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**TRANSMITTAL MEMO**  
(Privileged Communication)

Date: May 2, 2008

To: Sunrise Pointe Vistas HOA  
c/o Premier Properties, Inc.  
3280 S. Camino del Sol, Suite 110  
Green Valley AZ 85614

From: Dona Malazian

Re: Sunrise Pointe/General Matters

**ENCLOSURE:** Original recorded Amended and Restated Declaration of  
Covenants, Conditions, Restrictions and Easements for Sunrise  
Pointe Vistas.

**COMMENTS:** Please file this original recorded document with the Association's  
corporate papers. We have retained a copy for our file.

F. ANN RODRIGUEZ, RECORDER  
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**AMENDED AND RESTATED DECLARATION OF  
COVENANTS, CONDITIONS, RESTRICTIONS AND  
EASEMENTS**

**FOR**

**SUNRISE POINTE VISTAS  
PHASE I**

**An Age-Restricted Planned Community**

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**AMENDED AND RESTATED DECLARATION OF COVENANTS,  
CONDITIONS AND RESTRICTIONS OF  
SUNRISE POINTE VISTAS  
PHASE I**

**RECITALS**

THIS AMENDED AND RESTATED DECLARATION OF COVENANTS, CONDITIONS, RESTRICTIONS AND EASEMENTS FOR SUNRISE POINTE VISTAS, PHASE I (this "Declaration") is made this 27 day of March, 2008, by the owners (the "Owners") of the real property described as:

Lots 1 through 106 inclusive, and Common Areas A and B of Sunrise Pointe Vistas, Phase I, a subdivision in Pima County, Arizona, as recorded in Book 48 of Maps and Plats at Page 34 thereof, in the Office of the Pima County Recorder, Pima County, Arizona.

(the "Properties")

WHEREAS, the Declaration of Covenants, Conditions and Restrictions of Sunrise Pointe Vistas Phase I (the "Original Declaration"), was recorded on May 2, 1996, in Docket 10286, at Pages 683, *et seq.*, in the Office of the Pima County Recorder, and has been amended from time to time; and

WHEREAS, a "Restrictive Covenant," affecting Lot 20 of the Properties, was recorded on January 29, 1997, in Docket 10471, at Page 1536, *et seq.*, and is not affected by this Declaration; and

WHEREAS, an "Agreement and Declaration of Covenants," affecting Common Area E of the Properties (known as Pecan Valley Drive), was recorded on January 29, 1997, in Docket 10471, at Page 1494, *et seq.*, and is not affected by this Declaration; and

WHEREAS, an Amendment to the Original Declaration was recorded in January 29, 1997, in Docket 10471, at Pages 1487, *et seq.*, in the Office of the Pima County Recorder; and

WHEREAS, Section 11.3 of the Original Declaration provides that it may be amended with the approval of the Owners of not less than 75% of the Lots; and becomes effective when signed by the President and Secretary of Sunrise Pointe Vistas Homeowners Association, Inc., attesting that such amendment was approved by the requisite percentage of Owners and is recorded in the office of the Pima County Recorder, and

**WHEREAS**, at least 75% of the Owners of Lots within the Properties have approved the adoption of this Declaration.

### **COVENANTS**

**NOW THEREFORE**, the Owners hereby declare that the Properties are and shall be held, conveyed, encumbered, leased, and used subject to the following covenants, conditions, uses, restrictions, limitations, obligations, easements, equitable servitudes, charges and liens (hereinafter collectively referred to as the "Restrictions"), all of which are for the purpose of enhancing and protecting the value, desirability and attractiveness of the Properties. The Restrictions set forth herein shall run with the Properties, shall be binding upon all persons having or acquiring any right, title or interest therein, and shall inure to the benefit of, be binding upon and enforceable by all Owners, the Association and their successors and assigns in interest.

Except as provided herein, the Original Declaration, together with any amendments thereto, are superseded in their entirety by this Declaration and will no longer be in effect as of the date of recording of this Declaration. Notwithstanding the foregoing, Article VII as set forth in this Declaration is not intended to amend and does not amend or in any way affect Article VII of the Original Declaration or the easements granted in said Article VII or in the Plat. It is intended that such easements continue in full force and effect as they existed prior to the recordation of this Declaration. Article VII herein is set forth as a convenience and is merely intended to clarify the meaning of Article VII in the Original Declaration in light of present circumstances, including the fact that the development of the Properties has been completed and that neither Declarant nor U. S. Home Corporation has any continuing interest in the Properties. Therefore, in the event of a conflict or inconsistency between the provisions of Article VII herein and the provisions of Article VII in the Original Declaration, the provisions of Article VII in the Original Declaration will govern. However, that in the event of a conflict or inconsistency between the provisions of Article VII in the Original Declaration and any other provisions of this Declaration, including Section 5.1 hereof, the provisions of this Declaration will govern.

### **ARTICLE I** **DEFINITIONS**

Unless the context otherwise specifies or requires, the following words and phrases when used herein shall have the meanings hereinafter assigned.

**Section 1.1.**     **"Architectural Committee"** means the Committee established by the Board pursuant to Section 8.1 of this Declaration.

Section 1.2.     “Articles” mean the Articles of Incorporation of the Association and any and all amendments thereto which are or shall be filed in the Office of the Arizona Corporation Commission.

Section 1.3.     “Assessments” mean the Annual, Special and Reimbursement Assessments, together with any other sums which may become due to the Association by an Owner and includes late fees, interest, fines and penalties, attorney fees, collection costs, and any other costs.

Section 1.4.     “Association” means Sunrise Pointe Vistas Homeowners Association, Inc., its successors and assigns.

Section 1.5.     “Board” means the Board of Directors of the Association.

Section 1.6.     “Bylaws” mean the Bylaws of the Association, together with any amendments thereto. The Bylaws set forth the operating procedures of the Association.

Section 1.7.     “Common Area” or “Common Areas” mean all real property and improvements thereon designated as Common Areas on the Plat, and any other property owned or controlled by the Association, including easement areas, for the common use and enjoyment of the Owners.

Section 1.8.     “Declarant” means Title Guaranty Agency of Arizona, Inc., an Arizona corporation, as Trustee under Trust No. T-1278, and its successors and assigns.

Section 1.9.     “Declaration” means this Amended and Restated Declaration of Covenants, Conditions, Restrictions, and Easements for Sunrise Pointe Vistas, Phase I, as amended from time to time.

Section 1.10.     “Dwelling Unit” means the residence, including patio walls, constructed on a Lot.

Section 1.11.     “Governing Documents” mean this Declaration, the Articles of Incorporation of the Association, the Bylaws and Rules.

Section 1.12.     “Improvement” means any change, alteration or addition to a Lot and includes, but is not limited to, the Dwelling Unit, patios, swimming pools, walls, paths, driveways, excavation, landscaping, fixtures, satellite systems, fences, copings, awnings, sunshades, flagpoles, and the installation of any decorative item on the Lot or Dwelling Unit, including changing the color as originally installed or constructed.

Section 1.13.     “Lot” means the numbered plots of land shown on the Plat, including any improvements.

Section 1.14.     “Master Declaration” means that certain Amended and Restated Declaration of Covenants, Conditions, Restrictions and Easements for Santa Rita Springs, recorded on May 23, 2003, in Docket 12507, pages 1088, *et seq.*, in the Office of the Recorder of Pima County, Arizona.

Section 1.15. “Member” means every owner of a Lot.

Section 1.16.     “Mortgage” means any consensual encumbrance on a Lot, which is evidenced by an instrument recorded in Pima County, Arizona, and includes mortgages, deeds of trust and contracts for sale. The term “Mortgagee” includes a beneficiary under a Deed of Trust, and the term “First Mortgagee” means the holder of any Mortgage or the beneficiary of any deed of trust under which the interest of any Owner of a Lot is encumbered and which has first and paramount priority over any other lien or encumbrance, except for liens for real estate taxes and other governmental assessments.

Section 1.17.     “Owner” means the record holder, whether one or more Persons, of fee simple title to any Lot, including a buyer under a contract for the conveyance of real property pursuant to Arizona Revised Statutes, Section 33-741, but excluding Persons holding an interest merely as security for the performance of an obligation, and excluding buyers under sales agreements or deposit receipt and agreements.

Section 1.18.     “Person” means a natural person, corporation, limited liability company, partnership, limited partnership, trust, estate, any governmental entity and any other entity heretofore or hereafter created or authorized.

Section 1.19.     “Plat” means the Plat of Sunrise Pointe Vistas, recorded in Book 48 of Maps and Plats at Page 34 in the Office of the County Recorder of Pima County, Arizona, and any amendment thereto or resubdivision thereof.

Section 1.20.     “Properties” mean Lots 1 through 106 and Common Areas A and B of Sunrise Pointe Vistas, Phase I, as described on the Plat.

Section 1.21.     “Qualifying Resident” means a person who is 55 years of age or older.

Section 1.22.     “Rules” mean those policies and procedures, adopted by the Board, that interpret or supplement the provisions of this Declaration or which govern the conduct of Owners.

## ARTICLE II ASSOCIATION

Section 2.1. Master Declaration. The Properties are a part of a master planned community known as Santa Rita Springs (the “Master Association”). The Properties shall be subject to the terms and conditions of the Declaration of Covenants, Conditions and Restrictions for Santa Rita Springs, recorded in Docket 9955, pages 1005 through 1061, and then re-recorded February 28, 1995 in Docket 9989, Pages 1320, *et seq.*, then Amended and Restated in Docket 10,110 at page 949, and re-recorded on September 6, 1995, in Docket 10122 at pages 439, *et seq.*, with the First Amendment and Notice of Termination in Docket 10122 at page 433, then Amended and Restated and re-recorded on January 10, 1997, in Docket 10459 at Pages 955 *et seq.*, and then Amended and Restated and re-recorded on May 23, 2003, in Docket 12057 at pages 1088 *et seq.*, in the Office of the Recorder of Pima County, Arizona (the “Master Declaration”), and the Articles of Incorporation and Bylaws of Santa Rita Springs Homeowners Association, and that certain Agreement entered into between Santa Rita Springs and Sunrise Pointe Vista Homeowners Association on August 13, 2003, and recorded on December 16, 2003, in Docket 12198, pages 215 *et seq.* (collectively the “Master Association Documents”), including all amendments to the Master Association Documents. All restrictions, regulations, approvals and consents, submittals and all other provisions of the Master Declaration shall be in addition to any obligations required under the terms of this Agreement.

Section 2.2. Membership. Every person who is an Owner of a Lot is a Member of the Association. Ownership is appurtenant to and may not be separated from ownership of a Lot. Only Persons who own Lots under recorded instruments, including deeds and contracts for sale, shall be Members of the Association.

Section 2.3. Ownership by an Entity. If a Lot is owned by a corporation, partnership, association or trust, that entity shall be a Member and shall designate in writing an individual who shall have the power to vote said membership, and in the absence of such designation, the president or general partner or trustee of such entity shall have the power to vote the membership.

Section 2.4. Voting Rights. Except as provided in Section 2.5 below, there is one vote for each Lot owned. If a Lot is owned by more than one Person, whether a husband or wife, or any other type of co-ownership, the co-Owners shall agree among themselves upon the disposition of the vote allocated to that Lot, and if they cannot agree, the vote shall be prorated among them.

Section 2.5. Suspension of Voting Rights. If, at any time, any amount due to the Association from the Owner of any Lot for any Assessment becomes delinquent, such

Owner's right to vote on any Association matter will be automatically suspended until such Assessment has been paid in full.

**Section 2.6. Purpose of Association.** The Association is a non-profit corporation which will serve as the governing body for all Owners and Members for the protection, improvement, alteration, maintenance, repair, replacement, administration and operation of the Common Areas, and any other areas for which the Association is responsible under the terms of this Declaration or otherwise; the assessment of expenses; payment of losses; disposition of casualty insurance proceeds; and other matters as provided in Governing Documents. The Association shall not be deemed to be conducting a business of any kind. All funds received by the Association shall be held and applied by it for the Owners and Members in accordance with the provisions of the Governing Documents.

**Section 2.7. Rights and Responsibilities of Association.** The Association, through the Board of Directors, unless specifically provided otherwise, shall have the right of enforcement of all of the provisions hereof. The Association shall maintain the private drainage easements within the Properties, and may in its discretion landscape same, and shall be responsible for the efficient management and operation of the Common Areas and any other areas for which it is responsible under the terms of this Declaration or for which it has assumed responsibility, including (but not limited to):

- A. maintaining, operating, and rebuilding improvements on the Common Areas;
- B. maintaining common streets, drainage easements, pedestrian easements, roads, slope easements, sidewalks, and entryway features and landscaping leading into the Properties;
- C. maintaining all trees and vegetation planted or existing on the Common Areas at a height, width and density that will not materially interfere with the view of an Owner of a Lot. (The Board of Directors shall determine, in its sole discretion, whether any such interference with view is "material" for the purposes of this Section);
- D. operating, maintaining, rebuilding and insuring Improvements originally constructed by Developer, or later constructed by the Association on the Common Areas;
- E. paying real estate taxes, assessments and other charges on the Common Areas;

- F. insuring all Improvements which the Association is obligated to maintain against damage by casualty with such companies and in such limits as determined by the Board of Directors;
- G. hiring, firing, supervising and paying independent contractors including, but not limited to, managing agent, workmen, landscapers, attorneys, accountants, architects and contractors to carry out the obligations set forth herein;
- H. maintaining such liability insurance as the Association deems necessary to protect the Members and the Board of Directors of the Association from any liability caused by occurrences or happenings on or about the Common Areas;
- I. purchasing all goods, supplies, labor and services reasonably necessary for the performance of the obligations set forth herein;
- J. establishing and maintaining such cash reserves as the Board may, in its sole and absolute discretion, deem reasonably necessary for the periodic maintenance, repair and replacement of the Improvements which the Association is responsible to maintain;
- K. providing for and payment of all utility services for the Common Areas if deemed appropriate by the Board;
- L. entering into such agreements and taking such actions as are reasonably necessary and convenient for the accomplishment of the obligations set forth above and the operation and maintenance of the Properties as a first-class, residential development;
- M. obtaining licenses and entering into easements and other agreements for the use of the Common Areas;
- N. maintaining any personal property owned by the Association; and
- O. such other matters as provided for in the Governing Documents.

**Section 2.8. Articles and Bylaws.** The provisions of the Bylaws, the Articles and this Declaration, which Declaration shall control in the event of conflict, shall control the manner in which the Association holds meetings and attends to other corporate formalities.

**Section 2.9. Board of Directors.** The Board of Directors of the Association shall be elected in accordance with the pertinent provisions of the Bylaws.

**Section 2.10. Rules and Regulations of the Association.** The Board may adopt, amend or repeal such rules and regulations as it deems reasonable and appropriate (collectively the "Rules"), which shall be binding upon all Persons subject to this Declaration and shall govern the use and occupancy of the Properties. The Rules may include the establishment of a system of fines and penalties for violation of the Rules, which shall be levied only after the offending Owner has been given notice and an opportunity to be heard in accordance with the terms of the Bylaws of the Association. The Rules shall govern such matters as the Board deems to be in furtherance of the purposes of the Association, including, without limitation, the use of Common Areas. The Rules may be amended at any special or regular meeting of the Board.

The Rules are deemed incorporated herein by this reference and shall have the same force and effect as if they were set forth in and were part of this Declaration and shall be binding upon all Persons having any interest in, or making any use of, any part of the Properties, whether or not copies of the Rules are actually received by such Persons. References to the covenants and restrictions contained herein shall be deemed to refer also to the Rules (except to the extent the Rules are in conflict herewith). The Rules, as adopted, amended or repealed, shall be available for review at the principal office of the Association to each Person reasonably entitled thereto. It shall be the responsibility of each Person subject to the Rules to review and keep abreast of any changes in the provisions thereof. In the event of any conflict between any provision of the Rules and any provisions of this Declaration, or the Articles or Bylaws, the provisions of the Rules shall be deemed to be superseded by the provisions of this Declaration, the Articles or Bylaws to the extent of any such conflict.

**Section 2.11. Non-Liability and Indemnification.** To the fullest extent permitted by law, neither the Board, nor any officers, nor any committees of the Board, nor any members thereof, shall be liable to any Owner or to the Association or any other person for any damage, loss or prejudice suffered or claimed on account of any decision, course of action, act, inaction, omission, error, negligence or the like, made in good faith and which the Board or such officers or members of committees of the Board, reasonably believed to be within the scope of their respective duties or rights.

To the fullest extent permitted by law, the Association shall indemnify every director, officer or committee member of the Association. The Association may in the discretion of the Board, indemnify every other Person serving as a direct agent of the Association, or otherwise acting on behalf of and at the request of the Association.

No officer, director or committee member will be indemnified in connection with any action brought by him/her against the Association (whether by derivative action or counterclaim) unless he or she has been successful on the merits, after trial. The right of indemnification hereinafter provided will not be exclusive of other rights to which any director, officer or committee member may otherwise be entitled by law.

Any such indemnification shall be limited to all expenses and liabilities, including attorneys' fees, reasonably incurred by or imposed upon such person in connection with any proceeding to which he or she may be made a party or in which he or she may become involved, by reason of his/her serving, or having served in such capacity on behalf of the Association, or incurred in any settlement thereof, whether or not he or she is a director, officer or member of a committee or serving in such other specified capacity at the time such expenses are incurred. The Association may withdraw this right of indemnification if any person so indemnified refuses to cooperate with the Association's reasonable defense or settlement of a pertinent claim. This obligation does not apply to requests for the Association to indemnify a director, officer or member of a committee for a claim initiated by such person, unless the Board has given its prior written approval.

**Section 2.12. Managing Agent.** All powers, duties and rights of the Association or the Board, as provided by law and herein, may be designated to a managing agent under a management agreement, provided, however, that no such delegation shall relieve the Association of its obligation to perform any such delegated duty. Any agreement for professional management shall not exceed a term of one year, which term may be renewed by agreement of the parties for successive one-year periods. Any such agreement shall provide for termination by either party with or without cause and without payment of a termination fee upon 90 days' written notice; provided, however, that the Association may terminate the Agreement for cause upon thirty (30) days' written notice.

**Section 2.13. Disputes.** In the event of any dispute or disagreement between any Owners or any other persons subject to this Declaration relating to the Properties or any question of interpretation or application of the provisions of this Declaration, Bylaws or Rules, this Declaration shall control.

**Section 2.14. Records and Accounting.** The Association shall keep, or cause to be kept, true and correct books and records of account at the sole cost and expense of the Association in accordance with generally-accepted accounting principles. Such books and records, together with current copies of the Governing Documents, shall be available for inspection by all Owners and First Mortgagees of record at reasonable times during regular business hours.

## ARTICLE III MAINTENANCE

### Section 3.1. Exterior Maintenance, Repair, Up-Keep and Repainting of Dwelling Units.

A. Dwelling Units. Maintenance, repair and upkeep and repainting of Dwelling Units, including all other Improvements on a Lot, shall be the sole responsibility of each Owner.

B. Perimeter Walls. Each Owner shall maintain, repair and repaint (if applicable), the interior and exterior sides of the perimeter yard walls or fences appurtenant to his/her Lot, except that if such a wall or fence is a common wall or fence (see Section 7.9), an Owner shall be required to repair and repaint only that portion of the wall or fence exclusively used by that Owner.

C. Plumbing. Each Owner shall be responsible for sewer blockage, repair, etc. of all Dwelling Unit plumbing, as well as the house connection line from the Dwelling Unit to its connection point in the main collection sewer line in the street.

D. Exterior Lighting. Each Owner shall be responsible for the maintenance and repair, including replacement of light bulbs, of all exterior lighting fixtures located within the Owner's Dwelling Unit, or in the Common Area, provided such lighting in the Common Area is metered to the Owner's Dwelling Unit.

E. Private Drainage Easements. Areas denoted as "Private Drainage Easements" are shown on the Plat or by separate instrument duly recorded, over and across certain Lots or Common Area for the exclusive use and benefit of other Lot Owners. The Association is responsible for maintaining all Private Drainage Easements by keeping them reasonably free and clear from all debris, refuse and any other foreign matter which may interfere with or hinder the free flow of water in the Private Drainage Easement as originally constructed.

F. Failure to Maintain. Such maintenance, repair and repainting of a Dwelling Unit and other Improvements on a Lot shall be undertaken in a manner and with such frequency as shall keep each Owner's Lot in an attractive, well-kept and maintained condition, in conformity with all other Lots. In the event any Owner fails to fulfill his/her obligation under this Section, the Association, after approval of a 2/3rds vote of the Board of Directors, shall have the right through its agents and employees, to enter upon the subject property, and to repair, maintain and restore the Lot, including the perimeter yard walls, or fences and any other Improvements. The cost of such exterior maintenance shall be added to and become part of the Assessment to which such Lot is subject. The Board

shall have the right to determine whether or not a Lot is in need of maintenance, repair and up-keep in order to conform to the standards of the general neighborhood of the Properties, and the Board shall use a reasonably high standard to determine whether such maintenance, repair and up-keep is required so that the Lots as a whole will reflect a high pride of ownership.

G. Easement for Maintenance. Each Owner or his/her authorized agent, in order to conduct such maintenance, repair or repainting, shall have the right of entry at reasonable times upon Lots adjacent to such Owner's Lot, provided reasonable notice of such entry is first given by such Owner to the Owner of the involved adjacent Lot. The Association shall have a right of entry and an easement upon each Lot for the purpose of fulfilling its responsibilities hereunder.

Section 3.2. Maintenance of Common Areas. The Association shall be responsible for the maintenance, repair and upkeep of any Common Area improvements including, but not limited to, non-public streets, curb line sidewalks and Common Area sidewalks, landscaping, Common Area mail box sites and bulletin boards, if any, constructed on the Common Areas.

#### ARTICLE IV INSURANCE AND CONDEMNATION

Section 4.1. Insurance Requirements. The Association shall purchase and maintain at all times the following types of insurance:

A. Commercial General Liability and Property Insurance. Commercial general liability insurance covering bodily injury and property damage liability insurance covering all Common Areas maintained by the Association, and all other areas under the jurisdiction or control of the Association, excluding the Lots. Such insurance policy or policies shall contain, if available, a "severability of interest" clause or endorsement which shall preclude the insurer from denying the claim of an Owner because of negligent acts of the Association or of any other Owners.

The scope of coverage of such policy or policies must include all other coverage in the kinds and amounts commonly required by private institutional mortgage investors for projects similar in construction, location and use to the Properties. Coverage shall be for at least one million dollars (\$1,000,000) combined single limit.

Such coverage shall include, without limitation, legal liability of the insureds for property damage, bodily injuries and deaths of persons in connection with the operation, maintenance, or use of the Common Areas maintained by the Association; legal liability arising out of lawsuits related to employment contracts of the Association; and protection for such other risks as shall customarily be covered with respect to projects similar in construction, location and use.

**B. Insurance of Common Areas.** Fire and other hazard insurance covering improvements constructed on the Common Areas shall consist, at a minimum of a multi-peril type policy covering the subject improvements, providing as a minimum, fire and extended coverage and all other coverage in the kinds and amounts commonly required to be covered by private institutional mortgage lenders.

Such policies of insurance shall contain a "Replacement Cost Endorsement" providing that any claim shall be settled on a full replacement cost basis without deduction for depreciation, an "Inflation Guard Endorsement" and an "Agreed Amount Endorsement", if possible.

If the Common Areas or any portions thereof are located within an area identified by the Federal Emergency Management Agency as having special flood hazards, and flood insurance coverage for improvements on the Common Areas have been made available under the National Flood Insurance Program, then such a policy of flood insurance shall, if deemed necessary by the Board, be obtained on the Common Areas in an amount at least equal to the lesser of:

1. the maximum coverage available under the National Flood Insurance Program for all insurable property located within a designated flood hazard area; or
2. 100% of current replacement cost of all insurable property located within a designated flood hazard area.

**C. Fidelity Insurance.** Fidelity coverage against dishonest acts on the part of directors, officers, managers, trustees, employees, or volunteers responsible for handling funds belonging to or administered by the Association. Such fidelity bond or insurance shall name the Association as the insured and shall be written in an amount sufficient to provide protection, that is, in no event less than one and one-half times the Association's annual operating expenses and reserves, and provide for at least 30 days' notice to the Association before cancellation or substantial modification thereof. In connection with such coverage, an appropriate endorsement to the policy to cover any person who serves without compensation shall be added, if the policy would not otherwise cover volunteers.

**D. Directors and Officers Liability Insurance.**

**Section 4.2. Waiver of Subrogation.** Every policy of insurance obtained by the Association shall contain an express waiver, if available, of any and all rights of subrogation against the Board and such other persons or entities affiliated with the Association, such as a manager and its representatives, members and employees, and a provision, if available, preventing any cancellation or modification thereof, except upon at least 30 days' written notice to the insureds.

Liability insurance hereinabove specified shall name as separately protected insureds the Association, the Board and such other persons or entities, affiliated with the Association, such as a manager and its representatives, members and employees, as their interest may appear with respect to any liability arising out of the maintenance or use of any insured property.

To the extent that each such policy will not be voided or impaired thereby, the Association hereby waives and releases all claims against the Board and such other persons or entities named in said insurance policies, whether or not caused by negligence or breach of any agreement by said persons, but only to the extent that insurance proceeds are received in compensation for such loss.

Section 4.3. Insurance Premiums. Premiums for insurance purchased or obtained by the Association shall be a common expense payable through assessments of Lots and all such insurance coverage obtained by the Board shall be written in the name of the Association.

Section 4.4. Additional Optional Insurance by Owner. In addition to the aforesaid insurance required to be carried by the Association, each Owner shall, at his own expense, carry any other insurance deemed advisable; however, if available, said policy or policies shall provide that there shall be no contribution or offset between policies of the Association and policies an individual Owner may have in effect.

The Association shall have no duty whatsoever to insure, protect or maintain real or personal property located upon any Lot.

It shall be the individual responsibility of each Owner, at his/her own expense, to provide Owner's liability and property damage insurance, theft and other insurance covering personal and real property of the Owner.

Section 4.5. Destruction/Insurance Proceeds. In the event of substantial damage or destruction of any part of the Common Areas, no Owner of a Lot or other party shall have priority over a First Mortgagee with respect to the distribution of any insurance proceeds.

Section 4.6. Condemnation; Destruction.

A. Condemnation.

1. Taking. The term "taking", as used in this Section, shall mean either (a) condemnation by eminent domain, or (b) sale under threat of condemnation.

2. Authority of the Board. In the event of a threatened taking of all or any portion of the Common Areas, the Members hereby appoint the Board of the

Association and such persons as the Board or the Association may designate, to represent all of the Owners in connection with the taking. The Board shall act in its sole discretion with respect to any awards being made in connection with the taking and shall be entitled to make a voluntary sale to the condemnor in lieu of engaging in a condemnation action.

3. Partial Taking. In the event of a taking of less than all of the Common Areas, the rules as to restoration and replacement of the Common Areas and the Improvements thereon shall apply as in the case of destruction of Improvements upon the Common Areas as provided in Section 4.6B.

4. Distribution of Proceeds. Any awards received on account of the taking shall be paid to the Association and to mortgagees of record, as their interests may appear. In the event of a total taking, the Board may retain any award in the general funds of the Association, and any distribution of the award shall be on a reasonable and equitable basis. Notwithstanding anything to the contrary in this Section, the distribution of any awards for a taking of all or any portion of the Common Areas shall be subject to the prior right of mortgagees.

B. Destruction.

1. Duty of Association. In the event of a partial or total destruction of the Common Areas or Improvements thereon, except as otherwise provided herein, it shall be the duty of the Association to restore and repair the same to its former condition as promptly as is practicable and in a workmanlike manner. The proceeds of any insurance maintained pursuant hereto shall be used for such purpose, subject to the prior rights of mortgagees whose interests may be protected by said policies.

2. Destruction; Proceeds Exceed 80% of Reconstruction Costs. If the amount available from the proceeds of such insurance policies for such restoration and repair is at least 80% of the estimated costs of restoration and repair, a special assessment for reconstruction with each Owner contributing a like sum for each Lot owned, may be levied by the Association to provide the necessary funds for such reconstruction and repair, over and above the amount of any insurance proceeds available for such purpose, and such assessment shall not require the consent of any specified proportion of the Members.

3. Destruction; Proceeds Less than 80% of Reconstruction Costs. If the amount available from the proceeds of such insurance policies for such restoration and repair is less than 80% of the estimated costs of restoration and repair, the improvements shall not be replaced or restored through application of a special assessment unless such assessment is approved by the vote or written consent of 2/3rds of the Members in the Association.

(a) Use of Hazard Proceeds. Notwithstanding the foregoing, unless the Owners of at least 2/3rds of the Lots, and the holders of 2/3rds of the First Mortgages, have given their prior written approval, the Association shall not be entitled to use hazard proceeds for losses to any Common Areas for other than the repair, replacement or reconstruction of such Improvements.

(b) Common Areas. In the event of a determination not to replace or restore the Improvements on the Common Areas as set forth above, the Common Areas shall be cleared and landscaped as open space to be used by the Owners pursuant to the provisions hereof, and the costs thereof shall be paid for with the insurance proceeds, and any deficiency may be raised by the levy of uniform special assessments for reconstruction in an amount determined by the Board shall not require the consent of any specified proportion of the Members.

## ARTICLE V OWNERSHIP AND USE OF COMMON AREAS

Section 5.1. Owners' Easements of Enjoyment. Every Owner shall have a right and easement of enjoyment in and to the Common Areas which shall be appurtenant to and shall pass with title to every Lot, subject to the provisions hereof.

Section 5.2. Conditional Use of Common Areas. Each Owner, his family, licensees, invitees and tenants or lessees, or contract purchasers of a Lot shall be entitled to use the Common Areas subject to:

A. The provisions of the Governing Documents. Each Owner, invitee, licensee, and tenant agrees that in using the Common Areas, he/she will comply with the provisions of such Governing Documents.

B. The right of the Association to take such steps as are reasonably necessary to protect the Common Areas against foreclosure.

C. The right of the Association, in connection with any adopted Rules, to enforce reasonable rules and regulations with respect to the use of the Common Areas, including specific provisions with respect to the parking of vehicles thereon.

Section 5.3. Delegation of Use. Any Owner may delegate his/her right of enjoyment in the Common Areas to the members of his family, his tenants or lessees or contract purchasers who reside in the Dwelling Unit, subject to such Rules as the Association may, from time to time, establish. Such delegation shall not relieve said Owner of his/her obligations and responsibilities as a Member under the Bylaws, Rules and this Declaration.

Section 5.4. Damage or Destruction of Common Areas. In the event any Common Areas are damaged or destroyed by a willful or grossly negligent act of an Owner or any of his/her guests, tenants, licensees, agents, or members of his/her family, such Owner shall be liable therefor to the extent of liability imposed by local law, and such Owner does hereby irrevocably authorize the Association to repair the damaged property, and the Association shall so repair the damaged property in good workmanlike manner in substantial conformance with the original plans and specifications. The Owner shall then repay the Association the amount actually expended for such repairs. Each Owner further agrees that these charges for repairs, if not paid within ten days after completion of the work, shall be delinquent and shall become a lien upon each Owner's Lot and shall continue to be a lien until fully paid. Said charges shall bear interest at a rate not to exceed the maximum rate permitted by Arizona law. The lien shall be subordinate to any First Mortgage or encumbrance on the subject property. The amount of principal and interest owed by the Owner to the Association shall be a debt, and shall be collectible by any lawful procedure allowed by the laws of the State of Arizona.

Section 5.5. Restriction of Conveyance of Common Areas. The Common Areas owned by the Association may not by act or omission be abandoned, partitioned, subdivided, encumbered, sold or transferred without the prior written approval of 2/3rds of voting Members of the Association, except that the Association shall have the right at all times to grant easements over the Common Areas for the purpose of constructing, erecting, operating or maintaining thereon, therein and thereunder: (A) roads, streets, walks, pathways and driveways; (B) temporary overhead or permanent underground lines, cables, wires, conduits or other devices for the transmission of electricity for lights, heating, power, telephone, cable TV and other purposes; (C) sewers, storm drains and pipes, drainage easements, water systems, water heating and gas lines or pipes; and (D) such other improvements or agreements as may be provided for in this Declaration or be deemed advisable in the sole discretion of the Board of Directors.

## ARTICLE VI ASSESSMENTS

Section 6.1. Creation of the Lien and Personal Obligation to Pay Assessments. Each Owner, upon the recordation of a deed to any Lot, whether or not it shall be so stated in such deed, agrees and covenants to pay to the Association: (A) Annual Assessments or charges, (B) Special Assessments, and (C) Reimbursement Assessments. These Assessments shall be established and collected as provided in this Article. All Assessments levied against a Lot, together with interest from the date of delinquency until paid, late fees, costs and reasonable attorneys fees, shall be charged against the Lot and shall be a continuing lien upon the Lot. Such lien shall be deemed to have attached as of the date of recordation of the Original Declaration, and shall be senior to all matters other

than tax liens for real property taxes on the Lot, assessments on the Lot in favor of any municipal or other governmental assessing unit, reservations in patents, and the lien of any First Mortgage. Upon the voluntary conveyance of a Lot, the selling Owner and the buyer shall be and remain jointly and severally liable for the payment of all Assessments levied against the Lot prior to the closing of said sale and unpaid at the time of the conveyance, subject to the provisions of this Article.

Delinquent Assessments, together with interest, late fees, costs, and reasonable attorneys fees, also shall be the personal obligation of the Person who was the Owner of such Lot at the time when the Assessment was levied, and shall bind his/her heirs, devisees, personal representatives and assigns. Except as otherwise provided herein, the personal obligation for delinquent Assessments shall not pass to successors in title unless expressly assumed by them.

**Section 6.2. Purpose of Assessments.** The Assessments levied by the Association shall be used exclusively to promote the recreation, health, safety, welfare, and enjoyment of the residents in the Properties, for the improvement and maintenance of the Common Areas, enforcement of the Governing Documents, and the establishment of reasonable reserves for anticipated future expenditures for such purposes.

**Section 6.3. Annual Assessment.**

**A. Annual Assessment.** The Board shall determine the amount of the Annual Assessment, based upon the operating budget of the Association, including appropriate reserves. The amount of the Annual Assessment may not be increased more than twenty percent of the previous year's Assessment without the vote of a majority of the Members in the Association. The Board of Directors may fix the Annual Assessment at an amount not in excess of the maximum referred to above. Except as otherwise set forth in this Section, the rate set for the Annual Assessment for any particular year may be revised periodically by the Board of Directors based on actual operating costs of the Association.

**B. Notification to Owners of Annual Assessments.** The Board shall provide notice to the Owners of the amount of the Annual Assessment with the annual budget, as provided in Section 6.3C below.

**C. Budgeting.** Each year the Board shall prepare, approve and make available to each Member, a budget containing: (1) estimated revenue and expenses; (2) the amount of total cash reserves of the Association currently available for replacement or repair of the Common Areas or other areas within the Properties which the Association is responsible to repair and maintain, and for contingencies; and (3) a general statement setting forth the procedures used by the Board in the calculation and establishment of reserves to defray the costs of repair, replacement or additions to major components of

the Common Areas. The total amount needed to fund the annual budget shall be charged equally against all Lots as Annual Assessments, subject to any limitations set forth in the Governing Documents. The Board shall prepare and approve the annual budget and distribute a copy to each Lot Owner, together with written notice of the amount of the Annual Assessment to be levied against the Owner's Lot, not less than 15 days nor more than 60 days prior to the beginning of the fiscal year.

**D. Non-Waiver of Assessments.** If before the expiration of any fiscal year the Association fails to fix the Annual Assessments for the next fiscal year, the Annual Assessment established for the preceding year shall continue until a new Regular Annual Assessment is fixed.

**Section 6.4. Special Assessments.** Special Assessments may be recommended by the Board of Directors, in addition to the regular Annual Assessment for (A) constructing capital improvements; (B) correcting an inadequacy in the current operating account; (C) defraying, in whole or in part, the cost of any construction, reconstruction, unexpected repair or replacement of improvements in the Common Area; or (D) paying for such other matters as the Board may deem appropriate for the Properties or the good and welfare of the Members. Special Assessments require the approval of 2/3rds of the Members who are voting in person or by absentee ballot at an Annual Meeting or at a Special Meeting duly called for this purpose (at which a quorum is present). The vote also may be by mail ballot in place of a meeting.

**Section 6.5. Reimbursement Assessments.** The Association shall levy a Reimbursement Assessment if: (A) Any Owner, his/her family member, tenant, guest or invitee, has failed to comply with the Association's Governing Documents, which failure has necessitated an expenditure of money by the Association to bring the Owner or his/her Lot into compliance; or (B) Any Owner, his/her family member, tenant, guest or invitee has caused damage to the Common Area. A Reimbursement Assessment shall not be levied by the Association until notice and an opportunity for a hearing has been given to the Owner. Reimbursement Assessments may be enforced in the same manner as Annual Assessments, except as provided in any superseding law.

**Section 6.6. Reserve Fund.**

**A. Requirement for Reserve Fund.** The Association shall maintain a separate reserve account with the funds therein being used for the periodic maintenance, repair and replacement of the Common Area, and any other property that is the maintenance obligation of the Association, as required hereunder.

**B. Funding the Reserves.** To the greatest extent possible, this reserve fund shall be funded by a portion of the Regular Annual Assessments of Owners rather

than by Special Assessments; provided however, that this provision shall not be deemed to limit the power of the Association to levy any Assessment or charge authorized by this Declaration.

C. Management of Reserves. The reserves which are collected as part of the Annual Assessments shall be deposited by the Association in a separate bank account to be held in trust for the purposes for which they are collected or allocated. Such reserves shall be deemed a contribution to the capital account of the Association by the Owners and, once paid, no Owner shall be entitled to any reimbursement of those funds. The Board is only responsible for providing for such reserves as the Board, in good faith, deems reasonable, and no member of the Board is liable to any Owner or to the Association if the amount in the reserve account proves to be inadequate.

Section 6.7. Uniform Rate of Assessment. All Annual Assessments and special assessments must be fixed at a uniform rate for all Lots. Annual Assessments may be collected on a monthly basis or as otherwise determined by the Board of Directors.

Section 6.8. Certificate of Payment. The Association shall, upon demand, and for a reasonable charge, furnish a certificate signed by an officer of the Association setting forth whether the Assessments on a specified Lot have been paid. A properly executed certificate of the Association as to the status of the Assessments on a Lot is binding upon the Association as of the date of its issuance.

Section 6.9. Effect of Non-Payment of Assessments; Remedies of the Association. If any Assessment is not paid within 15 days of its due date, a late fee and interest may be charged, in an amount to be determined by the Board of Directors. If a check tendered for any Assessment is returned as unpaid for any reason, a charge shall be assessed, as determined by the Board of Directors. In the event the Association employs an attorney to collect a delinquent Assessment, whether by foreclosure of the lien created herein or otherwise, the delinquent Owner shall pay, in addition to the Assessments and interest accrued thereon, such reasonable attorneys' fees and all other costs and expenses incurred by the Association as a result of such delinquency. In addition to all other remedies provided by law, the Association, or its authorized representative, may enforce the obligations of any Owner to pay the Assessments in any manner provided by law or in equity, or without any limitation to the foregoing, or by either or both of the following procedures:

A. Civil Action. The Board may cause a civil action to be commenced and maintained in the name of the Association against any Owner who is personally obligated to pay delinquent Assessments. Any judgment obtained in the Association's favor shall include the amount of the delinquent Assessments, interest and late fees; any additional charges incurred by the Association; and any other amounts the

court may award, including reasonable attorneys' fees and court costs. A proceeding to recover a judgment for unpaid Assessments may be maintained without the necessity of foreclosing or waiving the Association's lien.

B. Enforcement of Lien. As provided in Section 6.1 above, all Assessments, plus late fees, interest and costs connected therewith, shall be a continuing lien upon the Lot assessed.

1. Notice and Perfection of Lien. As more fully provided in A.R.S. §33-1807, the recording of the Original Declaration constitutes record notice and perfection of the Association's lien. The Association is not required to record a notice of lien, but may do so to provide notice to third parties of its interest in a Lot. The Association's lien is senior to all matters other than tax liens for real property taxes on the Lot, Assessments on the Lot in favor of any municipal or other governmental assessing unit, reservations in patents, and the lien of any First Mortgage. Except for the transfer of a Lot pursuant to a foreclosure of a First Mortgage, the sale or transfer of a Lot does not affect the Association's lien.

2. Foreclosure of Lien. The Association's lien may be foreclosed by appropriate action in court or in the manner provided by law for the foreclosure of a realty mortgage, as set forth by the laws of the State of Arizona, as the same may be changed or amended. The lien provided for herein shall be in favor of the Association and shall be for the benefit of all other Owners. The Association shall have the power to bid in at any foreclosure sale and to purchase, acquire, hold, lease, mortgage, and convey any Lot. In the event such foreclosure is by action in court, reasonable attorneys' fees, court costs, title search fees, interest and all other costs and expenses shall be allowed to the extent permitted by law. Each owner hereby expressly waives any objection to the enforcement and foreclosure of this lien.

Section 6.10. No Offset and No Exemption of Owner. No offset against any Assessment shall be permitted for any reason, including, without limitation, any claim that the Association is not properly discharging its duties. No Owner is exempt from liability for payment of Assessments because he/she does not use or enjoy the Common Area, or has abandoned his/her Lot, or for any other reason, including (but not limited to) any allegation that the Board of Directors is not performing its obligations under the Association's Governing Documents. Payment of Association Assessments shall not be contingent on the performance by the Association of any obligations under the Governing Documents.

Section 6.11. Subordination of the Lien to First Mortgages; Sale or Transfer of Lots. The lien for Assessments provided for herein, including without limitation any fees

costs, late charges, or interest which may be levied by the Association in connection with unpaid Assessments, shall be subordinate to the lien of any First Mortgage. Sale or transfer of any Lot pursuant to foreclosure of any such First Mortgage or any proceeding in lieu thereof, including deed in lieu of foreclosure, or cancellation or forfeiture of such executory land sales contract, shall extinguish the lien of Assessments or charges which became due prior to any such sale or transfer, or foreclosure, or any proceeding in lieu thereof, including deed in lieu of foreclosure, or cancellation or forfeiture of any such executory land sales contract; provided, however, that any such delinquent Assessments or charges, including interest, late charges, costs, and reasonable attorneys' fees, which are extinguished as provided herein, may be reallocated and assessed to all Lots as a common expense or may be expressly assumed by a Successor Owner. No such sale, transfer, foreclosure, or any proceeding in lieu thereof, including deed in lieu of foreclosure, nor cancellation or forfeiture of such executory land sales contract, shall relieve any Owner of a Lot from liability for any Assessments or charges thereafter becoming due, nor from the lien thereof. In the event of foreclosure of a First Mortgage or the taking of a deed in lieu thereof, such First Mortgagee shall not be liable for unpaid Assessments or other charges which accrued prior to the acquisition of title to the Lot in question by such First Mortgagee.

Section 6.12. Mortgage Protection and Additional Assessment as Common Expense. Notwithstanding and prevailing over any other provisions of this Declaration, or the Association's Articles or Bylaws, or the Rules, the following provisions shall apply to and benefit each First Mortgagee of a Lot:

A. First Mortgagees shall not be personally liable for the payment of any Assessment or charge, nor for the observance or performance of any covenant, restriction, regulation, Rule, Article or Bylaw, except for those matters which are enforceable by injunctive or other equitable actions, not requiring the payment of money, nor shall a First Mortgagee be liable for any violation of the Restrictions that occurred prior to such First Mortgagee acquiring title.

B. During the pendency of any proceeding to foreclose the first mortgage, including any period of redemption, the mortgagee (or receiver appointed in such action) may, but is not required to, exercise any or all of the rights and privileges of the Owner of the mortgaged Lot, including (but not limited to) the exclusion of the Owner's exercise of such rights and privileges.

C. At such time as the First Mortgagee becomes the record Owner of a Lot, he/she or it shall be subject to all of the terms and conditions of this Declaration, including but not limited to, the obligation to pay for all Assessments and charges accruing thereafter, in the same manner as any Owner.

D. The First Mortgagee, or any other party acquiring title to a mortgaged Lot through foreclosure suit or through any equivalent proceeding arising from said first mortgage, such as, but not limited to, the taking of a deed in lieu of foreclosure, shall acquire title to the mortgaged Lot free and clear of any lien authorized by or arising out of any of the provisions of this Declaration or Bylaws which secured the payment of any Assessment for charges accrued prior to the final conclusion of any such foreclosure suit or equivalent proceeding, including the expiration date of any period of redemption.

E. First Mortgagees are entitled to pay taxes or other charges which are in default and which may or have become a charge against any Common Area owned by the Association, and such First Mortgagees may pay overdue premiums on hazard insurance policies, or secure new hazard insurance coverage on the lapse of a policy, for such Common Area, and any First Mortgagees making such payment may be owed immediate reimbursement from the Association.

F. Nothing in this Declaration shall in any manner be deemed to give an Owner, or any other party, priority over any rights of a First Mortgagee of a Lot pursuant to the terms of such First Mortgagee's Mortgage in the case of a distribution to an Owner of insurance proceeds or condemnation awards for losses or to a taking of any Lot or any part of the Common Areas owned by the Association. Each First Mortgagee shall be entitled to timely written notice of such loss or taking.

Section 6.13. Green Valley Recreation, Inc. Green Valley Recreation, Inc. is a non-profit corporation organized under the laws of the State of Arizona for the purpose of maintaining and providing social and recreational facilities and services in Green Valley. On November 8, 1978, Green Valley Recreation, Inc. recorded that certain Master Deed Restriction in Docket 5900 at page 894, Pima County records, establishing a method to incorporate land within its jurisdictional area. The Properties are a part of that area, and each purchaser of a Lot within the Properties, by the payment of the purchase price and acceptance of a deed, agrees for himself, his heirs, successors and assigns, to be bound by the rules and regulations thereof, to pay all membership dues assessed by Green Valley Recreation, Inc., and to comply with all provisions of the Articles of Incorporation and Bylaws of Green Valley Recreation, Inc. The Properties and each Lot subsequently purchased are subject to said Master Deed Restriction. There is hereby created a lien with power of sale, encumbering each Lot subsequently purchased to secure payment of the aforesaid membership dues and assessments, provided that no action shall be brought to foreclose such lien or proceed under the power of sale prior to the expiration of 30 days after a notice and claim of lien is mailed to the Owner of such Lot and a copy of the lien is recorded in the Office of the Recorder of Pima County, Arizona.

Each Owner acknowledges the benefit to the Properties afforded by the existence of Green Valley Recreation, Inc., and the facilities it offers for the enhancement

of the general plan of development. Any lien claimed or recorded in favor of Green Valley Recreation, Inc. or its successors and assigns shall at all times be subordinate to the lien for unpaid assessments created by these covenants and shall also, to the same extent as set forth herein with regard to the lien for unpaid assessments, be subordinate to the lien of any First Mortgage. The provisions hereof dealing with Green Valley Recreation, Inc., and its assessments shall constitute covenants running with the land in the same fashion as all other covenants, conditions and restrictions of this Declaration. This Section may not be amended without the consent of Green Valley Recreation, Inc.

**Section 6.14. Master Association Assessments.** As set forth in the Agreement entered into with Santa Rita Springs ("Master Association") on August 13, 2003, the Association agrees that it will pay Annual and Special Assessments to the Master Association in the following manner:

A. The Master Association shall invoice the Association for the Annual or Special Assessments due from the Owners.

B. The Association shall collect the Annual or Special Assessments imposed by the Master Association, together with the Assessments due the Association and remit payment to the Master Association on a periodic basis as determined by the Master Association.

C. The Association's payment shall be equal to the number of Lots within the Association times the amount of the Annual or Special Assessment.

D. In addition to the lien rights held by the Master Association, the Master Association has the right to file a lawsuit against the Association to enforce its obligation to remit Assessments to the Master Association.

E. The Association assumes all responsibility for collecting any delinquent Assessments from the Owners and for paying the Assessments levied by the Master Association directly to the Master Association.

## ARTICLE VII EASEMENTS AND COMMON AREAS

**Section 7.1. Easement for Encroachments.** Each Lot and the Common Areas are and will continue to be subject to an easement for encroachments already created or that necessarily will be created by activities conducted and conditions existing upon the Properties, including, construction, settling and overhangs. A valid easement for said encroachments and for the maintenance of same, so long as they stand, does and will continue to exist.

Section 7.2. Utility Easements. There is hereby created a blanket easement upon, across, over and under the Lots for ingress, egress, installation, replacing and maintaining of all utility and service lines and systems, including, but not limited to, water, sewers, gas, telephones, electricity, television cable or communication lines and systems, etc. By virtue of this easement, it shall be expressly permissible for the providing utility or service company to install and maintain facilities and equipment on the Lots and to affix and maintain wires, circuits and conduits on, in, and under the roofs and exterior walls of Dwelling Units. Notwithstanding anything to the contrary contained in this section, no sewers, electrical lines, water lines, or other utilities or service lines may be installed or relocated on the Lots, except as initially designed and installed or thereafter approved by the Architectural Committee. This easement shall in no way affect any other recorded easements on the Lots. In no event shall any portion of the above-mentioned easements for utilities be construed to authorize the placing or installing of sewers, electrical lines, water lines and other utilities under any permanent Dwelling Unit constructed on the Lots. This easement shall be limited to improvements as originally constructed. There shall be an access easement for the delivery and collection of the U.S. Mail.

Section 7.3. Easements for Security and Cable Television Systems. Except as otherwise provided herein, a perpetual exclusive easement and right-of-way does and will continue to exist in favor of such Persons who are approved by the Association upon, across, over and under all Common Areas for the construction, maintenance, operation and repair of a cable television system or security system or both, and facilities appurtenant to either or both. However, no easement or right-of-way will exist that would be inconsistent with use restrictions imposed by Pima County. Such approved Persons may excavate for, place, lay, construct, operate, use, maintain, repair, replace, reconstruct, enlarge, alter, improve, add to, relocate and remove at any time and from time to time, underground structures, equipment and materials, with required appurtenances, necessary for the operation of said cable television or security system. There exists and will continue to exist a right of ingress and egress from said easement by such route or routes in, upon, over and across the Properties or any portion or portions thereof as the Association or its assigns may determine, together with the right to clear and keep clear said easement and rights-of-way from any and all obstructions. Without limiting the generality of the foregoing, such entities will have the right to trim and cut trees, foliage and roots upon and from within the above-described easement and rights-of-way whenever in its judgment the same becomes necessary for the convenient and safe exercise of the right herein granted.

All cable television system equipment or security system equipment installed by any Person will remain, regardless of the manner in which the same are affixed to land, the personal property of such installing Person, and shall not become or be deemed to be a part of the realty.

Nothing herein contained will obligate the Association or any other Person to provide a cable television system or security system in the Properties. In the event that such cable television system or security system is built, the type and quality of the system will be within the absolute discretion of the constructing Person.

Section 7.4. Easement for Walls and Other Improvements. Walls and other Improvements, including but not limited to, driveways, walkways, exterior lighting (metered to a particular Dwelling Unit), drainage structures, etc., which have been constructed or will be constructed as a part of, or for the use of, a particular Dwelling Unit may encroach upon or encompass portions of a Common Area or adjacent Lots. Wherever such encroachments on the Common Area or adjacent Lots should occur, the Owner of the Dwelling Unit involved shall have, subject to the conditions hereinafter set forth, a perpetual permanent right for such perimeter walls to encompass portions of the Common Area or adjacent Lots and for such other improvements to encroach upon portions of the Common Area or adjacent Lots.

In consideration thereof, such Owners agree to maintain and keep in repair any Improvements encroaching upon the Common Area or adjacent Lots which were constructed for the use of their Lot.

In the event any such Owner should make demand upon the Association or upon the Owners of adjacent Lots to repair or maintain any Common Area which, because of incidental encroachment, lies within such Owner's yard area enclosed by a perimeter wall, or to maintain and repair any Improvements encroaching upon the Common Area or adjacent Lots, then the Association or the Owner of the adjacent Lot upon which the encroachment lies, as the case may be, shall have the absolute right, and may cause the Owner making such demand, to remove at his/her expense the perimeter wall or other improvements encroaching upon the Common Area or adjacent Lot and to replace and rebuild, in accordance with the Architectural Committee's plans and design specifications, such perimeter wall as to be within such Owner's Lot.

Section 7.5. Electrical Service and Telephone Lines. All electrical service and telephone lines shall be placed underground and no outside electrical lines shall be placed overhead, except existing overhead lines; provided that no provision hereof shall prohibit the erection of temporary power or telephone structures incident to construction.

**Section 7.6. Pedestrian/Utility Easement.** If portions of the Lots are encumbered by a pedestrian or utility easement as shown on the Plat for the benefit of pedestrians or for the installation and placement of utilities, then by accepting a deed to any Lot, the Owner acknowledges and consents to such easement.

Section 7.7. Association's Right of Entry. During reasonable hours and with reasonable prior notice to the Owner, the Association, any member of the Architectural

Committee, any member of the Board, or any authorized representative of them, shall have the right to enter upon and inspect any Lot, excluding the interior of any residence located thereon, for the purpose of making inspections to determine whether the provisions of the governing documents are being complied with by the Owner or occupants of said Lot.

Section 7.8. Association's Easement for Performing Maintenance Responsibilities. The Association shall have an easement upon, across, over and under the Common Area and Lots for the purpose of repairing, maintaining and replacing those portions of the Common Area and Lots which the Association is obligated to maintain, or has elected to maintain, specifically including that certain ingress and egress easement between Abrego Drive and the Properties.

Section 7.9. Common Walls. The rights and duties of Owners with respect to common walls or fences shall be as follows:

A. Each wall, including patio walls and fences, which is constructed as a part of the original construction of the Dwelling Unit, any part of which is placed on, adjacent to, or over the dividing line between separate Dwelling Units, shall constitute a common wall. Each Owner consents to the use and construction of such common walls and acknowledges that portions of the Properties may contain common walls. With respect to any such wall, each of the adjoining Dwelling Unit Owners shall assume the burden of and be entitled to the benefits recited in this Section and to the extent not inconsistent herewith, the general rules of law regarding common walls shall be applied thereto.

B. The Owners of contiguous Dwelling Units who have a common wall shall have reciprocal easements for support and an equal right to use such wall provided that such use by one Owner does not interfere with the use and enjoyment of same by the other Owner.

C. Unless other provisions of this Section are applicable, the costs of reasonable repairs and maintenance of a common wall shall be shared equally by the Owners who make use of the common wall in proportion to such use.

D. In the event any common wall is damaged or destroyed through the act of one adjoining Owner, or any of his guests or agents or members of his family so as to deprive the other Owner of the full use and enjoyment of such wall, then the first of such Owners, if required under local law, shall forthwith proceed to rebuild and repair the same to as good condition as formerly without cost to the other Owner.

E. In the event any common wall is damaged or destroyed by some cause other than the act of one of the adjoining Owners, his agents, guests or family

(including ordinary wear and tear and deterioration from lapse of time), then in such event, both such adjoining Owners shall, if required under local law, proceed forthwith to rebuild or repair the same to as good condition as formerly at their joint and equal expense.

F. Notwithstanding anything to the contrary herein contained, there shall be no impairment of the structural integrity of any common wall without prior consent of the adjoining Owner.

G. In the event of a dispute between Owners with respect to the repair or rebuilding of a common wall or with respect to the sharing of cost thereof, then upon written request of one of such Owners delivered to the Association, the matter shall be heard and determined by the Board.

ARTICLE VIII  
ARCHITECTURAL COMMITTEE

Section 8.1. Composition of Committee. The Board will appoint not less than three nor more than five Owners to an Architectural Committee which will act in accordance with this Article VIII. Members of the Architectural Committee are not entitled to any compensation for services performed pursuant to this Article VIII; provided, however, that members of the Architectural Committee will be reimbursed for all actual expenses reasonably incurred in the performance of their duties. Consultants hired by the Architectural Committee will be entitled to compensation as determined by the Board, payable as an expense of the Association.

Section 8.2. Review by the Committee. No Dwelling Unit, structure, improvement (including but not limited to any building, fence, wall, driveway or other surfaced area), or any attachment to an existing structure, shall be made, placed or constructed upon any Lot or the Properties (except by the Association upon the Common Area); no change of the exterior of a Dwelling Unit, structure, or Improvement shall be made; no change in the final grade of any Lot shall be made; and no landscaping shall be installed or changed (except in enclosed rear yards), unless complete plans and specifications (including a construction schedule) showing the nature, design, kind, quality, shape, height, materials, color scheme and location of any such Dwelling Unit, improvement, structure, attachment, or landscaping, shall have first been submitted to and approved in writing by the Architectural Committee. The exception for installation or change of landscaping in enclosed rear yards shall not apply to the planting of any trees. The Architectural Committee shall exercise its best judgment to the end that all Dwelling Units, attachments, Improvements, construction, landscaping and alterations to structures

on lands located within the Properties (collectively referred to herein as "Architectural Improvements") conform to and harmonize with the existing surroundings and structures. Decisions of the Architectural Committee shall be binding and conclusive.

Section 8.3. Procedures. The Architectural Committee shall approve or disapprove all plans within 45 days after submission and issuance by the Association of a receipt thereof. In the event the Architectural Committee fails to approve or disapprove such design and location within 45 days after said plans and specifications have been submitted to it, approval shall be deemed denied, except that the party submitting the plans may resubmit the plans, and if no response is given for a period of 45 days after a written request is sent by certified mail for a decision, approval shall be deemed given. The Architectural Committee may establish its own rules amplifying or supplementing the foregoing procedures. The Architectural Committee may from time to time, without notice and subject to the approval of the Board, establish, add to, delete or amend separate standards, rules and procedures, which shall not be contrary to or inconsistent with these Procedures, providing for or otherwise relating to the submission, processing, review and approval of plans and specifications for Improvements or various portions or stages thereof. The Architectural Committee shall not be bound by previous standards or interpretations of its standards; and any consent or approval of a prior set of plans and specifications shall not preclude disapproval of a subsequent identical or similar set of plans and specifications.

Section 8.4. Vote. A majority vote of the Architectural Committee is required to approve a proposed change or Improvement, unless the Committee has designated a representative to act for it, in which case the decision of the representative shall control.

Section 8.5. Liability. The Architectural Committee and the members thereof shall not be liable for damages to any person submitting requests for approval, or to any Owner by reason of any action, failure to act, approval, disapproval or failure to approve or disapprove in regard to any matter within its jurisdiction hereunder.

Section 8.6. Variance. The Architectural Committee may grant reasonable variances or adjustments from any conditions and restrictions imposed by this Article or Article IX hereof in order to overcome practical difficulties and prevent unnecessary hardships arising by reason of the application of the Uses and Restrictions contained in this Article or Article IX hereof. Such variances or adjustments shall be granted only in case the granting thereof shall not be materially detrimental or injurious to the Owner and shall not mitigate against the general intent and purpose hereof.

Section 8.7. Nonconforming Improvements. In the event that the Improvements do not, upon the proposed date set forth in the construction schedule, conform to the plans submitted to and approved by the Architectural Committee, the Architectural Committee shall give written notice to the Owner of the property upon which such

Improvements have been made. Such notice shall specify the nature of the nonconformity of the Improvements and shall grant the Owner a hearing before the Architectural Committee.

If an Owner has not corrected the nonconformity of the Improvements within 30 days of the mailing or delivery of the written notice, or not less than 10 days if the violation is a continuing one, then the Architectural Committee shall have the right and an easement to direct its agents, employees or contractors to enter upon said Owner's property for the purpose of making any or all of such improvements, alterations or repairs as are necessary to bring the Owner's Improvements into conformity with the plans submitted to and approved by the Architectural Committee.

All costs incurred by the Association in the course of the Architectural Committee's efforts to bring the nonconforming Improvements into conformity with the approved plans as provided above, including costs of labor, materials and all associated administrative costs reasonably incurred by the Association in connection therewith, shall be a Reimbursement Assessment and shall become a lien on such Owner's Lot and shall be enforceable and collected as provided for herein.

Section 8.8. Color and Building Materials. Without limiting the foregoing, no new construction, color changes nor any changes in the original building structure, composition or products, shall be permitted without approval of the Architectural Committee.

Section 8.9. Broad Discretion of Architectural Committee In reviewing plans for new construction of a Dwelling Unit, or alterations, modifications, additions or other changes to an existing Dwelling Unit, improvement or structure upon a Lot, the Architectural Committee shall exercise its discretion in deciding whether or not an alteration or modification is in harmony with the overall scheme of subdivision development. The Architectural Committee has the right to deny plans for new construction, alterations or modifications for purely aesthetic reasons if the Architectural Committee considers the new construction, alterations or modifications to be unattractive in relation to the overall scheme of development, or if the Architectural Committee considers the new construction, alterations or modifications to be a nuisance or upset of design, or if the Architectural Committee considers the new construction, alterations or modifications to be in contrast to or out of harmony with the style of existing structures, or if the physical view of the Properties will be disrupted by the alterations or modifications. The Architectural Committee may, but is not obligated to, elicit the opinion of other Owners, including the neighbors of the Owner submitting the plan for new construction, alterations or modifications, as to the conformity and harmony of the proposed plan with the overall scheme of development, and the effect that the proposed plan might have on the physical view of other Owners. After eliciting these opinions, the Architectural Committee may, but need not, take them into account in making its final

decision of approval or disapproval for new construction or of an alteration or modification to an existing structure. While the opinion of no single Owner will control a decision of the Architectural Committee, the Architectural Committee may, within its own discretion, but need not, attach whatever significance it deems sufficient to the statements of residents and/or neighbors of the Owner submitting the proposed plans for new construction or alteration or modification to an existing structure.

Section 8.10. Fee. The Board may establish a reasonable processing Fee to defer the costs of the Architectural Committee in considering any requests for approvals submitted to the Architectural Committee. The Board may also establish a fee schedule and amend such schedule from time to time, with respect to all or any portion or stage of the processing of plans and specifications as provided for in Section 8.3

Section 8.11. Minimum Criteria for Alterations or Modifications. All plans must meet the following minimum criteria and such further criteria as the Architectural Committee promulgate.

A. Plans for new construction or Improvements other than landscaping must include the following: (1) a full description of the work to be performed, including the type of finish (stucco, brick, wood, etc.), color, and any other appropriate detail; (2) an architectural drawing or equivalent with dimensions (height, width, length); (3) location on the property; and (4) name, address, and telephone number of the Owner.

B. Plans for approval of landscaping shall include the following: (1) a full description of the proposed landscaping changes (additions and removals); (2) the types of vegetation and locations of proposed additions; (3) name, address, and telephone number of Owner.

C. The plans shall be in accordance with the provisions of the Governing Documents, and may not involve material changes to the original construction of the Dwelling Unit, without specific written waiver of this subsection in the sole discretion of the Architectural Committee.

D. The plans must be in sufficient detail to permit the Architectural Committee to make its determination; and

E. The plans must be complete and ready for submittal to obtain a building permit from Pima County or other governmental entity.

Section 8.12. No Responsibility for Defects. Neither the Association nor the Architectural Committee will be responsible in any way for any defects in any plans or

specifications submitted in accordance with the foregoing, nor for any structural defects in any buildings or structures erected according to such plans or specifications.

Section 8.13. Expiration of Approval. Commencement of any Improvement, the plans for which have been approved, or deemed approved, by the Architectural Committee, must occur within six months of the date of such approval, or the approval will expire and plans for such Improvement must be resubmitted to the Architectural Committee for its subsequent approval.

Section 8.14. Conflict of Interest. If a member of the Architectural Committee desires to make any Improvement that requires Architectural Committee approval, that member must be excused from the review and discussion of the plans by the Architectural Committee and, if that would cause the Architectural Committee to consist of fewer than three members, the Board member acting as adviser to the Architectural Committee shall serve with the remaining members of the Committee, to approve or disapprove such plans. No more than one Owner per Dwelling Unit may serve upon the Architectural Committee.

Section 8.15. Right to Appeal.

A. Any decision of the Architectural Committee may be appealed by any Aggrieved Owner, no later than 30 days after the date such an Aggrieved Owner receives written notice of the Architectural Committee's decision. "Aggrieved Owner" means and includes any Owner: (1) whose proposed Improvement was denied, (2) who objected to an approved proposed Improvement, (3) who is determined by the Architectural Committee to be in violation of any of the Governing Documents, and (4) whose complaint of a violation of any of the Governing Documents was denied or not pursued by the Architectural Committee. If no appeal to a decision of the Architectural Committee is made by an Aggrieved Owner within the time set forth above, the decision of the Architectural Committee will become final and not subject to appeal.

B. The Board must promulgate written Rules for procedures for an appeal.

ARTICLE IX  
PERMITTED USES AND RESTRICTIONS

All the Properties shall be held, used and enjoyed, subject to the following limitations and restrictions.

Section 9.1. Private Residential Purposes. Dwelling Units and Lots shall be occupied and used by the respective Owners solely for private single family residential use of the Owner, his family, tenants and social guests, and for no other purpose. All

Dwelling Units shall be constructed of first-class materials, and no manufactured, pre-fabricated or mobile homes shall be permitted.

**Section 9.2. Business Activities.** No trade or business may be conducted on any Lot. However, a Person may conduct a home business on the Lot so long as (A) the existence or operation of the business activity is not apparent or detectable by sight, sound or smell from outside of the Lot; (B) the business activity does not involve (1) any Person conducting such business who does not reside on the Lot, or (2) door-to-door solicitation of other Owners or their tenants, guests and invitees; (C) the existence or operation of the business does not increase that Lot's use of any part of the Common Areas over that which is standard for a single family residence; (D) the existence or operation of the business does not require customers or delivery trucks to visit the Lot; and (E) the business activity does not constitute a nuisance or a hazardous or offensive use, or cause the Owner to violate any provision of the Governing Documents, or threaten the security or safety of others, as may be determined in the sole discretion of the Board.

**Section 9.3. Leasing.** No room or rooms in any residence on said Lots may be rented or leased, provided that nothing in this Section prevents the renting or leasing of an entire Lot, together with its Improvements. However, no Lot may be rented for a hotel or transient purpose, which will be construed to mean for a period of less than 30 days.

Each tenant must comply with the Governing Documents. Each Owner will be responsible for any violation of the provisions of the Governing Documents by his/her tenants, guests and other invitees, including landscapers and other vendors. It will be a material default in any lease if a tenant violates any provision of the Governing Documents, and the Association may require the Owner to remove such Persons from the Lot.

**Section 9.4. Temporary Structures, Mobile Homes, Etc.** No manufactured, prefabricated home or mobile home shall be permitted or placed upon any Lot or anywhere else on the Properties. Except as hereinafter provided, no structure of a temporary character, including but not limited to a house trailer, tent, shack, temporary garage, or outbuilding shall be placed or erected upon any Lot, and no residence placed or erected upon any Lot shall be occupied in any manner at any time prior to its being fully completed, nor shall any residence when completed be in any manner occupied until made to comply with all requirements, conditions and restrictions herein set forth; provided, however, that during the actual construction or alteration of a structure on any Lot, necessary temporary structures for storage of materials may be erected and maintained by the Person doing such work. The work of constructing, altering, or remodeling any structure on any part of any Lot shall be prosecuted diligently from the commencement thereof until completion thereof.

Section 9.5. Modification of Exterior Walls. Unless approved by the Architectural Committee, no Owner shall alter or modify the exterior wall of a Dwelling Unit by cutting any opening in or placing any window of any kind in said exterior wall.

Section 9.6. Landscaping. All front and side yard landscaping shall conform to and be compatible with the original landscaping installed at the time of completion of the Dwelling Unit. Landscaping shall not be permitted to cause a nuisance, nor shall landscaping be placed near foundations so as to require watering which may undermine the integrity of such foundations. Replacement or modification of any front or side yard landscaping requires the prior written approval of the Architectural Committee, except for small ornamental shrubs and replacement of original landscaping.

Section 9.7. Drainage. There shall be no interference with the established drainage pattern over any property unless approved by the Architectural Committee or unless adequate provision is made for proper drainage conforming to applicable governmental rules, regulations, ordinances and drainage criteria. For purposes hereof, "established drainage" is defined as the drainage which exists at the time the overall grading of the Properties is completed, or which is shown on any plans conforming to applicable rules, regulations, ordinances, and applicable drainage criteria.

Section 9.8. Shrubs, Trees, Grasses, Etc. Shrubs, trees, or any other items cannot be located on any Lot or Common Area so as to pose a hazard to pedestrians or traffic. Bermuda grass, except that of a variety recognized to be pollen free, may not be grown on any Lot. Trees and other vegetation must be maintained and pruned so as to have a neat appearance. Yards must be kept free of weeds and debris. Owners are responsible for damage to common walls, sidewalks and streets caused by their trees and other vegetation. Owners must arrange to have their yards maintained during their absence. The Architectural Committee may provide a list of approved and prohibited plants and trees, and may forbid the planting or maintenance of certain trees, shrubs, grasses or other vegetation, or restrict the propagation of such trees, shrubs, grasses or other vegetation to low-allergenic or other arid species.

Section 9.9. Views. All trees and other vegetation planted or existing on any Lot must be maintained at a height, width and density that will not materially interfere with the View of an Owner of any Lot that is located (however distant) above, below, diagonally or adjacent thereto. For the purposes hereof, "View" means the line of sight from a Lot in any direction to the Santa Rita Mountains and/or any other mountain and associated hills not obstructed by a structure; and (2) a View will be deemed to be materially interfered with unless such interference is trivial or incidental. The Architectural Committee shall determine if interference with a View is material.

Section 9.10. Fences, Walls and Hedges. No fence or hedge may exceed six feet in height. Any planting(s) used to form a edge will be subject to the same setback

requirements applied to a fence or wall. In measuring the height of a fence, wall or hedge, the natural grade of the ground level must be used. Bare concrete walls and chain link fences are prohibited.

**Section 9.11. Nuisances.** No rubbish or debris of any kind shall be placed or permitted on any Lot, so as to render any such property or any portion thereof unsanitary, unsightly, offensive or detrimental to any other property in the vicinity thereof or to its occupants. No loud or offensive noise, excessively glaring or bright lights, foul odors or any other nuisance shall be permitted to exist or operate upon the Lots as to be offensive or detrimental to its occupants. All exterior lights must be located and maintained so as not be directed toward or interfere with surrounding Lots, including streets, or be directed toward the sky. Only white or yellow lights are permitted. Without limiting the generality of any of the foregoing provisions, no exterior speakers, horns, whistles, bells or other sound devices, except security devices used exclusively for security purposes, shall be located, used or placed on any such Lot without the prior written approval of the Architectural Committee. The Architectural Committee, in its sole discretion, shall have the right to determine the existence of any such nuisance.

**Section 9.12. No Hazardous Activities.** No activities shall be conducted on the Lots and on Improvements constructed on the Lots which are or might be unsafe or hazardous to any person or property. Without limiting the generality of the foregoing, no firearms shall be discharged upon the Lots, and no open fires shall be lighted or permitted on the Lots, except in a contained barbecue unit while attended and in use for cooking purposes, or within a safe and well-designed exterior fireplace or fire pit.

**Section 9.13. Parking and Storage of Vehicles.**

**A. General Rule.** Except as otherwise stated in this Section, all motor vehicles shall be stored in a garage so as to conceal the same from view from adjoining properties or from the street or public way. When there is insufficient room within an enclosed garage, vehicles may be parked upon the paved driveway surfaces of each Lot. However, garages may not be converted to living space (see Section 9.21).

**B. Restrictions.** Parking and/or storage of recreational vehicles, commercial vehicles, motor homes, campers, trailers, boats and similar vehicles is prohibited on all portions of the properties, except within the confines of an enclosed structure which has been first approved by the Architectural Committee, in its sole and absolute discretion. Such vehicles may be parked on the parking area of an Owner's Lot, but only for short periods of time (as provided in the Rules), solely for purposes of loading or unloading.

The foregoing prohibition shall not apply to (1) pick-up trucks with no more than a 3/4 ton capacity with camper shells attached that are no more than seven

feet in height as measured from ground level; or (2) non-commercial pick-up trucks larger than 3/4 ton capacity that the Architectural Committee finds to be substantially similar in size and appearance to smaller vehicles, so long as any such vehicles are used on a regular and recurring basis for regular transportation and are parked in accordance with the provisions of Section 9.13.A.

C. Overnight and Guest Parking. Overnight parking on the streets is prohibited, except as otherwise provided in the Rules. Any restrictions pertaining to guest parking shall be set forth in the Rules.

D. Vehicles for Sale. Vehicles displaying "For Sale" signs may not be parked on the Properties except inside garages.

E. Use of Recreational Vehicle as Living Quarters. The use or occupancy of a recreational vehicle, motor home, van, camper, trailer, or boat as living quarters on either a temporary or permanent basis is strictly prohibited on any portion of the Properties.

F. Storage of Vehicles Under Repair; Inoperable Vehicles; and Commercial Vehicles. At no time shall there be any outside storage of motor vehicles in stages of construction, reconstruction, modification or rebuilding of parts of motor vehicles, such as frames, bodies, engines or other parts or accessories. No inoperable, unlicensed, junk, or wrecked vehicles may be located on any Lot or Common Area. No commercial or construction vehicles may be located on any Lot or Common Area unless the Association grants permission to the Owner, in writing, and for a limited period of time.

Section 9.14. Lots to be Maintained; Rubbish. No Lot may be used in whole or part for the storage of rubbish of any kind whatsoever, nor for the storage of anything that will cause the Lot to appear in an unclean or untidy condition. No obnoxious or offensive activity may be carried on upon any Lot, nor may anything be done, placed or stored on any Lot which is an annoyance or nuisance to the neighborhood, or occasion any noise or odor that disturbs the peace, quiet, comfort or serenity of the occupants of surrounding Lots. All equipment for the storage or disposal of garbage or other waste must be kept in a clean and sanitary condition. The Architectural Committee may provide a list of acceptable containers. No container may be visible from neighboring property except when the garbage and recycling containers are at the street for collection purposes, and then only from the morning to sundown of pickup day.

Section 9.15. Clotheslines. Outside clotheslines or other outside facilities for drying or airing clothes shall not be erected, placed or maintained on any portion of the Properties.

### Section 9.16. Animals.

A. Animal Restrictions. No animals, livestock or poultry of any kind shall be raised, bred or kept on any Lot, except that a reasonable number of dogs, cats or other generally-recognized household pets may be kept, provided that they are not kept, bred or maintained for any commercial purpose, and further provided that such pets do not create a nuisance for any other resident within the Properties. A “reasonable number” as used in this Section shall ordinarily mean no more than two pets per household; however, the Board may determine that a reasonable number in any instance may be more or less. The Board of Directors, in its sole discretion, is authorized to determine whether the presence of a particular pet constitutes a nuisance and whether an animal is a “generally-recognized household pet.”

B. Required Use of Leash and Clean-Up. All dogs shall be restrained on a hand-held leash when outside a Lot, and all dogs shall be directly under control at all times. An owner must clean up after his/her pet and dispose of excrement, bagged, in a trash receptacle. Any Lot where a pet is kept or maintained shall at all times be kept in a neat and clean condition.

C. No Structures for Animals. No structure for the care, housing, confinement, or training of any animal or pet shall be maintained on any portion of the Properties.

D. Rules and Regulations. The Board of Directors shall have the right to adopt, amend and repeal rules and regulations governing the keeping of pets, and such rules and regulations may include an enforcement procedure. Such rules and regulations shall be promulgated in accordance with Section 2.10 of this Declaration.

Section 9.17. Signs. Except as otherwise provided in this Section, no signs whatsoever (including, but not limited to, private sales, commercial, advertising and similar signs), shall be erected or maintained anywhere on the Lots including, but not limited to, the inside or outside of windows in any Dwelling Unit located on the property. Signs that are placed in inappropriate areas without specific Architectural Committee approval will be removed by the Association. Permitted signs include the following:

A. Political signs which conform to applicable Pima County codes and regulations may be displayed on an Owner’s Lot;

B. Such signs as may be required by legal proceedings;

C. Not more than one residential identification sign with a total face area of 36 square inches or less for each Lot; and

D. One "for sale" sign may be maintained on a Lot which is available for sale to the public. Said "for sale" sign shall not exceed six square feet. "Add-on" panels are restricted to two. "For sale" signs are restricted to the front yard only and may not hang over the top of any perimeter wall or attached in any manner to the residence itself.

Directional "Open House" signs are permitted only when a Realtor is present at the property being shown and are not permitted to be used as advertising signs for real estate office locations. Such signs are restricted to tent-type signs, are limited to two signs unless additional signs are specifically granted by the Architectural Committee, and are not allowed on sidewalks or other Owner's Lots. Any sign enhancements, such as balloons, banners, etc. are not allowed and are subject to immediate removal by the Association.

Section 9.18. Backboards. No basketball backboards of any kind shall be erected at, or attached by either a permanent or temporary method to any Dwelling Unit.

Section 9.19. Satellite Television Antennas; Aerials. Except as otherwise provided in the Federal Telecommunication Act or any other applicable law, no aerial, antenna or satellite dish for use of television, radio or other form of communication reception, of a temporary or permanent character, shall be erected on any Lot or attached to the Dwelling Unit located upon any Lot unless reasonably screened from view and approved by the Architectural Committee in accordance with standards adopted by the Architectural Committee in its sole and absolute discretion. The Architectural Committee may waive the requirement of screening or may consider such equipment adequately screened should it determine, in its sole discretion, that the size, location, general appearance and height of the equipment renders the erection of such equipment unobtrusive and not materially damaging to the overall appearance and welfare of the Lots, and the Architectural Committee may adopt written rules, standards or guidelines as to all such matters.

Section 9.20. Window Coverings; Doors. No reflective materials, including, but without limitation, aluminum foil, reflective screens or glass, mirrors or similar type items, shall be installed or placed upon the outside or inside of any windows of any Dwelling Unit without the prior written approval of the Architectural Committee. No enclosures, drapes, blinds, shades, screens or other items affecting the exterior appearance of a residence shall be installed in any Dwelling Unit without the written consent of the Architectural Committee. Any decorative or security wrought iron placed on the exterior of the windows or doors of a Dwelling Unit must be approved by the Architectural Committee and painted in black or the same color as the house or the trim.

Section 9.21. Garages and Driveways. The interior of all garages constructed on the Lot shall be maintained by the Owner thereof in a neat, clean and sightly condition.

Garages shall be used for parking vehicles and storage only, and shall not be used or converted for living or recreational activities without the prior written approval of the Architectural Committee. Garage doors shall be kept closed at all times, except as may be reasonably necessary for ingress, egress and normal daily activities which require the utilization of the garage. All driveways shall be of concrete construction.

Section 9.22. Diseases and Insects. No thing or condition which could induce, breed or harbor infectious plant diseases or noxious insects shall be allowed to exist on any Lot or Common Area within the Properties.

Section 9.23. Fuel Tanks. No fuel tanks of any kind other than a propane or similar fuel tank with a capacity of ten gallons or less used in connection with a normal, residential gas barbecue or grill, shall be erected, placed or maintained on any Lot without the prior written consent of the Architectural Committee.

Section 9.24. Solar Panels. Except as initially installed, no heating, air conditioning, evaporative cooling or solar energy collecting unit or panels shall be placed, constructed or maintained upon any Lot without the prior written approval of the Architectural Committee.

Section 9.25. Derricks; Boring. No derrick or other structure designed for use in boring for oil or natural gas shall be erected, placed or permitted upon any part of the Lots, nor shall any oil, natural gas, petroleum, asphaltum or hydrocarbon products or minerals of any kind be produced or extracted therefrom.

Section 9.26. Continuous Access. No Owner at any time may block, close or cause or allow to be blocked or closed, any street within the Properties without the approval of the Board.

Section 9.27. Soil Reports. The soils which underlie the foundation of Dwelling Units within the Properties may have the potential for consolidation or swelling. No Owner of all or any portion of any Lot shall maintain or cause to be maintained upon said Lot a pattern of grading and drainage other than the original drainage and grading for said Lot, as established by the Developer.

No Owner of all or any portion of any Lot shall construct a swimming pool, Jacuzzi, whirlpool, or other like improvement ("subgrade improvements") without first making, or causing to be made, an independent determination that the soil conditions of the Lot are suitable for such improvement.

Section 9.28. Right of Inspection. During reasonable hours, any member of the Board, or any authorized representative of the Architectural Committee, shall have the right, upon reasonable notice to the Owner of a Dwelling Unit, to enter upon and inspect

the Lot (except the interior of any Dwelling Unit) for the purpose of ascertaining whether or not the provisions of the Governing Documents have been or are being complied with, and such Persons shall not be deemed guilty of trespass by reason of such entry.

Section 9.29. Waivers. Any or all of the restrictions of this section are subject to waiver by the Architectural Committee, and any such waiver may apply at the option of the Architectural Committee to fewer than all of the Lots without waiving of the restriction as to any other Lot (see Section 8.6).

Section 9.30. Compliance with Pima County Use Restrictions. The Association and the Owners must comply with all use restrictions imposed by Pima County on any portion of the Property (whether on a Lot or Common Area) including any set-back requirements.

## ARTICLE X MASTER DECLARATION AND DISCLAIMERS

Each Owner of any Lot, by acceptance of a deed thereto, is deemed to acknowledge the existence and effect of the Master Declaration which governs the Properties and substantial additional land adjacent or in near proximity to the Properties and is deemed to acknowledge that the use, occupancy and enjoyment of the Lot is subject to the restrictions, regulations, approvals, consents and all other provisions of the Master Declaration and Master Association Documents. Neither the Association, nor its officers and directors, make any representations or warranties of any nature whatsoever with respect to the content or effect of such Master Declaration or as to the operation of the Master Association, including without limitation, any matter relating to recreational facilities or the phasing or construction thereof.

Each Owner of any Lot within the Properties shall be required to comply with the applicable provisions of the FICO Agreement, as defined in the Master Declaration, which agreement includes, among other things, a requirement that each Lot be subject to certain restrictions set forth in that certain Declaration of Reservations, Easements and Covenants Running with the Land, recorded in Book 6179, Page 719, Pima County Records, and rerecorded in Book 6223, Page 671 (the "FICO Declaration"), including a covenant prohibiting the drilling of wells upon any Lot and the recordation upon each Lot of a covenant in the form of Exhibit F to the FICO Declaration.

Neither the Association, nor its officers and directors, make any representations or warranties with respect to the golf course built in the vicinity of the Properties. Without limitation, no representation is made with respect to tee times, preferential rights, or the general availability of the golf course for play, nor with respect to greens fees, membership rights, rules and regulations, or any other matter. A perpetual easement is

hereby reserved over the Properties and each Lot and all Common Areas within the Properties for the entry of errant golf balls. Each Owner further acknowledges and agrees that because the Properties are in the vicinity of a golf course, there exists certain risk of property damage and personal injury due to errant golf balls. Each Owner assumes all risk relating thereto, and acknowledges that regardless of the design or layout of the Properties, errant balls cannot be controlled and that certain risks and inconveniences exist. Neither the Association, nor its officer and directors, shall be liable for any personal injury or property damage which may result from or be related in any way to such errant golf balls.

## ARTICLE XI GENERAL PROVISIONS

### Section 11.1. Age Restriction.

A. The Lots described in this Declaration comply with the exemption provisions of the Fair Housing Act Amendments of 1988, Public Law 100-430, 42 U.S.C., Section 3601, *et.seq.*, as further interpreted by Rules and Regulations of the Department of Housing and Urban Development promulgated January 23, 1989, at page 3290, which rules and regulations are incorporated herein by reference, and which laws and regulations have been adopted in substantial conformity by Arizona Revised Statutes, Section 41-1491.04 (the "Exemption"). The Exemption is based, generally, upon a standard that at least one occupant per household must be 55 years of age or older. Certain exceptions are made in the Fair Housing Act Amendments of 1988 for cases where at least 80% of the dwellings are so occupied.

B. Accordingly, except as provided below, each Lot must be occupied by at least one person who is at least 55 years of age or older, and these Properties will be deemed to be Housing for Older Persons as defined in the Fair Housing Amendments Act of 1988. All sales of the Lots are subject to the Housing for Older Persons requirements, and it will be a violation of the terms and provisions of this Declaration if any Lot is subsequently sold and is not occupied by at least one person 55 years of age or older. However, if an occupant who is 55 years of age or older dies and leaves the Lot to a surviving spouse or other companion who was residing with the decedent, then provided such surviving spouse or other co-habitant is at least 45 years of age, and provided at least 80% of the Lots are occupied by at least one person 55 years of age or older, the Association may elect to allow the surviving spouse or co-habitant to remain the occupant of the Lot without violating this Declaration.

C. No person less than 18 years of age (a "minor") may reside on any Lot for more than three months during any 12-month period. Nothing in this Declaration will be construed to permit a minor to reside in any Dwelling Unit.

D. These age restrictions apply to all occupants, whether Owners or tenants, and to all leases as well as sales.

E. The Owners acknowledge that it is the responsibility of each Owner to comply with the age restrictions and to notify the Association, in writing, of the residents upon the sale or lease of any Lot. The Association has the right to verify the age of all occupants of a Lot in accordance with the requirements of the Fair Housing Act Amendments of 1988 and to periodically update those records.

#### Section 11.2. Enforcement.

A. Each Owner has the right to enforce the Governing Documents by filing a lawsuit against any other Owner, and the successful party will be entitled to an award of reasonable attorney fees, litigation expenses and costs incurred.

B. The Association may enforce the Governing Documents in any manner provided for herein, or by filing a lawsuit, including, but not limited to:

1. Imposing reasonable monetary penalties after notice and an opportunity to be heard is given to the Owner;

2. 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 owned to the Association;

3. Exercising self-help or taking action to abate any violation of the Governing Documents;

4. Requiring an Owner, at the Owners' expense, to remove any Improvements on the Owner's Lot that are in violation of the Governing Documents and to restore the Lot to its previous condition. After notice stating a time within which the Owner must perform, if the Owner fails to take action, the Board or its designee has the right to enter the Lot, remove the Improvement in violation and restore the Lot to substantially the same condition as previously existed and any such action will not be deemed a trespass;

5. Without liability to the Association or Board, prohibiting any person engaged by an Owner who fails to comply with the terms and provisions of the Governing Documents, from continuing or performing any further activities in the Properties;

6. Towing vehicles which are parked in violation of the Governing Documents; and

7. Filing a lawsuit to enjoin a violation of the Governing Documents, to compel compliance with the Governing Documents, to recover fines or money damages or to obtain such other relief to which the Association may be entitled.

C. The Association is not obligated to take any enforcement action if the Board, in the exercise of good faith, determines that by virtue of the Association's finances, 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 interest of the Association.

D. All rights and remedies of the Association under the Governing Documents or at law or in equity are cumulative, and the exercise of one right or remedy will not waive the Association's right to exercise another right or remedy.

E. No delay or failure by the Association or any Owner in exercising any right under this Declaration or any of the other Governing Documents will operate as a waiver of such right or any other right, and no single or partial exercise of any such right will preclude any other or further exercise of such right or the exercise of any other right.

F. No claim or cause of action will accrue against the Board, the Association, or any Owner for their neglect or refusal to exercise such right of enforcement.

G. The prevailing party in any Court action or administrative proceeding between the Association and an Owner shall be awarded reasonable attorneys' fees and costs. If no Court action or administrative proceeding is brought, the Association shall be reimbursed by the pertinent Owner(s), all reasonable attorneys' fees and costs it incurs in enforcing the Governing Documents.

H. In the event that any Owner, his/her guests, tenants or family members are in violation of any of the provisions of the Governing Documents, the Association, after providing notice and an opportunity to cure the violation, has the right to record a "Notice of Violation" with the Pima County Recorder's Office, stating the name of the Owner, the Lot and the nature of the violation, and the Association's intent not to waive any of its rights of enforcement. The Notice shall remain of record until the violation is cured.

I. Before a fine or penalty is levied, the following enforcement procedure will be followed:

1. Demand. Written demand to cease and desist from an alleged violation shall be served upon the alleged violator specifying: (a) the alleged violation; (b) the action required to abate the violation and, (c) if the violation is a continuing one, a time period of not less than 10 days, unless the violation constitutes a safety or health hazard, or if the violation is not a continuing one, a statement that any further violation of the same provision of the Governing Documents may result in the imposition of sanctions after notice and hearing.

2. Notice. Within one month of such notice, if the violations continue past the period allowed in the notice for abatement without penalty, or if the same provision of the Governing Documents is subsequently violated, the Board shall serve the violator with written notice of a hearing to be held by the Board in executive session. Service may be made personally or by first class mail to the violator's address of record. The notice shall contain: (a) the nature of the alleged violation; (b) the time and place of the hearing, which time shall be not less than ten days from the giving of notice; (c) an invitation to attend the hearing and produce any statement, evidence and witnesses on his/her behalf; and (d) the proposed sanctions to be imposed, which may include the imposition of a fine.

3. Hearing. The hearing shall be held in executive session of the Board of Directors, pursuant to the aforesaid Notice, thereby affording the Owner a reasonable opportunity to be heard. Protocol of the hearing will be set by the Board of Directors. Prior to the effectiveness of any sanction hereunder, proof of notice and the invitation to be heard shall be placed in the minutes of the meeting. Such proof shall be deemed adequate if a copy of the notice together with a statement of the date and manner of delivery is entered into the minutes by the officer or director who delivered such notice. If the Owner does not appear at the hearing, the Board will presume the validity of the Notice of Violation and may levy a fine or penalty.

Section 11.3. Amendment. This Declaration may be amended by an instrument in writing, signed and acknowledged by the President and Secretary of the Association, certifying that such Amendment has been approved by the vote or written consent of the then Owners of not less than 51% of the Lots within the Properties. Such amendment shall be effective upon its recordation with the Pima County Recorder, Pima County, Arizona.

If the Board proposes amendments to this Declaration, it must provide a copy of the amendment to all of the Owners with notice that the vote on the proposed amendment will be taken at a regular or special meeting of the Members called and held in accordance with the Bylaws or, in the alternative that all Owners will be entitled to

vote on the proposed amendment by submitting a written ballot to the Association. If the vote is by ballot, the ballot will be included with the notice of the proposed amendment.

Proposed amendments to the Declaration will also be submitted to the Owners for their approval provided that a resolution setting forth such proposed amendments signed by at least 75% of the Owners is submitted to the Board with a request that the proposed amendment either be provided to the Owners with a written ballot or that the proposed amendment be voted on at a regular or special meeting of the Members called and held in accordance with the Bylaws. Such amendments may not be contrary to any applicable law.

**Section 11.4. Lien of Mortgages.** No breach of the provisions, conditions, restrictions or covenants contained within this Declaration will defeat or render invalid the lien of any mortgage made in good faith for value as to any portion of the Properties. Such provisions, conditions, restrictions and covenants shall be enforceable against any portion of the Properties acquired by any person through foreclosure or by deed in lieu of foreclosure or any breach occurring after such acquisition.

**Section 11.5. Trustee's Sale and Foreclosure.** During the pendency of any trustee's sale or with respect to any proceeding to foreclose a First Mortgage, including any period of redemption, the First Mortgagee (or receiver appointed in such action) may, but need not, exercise any or all of the rights and privileges of the Owner of the mortgaged Lot including, but not limited to, the right, if any, to vote as a Member of the Association to the exclusion of the Owner's exercise of such rights and privileges.

**Section 11.6. No Liability.** The Association, the members of any committee and the Association's directors and officers will not be liable to any person for any damage, loss, or prejudice suffered or claimed on account of any decision, approval, disapproval, act, omission or error made in good faith (whether or not negligent), and which such director, officer, or committee member reasonably believed to be within the scope of his/her duties.

**Section 11.7. Change of Circumstances.** No change of condition or circumstances within the Properties will, in any manner, operate to terminate or modify any of the provisions of this Declaration.

**Section 11.8. Action by Association.** Whenever, under the provisions of the Governing Documents, any right, power, privilege or authority of the Association is to be exercised or withheld, or any consent or approval by the Association is to be given or withheld, then, unless specifically set forth in the Governing Documents, such right, power, privilege or authority will be exercised or withheld, or such consent or approval will be given or withheld by the Board and not by the Members of the Association, and a decision of a majority of the Board present at a duly called and held Directors' meeting

will be the decision of the Association in regard thereto. This Section will not apply to architectural matters within the Properties that are subject to the review of the Architectural Committee as provided for or as permitted herein.

Section 11.9. Construction.

A. Interpretation. The provisions of this Declaration shall be liberally construed to effectuate the purpose of creating a uniform plan for the development and operation of the Properties.

B. Restrictions Severable. Notwithstanding any other provision hereof, each of the provisions of this Declaration shall be deemed independent and severable, and the invalidity or partial invalidity of any provision or portion thereof shall not affect the validity or enforceability of any other provision.

C. References to Restrictions. Any and all instruments of conveyance or lease of any interest in any Lot or the Properties may contain reference to this Declaration and shall be subject to the Restrictions in this Declaration the same as if they were therein set forth in full; provided that the Restrictions herein shall be binding upon all persons affected by the same, whether express reference is made to this Declaration or not.

D. Rule Against Perpetuities. In the event the provisions hereunder are declared void by a Court of competent jurisdiction by reason of the period of time herein stated for which the same shall be effective, then in that event said periods of time shall be reduced to a period of time which shall not violate the rule against perpetuities as set forth in the laws of the State of Arizona.

E. Captions. All captions and titles used in this Declaration are intended solely for convenience or reference purposes only and in no way define, limit or describe the true intent and meaning of the provisions hereof.

Section 11.10. Binding Effect. By acceptance of a deed or acquiring any ownership interest in any of the Properties included within this Declaration, each person or entity, for himself, or his heirs, personal representatives, successors, transferees and assigns, binds himself, his heirs, personal representatives, successors, transferees and assigns to all of the provisions, restrictions, covenants, conditions, rules and regulations now or hereafter imposed by this Declaration and any amendments thereof. In addition, each such person by so doing thereby acknowledges that this Declaration sets forth a general scheme for the Properties and hereby evidences his intent that all the restrictions, conditions, covenants, rules and regulations contained herein shall run with the land and be binding on all subsequent and future owners, grantees, purchasers, assignees, and

transferees thereof. Furthermore, each such person fully understands and acknowledges that this Declaration shall be mutually beneficial, prohibitive and enforceable by the various subsequent and future owners.

**Section 11.11. Term.** The provisions of this Declaration run with the land and continue and will remain in full force and effect at all times and against all persons.

**Section 11.12. Conflicts in Governing Documents.** In the event of any conflict between provisions of the Governing Documents, (A) the provisions of this Declaration supersede the Articles of Incorporation, the Bylaws, and the Rules; (B) the Articles of Incorporation supersede the Bylaws, and the Rules; and (C) the Bylaws supersede the Rules.

**Section 11.13. Meaning of Pronouns; Singular and Plural Words.** All pronouns used in this Declaration will be deemed to refer to the masculine or feminine gender, as the identity of the Person to whom reference is made may require. Words used in the singular include the plural and words used in the plural include the singular.

IN WITNESS WHEREOF, the undersigned certify that at least 75% of the Owners have voted to approve this Amended and Restated Declaration, thereby superseding the Original Declaration.

SUNRISE POINTE VISTAS HOMEOWNERS  
ASSOCIATION, an Arizona non-profit corporation

By Richard D. Grannan  
President

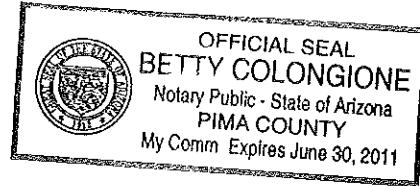
ATTEST:

By Nancy C. Wolke  
Secretary

STATE OF ARIZONA )  
 ) ss.  
County of Pima )

The foregoing instrument was acknowledged before me this 27<sup>th</sup> day of March, 2008, by Richard D. Learne, as President of SUNRISE POINTE VISTAS HOMEOWNERS ASSOCIATION, an Arizona non-profit corporation.

Beth Glazier  
Notary Public



STATE OF ARIZONA )  
 ) ss.  
County of Pima )

The foregoing instrument was acknowledged before me this 27 day of  
March, 2008, by Wesley C. Wolske as Secretary  
of SUNRISE POINTE VISTAS HOMEOWNERS ASSOCIATION, an Arizona non-  
profit corporation.

Beth Colomina  
Notary Public

