d) contracting for services (including, without limitation, trash collection or cable television) to be provided to Owners, Lessees and Residents; and (e) taking such other action as the Board deems necessary, appropriate or desirable for the management and administration of the Association or the benefit of the Association or the Project.

7.9 Surplus Funds.

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

7.10 Initial Capital Contribution.

Each Purchaser of a Lot from the Declarant shall pay to the Association immediately upon becoming the Owner of the Lot a sum equal to one-sixth (1/6th) of the then current Regular Assessment for an Assessable Lot. Funds paid to the Association pursuant to this Section may be used by the Association for payment of operating expenses or any other purpose permitted under the Community Documents. Payments made pursuant to this Section shall be nonrefundable and shall not be considered as an advance payment of any Assessments levied by the Association pursuant to this Declaration. Payments made pursuant to this Section shall be deemed a contribution to the capital of the Association.

7.11 Transfer Fee.

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

ARTICLE 8

MAINTENANCE

8.1 Areas of Association Responsibility.

The Association shall be responsible for the management and Maintenance of the Areas of Association Responsibility, and all Improvements located thereon, except for any part of the Areas of Association Responsibility which any governmental entity is maintaining or is obligated to maintain. The Board shall be the sole judge as to the appropriate Maintenance of all Areas of Association Responsibility, but the Areas of Association Responsibility, and the Improvements located thereon, shall be maintained in good condition and repair at all times.

No Owner, Resident or other Person shall construct or install any Improvements on the Areas of Association Responsibility or alter, modify or remove any Improvements situated on the Areas of Association Responsibility without the approval of the Board. No Owner, Resident or other Person shall obstruct or interfere with the Association in the performance of the Association's management or Maintenance of the Areas of Association Responsibility, and the Improvements located thereon.

8.2 Lot Owner's Responsibility.

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

8.3 Assessment of Certain Costs of Maintenance and Repair.

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

8.4 Improper Maintenance and Use of Lots.

In the event (a) any portion of any Lot is so maintained as to present a public or private nuisance or as to substantially detract from the appearance or quality of the surrounding Lots or other areas of the Project which are substantially affected thereby or related thereto, (b) any portion of a Lot is being used in a manner which violates this Declaration, or (c) the Owner of any Lot is failing to perform any of its obligations under the Community Documents, the Board may make a finding to such effect, specifying the particular condition or conditions which exist, and pursuant thereto give notice thereof to the offending Owner that unless corrective action is taken within fifteen (15) days, the Board may cause such action to be taken at said Owner's cost. If at the expiration of said fifteen (15) day period of time the requisite corrective action has not been taken, the Board shall be authorized and empowered to cause such action to be taken and the cost thereof shall be paid by such Owner to the Association upon demand and payment of such amounts shall be secured by the Assessment Lien.

8.5 Boundary Walls.

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

The Owners of contiguous Lots who share a boundary wall shall both equally have the right to use such wall provided that such use by one Owner does not interfere with the use and enjoyment of same by the other Owner. Except as otherwise provided in this Section, the Owners of contiguous Lots who share a boundary wall shall each pay one-half ($\frac{1}{2}$) of the cost of any maintenance, repair or replacement of the boundary wall. Either of such Owners may perform any necessary repair, maintenance or replacement of the boundary wall and in such event, such Owner shall be entitled to reimbursement from the other Owner for one-half ($\frac{1}{2}$) of such cost. In the event that any boundary wall is damaged or destroyed through the negligence or willful act of an Owner, his agents, tenants, licensees, guests or family, it shall be the obligation of such Owner to rebuild and repair the boundary wall without cost to the other Owner or Owners who share the boundary wall.

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

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

The Declarant hereby reserves to itself and its successors and assigns a perpetual, non-exclusive easement over, under, upon and across the Lots for the purpose of repairing or relocating a boundary wall without the consent of the Owners who share the use of the boundary wall.

8.6 Maintenance of Walls other than Boundary Walls.

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

ARTICLE 9

INSURANCE

9.1 Scope of Coverage.

Commencing not later than the time of the first conveyance of a Lot to a Purchaser, the Association shall maintain, to the extent reasonably available, the following insurance coverage:

- (a) Comprehensive general liability insurance, including medical payments insurance, in an amount determined by the Board, but not less than \$1,000,000. 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 Areas of Association Responsibility and all other portions of the Project which the Association is obligated to maintain under this Declaration, 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;
- (b) Property insurance on all Common Areas insuring against all risk of direct physical loss, insured against in an amount equal to the maximum insurable replacement value of the Common Areas, as determined by the Board; provided, however, that the total amount of insurance after application of any deductibles shall not be less than one hundred percent (100%) of the current replacement cost of the insured property, exclusive of land, excavations, foundations and other items normally excluded from a property policy.
- (c) Workmen's compensation insurance to the extent necessary to meet the requirements of the laws of Arizona;
- (d) Such other insurance as the Board 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) statement of the name of the insured as the Association; and (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 (10) days in advance of the effective date of any substantial modification, reduction or cancellation of the policy.

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

9.2 Certificates of Insurance.

An insurer that has issued an insurance policy under this Article shall issue a certificate 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 a deed of trust to whom certificates of insurance have been issued.

9.3 Payment of Insurance Proceeds.

With respect to any loss to any Area of Association Responsibility covered by property insurance obtained by the Association in accordance with this Article, the loss shall be adjusted with the Association, and the insurance proceeds shall be payable to the Association and not to any mortgagee or beneficiary under a deed of trust. Subject to the provisions of Section 9.4, the proceeds shall be disbursed for the repair or restoration of the damage to the Area of Association Responsibility.

9.4 Repair and Replacement of Damaged or Destroyed Property.

Any portion of the Common Areas which is damaged or destroyed shall be repaired or replaced promptly by the Association unless repair or replacement would be illegal under any state or local health or safety statute or ordinance, or Owners representing at least eighty percent (80%) of the total authorized votes in the Association vote not to repair or replace the damaged or destroyed Improvements. The cost of repair or replacement in excess of insurance proceeds and reserves shall be paid by the Association.

If all of the Areas of Association Responsibility are not repaired or replaced, insurance proceeds attributable to the damaged Areas of Association Responsibility 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 either be retained by the Association as an additional capital reserve.

9.5 Cancellation of Insurance.

No Owner shall permit anything to be done or kept in his Lot or in or upon any Common Areas which will result in the cancellation of insurance maintained by the Association on the Common Areas or which would be in violation of any law.

ARTICLE 10

DISPUTE RESOLUTION

10.1 Defined Terms. As used in this Article 10, the following terms shall the meaning set forth below:

(a) **"Alleged Defect"** means any alleged defect or deficiency in the planning, design, engineering, grading, construction or development of the Common Area or any Lot.

(b) **"Bound Parties"** means: (i) the Declarant; (ii) all Lot Owners, Lessees and Residents; and (iii) any contractor or subcontractor, architect, engineer, consultant or other Person who performs or furnishes the design, specifications, surveying, planning, supervision, testing, construction or observation of construction of the Common Area or the Lots and who agrees in writing to be bound by the provisions of this Article 10.

(c) **"Claim"** means: (i) any claim or cause of action arising out of or related in any way to the planning, design, engineering, grading, construction or development of the Common Area or the Lots or any other part of the Project, including, without limitation, any claim or cause of action that the Common Area or the Lots are defective or that the Declarant or its agents, contractors, employees, subcontractors, architects, engineers or consultants were negligent in the planning, design, engineering, grading, construction or development thereof; or (ii) any claim or cause of action against the Declarant or any employee, agent, director, member or officer of Declarant arising out of or in any way related to the development of the Project or the management or operation of the Association, including, without limitation, any claim for negligence, fraud, intentional misconduct or breach of fiduciary duty.

10.2 Agreement to Resolve Certain Disputes Without Litigation. All Bound Parties agree that all Claims shall be resolved exclusively in accordance with the dispute resolution procedures set forth in this Article 10.

10.3 Notice of Claim.

Any Bound Party having or alleging to have a Claim (a "Claimant") against any other Bound Party (a "Respondent") shall notify each Respondent in writing of the Claim (the "Claim Notice"), stating plainly and concisely: (a) the nature of Claim, including, date, time, location, Persons involved, and Respondent's role in the Claim; (b) the factual and legal basis of the Claim; and (c) what Claimant wants Respondent to do or not do to resolve the Claim.

In the event the Claimant is the Association, the Association must provide written notice to all Members prior to delivering a Claim Notice or commencing any legal action, cause of action, proceeding, reference or arbitration against the Declarant or any other Bound Party which notice shall (at a minimum) include: (a) a description of the Claim, (b) a description of the attempts of any Declarant or other Bound Party to correct such Alleged Defect and the opportunities provided to Declarant or other Bound Party to correct such Alleged Defect, (c) the estimated cost to repair such Alleged Defect, (d) the name and professional background of the attorney retained by the Association to pursue the claim against a Declarant or other Bound Party and a description of the relationship between such attorney and member(s) of the Board (if any), (e) a description of the fee arrangement between such attorney and the Association, (f) the estimated attorneys' fees and expert fees and costs necessary to pursue the claim against the Declarant or other Bound Party and the source of the funds which will be used to pay such fees and expenses, (g) the estimated time necessary to conclude the action against the Declarant or a other Bound Party, (h) a description of the manner in which the action will be funded and a description of any demands, notices, offers to settle or responses to offers to settle made either by the Association or other Bound Party, and (i) an affirmative statement from the Board that the action is in the best interests of the Association and its Members. If the Alleged Defect is alleged to be the result of an act or omission of a person licensed by the State of Arizona under Title 20 or Title 32 of the Arizona Revised Statutes (a "Licensed Professional"), then the notice from the Association must be accompanied by an affidavit from a Licensed Professional in the same discipline as the Licensed Professional alleged to be responsible for the Alleged Defect. The affidavit must contain the information required to be contained in a preliminary expert opinion affidavit submitted pursuant to Section 12-2602B of the Arizona Revised Statutes.

10.4 Mediation.

If the Parties do not resolve the Claim through negotiation within thirty (30) days after the date of the Claim Notice or within such longer period as may be agreed upon by the Parties ("Termination of Negotiations"), Claimant shall have thirty (30) additional days within which to submit the Claim to mediation by the American Arbitration Association ("AAA") or such other independent mediation service agreed to by the Claimant and Respondent.

If Claimant does not submit the Claim to mediation within thirty (30) days after Termination of Negotiations, Claimant shall be deemed to have waived the Claim, and Respondent shall be released and discharged from any and all liability to Claimant on account of such Claim.

If the Parties do not settle the Claim within thirty (30) days after submission of the matter to the mediation process, or within such time as determined reasonable or appropriate by the mediator, the mediator shall issue a notice of termination of the mediation proceedings ("Termination of Mediation Notice"). The Termination of Mediation Notice shall set forth when and where the Parties met, that the Parties are at an impasse, and the date that mediation was terminated.

10.5 Binding Arbitration.

In the event a Claim is not resolved by Mediation, the Claimant shall have fifteen (15) days after the date of the Termination of Mediation Notice to submit the Claim to binding arbitration in accordance with this Section. If the Claimant fails to timely submit the Claim to arbitration, then the Claim shall be deemed waived and abandoned and the Respondent shall be relieved of any and all liability to Claimant arising out of the Claim. If the Claimant submits the Claim to binding arbitration in accordance with this Section, the arbitration shall be conducted in accordance with the following:

- (a) **Initiation of Arbitration.** The arbitration shall be initiated by either party delivering to the other a Notice of Intention to Arbitrate as provided for in the AAA Commercial Arbitration Rules, or such other AAA rules as the AAA determines to be applicable (the "AAA Rules"). A Respondent may join as a party to the arbitration any Bound Party who may be liable to the Respondent or the Claimant with respect to the Claim.
- (b) **Governing Procedures.** The arbitration shall be conducted in accordance with the AAA Rules and A.R.S. § 12-1501, et seq. In the event of a conflict between the AAA Rules and this Section 10.5, the provisions of this Section 10.5 shall govern.
- (c) **Appointment of Arbitrator.** The parties shall appoint a single Arbitrator by mutual agreement. If the parties have not agreed within ten (10) days of the date of the Notice of Intention to Arbitrate on the selection of an arbitrator willing to serve, the AAA shall appoint a qualified Arbitrator to serve. Any arbitrator chosen in accordance with this Subsection (c) is referred to in this Section 10.5 as the "Arbitrator".
- (d) **Qualifications of Arbitrator.** The Arbitrator shall be neutral and impartial. The Arbitrator shall be fully active in such Arbitrator's occupation or profession, knowledgeable as to the subject matter involved in the dispute, and experienced in arbitration proceedings. The foregoing shall not preclude otherwise qualified retired lawyers or judges.
- (e) **Disclosure.** Any candidate for the role of Arbitrator shall promptly disclose to the parties all actual or perceived conflicts of interest involving the dispute or the parties. No Arbitrator may serve if such person has a conflict of interest involving the subject matter of the dispute

or the parties. If an Arbitrator resigns or becomes unwilling to continue to serve as an Arbitrator, a replacement shall be selected in accordance with the procedure set forth in Subsection (c) above.

(f) **Compensation.** The Arbitrator shall be fully compensated for all time spent in connection with the arbitration proceedings in accordance with the Arbitrator's usual hourly rate, unless otherwise agreed to by the parties, for all time spent by the Arbitrator in connection with the arbitration proceeding. Pending the final award, the Arbitrator's compensation and expenses shall be advanced equally by the parties.

(g) **Preliminary Hearing.** Within thirty (30) days after the Arbitrator has been appointed, a preliminary hearing among the Arbitrator and counsel for the Parties shall be held for the purpose of developing a plan for the management of the arbitration, which shall then be memorialized in an appropriate order. The matters which may be addressed include, in addition to those set forth in the AAA Rules, the following: (i) definition of issues; (ii) scope, timing and types of discovery, if any; (iii) schedule and place(s) of hearings; (iv) setting of other timetables; (v) submission of motions and briefs; (vi) whether and to what extent expert testimony will be required, whether the Arbitrator should engage one or more neutral experts, and whether, if this is done, engagement of experts by the Parties can be obviated or minimized; (vii) whether and to what extent the direct testimony of witnesses will be received by affidavit or written witness statement; and (viii) any other matters which may promote the efficient, expeditious, and cost-effective conduct of the proceeding.

(h) **Management of the Arbitration.** The Arbitrator shall actively manage the proceedings as the Arbitrator deems best so as to make the proceedings expeditious, economical and less burdensome than litigation.

(i) **Confidentiality.** All papers, documents, briefs, written communication, testimony and transcripts as well as any and all arbitration decisions shall be confidential and not disclosed to anyone other than the Arbitrator, the parties or the parties' attorneys and expert witnesses (where applicable to their testimony), except that upon prior written consent of all parties, such information may be divulged to additional third parties. All third parties shall agree in writing to keep such information confidential.

(j) **Hearings.** Hearings may be held at any place within the State of Arizona designated by the Arbitrator and, in the case of particular witnesses not subject to subpoena at the usual hearing site, at a place where such witnesses can be compelled to attend.

(k) **Final Award.** The Arbitrator shall promptly (within sixty (60) days of the conclusion of the proceedings or such longer period as the

parties mutually agree) determine the claims of the parties and render a final award in writing. The Arbitrator may award the prevailing party in the proceeding all or a part of such party's reasonable attorneys' fees and expert witness fees, taking into account the final result of arbitration, the conduct of the parties and their counsel in the course of the arbitration, and other relevant factors. The Arbitrator shall not award any punitive damages. The Arbitrator shall not award indirect, consequential or special damages regardless of whether the possibility of such damage or loss was disclosed to, or reasonably foreseen by the party against whom the claim is made; provided, however, that such damages may be deemed by the Arbitrator to be direct damages in an award reimbursing payments made by a party therefor to a third party. The Arbitrator shall assess the costs of the proceedings (including, without limitation, the fees of the Arbitrator) against the non-prevailing party.

10.6 Right to Enter, Inspect, Repair and/or Replace.

Within a reasonable time after the receipt by the Declarant or other Bound Party of a Claim Notice, the Declarant or other Bound Party shall have the right, upon reasonable notice to Claimant and during normal business hours, to enter onto or into, as applicable, the Common Area, any Lot, including any Residence constructed thereon, and/or any Improvements for the purposes of inspecting and/or conducting testing to determine the validity of the Claim and, if deemed necessary by the Declarant or other Bound Party, to correct, repair and/or replace any Alleged Defect. In conducting such inspection, testing, repairs and/or replacement, Declarant or other Bound Party shall be entitled to take any actions as it shall deem reasonable and necessary under the circumstances.

Nothing set forth in this Section shall be construed to impose any obligation on the Declarant or other Bound Party to inspect, test, repair, or replace any item or Alleged Defect for which the Declarant or other Bound Party is not otherwise obligated under applicable law or any limited warranty provided by the Declarant or other Bound Party in connection with the sale of the Lots and/or the Improvements constructed thereon. The right of the Declarant and other Bound Parties to enter, inspect, test, repair and/or replace reserved hereby shall be irrevocable and may not be waived or otherwise terminated except by a writing, in recordable form, executed and Recorded by the Declarant or a other Bound Party. In no event shall any statutes of limitations be tolled during the period in which the Declarant or other Bound Party conducts any inspection or testing of any Alleged Defects.

10.7 Use of Funds.

In the event the Association recovers any funds from a Declarant or any other Person as a result of a claim involving an Alleged Defect, the funds shall first be used to correct and or repair the Alleged Defect or to reimburse the Claimant for any costs actually incurred by such Claimant in correcting and/or repairing the Alleged Defect, and any excess funds shall be paid into the Association's reserve fund.

10.8 Approval of Litigation.

The Association shall not deliver a Claim Notice to any Bound Party, commence any legal action or arbitration proceeding against any Bound Party or incur any expenses (including, without limitation, attorneys' fees) in connection with any Claim without the written approval of Owners entitled to cast more than seventy-five percent (75%) of the total votes in the Association, excluding the votes of any Owner who would be a defendant in such proceedings. The Association must pay for any such legal action or arbitration proceeding with monies that are specifically collected for such purposes and may not borrow money or use reserve funds or other monies collected for specific Association obligations other than legal fees. In the event that the Association commences any legal action or arbitration proceeding involving a Claim, all Owners must notify prospective purchasers of such legal action or arbitration proceeding and must provide such prospective purchasers with a copy of the notice received from the Association in accordance with Section 10.3.

ARTICLE 11

GENERAL PROVISIONS

11.1 Enforcement.

The Association may enforce the Community Documents in any manner provided for in the Community Documents or by law or in equity, including, but not limited to:

- (a) imposing reasonable monetary fines after notice and an opportunity to be heard is given to the Owner or other violator. An Owner shall be responsible for payment of any fine levied or imposed against a Lessee or Resident of the Owner's Lot or by any guest or invitee of the Owner or any Lessee or Resident;
- (b) suspending an Owner's right to vote;
- (c) suspending any Person's right to use any recreational facilities within the Common Area; provided, however, nothing herein shall authorize the Board to limit ingress or egress to or from a Lot;
- (d) suspending any services provided by the Association to an Owner or the Owner's Lot if the Owner is more than 15 days delinquent in paying any assessment or other charge owed to the Association;
- (e) exercising self-help or taking action to abate any violation of the Community Documents in a non-emergency situation;

- (f) requiring an Owner, at the Owner's expense, to remove any structure or Improvement on such Owner's Lot in violation of this Declaration and to restore the Lot to its previous condition and, upon failure of the Owner to do so, the Board or its designee shall have the right to enter the property, remove the violation and restore the property to substantially the same condition as previously existed and any such action shall not be deemed a trespass;
- (g) without liability to any Person, prohibiting any contractor, subcontractor, agent, employee or other invitee of an Owner who fails to comply with the terms and provisions of this Declaration or the Design Guidelines from continuing or performing any further activities in the Project;
- (h) towing vehicles which are parked in violation of this Declaration or the Association Rules; and
- (i) filing a suit at law or in equity to enjoin a violation of the Community Documents, to compel compliance with the Community Documents, to recover fines or money damages or to obtain such other relief as to which the Association may be entitled.
- (j) recording a written notice of violation by any Owner, Lessee or Resident of any restriction or other provision of the Community Documents. The notice shall be executed by an officer of the Association and shall contain substantially the following information: (a) the name of the Owner, Lessee or Resident violating, or responsible for the violation of, the Community Documents; (b) the legal description of the Lot against which the notice is being Recorded; (c) a brief description of the nature of the violation; (d) a statement that the notice is being Recorded by the Association pursuant to this Declaration; and (e) a statement of the specific steps which must be taken by the Owner or occupant to cure the violation. Recordation of a notice of violation shall serve as notice to the Owner and Resident, and any subsequent purchaser of the Lot, that there is such a violation. Failure by the Association to Record a notice of violation shall not constitute a waiver of any such violation, constitute any evidence that no violation exists with respect to a particular Lot or constitute a waiver of any right of the Association to enforce the Community Documents.

The Association shall not be obligated to take any enforcement action if the Board determines, in its sole discretion, that because of the strength of the Association's possible defenses, the time and expense of litigation or other enforcement action, the likelihood of a result favorable to the Association, or other facts deemed relevant by the Board, enforcement action would not be appropriate or in the best interests of the Association.

Any Owner shall also have the right to enforce this Declaration in any manner available at law or in equity. All rights and remedies of the Association under the Community Documents or at law or in equity are cumulative, and the exercise of one right or remedy shall not waive the Association's right to exercise another right or remedy. The failure of the Association or an Owner to take enforcement action with respect to a violation of the Community Documents shall not constitute or be deemed a waiver of the right of the Association or any Owner to enforce the Community Documents in the future. If any lawsuit is filed by the Association or any Owner to enforce the provisions of the Community Documents or in any other manner arising out of the Community Documents or the operations of the Association, the prevailing party in such action shall be entitled to recover from the other party all attorney fees incurred by the prevailing party in the action.

11.2 Duration; Termination.

This Declaration, as it may be amended pursuant to Section 11.3, shall run with the land and bind the Property and be in full force and effect in perpetuity unless terminated as provided in this Section. This Declaration may be terminated at any time if such termination is approved by the affirmative vote or written consent, or any combination thereof, of the Owners holding ninety percent (90%) or more of the votes in the Association. If the necessary votes and consents are obtained, the Board shall cause to be Recorded a Certificate of Termination, duly signed by the President or Vice President and attested by the Secretary or Assistant Secretary of the Association, with their signatures acknowledged. Following the Recording of a Certificate of Termination, this Declaration shall have no further force and effect, and the Association shall be dissolved pursuant to the terms set forth in its Articles. So long as the Declarant owns one or more Lots, no termination of this Declaration shall be effective unless approved in writing by the Declarant.

11.3 Amendments.

This Declaration may be amended at any time by the affirmative vote of Owners of not less than two-thirds (2/3) of the Lots. So long as the Declarant owns one or more Lots, any amendment to this Declaration must be approved in writing by the Declarant. In addition, the provisions of Article 10 shall not be amended without the prior written consent of the Declarant even if the Declarant no longer owns any Lot at the time the amendment is adopted by the Owner. So long as the Declarant owns one or more Lots, the Declarant may unilaterally amend this Declaration to comply with the requirements or guidelines of the United States Department of Veterans Affairs, the United States Department of Housing and Urban Development, the Federal National Mortgage Association or the Federal Home Loan Mortgage Corporation.

Any amendment approved by the Owners shall be signed by the President or Vice President of the Association and shall be Recorded. Unless a later effective date is provided for in the amendment, any amendment to this Declaration shall be effective upon the Recording of the amendment.

Any challenge to an amendment to this Declaration for the reason that the amendment was not adopted by the required number of Owners or was not adopted in accordance with the procedures set forth in this Section must be made within one (1) year after the Recording of the amendment.

11.4 Condemnation of Common Area.

If all or any part of the Common Area is taken or condemned, or conveyed by the Association in lieu of or under threat of such condemnation, by or to any authority having the power of condemnation or eminent domain, the award or other compensation paid as a result of such taking or conveyance shall be paid to the Association. If the taking involves a portion of the Common Area upon which Improvements have been constructed, then the Association shall construct replacement Improvements on the remaining Common Area to the extent land is available for such construction, unless within sixty (60) days after such taking the Owners holding at least eighty percent (80%) of the votes in the Association instruct the Board not to build replacement Improvements.

If such replacement Improvements are to be constructed, then the Association shall be entitled to use the award or other compensation made for such taking solely for the purpose of such construction. If the taking does not involve any Improvements on the Common Area or if the Owners holding more than eighty percent (80%) of the votes in the Association decide not to construct any replacement Improvements or if there are any net funds remaining after such construction is completed, then such awarded net funds shall be retained by the Association and used for such purposes as may be determined by the Board.

11.5 Interpretation.

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

11.6 Severability.

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

11.7 Change of Circumstances.

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

11.8 Laws, Ordinances and Regulations.

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

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

11.9 References to this Declaration in Deeds.

Deeds to and instruments affecting any Lot or any other part of the Project may contain the covenants, conditions and restrictions herein set forth by reference to this Declaration; but regardless of whether any such reference is made in any Deed or instrument, each and all of the provisions of this Declaration shall be binding upon the grantee-Owner or other person claiming through any instrument and his heirs, executors, administrators, successors and assignees.

11.10 Gender and Number.

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

11.11 Captions and Titles.

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

thereof. Unless otherwise specified, all references in this Declaration to Articles or Sections refer to Articles and Section of this Declaration.

Sivage-Thomas of Arizona, Inc., a New Mexico corporation, Declarant

By: _____

Its: _____

State of Arizona)
) ss.
County of Maricopa)

The foregoing instrument was acknowledged before me this 5th day of June, 2003, by Michael J. Baird the Pres. of Sivage-Thomas of Arizona, Inc., a New Mexico corporation, on behalf of the corporation.

Barbara J. Baird
Notary Public

My Commission Expires:

Sept 5 - 2004



EXHIBIT A

LEGAL DESCRIPTION OF PROPERTY

Lots 1 through 193, inclusive, and Tracts B, C, E, F, H, I, J, K, L, M, N, O, P, Q, R, UU, VV, WW, YY, XX and ZZ, inclusive, Agua Fria Ranch according to the plat recorded in Book 632 of Maps, page 20, records of Maricopa County, Arizona.

First American Title

OFFICIAL RECORDS OF
MARICOPA COUNTY RECORDER
HELEN PURCELL
20030870476 07/02/2003 16:43
ELECTRONIC RECORDING

When recorded, return to:

33070M-4-32-22--
Sandovalr

Steven L. Lisker, Esq.
Bryan Cave LLP
Two N. Central Avenue
Suite 2200
Phoenix, AZ 85004-4406

ASSIGNMENT OF DECLARANT'S RIGHTS

33070 G

16/23

This Assignment of Declarant's Rights ("Assignment") is made as of the 1st day of July, 2003, by SIVAGE-THOMAS OF ARIZONA, INC., a New Mexico corporation ("Assignor") to and for the benefit of PULTE HOME CORPORATION, a Michigan corporation ("Assignee").

RECITALS

A. Assignor is the Declarant under that certain Declaration of Covenants, Conditions and Restrictions for Agua Fria Ranch recorded on June 6, 2003, as Document No. 2003-0731869, Official Records of Maricopa County Recorder, Maricopa County, Arizona (the "Declaration"). Terms not otherwise defined herein shall have the meanings given them in the Declaration.

B. Contemporaneously with the recordation of this Assignment, Assignor is conveying to Assignee title to all Property within the Project, together with all Improvements located thereon.

C. Assignor hereby is assigning the Declarant's rights under the Declaration to Assignee contemporaneously with the conveyance of the Property to Assignee.

AGREEMENT

NOW, THEREFORE, for good and valuable consideration, receipt whereof is hereby acknowledged, the parties hereby agree as follows:

1. The Recitals A through C are incorporated herein and made a part hereof.
2. Assignor hereby assigns and transfers to Assignee, and Assignee hereby accepts, all of its rights as Declarant or otherwise under the Declaration.
3. Assignor represents and warrants to Assignee that Assignor has not previously assigned, pledged or transferred any of Assignor's rights as the Declarant under the Declaration and that Assignor is the current holder of such rights and has the legal right to assign such rights to Assignee.

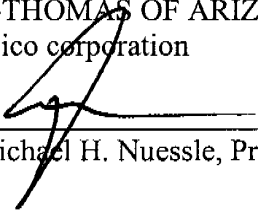
4. Assignor shall indemnify, defend and hold Assignee harmless for, from and against any and all losses, damages, liabilities, actions, proceedings, demands, claims, costs and expenses (including reasonable attorneys' fees) suffered or incurred by Assignee by reason of the failure of Assignor to have performed and complied with the obligations, liabilities, duties, covenants, conditions and restrictions contained in the Declaration which accrue or arise out of events occurring prior to the date hereof.

5. Assignee shall indemnify, defend and hold Assignor harmless for, from and against any and all losses, damages, liabilities, actions, proceedings, demands, claims, costs and expenses (including reasonable attorneys' fees) suffered or incurred by Assignor by reason of the failure of Assignee to perform and comply with the obligations, liabilities, duties, covenants, conditions and restrictions contained in the Declaration which accrue or arise out of events occurring on or after the date hereof.

IN WITNESS WHEREOF, Assignor and Assignee have executed this Assignment as of the date and year first above set forth.

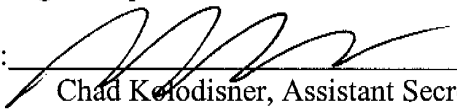
ASSIGNOR:

SIVAGE-THOMAS OF ARIZONA, INC., a
New Mexico corporation

By: 
Michael H. Nuessle, President

ASSIGNEE:

PULTE HOME CORPORATION, a
Michigan corporation

By: 
Chad K. Rodisner, Assistant Secretary

**CONSENT OF FEE TITLE OWNER
OF A PORTION OF THE PROPERTY**

The undersigned, owner of a portion of the Property, hereby acknowledges and consents to the foregoing Assignment as of this 1st day of July, 2003.

FIRST AMERICAN TITLE INSURANCE
COMPANY, a California corporation, as
Trustee under Trust No. 8546 and not
personally

By: _____

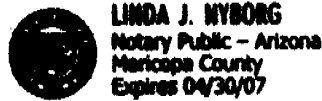
Its: _____

STATE OF ARIZONA)
) ss.
 County of Maricopa)

Acknowledged before me this 1st day of July, 2003, by Chad Kolodisner, the Assistant Secretary of PULTE HOME CORPORATION, a Michigan corporation, on behalf of the corporation.

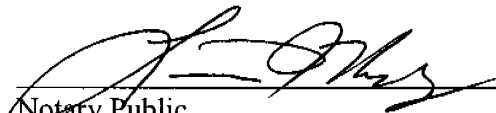

 Notary Public

My Commission Expires:
4-30-07

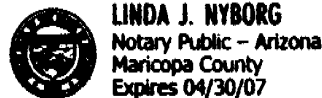


STATE OF ARIZONA)
) ss.
 County of Maricopa)

Acknowledged before me this 1st day of July, 2003, by Michael H. Nuessle, the President of SIVAGE-THOMAS OF ARIZONA, INC., a New Mexico corporation, on behalf of the corporation.


 Notary Public

My Commission Expires:
4-30-07



STATE OF ARIZONA)
) ss.
 County of Maricopa)

Acknowledged before me this 1st day of July, 2003, by _____, the _____ of
 FIRST AMERICAN TITLE INSURANCE COMPANY, a California corporation, as Trustee
 under Trust No. 8546, on behalf of the corporation.

 Notary Public

My Commission Expires:

When recorded, please return to:
Central Arizona Water
Conservation District
P.O. Box 43020
Phoenix, Arizona 85080-3020
Attn: Manager, Groundwater
Replenishment District



**DECLARATION OF COVENANTS, CONDITIONS
AND RESTRICTIONS FOR
AGUA FRIA RANCH
REGARDING MEMBERSHIP IN THE CENTRAL ARIZONA
GROUNDWATER REPLENISHMENT DISTRICT**

This Declaration of Covenants, Conditions and Restrictions for Agua Fria Ranch Regarding Membership in the Central Arizona Groundwater Replenishment District is made this 14th day of October, 2002, by Youngtown Resort Living, L.L.C., an Arizona limited liability company.

RECITALS

A. Declarant is the owner of the Property, legally described in Exhibit A attached and incorporated into this Declaration.

B. Declarant has applied to the Department for a certificate of assured water supply for the property pursuant to Arizona Revised Statutes Title 45, Chapter 2, Article 9.

C. As permitted by Arizona Revised Statutes § 45-576.01(B), Declarant desires to satisfy one requirement for obtaining a certificate of assured water supply by qualifying the Property as Member Land pursuant to the Groundwater Replenishment Statute. As Member Land, the Property will be a member of the Central Arizona Groundwater Replenishment District, an operating subdivision of the CAWCD.

D. To qualify the Property as Member Land, the Groundwater Replenishment Statute requires Declarant to subject the Property to this Declaration.

E. To permit the delivery of Excess Groundwater to the Property as Member Land, each Parcel must be subject to the Parcel Replenishment Obligation and the Replenishment Assessment to be determined by CAWCD.

F. Qualifying the Property as Member Land and subjecting the Property to the Parcel Replenishment Obligation and the Replenishment Assessment directly benefits the Property by increasing the potential of the Property to qualify for a certificate of assured

water supply issued by the Department pursuant to Arizona Revised Statutes Title 45, Chapter 2, Article 9, thereby allowing the development, use and enjoyment of the Property.

NOW, THEREFORE, Declarant hereby declares that the Property shall be held, sold and conveyed subject to the covenants, conditions and restrictions contained in this Declaration.

ARTICLE 1 DEFINITIONS

1.1 "CAWCD" means the Central Arizona Water Conservation District, a political subdivision of the State of Arizona, and any successor political subdivision.

1.2 "Declarant" means Youngtown Resort Living, L.L.C., an Arizona limited liability company.

1.3 "Declaration" means this Declaration of Covenants, Conditions and Restrictions for Agua Fria Ranch Regarding Membership in the Central Arizona Groundwater Replenishment District, as amended from time to time.

1.4 "Department" means the Arizona Department of Water Resources, an agency of the State of Arizona, and any successor agency.

1.5 "Excess Groundwater" means the amount of Groundwater equal to the amount of Groundwater delivered to the Property in a calendar year in excess of the amount of Groundwater that may be used at the Property in that calendar year consistent with the applicable Assured and Adequate Water Supply Rules adopted by the Department for the Phoenix Active Management Area pursuant to Arizona Revised Statutes § 45-576(H).

1.6 "Groundwater" is as defined in Arizona Revised Statutes § 45-101(5).

1.7 "Groundwater Replenishment Statute" means Arizona Revised Statutes Title 48, Chapter 22.

1.8 "Member Land" is as defined in Arizona Revised Statutes § 48-3701(9).

1.9 "Owner" means the Person or Persons who individually or collectively own fee title to a Parcel, provided that if fee title to a Parcel is vested in a trustee under a deed of trust under Arizona Revised Statutes Title 33, Chapter 6.1, the owner of the trustor's interest under the deed of trust is deemed to be the "Owner" of that Parcel.

1.10 "Parcel" means any portion of the Property now existing or hereafter established for which the tax assessor for the county in which the Property is located has issued a separate tax parcel number.

1.11 "Parcel Replenishment Obligation" means, with respect to any particular Parcel, an amount of Groundwater that is equal to the amount of Groundwater delivered to the Parcel in a calendar year multiplied by the percentage that the Excess Groundwater of the Property for that year bears to the total amount of Groundwater delivered to the Property during that year.

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

1.13 "Property" means the real property described in Recital A.

1.14 "Replenishment Assessment" means the annual assessment levied by CAWCD against a Parcel in a calendar year based on the Parcel Replenishment Obligation applicable to that Parcel during that year.

ARTICLE 2 COVENANT FOR REPLENISHMENT ASSESSMENT

2.1 Replenishment Assessment. Each Parcel is hereby made subject to the Replenishment Assessment based on the Parcel Replenishment Obligation in an amount to be determined by CAWCD as necessary to allow CAWCD to perform its groundwater replenishment obligation under the Groundwater Replenishment Statute.

2.2 Levy of Replenishment Assessment. CAWCD shall levy the Replenishment Assessment against each Parcel in accordance with Arizona Revised Statutes § 48-3778.

2.3 Interest, Costs and Penalties. If the Replenishment Assessment is not paid when due, CAWCD will be entitled to interest, costs and penalties as provided by Arizona Revised Statutes § 48-3782.

ARTICLE 3 COVENANT FOR CREATION OF LIEN

3.1 Creation of Lien and Personal Obligation. Declarant, for each Parcel, hereby covenants and agrees, and each Owner (other than Declarant), by becoming the Owner of a Parcel, is deemed to covenant and agree, to pay the Replenishment Assessment to CAWCD in accordance with this Declaration and the Groundwater Replenishment Statute. The Replenishment Assessment, together with interest, costs, and penalties as provided by Arizona Revised Statutes § 48-3782, constitutes a continuing lien on the Parcel against which such Replenishment Assessment is levied, as provided by Arizona Revised Statutes § 48-3778. A Replenishment Assessment, together with interest,

costs and penalties, as provided by Arizona Revised Statutes § 48-3782, is also a personal obligation of each Person who was an Owner of a Parcel at the time such Replenishment Assessment came due.

3.2 Remedies for Nonpayment of Replenishment Assessment. In the event of delinquency of any Replenishment Assessment, CAWCD has the rights and remedies provided in Arizona Revised Statutes §§ 48-3778 and 48-3782.

ARTICLE 4 GENERAL PROVISIONS

4.1 Binding Effect. The Property shall be held, sold and conveyed subject to this Declaration. By acceptance of a deed or by acquiring any portion of or any interest in the Property, each Owner is bound by all the covenants, conditions and restrictions now or hereafter imposed by this Declaration. The covenants, conditions and restrictions contained in this Declaration run with the land and bind Declarant, all Owners, and all successors and assigns of Declarant or any Owner. Declarant agrees and covenants to CAWCD to execute and record any additional documentation which CAWCD may reasonably require to effectuate the intents and purposes of this Declaration and the Groundwater Replenishment Statute.

4.2 Amendments. This Declaration may be modified, amended or revoked only (i) by the express written agreement of CAWCD, the Department and the Owners of 67% of the total area of the Property; or (ii) by amendment statutes, rules or regulations or successor statutes, rules or regulations, as contemplated by Paragraph 4.4.

4.3 Interpretation. This Declaration must be construed and interpreted in accordance with and in reference to the laws of the State of Arizona, including but not limited to the Groundwater Replenishment Statute.

4.4 Rules, Regulations and Successor Statutes. All references in this Declaration to Arizona Revised Statutes include all rules and regulations promulgated by the Department under such statutes and all amendments and successor statutes, rules and regulations to such statutes, rules and regulations.

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

4.6 Captions. All captions, titles or headings in this Declaration are used for the purpose of reference and convenience only and do not limit, modify or otherwise affect any of the provisions of this Declaration.

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

DECLARANT: YOUNGTOWN RESORT LIVING, L.L.C., an Arizona limited liability company

By: _____

Its: _____

The undersigned Optionee, identified as "Buyer" under that certain Agreement for Purchase and Sale and Escrow Instructions dated March 8, 2002, by and between Youngtown Resort Living, L.L.C., an Arizona limited liability company and Sivage-Thomas of Arizona, Inc., a New Mexico corporation, and/or nominee, hereby directs Youngtown Resort Living, L.L.C. to execute this document and consents to the execution and recording of this document.

OPTIONEE: SIVAGE-THOMAS OF ARIZONA, INC., a New Mexico corporation

By: _____

Its: _____

STATE OF ARIZONA)
)
County of maricopa)

ss.

The foregoing instrument was acknowledged before me this 14th day of October, 2002, by ED POZON, the Manager of Youngtown Resort Living, LLC, on behalf of LLC.



Notary Public State of Arizona
Maricopa County
Sheryl Marie Sy Gapuz

My commission expires

8/23/2005

Notary Public

20021333571

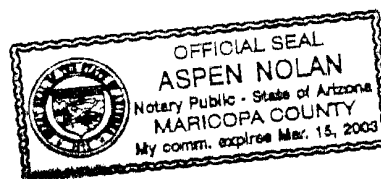
STATE OF Arizona)
County of Maricopa)

ss.

The foregoing instrument was acknowledged before me this 9th day of October, 2002, by Michael Nesbitt, the PRESIDENT of Savage - Thomas of Arizona, Inc, on behalf of the corporation.

Aspen Nolan
Notary Public

My commission expires:

3/15/2003

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080.02

EXHIBIT A

PARCEL NO. 1:

The East half of the Northeast quarter and the East half of the Southeast quarter of Section 25, Township 3 North, Range 1 West of the Gila and Salt River Base and Meridian, Maricopa County, Arizona:

EXCEPT commencing at the Southeast corner of said Section 25;

Thence West along the South Section line of said Section 25, a distance of 1,322.59 feet to the TRUE POINT OF BEGINNING;

Thence North 00 degrees 42 minutes 11 seconds West, a distance of 988.25 feet;

Thence East, a distance of 1,322.24 feet;

Thence South 00 degrees 43 minutes 24 seconds East, a distance of 329.45 feet;

Thence West, a distance of 132.00 feet;

Thence South 00 degrees 43 minutes 24 seconds East, a distance of 329.42 feet;

Thence West, a distance of 1,058.47 feet;

Thence South 00 degrees 42 minutes 11 seconds East, a distance of 329.39 feet to a point on the South line of said Section 25;

Thence West, a distance of 132.00 feet to a point on the South line of said Section 25;

To the TRUE POINT OF BEGINNING; and

EXCEPT the South 65 feet.

PARCEL NO. 2:

That part of the East half of the Northeast quarter and the East half of the Southeast quarter of Section 25, Township 3 North, Range 1 West of the Gila and Salt River Base and Meridian, Maricopa County, Arizona, described as follows:

COMMENCING at the Southeast corner of said Section 25;

Thence West along the South Section line of said Section 25, a distance of 1,322.59 feet to the TRUE POINT OF BEGINNING;

Thence North 00 degrees 42 minutes 11 seconds West, a distance of 988.25 feet;

Thence East, a distance of 1,322.24 feet;

Thence South 00 degrees 43 minutes 24 seconds East, a distance of 329.45 feet;

Thence West, a distance of 132.00 feet;

Thence South 00 degrees 43 minutes 24 seconds East, a distance of 329.42 feet;

Thence West, a distance of 1,058.47 feet;

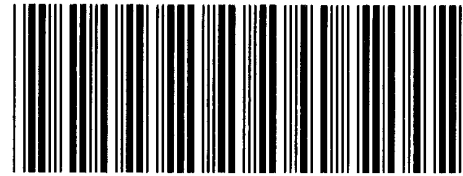
Thence South 00 degrees 42 minutes 11 seconds East, a distance of 329.39 feet to a point on the South line of said Section 25;

Thence West, a distance of 132.00 feet to a point on the South line of said Section 25;

To the TRUE POINT OF BEGINNING;

EXCEPT the North 32 feet of the South 65 feet.

When recorded, return to:
Central Arizona Water
Conservation District
P.O. Box 43020
Phoenix, Arizona 85080-3020
Attn: Manager, Groundwater
Replenishment District



OFFICIAL RECORDS OF
MARICOPA COUNTY RECORDER
HELEN PURCELL
2002-1333572 12/12/02 11:44
2 OF 2

DELROSSA

**AGREEMENT AND NOTICE OF MUNICIPAL PROVIDER
REPORTING REQUIREMENTS FOR
AGUA FRIA RANCH
REGARDING MEMBERSHIP IN THE CENTRAL ARIZONA
GROUNDWATER REPLENISHMENT DISTRICT**

This Agreement and Notice of Municipal Provider Reporting Requirements for Agua Fria Ranch Regarding Membership in the Central Arizona Groundwater Replenishment District is made this 12th day of December, 2002, among the Central Arizona Water Conservation District, a political subdivision of the State of Arizona, Youngtown Resort Living, L.L.C., an Arizona limited liability company, and Arizona-American Water Company, an Arizona corporation.

RECITALS

A. Owner is the owner of the Property, legally described in Exhibit A attached and incorporated into this Agreement.

B. Owner has applied to the Department for a certificate of assured water supply for the Property pursuant to Arizona Revised Statutes Title 45, Chapter 2, Article 9. Owner and the Municipal Provider have executed a notice of intent to serve agreement, as required by the Department, whereby the Municipal Provider has agreed to provide water to the Property.

C. As permitted by Arizona Revised Statutes § 45-576.01(B), Owner desires to satisfy one requirement for obtaining a certificate of assured water supply by qualifying the Property as Member Land pursuant to the Groundwater Replenishment Statute. As Member Land, the Property will be a member of the Central Arizona Groundwater Replenishment District, an operating subdivision of CAWCD.

D. To qualify the Property as Member Land and to permit the delivery of Excess Groundwater to the Property as Member Land, the Groundwater Replenishment Statute requires the Property to be subject to the Declaration.

E. To qualify the Property as Member Land, the Groundwater Replenishment Statute also requires the Municipal Provider to record this Agreement and comply with certain annual reporting requirements in accordance with Arizona Revised Statutes § 48-3774(C).

NOW, THEREFORE, for good and valuable consideration, the receipt and sufficiency of which are acknowledged, and intending to be legally bound, the parties hereby agree as follows:

ARTICLE 1 DEFINITIONS

1.1 "Agreement" means this Agreement and Notice of Municipal Provider Reporting Requirements for Agua Fria Ranch Regarding Membership in the Central Arizona Groundwater Replenishment District, as amended from time to time.

1.2 "CAWCD" means the Central Arizona Water Conservation District, a political subdivision of the State of Arizona, and any successor political subdivision.

1.3 "Declaration" means the Declaration of Covenants, Conditions and Restrictions for Agua Fria Ranch Regarding Membership in the Central Arizona Groundwater Replenishment District recorded by Owner, as declarant, against the Property.

1.4 "Department" means the Arizona Department of Water Resources, an agency of the State of Arizona, and any successor agency.

1.5 "Director" means the director of the Department.

1.6 "Excess Groundwater" means the amount of Groundwater equal to the amount of Groundwater delivered to the Property in a calendar year in excess of the amount of Groundwater that may be used at the Property in that calendar year consistent with the applicable Assured and Adequate Water Supply Rules adopted by the Department for the Phoenix Active Management Area pursuant to Arizona Revised Statutes § 45-576(H), but in no event shall the amount of Excess Groundwater delivered to the Property in a calendar year be less than the amount of Groundwater calculated according to the formula in Paragraph 2.4.

1.7 "Groundwater" is as defined in Arizona Revised Statutes § 45-101(5).

1.8 "Groundwater Replenishment Statute" means Arizona Revised Statutes, Title 48, Chapter 22.

1.9 "Member Land" is as defined in Arizona Revised Statutes § 48-3701(9).

1.10 "Municipal Provider" means Arizona-American Water Company, an Arizona corporation, and its successors and assigns.

1.11 "Owner" means Youngtown Resort Living, L.L.C., an Arizona limited liability company, and its successors and assigns.

1.12 "Parcel" means any portion of the Property now existing or hereafter established for which the tax assessor for the county in which the Property is located has issued a separate tax parcel number. The current tax parcel number for each Parcel is as shown in Exhibit B attached and incorporated into this Agreement.

1.13 "Parcel Replenishment Obligation" means, with respect to any particular Parcel, an amount of Groundwater that is equal to the amount of Groundwater delivered to the Parcel in a calendar year multiplied by the percentage that the Excess Groundwater of the Property for that year bears to the total amount of Groundwater delivered to the Property during that year.

1.14 "Property" means the real property described in Recital A.

1.15 "Report(s)" means the report(s) required to be prepared by the Municipal Provider in accordance with Arizona Revised Statutes § 48-3775(A) and this Agreement.

ARTICLE 2 REPORTING REQUIREMENTS

2.1 Annual Reports. In accordance with Arizona Revised Statutes § 48-3775(A), on or before March 31 of each year after the recordation of this Agreement, the Municipal Provider shall file a Report with CAWCD, with the Director, and with the tax assessor and treasurer for the county where the Property is located that contains the following information for the preceding calendar year, which is the reporting year:

2.1.1 The amount of Groundwater delivered by the Municipal Provider to each Parcel, identified by the applicable tax parcel number, and the basis for the calculation of the amount of Groundwater delivered.

2.1.2 The amount of Groundwater delivered by the Municipal Provider to the Property, and the basis for the calculation of the amount of Groundwater delivered.

2.1.3 The amount of Excess Groundwater delivered by the Municipal Provider to the Property, and the basis for the calculation of the amount of Excess Groundwater delivered.

2.1.4 The Parcel Replenishment Obligation of each Parcel, identified by the applicable tax parcel number.

2.1.5 Such other information as CAWCD may reasonably require.

2.2 Records. In accordance with Arizona Revised Statutes § 48-3775(F), the Municipal Provider shall maintain current and accurate records of the information required to be included in the Reports.

2.3 Form of Reports. In accordance with Arizona Revised Statutes § 48-3777, CAWCD shall determine the form of the Reports to be submitted by the Municipal Provider in order to carry out the purposes of the Groundwater Replenishment Statute.

2.4 Formula for Calculating the Minimum Quantity of Excess Groundwater. The Municipal Provider shall calculate and report the amount of Excess Groundwater delivered to the Property in any year according to the following formula. The following formula establishes a minimum amount of Groundwater which must be reported as Excess Groundwater in a given year. However, the formula does not prevent the Municipal Provider from reporting a greater amount of Groundwater as Excess Groundwater in a given year, if the Municipal Provider wishes, or needs, to do so.

<u>Reporting Year</u>	<u>Calculation</u>
2002	A minimum of 8/15 of the Groundwater delivered to the Property shall be reported as Excess Groundwater
2003	A minimum of 9/15 of the Groundwater delivered to the Property shall be reported as Excess Groundwater
2004	A minimum of 10/15 of the Groundwater delivered to the Property shall be reported as Excess Groundwater
2005	A minimum of 10/15 of the Groundwater delivered to the Property shall be reported as Excess Groundwater
2006	A minimum of 10/15 of the Groundwater delivered to the Property shall be reported as Excess Groundwater
2007	A minimum of 10/15 of the Groundwater delivered to the Property shall be reported as Excess Groundwater
2008	A minimum of 10/15 of the Groundwater delivered to the Property shall be reported as Excess Groundwater
2009	A minimum of 10/15 of the Groundwater delivered to the Property shall be reported as Excess Groundwater

2010	A minimum of 10/15 of the Groundwater delivered to the Property shall be reported as Excess Groundwater
2011	A minimum of 10/15 of the Groundwater delivered to the Property shall be reported as Excess Groundwater
2012	A minimum of 10/15 of the Groundwater delivered to the Property shall be reported as Excess Groundwater
2013	A minimum of 10/15 of the Groundwater delivered to the Property shall be reported as Excess Groundwater
2014	A minimum of 10/15 of the Groundwater delivered to the Property shall be reported as Excess Groundwater

ARTICLE 3 ENFORCEMENT POWERS

3.1 Penalty for Failure to Report. If the Municipal Provider fails to timely file a Report as required by CAWCD, CAWCD may assess a penalty in accordance with Arizona Revised Statutes § 48-3775(G).

3.2 Inspections, Investigations and Audits. The CAWCD has the rights provided under Arizona Revised Statutes § 48-3783 with respect to inspections, investigations and audits.

ARTICLE 4 GENERAL PROVISIONS

4.1 Binding Effect. The provisions of this Agreement inure to the benefit of and bind the respective successors and assigns of the parties hereto, provided that no assignment or transfer of this Agreement or any part or interest herein by the Municipal Provider is valid until approved by CAWCD, which approval may be withheld solely on the basis of CAWCD's determination that assignment would cause the Municipal Provider, Owner, or CAWCD to be out of compliance with the Groundwater Replenishment Statute or unable to meet its obligations under this Agreement or under the Groundwater Replenishment Statute. The Municipal Provider and Owner agree and covenant to CAWCD to execute and record any additional documentation which CAWCD may reasonably require to effectuate the intents and purposes of this Agreement and the Groundwater Replenishment Statute.

4.2 Entire Agreement. This Agreement constitutes the entire agreement among the parties and no understandings or obligations not expressly set forth in this Agreement are binding upon the parties.

4.3 Amendments. This Agreement may be modified, amended or revoked only (i) by the express written agreement of the parties hereto; or (ii) by amendment statutes, rules or regulations or successor statutes, rules or regulations, as contemplated by Paragraph 4.5.

4.4 Interpretation. This Agreement is governed by and must be construed and interpreted in accordance with and in reference to the laws of the State of Arizona, including but not limited to the Groundwater Replenishment Statute.

4.5 Rules, Regulations and Successor Statutes. All references in this Agreement to Arizona Revised Statutes include all rules and regulations promulgated by the Department under such statutes and all amendments and successor statutes, rules and regulations to such statutes, rules and regulations.

4.6 Severability. Any determination by any court of competent jurisdiction that any provision of this Agreement is invalid or unenforceable does not affect the validity or enforceability of any other provision of this Agreement.

4.7 Captions. All captions, titles or headings in this Agreement are used for the purpose of reference and convenience only and do not limit, modify or otherwise affect any of the provisions of this Agreement.

4.8 Notices. Except as otherwise required by law, any notice given in connection with this Agreement must be in writing and must be given by personal delivery, overnight delivery, facsimile, or United States certified or registered mail. Any such notice must be addressed to the appropriate party at the following address (or at any other address as a party may hereafter designate by written notice given as required by this paragraph):

CAWCD:

For delivery use: Central Arizona Water Conservation District
23636 North 7th Street
Phoenix, Arizona 85024
Attn: Manager, Groundwater Replenishment District

For U.S. Mail use: Central Arizona Water Conservation District
P.O. Box 43020
Phoenix, Arizona 85080-3020
Attn: Manager, Groundwater Replenishment District

Municipal
Provider: Arizona-American Water Company
15626 North Del Webb Boulevard
Sun City, Arizona 85351

Owner: Youngtown Resort Living, L.L.C.
3740 East Southern Avenue, Suite 205
Mesa, Arizona 85206

Notice is deemed to have been given on the date on which notice is personally delivered, delivered to an overnight delivery service, transmitted by facsimile, or mailed. Notice is deemed to have been received on the date on which the notice is actually received or delivery is refused.

4.9 Consent to Recording. Owner hereby consents to the recording of this Agreement against the Property.

IN WITNESS WHEREOF, the Parties to this Agreement have executed this Agreement as of the date first set forth above.

CAWCD: CENTRAL ARIZONA WATER CONSERVATION DISTRICT

By: _____

George R. Renner

Its: President

MUNICIPAL
PROVIDER:

ARIZONA-AMERICAN WATER COMPANY, an Arizona
corporation

By: _____

Its: Director, Water Resources

OWNER:YOUNGTOWN RESORT LIVING, L.L.C., an Arizona
limited liability company

By: _____

Its: ED POZOR, Authorized Signer

The undersigned Optionee, identified as "buyer" under that certain Agreement for Purchase and Sale and Escrow Instructions dated March 8, 2002, by and between Youngtown Resort Living, L.L.C., an Arizona limited liability company and Savage-Thomas of Arizona, Inc., a New Mexico corporation, and/or Nominee, hereby directs Youngtown Resort Living, L.L.C. to execute this document and consents to the execution and recording of this document.

OPTIONEE:SIVAGE-THOMAS OF ARIZONA, INC., a New Mexico
corporation

By: _____

Its: President

STATE OF ARIZONA)
) ss.
County of MARICOPA)

The foregoing instrument was acknowledged before me this 14th day of October, 2002, by ED POZOR, the Manager of Youngtown Resort Living, LLC, on behalf of LLC.



Notary Public State of Arizona
Maricopa County
Sheryl Marie Sy Gapuz
Expires August 23, 2005

[Signature]
Notary Public

My commission expires:

8/23/2005

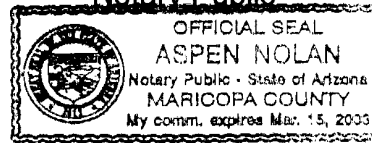
STATE OF Arizona)
) ss.
 County of Maricopa)

The foregoing instrument was acknowledged before me this 9th day of October, 2002, by Michael Verde, the President of Savage-Morris of Arizona, Inc, on behalf of the corporation.

Aspen Nolan
 Notary Public

My commission expires:

3/15/2003



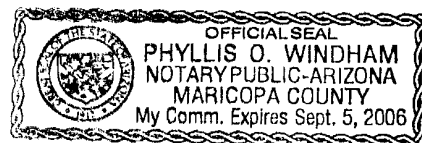
STATE OF Arizona)
) ss.
 County of Maricopa)

The foregoing instrument was acknowledged before me this 6th day of December, 2002, by Keith R. Larson, the Director of Arizona-American Water Company, on behalf of the corporation.

Phyllis O. Windham
 Notary Public

My commission expires:

9/5/06



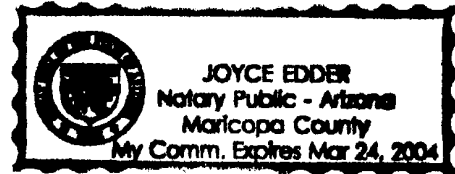
STATE OF Arizona)
) ss.
County of Maricopa)

The foregoing instrument was acknowledged before me this 12th day of December, 2002, by George R. Kenner, the President of Central Arizona Water Conservation District, on behalf of CAWCD.

Joyce Edder
Notary Public

My commission expires:

03/24/04



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EXHIBIT A

PARCEL NO. 1:

The East half of the Northeast quarter and the East half of the Southeast quarter of Section 25, Township 3 North, Range 1 West of the Gila and Salt River Base and Meridian, Maricopa County, Arizona:

EXCEPT commencing at the Southeast corner of said Section 25;

Thence West along the South Section line of said Section 25, a distance of 1,322.59 feet to the TRUE POINT OF BEGINNING;

Thence North 00 degrees 42 minutes 11 seconds West, a distance of 988.25 feet;

Thence East, a distance of 1,322.24 feet;

Thence South 00 degrees 43 minutes 24 seconds East, a distance of 329.45 feet;

Thence West, a distance of 132.00 feet;

Thence South 00 degrees 43 minutes 24 seconds East, a distance of 329.42 feet;

Thence West, a distance of 1,058.47 feet;

Thence South 00 degrees 42 minutes 11 seconds East, a distance of 329.39 feet to a point on the South line of said Section 25;

Thence West, a distance of 132.00 feet to a point on the South line of said Section 25;

To the TRUE POINT OF BEGINNING; and

EXCEPT the South 65 feet.

PARCEL NO. 2:

That part of the East half of the Northeast quarter and the East half of the Southeast quarter of Section 25, Township 3 North, Range 1 West of the Gila and Salt River Base and Meridian, Maricopa County, Arizona, described as follows:

COMMENCING at the Southeast corner of said Section 25;

Thence West along the South Section line of said Section 25, a distance of 1,322.59 feet to the TRUE POINT OF BEGINNING;

Thence North 00 degrees 42 minutes 11 seconds West, a distance of 988.25 feet;

Thence East, a distance of 1,322.24 feet;

Thence South 00 degrees 43 minutes 24 seconds East, a distance of 329.45 feet;

Thence West, a distance of 132.00 feet;

Thence South 00 degrees 43 minutes 24 seconds East, a distance of 329.42 feet;

Thence West, a distance of 1,058.47 feet;

Thence South 00 degrees 42 minutes 11 seconds East, a distance of 329.39 feet to a point on the South line of said Section 25;

Thence West, a distance of 132.00 feet to a point on the South line of said Section 25;

To the TRUE POINT OF BEGINNING;

EXCEPT the North 32 feet of the South 65 feet.

EXHIBIT B

Tax Parcel Numbers

<u>Tax Assessor Parcel Number</u>	<u>Tax Year</u>	<u>County</u>	<u>AMA</u>
501-45-011A	2002	Maricopa	Phoenix
501-45-011B	2002	Maricopa	Phoenix
501-45-011C	2002	Maricopa	Phoenix
501-45-012	2002	Maricopa	Phoenix