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**DECLARATION
OF
COVENANTS, CONDITIONS, RESTRICTIONS, RESERVATIONS AND EASEMENTS
FOR
CORTESSA**

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**DECLARATION
OF
COVENANTS, CONDITIONS, RESTRICTIONS, RESERVATIONS AND EASEMENTS
FOR
CORTESSA**

THIS DECLARATION OF COVENANTS, CONDITIONS, RESTRICTIONS, RESERVATIONS AND EASEMENTS (as amended from time to time, the "Declaration") is made as of this 17th day of June, 2004 by Stardust Development, Inc., an Arizona corporation ("Declarant"), with the consent of the party identified below.

RECITALS

A. Declarant and the party whose consent is to be attached at the end of this Declaration (the "Consenting Party") own that certain real property situated in Maricopa County, Arizona, described on Exhibit A attached hereto (the "Covered Property").

B. Declarant and the Consenting Party desire to submit and subject the Covered Property, together with all buildings, improvements and other permanent fixtures of whatever kind now or hereafter located thereon, and all easements, rights, appurtenances and privileges belonging or in any way pertaining thereto (all of which comprise a part of the "Property" as hereafter defined), to the covenants, conditions, restrictions, liens, assessments, easements, privileges and rights contained herein. Declarant and the Consenting Party desire to develop the Property in phases as an integrated development for predominantly residential use to be known as "Cortessa", with such Common Area as may from time to time be designated pursuant hereto.

C. As part of the various stages of development of the Property, Declarant and the Consenting Party intend, without obligation, to Record or cause to be Recorded various subdivision plats and to dedicate portions of the Property to the public or otherwise for streets, roadways, drainage, flood control and other public uses. Where deemed appropriate for the character of the area, various Neighborhood Declarations may also be Recorded against portions of the Property. Any Neighborhood Declarations Recorded after the effective date hereof may set forth additional covenants, conditions, restrictions, assessments, charges, servitudes, liens, reservations and easements applicable to portions of the Property and may provide for the establishment of separate Neighborhood Associations, which will be subordinate to the Association for Cortessa provided for herein.

D. Declarant and the Consenting Party deem it desirable to establish covenants, conditions and restrictions applicable to the Property, and each and every portion thereof, and certain mutually beneficial restrictions and obligations with respect to the proper use, occupancy and enjoyment thereof, all for the purpose of enhancing and protecting the value, desirability and attractiveness of the Property and enhancing the quality of life within the Property.

E. Declarant and the Consenting Party also deem it desirable to have an owners association ("Association") for the Property and to delegate to it powers provided for in this Declaration or that generally benefit its members, the Property, and the owners of any interests therein. A nonprofit corporation has been, or will be, incorporated under the laws of the State of Arizona for the purpose of being the Association provided for in this Declaration.

F. Declarant and the Consenting Party desire and intend that the owners, mortgagees, beneficiaries and trustees under trust deeds, occupants and all other Persons now holding or hereafter acquiring any interest in the Property shall at all times enjoy the benefits of, and shall hold their interests subject to, the covenants, conditions, restrictions, liens, assessments, easements, privileges and rights hereinafter set forth, all of which are declared to be in furtherance of a plan to promote and protect the Property.

DECLARATIONS

NOW, THEREFORE, Declarant (with the consent and approval of the Consenting Party) hereby declares as follows:

The Property shall hereafter be held, transferred, sold, conveyed, leased, occupied and used subject to the covenants, conditions, restrictions, liens, assessments, easements, privileges and rights hereinafter set forth, all of which shall run with the land and be binding upon the Property and all parties having or acquiring any right, title or interest in or to the Property, or any part thereof, and shall inure to the benefit of each owner thereof, the Declarant, the Association and each member of the Association; and

Defined terms appearing in this Declaration shall have the first letter of each word in the term capitalized. Defined terms shall have the meanings given to them in Appendix A to this Declaration (or as may be otherwise expressly provided herein).

SECTION 1

RIGHTS OF ENJOYMENT IN COMMON AREAS

1.1 Easements of Enjoyment. Declarant and every Owner, Occupant and Resident of the Property shall have a right and easement of enjoyment in and to all of the Common Areas, which easement shall be appurtenant to, and shall pass with, the title to every Lot and Parcel, subject to all of the easements, covenants, conditions, restrictions and other provisions contained in this Declaration, including, but not limited to, the following provisions:

1.1.1 The right of the Association to suspend the right of an Owner, Occupant, Resident or any other Person to use the Common Areas, or any designated portion thereof, for any period during which any Assessment against the Owner's Lot or Parcel remains delinquent and remains unpaid and for any period during which the Owner, Occupant, Resident or other Person is otherwise in default under this Declaration, any Supplemental Declaration or the Association Rules, after written notice of the failure to make payment or other default is given by the Board to the defaulting party. Notwithstanding the foregoing, the Association shall not have the right to suspend any Owner's right to use any portion of the Common Area necessary for the Owner to gain access to the Owner's Lot or Parcel.

1.1.2 The right of the Association to regulate the use of the Lots, Parcels and Common Areas through the Association Rules and to prohibit or limit access to the Common Areas, and other specified areas, not intended for use by the Owners, Occupants and Residents. The Association Rules shall be intended, in the absolute discretion of the Board, to enhance the preservation of the Common Areas for the safety and convenience of the users thereof, and

otherwise shall serve to promote the best interests of Declarant, Owners, Occupants and Residents of the Property.

1.1.3 The right of the Association to dedicate, transfer and grant easements over all or any part of the Common Areas to any public or quasi-public agency, authority, or utility for such purposes and subject to such conditions as may be agreed to by the Association, provided that these actions otherwise comply with this Declaration.

1.1.4 The right of the Association to change the use of the Common Areas, provided that this action otherwise complies with this Declaration.

1.1.5 The right of the Association to change the size, shape or location of Common Areas, to exchange Common Areas for other lands or interests therein that become Common Areas, and to abandon or otherwise transfer Common Areas, provided that these actions otherwise comply with this Declaration.

1.1.6 The right of the Association to borrow money for the purpose of improving, replacing, restoring or expanding the Common Areas or Areas of Common Responsibility, and the right of the Association to mortgage the Common Areas, provided that the rights of any lender shall be subordinated to the rights of the Owners, and provided that the foregoing actions otherwise comply with this Declaration.

1.1.7 Notwithstanding anything to the contrary herein, the Common Areas shall not be mortgaged or conveyed without the consent of at least two-thirds (2/3) of the votes of the Members, and Declarant, so long as Declarant owns any portion of the Property.

1.2 Delegation of Use. The Declarant and any Owner or Resident may, in accordance with the Declaration and the Association Rules, delegate the Owner's right of enjoyment in the Common Areas to the Owner's family members, tenants and guests; provided, however, that the Association shall have the right to limit the number of guests of an Owner or Resident using the Common Areas.

1.3 Waiver of Use. No Owner may exempt himself from personal liability for Assessments, nor release the Owner's Lot or Parcel from the liens or charges arising under this Declaration, any Supplemental Declaration, Tract Declaration or the Association Rules, by waiver of the Owner's use and enjoyment of the Common Areas.

1.4 Indemnification/Acknowledgment. The Owners (other than the Designated Builders) acknowledge that: (a) the Property subject to this Declaration contains Common Areas; (b) the Common Areas possess certain inherent dangers from which the Owners must take precautions to protect themselves, their families, invitees, guests and others; (c) no safety personnel will patrol the Common Areas, and the Owners assume the risk and the responsibility of protecting themselves, their families, invitees, guests or others; and (d) the Owners will indemnify, defend and hold harmless the Declarant, the Association, the Designated Builders, and their respective successors and assigns, for, from and against any claims, liabilities, injuries and damages, including, but not limited to, interest, reasonable attorneys' fees, witness fees, costs and related expenses incurred by or claimed against the Declarant, the Association, the

Designated Builders, and their respective successors and assigns, under any laws arising in any way from or in connection with the Common Areas.

SECTION 2

EASEMENTS

2.1 Utility Easement. There is hereby created a blanket easement upon, across, over and under the Property (including all Lots, Parcels, Common Areas, Neighborhood Common Areas and Areas of Common Responsibility) for ingress to, egress from and the installation, replacement, repair and maintenance of, all utility and service lines and systems, including, but not limited to, water, sewer, gas, telephone, electricity, cable or communication lines and systems. Pursuant to this easement, a providing utility or service company may install and maintain the necessary or appropriate facilities, wires, circuits, conduits, cables and equipment on the Property. Notwithstanding anything to the contrary contained in this Section, no sewers, electrical lines, water lines, or other utility or service lines may be installed or relocated within the Property except as initially created or approved by Declarant, without the prior written approval of, in the case of a Common Area, Neighborhood Common Area or an Area of Common Responsibility, the Association and the Design Review Committee or, in the case of a Lot or Parcel, the Owner of the Lot or Parcel and the Design Review Committee. Nothing contained herein shall entitle Declarant or any utility or service company in exercising the rights granted herein to disturb any Dwelling Unit constructed in accordance with the requirements of this Declaration.

2.2 Declarant Easement. There is hereby created a nonexclusive easement for ingress and egress over, for the right to go over, under, and across, and for the right to enter and remain upon, all portions of the Property, including, but not limited to, Lots and Parcels (except the interiors of occupied Dwelling Units) and Common Areas, for the purpose of enabling Declarant and its employees, agents, invitees, licensees, contractors and guests to exercise Declarant's rights and obligations hereunder and to engage in activities reasonably related to the development, management, administration, operation, maintenance, advertisement and sale or rental of the Property. Without limiting the generality of the foregoing, Declarant's easement shall include the right to maintain and correct drainage of surface or storm water throughout the Property, which includes the right to cut any trees, bushes or shrubbery, to grade the soil or to take other actions reasonably related to the maintenance and correction of drainage. The rights of access established in this Section 2.2 shall be exercised so as to reasonably minimize interference with the quiet enjoyment of a Lot or Parcel by its Owner and any Resident or Occupant.

2.3 Association Easement. There is hereby created a nonexclusive easement in favor of the Association for ingress and egress over, for the right to go over, under and across, and for the right to enter and remain upon, all portions of the Property, including, but not limited to, Lots and Parcels (except the interiors of occupied Dwelling Units) and Common Areas, for the purpose of enabling the Association and its contractors, employees, representatives, and agents to exercise the Association's rights and obligations hereunder. The rights of access established in this Section 2.3 shall be exercised so as to reasonably minimize interference with the quiet enjoyment of a Lot or Parcel by its Owner and any Resident or Occupant.

2.4 Drainage Easement. All Lots, Parcels, Common Areas and Neighborhood Common Areas shall be subject to an easement for the drainage and retention of water from other Lots, Parcels, Common Areas, Neighborhood Common Areas and properties in accordance with the drainage plans for the Property and any portions thereof on file with Government Authorities. No Persons shall be entitled to alter the drainage patterns on any portion of the Property that are set forth on drainage plans approved by the Government Authorities to increase materially, or to relocate materially, the drainage of water onto adjacent portions of the Property without the consent of any Owners of the affected property (or the Declarant, if the Declarant owns the affected property), and the Association.

2.5 Irrigation Easement. Every Lot and Parcel is also hereby subjected to a nonexclusive easement for overspray and runoff of water from any irrigation systems serving the Common Areas, Neighborhood Common Areas or Areas of Common Responsibility. Under no circumstances will the Association or any officers, directors, employees, or agents of the Association be responsible for any property damage or personal injury resulting from any overspray or from the operation of the irrigation systems serving the Common Areas, Neighborhood Common Areas or Areas of Common Responsibility.

2.6 Access Easement. If access to a Lot or Parcel is through a Common Area or a Neighborhood Common Area, any conveyance or encumbrance of that Common Area or Neighborhood Common Area shall be subject to an access easement benefiting the Lot or Parcel.

2.7 Perimeter Wall Easement. Declarant may establish one or more perimeter wall easements from time to time by Plat, Supplemental Declaration, Neighborhood Declaration or other Recorded instrument, for walls or fences or other similar structures at the perimeter of the Property, a Neighborhood, or other similar locations, but only with the prior written consent of any Designated Builder that owns all or any portion of the property subject to the easement, which consent shall not be unreasonably withheld, conditioned or delayed.

SECTION 3

PERMITTED USES AND RESTRICTIONS

3.1 Architectural Control. The Property is subject to architectural control as more particularly described in this Section 3, Section 12 and elsewhere in this Declaration. Except as otherwise expressly provided in this Declaration, no improvements, alterations, repairs, excavation, grading, landscaping or other work that in any way alters a Lot or Parcel, or the exterior appearance of Improvements located thereon, shall be made or done without the prior written approval of the Design Review Committee. No changes or deviations in or from the plans and specifications once approved by the Design Review Committee shall be made without prior written approval of the Design Review Committee. All subsequent additions to or changes or alterations in any Improvement, including exterior color scheme, and all changes in the grade of Lots and Parcels, shall be subject to the prior written approval of the Design Review Committee.

3.2 Restriction on Further Property Restrictions. No further covenants, conditions, restrictions or easements shall be Recorded by any Owner, Occupant or other Person (except Declarant) against any Lot or Parcel without the provisions thereof having been first approved in

writing by the Board, and any covenants, conditions, restrictions or easements Recorded without the required approval being evidenced thereon shall be null and void. Nothing contained herein shall preclude Declarant from amending or supplementing this Declaration in accordance with its terms or imposing such additional covenants, conditions, reservations, and restrictions as Declarant deems appropriate, subject to any limitations set forth herein.

3.3 Landscaping.

3.3.1 Within 90 days after the close of escrow for the initial sale of a Dwelling Unit on a Lot, the Owner of the Lot shall complete the landscaping of all portions of the Lot that are Visible From Neighboring Property. Except as set forth herein, all such landscaping shall be subject to the prior written approval of the Design Review Committee as more particularly described in Section 12. It is strongly recommended that the Owner retain the services of a landscape design professional who has special knowledge of plant material and watering systems suitable to the Sonoran Desert region and the plant materials approved by the Design Review Committee.

3.3.2 Landscaping shall be subject to the following general requirements: (a) landscape design shall reinforce and complement the architectural and site planning; (b) landscape design shall promote continuity while creating interesting character for the community; (c) no hedge more than three feet in height shall be closer than the front yard setback as may be required by the Government Authorities; and (d) each Owner must submit a separate, detailed landscape plan for approval by the Design Review Committee as provided in Section 3.3.1.

3.3.3 In the event an Owner fails to complete the required landscaping within the 90-day period, the Board may, by resolution, make a finding to such effect and pursuant thereto give notice to the Owner that unless landscaping is commenced within 14 days and thereafter diligently pursued to completion, the Board may (a) cause the required landscaping to be accomplished at the Owner's expense; and/or (b) pursue any of the other rights and remedies permitted by Section 7. If, at the expiration of the 14-day period of time, the required landscaping has not been commenced and thereafter diligently pursued to completion, the Board shall be authorized and empowered (a) to pursue any of the rights and remedies permitted by Section 7; and/or (b) to cause the landscaping to occur and the cost thereof to be added to, and become a part of, the Assessment to which the offending Owner and the Owner's Lot is subject, with such costs to be secured by the Assessment Lien.

3.3.4 Except as otherwise expressly provided in this Declaration and the Design Review Guidelines, any landscaping and incidental work performed pursuant to the foregoing provisions shall not be commenced without the prior written approval of the Design Review Committee and no material changes or deviations (as determined by the Design Review Committee) in or from any plans and specifications approved by the Design Review Committee shall be made without the prior written approval of the Design Review Committee. As more particularly described in Section 12, a Designated Builder shall have the right to submit one or more standard landscaping plans that may be used on any of that Designated Builder's Lots, and the Design Review Committee's approval of a Designated Builder's standard landscaping plan

shall constitute approval of each use of that standard landscaping plan by the Designated Builder, unless otherwise specified by the Design Review Committee.

3.4 Health, Safety and Welfare. In the event any uses, activities and facilities on any Lot or Parcel are deemed by the Board to be a nuisance or to adversely affect the health, safety or welfare of Owners, Occupants or Residents, the Board may make rules restricting or regulating their presence within the Property as part of the Association Rules, or may direct the Design Review Committee to make rules governing their presence on Lots and Parcels as part of the Design Review Guidelines.

3.5 Maintenance of Landscaping. Each Owner shall keep neatly trimmed, properly cultivated and free from trash, weeds and other unsightly material, all shrubs, trees, hedges, grass, plantings and landscaping of every kind located on (a) the Owner's Lot or Parcel (including setback areas); (b) any other public right-of-way or easement area that abuts the Owner's Lot or Parcel and is located between the boundary line of the Owner's Lot or Parcel and the paved area of any street, sidewalk, bike path or similar area; and (c) any nonstreet public right-of-way; provided, however, that the Owner shall not be responsible for maintenance of any area over which (x) the Association assumes the responsibility in writing; (y) the Association has been given the responsibility by a Recorded instrument as provided in Section 10.1 of this Declaration; or (z) the Government Authorities or another public agency assumes responsibility, for so long as the Association, the political subdivision or other public agency assumes or has responsibility as provided in (x), (y) or (z) above. The Design Review Committee may require landscaping by the Owner of the areas described in (b) and (c) above.

3.6 Nuisances, Construction Activities. No rubbish or debris of any kind shall be placed or permitted to accumulate upon or adjacent to any Lot or Parcel, and no odors shall be permitted to arise or emit therefrom so as to render any such property or any portion thereof, or activity thereon, unsanitary, unsightly, offensive or detrimental to any other Lot or Parcel in the vicinity thereof or to the Owners, Occupants or Residents of any other Lot or Parcel. No other nuisance shall be permitted to exist or operate upon any Lot or Parcel so as to be offensive or detrimental to any other property in the vicinity thereof or to its occupants. Temporary toilets shall be located in reasonable proximity to each Lot or Parcel upon which construction has commenced and shall be maintained in such locations during the entire course of construction, and all construction workers shall be required to use the temporary toilets. The temporary toilets shall be maintained in presentable, safe, clean, sanitary and odor-free condition and removed immediately after completion of construction. Without limiting the generality of any of the foregoing provisions, no exterior speakers, horns, whistles, fireworks, bells or other sound devices, except security devices used exclusively for security purposes, shall be located, used or placed on any such Lot or Parcel. Normal construction activities and parking in connection with the building of Improvements on a Lot or Parcel shall not be considered a nuisance or otherwise prohibited by this Declaration, but all Lots and Parcels shall be kept in a neat and tidy condition during construction periods; trash and debris shall not be permitted to accumulate, and supplies of brick, block, lumber and other building materials shall be piled only in the areas approved by the Design Review Committee. All trash and construction debris shall be immediately deposited in an enclosed metal container maintained by the Owner on the Lot or Parcel, and these containers shall be emptied with sufficient frequency to prevent the accumulation of trash and debris. Each Owner shall be responsible for immediately removing any dirt, mud or debris

collecting in public streets as a result of the Owner's construction activities. In addition, any construction equipment and building materials stored or kept on any Lot or Parcel during construction of Improvements may be kept only in areas approved by the Design Review Committee. The Design Review Committee may also require screening of the storage areas. The Board, in its sole discretion, shall have the right to determine the existence of any nuisance.

3.7 Repair of Building. No building or structure on any Lot or Parcel shall be permitted to fall into disrepair, and each building and structure shall at all times be kept in good condition and repair and adequately painted or otherwise finished. In the event any building or structure on any Lot or Parcel is damaged or destroyed, then, subject to the approvals required by Section 12, the building or structure shall be immediately repaired or rebuilt or shall be demolished.

3.8 Signs. No signs whatsoever (including, but not limited to, commercial, political and similar signs) that are Visible From Neighboring Property shall be erected or maintained on any Lot or Parcel except:

3.8.1 Signs required by legal proceedings.

3.8.2 Numbering designating the street address of the Dwelling Unit (a) stenciled and located on the curb immediately in front thereof or (b) affixed to the Dwelling Unit.

3.8.3 Signs indicating a property to be "For Sale" or "For Lease," provided no more than one such sign is located on each individual residence, no individual sign is larger than nine square feet in size, and no sign is placed closer to the street than six feet.

3.8.4 Other signs that are in conformance with the applicable requirements of the Government Authorities or other applicable governmental agencies and have been approved in advance and in writing by the Design Review Committee as to size, color, design, message content and location.

The foregoing shall not prohibit signs at street entrances constructed by Declarant identifying the Property or signs identifying or used in connection with or directing traffic to model homes or other temporary signs used by the Designated Builders in connection with the sale of homes in the Property.

3.9 Roof Structures and Equipment. If a Dwelling Unit has a pitched roof, the roofing material for that portion Visible From Neighboring Property must be clay or concrete tile. No heating, air-conditioning or ventilation equipment, or any other equipment or structures shall be located or installed on any roof. In addition, any such equipment or structures shall not be located or installed anywhere on a Lot or Parcel if it is Visible From Neighboring Property. The location and installation of solar units and panels on the roof shall not be prohibited, but the Board may adopt reasonable rules, restrictions and requirements, from time to time, regulating the placement, appearance, size, operation, and other aspects of any solar units and panels, and the placement of any solar units and panels on any roof or anywhere on a Lot or Parcel that is Visible From Neighboring Property shall require the prior written approval of the Design Review Committee, which approval shall not be unreasonably withheld or delayed.

3.10 Utility Service. No lines, wires, or other devices for the communication or transmission of electric current or power, including telephone, television, and radio signals, shall be erected, placed or maintained anywhere in or upon any Lot or Parcel unless they are contained in conduits or cables installed and maintained underground, except (a) to the extent (if any) underground or concealed placement may be prohibited by law, (b) for above-ground structures or media for transmission as may be originally constructed by Declarant, or (c) as may otherwise be approved by the Design Review Committee. No provision hereof shall be deemed to forbid the erection of temporary power or telephone structures incident to the construction of buildings or structures approved by the Design Review Committee.

3.11 Right of Entry. During reasonable hours and upon reasonable notice to the Owner or other Resident of a Lot or Parcel (or the Declarant, if Declarant owns the Lot or Parcel), any member of the Design Review Committee, any member of the Board, or any of their respective authorized representatives, shall have the right to enter upon and inspect any Lot or Parcel, and the Improvements thereon, except for the interior portions of any completed Dwelling Unit, for the purpose of ascertaining whether or not the provisions of this Declaration have been, or are being, complied with, and such persons shall not be deemed guilty of trespass by reason of such an entry.

3.12 Permitted Uses. Except for the construction, maintenance and other activities related to the model homes as provided below and business activities permitted by this Section 3.12 and the other provisions of this Declaration, the Lots and Parcels shall be used, improved and devoted exclusively to residential use by Single Families. No gainful occupation, profession, trade or other nonresidential use may be conducted on any Lot or Parcel or in or from any Dwelling Unit, except that an Owner, Occupant or Resident may conduct a business activity within the Dwelling Unit so long as: (a) the existence or operation of the business activity is not apparent or detectable by sight, sound or smell from outside the Dwelling Unit; (b) the business activity conforms to all zoning ordinances and requirements for the Property; (c) the business activity does not involve persons coming on to the Lot or Parcel or the door-to-door solicitation of Owners or other Residents in the Property; (d) the business activity does not involve the delivery of products or other materials to the Lot or Parcel (other than once a day document or package delivery services and once a day document or package pick up services, such as Federal Express); (e) the business activity does not violate any provision of this Declaration, the Design Review Guidelines or the Association Rules; and (f) the business activity is consistent with the residential character of the Property and does not constitute a nuisance or a hazardous or offensive use or threaten security or safety of other Owners, Occupants and Residents in the Property, as may be determined from time to time in the sole discretion of the Board. The terms "business" and "trade" as used in this Section shall be construed to have ordinary, generally accepted meanings and shall include, without limitation, any occupation, work or activity undertaken on an ongoing basis that involves the provision of goods or services to Persons other than the provider's family and for which the provider receives a fee, compensation or other form of consideration, regardless of whether (a) the activity is engaged in full or part time; (b) the activity is intended to or does generate a profit; or (c) a license is required for the activity. The leasing of an entire Dwelling Unit by the Owner thereof shall not be considered a trade or business within the meaning of this Section.

3.13 Animals. No animal, horse, bird, poultry or livestock, other than a reasonable number of generally recognized house or yard pets as established by the Board in accordance with this Section 3.13, shall be maintained on any Lot or Parcel, and no animal of any sort shall be kept on a Lot or Parcel before the close of escrow for purchase of the Dwelling Unit. This prohibition includes, but is not limited to, guard dogs or any other animal maintained, kept or housed on a Lot or Parcel for security or to prevent theft during the course of construction. Animals are permissible only if they are kept or raised thereon solely as domestic pets and not for commercial purposes. No animal or bird shall be allowed to make an unreasonable amount of noise or to become a nuisance. No structure for the care, housing or confinement of any bird or other animal shall be maintained so as to be Visible From Neighboring Property without the prior written consent of the Design Review Committee. Upon the written request of any Member or Resident, the Board shall conclusively determine, in its sole and absolute discretion, whether, for the purposes of this Section 3.13, a particular animal or bird is a generally recognized house or yard pet, whether such a pet is a nuisance, or whether the number of animals or birds on any such property is reasonable. Any decision rendered by the Board shall be enforceable in the same manner as other restrictions contained herein.

3.14 Temporary Structures. No structure of a temporary character, trailer, basement, tent, shack, barn or other outbuilding shall be constructed, erected, placed or used on portions of the Property at any time for any purpose whatsoever, either temporarily or permanently. Notwithstanding the foregoing, it shall be expressly permissible for Declarant and the Designated Builders to maintain, during the period of construction and sale of Lots within the Property, upon such portions of the Property as Declarant may authorize, both temporary offices and trailers that are convenient or incidental to the sale of Lots and the construction of residences on such Lots.

3.15 Model Homes. The provisions of this Declaration that prohibit nonresidential use of Lots and Parcels and regulate parking of vehicles shall not prohibit the construction and maintenance of model homes or temporary trailers for marketing by Declarant, Designated Builders, or other builders specifically designated by Declarant and parking incidental to the use of such model homes and lights, flags, flagpoles, fences, signs and other associated Improvements, so long as the use of the trailers and location of such model homes are approved by the Design Review Committee, and the construction, operation and maintenance of such model homes otherwise complies with all of the provisions of this Declaration. In the event that any garages attached to the model homes are converted to office use in connection with the sale of homes within the Property, each such garage shall be converted back to use for the storage of vehicles at such time as the respective model home is sold for residential use. The Design Review Committee may also permit other areas to be used for parking in connection with the showing of model homes, provided such parking and parking areas are in compliance with applicable governing ordinances and any rules of the Design Review Committee. No home shall be used as a model home for the sale of homes not located within the Property.

3.16 Diseases and Insects. No Owner shall permit any thing or condition to exist upon any Lot or Parcel that may induce, breed or harbor infectious plant diseases or noxious insects.

3.17 Antennas. No antenna, satellite dish, or other device for the transmission or reception of television or radio signals or any other form of electromagnetic radiation that is

Visible From Neighboring Property shall be erected, used or maintained outdoors on any Lot or Parcel whether attached to a building or structure or otherwise, without the prior written approval of the Design Review Committee. The Board may adopt reasonable rules, restrictions and requirements from time to time regulating the placement, appearance, size, operation, and other aspects of any antennas, satellite dishes, and other structures and devices for the transmission or reception of television or radio signals or any other form of electromagnetic radiation, allowed for use on Lots or Parcels, within the constraints of any applicable law. Any such rules, restrictions and requirements shall take into account aesthetic considerations, available technology, cost, feasible alternatives, and the effect (if any) of applicable laws and other requirements of governmental authorities.

3.18 Trash Containers and Collection. No garbage or trash shall be placed or kept on any Lot or Parcel, except in covered containers of a type, size and style that are approved by the Government Authorities and acceptable to the appropriate garbage or trash collector. In no event shall such containers be maintained so as to be Visible From Neighboring Property, except to make the same available for collection and then only for the shortest time reasonably necessary to effect collection. In no event shall such containers be placed for collection before sunset of the day immediately preceding the day of collection. All rubbish, trash, or garbage shall be promptly removed from all Lots and Parcels and shall not be allowed to accumulate thereon. No outdoor incinerators shall be kept or maintained on any Lot or Parcel.

3.19 Clothes Drying Facilities. Outside clotheslines or other outside facilities for drying or airing clothes shall not be erected, placed or maintained on any Lot or Parcel.

3.20 Window Treatments. All windows within any Dwelling Unit constructed on any Lot shall be covered with appropriate window treatments within 60 days after first occupancy thereof. No reflective materials, including, but not limited to, aluminum foil, reflective screens or glass, mirrors or similar-type items shall be installed or placed on the outside or inside of any windows unless approved by the Design Review Committee. The exterior side of all drapes, curtains or other window coverings shall complement the natural colors of the Dwelling Unit.

3.21 Party Walls. Except as hereinafter provided, the rights and duties of Owners with respect to party walls between Lots or Parcels, or party fences between Lots or Parcels shall be as follows:

3.21.1 The Owners of contiguous Lots or Parcels who have a party wall or party fence shall both equally have the right to use such wall or fence, provided that such use by one Owner does not interfere with the use and enjoyment of same by the other Owner.

3.21.2 In the event that any party wall or party fence is damaged or destroyed through the act of an Owner or any of the Owner's agents, guests, or family members (whether or not the act is negligent or otherwise culpable), it shall be the obligation of that Owner to rebuild and repair the party wall or party fence without cost to the Owner of the adjoining Lot or Parcel. Any dispute over an Owner's liability for such damage shall be resolved as provided in Section 3.21.5, but any liability imposed on an Owner hereunder shall not prevent the Owner from seeking indemnity therefor from the Persons causing such damage.

3.21.3 In the event any party wall or party fence is destroyed or damaged (including deterioration from ordinary wear and tear and lapse of time), other than by the act of an adjoining Owner, the Owner's agents, guests or family, it shall be the obligation of all Owners whose Lots or Parcels adjoin the party wall or party fence to rebuild and repair the wall or fence at their joint expense, with the expense to be allocated among the Owners in accordance with the frontage of their Lots or Parcels on the party wall or party fence.

3.21.4 Notwithstanding anything to the contrary herein contained, there shall be no impairment of the structural integrity of any party wall or party fence without the prior consent of all Owners with any interest therein whether by way of easement or in fee.

3.21.5 In the event of a dispute between Owners with respect to the construction, repair or rebuilding of a party wall or party fence, or with respect to the sharing of the cost thereof, all such adjoining Owners may submit the dispute to the Board. If the Board, in its sole and absolute discretion, elects to review the dispute, any decision rendered by the Board regarding the dispute shall be binding; provided, however, the prevailing party in such dispute shall be responsible for seeking enforcement of any such decision.

3.21.6 Anything in the foregoing to the contrary notwithstanding, in the case of party fences between (a) Common Areas and Lots or Parcels, or (b) constructed by the Declarant or the Association on Common Areas, the Association shall be responsible for all maintenance thereof, subject to the provisions of Section 6, except that each Owner of a Lot or Parcel shall be responsible for painting the portion of the party wall or party fence facing that Owner's Lot or Parcel or the portion thereof that is not a portion of the Common Area.

3.21.7 In the event any party wall encroaches less than one foot (1') upon a Lot or Parcel, an easement for the encroachment and for the maintenance of the party wall shall exist in favor of the Owners of the Lots or Parcels that share the party wall.

3.22 Walls and Fences. No solid wall or fence shall be constructed or maintained closer to the boundary of the Lot or Parcel than is permitted by applicable building setback lines. Except as may be specifically permitted by the Design Review Committee or as required by applicable municipal zoning ordinances, no side or rear fence and no side or rear wall (except the wall of the building constructed on the Lot or Parcel), shall be more than six feet in height, as measured from the higher side of the fence or wall; provided, however, all walls and fences adjacent to arterial roadways shall be seven feet in height, as measured from the higher side of the fence or wall. All walls and fences shall be painted cinder block or integral color cinder block. Wrought iron inserts are permissible if they are approved by the Design Review Committee and painted to blend with the color of the Dwelling Unit. Notwithstanding the foregoing, all fences and walls, including, but not limited to, the color thereof, are subject to Design Review Committee approval. In no event shall chain link or wire fencing be allowed.

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

3.24 Trucks, Trailers, Campers and Boats. No motor vehicle classed by manufacturer rating as exceeding $\frac{3}{4}$ ton, mobile home, travel trailer, tent trailer, trailer, camper shell, detached camper, boat, boat trailer or other similar equipment or vehicle may be parked, maintained, constructed, reconstructed or repaired on any Lot, Parcel or street in the Property so as to be Visible From Neighboring Property.

3.25 Motor Vehicles. No automobile, motorcycle, motorbike or other motor vehicle shall be constructed, reconstructed or repaired upon any Lot, Parcel or street in the Property, and no inoperable vehicle may be stored or parked on any such Lot, Parcel or street so as to be Visible From Neighboring Property.

3.26 Parking. Vehicles of all Owners and Residents are to be kept only in garages or the driveway of any Lot. Except with respect to model home garages, no garage located on a Lot shall be used for any purpose other than the storage of vehicles and other household items, and in no event shall any garage be converted to living area. Guests and the invitees of Owners shall be entitled to keep their vehicles on streets in front of a Lot or within reasonable proximity thereof for a period of no greater than forty-eight hours during any seven day period. In no event shall a disabled or inoperative vehicle be maintained on a street, driveway or otherwise be Visible from Neighboring Property.

3.27 Tenants. The entire Dwelling Unit on a Lot may be let to a Single Family tenant from time to time by the Owner, subject to the provisions of this Declaration.

3.28 Environmental Protections. Neither Lots or Parcels nor any Improvements on Lots or Parcels shall be used to generate, manufacture, refine, transport, treat, store, handle, dispose of, transfer, produce or process Hazardous Substances or solid waste, except in compliance with all applicable federal, state, and local laws or regulations. For purposes of this Section, "Hazardous Substances" shall be deemed to include pollutants or substances defined as "hazardous waste," "hazardous substances," "hazardous materials," or "toxic substances" in any federal, state or local laws, ordinances, regulation, policies or orders pertaining to the environment.

3.29 No Subdivision. No Parcel shall be subdivided, and no Lot shall be further subdivided, by any Owner, Occupant or other Person (except Declarant), without the prior written consent of Declarant (until the Transition Date) and the Board, and any subdivisions accomplished without the required consents shall be null and void. No portion less than all of any Lot or Parcel shall be conveyed, transferred or hypothecated by any Owner or other Person (except Declarant), without the prior written consent of Declarant (until the Transition Date) and the Board. Nothing in the foregoing shall preclude Declarant from replatting the Property or subdividing any Parcel or re-subdividing any Lot.

SECTION 4

ORGANIZATION OF ASSOCIATION

4.1 Formation of Association. The Association shall be a nonprofit Arizona corporation charged with the duties and invested with the powers prescribed by law and set forth

in the Articles, Bylaws and this Declaration. Neither the Articles nor the Bylaws shall, for any reason, be amended or otherwise changed or interpreted so as to be inconsistent with this Declaration.

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

4.3 Association Rules. By a majority vote of the Board, the Association may, from time to time and subject to the provisions of this Declaration, adopt, amend and repeal rules and regulations to be known as the "Association Rules," provided the Association Rules are not inconsistent with the provisions of this Declaration, the Articles or the Bylaws. The Association Rules may pertain to any of the Association's rights, activities and duties, including, but not limited to, rules restricting and governing the use of any Common Area, Neighborhood Common Area or Area of Common Responsibility by any Member, Occupant or Resident, and rules regarding permitted activities on Lots and Parcels. Upon adoption, the Association Rules shall have the same force and effect as if they were set forth in and were a part of this Declaration.

4.4 No Personal Liability. No member of the Board or of any committee of the Association, no officer of the Association, no manager or other employee of the Association and no managing agent retained by the Association shall be personally liable to any Member or to any other Person, including the Association, for any damage, loss or prejudice suffered or claimed on account of any act, omission, error or negligence of the Association, the Board, any managing agent retained by the Association, any representative or employee of the Association or any committee, committee member or officer of the Association; provided, however, the limitations set forth in this Section 4.4 shall not apply to any Person who has failed to act in good faith or has engaged in willful or intentional misconduct.

4.5 Other Ancillary Associations. In the event any homeowners or similar association, other than the Association provided for herein or a Neighborhood Association, is to be formed by a developer (other than Declarant) of any portion of the Property, or in the event any club, group or organization is to be formed and plans to use the Common Areas or Neighborhood Common Areas as a meeting place or site for other group activities, the articles of incorporation and bylaws or other governing documents for the association shall not be effective unless the contents thereof have been approved by the Board and the governing documents specify that the association and the rights of its members are subject and subordinate to the provisions of this Declaration, the Articles and Bylaws, and the provisions of the Association Rules. This Section 4.5 shall not apply to social clubs and other clubs and associations that may be formed for the benefit of Owners and Residents within the Property, but that do not perform the functions of a typical owners' association such as maintenance of real property, the collection of assessments for activities related to the operation and maintenance of real property within the Property, or the establishment or enforcement of restrictions and regulations affecting real property within the Property.

SECTION 5

MEMBERSHIP AND VOTING

5.1 Owners of Lots and Parcels. Unless provided to the contrary in a Tract Declaration, Supplemental Declaration or Neighborhood Declaration, all Lots and Parcels shall be entitled to Memberships in the Association as follows:

5.1.1 one Membership for each Lot.

5.1.2 four Memberships for each acre (43,560 square feet), or fraction thereof, in each Parcel owned, unless otherwise provided herein or in any Supplemental Declaration, Neighborhood Declaration or Tract Declaration. If a subdivision plat or other instrument creating Lots is Recorded covering all or part of the area within the Parcel, (a) there shall be one Membership for each platted Lot, and the Parcel shall be reduced in size by the area so platted; and (b) there shall be one Membership for each acre, or fraction thereof, in the unplatted remainder of the Parcel so long as it remains unplatted.

Each Membership shall be appurtenant to, and may not be separated from, ownership of the Lot or Parcel to which the Membership is attributable.

5.2 Declarant. Notwithstanding anything to the contrary in this Declaration, Declarant shall be entitled to the Memberships and votes for each Lot and Parcel owned by Declarant. If any lender to whom Declarant has assigned or hereafter assigns all or substantially all of its rights under this Declaration succeeds to the interests of Declarant by virtue of that assignment, the voting rights of Declarant shall not be terminated and the lender shall hold Declarant's Memberships and voting rights on the same terms as they were held by Declarant pursuant to this Declaration.

5.3 Voting/Memberships. The Association shall have two classes of voting Memberships:

5.3.1 Class A. Class A Memberships shall be all Memberships, except the Class B Memberships held by the Declarant and the Designated Builders, and each Owner shall be entitled to one vote for each Class A Membership held by the Owner, subject to the authority of the Board to suspend the voting rights of the Owner for violations of this Declaration in accordance with the provisions hereof; and

5.3.2 Class B. Until converted to Class A Memberships as provided below, each Membership owned by the Declarant or a Designated Builder shall be a Class B Membership. At the time of any vote by the Members of the Association, the Declarant and the Designated Builders shall be entitled to three votes for each Class B Membership owned thereby, respectively. The respective Class B Memberships of the Declarant or a Designated Builder shall cease and be converted to Class A Memberships on the first to occur of the following (the "Transition Date"):

(a) Ninety days after the date when the total votes outstanding in the Class A Memberships entitled to vote equal the total votes outstanding in the Class B Memberships;

(b) The 31st day of December, of the year that is 15 years after the Recordation of this Declaration; or

(c) The date Declarant or a Designated Builder notifies the Board in writing that the party is terminating its Class B Memberships and converting its Memberships to Class A Memberships; provided, however, that the voluntary termination of the Class B Memberships of Declarant, or of the individual Class B Memberships of any Designated Builder, will not affect the status of the remaining Class B Memberships, and that, so long as the Designated Builder's Class B voting rights are assigned to the Declarant pursuant to Section 5.4, any such notification by the Designated Builder shall require the prior written approval of the Declarant.

5.4 Assignment of Voting Rights. Notwithstanding anything to the contrary herein, all voting rights associated with Memberships held by Designated Builders, as of the date of this Declaration and hereafter acquired, shall be deemed to be assigned to the Declarant, with the assignment to continue with respect to each Membership until the earliest of the following to occur: (a) the sale of the Lot or Parcel to which the Membership is appurtenant to a Retail Purchaser; (b) the date that the Declarant notifies the Designated Builder, in writing, that it is terminating the assignment of that Designated Builder's voting rights; or (c) the date that neither the Declarant nor any Affiliate of the Declarant owns, directly or indirectly, any of the Property or the Annexable Property described on Exhibit B. The assignment of voting rights pursuant to this Section 5.4 shall not be deemed to convert the associated Memberships from Class B Memberships to Class A Memberships or to otherwise alter the nature of the assigned Memberships.

5.5 Right to Vote. No change in the ownership of a Membership shall be effective for voting purposes unless and until the Board is given actual written notice of the change and is provided with satisfactory proof thereof. The vote for each such Membership must be cast as a unit, and fractional votes shall not be allowed. If a Membership is owned by more than one Person and such Owners are unable to agree amongst themselves as to how their vote or votes shall be cast, they shall lose the right to vote on the matter in question. If any Member casts a vote representing a certain Membership, it will thereafter be conclusively presumed for all purposes that the Member was acting with the authority and consent of all other owners of the same Membership unless objection thereto is made at the time the vote is cast. In the event more than one vote is cast for a particular Membership, none of the votes for that Membership will be counted and all the votes for that Membership will be deemed void.

5.6 Membership Rights. Each Member shall have the rights, duties and obligations set forth in this Declaration and such other rights, duties and obligations as are set forth in the Articles and Bylaws.

5.7 Transfer of Membership. The rights and obligations of a Class A Member in the Association shall not be assigned, transferred, pledged, conveyed or alienated in any way except

upon transfer of ownership to an Owner's Lot or Parcel and then only to the transferee of ownership of the Lot or Parcel. A transfer of ownership to a Lot or Parcel may be effectuated by deed, intestate succession, testamentary disposition, foreclosure of a mortgage or deed of trust of record or such other legal process as is now in effect or as may hereafter be established under or pursuant to the laws of the State of Arizona. Any attempt to make a prohibited transfer shall be void. Any transfer of the ownership of a Lot or Parcel shall operate to transfer the Membership(s) appurtenant to the Lot or Parcel to the new Owner thereof. To the extent applicable, the provisions of this Section 5.7 are subject to Section 5.4.

5.8 Suspension of Voting Rights. If any Owner is in arrears in the payment of any Assessments or other amounts due hereunder or is otherwise in default under any of the provisions of this Declaration and the violation is not cured before the Record Date (as defined in the Bylaws), the Owner's right to vote as a Member of the Association shall not be exercisable for the meeting and shall remain suspended until all payments, including accrued interest, penalties, reasonable attorneys' fees and other costs as set forth below, are brought current, and until any other infractions or violations of this Declaration are cured; provided, however, the voting rights assigned to Declarant pursuant to Section 5.4 may not be suspended, so long as the assignment of voting rights is in effect.

SECTION 6

COVENANT FOR ASSESSMENTS AND CREATION OF LIEN

6.1 Creation of Lien and Personal Obligation of Assessments. The Declarant, for each Lot and Parcel within the Property, hereby covenants and agrees, and each Owner, by acceptance of a deed or other conveyance of an ownership interest in a Lot or Parcel (whether or not it shall be so expressed in such deed), is deemed to covenant and agree, to pay to the Association all Assessments and other charges provided for herein, including, but not limited to: (a) Regular Assessments; (b) Special Assessments; (c) Capital Reserve Assessments; (d) Neighborhood Assessments; (e) Benefited Assessments, (f) Special Use Fees established in accordance with Section 9.5; and (g) all other fees and charges levied pursuant hereto. The Declarant, for each Lot and Parcel within the Property, hereby covenants and agrees, and each Owner, by acceptance of a deed or other conveyance of an ownership interest in a Lot or Parcel (whether or not it shall be so expressed in such deed), is deemed to covenant and agree, to pay to the Governmental Authorities, the Sewer Assessments, if applicable. All Assessments, including, without limitation, the Sewer Impact Assessment and the other Sewer Assessments (if applicable), together with interest, penalties, collection costs, reasonable attorneys' fees, witness fees, costs and related expenses, shall be a charge, continuing servitude and lien upon the Lot or Parcel against which each such Assessment is made. Each Assessment, together with interest, penalties, collection costs, reasonable attorneys' fees, witness fees, costs and related expenses, shall also be the personal obligation of the Person who was the Owner of the Lot or Parcel at the time the Assessment was due. The personal obligation for delinquent Assessments shall not pass to the successors in title of the Owner unless expressly assumed by such successors. If more than one Person owns a Lot or Parcel, all co-Owners of the Lot or Parcel shall be jointly and severally liable for all Assessments provided for in this Declaration.

6.2 Regular Assessments. To provide for the uses and purposes specified in Section 9, including the establishment of replacement and maintenance reserves, real estate taxes, insurance, management fees and such expenses that the Board deems reasonable or necessary to conduct the business of the Association, the Board shall assess against each Membership a Regular Assessment. The amount of the Regular Assessment shall be determined with the objective of fulfilling the Association's obligations under this Declaration to provide for the uses and purposes specified in Section 9. The Board may, during an Assessment period, revise the amount of the Regular Assessment in order to meet expenses that exceed the amounts anticipated by the Association and collect the increased Assessment in accordance with procedures established pursuant to Section 6.13. Subject to Sections 6.7 and 6.8 (pertaining to the obligation of the Declarant and Designated Builders to subsidize the Association in lieu of payment of Regular Assessments), the Regular Assessment shall be assessed against the Members commencing with the first day of the month following the date the first Lot or Parcel is conveyed to a Retail Purchaser; provided, however, that in the event fulfillment of the purposes of the Association does not require the imposition of a Regular Assessment at that time, the Board may delay the initial imposition of the Regular Assessment against each Member until such time as the fulfillment of the purposes of the Association require such imposition or may delay the initial imposition of a Regular Assessment against the Members in a particular Phase of the Property in accordance with Section 6.18 until such time as the fulfillment of the purposes of the Association require such imposition on the Members in that Phase.

6.3 Special Assessments for Capital Improvements and Extraordinary Expenses. In addition to the other Assessments provided for herein, the Association may levy against each Membership, in any Assessment period, a Special Assessment applicable to that Assessment period only for the purpose of defraying, in whole or in part, the cost of any construction, reconstruction, repair or replacement of a capital improvement upon the Common Area, including fixtures and personal property related thereto, or for the purpose of defraying other extraordinary expenses; provided that any such Special Assessment must have the prior written consent of Declarant, if it still holds a Class B Membership, and 75% of the votes of the Members who are voting in person or by proxy at a meeting duly called for such purpose. The provisions of this Section shall not preclude or limit the assessment, collection or use of the Regular Assessments for the aforesaid purposes.

6.4 Capital Reserve Fund. In addition to the other Assessments provided for herein, a Capital Reserve Assessment shall be levied against a new Member at the time of a transfer of a Lot to the first Retail Purchaser of such Lot. The Capital Reserve Assessment shall equal one-quarter (i.e., three months' value) of the then-annual total Regular Assessments per Membership in effect at the time of the sale or transfer of the Membership. The Board may also charge a transfer fee to be reasonably set by the Board upon any subsequent sale of a Lot. Notwithstanding Section 9.1, the Capital Reserve Assessments shall be kept in a separate capital reserve fund and shall only be used for the reconstruction, replacement or nonroutine maintenance and repair of Common Area Improvements (including, but not limited to, landscaping, equipment and other amenities).

6.5 Neighborhood Assessment. In addition to the other Assessments provided for herein, if a Tract Declaration, Supplemental Declaration or Neighborhood Declaration designates certain costs as a Neighborhood Assessment or if the Board in its reasonable discretion

determines that a Neighborhood benefits in a substantial way from a particular feature, characteristic or service and other parts of the Property outside the Neighborhood do not benefit or do not benefit as much from the feature, characteristic, or service, the Association may charge a Neighborhood Assessment against each Membership within the Neighborhood to pay for the incremental cost incurred in connection with the feature, characteristic or service, including, but not limited to, maintenance, repair and replacement costs. Unless otherwise provided in a Tract Declaration, Supplemental Declaration or Neighborhood Declaration, all Neighborhood Assessments shall be on a uniform basis among those Memberships subject to the Neighborhood Assessment. Notwithstanding anything to the contrary in this Declaration, with respect to any Neighborhood that is controlled by Declarant, whether by voting control of the Neighborhood Association or otherwise, the imposition of a Neighborhood Assessment shall require the prior written consent of the Declarant.

6.6 Benefited Assessments. In addition to the other Assessments provided for herein, if a Tract Declaration, Supplemental Declaration or Neighborhood Declaration designates a Benefited Assessment Area and describes the Lots or Parcels that are intended to enjoy the benefit thereof, then all expenses of the Association pertaining to the operation, maintenance, repair and replacement of a Benefited Assessment Area shall be shown separately in the budget adopted by the Board and the expenses pertaining to the operation, maintenance, repair and replacement of the Benefited Assessment Areas (which expenses shall for purposes of this Section include, without limitation: (a) any contributions to reserves for maintenance, replacement and repairs and for contingencies; (b) any additional insurance premiums charged to the Association because of the type or nature of the Benefited Assessment Area; and (c) any costs, losses, damages, liabilities or expenses, including, without limitation, attorneys' fees and court costs, suffered or incurred by the Association by reason of its ownership, operation, maintenance, replacement or repair of the Benefited Assessment Area, to the extent such costs, losses, damages, liabilities or expenses exceed the amount of any insurance proceeds received by the Association or any proceeds recovered by the Association from other Persons, as reasonably determined by the Board) shall be assessed solely against the Lots and Parcels that are intended to benefit from the Benefited Assessment Area as established by the Tract Declaration designating the Benefited Assessment Area. No expenses pertaining to the operation, maintenance, repair or replacement of a Benefited Assessment Area shall be used in computing the Regular Assessments. Unless otherwise provided for in the applicable Tract Declaration, Benefited Assessments shall be levied against the Lots and Parcels intended to benefit from the Benefited Assessment Area at a uniform rate per Membership. If the Board determines that the Benefited Assessments with respect to any Benefited Assessment Area are, or will, become inadequate to meet all expenses pertaining to that Benefited Assessment Area for any reason, including, without limitation, nonpayment of Benefited Assessments by Members, the Board may increase the Benefited Assessment and the revised Benefited Assessments shall commence on the date designated by the Board.

6.7 Rate of Assessment. Regular Assessments and Neighborhood Assessments may be collected on a monthly, quarterly, or annual basis as determined by the Board (or, with respect to Neighborhood Assessments, as specified in a Tract Declaration, Neighborhood Declaration, Supplemental Declaration or as determined by the Neighborhood Association, if any), and Special Assessments may be collected as specified by the Board unless otherwise determined by the resolution of the Members of the Association approving the Special Assessment. Subject to

Section 6.13, the amount of any Regular Assessment shall be set in the sole discretion of the Board and shall be, with the exception of the Declarant and the Designated Builders, fixed at a uniform rate. In lieu of Regular Assessments, the Declarant and the Designated Builders shall have the obligations set forth in Section 6.8. All Special Assessments shall be on a uniform basis per Membership.

6.8 Deficits. In the event that the Regular Assessments set forth in this Section are insufficient to meet the operating and business expenses of the Association, the Association shall give notice to the Declarant and the Designated Builders of such insufficiency and the Declarant and the Designated Builders shall subsidize the difference, the subsidy being allocated between the Declarant and the Designated Builders as follows: beginning on the date that Regular Assessments commence and continuing for 30 days thereafter, and for each successive 30-day period, the Declarant and the Designated Builders shall allocate the percentage amount of any deficit for the 30-day period (with expenses to be allocated to 30-day periods on an accrual basis) such that each shall contribute based on the number of Memberships attributable to Lots and Parcels that each respectively owns on the first day of each such 30-day period divided by the total number of Memberships attributable to Lots and Parcels owned by the Declarant and all the Designated Builders on that same day. Notwithstanding any other provision of this Section 6.8, in no event shall the subsidy paid by each of the Declarant or any Designated Builder per year exceed the total amount that each respectively would have paid had they been required to pay the full Regular Assessment rate per Membership set forth in Section 6.6. Notwithstanding anything to the contrary in this Section 6.8, in the event of any inconsistency between the provisions of this Section 6.8 and the provisions of any written agreement between Declarant and a Designated Builder, the provisions of the written agreement between the Declarant and the Designated Builder shall prevail as between Declarant and the Designated Builder.

6.9 Notice and Quorum. Written notice of any meeting called for the purpose of taking any action authorized under Section 6.3 or Section 6.13 shall be sent to all Members subject to the Assessment no less than 10 days nor more than 50 days in advance of the meeting. At the first such meeting called, the presence of Members or of proxies entitled to cast 50% of all the votes (exclusive of suspended voting rights) shall constitute a quorum. If the required quorum is not present, another meeting may be called subject to the same notice requirement, and the required quorum at the subsequent meeting shall be one-half ($\frac{1}{2}$) of the required quorum at the preceding meeting. No such subsequent meeting shall be held more than 60 days following the preceding meeting. Any Member can waive notice to a meeting and right to vote may be exercised by proxy pursuant to such rules as the Board may from time to time promulgate.

6.10 Rules Regarding Billing and Collection Procedures. With the exception of the Sewer Assessments (if applicable), the Board shall have the right to adopt rules and regulations setting forth procedures for the billing and collection of the Assessments, provided that the procedures are not inconsistent with the provisions hereof. The failure of the Association, or any other Person with the power and authority to invoice and collect any Assessment, to send a bill to a Member shall not relieve any Member of liability for any Assessment under this Declaration, but the Assessment Lien therefor shall not be foreclosed or otherwise enforced until the Member has been given not less than 30 days written notice, prior to foreclosure or enforcement, at the address of the Member on the records of the Association, that the Assessment, or any installment thereof is, or will be, due, and of the amount owing. Such notice may be given at any time prior

to or after delinquency of the payment. The Association shall be under no duty to refund any payments received by it even though the ownership of a Membership changes during an Assessment period; successor Owners of Lots or Parcels shall be given credit on a prorated basis for prepayments made by prior Owners.

6.11 Computation of Assessments; Annual Budget. The Board shall adopt a budget for each fiscal year of the Association, which budget shall serve as the basis for determining the Assessments for the applicable fiscal year (subject to the limitations of Section 6.13). Within a reasonable period following the meeting of the Board at which it adopts the budget for the year in question, the Board shall make available to each Owner, upon request, a copy of the budget and a statement of the amount of Assessments to be levied against the Owner's Membership for the upcoming year. In the event the Board fails to adopt a budget for any fiscal year prior to commencement of such fiscal year, then until and unless such budget is adopted, the budget (and the amount of the Assessments provided for therein) for the year immediately preceding shall remain in effect. Except as provided in Section 6.13, neither the budget nor any Assessment levied pursuant thereto shall be required to be approved by the Owners.

6.12 Due Dates. Assessments for each fiscal year shall be due and payable as determined by the Board. Assessments shall be deemed "paid" when actually received by the Association or by its designated manager or agent, but if any Assessments are paid by check and the bank or other institution upon which such check is drawn thereafter dishonors and refuses to pay the check, those Assessments shall not be deemed "paid", shall remain due and payable with interest accruing at a per annum rate equal to 18% from the date the Assessments were originally due and shall be subject to a returned check charge in the amount established by the Board from time to time.

6.13 Maximum Regular Assessment. The Regular Assessments provided for herein shall not, at any time, exceed the "Maximum Regular Assessment" as determined in accordance with this Section. For the fiscal year ending December 31, 2004, the Maximum Regular Assessment shall be an amount for each Membership set by the Board in the exercise of the Board's discretion. Thereafter, except as provided below, unless a greater increase is approved by a vote of two-thirds (2/3) of the votes of the Members represented in person or by proxy at a meeting of Members called for such purpose, the Maximum Regular Assessment for any fiscal year shall be equal to the Regular Assessment for the immediately preceding fiscal year increased by the greater of: (a) 10%; or (b) the percentage increase for the immediately preceding year over the year before that in the Consumer Price Index--All Urban Consumers--All Items (1982-1984 Average = 100 Base) published by the Bureau of Labor Statistics of the U.S. Department of Labor (or its successor). Notwithstanding the foregoing, the Board may, without the approval of the Members, increase the Maximum Regular Assessment for any fiscal year by an amount sufficient to permit the Board to meet any increases over the preceding fiscal year in: (a) premiums for any insurance coverage required by this Declaration to be maintained by the Association; (b) charges for utility services necessary to the Association's performance of its obligations under this Declaration; or (c) taxes, notwithstanding the fact that the resulting increase in the Maximum Regular Assessment is greater than otherwise permitted under this Section 6.13.

6.14 Collection Costs and Interest on Delinquent Assessments. Any Assessment or installment thereof not paid within 30 days after the date the Assessment or installment is due shall be deemed delinquent and shall bear a late fee and default interest, the amount of which shall be set forth in Section 7.1, and the Member shall be liable for all collection costs, reasonable attorneys' fees, witness fees, costs and related expenses, which may be incurred by the Association in collecting such amounts or in enforcing all of the rights and remedies provided herein. The Board also may, but is not obligated to, Record a Notice of Delinquent Assessment against any Lot or Parcel as to which an Assessment is delinquent and constitutes a lien and may establish a fixed fee to reimburse the Association for the Association's cost in Recording the Notice, processing the delinquency and Recording a notice of payment. Any such fixed fee shall be treated as a collection cost of the Association secured by the Assessment Lien.

6.15 Evidence of Payment of the Assessments. Upon receipt of a written request by a Member or any other Person, the Association (or Surprise with respect to the Sewer Assessment), within a reasonable period of time thereafter, shall issue to such Member or other Person a written certificate stating (a) that all Assessments and all collection costs, reasonable attorneys' fees and other charges, if any, as provided above, have been paid with respect to any specified Lot or Parcel as of the date of the certificate; or (b) if all Assessments and other charges have not been paid, the amount of unpaid Assessments and the amount of any collection costs, reasonable attorneys' fees, and other charges, due and payable as of that date. The Association may make a reasonable charge for the issuance of these certificates, which charge must be paid at the time the request for a certificate is made. Any such certificate, when duly issued as herein provided, shall be conclusive and binding with respect to any matter therein stated as against any bona fide purchaser of, or lender on, the Lot or Parcel in question.

6.16 Property Exempted from Assessments and Assessment Lien. Exempt Property shall be exempted from Assessments and the Assessment Lien; provided, however, that if any change of ownership of Exempt Property results in all or any part thereof becoming Assessable Property in any year, the previously Exempt Property shall thereupon, to the extent applicable, be subject to Assessments (prorated as of the date it became Assessable Property) and the Assessment Lien.

6.17 No Offsets. All Assessments and other amounts payable to the Association shall be payable in accordance with the provisions of this Declaration, and no offsets against Assessments or other amounts shall be permitted for any reason, including, but not limited to, a claim that the Association is not properly exercising its duties and powers as provided in the Declaration.

6.18 Delay of Regular Assessments for Phases. It is anticipated that portions of the Property will be developed at different times than other portions of the Property. In this regard, those portions of the Property that are most likely to be developed at similar times are called a "Phase" of the Property, which portion of the Property may be identified as a Phase in this Declaration, an amendment to the Declaration, or in a Tract Declaration. Because a Phase may be developed at a later time than other portions of the Property, the Board may determine, in its discretion, to delay the initial imposition of Regular Assessments on the Members in a particular Phase of the Property, which decision shall not delay or suspend the Regular Assessments to be paid by Members outside that particular Phase. The delay in the initial imposition of Regular

Assessments shall remain until such time as the Board decides to commence Regular Assessments on the Members in that Phase or until such time as the first Lot or Parcel in that Phase is conveyed to a Retail Purchaser, whichever occurs first.

SECTION 7

ENFORCEMENT OF DECLARATION AND ASSESSMENTS; ASSESSMENT LIEN

7.1 Enforcement. The Declarant, for so long as it holds a Class B Membership, and the Association, as the agent and representative of the Members, shall have the right to enforce the provisions of this Declaration, any Supplemental Declaration, the Articles, Bylaws and Design Guidelines, the Association Rules and any and all covenants, restrictions, reservations, charges, servitudes, assessments, conditions, liens, or easements provided for in any contract, deed, declaration or other instrument relating to the Property that have been executed pursuant to, or subject to, the provisions of this Declaration, or that otherwise indicate its provisions were intended to be enforced either by the Association or by the Declarant for the Association. If, however, the Association fails or refuses to enforce this Declaration or any of the instruments listed above for an unreasonable period of time after written request to do so, then an Owner, at the Owner's expense, or the Declarant, at the Declarant's expense (if Declarant owns a Lot or Parcel but no longer has enforcement rights pursuant to the first sentence of this Section 7.1) may enforce them on behalf of the Association by any appropriate legal action, whether at law or in equity. Notwithstanding any provision of this Declaration, Declarant shall have no duty to undertake any such enforcement actions and shall not be deemed a guarantor of enforcement.

7.1.1 Any amounts owing the Declarant or Association hereunder as a result of a default by any Owner and that are not paid within 30 days after such amounts are due shall be immediately subject to a late payment penalty as may be set by the Board from time to time (not to exceed the greater of 10% of the amount owed or \$15.00), plus default interest on the amount of the late payment and the late payment fee, at a per annum rate equal to 18%.

7.1.2 In the event of a default of any provisions hereof, including, but not limited to, any failure to comply with use restrictions or landscaping or design review control, the Association or Declarant shall be entitled to obtain, in addition to any other rights or remedies at law or in equity, immediate injunctive relief. Each Owner agrees that damages are an inadequate remedy for any violation of any term or provision of this Declaration. The Association and the Declarant are authorized, although not required, to retain an attorney in conjunction with the enforcement of this Declaration. The Owner in violation of this Declaration shall be liable for all reasonable attorneys' fees, witness fees, costs and related expenses associated with the enforcement, and the foregoing enforcement costs shall be secured by the Assessment Lien.

7.1.3 If any Owner, including, but not limited to, any Designated Builder, fails to keep the streets clear of mud, dirt or debris resulting from the construction activities or fails to keep any Lot or Parcel clear of rubbish or debris or maintains a nuisance or unsafe, unsightly or offensive condition thereon or otherwise undertakes any activity or fails or permits any condition or circumstance to arise that constitutes a violation of any term or condition of this Declaration, Declarant or the Association shall be entitled to take such action as it deems appropriate in order

to correct or remove such condition and enter the Lot, Parcel, street or other property on which the condition exists, with or without such notice as Declarant or the Association deems prudent under the circumstances, and all costs, expenses and fees (including reasonable attorneys' fees, witness fees, costs and related expenses incurred by Declarant or Association in taking action) shall be immediately due and owing by the Owner creating, causing or permitting the condition to exist, together with default interest from the date such costs are incurred and late payment fee as set forth above. The exercise of Declarant's and the Association's rights shall not be deemed to cure such default and may be exercised in addition to and not in lieu of any other right or remedy provided herein or at law or in equity.

7.2 Remedies to Enforce Payment of Assessments. If any Member fails to pay any Assessments when due, the Association may enforce the payment of the Assessments and/or the Assessment Lien by taking either or both of the following actions, concurrently or separately (and, by exercising either of the remedies hereinafter set forth, the Association does not prejudice or waive its right to exercise the other remedy):

7.2.1 Bring an action at law and recover a judgment against the Member personally obligated to pay the Assessments; and

7.2.2 Foreclose the Assessment Lien against the Lot or Parcel in accordance with the then-prevailing Arizona law relating to the foreclosure of realty mortgages or, if applicable, a nonjudicial sale under deeds of trust (including, where applicable, the right to recover any deficiency) and, if foreclosed as a realty mortgage, the Lot or Parcel may be redeemed after foreclosure sale as provided by law.

7.3 Subordination of Assessment Lien to First Mortgage or Deed of Trust; Priority of Lien. The Assessment Lien provided for herein shall be subordinate to any first mortgage lien held by, or deed of trust of which the beneficiary is, a lender who has lent funds with the Lot or Parcel as security, or held by the lender's successors and assigns, and shall also be subject and subordinate to liens for taxes and other public charges, which by applicable law are expressly made superior. Except as above provided, the Assessment Lien shall be superior to any and all charges, liens or encumbrances that hereafter in any manner may arise or be imposed upon each Lot and Parcel. Sale or transfer of any Lot or Parcel shall not affect the Assessment Lien; provided, however, that if the sale or transfer is pursuant to foreclosure of a mortgage or deed of trust to which the Assessment Lien is subordinate, or pursuant to any sale or proceeding in lieu thereof, the purchaser at the mortgage foreclosure or deed of trust sale, or any grantee taking by deed-in-lieu of foreclosure, shall take the Lot or Parcel free of the Assessment Lien for all Assessments that have accrued up to the date of issuance of a sheriff's or trustee's deed or deed in lieu of foreclosure; but upon the date of issuance of a sheriff's or trustee's deed or deed in lieu of foreclosure, the Assessment Lien immediately shall become and remain superior to any and all other charges, liens or encumbrances (except liens for taxes or other public charges that by applicable law are expressly made superior), and the mortgage or deed of trust foreclosure sale purchaser or grantee shall take subject to all Assessments, and the Assessment Lien thereof, accruing subsequent to the date of issuance of a sheriff's or trustee's deed or deed given in lieu of foreclosure.

7.4 Costs to be Borne by Member in Connection with Enforcement of Payment of Assessments. In any action taken pursuant to Section 7.2, the Member shall be personally liable for, and the Assessment Lien shall be deemed to secure the amount of, all Assessments, Special Use Fees and other charges, together with interest, penalties and the Association's collection costs, reasonable attorneys' fees, witness fees, costs and related expenses, including those costs and fees specified in Section 6.14.

7.5 Approval of Legal Proceedings. Except for any legal or collection proceedings initiated by the Association to (a) enforce the use restrictions contained in this Declaration; (b) enforce the Association Rules; (c) enforce the Design Review Guidelines; (d) collect any unpaid Assessments levied pursuant to this Declaration; or (e) enforce a contract entered into by the Association with vendors providing services to the Association, the Association shall not incur legal expenses, including, but not limited to, reasonable attorneys' fees, witness fees, costs and related expenses or liability for costs and fees of an adverse party, where the Association initiates legal proceedings or is joined as a plaintiff in legal proceedings, without the prior approval of Members holding more than 50% of the total votes entitled to be cast by all Members, excluding the vote of any Member who would be a defendant in such proceedings. The costs of any legal proceedings initiated by the Association that are not included in the above exceptions shall be financed by the Association only with monies that are collected for that purpose by Special Assessment, and the Association shall not borrow money, use reserve funds, or use monies collected for other Association obligations. Each Owner shall notify prospective purchasers of such legal proceedings initiated by the Board and not included in the above exceptions. Nothing in this Section shall preclude the Board from incurring expenses for legal advice in the normal course of operating the Association to (a) enforce this Declaration and related documents; (b) comply with the statutes or regulations related to the operation of the Association; (c) amend this Declaration and related documents, in accordance with their terms; (d) grant easements or convey Common Area as provided in this Declaration; or (e) perform the obligations of the Association as provided in this Declaration. Subject to the exceptions in the first sentence of this Section, with respect to matters involving property or Improvements to property, the Association additionally shall not initiate legal proceedings or join as a plaintiff in legal proceedings unless (1) the property or Improvement is owned either by the Association or jointly by all Members of the Association, (2) the Association has the maintenance responsibility for the property or Improvements pursuant to this Declaration, or (3) the Owner who owns the property or Improvements consents in writing to the Association initiating or joining the legal proceeding.

SECTION 8

CLAIM AND DISPUTE RESOLUTION/LEGAL ACTIONS

8.1 Generally. It is intended that the Common Area, Neighborhood Common Area, each Lot and Parcel, and all Improvements constructed on the Property by Persons in the business of constructing Improvements ("Developers"), will be of a quality that is consistent with good construction and development practices in the area where the Property is located for housing and amenities similar to that constructed within the Property. Nevertheless, due to the complex nature of construction and the subjectivity involved in evaluation of quality, disputes may arise as to whether a defect exists and the responsibility therefor. It is intended that all

disputes and claims regarding alleged defects ("Alleged Defects") in any Improvements on any Lot, Parcel, Common Area or Neighborhood Common Area and the other disputes and claims described herein will be resolved amicably, without the necessity of time-consuming and costly litigation. Accordingly, all Developers (including Designated Builders), the Association, the Board, and all Owners shall be bound by the following claim resolution procedures. As used in this Section 8, the term "Developers" shall be understood to exclude Declarant; the applicability of this Section 8 to the Declarant is set forth in Section 8.10.

8.2 Right to Cure Alleged Defect. If the Association, the Board or any other Owner or Person ("Claimant") claims, contends, or alleges an Alleged Defect, the Developer that constructed the Improvement shall have the right to inspect, repair and/or replace the Alleged Defect as set forth herein.

8.2.1 Notice of Alleged Defect. If a Claimant discovers an Alleged Defect, the Claimant shall give written notice of the Alleged Defect to the Developer that constructed the Improvement ("Notice of Alleged Defect"), including a description of the specific nature of the Alleged Defect, within 30 days after discovery.

8.2.2 Right to Enter, Inspect, Repair and/or Replace. Within a reasonable time after the receipt of a Notice of Alleged Defect, or the independent discovery of any Alleged Defect by a Developer, the Developer that constructed the Improvement shall have the right, upon reasonable notice to the Claimant and during normal business hours, to enter onto or into the Common Area, Neighborhood Common Area, Area of Common Responsibility, Lot, Parcel or Dwelling Unit, and/or any other Improvements or portion of the Property for the purposes of inspecting and/or conducting testing and, if deemed necessary by the Developer in its sole discretion, repairing and/or replacing the Alleged Defect. In conducting such inspection, testing, repair and/or replacement, the Developer shall be entitled to take any actions it deems reasonable and necessary under the circumstances.

8.3 No Additional Obligations; Irrevocability and Waiver of Right. Nothing set forth in this Section 8 shall be construed to impose any obligation on a Developer to inspect, test, repair, or replace any item or Alleged Defect for which the Developer is not otherwise obligated under applicable law or any warranty provided by the Developer in connection with the sale of the Lots, Parcels and Dwelling Units and/or the Improvements constructed thereon. The right reserved to each Developer to enter, inspect, test, repair and/or replace an Alleged Defect shall be irrevocable and may not be waived or otherwise terminated with regard to the Developer, except by a written document executed by that Developer and Recorded.

8.4 Legal Actions. Any legal action initiated by a Claimant must be brought in accordance with, and subject to, Section 7.5 and Section 8.5 of this Declaration. If a Claimant initiates any legal action, cause of action, regulatory action, proceeding, reference, mediation, or arbitration against a Developer alleging damages for costs related to an Alleged Defect ("Alleged Defect Costs"), any judgment or award in connection therewith shall first be used to correct and or repair the Alleged Defect or to reimburse the Claimant for any costs actually incurred by the Claimant in correcting and/or repairing the Alleged Defect. If the Association, as a Claimant, recovers any funds from a Developer (or any other Person) to repair an Alleged Defect, any excess funds remaining after repair of the Alleged Defect shall be paid into the Association's

reserve fund. If the Association is a Claimant, the Association must provide a written notice to all Members prior to initiation of any legal action, regulatory action, cause of action, proceeding, reference, mediation or arbitration against a Developer including, at a minimum the following:

- (a) a description of the Alleged Defect;
- (b) a description of the attempts of the Developer to correct the Alleged Defect and the opportunities provided to the Developer to correct the Alleged Defect;
- (c) a certification from an architect or engineer licensed in the State of Arizona that the Alleged Defect exists along with a description of the scope of work necessary to cure the Alleged Defect and a resume of such architect or engineer;
- (d) the estimated Alleged Defect Costs;
- (e) the name and professional background of the attorney retained by the Association to pursue the claim against the Developer and a description of the relationship between the attorney and member(s) of the Board or the Association's management company (if any);
- (f) a description of the fee arrangement between the attorney and the Association;
- (g) the estimated attorneys' fees and expert fees and costs necessary to pursue the claim against the Developer and the source of the funds that will be used to pay the fees and expenses;
- (h) the estimated time necessary to conclude the action against the Developer;
- (i) a good faith estimate of the fees and costs the Association may be required to pay to the Developer in the event that the Association's claim is unsuccessful; and
- (j) an affirmative statement from a majority of the members of the Board that the action is in the best interests of the Association and its Members.

8.5 Alternative Dispute Resolution. Any dispute or claim (each, a "Dispute") between or among (a) a Developer (or its brokers, agents, consultants, contractors, subcontractors, or employees) on the one hand, and any Owner or the Association on the other hand; or (b) the Association and any Owner, including any claim based on contract, tort, or statute, arising out of or relating to (1) the rights or duties of the parties under this Declaration; (2) the design or construction of any portion of the Property, or (3) an Alleged Defect, but excluding disputes relating to the payment of any type of Assessment and routine enforcement of the use restrictions set forth in Section 3, shall be subject first to mediation and then arbitration as set forth in this Section 8.5, in lieu of instituting litigation with regard to the Dispute. EACH OWNER, BY ACCEPTING TITLE TO A LOT OR A PARCEL, AND ALL OTHER PERSONS HEREAFTER ACQUIRING ANY OTHER INTEREST IN ANY OF THE PROPERTY,

ACKNOWLEDGE AND ACCEPT THAT THEY WILL HAVE NO RIGHT TO HAVE THE DISPUTES DESCRIBED ABOVE TRIED IN COURT.

8.5.1 Mediation.

(a) Initiation of Mediation. Mediation shall be initiated by the party or parties instituting the Dispute (each, a "Disputing Party") delivering written notice of the intent to mediate to the party or parties against whom the Dispute is alleged (each, a "Respondent"). Within ten days from the date the mediation notice is delivered to the last Respondent, the parties shall agree upon a mediator. If the parties are unable to agree upon a mediator within ten days, the Disputing Party (or Disputing Parties, if there are more than one) shall promptly select one mediator, and the Respondent (or Respondents, if there are more than one) shall promptly select one mediator, and those two mediators shall select a third independent mediator who shall serve as the sole mediator of the Dispute.

(b) Conduct of Mediation. The mediation shall be held in the County. The mediator shall have the discretion to conduct the mediation in the manner in which the mediator believes is most appropriate for reaching a settlement of the Dispute. The mediator is authorized to conduct joint and separate meetings with the parties to the Dispute and to make oral and written recommendations for settlement. Whenever necessary, the mediator may also obtain expert advice concerning technical aspects of the Dispute, provided the parties to the Dispute agree to obtain, and to assume the expenses of obtaining, the expert advice as provided in Section 8.5.3. Persons other than the parties to the Dispute, and their attorneys, may attend mediation sessions only with the permission of all parties to the Dispute and with the consent of the mediator. There shall be no stenographic record of the mediation process.

(c) Conclusion of Mediation. The mediator shall not have the authority to impose a settlement on any party to the Dispute. Upon termination of the mediation, the mediator shall notify the parties to the Dispute, in writing, of the date on which the mediation terminated. Any admissions, offers of compromise, settlement negotiations or other communications at the mediation shall not be admissible in any subsequent dispute resolution forum.

8.5.2 Final and Binding Arbitration. If the parties cannot resolve their Dispute pursuant to the mediation procedures described in Section 8.5.1, the Disputing Party shall have 30 days following termination of mediation proceedings (as determined by the mediator in writing) to submit the Dispute to final and binding arbitration by delivering written notice of the intent to arbitrate to all Respondents. If the Disputing Party does not submit the Dispute to arbitration within 30 days after termination of mediation proceedings, the Disputing Party shall be deemed to have waived any claims related to the Dispute, and all Respondents shall be released and discharged from any and all liability to the Disputing Party on account of the Dispute; provided, however, nothing herein shall release or discharge any party from any liability to Persons who are not a party to the proceedings.

(a) Necessary Parties. The parties to the Dispute shall cooperate in good faith to ensure that all necessary and appropriate parties are included in the arbitration proceeding. No Developer shall be required to participate in the arbitration proceeding if all

parties against whom the Developer would have necessary or permissive cross-claims or counterclaims cannot be joined in the arbitration proceedings.

(b) Arbitrator. Within ten days from the date the written notice of arbitration is delivered to the last Respondent, the parties shall agree upon an arbitrator. If the parties are unable to agree upon an arbitrator within ten days, the Disputing Party (or Disputing Parties, if there are more than one) shall promptly select one arbitrator, and the Respondent (or Respondents, if there are more than one) shall promptly select one arbitrator, and those two arbitrators shall select a third independent arbitrator who shall serve as the sole arbitrator of the Dispute. If an arbitrator resigns or becomes unwilling or unable to continue to serve as an arbitrator in the Dispute, a replacement shall be selected in accordance with this Section 8.5.2(b). Any arbitrator selected pursuant to this Section 8.5.2(b) shall be impartial, fully active in the arbitrator's occupation, knowledgeable as to the subject matter involved in the Dispute and experienced in arbitration proceedings. The foregoing shall not preclude otherwise qualified retired judges or lawyers.

(c) Arbitration Proceedings. The arbitration proceedings shall be held in the County. The arbitrator shall have the authority to try all issues, whether of fact or law, and shall have the power to hear and dispose of all motions (including, but not limited to, motions to dismiss and summary judgment motions) in the same manner as a trial court judge. Except as otherwise specifically provided in this Section 8.5, the arbitrator shall have the discretion to conduct the arbitration in the manner in which the arbitrator believes is most appropriate for the Dispute. Within 20 days after being selected as the arbitrator, the arbitrator shall produce a written arbitration management plan, describing how the arbitration will proceed, which may include, but need not be limited to, deadlines for conducting discovery and hearing motions, one or more pre-hearing conferences, and limitations on discovery (in addition to those described in Section 8.5.2(d)).

(d) Discovery. The parties to the Dispute shall be entitled to limited discovery only, consisting of the exchange between the parties of the following matters: (i) witness lists; (ii) expert witness designations; (iii) expert witness reports; (iv) exhibits; (v) reports of testing or inspections of the property subject to the Dispute, including, but not limited to, destructive or invasive testing; and (vi) trial briefs. The Developer shall also be entitled to conduct further tests and inspections as provided in Section 8.2. Any other discovery shall be permitted by the arbitrator upon a showing of good cause or based on the mutual agreement of the parties to the Dispute. The arbitrator shall oversee discovery and may enforce all discovery orders in the same manner as any trial court judge.

(e) Final Award. The arbitrator shall render a final decision, in writing, no later than 60 days following the conclusion of the arbitration proceedings.

(f) Limitation on Remedies/Prohibition on the Award of Certain Damages. The arbitrator shall have the power to award compensatory damages and to grant all other legal and equitable remedies, except the arbitrator shall not have the authority to award punitive, special or consequential damages. EACH OWNER, BY ACCEPTING TITLE TO A LOT OR A PARCEL, AND ALL OTHER PERSONS HEREAFTER ACQUIRING ANY OTHER INTEREST IN ANY OF THE PROPERTY, ACKNOWLEDGE AND ACCEPT THAT

THEY SHALL HAVE NO RIGHT TO RECEIVE PUNITIVE, SPECIAL OR CONSEQUENTIAL DAMAGES FOR ANY OF THE DISPUTES DESCRIBED ABOVE.

8.5.3 Expenses of Mediation and Arbitration. Each party to the Dispute shall bear all of its own costs incurred prior to and during the mediation and arbitration proceedings, including, but not limited to, the fees and costs of its attorneys or other representatives, discovery costs, and expenses of witnesses produced by the party. Each party to the Dispute shall share equally all charges of the mediator(s), arbitrator(s), and all costs of obtaining expert advice concerning technical aspects of the Dispute (for which the parties to the Dispute agreed to pay), unless otherwise agreed to by the parties.

8.5.4 Enforcement of Resolution. If the parties to a Dispute resolve the Dispute through mediation in accordance with Section 8.5.1 and any party thereafter fails to abide by the terms of such mediation, or if an arbitration award is made in accordance with Section 8.5.2 and any party to the Dispute thereafter fails to comply with such resolution or award, then the other party or parties to the Dispute may file suit or initiate administrative proceedings to enforce the terms of the mediation resolution or arbitration award without the need to again comply with the procedures set forth in this Section. In that event, the party taking action to enforce the terms of the mediation or the award shall be entitled to recover from the noncomplying party (or if more than one noncomplying party, from all such parties pro rata), all costs incurred to enforce the terms of the mediation or arbitration award including, but not limited to, reasonable attorneys' fees, witness fees, costs and all related expenses.

8.5.5 Confidentiality. All papers, documents, briefs, written communication, testimony and transcripts as well as any and all mediation resolutions and arbitration decisions shall be confidential and not disclosed to anyone other than the mediator, arbitrator, the parties to the Dispute, the attorneys of the parties to the Dispute and expert witness (where applicable to their testimony), unless: (a) the prior written consent of all parties to the Dispute has been obtained; (b) the information is otherwise available to the public through no act of the party or parties that received the information in the course of the Dispute; or (c) a court order requires otherwise. Prior to disclosure, all third parties must agree in writing to keep such information confidential.

8.6 Repurchase Option for Alleged Defect Claims. Notwithstanding anything in this Declaration to the contrary, in the event any Owner, either directly or through the Association has a dispute with a Developer regarding any Alleged Defects in the Owner's Dwelling Unit and submits the dispute to arbitration pursuant to Section 8.5.2, the Developer that constructed the Dwelling Unit (or any assignee of the Developer) shall have the option (BUT NOT THE OBLIGATION) to purchase such Dwelling Unit on the following terms and conditions.

8.6.1 The purchase price shall be an amount equal to the sum of the following less any sums paid to such Owner under any homeowner's warranty in connection with the Alleged Default:

(a) the purchase price paid by the original Owner of the Dwelling Unit when originally purchased from the Developer;

(b) the value of any Improvements made to the Dwelling Unit by anyone other than the Developer;

(c) the Dwelling Unit Owner's reasonable moving costs; and

(d) any closing costs, including loan fees and/or "points" incurred by the Dwelling Unit Owner in connection with the purchase of another primary residence within 90 days after the closing of the repurchase provided for herein. If the costs set forth in this Section 8.6.1(d) have not been incurred prior to the closing of the repurchase provided for herein, upon presentation of reasonable documentation after the closing of the repurchase option, the Developer that exercised the repurchase option shall promptly reimburse the Owner for such costs incurred within the time period referenced above.

8.6.2 Close of escrow on the repurchase of the Dwelling Unit shall occur within 45 days after written notice from the Developer to the Dwelling Unit Owner of the Developer's intent to exercise the option herein.

8.6.3 Title shall be conveyed to the applicable Developer free and clear of all monetary liens and encumbrances other than nondelinquent real estate taxes.

8.6.4 All closing costs in connection with the repurchase shall be paid by the applicable Developer.

8.6.5 Exercise of the repurchase option as provided hereinabove shall constitute full and final satisfaction of all claims relating to the subject Dwelling Unit, including claims relating to the Alleged Defect. The Dwelling Unit Owner (or Association, as applicable) shall promptly execute and deliver any notice of dismissal or other document necessary or appropriate to evidence such satisfaction.

8.7 Class Action Claims. The provisions set forth in this Section 8 are intended to apply to any class action claims.

8.8 Statutes of Limitations. Nothing in this Section shall be construed to toll, stay, reduce, or extend any applicable statute of limitations. All statutes of limitation applicable to claims that are subject to mediation and arbitration pursuant to the alternative dispute resolution provisions of Section 8.5 shall apply to the commencement of mediation proceedings pursuant to Section 8.5.1.

8.9 As-Built Conditions. Various engineering and architectural plans pertaining to the Property, including, but not limited to, Plats, subdivision maps, grading plans, plot plans, improvement plans and building plans (collectively, the "Plans"), contain dimensions regarding certain aspects of the Dwelling Units, Common Areas and other parts of the Property. By accepting a deed to any portion of the Property, each Owner shall be deemed to have acknowledged and agreed that (a) if there is a discrepancy between the Plans and the actual as-built conditions of any Dwelling Unit, Common Area, Neighborhood Common Area or any other Improvement within the Property, the as-built conditions will control and be deemed to be accepted as-is by the Owner; (b) the usable or buildable area, location and configuration of the Dwelling Units, Common Areas, Neighborhood Common Areas and any other Improvements

located within the Property may deviate from the Plans or from any other display or configuration related thereto; (c) each Owner waives the right to make any demands of or claims against Developers or the Declarant as a result of any discrepancies between the Plans and any actual as-built conditions of any Dwelling Unit, Common Area, Neighborhood Common Area or any other Improvement within the Property; and (d) the location, size, height and composition of all walls and fences to be constructed on or as part of a Dwelling Unit or adjacent thereto shall be determined in the discretion of the Declarant or the Developer, as applicable, in accordance with this Declaration. Despite the Plans or any other materials that may exist, Developers and the Declarant shall be deemed to have made no representations, warranties or assurances with respect to any such matters or with respect to the size, height, location or composition of any wall or fence to be constructed on or adjacent to any Dwelling Units.

8.10 Applicability to Declarant.

8.10.1 Each Owner acknowledges that Designated Builders, and not the Declarant, are constructing Dwelling Units and related Improvements on Lots within the Property. Each Owner further acknowledges that (a) the Declarant is not responsible for the construction of Dwelling Units on Lots; (b) there is no direct relationship or privity of contract between the Owner and the Declarant; and (c) the Owner is not a third party beneficiary to any agreement between Designated Builder, or any other party, and the Declarant. To the extent that a claim arises regarding the construction of Improvements on the Common Areas or other matters that involve the Declarant, however, the provisions of this Section 8 (including, but not limited to, Section 8.2, Section 8.4 and Section 8.5) shall apply to the Declarant as if Declarant was a "Developer" (as defined in Section 8.1). Notwithstanding the foregoing, Section 8.9 shall apply to the Declarant, as more particularly described therein, regardless of whether a claim arises involving the Declarant. As used in this Section 8.10, the term "Owner" shall be deemed to exclude Designated Builders.

8.10.2 Nothing set forth in this Section 8 shall be construed to impose any obligation on the Declarant that the Declarant does not otherwise have under applicable law or under any warranty provided by the Declarant, including, but not limited to, the obligation to inspect, test, repair, or replace any item or Alleged Defect for which the Declarant is not otherwise obligated.

8.10.3 Notwithstanding anything to the contrary in this Section 8, in the event of any inconsistency between the provisions of this Section 8 and the provisions of any written agreement between Declarant and a Designated Builder, the provisions of the written agreement shall govern as between Declarant and the Designated Builder.

8.11 Tract Declaration With Differing Dispute Resolution Provisions. A Tract Declaration may contain alternate or supplemental dispute resolution procedures to those set forth in this Section 8. Notwithstanding anything to the contrary contained in this Section 8, if a Tract Declaration states that the dispute resolution procedures contained therein are to be used for all or certain types of disputes, then the dispute resolution procedures set forth in the Tract Declaration shall be used for those types of disputes in lieu of the procedures contained in this Section 8; provided, however, the dispute resolution provisions contained in a Tract Declaration shall not affect Persons that are not subject to the provisions of the Tract Declaration and neither

the Declarant or the Designated Builders shall be bound by such alternate or supplemental dispute resolution procedures contained in a Tract Declaration unless the Declarant or the Designated have agreed in the Tract Declaration to be bound thereby.

SECTION 9

USE OF FUNDS

9.1 Purposes for which Association's Funds May Be Used. The Association shall apply all funds and property collected and received by it (including the Regular Assessments and Special Assessments, fees, loan proceeds, surplus funds and all funds and property received by it from any other source) for the common good and benefit of the Property and the Owners, Occupants and Residents by devoting the funds and property, among other things, to the acquisition, construction, alteration, maintenance, provision and operation, by any manner or method whatsoever, of any and all land, properties, Improvements, facilities, services, projects, programs, studies and systems, within or without the Property, which may be necessary, desirable or beneficial to the general common interests of the Property, the Owners, Occupants and the Residents. The following are some, but not all, of the areas in which the Association may seek to aid, promote and provide for such common benefit: maintenance of streets, access controls, walls and Improvements on Common Areas, project signage and landscaping on Common Areas and public right-of-way and drainage areas within the Property; maintenance and repair of Areas of Common Responsibility; obtaining of liability insurance; supplying of utilities and other public services; funding "Excess Costs" associated with the Street Light Improvement District (as more particularly described in Section 13.3); providing for communication and transportation within, and dissemination of information concerning, the Property; indemnification of officers and directors of the Association, including such Director and Officer liability insurance as the Board deems appropriate; and generally protecting the health and safety of the Owners, Occupants and the Residents. The Association also may expend its funds for any purposes that any municipality may expend its funds under the laws of the State of Arizona or the municipality's charter.

9.2 No Borrowing Power. Prior to the Transition Date, the Association may not borrow money unless specifically authorized by Declarant. In no event shall Declarant authorize any borrowing in excess of \$10,000 without the consent of the majority of the Class A Members, and in no event shall the proceeds of any borrowing be applied to any expenditure that could not otherwise be defrayed through the application of the proceeds of the Regular Assessments.

9.3 Association's Rights in Spending Funds From Year to Year. The Association shall not be obligated to spend in any year all the sums received by it in that year (whether by way of Regular Assessments, Special Assessments, fees or otherwise), and may carry forward as surplus any balances remaining. The Association shall not be obligated to reduce the amount of the Regular Assessment in the succeeding year if a surplus exists from a prior year, and the Association may carry forward from year to year such surplus as the Board in its discretion may determine to be desirable for the greater financial security of the Association and the accomplishment of its purposes.

9.4 Insurance.

9.4.1 The Board shall have the power and authority to purchase, with Association funds, such public liability, casualty, officers' and directors' liability and indemnity, worker's compensation and other insurance as the Board deems necessary or appropriate from time to time. Policies shall be on such terms and conditions as the Board determines are appropriate from time to time. All insurance policies and claims thereunder shall be administered by the Board. To the extent reasonably available, the Association shall maintain at least \$2,000,000 (combined limits) of insurance against liability incurred as a result of death or injury to persons or damage to property on the Common Areas.

9.4.2 Each Owner shall be responsible for providing insurance on the Owner's Lot or Parcel, and all Improvements thereto, and furnishings and personal property therein, and the Owner's personal liability to the extent not covered by public liability insurance obtained by the Association, and such other insurance as the Owner desires.

9.4.3 Neither the Association, nor any Board member or officer of the Association, nor Declarant, nor any Designated Builder shall be liable to any Owner or other Person if any risks or hazards are not covered by insurance or if the amount of insurance is not adequate, and it shall be the responsibility of each such Owner and other Person to ascertain the coverage and protection afforded by the Association's insurance and to procure and pay for such additional insurance coverage and protection as the Owner or other Person may desire.

9.5 Special Use Fees. Subject to the provisions of this Declaration, including, but not limited to, Section 18, the Board is authorized to impose, bill for, sue for, collect, administer, and disburse Special Use Fees, and the payment of all Special Use Fees shall be secured by the Assessment Lien established in Section 6.1. In establishing or adjusting the amounts of Special Use Fees from time to time, the Board shall have the discretion to establish reasonable classifications among Owners, Occupants, Residents and other Persons.

9.6 Designated Service Providers.

9.6.1 The Board shall have the authority to designate exclusive providers of services within the Property when the Board deems it necessary or desirable to do so for reasons of obtaining better rates or terms of service for Owners or for other reasons deemed reasonable by the Board, with such service providers to be known as "Designated Service Providers." If the Board makes such a designation, the Association may enter into an agreement with the Designated Service Provider on behalf of the Owners, and the cost of services purchased by the Board shall be considered an expense of the Association and shall be charged as a Special Use Fee as described in Section 9.5. The Board may allocate such costs between improved and unimproved properties, among portions of the Property or otherwise among recipients of the services, in such a manner as the Board reasonably deems equitable. Notwithstanding any designation and negotiation with a Designated Service Provider, each Owner may contract separately with the Designated Service Provider to receive services in excess of those provided to the Property pursuant to the Designated Service Provider's agreement with the Association, and the cost of the additional services shall be paid separately by the Owner and shall not be a Special Use Fee under this Declaration. Any Designated Service Provider shall have an easement

over the Common Areas and Neighborhood Common Areas to the extent necessary or convenient for the efficient delivery of the designated service.

9.6.2 Without limiting the generality of the foregoing portions of this Section 9.6, for so long as fire protection is not included in municipal services provided by the County to the Property, the Board shall have the authority to enter into an agreement with Rural/Metro Corporation (or another qualified service provider) for fire protection service to the Dwelling Units in the Property.

9.7 Agreements with Adjacent Property Owners. Notwithstanding anything to the contrary, the Association shall have the right, but not the obligation, to enter into agreements with owners or users of property not bound by this Declaration pertaining to the maintenance and cost allocation of shared facilities and amenities (if any), the use and development of such adjacent property, and such other agreements that the Board determines are for the common good and benefit of the Property and the Owners, Occupants and Residents.

SECTION 10

MAINTENANCE

10.1 Common Areas and Areas of Common Responsibility. The Association, or its duly delegated representative, shall maintain and otherwise manage all Common Areas and all Areas of Common Responsibility, including, but not limited to, entry signs, drainage and flood control areas, landscaping, project perimeter walls, walkways, paths, trails, parking areas, drives and other facilities, the landscaped portions of public street rights-of-way (to the extent required by the Government Authorities), "gang" mail boxes and lighting. The Association shall not maintain areas that (a) the Government Authorities are maintaining, or (b) are to be maintained by the Owner of a Lot or Parcel, unless the Association elects to maintain such areas. Specific areas to be maintained by the Association may be identified on Plats or may be identified in deeds from the Declarant to a transferee of a Lot or Parcel, but the failure to so identify such areas shall not affect the Association's rights or responsibilities with respect to the Common Areas and Areas of Common Responsibility.

10.1.1 The Board shall use a reasonably high standard of care in providing for repair, management and maintenance, so the Property will reflect a high pride of ownership. In connection therewith the Association may, in the discretion of the Board:

(a) Reconstruct, repair, replace or refinish any Improvement or portion thereof upon any Common Area or Area of Common Responsibility;

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

(c) Place and maintain upon any Common Area or Area of Common Responsibility such signs as the Board may deem appropriate for the proper identification, use and regulation thereof;

(d) Do all such other and further acts as the Board deems necessary or appropriate to preserve and protect the Common Areas and the Areas of Common Responsibility and the beauty thereof, in accordance with the general purposes specified in this Declaration.

10.1.2 The Board shall be the sole judge as to the appropriate maintenance of all Common Areas and Areas of Common Responsibility. Any cooperative action necessary or appropriate to the proper maintenance and upkeep of the properties shall be taken by the Board or by its duly delegated representative.

10.1.3 In the event this Declaration permits the Board to determine whether Owners of certain Lots or Parcels will be responsible for maintenance of certain Common Areas or Areas of Common Responsibility, the Board shall have the sole discretion to determine whether or not it would be in the best interest of the Owners, Occupants and Residents of the Property for the Association or an individual Owner to be responsible for such maintenance, considering cost, uniformity of appearance, location and other factors deemed relevant by the Board. The Board may cause the Association to contract with others for the performance of the maintenance and other obligations of the Association under this Section 10 and, in order to promote uniformity and harmony of appearance, the Board also may cause the Association to contract to provide maintenance services to Owners of Lots or Parcels having such responsibilities in exchange for the payment of such fees as the Association and Owner may agree upon.

10.2 Assessment of Certain Costs of Maintenance and Repair of Common Areas and Areas of Common Responsibility. If the need for maintenance or repair of Common Areas, Neighborhood Common Areas and Areas of Common Responsibility is caused through the willful or negligent act of any Member, the Member's family, guests or invitees, the cost of such maintenance or repairs shall be added to, and become a part of, the Assessment to which the Member and the Member's Lot or Parcel is subject, and shall be secured by the Assessment Lien.

10.3 Maintenance of Lots and Parcels.

10.3.1 Generally. Subject to the Association's obligations with respect to any Areas of Common Responsibility on Lots or Parcels, each Owner shall furnish and be responsible for, at the Owner's expense, all of the maintenance, repairs and replacements within the Owner's Lot or Parcel. Without limiting the generality of the foregoing sentence, each Owner shall:

(a) keep all shrubs, trees, hedges, grass, and plantings of every kind located on landscaped portions of the Owner's Lot or Parcel neatly trimmed in accordance with Section 3.5, provide adequate irrigation to the shrubs, trees, hedges, grass, and plantings of every kind located on landscaped portions of the Owner's Lot or Parcel, and promptly remove any dead or diseased shrubs, trees, hedges, grass, and plantings of every kind located on landscaped portions of the Owner's Lot or Parcel;

(b) keep all natural areas of the Lot or Parcel free of trash and other unsightly material, in accordance with Section 3.6;

(c) maintain in good condition and repair all watering systems and related equipment on the Owner's Lot or Parcel; and

(d) maintain in good condition and repair all paved, concrete and other synthetically surfaced areas on the Owner's Lot or Parcel, including, but not limited to, driveways, roadways, and parking areas.

10.3.2 Improper Maintenance and Use of Lots and Parcels. In the event any portion of any Lot or Parcel is so maintained as to present a public or private nuisance, or as to substantially detract from the appearance or quality of the surrounding Lots or Parcels or other areas of the Property that are substantially affected thereby or related thereto, or in the event any portion of a Lot or Parcel is being used in a manner that violates this Declaration, or in the event the Owner of any Lot or Parcel is failing to perform any of its obligations under this Declaration, the Association Rules or the Design Review Guidelines the Board may, by resolution, make a finding to such effect, specifying the particular condition or conditions that exist, and pursuant thereto give notice thereof to the offending Owner that unless corrective action is taken within 14 days, the Board may (a) cause corrective action to be taken at the Owner's cost; and/or (b) pursue any other rights and remedies permitted by Section 7. If at the expiration of the 14-day period of time the requisite corrective action has not been taken, the Board shall be authorized and empowered (a) to pursue any of the rights and remedies permitted by Section 7; and/or (b) to cause corrective action to be taken and the cost thereof to be added to, and become a part of, the Assessment to which the offending Owner and the Owner's Lot or Parcel is subject, with such costs to be secured by the Assessment Lien.

10.4 Landscape Replacement. Landscaping originally planted on the Common Areas may exceed the landscaping that is ultimately planned for the Common Areas due to over-planting in anticipation of normal plant losses. Neither the Declarant nor any other installer of landscaping on Common Areas shall be responsible for replacement of landscaping that dies after the warranty period provided by the installer thereof or that requires replacement due to vandalism, lack of proper watering or maintenance by the Association or damage from negligence; the Association shall be solely responsible for such replacement, subject to potential recovery by the Association from any vandal or negligent Person. The Board shall have the power to determine whether to remove and not replace dead or damaged landscaping if, in the discretion of the Board, (a) the remaining landscaping is acceptable to the Board and (b) remaining landscaping is generally consistent in quality and quantity with the landscaping shown on approved landscaping plans filed with Governmental Authorities in connection with the Property, even if the location or type of specific plants is different than the types or locations shown on such approved landscaping plans.

SECTION 11

EMINENT DOMAIN

11.1 Definition of Taking. The term "Taking" means condemnation by eminent domain or sale under threat of condemnation of all or any portion of the Common Areas or Neighborhood Common Areas.

11.2 Representation in Condemnation Proceedings. The Owners hereby appoint the Association through such Persons as the Board may delegate, to represent all of the Owners in connection with any threatened Taking. The Board shall act in its sole discretion with respect to any awards 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.

11.3 Award For Common Areas. Any awards received by the Association on account of the Taking shall be paid to the Board. The Board may, in its sole discretion, retain any award in the general funds of the Association (or in the Neighborhood's funds, if the Taking relates to Neighborhood Common Areas), expend the funds for restoration and repair of Common Areas or Neighborhood Common Areas, as applicable, or distribute all or any portion thereof to the Owners, as their interests may appear. The rights of an Owner and any mortgagee of the Owner's Lot or Parcel as to any distribution shall be governed by the provisions of the mortgage encumbering the Lot or Parcel.

11.4 Condemnation of Lots or Parcels. If any Lots, Parcels or other portions of the Assessable Property are condemned by eminent domain or sale under threat of condemnation, the Association shall have no right to receive any portion of any award distributed for such Lots or Parcels as a result of Assessment revenue lost by the conversion of the Lots and Parcels to Exempt Property.

SECTION 12

DESIGN REVIEW COMMITTEE

12.1 Establishment. Declarant shall establish a Design Review Committee ("DRC") and shall establish and adopt Design Review Guidelines and procedural rules and regulations (including an "Approved Plant List" for the purposes of establishing landscaping criteria) to direct the DRC in the performance of its duties. The Design Review Guidelines may, but shall not be required to, vary with respect to different portions of the Property. The DRC shall consist of three regular members and an alternate member, each appointed by Declarant. The appointees need not be Owners, Occupants or Residents and need not possess any special qualifications except such as Declarant may, in its sole discretion, require. Declarant may replace any member of the DRC at any time with or without cause. In the event of the death or resignation of any member of the DRC, Declarant shall replace the member within 90 days following death or resignation. Pending the replacement of the deceased or resigned member, the remaining member or members of the DRC shall have full authority to act as the DRC under this Declaration. Declarant's right to appoint, remove and replace DRC members shall cease, and the Board shall be vested with that right and all rights of the Declarant pertaining to the DRC upon the earliest to occur of the following: (a) two years after the Transition Date; or (b) when such rights are expressly relinquished by Declarant to the Board in writing.

12.2 Purpose. The purpose of the DRC is to maintain consistency of architectural and landscaping standards throughout the Property and thereby preserve the aesthetic and economic value of the Property. The DRC is hereby empowered to supplement and amend the Design Review Guidelines and its procedural rules and regulations to the extent and with the frequency it deems necessary or appropriate; provided, however, that the modifications are in general

conformity with the standards set forth in this Declaration and the modifications receive the prior written approval of the Board. Neither the DRC, Declarant nor the Association is assuming any liability for the economic value nor structural integrity of any Improvement. DRC's decisions shall pertain solely to the matters set forth herein and shall in no way constitute a representation or warranty of economic value or structural integrity. All decisions shall be made in the DRC's sole discretion and shall be final and conclusive, unless the Board elects to review any DRC decision, in accordance with 12.3.5 below.

12.3 Operation/Authority.

12.3.1 It shall be the duty of the DRC to consider and act upon all proposals and plans submitted to it pursuant to this Declaration. A quorum for any such meeting of the DRC shall consist of two members, and a vote of two of the members of the DRC shall be necessary for any decision. A duly appointed alternate member may participate in any meeting in which there is not a quorum of regular members present, may constitute a quorum by his/her presence and shall have all the authority of a regular member while so participating. The DRC shall review all applications submitted to it and shall furnish a written decision to the applicant setting forth the reasons for its decision and the nature of any objections, which may be indicated on the plans submitted or as the DRC may deem otherwise appropriate.

12.3.2 The DRC shall have broad discretionary powers in determining whether an application is in conformance with the Design Review Guidelines. In addition, the DRC may disapprove any application if the DRC, in its discretion, believes the applicant has not supplied sufficient or accurate information for the DRC to exercise the judgment required by this Declaration. The DRC has the authority to grant variances to the Design Review Guidelines by an affirmative vote of the majority of the members of the DRC. In no event, however, shall the DRC have the authority to grant any variance from a prohibition, restriction, requirement or other provision of this Declaration, unless expressly provided otherwise herein.

12.3.3 The DRC shall keep complete written records of all applications for approval submitted to it (including one set of all preliminary sketches and all architectural plans) in connection with all actions taken by it under the provisions of the Design Review Guidelines. For purposes of this Section 12, an "application" to the DRC shall not be deemed submitted unless (a) it is in writing and in such form as the DRC may from time to time request; (b) it is submitted with such elevations, drawings and other documents prepared by design professionals in accordance with industry standards and such requirements as the DRC may require; (c) it is submitted in such multiple copies and at such location or locations as specified by the DRC; (d) it is accompanied by an application fee, if applicable, in the full and correct amount; and (e) it meets such other requirements as the DRC may from time to time impose. Each Owner (including each Designated Builder) is encouraged to submit to the DRC preliminary elevations for review to avoid incurring unnecessary costs making unacceptable final submissions.

12.3.4 The DRC shall review an application submitted to it and issue its written decision ("DRC Decision") within 45 days of the date the application was received by the DRC, as evidenced by an appropriately signed receipt. If the DRC does not issue a written decision regarding an application within 45 days from the date the application was received, as evidenced by an appropriately signed receipt, the application shall be deemed disapproved.

12.3.5 The Board may, but shall have no obligation to, review DRC Decisions in accordance with the following procedure: after the DRC has issued a DRC Decision, or upon the expiration of the 45-day review period provided in Section 12.3.4 (the "DRC Review Period"), the applicant, and only the applicant, may, within 30 days after the earlier of the issuance of the DRC Decision or the expiration of the DRC Review Period, submit a written appeal to the Board requesting that the Board review the DRC Decision. If the Board elects to review the DRC Decision, the Board shall do so and issue a written decision within 45 days after the Board's receipt of the applicant's written appeal (the "Board Review Period"). If the Board elects not to review the DRC Decision, or if the Board fails to issue a written decision within the Board Review Period, the Board shall be deemed to have sustained the DRC Decision. The Board's decision to sustain or overrule the DRC Decision, whether by the issuance of a written decision or otherwise, shall be in the Board's sole and absolute discretion, and shall be final and conclusive.

12.3.6 Notwithstanding anything to the contrary in this Declaration, a Designated Builder shall have the right to submit one or more standard Dwelling Unit plans and one or more standard landscaping plans that may be used on any of that Designated Builder's Lots, and the DRC's approval of a Designated Builder's standard Dwelling Unit plans and standard landscaping plans shall constitute approval of each use of those standard Dwelling Unit plans and standard landscaping plans by the Designated Builder, unless otherwise specified by the DRC.

12.3.7 Unless this Declaration specifically provides to the contrary, the DRC shall not arbitrarily or unreasonably withhold its approval with respect to any matter requiring DRC approval under this Declaration.

12.4 Fee. The Board shall have the right, in its sole discretion, to assess against applicants a processing fee to, among other things, defer any costs incurred by the DRC for the services of an architect or other professionals in considering any requests for approval submitted to it. An architect or other professionals may serve on the DRC. If a processing fee is assessed, the fee shall be in such amount, and payable in accordance with such schedule, as may be reasonably determined by the DRC. Any processing fee not paid in full at the time of submittal of the request for approval shall be added to, and become a part of, the Assessment to which the requesting Owner and the Owner's Lot or Parcel is subject, and shall be secured by the Assessment Lien. The DRC shall be entitled, however, to refuse to process the application if the applicant does not include payment of any applicable fee.

12.5 No Liability of Design Review Committee. All plans, drawings and specifications approved by the DRC are not approved for engineering, design or architectural competence. Through its approval of plans, drawings and specifications, the DRC does not assume liability or responsibility therefor or for any defect in any structure constructed from the plans, drawings and specifications. Declarant, members of the DRC and members of the Board shall not be liable to the Association, any Owner or any other Person for any damage, loss or prejudice suffered or claimed because of:

12.5.1 the approval or disapproval of any plans, drawings or specifications, whether or not defective; or

12.5.2 the construction or performance of any work, whether or not pursuant to approved plans, drawings or specifications.

12.6 Waiver. The approval by the DRC of any plans, drawings or specifications for any work done or proposed, or for any other matter requiring the approval of the DRC, shall not be deemed to constitute a waiver of any right to withhold approval of a similar plan, drawing, specification or matter subsequently submitted for approval. No approval by the DRC shall waive or replace applicable approval requirements by the Government Authorities.

SECTION 13

RIGHTS AND POWERS OF ASSOCIATION; RESERVATION OF RIGHTS

13.1 Association's Rights and Powers as Set Forth in the Articles and Bylaws. In addition to the rights and powers of the Association set forth in this Declaration, the Association shall have such rights and powers as are set forth in its Articles and Bylaws. Such rights and powers, subject to the approval thereof by any agencies or institutions deemed necessary by Declarant, may encompass any and all things that a natural person could do or that now or hereafter may be authorized by law, provided the Articles and Bylaws are not inconsistent with the provisions of this Declaration and are necessary, desirable or convenient for effectuating the purposes set forth in this Declaration. After incorporation of the Association, a copy of the Articles and Bylaws of the Association shall be available for inspection at the office of the Association during reasonable business hours. Until such time as the Association is incorporated, Declarant shall and hereby reserves to itself, its successors and assigns, the exclusive right to exercise the powers, rights and duties granted to or imposed upon the Association under this Declaration.

13.2 Reservation of Trade Name. Declarant hereby reserves all right, title and interest in the name "Cortessa" and such other names as Declarant may use in connection with the Property or the Association for the uses set forth herein and any other use as Declarant may choose. The Association and all Owners shall be entitled to the nonexclusive use of the name "Cortessa" and other names only with reference to, and in connection with, the Property, the Association or its authorized activities. Any officer of the Association, each acting alone without the other, is hereby authorized to execute on behalf of the Association such consents, approvals, confirmations, acknowledgments and other instruments as Declarant may request in order to evidence and confirm the rights and interests of Declarant in "Cortessa" and such other names as Declarant may use in connection with the Property or the Association.

13.3 Obligations Regarding Street Light Improvement District. A Street Light Improvement District (the "District") has been or will be formed for the purpose of purchasing energy for the lighting of public streets and parks within the Property, and such other real property as is included in the District (collectively, the "District Property"). All expenses associated with the District will be allocated among the District Property and will be levied and assessed against the owners of the District Property (which will include the Owners of the Property subject to this Declaration) as ad valorem taxes, in accordance with the applicable ordinances, rules and regulations of the Government Authorities. In conjunction with the formation of the District, the Declarant has agreed, or will agree, to pay the Government

Authorities for all costs and expenses of purchasing energy for street and public park lighting for the District billed in excess of the amount of ad valorem taxes collected for the District (the "Excess Costs"). Upon incorporation, the Association shall assume the obligation to fund the Excess Costs, as permitted by the ordinances, rules and regulations applicable to the District. If the Association is required to pay the Government Authorities for Excess Costs, the Association, in its sole and absolute discretion, may either (a) include the Excess Costs in the general operating expenses of the Association and fund the Excess Costs by revenue derived from Regular Assessments; or (b) levy any portions of the Excess Costs that arose as the result of the failure of an Owner to pay the taxes for the District against the Owner that failed to make the payment (in which event, the payment of any such amount shall be secured by the Assessment Lien).

13.4 Reservation of Right to Provide Additional Improvements. Declarant hereby reserves the right, but shall be under no obligation, to construct such additional features, amenities, and other Improvements to benefit the Property as Declarant deems necessary and to transfer all such Improvements to the Association with the Board's consent. Upon such transfer, the Improvements shall be maintained by the Association in accordance with this Declaration.

SECTION 14

TERM; AMENDMENTS; TERMINATION

14.1 Term; Method of Termination. This Declaration shall be effective upon the date of its Recordation and, as amended from time to time, shall continue in full force and effect for a term of 20 years from the date of Recordation. From and after that date, this Declaration, as amended, shall be automatically extended for successive periods of 10 years each, unless there is an affirmative vote to terminate this Declaration by the then Members casting 90% of the total votes cast at a meeting held for such purpose within six months prior to the expiration of the initial effective period hereof or any 10 year extension. The Declaration may be terminated at any time if 90% of the votes cast by each class of Members shall be cast in favor of termination at a meeting held for such purpose. Notwithstanding the foregoing, no vote to terminate this Declaration shall be effective unless and until the written consent to termination has been obtained, within a period from six months prior to the vote to six months after the vote, from the holders of Recorded first mortgages or deeds of trust to which the Assessment Lien is subordinate pursuant to Section 7.3, on 75% of the Lots upon which there are such Recorded first mortgages and deeds of trust. If the necessary votes and consents are obtained, the Board shall cause to be Recorded with the County Recorder of Maricopa County, Arizona, a Certificate of Termination, duly signed by the President or Vice President and attested by the Secretary or Assistant Secretary of the Association, with their signatures acknowledged. Thereupon, this Declaration shall have no further force and effect, and the Association shall be dissolved pursuant to the terms set forth in its Articles.

14.2 Amendments. Except as otherwise provided in this Declaration, this Declaration may be amended only with: (a) the affirmative vote (in person or proxy) or written consent of the Members holding not less than 75% of the votes then entitled to be cast and (b) the consent of Declarant, so long as the Class B Membership is in existence. The amendment shall be

evidenced by Recording with the County Recorder of Maricopa County, Arizona, a duly signed and acknowledged instrument setting forth the amendment.

14.3 Right of Amendment if Requested by Governmental Agency or Lending Institutions. Notwithstanding anything contained herein to the contrary, Declarant reserves the right to amend all or any part of this Declaration to such an extent and with such language as may be requested by the Federal Housing Administration ("FHA"), the Veterans Administration ("VA"), Federal National Mortgage Association ("FNMA") or the Federal Home Loan Mortgage Corporation ("FHLMC") and to further amend to the extent requested by any other federal, state or local governmental agency that requests such an amendment as a condition precedent to such agency's approval of this Declaration, or by any federally or state chartered lending institution as a condition precedent to lending funds upon the security of any Lot(s) or Parcel(s) or any portions thereof. Any such amendment shall be effected by the Recording, by Declarant, of a Certificate of Amendment duly signed and acknowledged by or on behalf of the Declarant specifying the federal, state or local governmental agency or the federally or state chartered lending institution requesting the amendment and setting forth the amendatory language requested by the agency or institution. The Recording of such a Certificate shall be deemed conclusive proof of the agency's or institution's request for such an amendment, and the Certificate, when Recorded, shall be binding upon all of the Property and all Persons having an interest therein. It is the desire of Declarant to retain control of the Association and its activities during the anticipated period of planning and development. If any amendment requested pursuant to the provisions of this Section 14.3 deletes, diminishes or alters Declarant's control, Declarant shall have the right to prepare, provide for and adopt, as an amendment hereto, other and different control provisions. Except as provided in this Section 14.3 and in Section 14.4, Declarant shall not have any right to amend this Declaration otherwise than in accordance with and pursuant to the provisions of Section 14.2.

14.4 Declarant's Rights of Amendment. Notwithstanding anything in this Section 14 to the contrary, Declarant shall, for so long as it possesses a Class B Membership, be entitled to unilaterally amend this Declaration to correct minor errors and omissions.

SECTION 15

ANNEXATION OF ADDITIONAL PROPERTY

15.1 General Intent. It is contemplated that additional real property may be annexed to and become subject to this Declaration as set forth in this Section 15. Declarant may annex some or all of the Annexable Property; provided, however, that no Annexable Property can be annexed unless it is owned by Declarant or an Affiliate at the time of annexation or the express written consent to annexation by the record owner of the property being annexed is reflected in the public record at the time of annexation.

15.2 Annexations by Declarant. Declarant may elect to annex all or any portion of the Annexable Property to this Declaration in increments of any size whatsoever, or to annex more than one increment at any given time and in any given order by Recording a Supplemental Declaration describing the property being annexed. Until the Transition Date, Declarant may annex any of the Annexable Property to this Declaration without the vote of the Members and

without notice to or approval of any other Person (other than the owner of the land if the owner at the time of annexation is a Person other than Declarant). Although Declarant shall have the ability to annex additional property as provided in this Section 15, Declarant shall not be obligated to annex any property. No property, other than the Property shall become subject to this Declaration unless and until a Supplemental Declaration is Recorded as provided in this Section 15 and takes effect.

15.3 Supplemental Declarations. A Supplemental Declaration shall be a writing in Recordable form that annexes additional real property to the plan of this Declaration and that incorporates by reference all of the provisions of this Declaration. It may also contain such other provisions as may be appropriate to the property being annexed so long as any such additional provisions are not in conflict with the existing provisions of this Declaration.

15.4 Effects of Annexation. Recordation of a Supplemental Declaration, as provided for in Section 15.3, shall constitute and effectuate the annexation of the property described in the Supplemental Declaration (unless a later effective date is specified in the Supplemental Declaration) making the property subject to this Declaration and subject to the functions, powers, and jurisdiction of the Association, and thereafter the property shall be part of the Property for all intents and purposes of this Declaration and all of the owners of Lots and Parcels in the annexed property shall automatically be Owners and Members under this Declaration.

15.5 Withdrawal of Property. At any time on or before the Transition Date and without the consent of any other Owner other than the Owner of such Property (if other than the Declarant), the Declarant shall have the right to deannex and withdraw portions of the Property (or as to portions of the Annexable Property, specify that such property is no longer subject to annexation under this Declaration). The withdrawal of such portion of the Property shall be accomplished by the Declarant Recording a written instrument setting forth the legal description of the property being withdrawn and stating that such property shall no longer be subject to this Declaration.

SECTION 16

NEIGHBORHOODS AND NEIGHBORHOOD ASSOCIATIONS

16.1 Neighborhood Declarations and Neighborhood Associations.

16.1.1 Any Neighborhood may have a Recorded "Neighborhood Declaration" that sets forth additional covenants, conditions, restrictions and easements applicable to the property in that Neighborhood. Neighborhood Declarations shall be subordinate to, and not materially inconsistent with, this Declaration, subject to the provisions of Section 16.4. Any Neighborhood Declaration may cover one or more than one Neighborhood. A Neighborhood Declaration and a Supplemental Declaration may be combined into a single instrument. Unless waived in writing by the Board, Neighborhood Declarations shall provide for, among other things, (a) the right of the Association to provide management support services to the Neighborhood, if the Association should elect to do so, as provided in Section 16.2; (b) the right of the Association to provide property management and Neighborhood Common Area maintenance services to the Neighborhood, if the Association should elect to do so, as provided

in Section 16.3; (c) the obligation of the Neighborhood, pursuant to Section 16.5, to pay the Association for all costs incurred by the Association in performing services as provided in this Section 16; and (d) the right of the Association to take temporary control of a Neighborhood and its Neighborhood Association, if any, as provided in Section 16.6.

16.1.2 Any Neighborhood may have an incorporated "Neighborhood Association" (which may govern one or more than one Neighborhood). Copies of the minutes for each meeting of the board of directors and of the members of each Neighborhood Association shall be furnished to the Board of the Association immediately after each meeting.

16.1.3 Prior to the Transition Date, any Neighborhood Declaration and the articles of incorporation and bylaws for any Neighborhood Association must be approved by Declarant in order to be effective. Unless they are prepared by Declarant or a Designated Builder, any Neighborhood Declaration and the articles of incorporation and bylaws for any Neighborhood Association must also be approved by the Board of the Association in order to be effective. After they are initially effective, no Neighborhood Declaration or articles or bylaws of a Neighborhood Association may be amended, supplemented or terminated, except as expressly provided in any such instrument, without the prior written consent of (a) Declarant (prior to the Transition Date); and (b) after the Neighborhood is no longer subject to the control of Declarant or a Designated Builder, the Board of the Association.

16.2 Management Support. Although a Neighborhood Association will be governed by its own board of directors and its officers, unless otherwise provided in the Neighborhood Declaration, the Board of the Association, at its election, may require any Neighborhood (after it is no longer controlled by Declarant or a Designated Builder) to use the administrative and management services of the Association for the Neighborhood. Any Neighborhood (whether or not controlled by Declarant or a Designated Builder) may request that the Association provide administrative and management services to the Neighborhood. Administrative and management services that the Association may provide (or cause to be provided from its contractors) to Neighborhoods include, but are not limited to, acting as accountants for the Neighborhood; handling the collection of assessments levied by the Neighborhood, and enforcing such collection; assisting in the preparation of budgets; administering the use of the Neighborhood Common Area; negotiating contracts for services; and enforcing the governing documents of the Neighborhood.

16.3 Property Management and Maintenance. Unless otherwise provided in the Neighborhood Declaration, the Board of the Association, at its election, may require any Neighborhood (after it is no longer controlled by Declarant or a Designated Builder) to retain the Association as the property manager for the Neighborhood so that an approximately uniform level of Neighborhood Common Area maintenance in the various Neighborhoods may be achieved. Any Neighborhood (whether or not controlled by Declarant or a Designated Builder) may request that the Association serve as the property manager for the Neighborhood. When the Association is serving as the property manager for a Neighborhood, the Association shall maintain the Neighborhood Common Areas within that Neighborhood.

16.4 Neighborhood Common Area Maintenance. Neighborhood Common Areas shall be maintained in accordance with not less than the same standards established for the Common

Areas of the Association. Neighborhoods may, however, establish maintenance and similar standards that are more stringent or otherwise higher than the standards for Common Areas of the Association, in which event, the higher standards shall control. Maintenance of the Neighborhood Common Areas may be performed by employees of the Neighborhood Association (or the Association, as applicable) and/or one or more Persons designated by, or under contract to, the Neighborhood Association (or the Association, as applicable).

16.5 Charges to Neighborhoods. Each Neighborhood, through its Neighborhood Association, if any, upon presentation of a billing statement from the Association, shall promptly pay the Association for all costs incurred by the Association in providing any services described in this Section 16, or any other sums due the Association from the Neighborhood pursuant to this Declaration or any agreement between the Neighborhood and the Association. The Association shall perform the services provided for in this Section 16 on a nonprofit basis, but may allocate overhead costs among the Neighborhoods being served on a reasonable basis determined by the Board or its accountants; provided, however, the compensation payable to the Association for any services under this Section 16 shall be reasonably competitive with the charges for similar services rendered by unaffiliated companies providing such services on a contract basis to other communities and customers in the area. If any costs to be paid by a Neighborhood are not reimbursed promptly when due, the Association shall be entitled to exercise any rights and remedies specified in this Declaration for nonpayment and also such rights and remedies as it may have at law or in equity to enforce collection of such sums. All costs of such enforcement and collection shall be borne by the Neighborhood and its Neighborhood Association, if any.

16.6 Additional Association Rights. At any time after Declarant or the Designated Builder has relinquished control of a Neighborhood, the Association shall have the right to take control of a Neighborhood and its Neighborhood Association, if any, for such period of time as is necessary to bring about collection of Assessments or otherwise to cause the Neighborhood and its Neighborhood Association to meet the standards and obligations described in this Section 16. Control may (but shall not be required to) be effected by the Association removing such officers and directors as the Association deems appropriate and substituting other individuals, including, if the Board so elects, individuals who are also officers and directors of the Association.

SECTION 17

TRACT DECLARATIONS

The Declarant reserves the right, but not the obligation, to Record one or more Tract Declarations with respect to Lots and Parcels within the Property (and with respect to portions of the Annexable Property, in connection with, or subsequent to, the annexation and subjection of such portions to this Declaration pursuant to Section 15). Each Tract Declaration must be executed by the Declarant and by the Owner of the Parcel or Lots subject to such Tract Declaration, if other than Declarant. A Tract Declaration may: (a) identify a Phase of the Property; (b) reserve or grant easements to such Persons and for such purposes as the Declarant may deem appropriate; (c) establish Benefited Assessment Areas and designate the Lots and Parcels that are subject to Benefited Assessments related thereto, and (d) impose such additional covenants, conditions and restrictions as the Declarant may deem appropriate for the property subject to the Tract Declaration. Except to correct minor errors and omissions, or as otherwise

expressly provided in this Declaration or the Tract Declaration itself, a Tract Declaration may only be amended by a written instrument executed by all of the following: (a) Owners holding at least sixty-seven percent (67%) of the votes in the Association held by the Owners of all of the Lots and Parcels subject to that Tract Declaration; (b) the Board; and (c) the Declarant so long as the Declarant owns any Lot or Parcel in the Property.

SECTION 18

DECLARANT'S EXEMPTION FROM RESTRICTIONS

Notwithstanding anything contained in this Declaration to the contrary, none of the restrictions contained in this Declaration shall be construed or deemed to limit or prohibit any act of Declarant or its employees, agents and subcontractors, or parties designated by Declarant (to the extent specified in the designation) in connection with the construction or completion of Improvements upon, or sale or leasing of, the Lots, Parcels, Common Areas and other portions of the Property. Without limiting the generality of the foregoing in any way and notwithstanding anything to the contrary in this Declaration, (a) Declarant is expressly exempted from the provisions of this Declaration requiring submittals to, or authorizations by, the DRC, including, but not limited to, Section 3.1; (b) the provisions of Section 12 are not applicable to any Lots or Parcels owned by Declarant; and (c) Declarant shall have the right to place, structures, construction trailers, equipment yards, landscape or materials storage or signs on any part of the Property, as may be necessary or convenient to the development or sale of Lots and Parcels within the Property. Notwithstanding anything to the contrary contained in this Section 18, in the event that Declarant is regularly engaged in the business of constructing and selling residences on the Lots owned by Declarant, Declarant will be entitled to all of the rights, privileges and exemptions, and subject to all of the obligations, imposed on Designated Builders under this Declaration with respect to such residential construction and sales activities.

SECTION 19

DISCLAIMER OF REPRESENTATIONS; LIMITATION ON LIABILITY

19.1 Declarant's Disclaimer of Representations. Anything to the contrary in this Declaration notwithstanding and in addition to any other disclaimers set forth in this Declaration, Declarant and the Designated Builders make no warranties or representations whatsoever that the plans presently envisioned for the complete development of the Property can, or will be, carried out, or that any land now owned or hereafter acquired by any of them (including, but not limited to, any property presently expected to become part of the Property) is, or will be, subjected to this Declaration, or that any such land (whether or not it has been subjected to this Declaration) is, or will be, committed to, or developed for, a particular (or any) use, or that if such land is once used for a particular use, such use will continue in effect. Declarant and the Designated Builders make no representations or warranties that the use of any Property subject to this Declaration will not be changed in the future. Nothing contained in this Declaration and nothing that may be represented to a purchaser of a Lot or Parcel by real estate brokers or salesmen representing the Declarant or any of the Designated Builders shall be deemed to create any implied covenants or restrictions with respect to the use of any Property. Each Owner acknowledges that Declarant and the Designated Builders may undertake development of the

Property in phases and that by undertaking development of a phase the Declarant or a Designated Builder is making no representation that such phase or any other phase will be completed.

19.2 Disclaimer of Representations Regarding Drainage. Without limiting the generality of the disclaimer set forth in Section 19.1, in no event is Declarant making any representations or warranties regarding the adequacy of any drainage onto or off of any Lot, Parcel, Common Area or other part of the Property. Declarant is assuming no responsibility or liability for drainage of water over, under or across the Lots, Parcels, Common Area or any other part of the Property (whether such drainage is from neighboring property or other parts of the Property) nor for any damage, loss, costs, expenses or fees incurred as a result of any debris, silt, erosion, or other incidental consequences thereof.

19.3 Disclaimer of Representations Regarding Soil Condition.

19.3.1 Each Owner acknowledges that Declarant has certain obligations to Designated Builders to prepare the Lots, Parcels and other portions of the Property for construction of Dwelling Units and related Improvements and to provide the Designated Builders with certain certifications and reports regarding the conditions of the Lots, Parcels and other portions of the Property, including, but not limited to, reports and certifications regarding the condition of the soils or subsurface condition, soils preparation, drainage and construction of the building pad (collectively, the "Soils Condition"), all pursuant to agreements between the Declarant and Designated Builders. Each Owner further acknowledges that Designated Builders are responsible for constructing Dwelling Units in accordance with soils and geotechnical reports and studies, and insuring that the Dwelling Unit and other Improvements, including landscaping, as constructed by Designated Builders, do not impede the drainage on the Lot or Parcel as contemplated by the drainage plans. Each Owner who purchases a Lot from a Designated Builder, or any party other than Declarant, hereby further acknowledges (a) that there is no direct relationship or privity of contract between the Owner and the Declarant; (b) that the Owner is not a third party beneficiary to any agreement between a Designated Builder, or any other party, and the Declarant; and (c) that no warranty from the Declarant to the Designated Builder, or any other party, has been, will be or can be conveyed or assigned to Owner, by express assignment, by conveyance or by implication, including, but not limited to, any representation or warranty regarding the Soils Condition of the Property.

19.3.2 Each Designated Builder shall defend, indemnify and hold Declarant harmless from, of, for and against any claims, damages, obligations, liabilities, losses, expenses or fees (including reasonable attorneys' fees, witness fees, costs and related expenses) arising from any Soils Condition on the Lots or Parcels owned or developed by the Designated Builder. In the event of any inconsistency between the provisions of this Section 19.3 and the provisions of any written agreement between Declarant or any Affiliate of Declarant and a Designated Builder, the provisions of the written agreement shall govern as between Declarant and such Affiliate of Declarant and the Designated Builder.

19.3.3 Each Owner hereby acknowledges that proper drainage is necessary for the maintenance of the Lots and Parcels and accordingly agrees that the Owner shall not install any sprinklers or water system, construct ponds, wells, retention basins, make or remove Improvements to the Dwelling Unit or otherwise alter the surface of the Lot or Parcel so as to

impede or impair the drainage of the Lot or Parcel. Each Owner agrees that following the installation of a pool, landscaping, sprinklers, water systems or other Improvements on a Lot or Parcel, the Owner shall have the Improvements inspected by a qualified testing and inspection company to confirm proper drainage away from the Dwelling Unit and to confirm that the Improvements will not otherwise impede or impair the drainage of the Lot or Parcel.

19.4 Restrictions of Liability for Access Controls and Common Area Amenities.

19.4.1 Access controls may be constructed within or adjacent to the Property in order to limit access and to provide more privacy for the Owners and Occupants. Each Owner and Occupant, and their families, guests and invitees, acknowledge that any such access controls may restrict or delay entry into, or access within, the Property by police, fire department, ambulances and other emergency vehicles or personnel. Each Owner and Occupant and their families, guests and invitees agree to assume the risk that any such guardhouse will restrict or delay entry into, or access within, the Property by police, fire department, ambulances or other emergency vehicles or personnel. Neither the Declarant, the Association nor any director, officer, agent or employee of the Declarant or the Association shall be liable to any Owner or Occupant or their families, guests or invitees for any claims or damages resulting, directly or indirectly, from the construction, existence or maintenance of any such access controls.

19.4.2 It is anticipated that various recreational facilities may be constructed and maintained on the Common Areas, although the Declarant shall not be obligated to construct such recreational facilities and no representation or warranty is made that such recreational facilities will be constructed. Each Owner and Occupant, and their families, guests and invitees, acknowledge that the presence of recreational facilities on the Common Areas and the use of such recreational facilities presents risks. Each Owner and Occupant and their families, guests and invitees agree to assume all risks associated with such recreational facilities on the Common Areas. Neither the Declarant, the Association nor any director, officer, agent or employee of the Declarant or the Association shall be liable to any Owner or Occupant or their families, guests or invitees for any claims or damages resulting, directly or indirectly, from such recreational facilities and any play structures and other features associated with such recreational facilities located on the Common Areas.

19.5 Further Restrictions on Liability. Notwithstanding anything to the contrary in this Declaration, each Owner, by accepting title to any portion of the Property and becoming an Owner, and each other Person acquiring an interest in the Property (including, but not limited to, any mortgagee) (but, with respect to Designated Builders, subject to the last sentence of Section 19.3.2), acknowledges and agrees that neither Declarant (including, but not limited to, any assignee of the interest of Declarant), nor any entity related to Declarant, nor any of their respective partners, shareholders, trustees, officers, directors, principals, or similar persons, shall have any personal liability to the Association, or any Owner, Member, mortgagee or other Person, arising under, in connection with, or resulting from (including, but not limited to, resulting from action or failure to act with respect to) this Declaration, any Supplemental Declaration or Neighborhood Declaration, the Association, or the DRC, except to the extent of that Person's interest in the Property; and, in the event of a judgment, no execution or other action shall be sought or brought thereon against any other assets, nor be a lien upon such other assets, of that Person.

19.6 Amendments Affecting Declarant Rights. Notwithstanding any other provision of this Declaration to the contrary, no amendment to any provision of this Declaration (including, but not limited to, this Section) that grants to or confers upon Declarant any rights, privileges, easements, benefits or exemptions shall be binding upon Declarant without the express written consent of Declarant.

19.7 Vicinity of Military Airport. NOTICE IS HEREBY GIVEN THAT THE PROPERTY LIES WITHIN AN AREA DESIGNATED PURSUANT TO STATE LAW AS BEING "TERRITORY IN THE VICINITY OF A MILITARY AIRPORT." THIS AREA IS SUBJECT TO OVERFLIGHTS. AS SUCH, THE PROPERTY WILL BE SUBJECT TO THE SITES AND SOUNDS TYPICALLY INCIDENT TO MILITARY AIR OPERATIONS, WHICH MAY INCLUDE, BUT NEED NOT BE LIMITED TO, ATTENDANT NOISE, VIBRATIONS, FUMES, DUST, FUEL AND LUBRICANT PARTICLES, AND ALL OTHER EFFECTS THAT MAY BE CAUSED BY AIRCRAFT LANDING AT, OR TAKING OFF FROM, OR OPERATING AT OR ON LUKE AIR FORCE BASE. THE RIGHT OF OWNERS TO OBJECT TO MILITARY AIR OPERATIONS WILL BE LIMITED BY APPLICABLE LAWS.

19.8 Utilities Disclosure. In the event that any provider of utility services to individual Dwelling Units within the Property cannot or will not bill Owners individually for such services (or in the event that the Board elects to have such services billed collectively to get reduced rates or better terms for Owners through a bulk purchase of such services), the utility provider shall invoice the Association for such services and the Association shall allocate the invoice among the Owners and Dwelling Units receiving the services as a Special Use Fee secured by the Assessment Lien. Any such collective invoice to the Association shall be allocated prorata to the recipients of the service, or as the Board may otherwise reasonably determine to be equitable.

19.9 Water Service Disclosure. Under an agreement (the "MWD Agreement") with the Maricopa County Municipal Water Conservation District No. 1 (the "MWD"), MWD has agreed to provide certain water services to the Property (the "MWD Services"). In accordance with the MWD Agreement, the MWD will invoice the Association for the MWD Services and the Association will be responsible for the payment of the fees charged. If the Association fails to pay the MWD in a timely manner, the MWD Agreement provides that the Owner of each Lot or Parcel will remain obligated for such Owner's prorata portion of the unpaid fees.

19.10 Surprise Sewer Services.

19.10.1 Sewer Service Fee Disclosure. The City of Surprise, an Arizona municipal corporation ("Surprise"), will provide sewer services to the Property (the "Sewer Services"). The fees charged by Surprise for the Sewer Services (the "Sewer Service Fees") will include, in addition to the normal fees and charges charged to Surprise's residential customers, a fixed project surcharge of \$5.00 per month and a replacement reserve charge to be determined from time to time by Surprise for the sewer lift station servicing the Property. The Sewer Service Fees shall be invoiced and collected by either of the following methods, as determined by Surprise from time to time in its sole and absolute discretion:

(a) Direct Billing. Surprise will invoice and collect the Sewer Service Fees directly from the Owner(s) of each Lot or Parcel on a monthly basis (directly invoiced and collected, such fees shall be referred to and treated herein as the "Sewer Assessments"). In accordance with Section 6.1 of this Declaration, each Sewer Assessment, together with interest, penalties, collection costs, reasonable attorney's fees, witness fees, costs and related expenses, shall be a charge and continuing servitude and lien upon the Lot or Parcel against which the Sewer Assessment is made and shall be an "Assessment Lien" for purposes of this Declaration. The Sewer Assessment, together with interest, penalties, collection costs, reasonable attorneys' fees, witness fees, costs and related expenses, shall also be the personal obligation of the Person who was the Owner of the Lot or Parcel at the time the Assessment was due. The personal obligation for delinquent Sewer Assessments shall not pass to the successors in title of the Owner unless expressly assumed by such successors. If more than one Person owns a Lot or Parcel, all co-Owners of the Lot or Parcel shall be jointly and severally liable for all Sewer Assessments. The lien rights hereby granted to Surprise shall be subject to all of the same limitations, conditions, restrictions and requirements as the lien rights granted to the Association in this Declaration for the nonpayment of Assessments, including, without limitation, subordination of the Sewer Assessment to first lienholder rights consistent to Section 7.3 and the requirement that Surprise provide timely certification of payment or nonpayment of any Assessments consistent with Section 6.15.

(b) Bulk Sewer Services Fees. Surprise will invoice and collect the Sewer Service Fees from the Association on a bulk basis, rather than invoicing and collecting from the Owner of each Lot or Parcel individually. The Owner of each Lot or Parcel shall pay such Owner's prorata portion of the Sewer Service Fees as part of the Regular Assessment charged by the Association against such Owner in accordance with Section 6 of this Declaration.

19.11 404 Disclosures.

19.11.1 Certain washes and other drainage and retention areas of the Property are subject to a permit issued by the Army Corps of Engineers pursuant to Section 404 of the federal Clean Water Act because they are considered to be (or to affect) ephemeral waters of the United States. This permit and its accompanying attachments (including a habitat mitigation plan and conditions imposed by the State of Arizona pursuant to Section 401 of the Clean Water Act) are referred to herein as the "404 Permit." A copy of the 404 Permit will be kept in the official records of the Association.

19.11.2 The 404 Permit imposes certain limitations on development and related activities within designated Common Areas of the Property and imposes certain landscaping and other maintenance and reporting obligations with respect to those Common Areas, which will be obligations of the Association pursuant to its responsibility for Common Areas. Landscaping obligations imposed by the 404 Permit include prohibitions on pruning trees within specified habitat mitigation areas of the Property. The 404 Permit also imposes certain requirements and limitations on activities within the Property, including, but not limited to, swimming within any water conveyance or drainage retention areas of the Property and the posting of "no swimming" signs at such areas.

19.11.3 Any work within the Property that affects the drainage of surface waters, or the condition of any structure or area required as a condition of the 404 Permit (including, but not limited to, habitat mitigation areas), may fall under the terms of the 404 Permit. Any person proposing to undertake such work must become familiar with the terms of the 404 Permit and comply with its terms if the person applies to complete the contemplated work. The Association will provide a copy of the 404 Permit to any contractor or other person employed or allowed by the Association to perform work within areas subject to the 404 Permit.

SECTION 20

MISCELLANEOUS

20.1 Interpretation of the Covenants. Except for judicial construction, the Association, by its Board, shall have the exclusive right to construe and interpret the provisions of this Declaration. In the absence of any decision to the contrary pursuant to dispute resolution proceedings, the Association's construction or interpretation of the provisions hereof shall be final, conclusive and binding as to all Persons and property benefited or bound by this Declaration.

20.2 Severability. Any determination pursuant to dispute resolution proceedings that any provision of this Declaration is invalid or unenforceable shall not affect the validity or enforceability of any of the other provisions hereof.

20.3 Rule Against Perpetuities. If any of the options, privileges, covenants or rights created by this Declaration are unlawful, void or voidable for violation of the rule against perpetuities, then the provision shall continue until 21 years after the death of the survivor of the now living descendants of the President of the United States on the date hereof.

20.4 References to the Declaration in Deeds. Deeds to, and instruments affecting, any Lot, Parcel or any part of the Property may reference this Declaration; but regardless of whether any such reference is made in any deed or instrument, each and all of the provisions of this Declaration shall be binding upon the grantee/Owner or other Person claiming through any instrument and his heirs, executors, administrators, successors and assigns.

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

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

20.7 Notices. If applicable law requires notice of any action or proposed action by the Board or any committee, or requires notice of any meeting, or requires a copy of any resolution of the Board to be given to any Owner, Occupant or Resident then, unless otherwise specified herein or in the resolution of the Board, the notice requirement shall be deemed satisfied if notice

is published once in any newspaper in general circulation within the County. This Section shall not be construed to require that any notice be given if not otherwise required and shall not prohibit satisfaction of any notice requirement in any other manner.

20.8 FHA/VA.

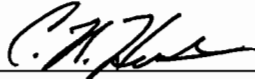
20.8.1 If a Designated Builder desires VA or FHA approval, the Designated Builder shall notify Declarant and all other Designated Builders in writing.

20.8.2 Prior to the Transition Date, the following actions will require the prior approval of the FHA and/or the VA, as applicable (if and to the extent that this Declaration shall have been previously submitted to and approved by the FHA and/or the VA and, at the time of the action in question, the applicable agency has insured or guaranteed an outstanding loan against any portion of the Property): (a) annexation of additional properties into the Property (unless the annexation is in accordance with a plan of annexation or expansion previously approved by such agencies); (b) dedication of any part of the Common Areas or Neighborhood Common Areas; and (c) amendment of this Declaration. Consent of the FHA or VA will be deemed to have been given if the matter has been submitted to the agency for approval and the agency has failed to respond within 30 days of submittal.

20.8.3 Nothing in this Declaration shall be understood (a) to require any mortgagees to collect Assessments that accrued prior to the date upon which the mortgagee came into possession of, or acquired title to, a Lot or Parcel, whichever occurs first; or (b) to cause the failure to pay Assessments to constitute a default under a mortgage.

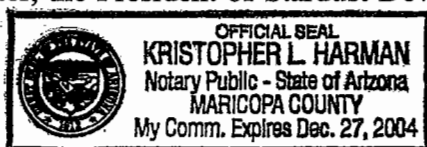
IN WITNESS WHEREOF, Declarant has caused its name to be signed by the signature of its duly authorized representatives as of the day and year first above written.

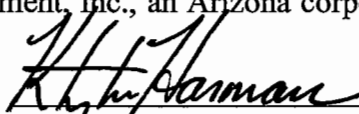
STARDUST DEVELOPMENT, INC., an Arizona corporation

By: 
Name: Chris B. Heeter
Title: President

STATE OF ARIZONA)
) ss.
County of Maricopa)

The foregoing instrument was acknowledged before me this 17th day of June, 2004, by Chris B. Heeter, the President of Stardust Development, Inc., an Arizona corporation, on behalf thereof.





Notary Public

My Seal and Commission Expiration Date:

CONSENT

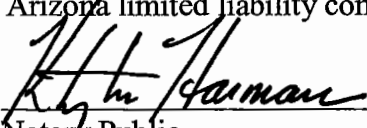
The undersigned hereby consents to, approves of, and joins in the foregoing Declaration of Covenants, Conditions, Restrictions, Reservations and Easements for Cortessa.

CORTESSA L.L.C., an Arizona limited liability company

By: 
Name: Chris B. Heeter
Title: Manager

STATE OF ARIZONA)
) ss.
County of Maricopa)

The foregoing instrument was acknowledged before me this 17th day of June, 2004, by Chris B. Heeter, the Manager of Cortessa L.L.C., an Arizona limited liability company, on behalf thereof.


Notary Public

My Seal and Commission Expiration Date:



APPENDIX A

DEFINITIONS

The following words, phrases or terms used in this Declaration shall have the following meanings:

A-1. "Affiliate" means, as to any Person, (a) any Person that directly or indirectly is in control of, is controlled by, or is under common control with, any such Person, (b) any Person who is a director, officer or employee (1) of any such Person or (2) of any Person described in the preceding clause (a). For purposes of this definition, control of a Person means the power, direct or indirect, (a) to vote 10% or more of the securities having ordinary voting power for the election of directors of such Person or (b) to direct or cause the direction of the management and policies of such Person, whether by contract or otherwise.

A-2. "Annexable Property" means any and all real property located within Section 27, Township 3 North, Range 3 West of the Gila and Salt River Base and Meridian, Maricopa County, Arizona, that is not already included as part of the Property, as defined herein.

A-3. "Area of Common Responsibility" means any area that is not owned, leased or otherwise held by the Association (and is therefore not part of the Common Area) but for which the Association has maintenance, repair, and/or operational responsibility by the terms of this Declaration, any Supplemental Declaration, any Neighborhood Declaration or any other applicable real property covenants, or by requirements of governmental authorities, or by contract. Any area described in the preceding sentence shall continue to be an Area of Common Responsibility only so long as the Association's responsibility for it continues.

A-4. "Articles" means the Articles of Incorporation of the Association, as they may from time to time be amended or supplemented.

A-5. "Assessable Property" means any Lot or Parcel included within the Property, except such part or parts thereof as may from time to time constitute Exempt Property.

A-6. "Assessments" means Regular Assessments, Special Assessments, Capital Reserve Assessments, Neighborhood Assessments, Benefited Assessments, Sewer Assessments, plan review fees and any other fees or charges levied pursuant to this Declaration.

A-7. "Assessment Lien" means the lien created and imposed by Section 6.

A-8. "Association" means the Arizona nonprofit corporation to be organized by Declarant to administer and enforce this Declaration and to exercise the rights, powers and duties set forth in this Declaration, its successors and assigns. Declarant hereby reserves the exclusive right to cause the Association to be incorporated. It is the present intent of the Declarant that the Association shall be referred to as the Cortessa Community Association, but Declarant shall be entitled to name the Association as it deems appropriate.

A-9. "Association Rules" means the rules provided for in Section 4.3.

A-10. "Benefited Assessment" means an Assessment levied against certain Lots and Parcels on the Property that are intended to particularly benefit from a particular service, amenity or other feature of the Property.

A-11. "Benefited Assessment Area" means any part of the Property designated in a Tract Declaration (or other Recorded instrument approved by the Declarant, and by the Owner of the property subject thereto, if other than the Declarant) as an area that is to be operated, maintained, repaired and replaced by the Association but which is for the intended benefit of the Owners of fewer than all of the Lots and Parcels in the Property.

A-12. "Board" means the Board of Directors of the Association.

A-13. "Bylaws" means the Bylaws of the Association, as they may from time to time be amended or supplemented.

A-14. "Capital Reserve Assessment" means the charge levied and assessed pursuant to Section 6.4.

A-15. "Common Area" and "Common Areas" means all real property, and the Improvements thereon, owned, leased or otherwise held by the Association for the common use and enjoyment of the Owners (including, but not limited to, areas used for recreational amenities, landscaping, drainage, flood control and open areas). The Common Areas do not include the Areas of Common Responsibility or the Neighborhood Common Areas. Any real property, and Improvements thereon, that are described as "common areas" in a Supplemental Declaration or on a Plat shall be deemed to be "Common Areas" as that term is defined herein and shall, for all purposes, be integrated into and deemed to be a part of the Common Areas subject to this Declaration.

A-16. "Consenting Party" has the meaning set forth in Recital A of this Declaration.

A-17. "County" means Maricopa County, Arizona.

A-18. "Covered Property" means the real property referred to in the Recitals hereof and described on Exhibit A attached hereto.

A-19. "Declarant" means the Declarant set forth in the preamble to this Declaration and its successors and assigns. The Declarant's rights shall only be assigned by a written, Recorded instrument executed by Declarant expressly assigning those rights. An assignment by Recorded instrument of all of Declarant's rights shall vest in the assignee all of Declarant's rights hereunder on the same terms that they were held by Declarant. An assignment by Recorded instrument of part of Declarant's rights shall vest in the assignee the specific rights named in the instrument of assignment on the same terms they were held by Declarant. Notwithstanding anything to the contrary herein, an assignment of all or any portion of Declarant's rights, or a sharing of those rights with Designated Builders, shall not deprive the assignor of any protection, indemnity or freedom from liability that would otherwise exist under this Declaration if the assignor had retained all of the Declarant's rights hereunder. No successor Declarant shall have any liability resulting from any actions or inactions of any preceding Declarant unless expressly

assumed by the successor Declarant, in which event the preceding Declarant shall be released from liability.

A-20. "Declaration" means this Declaration of Covenants, Conditions, Restrictions, Reservations and Easements, as amended and supplemented from time to time.

A-21. "Design Review Committee" and "DRC" means the committee to be created pursuant to Section 12.

A-22. "District" has the meaning set forth in Section 13.3.

A-23. "District Property" the meaning set forth in Section 13.3.

A-24. "DRC Decision" has the meaning provided in Section 12.3.4.

A-25. "Design Review Guidelines" means those guidelines established pursuant to Section 12.1, as amended or supplemented from time to time in accordance with Section 12.

A-26. "Designated Builder" means any Owner who regularly engages in the business of constructing residences and related Improvements, who owns Lots or Parcels and constructs or intends to construct Dwelling Units on the Lots or Parcels it owns, and who has been specifically designated as a Designated Builder hereunder by Declarant pursuant to a written Recorded instrument. In any written notice naming a Designated Builder, Declarant shall specify what special rights, privileges, obligations and exemptions of Declarant that particular Designated Builder will have pursuant to this Declaration, any applicable Supplemental Declaration, the Association Rules and the Design Review Guidelines.

A-27. "Designated Service Providers" has the meaning set forth in Section 9.6.

A-28. "Dwelling Unit" means any building or portion of a building situated upon a Lot designed and intended for use and occupancy as a residence by a Single Family.

A-29. "Excess Costs" the meaning set forth in Section 13.3.

A-30. "Exempt Property" means the following parts of the Property:

- (a) All land and Improvements owned by or dedicated to and accepted by any Government Authorities, for as long as the governmental entity or political subdivision is the owner thereof or for so long as the dedication remains effective;
- (b) All Common Areas, for as long as the Association is the owner thereof; and
- (c) All Neighborhood Common Areas, for as long as the Association or a Neighborhood Association is the owner thereof.

A-31. "Government Authorities" means any government authority having review and approval rights with regard to the Property.

A-32. "Improvements" means buildings, amenities, roads, driveways, levees, dams, channels, basins, parking areas, fences, walls, rocks, hedges, plantings, planted trees and shrubs, and all other structures and landscaping improvements, and any addition, alteration, repair, change or other work regarding any such item, including exterior paint.

A-33. "Lot" means any area of real property within the Property that is designated as a Lot on a Plat; as used herein, "Lot" includes all Improvements thereon.

A-34. "Member" means any Person holding a Membership in the Association pursuant to this Declaration.

A-35. "Membership" means a Membership in the Association and the rights granted to the Owners and the Declarant pursuant to Section 5 to participate in the Association.

A-36. "MWD" means the Maricopa County Municipal Water Conservation District No. 1.

A-37. "MWD Agreement" has the meaning set forth in Section 19.9.

A-38. "MWD Services" has the meaning set forth in Section 19.9.

A-39. "Neighborhood" means an area within the Property designated as an individual Neighborhood in a Supplemental Declaration or in a Neighborhood Declaration.

A-40. "Neighborhood Assessment" means any charge levied and assessed pursuant to Section 6.5.

A-41. "Neighborhood Association" means a property owners association provided for in Section 16, which may govern one or more Neighborhoods within the Property.

A-42. "Neighborhood Common Areas" means all real property, and the Improvements thereon, owned, leased or otherwise held by the Association or a Neighborhood Association, which are intended predominantly or exclusively for the common use and enjoyment of the Owners of property within a Neighborhood, such as community swimming pools, development landscaping, perimeter walls of the Neighborhood and other areas not designed for use with a single Dwelling Unit within the Neighborhood or designed for the general benefit of all Owners of the Property. Any real property, and Improvements thereon, that are described as "neighborhood common areas" in a Supplemental Declaration, Neighborhood Declaration or on a Plat shall be deemed to be "Neighborhood Common Areas" as that term is defined herein and shall, for all purposes, be integrated into and deemed to be a part of the Neighborhood Common Areas subject to this Declaration.

A-43. "Occupant" means any Person temporarily occupying any Dwelling Unit with the permission of the Owner thereof.

A-44. "Owner" means the record holder of legal title to the fee simple interest in any Lot or Parcel, but excluding Declarant and those who hold title merely as security for the performance of an obligation. In the case of a Lot or Parcel, the fee simple title to which is vested of Record in a trustee pursuant to A.R.S. § 33 -801, et seq. (as amended from time to time), legal title shall be deemed to be in the Trustor. An Owner shall include any Person who holds record title to a Lot or Parcel in joint ownership with any other Person or holds an undivided fee interest in any Lot or Parcel. To the extent the rights and obligations of Designated Builders, as Owners of Lots or Parcels, differ from the rights and obligations of other Owners of Lots or Parcels, the rights and obligations of Designated Builders, as Owners of Lots or Parcels, shall be separately set forth herein.

A-45. "Parcel" means an area of the Property that is subject to this Declaration but that has not been subdivided into Lots and related amenities and rights-of-way by a subdivision plat or other Recorded instrument creating Lots and related amenities, and rights-of-way. Any area of land within the Property shall cease to be a Parcel upon the Recordation of a subdivision plat or other instrument covering the area and creating Lots, related amenities, and rights-of-way. A Parcel shall not include a Lot or any Exempt Property.

A-46. "Person" means an individual, corporation, partnership, limited liability company, trustee, or other entity capable of holding title to real property under Arizona law.

A-47. "Phase" has the meaning set forth in Section 6.18.

A-48. "Plats" means the subdivision plat of the Covered Property as first Recorded, and as amended or supplemented from time to time, together with all subsequent Recorded subdivision plats for real property that is annexed to the Property pursuant to Section 15, as those subdivision plats may be amended or supplemented from time to time.

A-49. "Property" means the Covered Property and any other real property actually annexed and subjected to this Declaration as provided in Section 15, together with all Improvements located thereon.

A-50. "Recording," "Recordation" or "Record" means placing an instrument of public record in the Office of the County Recorder of Maricopa County, Arizona, and "Recorded" means having been so placed of public record.

A-51. "Regular Assessment" means the charge levied and assessed pursuant to Section 6.2.

A-52. "Resident" means:

- (a) Each Occupant actually residing on any part of the Assessable Property;
and
- (b) Members of the immediate family of each Owner or Occupant actually living in the same household with the Owner or Occupant.

Subject to such rules and regulations as the Association may hereafter specify, the term "Resident" also shall include the guests or invitees of any Owner or Occupant to the extent necessary to enforce the provisions of this Declaration.

A-53. "Retail Purchaser" means a Person that purchases a Lot in a retail transaction and shall not include Declarant, any Affiliate to Declarant, a Designated Builder, or any other Person who acquired the Lot (a) solely for the purpose of development and resale in one or a series of retail transactions, (b) by distribution (as distinguished from purchase), or (c) in any similar transaction.

A-54. "Sewer Assessments" has the meaning set forth in Section 19.10.1(a).

A-55. "Sewer Service Fees" has the meaning set forth in Section 19.10.

A-56. "Sewer Services" has the meaning set forth in Section 19.10.

A-57. "Single Family" means a group of one or more persons each related to the other by blood, marriage or legal adoption, or a group of not more than three persons not all so related, who maintain a common household in a Dwelling Unit.

A-58. "Special Assessment" means any charge levied and assessed pursuant to Section 6.3.

A-59. "Special Use Fees" means special fees that an Owner, Occupant, Resident or other Person is obligated by this Declaration, a Supplemental Declaration or the Association Rules to pay to the Association for use of, access to, or for the granting of, a right or privilege with respect to, a service, amenity, facility or other improvement including, but not limited to, fees collected pursuant to Section 9.5 for services provided by Designated Service Providers. Special Use Fees shall be in addition to any Assessment hereunder.

A-60. "Supplemental Declarations" means those instruments provided for in Section 15.3, which annex real property and subject it to the provisions of this Declaration.

A-61. "Surprise" means the City of Surprise, an Arizona municipal corporation.

A-62. "Transition Date" has the meaning set forth in Section 5.3.

A-63. "Tract Declaration" means any declaration Recorded pursuant to Section 17 that affects the Property or any portion thereof.

A-64. "Visible From Neighboring Property" means, with respect to any given object, that the object is, or would be, visible to a person six feet tall, standing on the same plane as the object being viewed at a distance of 200 feet or less from the nearest boundary of the property being viewed.

EXHIBIT A

PROPERTY

PARCEL NO. 1

THAT PORTION OF SECTION 27, TOWNSHIP 3 NORTH, RANGE 3 WEST OF THE GILA AND SALT RIVER BASE AND MERIDIAN, MARICOPA COUNTY, ARIZONA, DESCRIBED AS FOLLOWS:

COMMENCING AT A FOUND 3/4" PIPE, AT THE NORTHWEST CORNER OF SAID SECTION 27, SAID PIPE BEARS NORTH 89 DEGREES 53 MINUTES 02 SECONDS EAST (BASIS OF BEARING), A DISTANCE OF 2641.32 FEET TO A FOUND 3/4" PIPE AT THE NORTH QUARTER CORNER OF SAID SECTION 27;

THENCE NORTH 89 DEGREES 53 MINUTES 02 SECONDS EAST ALONG THE NORTH LINE OF THE NORTHWEST QUARTER OF SAID SECTION 27, A DISTANCE OF 33.00 FEET TO A POINT ON THE EAST LINE OF THE WEST 33.00 FEET OF THE NORTHWEST QUARTER OF SAID SECTION 27;

THENCE SOUTH 00 DEGREES 02 MINUTES 23 SECONDS EAST, ALONG SAID EAST LINE, A DISTANCE OF 33.00 FEET TO A POINT ON THE SOUTH LINE OF THE NORTH 33.00 FEET OF THE NORTHWEST QUARTER OF SAID SECTION 27 AND TO THE TRUE POINT OF BEGINNING;

THENCE NORTH 89 DEGREES 53 MINUTES 02 SECONDS EAST ALONG THE SOUTH LINE OF THE NORTH 33.00 FEET OF THE NORTHWEST QUARTER OF SAID SECTION 27, A DISTANCE OF 1308.58 FEET TO A POINT ON THE WEST LINE OF SUN PARK, A SUBDIVISION RECORDED IN BOOK 99 OF MAPS, PAGE 25 M.C.R.;

THENCE SOUTH 00 DEGREES 00 MINUTES 01 SECONDS WEST, ALONG THE WEST LINE OF SAID SUN PARK, A DISTANCE OF 650.90 FEET TO THE SOUTHWEST CORNER OF SAID SUN PARK;

THENCE SOUTH 89 DEGREES 59 MINUTES 59 SECONDS EAST, ALONG THE SOUTH LINE OF SAID SUN PARK, A DISTANCE OF 1617.80 FEET TO THE SOUTHEAST CORNER OF SAID SUN PARK;

THENCE NORTH 00 DEGREES 00 MINUTES 01 SECONDS EAST, ALONG THE EAST LINE OF SAID SUN PARK, A DISTANCE OF 654.20 FEET TO A POINT ON THE SOUTH LINE OF THE NORTH 33.00 FEET OF THE NORTHEAST QUARTER OF SAID SECTION 27;

THENCE ALONG SAID SOUTH LINE NORTH 89 DEGREES 52 MINUTES 56 SECONDS EAST, A DISTANCE OF 342.30 FEET;

THENCE NORTH 00 DEGREES 00 MINUTES 35 SECONDS WEST, ALONG THE WEST LINE OF THE EAST HALF OF THE NORTHWEST QUARTER OF THE

NORTHEAST QUARTER, A DISTANCE OF 33.00 FEET TO A POINT ON THE NORTH LINE OF THE NORTHEAST QUARTER OF SAID SECTION 27;

THENCE NORTH 89 DEGREES 52 MINUTES 56 SECONDS EAST, ALONG SAID NORTH LINE, A DISTANCE OF 1981.13 FEET TO A FOUND 1/2" REBAR WITH A BRASS TAG STAMPED L.S. 13554 AT THE NORTHEAST CORNER OF SAID SECTION 27;

THENCE SOUTH 00 DEGREES 01 MINUTES 17 SECONDS WEST, ALONG THE EAST LINE OF THE NORTHEAST QUARTER OF SAID SECTION 27, A DISTANCE OF 2637.36 FEET TO A FOUND 1" PIPE AT THE EAST QUARTER CORNER OF SAID SECTION 27;

THENCE SOUTH 00 DEGREES 01 MINUTES 04 SECONDS WEST, ALONG THE EAST LINE OF THE SOUTHEAST QUARTER OF SAID SECTION 27, A DISTANCE OF 2632.92 FEET TO A FOUND 3/4" PIPE AT THE SOUTHEAST CORNER OF SAID SECTION 27;

THENCE SOUTH 89 DEGREES 50 MINUTES 33 SECONDS WEST, ALONG THE SOUTH LINE OF THE SOUTHEAST QUARTER OF SAID SECTION 27, A DISTANCE OF 2638.66 FEET TO A FOUND 7/8" REBAR AT THE SOUTH QUARTER CORNER OF SAID SECTION 27;

THENCE SOUTH 89 DEGREES 50 MINUTES 29 SECONDS WEST, ALONG THE SOUTH LINE OF THE SOUTHWEST QUARTER OF SAID SECTION 27, A DISTANCE OF 2639.64 FEET TO A FOUND 1" PIPE IN HANDHOLE AT THE SOUTHWEST CORNER OF SAID SECTION 27;

THENCE NORTH 00 DEGREES 01 MINUTES 11 SECONDS WEST, ALONG THE WEST LINE OF THE SOUTHWEST QUARTER OF SAID SECTION 27, A DISTANCE OF 2635.61 FEET TO A FOUND 1" PIPE IN HANDHOLE AT THE WEST QUARTER CORNER OF SAID SECTION 27;

THENCE NORTH 89 DEGREES 52 MINUTES 17 SECONDS EAST, ALONG THE SOUTH LINE OF THE NORTHWEST QUARTER OF SAID SECTION 27, A DISTANCE OF 33.00 FEET TO A POINT ON THE EAST LINE OF THE WEST 33.00 FEET OF THE NORTHWEST QUARTER OF SAID SECTION 27;

THENCE NORTH 00 DEGREES 02 MINUTES 23 SECONDS WEST, ALONG SAID EAST LINE, A DISTANCE OF 2605.45 FEET TO THE TRUE POINT OF BEGINNING;

EXCEPT THAT PORTION OF THE NORTHEAST QUARTER OF SAID SECTION 27, DESCRIBED AS FOLLOWS:

BEGINNING AT A POINT 33 FEET SOUTH AND 33 FEET WEST OF THE
NORTHEAST CORNER OF SAID SECTION 27;

THENCE SOUTH 00 DEGREES 01 MINUTES 17 SECONDS WEST, ON A LINE
PARALLEL TO THE EAST LINE OF THE NORTHEAST QUARTER OF SAID
SECTION 27, A DISTANCE OF 60.00 FEET;

THENCE SOUTH 89 DEGREES 52 MINUTES 56 SECONDS WEST, A DISTANCE
OF 75.00 FEET;

THENCE NORTH 00 DEGREES 01 MINUTES 17 SECONDS EAST, A DISTANCE
OF 60.00 FEET TO A POINT ON THE SOUTH LINE OF THE NORTH 33 FEET OF
THE NORTHEAST QUARTER OF SAID SECTION 27;

THENCE ALONG SAID SOUTH LINE NORTH 89 DEGREES 52 MINUTES 56
SECONDS EAST, A DISTANCE OF 75.00 FEET TO THE TRUE POINT OF
BEGINNING.

PARCEL NO. 2

THE WEST 33 FEET OF THE NORTH HALF OF SECTION 27, TOWNSHIP 3
NORTH, RANGE 2 WEST OF THE GILA AND SALT RIVER BASE AND
MERIDIAN, MARICOPA COUNTY, ARIZONA; AND

THE NORTH 33 FEET OF THE NORTH HALF OF SECTION 27, TOWNSHIP 3
NORTH, RANGE 2 WEST OF THE GILA AND SALT RIVER BASE AND
MERIDIAN, MARICOPA COUNTY, ARIZONA;

EXCEPT THAT PORTION LYING WITHIN THE PLAT OF SUN PARK,
ACCORDING TO THE PLAT OF RECORD IN THE OFFICE OF THE COUNTY
RECORDER OF MARICOPA COUNTY, ARIZONA, RECORDED IN BOOK 99 OF
MAPS, PAGE 25; AND

EXCEPT THAT PORTION LYING WITH THE EAST HALF OF THE NORTHWEST
QUARTER OF THE NORTHEAST QUARTER OF SAID SECTION 27; AND

EXCEPT THAT PORTION LYING WITHIN THE EAST HALF OF THE
NORTHEAST QUARTER OF SAID SECTION 27.

(BEING ALSO DESCRIBED AS SHOWN AS A PORTION OF ROMOLA OF
ARIZONA GRAPEFRUIT UNIT 32, ACCORDING TO THE PLAT OF RECORD IN
BOOK 19 OF MAPS, PAGE 20, RECORDS OF MARICOPA COUNTY, ARIZONA.

EXHIBIT B
ANNEXABLE PROPERTY

**CORTESSA
PARCEL 20
SCHOOL SITE**

A portion of Section 27, Township 3 North, Range 2 West of the Gila and Salt River Base and Meridian, Maricopa County, Arizona being more particularly described as follows:

COMMENCING at a 3 inch Maricopa County aluminum cap found at the north quarter corner of said Section 27, from which a ½ inch rebar found at the northeast corner of Section 27 bears North 89°52'56" East, a distance of 2641.51 feet; thence North 89°52'56" East, along the north line of the northeast quarter of said Section 27, a distance of 408.79 feet; thence South 00°07'04" East, a distance of 712.86 feet to the TRUE POINT OF BEGINNING;

Thence South 82°04'29" East, a distance of 115.36 feet;

Thence North 89°52'56" East, a distance of 425.71 feet to a point on a non-tangent curve, concave northwest, whose radius is 50.00 feet, and whose center bears North 45°42'05" West;

Thence southerly, along said curve to the right, through a central angle of 05°02'31", an arc length of 4.40 feet to the beginning of a reverse curve, concave easterly, whose radius is 50.00 feet;

Thence southeasterly, along said curve to the left, through a central angle of 152°45'49", an arc length of 133.31 feet;

Thence South 13°25'23" East, a distance of 133.83 feet;

Thence North 89°52'56" East, a distance of 234.74 feet to a point on a non-tangent curve, concave northwesterly, whose radius is 1190.00 feet and whose center bears North 77°40'28" West;

Thence southwesterly, along said curve to the right, through a central of 27°07'45", an arc length of 563.46 feet;

Thence South 39°27'17" West, a distance of 364.62 feet to the beginning of a tangent curve, concave northerly, whose radius is 12.00 feet;

Thence westerly, along said curve to the right, through a central of 90°00'00", an arc length of 18.85 feet;

Thence North 50°32'43" West, a distance of 494.83 feet;

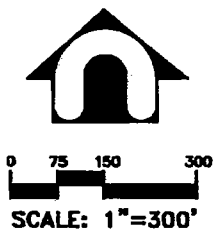
Thence North 00°00'01" East, a distance of 445.40 feet;

Thence North 79°11'13" East, a distance of 28.15 feet;

Thence North 00°00'01" East, a distance of 254.53 feet to the TRUE POINT OF BEGINNING;

Said parcel containing 13.782 acres, more or less.

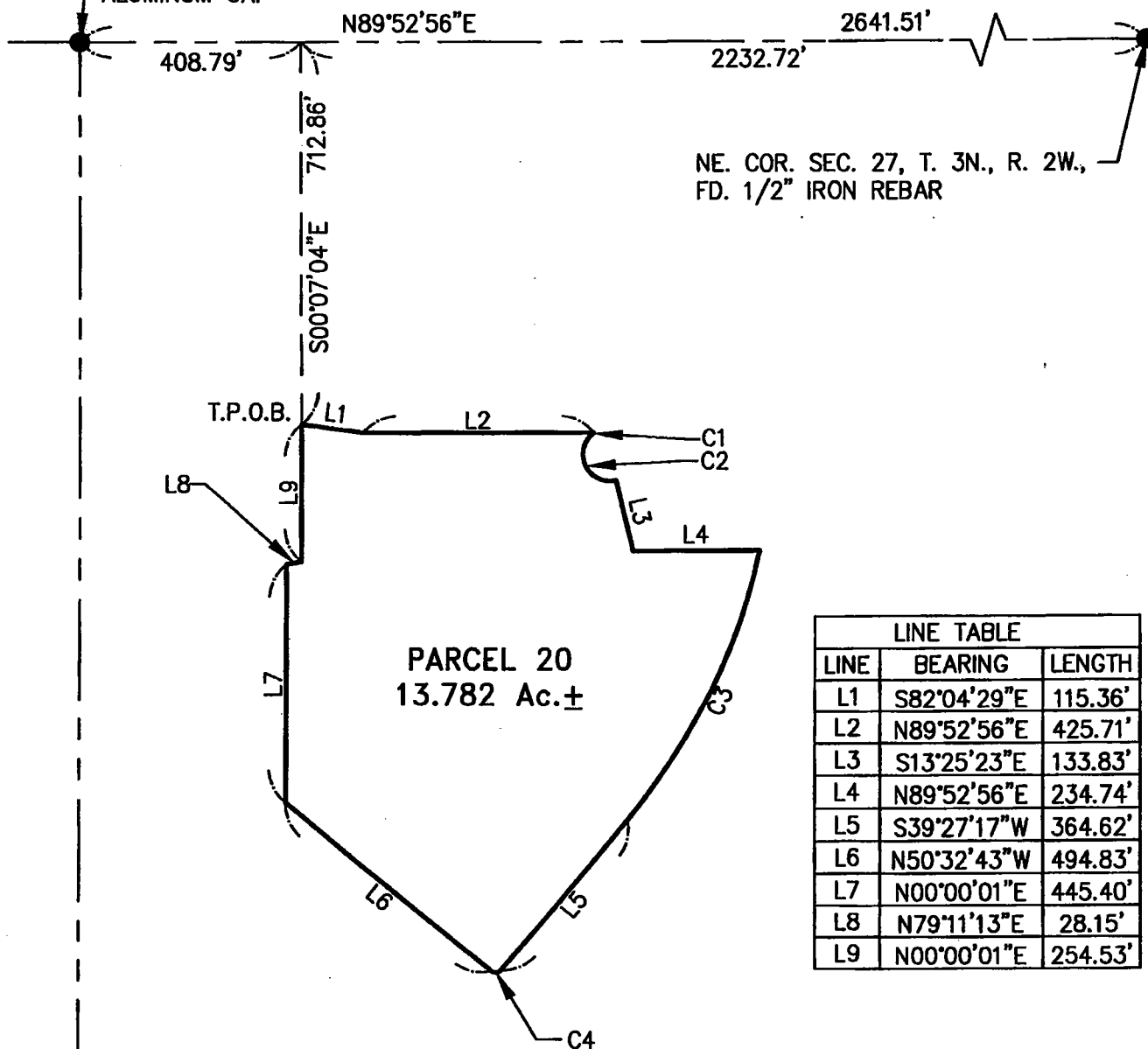




CURVE TABLE			
CURVE	RADIUS	LENGTH	DELTA
C1	50.00'	4.40'	5°02'31"
C2	50.00'	133.31'	152°45'49"
C3	1190.00'	563.46'	27°07'45"
C4	12.00'	18.85'	90°00'00"

P.O.C.

N. 1.4 COR. SEC. 27, T. 3N., R. 2W.,
FD. 3" MARICOPA COUNTY
ALUMINUM CAP



NE. COR. SEC. 27, T. 3N., R. 2W.,
FD. 1/2" IRON REBAR

PARCEL 20
13.782 Ac.±

LINE TABLE		
LINE	BEARING	LENGTH
L1	S82°04'29"E	115.36'
L2	N89°52'56"E	425.71'
L3	S13°25'23"E	133.83'
L4	N89°52'56"E	234.74'
L5	S39°27'17"W	364.62'
L6	N50°32'43"W	494.83'
L7	N00°00'01"E	445.40'
L8	N79°11'13"E	28.15'
L9	N00°00'01"E	254.53'

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SCALE:
1"=300'

SHEET
1 OF 1

JOB NO.:
STAR0000-0114

EXHIBIT FOR CORTESSA PARCEL 20 - SCHOOL SITE



DAVID EVANS
AND ASSOCIATES INC.
2141 East Highland Avenue, Suite 200
Phoenix, Arizona 85016
Phone: 602.978.9181

DRAWN BY: mmc

CHECKED BY:

DATE: 05/04

**CORTESSA
COMMERCIAL PARCEL 21**

A portion of the southeast quarter of Section 27, Township 3 North, Range 2 West of the Gila and Salt River Base and Meridian, Maricopa County, Arizona being more particularly described as follows:

COMMENCING at a 2 ½ inch Maricopa County brass cap in a pothole, found at the southeast corner of said Section 27, from which a 2 inch Maricopa County aluminum cap in a pothole, found at the south quarter corner of said Section 27 bears South 89°50'33" West, a distance of 2638.66 feet;

Thence South 89°50'33" West, along the south line of the southeast quarter of said Section 27, a distance of 904.39 feet;

Thence North 00°09'27" West, a distance of 70.00 feet to the TRUE POINT OF BEGINNING;

Thence North 00°01'04" East, a distance of 660.00 feet

Thence North 89°50'33" East, a distance of 839.60 feet;

Thence South 00°01'04" West, paralleling the east line of the southeast one-quarter of said Section 27, a distance of 631.50 feet;

Thence South 44°55'49" West, a distance of 35.41 feet;

Thence South 89°50'33" West, a distance of 22.40 feet to the beginning of a tangent curve, concave northerly, whose radius is 10056.00 feet;

Thence westerly, along said curve to the right, through a central angle of 01°30'42", an arc length of 265.31 feet;

Thence South 89°50'33" West, a distance of 526.92 feet to the TRUE POINT OF BEGINNING.

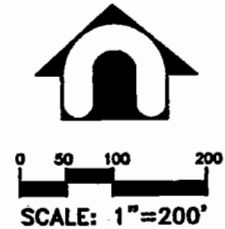
Said parcel containing 12.696 acres, more or less.



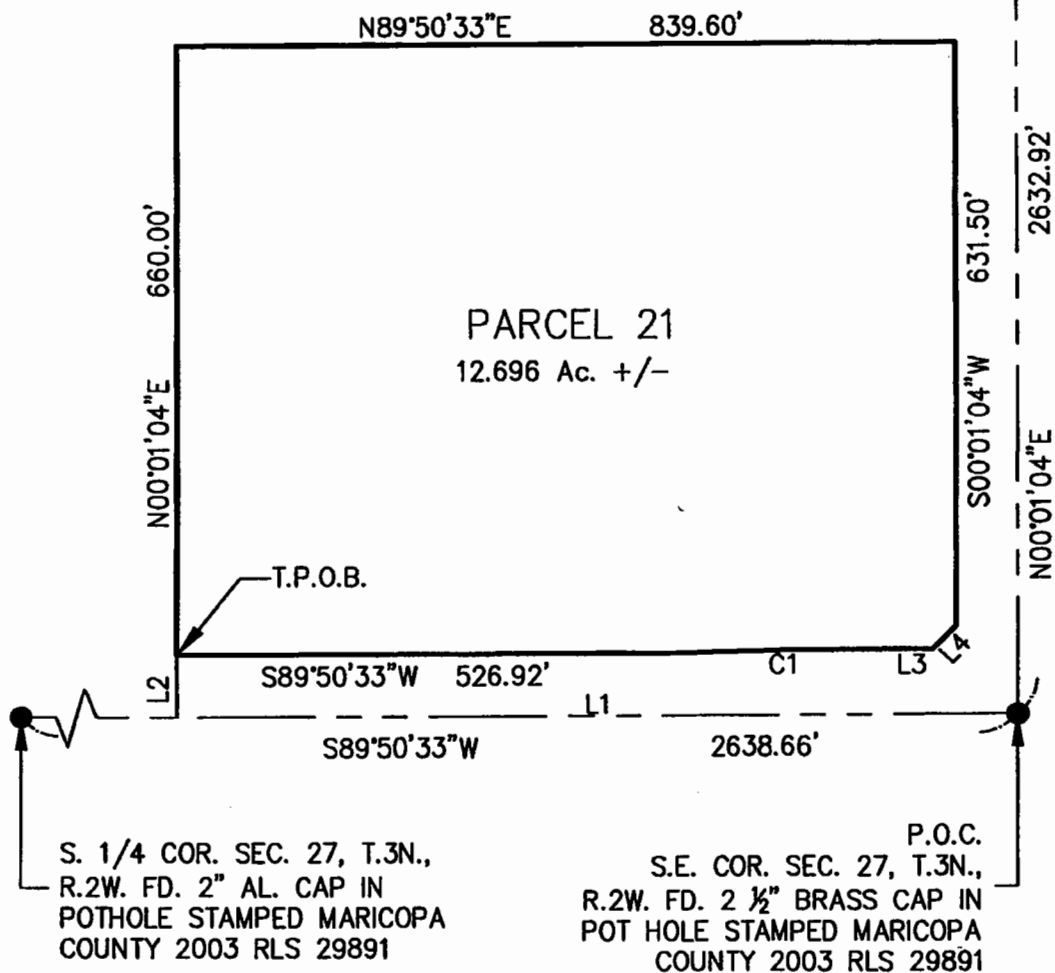
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LINE TABLE		
LINE	BEARING	LENGTH
L1	S89°50'33"W	904.39'
L2	N00°09'27"W	70.00'
L3	S89°50'33"W	22.40'
L4	S44°55'49"W	35.41'

CURVE TABLE			
CURVE	RADIUS	LENGTH	DELTA
C1	10056.00'	265.31'	1°30'42"



E. 1/4 COR. SEC. 27, T.3N.,
R.2W. FD. 2" AL. CAP
STAMPED MARICOPA COUNTY
2003 RLS 29891



SCALE: 1"=200'
SHEET 1 OF 1
JOB NO.: STAR0000-0114

**EXHIBIT FOR
CORTESSA
COMMERCIAL PARCEL NO. 21**

DE
**DAVID EVANS
AND ASSOCIATES INC.**
2141 East Highland Avenue, Suite 200
Phoenix, Arizona 85016
Phone: 602.676.8181

DRAWN BY: ZJCP
CHECKED BY:
DATE: 05/04

**CORTESSA
COMMERCIAL PARCEL 22**

A portion of the southeast quarter of Section 27, Township 3 North, Range 2 West of the Gila and Salt River Base and Meridian, Maricopa County, Arizona being more particularly described as follows:

COMMENCING at a 2 ½ inch Maricopa County brass cap in a pothole, found at the southeast corner of said Section 27, from which a 2 inch Maricopa County aluminum cap in a pothole, found at the south quarter corner of said Section 27 bears South 89°50'33" West, a distance of 2638.66 feet;

Thence South 89°50'33" West, along the south line of the southeast quarter of said Section 27, a distance of 904.39 feet;

Thence North 00°09'27" West, a distance of 70.00 feet to the TRUE POINT OF BEGINNING;

Thence South 89°50'33" West, a distance of 373.41 feet to the beginning of a tangent curve, concave northeasterly, whose radius is 12.00 feet;

Thence northwesterly, along said curve to the right, through a central angle of 90°00'00", an arc length of 18.85 feet;

Thence North 00°09'27" West, a distance of 452.45 feet;

Thence South 90°00'00" East, a distance of 386.82 feet;

Thence South 00°01'04" West, a distance of 463.39 feet to the TRUE POINT OF BEGINNING.

Said parcel containing 4.111 acres, more or less.



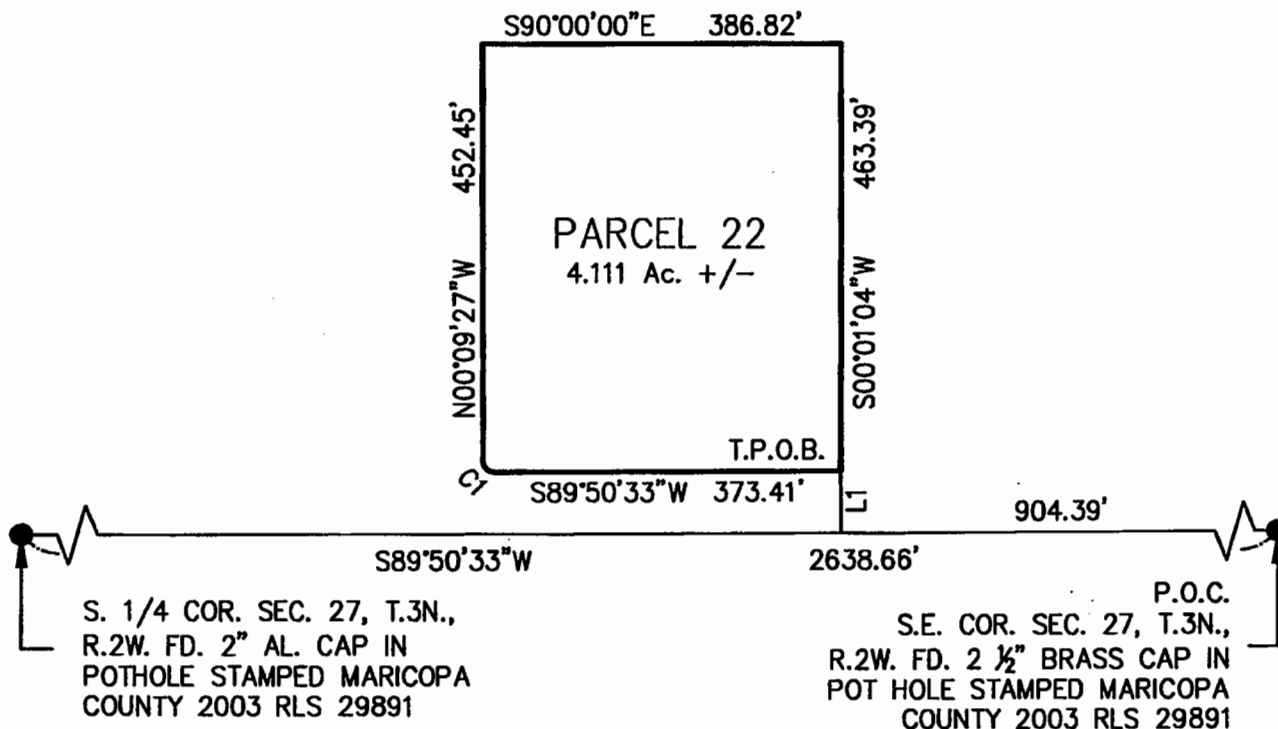
P:\STAR0000-0114\Star0114-1\dwg\SV\Builders\Parcels\Exhibits\STAR0114-1\SVEMBP22.dwg maba May 21, 2004 3:43:46pm



0 50 100 200
SCALE: 1"=200'

LINE TABLE		
LINE	BEARING	LENGTH
L1	N00°09'27"W	70.00'

CURVE TABLE			
CURVE	RADIUS	LENGTH	DELTA
C1	12.00'	18.85'	90°00'00"



SCALE: 1"=200'
SHEET 1 OF 1
JOB NO.: STAR0000-0114

**EXHIBIT FOR
CORTESSA
COMMERCIAL PARCEL NO. 22**

**DAVID EVANS
AND ASSOCIATES INC.**
2141 West Highland Avenue, Suite 200
Phoenix Arizona 85016
Phone: 602.978.6161

DRAWN BY: ZJCP
CHECKED BY:
DATE: 05/04

BYLAWS
OF
CORTESSA COMMUNITY ASSOCIATION

ARTICLE 1
IDENTITY

1.1 The Association. These Bylaws shall govern the operation of the Cortessa Community Association, an Arizona nonprofit corporation (the "Association"), formed pursuant to that certain Declaration of Covenants, Conditions, Restrictions, Reservations and Easements for Cortessa (the "Declaration"), as it may be amended from time to time, which was first recorded in the records of the County Recorder of Maricopa County, Arizona on June 18, 2004, at Document No. 2004-0694832.

1.2 Terms. Unless otherwise defined in these Bylaws, capitalized terms and phrases used herein shall have the same meanings given those terms and phrases in the Declaration or the Articles of Incorporation of the Association, as amended from time to time (the "Articles").

1.3 Priority of Articles and Declaration. The provisions of the Articles and the Declaration shall have priority over these Bylaws, and any provision of these Bylaws that is contrary to or inconsistent with the Articles or the Declaration shall be void to the extent of the inconsistency. Except as otherwise provided in the Declaration, the Articles or these Bylaws, the provisions of the Arizona nonprofit corporation act, A.R.S. §§ 10-3101 et seq., as may be amended or modified from time to time, or any successor statute or law thereto, shall govern the regulation and management of the affairs of the Association.

1.4 Principal Office. The principal office of the Association shall be located at 6730 N. Scottsdale Road, Suite 230, Scottsdale, Arizona 85253.

ARTICLE 2
MEMBERSHIP; MEETINGS

2.1 Membership. The Members of the Association and their voting rights shall be as provided in the Declaration. It is hereby acknowledged that the Declaration may be amended or supplemented from time to time to change the qualifications and requirements of the Members and their voting rights.

2.2 Location of Meetings. Meetings of the Members shall be held at such place as may be designated by the Board of Directors of the Association (the "Board") and stated in the notice of meeting.

2.3 Annual Meeting. An annual meeting of Members shall be held on such date and at such time as shall be designated from time to time by the Board and stated in the notice of the meeting for the purpose of transacting business authorized to be transacted by the Members.

2.4 Special Meetings. Special meetings of the Members may be called for any purpose or purposes by the President of the Association, the Board, or by delivery of one or more written demands of the Members having at least twenty-five percent (25%) of the votes entitled to be cast at such meeting.

2.5 Notices and Quorums. Unless otherwise provided in the Declaration, written notice of any annual or special meeting of the Members shall be sent to all Members not less than fifteen (15) days nor more than fifty (50) days in advance of the meeting and shall specify the time and place of the meeting. Any notice of a special meeting also shall specify the purpose for which it is called. Unless otherwise provided in the Declaration, at any meeting, the presence, in person or by proxy, of the holders of ten percent (10%) of the votes entitled to be cast by the Members at the meeting shall constitute a quorum. If the required quorum is not present, a majority of those present may adjourn the meeting from time to time. At any adjourned meeting, any business that might have been transacted at the meeting as originally called may be transacted without further notice. Unless the vote of a greater number is required by the Declaration, the Articles, these Bylaws or applicable law, the affirmative vote of a majority of the votes represented and entitled to be cast at duly held meeting at which quorum is present shall be binding as the act of the Members. Written notice of each meeting shall be given by, or at the direction of, the Secretary of the Association or person authorized to call the meeting. Notice shall be given by mailing a copy of the notice, postage prepaid, to each Member, addressed to the Member at the address last appearing on the books of the Association or supplied by the Member for the purpose of notice.

2.6 Proxies. At all meetings of Members, each Member entitled to vote may vote in person or by proxy. All proxies must be in writing and must be filed with the Secretary of the Association before or at the time of the meeting. The Board may, from time to time, specify a specific form of proxy to be used in connection with a particular meeting. Every proxy shall be revocable and shall automatically terminate (a) as of the date the Member giving the proxy ceases to be a Member, or (b) eleven (11) months from the date of its execution, unless otherwise provided in the proxy. Memberships held by a legal personal representative or by a court appointed receiver may be voted, in person or by proxy, by the representative or receiver without the transfer (except as required under a valid voting trust agreement) of membership into the name of the trustee or receiver.

2.7 Action Taken Without a Meeting. Any action required or permitted to be taken at a meeting of the Members may be taken without a meeting if a consent in writing, setting forth the action taken, is signed by the greater of (a) the percentage required under Arizona law, or (b) the percentage required under the Declaration, the Articles or these Bylaws. The consent may be executed in counterparts and shall have the same effect as a vote of the Members at a duly convened meeting.

2.8 Action by Written Ballot. Any action that the Association may take at any annual, regular or special meeting of the Members may be taken without a meeting if the Association delivers a written ballot to every Member entitled to vote on the matter. The written ballot shall set forth each proposed action and provide an opportunity to vote for or against each proposed action. All solicitations for action to be voted by written ballot shall: (1) indicate the

number of responses needed to meet the quorum requirements; (2) state the percentage of approvals necessary to approve each matter other than election of directors; and (3) specify the time by which a ballot must be delivered to the Association in order to be counted, which time shall not be less than three (3) days after the date that the Association delivers the ballot. Once the Association has received a written ballot, the ballot may not be revoked. Approval by written ballot pursuant to this Section 2.8 is valid only if both the number of votes cast by ballot equals or exceeds the quorum required to be present at a meeting authorizing the action and the number of approvals equals or exceeds the number of votes that would be required to approve the matter at a meeting at which the total number of votes cast was the same as the number of votes cast by ballot.

2.9 Irregularities. All information and/or irregularities in calls, notices of meetings and in the manner of voting, form of proxies, credentials and method of ascertaining those present, shall be deemed waived if no objection is made at the meeting or if waived in writing.

2.10 Record Date. For the purpose of determining Members entitled to notice of (or to vote at) any meeting of Members, or in order to make a determination of Members for any other purpose, the Board may direct the membership books to be closed for a stated period, not to exceed fifteen (15) days prior to the event concerned ("Record Date").

ARTICLE 3 BOARD OF DIRECTORS

3.1 Number and Qualification. The business, property and affairs of the Association shall be managed, controlled and conducted by the Board, which shall consist of not less than three (3) nor more than fifteen (15) members (each, a "Director") determined in accordance with the Declaration.

3.2 Powers and Duties. Subject to any restrictions set forth in the Articles, the Board shall have the powers and duties necessary for the administration of the affairs of the Association and may exercise and perform all of the rights, duties, privileges, obligations and responsibilities of the Board as described in the Declaration, the Articles and these Bylaws. To the extent permitted by law, the Board may delegate to one or more committees and to officers, employees or agents of the Association such duties and powers as appear to the Board to be in the best interests of the Association; provided, however, that no such delegation shall relieve the Board of its obligation to perform any delegated duty.

3.3 Election and Term of Office. Each Director shall serve for a one-year term. The names and addresses of the persons who shall serve as the initial Directors of the Association are set forth in the Articles. Prior to the Transition Date, the Declarant shall have the absolute power and right to appoint and remove the members of the Board, including filling any vacancies in the office of any Board member. After the Transition Date, the Members shall elect one Director for a term of three years, one Director for a term of two years and one Director for a term of one year. At each annual meeting thereafter, the Members shall appoint or elect, as the case may be, the number of Directors as is appropriate to replace those Directors whose terms have expired and to maintain staggered terms for the Directors for a term of three years each. If the number of

Directors is increased above three after the Transition Date, the additional Directors shall be elected to serve such terms so that, to the extent possible, a proportionate number of Directors are serving in staggered terms.

3.4 Vacancies; Removal of Board Members. If the office of any Board member becomes vacant by reason of death, resignation, retirement, disqualification, removal from office, disability or otherwise, such Board member will cease to be a Board member, and the Board member's place on the Board shall be deemed vacant. On and after the Transition Date, vacancies on the Board shall be filled by vote of the remaining Board members, and the person selected to fill any vacancy shall serve for the remainder of the term of the Board member he replaces. A Board member may be removed from the Board with or without cause in the same manner as such Board member was appointed or elected to the Board.

3.5 Resignation of Board Members. Any Board member may resign at any time by sending written notice of resignation to the Secretary. The resignation of a director shall take effect on the date of receipt of such notice or at any later time specified therein and, unless otherwise specified therein, the acceptance of any resignation shall not be necessary to make it effective.

3.6 Regular Meetings. Regular meetings of the Board may be held at such times and places as shall be determined, from time to time, by a majority of the Directors. Notice of a meeting need not be given to any Director who has signed a waiver of notice or a written consent to holding of the meeting.

3.7 Special Meetings. Special meetings of the Board may be called by the President of the Association on not less than seventy-two (72) hours' prior notice by telephone or in writing signed by the President and given to each Director, personally, by mail, telephone or facsimile, which notice shall state the time, place and purpose of the meeting. Special meetings of the Board also may be called in like manner and on like notice upon the written request of at least two (2) of the Directors other than the President. Notice of any such meeting need not be given to any Director who signed a waiver of notice or a written consent to holding of the meeting. Special meetings shall be held at the time and place specified in the notice of the meeting.

3.8 Waiver of Notice. Before, at, or after any meeting of the Board, any Director may, in writing, waive notice of the meeting, and the waiver shall be deemed equivalent to the giving of notice of the meeting. Attendance by a Director at any meeting of the Board shall be deemed to be a waiver of notice by him of the time and place thereof. If all the Directors are present at any meeting of the Board, no notice shall be required, and any business may be transacted at the meeting.

3.9 Quorum. A majority of the Board shall constitute a quorum for the transaction of business, but if there is less than a quorum present at any meeting of the Board, a majority of those Directors present may adjourn the meeting from time to time. No business of the Board shall be transacted at any meeting of the Board unless a quorum is present. If a quorum is present when a meeting is convened, the quorum shall be deemed to exist until the meeting is

adjourned, notwithstanding the departure of one or more Directors. Every act or decision done or made by a majority of the Directors at a duly held meeting at which a quorum is present shall be regarded as the act of the Board, unless the Articles, the Declaration or these Bylaws otherwise specifically require the affirmative vote of a different number of Directors on a specific matter.

3.10 Adjournments. The Board may adjourn any meeting from day to day or for such other time as may be prudent or necessary in the interests of the Association, provided that no meeting may be adjourned for a period longer than thirty (30) days. In addition, the Board may, with the approval of a majority of a quorum of its members, adjourn a Board meeting and reconvene in executive session to discuss and vote upon personnel matters, litigation in which the Association is or may become involved and orders of business of a similar nature.

3.11 Telephonic Communication. Unless otherwise prohibited by statute or resolution of the Board, meetings of the Board, whether regular or special, may be held by means of a conference telephone call or similar communications equipment arrangement that allows all persons participating in the meeting to hear each other. Participation by means of communications equipment shall constitute presence in person at the meeting.

3.12 Action Taken Without a Meeting. The Directors shall have the right to take any action in the absence of a meeting that they could take at a meeting by obtaining from the Directors a unanimous written consent to resolutions specifying the action. The consent may be executed in counterparts and shall have the same effect as a vote of the Directors at a duly convened meeting of the Board.

3.13 Committees. The Board may, by resolution, appoint committees of the Board comprised of Directors, which committees shall have the powers and authority designated in the resolution or resolutions establishing them.

3.14 Compensation. No Director shall receive compensation for any service he or she may render to the Association unless such compensation is approved by Members having more than fifty percent (50%) of the votes entitled to be cast by the Members present in person or by proxy at a meeting of the Members at which quorum is present. However, any Director may be reimbursed for his or her actual expenses incurred in the performance of his or her duties as a director.

3.15 Managing Agent. The Board may employ for the Association a "Managing Agent" at a compensation established by the Board. The Managing Agent shall perform such duties and services as the Board shall authorize, including, but not limited to, all of the duties listed in the Declaration except for such duties and services that under the Declaration may not be delegated to the Managing Agent. The Board may delegate to the Managing Agent all of the powers granted to the Board or the officers of the Association by the Declaration, the Articles or these Bylaws other than the power (i) to adopt the annual budget, any amendment thereto or to levy assessments; (ii) to adopt, repeal or amend Association Rules; (iii) to designate signatories on Association bank accounts; (iv) to borrow money on behalf of the Association ; or (v) to

acquire real property. So long as the Declarant owns any Lot or Parcel, any change in the Managing Agent must be approved in writing by the Declarant.

ARTICLE 4 OFFICERS

4.1 Designation. The principal officers of the Association shall be a President, a Secretary, a Treasurer and, if deemed necessary by the Board, one or more Vice Presidents, all of whom shall be elected by the Board. The Board may appoint an Assistant Secretary, an Assistant Treasurer, and such other officers as in their judgment may be necessary. Any one individual may hold two or more offices at the same time, unless prohibited by Arizona law.

4.2 Election of Officers. The officers of the Association shall be elected from time to time by the Board.

4.3 Removal of Officers. Upon an affirmative vote of a majority of the members of the Board, any officer may be removed, either with or without cause, and his or her successor elected.

4.4 Resignation of Officers. Any officer may resign at any time by giving written notice to the Board, the President or the Secretary. The resignation of an officer shall take effect on the date of receipt of such notice or at any later time specified therein, and, unless otherwise specified therein, the acceptance of a resignation shall not be necessary to make it effective.

4.5 Vacancies. A vacancy in any office may be filled by vote of a majority of the Board. The officer elected to a vacancy shall serve for the remainder of the term of the officer he replaces.

4.6 President. The President shall be the chief executive officer of the Association. The President shall preside at all meetings of the Board. The President shall have all of the general powers and duties that are normally vested in the office of the President of a corporation, including, but not limited to, the power to appoint committees from among the Directors from time to time as the President may, in the President's discretion, decide is appropriate to assist in the conduct of the affairs of the Association.

4.7 Vice President. The Vice President, if a Vice President is chosen (or the most senior Vice President, if there shall be more than one), shall take the place of the President and perform the duties of the President whenever the President shall be absent, unable to act or refuses to act. If neither the President nor a Vice President is able to act, the Board shall appoint some other member of the Board to do so on an interim basis. A Vice President shall also perform such other duties as shall from time to time be imposed upon him or her by the Board.

4.8 Secretary. The Secretary shall keep the minutes of all meetings of the Board; shall have charge of the ownership books and such other books and papers as the Board may direct; and shall, in general, perform all the duties incident to the office of the Secretary.

4.9 Treasurer. The Treasurer shall have the responsibility for the Association's funds and securities and shall be responsible for keeping full and accurate accounts of all receipts and disbursements in books belonging to the Association. The Treasurer shall be responsible for the deposit of all moneys and other valuable effects in the name, and to the credit, of the Association in the depositories as may from time to time be designated by the Board.

ARTICLE 5 MISCELLANEOUS

5.1 Books and Accounts. Subject to the provisions of the Articles, these Bylaws and applicable law, the Board, at all times, shall keep, or cause to be kept by the Treasurer, true and correct records of account in accordance with generally accepted accounting practice.

5.2 Execution of Corporate Documents. All notes, checks and contracts or other obligations shall be executed on behalf of the Association by one or more individuals as the Board shall designate from time to time.

ARTICLE 6 AMENDMENT OF THE BYLAWS

These Bylaws may be amended by the affirmative vote of a majority of the Board; provided, however, that for as long as there is a Class B Membership (if and to the extent that the Declaration previously has been submitted to and approved by the FHA and/or the VA and, at the time of the action in question, the applicable agency has insured or guaranteed an outstanding loan against any portion of the Property), any amendment of these Bylaws shall be subject to prior approval of the Federal Housing Administration, as applicable, or the Department of Veterans Affairs.

Certificate of Adoption

The undersigned secretary does hereby certify that the foregoing bylaws were adopted by the board of directors of Cortessa Community Association, pursuant to a vote of the majority of the board of directors.

Dated: July 12, 2004.

By: Jon A Munson

Name: Jon Munson

Its: Secretary

JUN 14 2004

ARTICLES OF INCORPORATION
OF
CORTESSA COMMUNITY ASSOCIATION

APPROVED Byline
DATE 6-14-04
1133467-0

The undersigned hereby sets forth the following statements for the purpose of forming a nonprofit corporation under and pursuant to the laws of the State of Arizona and, for that purpose, hereby adopts these Articles of Incorporation.

ARTICLE I
NAME

The name of the corporation is Cortessa Community Association (the "Association").

ARTICLE II
DEFINITIONS

Unless otherwise specifically provided herein, capitalized terms and phrases used herein shall have the meanings given those terms in that certain Declaration of Covenants, Conditions, Restrictions, Reservations and Easements for Cortessa, as amended from time to time (the "Declaration"). The Declaration is expected to be recorded in the records of the County Recorder of Maricopa County, Arizona, concurrently with, or shortly following, incorporation of the Association. Until such time as the Declaration is recorded, the Association shall have no members, and its affairs shall be managed entirely by the board of directors of the Association (the "Board") without any vote or consent of any other person. Upon recordation of the Declaration, the persons or entities defined as "Members" in the Declaration shall be the members of the Association. These Articles are effective as of the date they are duly filed with the Arizona Corporation Commission, however, the provisions of these Articles relating to the Declaration or the members of the Association shall not be operative until the Declaration has been recorded.

ARTICLE III
INITIAL BUSINESS

The character of business that the Association initially intends to conduct in Arizona is the fulfillment of all its duties and responsibilities and the exercise of all its rights, powers, privileges and prerogatives under the Declaration.

ARTICLE IV
BOARD OF DIRECTORS

The Board of shall consist of the number of directors as set forth in the Declaration and the Bylaws of the Association. The names and addresses of the three (3) individuals who are to serve as directors until their successors are appointed, or until the first annual election of directors, are as follows:

NAMEADDRESS

Robert C. Speirs

6730 North Scottsdale Road
Suite 230
Scottsdale, Arizona 85253

Kristopher L. Harman

6730 North Scottsdale Road
Suite 230
Scottsdale, Arizona 85253

Jon A. Munson

6730 North Scottsdale Road
Suite 230
Scottsdale, Arizona 85253ARTICLE V
STATUTORY AGENT

Mark A. Vander Stoep, whose address is 6303 South Rural Road, Suite 3, Tempe, Arizona 85283, is hereby appointed statutory agent of the Association. The Board may revoke the appointment of the agent at any time and shall have the power to fill any vacancy.

ARTICLE VI
INCORPORATOR

The name and address of the incorporator is Chris B. Heeter, 6730 N. Scottsdale Road, Suite 230, Scottsdale, Arizona 85253.

ARTICLE VII
MEMBERSHIP

The Association shall have members and their voting rights shall be as provided in the Declaration. It is hereby acknowledged that the Declaration may be amended from time to time to change the qualifications and requirements of members and their respective voting rights.

ARTICLE VIII
AMENDMENTS

Amendment of these Articles shall require the assent of seventy-five percent (75%) of all of the Members who are eligible to vote. Notwithstanding anything contained herein to the contrary, however, the Declarant, for so long as it holds a Class B Membership shall have the right to amend all or any part of these Articles to correct minor errors or omissions. Additionally, Declarant shall have the right to amend these Articles to the extent and with the language requested by the Federal Housing Administration ("FHA"), the Veterans Administration ("VA"), Federal National Mortgage Association or the Federal Home Loan Mortgage Corporation, and to further amend these Articles to the extent requested by any other federal, state or local governmental agency that requests an amendment as a condition precedent to the agency's

approval of these Articles, or by any federally or state chartered lending institution as a condition precedent to lending funds upon the security of any Lot(s) or Parcel(s) or any portions thereof. Any such amendment shall be effected by the filing, by the Board, of Articles of Amendment duly signed by or on behalf of the Association with signatures acknowledged, specifying the errors or omissions in question and/or the federal, state or local governmental agency or the federally or state chartered lending institution requesting the amendment and setting forth the amendatory language requested by the agency or institution. The filing of Articles of Amendment specifying such a request by an agency or institution shall be deemed conclusive proof of the agency's or institution's request for an amendment, and the Articles of Amendment, when filed, shall be binding upon all of the property and all persons having an interest therein.

ARTICLE IX
ELIMINATION OF DIRECTOR LIABILITY; INDEMNIFICATION

To the fullest extent permitted by Arizona law, no director of the Association shall be liable to the Association or its members for damages for any action taken or any failure to take any action as a director. No repeal, amendment or modification of this Article IX, whether direct or indirect, shall eliminate or reduce its effect with respect to any act or failure to act of a director of the Association occurring prior to such repeal, amendment or modification. To the fullest extent permitted by Arizona law, the Association shall indemnify and advance expenses to any person who incurs expenses or liabilities by reason of the fact he or she is or was an officer or director of the Association or is or was serving at the request of the Association as a director, officer, employee or agent of another foreign or domestic corporation, partnership, joint venture, trust, employee benefit plan or other entity. The foregoing indemnification and advancement of expenses shall be mandatory in all circumstances in which the indemnification and advancement of expenses to a director or officer are permitted by law. No repeal, amendment or modification of this Article IX, whether direct or indirect, shall eliminate or reduce its effect with respect to any matter giving rise to indemnification and advancement of expenses occurring prior to such repeal, amendment or modification.

ARTICLE X
CONFLICT WITH DECLARATION

The Association is formed and shall exist pursuant to and for the purpose of effectuating the provisions of the Declaration. In the event of any inconsistency between the terms of the Declaration, as amended or supplemented from time to time, and the terms of these Articles, as amended from time to time, the terms of the Declaration shall control.

IN WITNESS WHEREOF, the undersigned incorporator has executed these Articles this
14th day of JUNE, 2004.

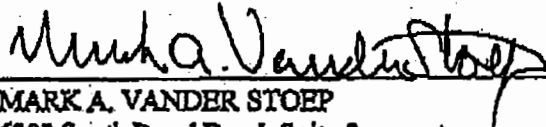
By: C. B. Heeter

Name: Chris B. Heeter

ACCEPTANCE OF STATUTORY AGENT

DATE: June 10, 2004
TO: ARIZONA CORPORATION COMMISSION
INCORPORATING DIVISION
1300 WEST WASHINGTON
PHOENIX, ARIZONA 85007
RE: CORTESSA COMMUNITY ASSOCIATION

Please be advised that MARK A. VANDER STOEP, having been designated Statutory Agent for the above-referenced corporation, approves of such designation and consents to act in such capacity. However, MARK A. VANDER STOEP specifically reserves the right to resign as Statutory Agent in accordance with the provisions of the Arizona Revised Statutes.


MARK A. VANDER STOEP
6303 South Rural Road, Suite 3
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