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**DECLARATION
OF
COVENANTS, CONDITIONS AND RESTRICTIONS
OF
CHANDLER CROSSING HOMEOWNERS ASSOCIATION**

February 8, 1994

DECLARANT:

ELLIOTT HOMES, INC., an Arizona referred to herein as "Declarant."

SUBJECT:

All of Chandler Crossing, a subdivision, which is more particularly described in Exhibit A attached hereto and incorporated herein by this reference.

TOGETHER with such further real property as may be made subject to this Declaration as Annexable Property as defined herein.

All of which is referred to herein as the "Property."

PURPOSE:

Declarant is the owner of both legal and equitable title in and to all the Property, and desires to Provide an orderly plan of development thereof by imposing upon the Property the covenants herein contained.

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DECLARATION

DECLARANT HEREBY DECLARES that for the mutual benefit of all the Property described above and as defined herein, and all those persons now or hereafter holding interests in the Property, the Property is hereby encumbered with and subjected to the covenants, conditions, restrictions, assessments, charges, servitudes, liens, reservations, and easements hereinafter set forth (herein collectively called "Covenants"), which shall run with the land and title to the Property, and all

of which are for the purpose of enhancing and protecting the value, desirability and attractiveness of the Property. These Covenants shall be binding upon the Property and the Owners thereof and other persons holding or acquiring any right, title or interest in the Property from and after the date of recordation of this Declaration, and shall inure to the benefit of each Owner thereof. Declarant hereby makes all conveyances of the Property or portions thereof or interests therein subject to the Covenants herein set forth whether or not expressly so provided in any instrument of conveyance; and by accepting deeds, leases, easements or other grants, or by conveyances of any portion of or interest in the Property, the Owners and other transferees, for themselves and their heirs, executors, administrators, trustees, personal representatives, successors and assigns, each agree that they take their interest in the Property subject to, and each shall be personally bound by, all of the terms and Covenants (including but not limited to the obligation to pay assessments and charges) hereinafter set forth:

ARTICLE I

Definitions

As used in this Declaration and unless otherwise defined herein or the context so requires, the singular shall include the plural, the plural includes the singular, words of one gender shall include all genders, and the following terms shall have the meaning stated:

1.01 "Annexable or Annexed property" means any real property and all improvements thereon that may be added to the property by Declaration supplement.

1.02 "Annual Assessment" means the charges levied and assessed each year pursuant to Article V below.

1.03 "Architectural Committee" means the committee of that name treated hereby pursuant to Article VIII below.

1.04 "Architectural Rules" means the rules, guidelines and standards adopted by the Architectural Committee, as those rules may be amended from time to time.

1.05 "Articles" means the articles of incorporation of the Association as the same may be amended or supplemented from time to time.

1.06 "Assessable Property" means the entire Property, except such part or parts thereof as may from time to time constitute Exempt Property.

1.07 "Assessment Period" means the period of time determined pursuant to Article V below.

1.08 "Assessment Lien" means any lien created and imposed by Article V below.

1.09 "Association" means Chandler Crossing Homeowners Association, its agents, successors and assigns, which Declarant, at its option, shall cause to be incorporated under the laws of the State of Arizona as a nonprofit corporation.

1.10 "Association Documents" means this Declaration, the Articles, the Bylaws, the Association Rules and the Architectural Rules.

1.11 "Association Land" means such part or parts of the Property, together with the buildings and other improvements thereon, as may be owned at any time by the Association, for so long as the Association is the Owner thereof.

1.12 "Association Rules" means the rules, guidelines and standards adopted by the Association, as those rules may be amended from time to time.

1.13 "Board" means the board of directors of the Association.

1.14 "Bylaws" means the bylaws of the Association.

1.15 "Common Area" means those areas of land shown as Tracts A, B and C on the recorded plat of the Property, together with all improvements thereon, and intended to be devoted to the common use and enjoyment of the Owners of the Property.

1.16 "Common Expenses" means expenditures made by or financial liabilities of the Association, together with any allocation for reserves.

1.17 "Covenants" means the covenants, conditions, restrictions, charges, servitudes, liens, encumbrances, reservations, and easements contained in this Declaration and all amendments and supplements to it.

1.18 "Declarant" means the Person named as such on page one of this instrument, and all successors and assigns of Declarant's rights and powers hereunder.

1.19 "Declaration" means this instrument, and all amendments and supplements to it that are duly recorded.

1.20 "Declaration Date" means the date first stated on page one of the instrument.

1.21 "Declarant Supplement" means the instrument defined in section 2.04.

1.22 "Designee" means a person designated by a Member to exercise certain rights pursuant to section 4.07 below.

1.23 "Dwelling Unit" means any building or part thereof situated upon a Lot and intended for use and occupancy as a place of dwelling by a Single Family.

1.24 "Exempt Property" means:

A. All land and improvements in the Property owned by or dedicated to a public or governmental authority for so long as the public or governmental authority is the owner or beneficiary thereof.

B. All Association Land.

C. Any and all areas designated as a Common Area or an approved and Recorded subdivision plat.

1.25 "First Mortgage": See Mortgage.

1.26 "Lot" means any plot of land shown and defined as such on the Recorded Plat of the Property.

1.27 "Member" means every person or entity who holds membership in the Association.

1.28 "Mortgage" means any recorded, filed or otherwise perfected instrument that is not a fraudulent conveyance under Arizona law, given in good faith and for valuable consideration as security for the performance of an obligation, including but not limited to deeds of trust, but shall not include any instrument creating or evidencing solely a security interest arising under the Uniform commercial Code as adopted in Arizona under Arizona Revised Statutes, sections 47-1101 et seq. "**First Mortgage**" means a purchase-money mortgage that is the first and most senior of all mortgages upon the same property.

1.29 "Mortgagee" means a person secured by a Mortgage, and shall include the trustee and the beneficiary under any deed of trust.

1.30 "Mortgagor" means the person delivering a Mortgage.

1.31 "Occupant" means a person or persons, whether or not an Owner, in rightful possession of a Lot.

1.32 "Owner" means the Person who is the record owner or holder of title to a Lot that is part of the Property. The term Owner shall include any person holding fee simple title to any Lot, including Declarant, but shall exclude Persons having any interest merely as security for the performance of an obligation. Further, if a Lot is sold pursuant to a recorded contract of sale to a purchaser who resides therein, then pursuant to the doctrine of equitable conversion the resident purchaser rather than the title owner shall be considered the Owner so long as the purchaser resides in that Lot. In the case of Lots the fee simple title to which is vested in a trustee pursuant to A.R.S. § 33-801 et seq., the Trustor shall be deemed to be the Owner. In the case of Lots the fee simple title to which is vested in a trustee pursuant to a subdivision trust agreement or similar agreement, the beneficiary of any such trust who is entitled to possession of the trust property shall be deemed the Owner.

1.33 "Parcel" means any area of land designated as a Parcel on the recorded plat of the Property, and also any un subdivided Tract that is subject to this Declaration.

1.34 "Person" means any individual, corporation, partnership, trustee or other entity capable of holding title to real property.

1.35 "Plat" means that certain map or plat of the Property placed of public record, as identified on page one of this instrument, as the same may be amended from time to time.

1.36 "Property" means that certain real property described on page one of this instrument as the "Property."

1.37 "Record" "Recorded" or "Recording" means the past, present or future recordation of a document in the office of the County Recorder of the County in which the Property is situated.

1.38 "Residence" means a single, detached Dwelling Unit on one Lot.

1.39 "Single family" means a group of persons related by blood, marriage or legal adoption, or a group of not more than three unrelated persons maintaining a common household.

1.40 "Special Assessment" means any assessment levied and assessed under this instrument other than an Annual Assessment.

1.41 "Special use fee" means admission charges, special fees, and fines connected with the use of facilities and the Property as authorized by this Declaration that an Owner, Occupant or any other Person is obligated to pay to the Association over, above and in addition to any Annual or Special Assessment or other charge imposed or payable hereunder.

1.42 "Tenant" means a Person lawfully occupying a Lot in the Property under any type of rental arrangement.

1.43 "Visible from neighboring property" means, with respect to any given object, that such object is or would be visible to an individual Six feet tall, standing at ground level on adjacent property, or any street, common area, easement, yard or Residence located within the Property.

ARTICLE II

Declarant, the Declaration, and the Property

2.01. Declaration Intent. Declarant has expended and will expend in Declarant's sole discretion considerable effort and funds to plan and develop the Property. The nature of the development is such that Declarant must for a period maintain control of the manner and course of development to assure continuity and reserved unto itself certain powers and authority deemed and hereby declared to be necessary to the fulfillment of this Declaration, including without limitation those powers, rights and privileges stated in this article.

2.02 Declaration. The above-stated Declaration and any supplemental declarations and amendments are declared and agreed to be in furtherance of a general plan for the development, improvement and sale of the Property and are established for the purpose of enhancing and perfecting the value, desirability and attractiveness of the Property and every part thereof. The Declaration and any supplemental declaration or amendment shall run with the Property for all purposes and shall be binding upon and inure to the benefit of the Association, Declarant, all Owners, Occupants and their successors in interest. Nothing in the Declaration or any supplemental declaration or amendment shall be construed to prevent Declarant from modifying its development plan for the Property or any portions thereof, or from dedicating or conveying portions of the Property or interests therein for uses other than as a Lot or Association Land.

2.03 Disclaimer of Representations. Declarant makes no representations or warranties whatsoever that the Property will be completed in accordance with the plans for the Property as they exist on the date this Declaration is recorded; any Lot subject to this Declaration will be committed to or developed for a particular use or for any use; or the use of any Lot subject to this Declaration will not be changed in the future.

2.04 Declaration Supplement. Declarant may unilaterally and, without further authority than this instrument cause to be Recorded from time to time one or more supplements to this Declaration, called a "Declaration Supplement." A Declaration Supplement shall be executed and acknowledged by Declarant, and upon Recording shall be binding upon

the Property, including the land added thereby. Any such Declaration Supplement shall be construed as a valid amendment of and supplement to this Declaration and fully a part hereof for all purposes to the same extent as if all of the provisions thereof were set forth in this Declaration.

2.05 Land Use Classifications. The Land Use Classifications for Lots and Association Land are hereby established as follows:

A. Residential--Single Family Detached Use, which shall include only Residences and a garage, which may be attached to or separate from the Residence.

B. Association Use, which may include Association Land.

C. School Use.

Notwithstanding the foregoing, the Lots owned by the Declarant may be used for models and sales offices and construction offices for the purpose of selling said Lots.

2.06 Declarant's Easement and Rights. There is hereby reserved to the Declarant and its agents, successors and assigns, an easement upon, across, in, over and under (a) all the Association Lands as the same may from time to time exist, and (b) such of the Property on which development and construction of its and sales of such improvements has not been completed. Such easement is for access, improvement, use, development, construction, maintenance, exhibit and sale purposes in connection with the improvement, development and sale of the Property. Declarant and its activities, including but no limited to construction of any improvement or performance of any work, shall be exempt from the architectural control provisions hereof and of any amendment or supplement. Declarant specifically reserves the right to delegate, assign, share or grant all or any part of the rights, privileges or authority reserved to Declarant under this Declaration (including but not limited to the easements and rights contained in this section), or all or any part of the exemptions granted to Declarant from provisions of this Declaration, whether by provision herein relating to architectural control and review, further subdivision, property use restrictions, rezoning and utility installation or relocation, upon such conditions as Declarant shall deem appropriate, to any one or more grantees, all or any of which may mutually hold such rights, privileges, authority or exemptions concurrently with and not to the exclusion of each other and Declarant.

2.07 Declarant's Utility Easement. A blanket easement upon, across, over, and under the Lots for the installation and maintenance of the electric, telephone, water, gas, CATV, drainage facilities, sanitary sewer, or similar utility lines, as shown on the Plat as it may be amended from time to time, and as may be hereafter required to service the Common Area, is hereby reserved by Declarant, together with the right to grant and transfer the same while Declarant holds Class B membership. This easement shall be for the benefit of Declarant, its assigns, and any utility or service company constructing facilities on the property. This easement shall in no manner adversely affect any other recorded easements.

ARTICLE III

The Association

3.01 Formation of Association; Authority. The Association shall be formed as a nonprofit Arizona corporation charge with the duties and invested with the powers prescribed by law and set forth in the Articles, Bylaws, and this Declaration. The Association is hereby granted the power and authority to administer & enforce the Covenants and to exercise the rights, powers and duties set forth in this Declaration. Such power and authority shall not be in limitation of, but shall be in addition to any power or right that Declarant or any Owner or other Person may have to enforce this Declaration according to its terms. The power of the Association shall be exercised by action duly and validly taken by the Board, its duly authorized members, employees, agents, committees or other representatives.

3.02 Declaration Controls. No provision of the Articles of Incorporation, Bylaws or other governing document of the Association shall prevail over a conflicting provision of this Declaration, as it may be amended from time to time. Nor shall any act be authorized or taken, nor any policy be proposed or promulgated by or under the authority of the Association by any means other than amendment of this Declaration, if the effect of same is to accomplish a purpose or result that would otherwise require an amendment hereof. Nothing herein shall be deemed to restrict the Association from any action or any provision in the Articles that is not in conflict with this Declaration.

3.03 Association Rules. By a majority vote of the Board, the Association may from time to time adopt, amend and repeal rules and regulations to be known as the "Association Rules." Such rules may, without limitation, govern use of the Property, including restricting or imposing a charge for the use of any portion of the Property by Owners or Occupants or

others, interpret this Declaration, or establish procedures for operation of the Association or the administration of this Declaration; provided, however, that the rules shall not be inconsistent with this Declaration, the Articles or Bylaws. A copy of the rules as they may from time to time be adopted, amended or repealed shall be maintained in the office of the Association and shall be mailed or otherwise delivered to each Owner upon the Owner's request upon purchase of a Lot and later, and a copy may be placed of public record at the election of the Board. Upon such mailing or delivery or recording, the rules shall have the same force and effect as if they were set forth in and were part of this Declaration.

3.04 Association's Rights of Enforcement of Provisions of Other Instruments Affecting the Property. The Association, as the agent and representative of the Owners, shall have the right, but not the obligation, to enforce any and all covenants, restrictions, reservations, charges, servitudes, assessments, conditions, liens or easements provided for in any declaration, deed or other instrument affecting all or any part or parts of the Property, including but not limited to Declaration Supplement or other amendmentary or supplemental instrument, provided such instrument shall have been executed pursuant to, or subject to, the provisions of this Declaration, or shall otherwise indicate that the provisions of such instrument may be enforced by the Owners or the Association.

3.05 Easements in favor of Association. The Lots are hereby made subject to the following easements in favor of the Association and its directors, officers, agents, employees and independent contractors:

- a. For inspection of the Lots in order to verify the performance by Owners of all items of maintenance and repair for which they are responsible.
- b. For inspection, maintenance, repair and replacement of areas for which the Association is responsible and are accessible only from such Lots.
- c. For correction of emergency conditions in one or more Lots.
- d. For the purpose of enabling the Association, the Board, the Architectural Committee or any other committees appointed by the Board to exercise and discharge the respective rights, powers and duties under the Association Documents.
- e. For inspection of the Lots in order to verify that the provisions of the Association Documents are being complied with the Owners, their guests, tenants, invitees and other occupants of the Lot.

3.06 Contracts with Others; Interested Parties.

A. GENERAL. Subject to the restrictions and limitations contained herein, the Association may enter into contracts and transactions with others, including Declarant, its subsidiaries and affiliates, and such contracts or transactions shall not be invalidated or in any way affected by the fact that one or more directors of the Association is employed by or otherwise connected with such person or entity (including Declarant, its subsidiaries or affiliates), provided that the fact of such interest shall be disclosed or known to all the directors acting upon such contract or transaction, and provided further that the transaction or contract is fair and reasonable; and any such interested director may be counted in determining the existence of a quorum at that meeting of the Board which shall authorize any such contract or transaction, and may vote thereat to authorize any such contract or transaction with like force and effect as if he were not so interested.

B. MANAGEMENT AGREEMENTS. Each Owner, by becoming such, shall be deemed to have agreed to be bound by the terms and conditions of all management agreements entered into by the Association with respect to the Property. A copy of all such management agreements shall be available to each Owner and Mortgagee for reasonable inspection at the offices of the Association. Any management agreement entered into by the Association shall be for a term not in excess of three years and shall provide that it may be canceled with or without cause; without payment of a termination fee (other than amounts then owing), upon ninety days written notice by either party.

3.07 Membership. Every person who is a record Owner, as defined herein, of a fee or undivided percentage fee interest in a Lot that is subject to this Declaration by covenants of record and to assessment by the Association, shall be a Member of the Association. Membership shall be appurtenant to and may not be separated from ownership of any Lot that is subject to assessment by the Association. Ownership of a Lot shall be the sole qualification for membership.

3.08 Voting Rights. Subject to the rights of Declarant, a Member shall be entitled to vote as provided herein for each Lot in which the Member holds the interest required for membership. When more than one Person holds an interest in any Lot, all such Persons shall be Members, but the single-vote for such Lot shall be exercised as they among themselves may determine. In no event shall more than one vote be cast with respect to any one Lot, except as provided for Class B votes.

A Member shall not be permitted to vote at any regular or special meeting of the Association if such Member is delinquent at the time the meeting is held in the payment of any assessment, fee or charge authorized by this Declaration.

3.09 Voting Classes. For purposes of casting votes in the Association, there shall be two classes of Members. Class A shall consist of all Members, with the exception of Declarant until the termination of Class B membership. Class B shall consist solely of Declarant.

3.10 Member's Votes. Voting rights of Members shall be vested and shall be exercisable only at such time and in such manner as shall be provided herein and in the Articles and Bylaws.

A. CLASS A MEMBERS shall be entitled to one voter for each Lot owned.

B. CLASS B DECLARANT shall be entitled to the votes provided in this section in order to assure the development of the Property in accordance with this Declaration:

1. Commencing upon the recording of this Declaration, Class B Declarant shall be entitled to three votes for every Lot owned.

2. Class B Declarant's votes and right to vote shall cease upon the first to occur of the following events:

i. At such time as the total votes vested in Class A Members excluding Declarant equal or exceed the total votes vested in Class B Declarant.

ii. January 1, 2000.

iii. Such earlier time as Declarant shall designate in writing.

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

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

ARTICLE IV

Association Land

4.01. Title to the Common Area. Declarant shall grant and convey to the Association, its successors and assigns, fee simple title to the Common Area as defined herein, subject to the terms and conditions of this Declaration prior to the sale of the first Lot.

4.02 Title to Association Land. All right, title and interest in and to all Association Land shall remain vested in the Association so long as the Association is the owner thereof, and the status of any other Owner as a Member shall not vest any of such right, title and interest in such other Owner. The Association shall have all rights, powers, privileges, duties and obligations as to Association land that a fee owner of land has by law, including the duty to pay ad valorem taxes.

4.03 Owners' Easements of Enjoyment. Every Owner shall have a right and easement of enjoyment in and to Association Land as a tenant in common with every other Owner, and the easement shall pass with the title to every Lot. The easement granted hereby shall be subject to the controls, restrictions and limitations set forth in this Declaration or any Declaration Supplement or amendment, and subject to the further limitation that such easement shall be in conformance with the contemplated use of the Association Land.

4.04 Rules Regulating Use of Association Land. All rights, easements and privileges granted and conferred under this article shall be subject to the exclusive right of the Association to adopt from time to time rules and regulations pertaining to the use of Association Land (including, but not limited to, prohibiting access to areas such as, for example, landscaped rights-of-way not intended by the Association for use by the Owners or others).

4.05 Special Use Fees, Including Fees Chargeable to Users of Association Land. All rights, easements and privileges granted and conferred under this article shall be subject to the exclusive right of the Association to charge Owners, Occupants, and other persons Special Use Fees, including initiation, admission and other fees, in connection with the use of any or all of the Association Land. In establishing or adjusting the amounts of such fees from time to time, the Board, in its absolute discretion, may establish reasonable classifications as to Owners, Residents and other persons.

4.06 Suspension of Rights of Enjoyment in Connection with Enforcement of Covenants. The Association shall have the right to suspend the rights, easements and privileges of any Owner (and the privilege of each Occupant or other person claiming through such Owner) except easements for ingress and egress for any period during which the Assessments or maintenance or other charges assessed to such Owner under this Declaration or any Declaration Supplement remain delinquent and unpaid.

4.07 Delegation of Use; Designee. Any Owner may, in accordance with the rules adopted pursuant to this Declaration and this Declaration and any Declaration Supplement delegate his right of enjoyment in the Association Land to a Designee, which may include the members of his family, his tenants, or his guests or invitees. Nothing in this section shall give any Designee any greater rights than those held at any time by the Owner making the delegation.

4.08 Maintenance Responsibility. Until such time as Declarant has transferred control of the Association to its Class A Members, Declarant will assume responsibility for maintenance, repair and management of the Association Land. The Association shall also assume responsibility periodically to inspect the Association Land in order that minimum standards of repair, design, color and landscaping shall be maintained for beauty, harmony and conservation of values with the entire project.

4.09 Change of Use of Association Land and Procedure. Upon adoption of a resolution by the Board stating that in the Board's opinion the then present use of a designated part of the Association Land is no longer in the best interests of the Owners, the Board shall have the power and right to change the use thereof (and in connection therewith, construct, reconstruct, alter or change the buildings and other improvements thereon in any manner deemed necessary by the Board to accommodate the new use), provided such new use (a) shall be for the benefit of the Owners, (b) shall be approved by the Architectural Committee, and (c) shall be consistent with any deed restrictions and zoning regulations restricting or limiting the use of the Association Land.

4.10 Transfer of Association Land and Procedure. Notwithstanding the rights, easements and privileges granted and conferred by this Declaration, the Board shall have the power and right to sell, assign, dedicate, give, convey or otherwise transfer (herein—after called "transfer") to any person, entity or public body, all or any part or parts of the Association Land free and clear of all rights, easements and privileges; provided, however, that in the event any such transfer is made to some person or entity other than a public body, then such transfer may be made only after a finding by the Board that the part or parts of the Association Land to be transferred are no longer necessary or useful for the Association's purposes or that the transfer will be in the best interests of the Owners of the Property. Notice of the Board's finding shall be published once a week for two consecutive weeks in a newspaper of general circulation in the area. If during the two calendar weeks following the week in which the last publication of such notice occurred there shall be filed with the Association a petition signed by ten percent of the Owners (calculated by number of votes held) protesting or objecting to the transfer, then the transfer may not be made unless it is approved by more than fifty percent of the votes cast by the Owners, in person or by proxy, at a meeting duly called for that purpose.

4.11 Eminent Domain. The term "taking" as used in this section shall mean condemnation by eminent domain or sale under threat of condemnation or in lieu thereof. The Owners hereby appoint the Board and such persons as the Board may designate to represent all of the owners in connection with the taking of all or any portion of Association Land. The Board shall act in its sole discretion with respect to any awards offered or 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. Any awards received on

account of the taking shall be paid to the Association and shall be used as the Board deems appropriate in its sole discretion, including by application to restoration and replacement of the Association Land and the improvements thereon, by retaining any award in the general funds of the Association or by distributing pro rata all or a portion thereof to the Owners based on their most recently assessed respective Annual Assessment obligations to the Association.

4.12 Annexation. Additional real property and all improvements thereon may be added to the Property by Declaration Supplement.

ARTICLE V

Covenants for Assessments

5.03. Creation of Lien and Personal Obligation of Assessments. Each Owner, for himself, his heirs, executors, administrators, trustees, personal representatives, and assigns, by acceptance of a deed for a Lot, whether or not it shall be so expressed in any such deed or other conveyance, is deemed to covenant and agrees to pay and to be personally liable for the assessments, fees and charges provided for hereunder. Each Owner shall be and remain personally liable, regardless of whether such Owner has transferred title to his Lot, for the amount of all assessments, fees and charges that fell due while he was an Owner. No Owner shall escape personal liability for the assessments and charges herein provided by non—use of Association Land or by transfer or abandonment of his Lot or other means. Except as is provided in this article, the personal obligation for all such amounts shall also pass with the Lot to the successor Owners thereof. The liability of a successor Owner shall not relieve any prior Owner of personal liability for the amount of assessments and charges that fell due while the prior Owner was an Owner and Member. The assessments, fees and charges provided for hereunder, together with interest thereon and expenses of collection, including reasonable attorney fees and agent charges, whether or not suit is filed, shall be a charge and a continuing lien upon the Lot against which each assessment is made. Declarant shall not be liable for any assessment authorized herein for any Lot to which it holds title, except for Annual Assessments.

5.02 Purpose of Assessments. The assessments levied by the Association shall be used (a) to promote the recreation, health, safety and welfare of all the residents on the Property, (b) for the improvement, maintenance, repair and landscaping of the Association Land, (c) for the purchase of liability insurance to cover the liability of the Association and its Members for the use of the Association Land, and (d) for such other use as the Board may approve.

5.03 Assessment Periods, Rates and Lien Date. The Assessment Period shall be the calendar year, except that the first Assessment Period shall commence upon the recording of this Declaration and terminate on December 31 of the same calendar year. Thereafter, each assessment shall be deemed imposed and a lien on January 1 of each year. All assessments shall be for the twelve—month period, or in the case of a need to adjust assessment dates a lesser period, then commencing or established by the Board as the Assessment Period each year. Each assessment shall be at a uniform rate stated in dollars per Lot, and shall be a lien upon each Lot from and after the first day of the Assessment Period. Notwithstanding the foregoing, so long as there is Class B membership in the Association, the Annual Assessment for Lots owned by Declarant shall be an amount equal to 25 percent of the Annual Assessment levied against Lots owned by Persons other than the Declarant. If a Lot ceases to qualify for the 25 percent rate of assessment during the period to which an Annual Assessment is attributable, the Annual Assessment shall be prorated between the applicable rates on the basis of the number of days in the Assessment Period that the Lot qualified for each rate.

5.04 Annual Assessment. There is hereby established and imposed an Annual Assessment upon all Assessable Property within the Property.

A. The first Annual Assessment shall have an Assessment Period commencing upon recording of this instrument and ending on December 31 of the same calendar year. The Annual Assessments provided for herein shall commence as to each individual Parcel or Lot on the first day of the month following the original conveyance of such Lot by Declarant to an Owner, and shall be prorated according to the number of months remaining in the Assessment Period.

B. The first Annual Assessment shall not exceed Two Hundred Forty and No/100 Dollars per Lot for Class A members. Each succeeding Annual Assessment shall be at a rate set by the Board or the Members as provided herein.

C. From and after January 1 of the year immediately following the conveyance of the first Lot by Declarant to an Owner, the Board may, without a vote of the membership, increase the maximum Annual Assessment during each fiscal year of the Association by the greater of (i) an amount proportional to the amount of increase during the prior fiscal year in the Consumer Price Index for All Urban Consumers (All Items), U.S. City Average, published by the United States Department of Labor, Bureau of Labor Statistics (1967 = 100), or in the event said index ceases to be published, by any

successor index recommended as a substitute thereof or by the United States Government, or the maximum Annual Assessment established for the previous year. The maximum Annual Assessment may be increased in an amount greater than provided heretofore upon an affirmative vote of two thirds of the Members constituting a quorum at a regular or special meeting duly called for such purpose. Such increase in the maximum Annual Assessment, whether authorized by the Board or by a vote of the Members, shall be fixed and determined at least 30 days prior to the beginning of such Assessment Period. If the Board fails to set such Annual Assessment within the time allocated, the amount of such assessment for any given Assessment Period shall be equal to that amount assessed for the prior Assessment Period.

D. So long as there is a Class B membership in the Association, Declarant shall pay and contribute to the Association, within 30 days after the end of each fiscal year of the Association, or at such other times as may be requested by the Board, such funds as may be necessary, when added to the Annual Assessments levied by the Association, to pay all Common Expenses of the Association as they become due.

5.05 Supplemental Assessments. In the event the Board shall determine that the funds budgeted or available in any fiscal year are, or will become, inadequate to meet all Common Expenses of the Association, it shall immediately determine the amount of such inadequacies and prepare a supplemental budget to levy a supplemental assessment against each Lot. No supplemental assessment shall be levied by the Board until such assessment has been approved by at least two-thirds of the votes entitled to be cast by Members voting in person or by proxy at a meeting duly called for such purpose. The supplemental assessment shall be paid on such dates and in such installments as may be determined by the Board.

5.06 Special Assessments. In addition to the other assessments authorized hereunder, the Association may establish and impose in any year subsequent to January 1 of the year immediately following the conveyance of the first Lot by Declarant to an Owner, a Special Assessment applicable to that year only, upon an affirmative vote of two-thirds of the Members constituting a quorum at a regular or special meeting duly called and noticed for such purpose. Such Special Assessment shall be for any purpose not in conflict with this Declaration.

5.07 General Fund. The Board shall cause proceeds of the Annual Assessments to be deposited into a "General Fund," which shall be the general operating fund for the Association, which may consist of more than one bank depository account, and which may be used in any manner authorized under this Declaration or within the authority of the Association for such funds.

5.08 Capital Improvement Fund.~ The Board may in its discretion establish a "Capital Improvement Fund" to be used only as a sinking fund to make capital improvements to the Property, including but not limited to streets and curbs, in such percentage of the Annual Assessment proceeds as the Board may determine, and ~money deposited therein shall accumulate until revenues are needed.

5.09 Collection of Assessments; Certificate. Assessments shall be collected as provided in this section.

A. Assessments shall be payable on a quarterly or other basis, as the Board shall determine from time to time. Payments shall be due on the dates established by the Board, and shall be delinquent five days thereafter.

B. Written notice of every assessment shall be sent to every Owner subject thereto, but failure to do so shall not affect the validity of the assessment or of any lien premised upon it. The Association shall upon demand furnish a certificate in writing, signed by an officer of the Association, stating whether on the date the certificate is issued the assessments on a specified Lot have been paid, which shall be conclusive evidence of payment of any assessment therein stated to have been paid. The Board may charge a reasonable fee for issuance of such certificate.

5.10 Effect of Nonpayment of Assessments; Remedies of the Association. Except as is otherwise provided herein, any assessment not paid within five days after the due date shall be delinquent, and shall bear interest from the date of the delinquency at the rate set from time to time by the Board, taking into consideration market rates of interest for delinquent obligations. In addition, the Board may establish a late fee. The Association may employ attorneys or other agents for the collection of delinquent assessments. All imposition and collection expenses incurred by the Association and its agents, including reasonable attorney fees, agent fees and other fees and charges, shall be added to the assessment and bear interest accordingly. The Association may bring an action at law against the Owner or other person personally obligated to pay the assessment, or foreclose the lien against the property in accordance with Arizona law relative to realty mortgages, or collect in any other manner permitted by law, singly or in combination and without prejudice to any other remedy. All expenses and costs of any action shall be added to the amount of the assessment.

5.11 Evidence of Lien. It shall not be necessary to the validity, enforceability or binding effect of any lien imposed by authority of this Declaration that it be evidenced by a recorded document other than this Declaration. It shall be sufficient

to establish the amount of the lien in a lien-foreclosure or other action that the complaint describe the unpaid assessment(s) with particularity and that a notice of lis pendens in the usual form be recorded. Notwithstanding other provisions of this section, a certificate stating the amount of any unpaid assessment, acknowledged and recorded by the president or secretary or treasurer or designated agent of the Association, shall be prima facie evidence of the amount of the lien.

5.12 Priority of Assessment Liens. Liens imposed upon the Property by this Declaration shall have the same effect and priority as a lien for real property taxes or other liens imposed for the common welfare and benefit of the Owners, and as such shall without necessity of recording be superior to all mortgages and other conveyances and other non—governmental liens, however imposed. Without limiting the generality of that principle, the following specific terms shall apply to such liens:

A. Sale or transfer of any Lot shall not affect an assessment lien. No sale or transfer shall relieve any Lot from liability for any assessments thereafter becoming due or from the lien thereof.

B. The assessment lien provided for herein shall be subordinate to any lien imposed by a First Mortgage made in good faith and for value. The sale or transfer of any Lot pursuant to foreclosure of such mortgage, or any proceeding in lieu thereof, shall extinguish the assessment lien of such assessment as to payments that became due prior to such sale or transfer. No breach of the covenants, conditions, or restrictions in this Declaration, nor the enforcement thereof, shall defeat or adversely affect the lien of any such First Mortgage; provided, however, all of the covenants, conditions and restrictions in this Declaration shall be binding upon any Owner whose title is derived through foreclosure or exercise of a power of sale by a Mortgagee.

5.13 Transfer Fee. Each purchaser of a Lot shall pay to the Association immediately upon becoming the owner of the Lot a transfer fee in such amount as is established from time to time by the Board.

5.14 Surplus Funds. The Association shall not be obligated to spend in any year all of the assessments and other sums received by it in such year and may carry forward as surplus any balances remaining. The Association shall not be obligated to reduce the amount of the annual assessments 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 accomplishment of its purposes.

ARTICLE VI

Architectural Committee

6.01 Creation of Committee. There is hereby established the Architectural Committee of the Association (the "Committee"), which committee shall have the purpose, power and obligation to review or cause to be reviewed all plans and specifications for construction, alteration and improvement upon any part of the Property to ensure that they comply with the Covenants of this Declaration. The Committee may charge reasonable fees for its Services.

6.02 Membership. The Architectural Committee shall be composed of three members, who shall select a chairman. The members shall be appointed by and serve at the pleasure of Declarant until such time as Declarant no longer owns any Lot or parcel in the Property or January 1, 2000, or such earlier time as Declarant shall designate in writing. Thereafter, the members shall be elected by the Board of the Association upon such terms as shall be provided in the bylaws.

6.03 Architectural Rules. The Architectural Committee, by unanimous, vote or unanimous written consent, may adopt, amend, awes repeal rules and regulations regarding the architectural style, nature, kind, shape, height, materials, exterior colors, surface texture, and location of any improvement on a Lot, which such rules and regulations shall be called the Architectural Rules. The Architectural Rules shall not be inconsistent with the Declaration, the Articles, the Bylaws, or the Plat. Such Rules shall establish a procedure for the preparation and submission of applications for any such construction, improvement or alteration.

6.04 Committee Approval Required. No excavation or grading work shall be performed on any Lot, no improvements shall be constructed on any Lot, and no addition, alteration, repair, change or other work that in any way alters the exterior appearance of any Residence shall be made or done without the prior approval of the Architectural Committee has been obtained, which shall require the signatures of two of the three members of the Committee- The Committee shall refuse to approve any plans ~ specifications that, in its opinion, are not suitable or desirable for aesthetic or other reasons and it shall consider the suitability of the proposed construction, improvement or alteration, the material that will be utilized, the site upon which such construction, improvement or alteration is to be located, the harmony thereof with the surroundings,

and the effect thereof on the Property. Any application not approved or rejected after thirty days from its filing with the Committee shall be deemed approved. All decisions of the Committee shall be final unless appealed in writing to the Board within ten days of the Committee decision. The decision of the Board shall be final. No Owner, Occupant or other - party shall have recourse against the Committee or the Board for its refusal to approve any such plans or specifications.

6.05 Conflicts of Decision. No waivers of these restrictions may be made by the Architectural Committee, except as is specifically provided in this Declaration. In the event of irreconcilable conflict between this Declaration and decisions of the committee, this Declaration shall control, and the burden of compliance shall remain always on the Owner and Occupant. The Committee, its members, and the Association shall not have any liability for acts or omissions done in good faith.

ARTICLE VII

Insurance

7.01 Scope of Coverage. Commencing not later than the time of the first conveyance of a Lot to a Purchaser, the Association shall maintain, to the extent reasonably available, the following insurance coverages:

A. Comprehensive general liability insurance, including medical payments insurance, in an amount generally required by private institutional mortgage investors for projects similar in construction, location and use. Such insurance shall cover all occurrences commonly insured against for death, bodily injury and property damage arising out of or in connection with the use, ownership or maintenance of the Common Area and all portions of the Property which the Association is obligated to maintain under this Declaration. Such insurance shall also cover legal liability arising out of lawsuits related to employment contracts of the Association, and such other risks as are customarily covered with respect to projects similar in construction, location and use.

B. Property insurance on the Common Area insuring against all risk of direct physical loss, assured against in an amount equal to the maximum insurable replacement value of the Common Area, as determined by the Board.

C. Workmen's compensation insurance to the extent necessary to meet the requirements of the laws of Arizona.

D. Such other insurance as the Association shall determine from time to time to be appropriate to protect the Association or the Owners.

7.02 Insurance by Owners. Each Owner shall be responsible for obtaining property insurance for his own benefit and his own expense covering his Residence, and all appliances, fixtures, personal property and other contents located in his Residence. Each Owner shall also be responsible for obtaining at his own expense personal liability coverage for death, bodily injury or property damage arising out of the use, ownership or maintenance of his Lot.

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

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

7.05 Repair and Replacement of Damaged or Destroyed Common Area. Any portion of the Common Area which is damaged or destroyed shall be repaired or replaced promptly by the Association unless (i) repair or replacement would be illegal under any state or local health or safety statute or ordinance, or (ii) Owners representing at least 75 percent of the total authorized votes in the Association vote not to rebuild. The cost of repair or replacement in excess of insurance proceeds in reserve shall be paid by the Association. If all of the Common Area is not repaired or replaced, insurance proceeds attributable to the damaged Common Area shall be used to restore the damaged area to a condition which is not in violation of any state or local health or safety statute or ordinance and the remainder of the proceeds shall be either (i) retained by the Association as additional capital reserve, or (ii) be used for payment of operating expenses of the Association, as decided by the affirmative vote or written consent or any combination thereof, of Members representing more than 50 percent of the votes in the Association.

ARTICLE VIII

General Use Restrictions

8.01. Applicability. The covenants and restrictions in this Article shall apply to all the Property without exception.

8.02 Restrictions Apply to All Structures. All structures must be constructed on the Property in compliance with any county or municipal zoning regulations applicable to the Property, must be architecturally compatible with contiguous structures as determined by the Architectural Committee, and must comply with the provisions of this Declaration.

8.03 Prohibited Structures. No trailer, tent, shack, garage or barn, and no temporary buildings or structures of any kind shall be used at any time for a residence, either temporary or permanent. Temporary buildings, trailers or other structures used during the construction of improvements approved by the Architectural Committee shall be removed immediately after completion of construction, and in no event shall any such building, trailer or other structure be maintained or kept on any property for a period in excess of 12 months without the prior written approval of the Architectural Committee.

8.04 Size; Materials. No structure on any part of the Property shall be more than 35 feet in height, measured from the highest elevation of the Lot upon which it is constructed to the highest point of the structure. No Residence constructed within the Property shall have less than 1,100 square feet of liveable area.

8.05 Condition Precedent to Construction. Prior to commencement of any construction, alteration or improvement upon any part of the Property, the construction plans must be approved by the Architectural Committee. Any building permit issued prior to such approval shall be deemed void.

8.06 No Obstruction of Easements. Easements, as indicated upon the recorded map or plat of the Property, are reserved for the installation and maintenance of public service utilities and other uses for public or quasi-public good. No buildings or other structures shall be placed upon such easements or placed so as to interfere with the free use of the same for the purposes intended. No fences will be allowed in public utility easements.

8.07 Residential Use. All Lots shall be used, improved and devoted exclusively to residential use by a single family. No trade or business may be conducted on any Lot or in or from any Residence, except that an Owner or other resident of a Residence may conduct a business activity within a Residence so long as: (i) the existence or operation of the business activity is not apparent or detectable by sight, sound or smell from outside the Residence; (ii) the business activity conforms to all applicable zoning ordinances or requirements for the Property; (iii) the business activity does not involve persons coming onto the Lot or the door— to—door solicitation of Owners or other residents in the Property; and (iv) 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 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 which involves the provision of goods or services to persons other than the provider's family and for which the provider receives a fee, compensation or other form of consideration, regardless of whether: (a) such activity is engaged in full or part time; (b) such activity is intended or does generate a profit; or (C) a license is required for such activity. The leasing of a Residence by the Owner thereof shall not be considered a trade or business within the meaning of this section.

8.08 Animals Prohibited. No animals, livestock, or poultry of any kind shall be raised, bred, or kept upon any part of the Property, except that a reasonable number of household pets may be kept within a Lot, provided they are not kept, bred, or maintained for any commercial purpose. No person owning or in custody of a pet shall allow the pet to stray upon any part of the Property outside the Owner's Lot. No dog shall be allowed outside the Owner's Lot except upon a leash held by a person capable of controlling it.

8.09 Trash Removal. Trash, garbage or other waste shall not be kept except in sanitary containers, as approved by the municipality that has jurisdiction over the Property. Refuse containers shall not be permitted in the front of a Lot and shall be screened from street view. Each Owner shall provide an area for the storage of trash containers, which area shall not be visible from neighboring property and shall be used to house the container when it is not placed on the street for pickup. Trash and garbage containers may be placed on the street during normal pickup days but shall be removed to their proper storage area as soon as possible after they have been emptied by sanitation workers.

All equipment for the storage or disposal of trash, garbage or other waste shall be kept in a clean and sanitary condition subject to any applicable municipal zoning ordinances. There shall be no exterior fires whatsoever, except for barbecue fires contained within proper receptacles.

8.10 Physical Condition of Lots. All Lots shall be at all times kept free of rubbish and litter so as to present a tidy appearance. Owners agree they will arrange for the care of their Lots during prolonged absence.

8.11 Enforcement of Lot Maintenance Restrictions; Charge. In the event an Owner does not maintain his Lot in a neat and proper manner as provided herein, the Association may cause the same to be cleaned and restored to proper condition, and may impose a Maintenance Charge for such service. Upon the Owner's refusal to pay the Maintenance Charge, within thirty days after presentation of a bill therefor, the Association may record an affidavit in the Office of the County Recorder of Maricopa County, State of Arizona, stating that said Owner refused to maintain said Lot in a neat and proper manner, the amount of charge, to whom it was paid, and the date, and such amount shall thereupon constitute a lien against said Lot subject to and enforceable in accordance with the provisions hereof as to liens.

8.12 Nuisances Prohibited. No unlawful, offensive, obnoxious or immoral activity or condition shall be carried on or maintained upon any portion of the Property, nor shall anything be done or permitted thereon which may be or become a nuisance or annoyance to the neighborhood, or unnecessarily result in substantial reduction of the market value of the Property. No Owner shall permit anything to be done or kept on a Lot which may be hazardous to any persons or property. The definition of what constitutes a violation of this section rests solely within the discretion of the Board.

8.13 Basketball Hoops; Antennas. Fixed-in—place basketball goals and backboards, whether free standing or attached to the Residence, are prohibited. No antenna or other device for the transmission or reception of television or radio signals of any form of electromagnetic radiation including, without limitation, satellite or microwave dishes shall be erected, used or maintained on any Lot without the prior written approval of the Architectural Committee.

8.14 Mineral Exploration. No Lot or other property shall be used in any manner to explore for or to remove any water, oil or other hydrocarbons, minerals of any kind, gravel, earth or any earth substance of any kind.

8.15 Signs. No sign, banner or placard shall be installed or maintained anywhere on the Lot or the exterior of the Residence without the prior written approval of the Architectural Control Committee.

8.16 Trucks, Trailers, Campers and Boats. No truck, mobile home, travel trailer, tent trailer, trailer, camper shell, detached camper, recreational vehicle, boat, boat trailer or other similar equipment or vehicle may be parked, maintained or constructed, reconstructed or repaired on any Lot or street so as to be visible from neighboring property without the prior written approval of the Architectural Committee, except for: (i) the temporary parking of any such vehicle or equipment on a Lot or on a street for a period of not more than 48 hours within any seven— day period; (ii) temporary construction trailers or facilities maintained during and used exclusively in connection with the construction of any improvement approved by the Architectural Committee; or (iii) boats and vehicles parked in garages on Lots so long as such vehicles are in good operating condition and appearance and are not under repair and the garage door can be fully closed concealing such boats and vehicles.

8.17 Motor Vehicles. Except for emergency vehicle repairs, no automobile, motorcycle or other motor vehicle shall be constructed, reconstructed or repaired upon a Lot or any portion of the Property, and no inoperable vehicle may be stored or parked on any such Lot or any portion of the Property, so as to be visible from neighboring property. No automobile, motorcycle or other motor vehicle shall be parked on any road or street in the Property, except for motor vehicles of guests of Owners which may be parked on a road or street for a period of not more than 48 hours during any seven—day period.

8.18 Towing of Vehicles. The Board shall have the right to have any truck, mobile home, travel trailer, tent trailer, trailer, camper shell, detached camper, recreational vehicle, boat, boat trailer or similar equipment or vehicle or any automobile, motorcycle, motor bike or other motor vehicle which is parked, kept, maintained, constructed, reconstructed or repaired in violation of the Association Documents towed away at the sole cost and expense of the Owner of the vehicle or equipment. Any expense incurred by the Association in connection with the towing of any vehicle or equipment shall be paid to the Association upon demand by the Owner of the vehicle or equipment. If the vehicle or equipment is owned by an Owner, any amounts payable to the Association shall be secured by an assessment lien, and the Association may enforce collection of such amounts in the same manner provided for in this Declaration for the collection of assessments.

8.19 Clothes Drying Facilities. No outside clothes line or other outside facilities for drying or airing clothes shall be erected, placed or maintained on any Lot so as to be visible from neighboring property.

8.20 Drainage. No structure, building, landscaping, fence, walls or other improvement shall be constructed, installed, placed or maintained in any manner that would obstruct, interfere with, or change the direction or flow of water in accordance with the drainage plans for the Property, or any part thereof, or for any Lot as shown on the drainage plans on file with the county or municipality in which the Property is located.

8.21 Interpretation of Restrictions. In the event of any ambiguity in any provision of the restrictions in this Declaration, the interpretation of the Architectural Committee as to meaning intended shall prevail.

8.22 Variances. The Board may, at its sole discretion and in extenuating circumstances, grant variances from the use restrictions set forth in this Declaration or in any supplement to or amendment to it, if the Board determines that (a) either (i) a restriction would create a substantial hardship or burden on an Owner or Occupant, or (ii) a change of circumstances has rendered a restriction obsolete, and (b) the activity permitted under the variance will not have a substantially adverse affect on other Owners and occupants and is consistent with the high quality of life intended for the Property.

ARTICLE IX

General Provisions

9.01 Binding Effect of Declaration. The Covenants contained herein shall run with, be for the benefit of, bind and burden the Property and shall be binding upon and inure to the benefit of all Declarant's successors in title, interest or possession in all and every part of the Property or portion thereof from and after the effective date provided in this instrument.

9.02 Dominant Tenement. Each. of the Lots shall constitute the dominant tenement and be entitled to the benefit of the Covenants herein contained as against all of the other Lots in the Property which shall constitute the servient tenements.

9.03 Perpetuities and Restraints on Alienation. If any of the Covenants created herein shall be unlawful, void or voidable by violation of the common—law rule against perpetuities, or violation of valid laws prohibiting restraints on alienation, then the term as stated herein shall be reduced to a period of time that shall not violate the rule against perpetuities under the laws of Arizona, and shall be amended so that no unlawful restraint on alienation occurs.

9.04 Severability. If any provision herein or the application thereof in any circumstance is held invalid, it shall not affect the validity of the remainder of this Declaration or the application of such provision to different circumstances.

9.05 Deeds. Deeds of conveyance of all or any of the Lots shall incorporate by reference all the provisions contained in this Declaration, provided that whether or not recited in such deeds of conveyance, these Covenants shall be binding upon every Person affected by its terms.

9.06 First Mortgages. No breach of the Covenants and other provisions of this Declaration nor the enforcement thereof, shall defeat or adversely affect the lien of any First Mortgage, provided, however, all of the Covenants in this Declaration shall be binding upon any Owner whose title is derived through foreclosure or exercise of a power of sale by a Mortgagee.

9.07 Enforcement. The Covenants are enforceable by the Declarant or by the Association or by any one or more Owners or beneficial Owners of any Lot, or portion thereof, in the Property; provided, however, that except as may otherwise be provided herein any breach of the Covenants, or any right of re—entry by reason thereof, shall not defeat or affect the lien of any mortgage or deed of trust made in good faith and for value upon any Lot. Further, the Covenants shall also be binding upon and effective against any Owner of a Lot whose title thereto is acquired by foreclosure, trustee's sale or otherwise. The breach of any of the Covenants may be enjoined, abated or remedied by appropriate proceedings, notwithstanding the lien or existence of any deed of trust or mortgage. Failure by any person to enforce any Covenant herein contained shall in no event be deemed a waiver of the right to do so thereafter or a consent to further or subsequent breach.

Violation of any one or more of these Covenants may be enjoined by any court of competent jurisdiction and/or damages may be sought and awarded. In the event an action is taken into court for the enforcement of any provision in this Declaration, reasonable expenses, including reasonable attorney fees, court costs, title search fees, interest and all other costs and expenses shall be allowed to plaintiff, and otherwise as permitted by law.

9.08 Amendment. The provisions of this Declaration and any supplements may be amended, including an amendment modifying, terminating, canceling, revoking, or rescinding all or any part hereof, by an instrument in writing setting forth such amendment, as provided in this section.

A. This Declaration and any Declaration Supplement may only be amended upon the written approval or affirmative vote, or any combination thereof, of Owners of not less than 75 percent of the Lots.

B. The Board may amend this Declaration or the Plat, without obtaining the approval or consent of any Owner (other than Declarant if its consent is required under this article) or First Mortgagee, in order to conform this Declaration or the Plat to the requirements or guidelines of the Federal National Mortgage Association, the Federal Home Loan Mortgage Corporation, the Federal Housing Administration, the Veterans Administration or any federal, state or local governmental agency whose approval of the Property, the Plat or the Association Documents is required by law or requested by the Declarant or the Board.

C. So long as Declarant is a Class B member, any amendment to this Declaration must be approved in writing by Declarant.

D. The Declarant or the Board may amend this Declaration without the consent of any other Owner to correct any error or inconsistency in the Declaration.

E. So long as the Declarant owns more than 75 percent of the Lots subject to this Declaration, any amendment to this Declaration shall be signed by Declarant and recorded in the records of Maricopa County, Arizona. At any time the Declarant does not own at least 75 percent of the Lots subject to this Declaration, any amendment approved pursuant to this article shall be signed by the president or vice president of the Association and shall be recorded with the County Recorder of Maricopa County, Arizona, and any such amendment shall certify that the amendment has been approved as required by this article. Unless a later effective date is provided for in the amendment, any such amendment shall be effective from and after the date recorded.

9.09 Effective Date. This Declaration and the covenants herein contained shall be effective on the declaration date stated on page one hereof, or on the date the same is placed of record in the office of the Maricopa County Recorder, whichever first occurs.

9.10 Term. This Declaration and its Covenants shall remain in force for a term of thirty—five years from the date this Declaration is recorded and thereafter the Covenants shall be automatically extended for successive periods of ten years, unless and until, before the end of such period, the same is revoked and terminated by written instrument, duly acknowledged and recorded as provided herein.

9.11 Attorneys Fees. If any legal proceeding is brought by either party with respect to this Agreement, the prevailing party shall be entitled to recover, in addition to any other relief to which it is entitled, its costs and expenses incurred in connection with such legal proceeding, including, without limitation, reasonable attorneys' fees.

9.12 Governing Law. This Agreement shall be governed as to the validity, interpretation, construction, and effect by the laws and decisions of the State of Arizona. The venue for any dispute hereunder shall be Maricopa County, Arizona.

IN WITNESS WHEREOF, the Declarant and such other persons as are signatory hereto have signed by their own hand, or have caused the corporate name to be signed by the duly authorized undersigned officer(s) of such corporation, effective on the date stated herein.

DECLARANT: ELLIOTT HOMES, INC., an
Arizona corporation

By:

Harry C. Elliott, III

President

STATE OF CALIFORNIA

County of Sacramento

On this day, personally appeared before me Harry C. Elliott, III, who is known to me to be the person whose name is above subscribed, and after being first duly sworn, acknowledged himself to be the President of Elliott Homes, Inc., and

upon his oath acknowledged that he executed the foregoing Declaration for and on behalf of that corporation for the purpose therein contained, being authorized so to do.

IN WITNESS WHEREOF, I hereunto set my hand and official seal on February 4, 1994.

Notary Public
My Commission Expires: MAR 3, 1995

GWEN MYERS

NOTARY PUBLIC-CALIFORNIA
SACRAMENTO COUNTY

EXHIBIT A

DESCRIPTION OF PROPERTY SUBJECT TO DECLARATION

A subdivision of part of Section 28 Township 1 South, Range 4 East, Gila and Salt River Base and Meridian, according to a plat recorded July 7, 1994 in Book 379 of Maps, page 44 in the office of the Maricopa County Recorder.